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A GUIDE ON THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS IN NIGERIA

In fulfilment of the Omaplex Virtual Internship Program, four interns were instrumental in developing a working paper on the Space Law regime in Nigeria which has been further developed to this present work.*

ABSTRACT

The core benefit of a successful Arbitration procedure is the enforcement of its judgement under which Arbitration is known as an 'award'. The essence of international arbitration cannot be overemphasized in the face of globalization where international business relations, commerce and trade has placed increasing demands on inter-state efficiency and cooperation. However, the recognition and enforcement of foreign arbitral awards has become an issue of concern for many countries of the world in recent times, as it determines the effectiveness of international arbitration practice in a country and whether or not a jurisdiction is arbitration friendly. Considering the importance of arbitration in the settlement of disputes globally, this article focuses on the procedure for enforcement of foreign arbitral awards in Nigeria. It also examines the attitude of national courts to international arbitral awards in Nigeria.

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1.0 INTRODUCTION

Arbitration is probably the best-known alternative to court litigation as disputants are now discovering that Arbitration is a more efficient, flexible and cost-efficient alternative to litigation.¹ It is a procedure in which a dispute is submitted by agreement of the parties, to one or more arbitrators who make pronouncements called an award which all parties agree to be bound by. By this, in choosing arbitration as a means of dispute resolution, the parties opt for a private process instead of going to court.²

Arbitration is favourable to parties because of its neutrality, confidentiality, speed, flexibility and the awards are easily enforced. The Supreme Court in the case of Ras Pal Gazi Construction Co. Ltd v F.C.D.A has held on the effect of arbitral award thus: "It is very clear and without any iota of doubt, that an arbitral award made by an arbitrator to whom a voluntary submission was made by the parties to the arbitration, is binding between the parties."³

International arbitration has evolved to allow parties from diverse legal and cultural backgrounds resolve their disputes in a final and binding manner, typically without the formalities of the procedural rules of their respective legal systems.⁴ For instance, in the event of disputes arising from cross border commercial transactions between parties of different legal backgrounds, parties subject themselves to an international Arbitration process which provides a level playing ground for all parties and an International award is given as judgement, same which is binding on parties and required to be enforced in their country of origin.

An arbitral award granted outside Nigeria is enforceable and binding on parties to it. A seamless ecosystem for enforcement of foreign judgement or arbitral awards boost investors' confidence. According to World Bank ease of doing business index 2019,⁵ Nigeria ranked 96th on enforcement of contract index and it takes about 454 days to enforce a contract through the court. The length and anxiety associated with litigation procedure have a habit of discouraging business relationship. Therefore, this article discusses the procedure of the enforcement of international arbitral awards in Nigeria.

2.0 THE ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS IN NIGERIA

The means by which an application can be made for the enforcement of foreign arbitral awards in Nigeria is through

the Court.⁶ The said application has to be made to a court which would have had jurisdiction to entertain the matter, save the arbitration option of the parties.

In Nigeria there are generally five ways to enforce foreign arbitral awards. These are;

- a) By an Action at law
- b) Enforcement under the Foreign Judgment (Reciprocal Enforcement) Act
- c) Enforcement under the Arbitration & Conciliation Act
- d) Enforcement under the New York Convention 1958
- e) Enforcement under the International Centre for Settlement of Investment Disputes (ICSID)

A. Enforcement by an Action at Law

International arbitral awards are enforceable by actions at law like the domestic arbitral awards. This is because international arbitration agreement like any other agreement is enforceable and the breach of same will be a ground for an action at law. The action is based on the fact that international arbitration agreements just like any other contract is recognized in law as binding and enforceable. The agreement to settle is an actual promise to perform the award of the arbitral tribunal and the failure to perform the award when made is a breach of the arbitration agreement.

Therefore to succeed in the action, the plaintiff must prove the existence of the arbitration agreement, the proper conduct of the arbitration in accordance with the agreement,⁷ and that the award was both final and valid by the law of the country in which it was made, and a duly certified copy of the translation of the above documents if they are not in English language. Also, the defendant may, resist the enforcement of the award by challenging the award, the conduct of the arbitration or the jurisdiction of the arbitral tribunal. it is important to note that the mode of commencement of this procedure of enforcement is by a writ of summons.⁸ Hence, it is worthy of note that, this method if engaged would amount to engaging in litigation all over again as certainly it will be contentious and enforcement would be slow. This method of enforcement is not much-admired.

B. Enforcement Under the Foreign Judgment (Reciprocal Enforcement) Act

Under the Foreign Judgment (Reciprocal Enforcement) Act,⁹ a judgment or award obtained in a foreign country may

be enforced in Nigeria within six years of the judgment or award. Such an award must according to the law of the foreign country, be enforceable as a judgment⁹ of a court in that country.

For FJA to be applicable, the foreign country where the award was delivered must also be inclined to enforce judgements and arbitral awards emanating from Nigeria courts in its Courts.¹¹ Also, under this method the said arbitral award would have to be registered first in a Nigerian court with jurisdiction to hear the dispute and thereafter the successful applicant can then use the writ of execution to implement the award.

Note however, that a superior court in Nigeria will not enforce any award under this Act if at the time of the application for its enforcement there exist an appeal in any court on the award for purposes of setting it aside or if it has wholly been satisfied or it could not be enforced by execution in the country of the original court.¹²

C. Enforcement under Section 51 the Arbitration & Conciliation Act

An international arbitral award may be enforced pursuant to the provisions of section 51 of the Act which provides inter alia that “an arbitral award shall, irrespective of the country in which it is made, be recognized as binding and subject to this section and section 32 of this Act shall, upon application in writing to the court, be enforced by the court”¹³

Under this procedure, the party relying on an award or applying for its enforcement shall supply;

- (a) the duly authenticated original award or a duly certified copy thereof;
- (b) the original arbitration agreement or a duly certified copy thereof
- (c) where the award or arbitration agreement is not made in the English language, in duly certified translation thereof into the English language.¹⁴

This method of enforcement under Section 51 of the Arbitration and Conciliation Act is by an application to Court which is by motion on notice.

D. Enforcement Under the New York Convention

The New York Convention on the Recognition and Enforcements of Foreign Arbitral Awards 1958 applies in Nigeria by virtue of section 54 of the Arbitration and

Conciliation Act.¹⁵ Section 54 of the Act provides as follows:

(1) Without prejudice to section 51 and 52 of the Act, where the recognition and enforcement of any award arising out of an international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign (Arbitral) Awards.... set out in Schedule 2 of this Act shall apply to any award in Nigeria, or in any contracting State:

- (a) Provided that such contracting State has reciprocal legislation recognizing the enforcement of arbitral awards made in Nigeria, in accordance with the provisions of the Convention.
- (b) That the Convention shall apply only to differences arising out of legal relationship which is contractual.

The Convention provides that its provisions apply to the recognition and enforcement of arbitral awards made in the territory of a state other than the state where the recognition and enforcement of such awards are sought. They also apply to awards not considered as domestic awards in the state where their recognition and enforcement are sought.¹⁶

It is a fact that Nigeria has made the reciprocity reservation and so only awards made in contracting states that undertake to recognize and enforce awards made in other contracting states, including Nigeria will be recognized and enforced in Nigeria. The effect of this is that awards made in a country which is not a party to the Convention or giving reciprocal treatment to Nigerian awards cannot enjoy in Nigeria the recognition and enforcement provided under the Convention.

E. Enforcement Under The International Centre For Settlement Of Investment Disputes Convention (Enforcement Of Awards) (ICSID).¹⁷

Nigeria ratified the ICSID Convention on 23 August 1965. In pursuance of its commitment to domesticate the ICSID Convention, the convention was re-enacted as a local legislation vide the International Centre for Settlement of Investment Dispute (Enforcement of Awards) Act.¹⁸

For arbitration proceedings to be conducted under ICSID Act, the parties must have consented and agreed that ICSID Convention shall apply for the settlement of their dispute. By Article 26 of the Convention, consent of the parties to

arbitration under ICSID Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy.¹⁹

Each Contracting States to the convention has only one duty to perform with respect to the award and that is, to recognize and enforce the award as if it is the final judgment of the court within their State. The applicant for the recognition or enforcement is only required to furnish the court with a Certified True Copy (CTC) of the award certified by the Secretary General.²⁰ In Nigeria, the appropriate court for the registration, recognition and enforcement of the ICSID award in the Supreme Court of Nigeria which is the highest court of the land.

This is perhaps the fastest procedure in Nigeria for enforcing an arbitral award as there is little or no room for objections to the enforcement of the award.

3.0 CONCLUSION

This article successfully highlighted and discussed the procedures for the enforcement of international arbitration of Nigeria. And further establishes that both domestic and foreign arbitral awards are enforceable in Nigeria pursuant to the procedures discussed above. Though, these methods of enforcements are not without their challenges, ranging from the complexity in the procedures, timing, and attitude of parties to voluntarily obey this awards. Arbitration is certainly one of the fastest mode of speedy dispensation of justice.

Finally, this article recommends that Nigerian courts should make special provisions in its Court rules or Practice directions to enforce decisions emanating from arbitrations. Also, the enforcement of arbitral awards generally in our courts should be given high priority, by ensuring its procedure is time-bound, this would ensure speedy dispensation of justice.

ENDNOTES

1. Gbemisola Olokode, "Enforcement of Arbitral awards in Nigeria: Issues and Challenges", *The News Journal of The Chartered Institute of Arbitrators Nigeria Branch*, Vol. 3 (7) 2019, at page 36
2. World Intellectual Property Organization (WIPO) Arbitration and Mediation Center Guide to WIPO Arbitration. Available at: <http://www.wipo.int/amc/> (last accessed 25 September 2020)
3. *Ras Pal Gazi Construction Co. Ltd v F.C.D.A (2001) LPELR-SC.45/96*
4. "What is an International Arbitration?" International Arbitration Information <https://www.international-arbitration-attorney.com/> (last accessed 25 September 2020)
5. <https://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts> last accessed 29th October 2020
6. *High Court of the States and the Federal Capital Territory and the Federal High Court.*
7. *Norske Atlas Insurance Co.Ltd. v London Central Insurance Co. Ltd. (1927) 43 TLR 541*
8. G.C Nwako & C.E Aduaka, "The Recognition and Enforcement of International Arbitral Awards in Nigeria: the Issue of time limitation", *Journal of Law, Policy and Globalization*, P.120, www.iiste.org ISSN2224-3240 Vol. 37, 2015116.
9. CAP F35 LFN 2004
10. According to S.2 of the Act, judgment "... shall include an award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as judgment given by a court in that place...." See also *Tulip (Nig.) Ltd. v NTM SAS [2011] 4 NWLR (Pt.1237) 259.*
11. *Candide and Olasupo, Commercial Arbitration Law and International Practice in Nigeria, (South Africa, Lexis Nexis 2012), Chap. 4, p. 202* see also Part 1 FJA for the list of Countries that render reciprocal enforcement to Nigeria.
12. Section 6 (1) of the Foreign Judgment (Reciprocal Enforcement) Act, Cap F35, LFN 2004
13. Section 51(1) of the Arbitration and Conciliation Act Cap A18, L.F.N, 2004.
14. *Ibid*, Section 2
15. *Supra* note 42
16. Art. 1.1 of the Convention
17. Act CAP 120, LFN 2004
18. cap 19 laws of the federation of Nigeria 1990.
19. Article 44 ICSID Convention.
20. G.C Nwako & C.E Aduaka, "The Recognition and Enforcement of International Arbitral Awards in Nigeria: the Issue of time limitation", *Journal of Law, Policy and Globalization*, P.120, www.iiste.org ISSN2224-3240 Vol. 37, 2015116. See also Section 1, of the International Dispute (Enforcement of Awards) Act, Cap LFN, 2004.

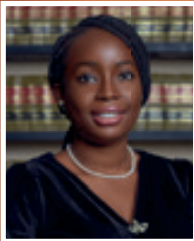


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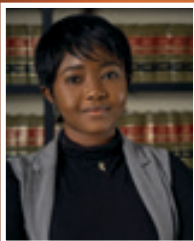
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