

## Chapter 28

# NIGERIA

### 1. Under general law

Nigerian law is based on common law, precedents and local statute and, where there is a lacuna in the local law, the laws in England operate as persuasive authority to complement the Nigerian law. The recognition of foreign judgments is dealt with within the framework of the existing Nigerian laws and the Foreign Judgments (Reciprocal Enforcements) Act Cap. 152,1990 (FJRE), which provides for the enforcement of judgments given in foreign countries that accord reciprocal treatment to judgments given in Nigeria.

The judgments that can be enforced in Nigeria are those to which Part 1 of the Act applies. The decision to confer reciprocal status to a foreign jurisdiction is based on the Minister being satisfied that substantial reciprocity of treatment will be assured as regards the enforcement of judgments given in superior courts in Nigeria.

The judgment of a superior court to which the Act, part 1 applies must be: -

- final and conclusive between the parties notwithstanding that an appeal may be pending against it or that it may still be subject to appeal in the courts of the foreign country.
- one in which a sum of money is payable thereunder, not being a sum payable as taxes or other charges of a like nature or in respect of a fine or other penalty.

An application to enforce a judgment must be made to a High Court in Nigeria within 6 years from the date of the judgment, or where there has been an appeal against the judgment, after the date of the last judgment given in the appeal. The Judgment will however not be registered if it could not be enforced by execution in the country of the original court.

On registration, the judgment has the same force and effect for the purposes of execution, and proceedings may be taken on it. The judgment debt carries interest and the registering High Court has the same control over the registered judgment as if the judgment was given in that High Court on the date of registration.

The judgment debtor may apply to the High Court to set aside the registration if: -

- the judgment is not a judgment to which Part 1 applies or that it was registered in contravention of the Act;
- the courts of the country of the original court had no jurisdiction in the circumstances of the case;
- the judgment debtor did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- the judgment was obtained by fraud;
- the enforcement of the judgment would be contrary to public policy in Nigeria; or
- the rights under the judgment are not vested in the person by whom the application for registration was made;

In cases where there is no reciprocal treatment of foreign judgments, the foreign creditor may use the judgment to procure another judgment in Nigeria by instituting a fresh action.

## **2. Assisting legislation**

There is no law in Nigeria dealing specifically with the recognition and enforcement of cross-border insolvencies nor any authority specifically set up to deal with issues that arise out of cross-border insolvencies.

## **3. Insolvency practice**

There is a dearth of authorities in Nigeria regarding cross-border insolvencies but there have been various pronouncements by the courts regarding enforcement of foreign judgments. An issue of great concern to the courts in Nigeria in cases of registration of foreign judgments in Nigeria or the registration of Nigerian judgments abroad is ensuring that there is no conflict between the courts of the original jurisdiction and the registering court.

There is no Insolvency Act in Nigeria. The laws relating to insolvency are included in the Companies and Allied Matters Act Cap 59 1990 (CAMA) which replaced the Companies Act, 1968. The rules governing the winding up of companies are contained in the Winding up Rules.

A Nigerian court can wind up a foreign company under CAMA Sections 407 which provides jurisdiction to the Federal High Court to wind up relevant companies whether registered or not, which have a registered office or head office within the jurisdiction of the court during the 6 months immediately preceding the presentation of the petition for winding up. Such a company may be wound up as an unregistered company under CAMA section 532 if: -

- the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs.
- the company is unable to pay its debts.
- the court is of the opinion that it is just and equitable that it be wound up.

As regards companies who have been wound up outside Nigeria but with assets within Nigeria, it is advisable to institute an action within jurisdiction for an order to sell the relevant assets based on the foreign winding up order procured. Such an action would be brought under FJRE, Section 11.

The Bankruptcy Act Cap 30, 1990 Section 53 provides that a bankrupt possessed of property outside Nigeria is required to join the trustee in selling such assets for the benefit of the creditors. It is noteworthy that the provisions of the Bankruptcy Act have hardly ever been used in Nigeria, except for the recent attempt to implement it as a debt recovery tool.

## 4. Proposed Reforms

The Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) has commenced a review of Nigerian insolvency laws and it is hoped that Nigeria will have its insolvency laws codified as the Nigerian Insolvency Law.

## 5. Examples

***Adwork Limited vs Nigeria Airways Limited Court of Appeal (2000) 2 NWLR (part 645) as follows;***

*“The original court that gave judgment does not lose its jurisdiction in relation to the execution process in the suit just because the judgment has been registered in a foreign country. But once it is recognized that a registering court has the same power with respect to execution as the original court, it becomes important to monitor closely what the registering court is doing in relation to the execution of a particular registered judgment in order to ensure that there is no conflict in the exercise of powers as to execution between the registering court and the court which originally gave the judgment”*

*“The process of execution of a judgment may take different forms and may necessitate other ancillary proceedings. In the quest to eliminate any conflict of jurisdiction as to execution between the registering court and the original court, it is important for either of the court to discover what is being done or has been done by either of them at a particular time before either assumes jurisdiction. It boils down to*

*the necessity for both courts to prevent an abuse of its execution process rather than in the proclamation of principles”*

*“When a judgment has been pronounced and no appeal is brought by the parties, the execution of the judgment normally follows. All types of application may follow and these usually include stay of execution, instalmental payment, variation etc. It appears that applications other than those directed specifically at obtaining satisfaction of the judgment are properly brought before the court which originally gave the judgment even in cases where the judgment has been registered in a foreign court. On the other hand, applications arising out of execution of writs taken out in the registering court ought to be heard by the registering court. This is without prejudice to the power of the court which originally gave the judgment to enforce by execution its judgment even when the judgment has been registered in a foreign court. The way it works is that either court must satisfy itself that the execution power is not being exercised simultaneously in exercise of the concurrent jurisdiction in the original and the registering court”.*