

ENFORCEMENT OF FOREIGN JUDGMENTS IN NIGERIA

The enforcement of foreign judgments in Nigeria is governed by the provisions of the Foreign Judgments (Reciprocal Enforcement) Act Laws of the Federation of Nigeria 1990 Cap 152.

The Act provides for the enforcement in Nigeria of judgments and orders made by superior courts of foreign countries. Superior courts are courts equivalent to or above the status of the Nigerian High Courts. Judgments of inferior courts such as country courts, Magistrate courts, et cetera are thus enforceable.

Only final and conclusive judgments delivered by the superior courts of record are enforceable in Nigeria. Arbitral awards are construed as “Judgments” and are therefore afforded the same status as judgments of superior courts of record. However, judgments that are in the nature of penalties, levies, taxes, fines are not enforceable.

Enforcement of foreign judgment in Nigeria is a statutory privilege and only judgments obtained in superior courts of commonwealths countries may be enforced in Nigeria without

the prior approval and consent of the Attorney-General and Minister of Justice of Nigeria first had and obtained.

Indeed, the Act clearly provides that foreign judgments obtained in non-commonwealth countries may only be enforced in Nigeria where the Attorney- General has given his approval to the application for enforcement of that judgment. The Attorney -General's discretion is primarily premised on the existence of a reciprocal arrangement between Nigeria and the particular non-commonwealth country from which the court judgment originated.

A creditor in respect of a foreign judgment may apply to a superior court in Nigeria at anytime within Six years after the date of the judgment or where there was an appeal, Six years after the date of the last judgment on appeal for a registration of the judgment. The Six years limitation period is a welcome departure from the previous statutory limitation period of ONE year.

The application for registration is by Originating Summons on notice to the judgment creditor. The application is usually

accompanied with the certified copy of the judgment itself and all such other documents as the circumstances may require.

Foreign judgments are not registrable in Nigeria if the judgment debt has been satisfied or if it could be enforced by execution in the originating court.

A registered judgment has the same force and effect as a judgment of a Nigerian superior court and the judgment sum carries interest until final liquidation by the judgment creditor. Section 4(3) of the Act provides that:

“Where the sum payable under judgment which is to be registered is expressed in a currency other than the currency of Nigeria, the judgment for such sum in currency of the currency of Nigeria as, on the basis of the rate of exchange prevailing at the date of the judgment of original court process court, is equivalent to the sum so payable”

The recent promulgated Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree 17 of 1995 has abolished this restriction and foreign judgment creditors may now enforce their arbitral awards or judgment debt without the burden of being statutorily compelled to have their judgment settled in Naira.

Section 6 of the Foreign Judgments Act provides for the grounds upon which a foreign judgment or award registered in Nigeria may be set aside. Some of the grounds are:

- That the original court had no jurisdiction to adjudicate;
- That the judgment debtor did not have sufficient notice of the foreign proceedings to enable him appear and therefore failed to appear;
- That the judgment was obtained by fraud.

The foreign judgment may be enforced by the issuance of a Writ of fieri facias against the movable property and chattels of the Judgment debtor. Foreign judgments may also be enforced by garnishee proceedings or via a winding-up proceeding against the Nigerian company (if the judgment debtor is a company).

IKECHI MGBEOJI [DECEMBER 1996]