Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards

General Editor
J William Rowley QC

Editors
Emmanuel Gaillard, Gordon E Kaiser and Benjamin Siino

Second Edition

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Publisher's Note

Global Arbitration Review is delighted to publish this new edition of *The Guide to Challenging and Enforcing Arbitration Awards*.

For those new to Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, and more in-depth books and reviews. We also organise conferences and build work-flow tools. Visit us at www.globalarbitrationreview.com.

As the unofficial 'official journal' of international arbitration, sometimes we spot gaps in the literature earlier than others. Recently, as J William Rowley QC observes in his excellent preface, it became obvious that the time spent on post-award matters had increased vastly compared with, say, 10 years ago, and it was high time someone published a reference work focused on this phase.

The Guide to Challenging and Enforcing Arbitration Awards is that book. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, M&A and mining disputes – and soon evidence and investor-state disputes – in the same unique, practical way. We also have books on advocacy in international arbitration and the assessment of damages.

My thanks to the original group of editors for their vision and energy in pursuing this project and to our authors and my colleagues in production for achieving such a polished work.

Alas, as we were about to go to press, we were stunned by the unexpected demise of one of those editors, Emmanuel Gaillard. This news was as big a shock as I can recall. Emmanuel was one of three or four names who define international arbitration in the modern era. It was a delight to know him, and a source of huge satisfaction that he respected GAR, and it is hard to imagine professional life without him. Our sympathies go to his family and beloved colleagues, who I have no doubt will keep at least some of the magic alive.

David Samuels

London
April 2021

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Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – in other words, efficient, experienced and impartial – leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in 166 countries (at the time of writing). When enforcement against a sovereign state is at issue, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 163.

Awards used to be honoured

International corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily – of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2020, *Global Arbitration Review*'s daily news reports contained hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement. Indeed, in the first three months of 2021, there has not been a day when the news reports have not headlined the attack on, survival of, or a successful or failed attempt to enforce an arbitral award.

A sprinkling of recent headlines on the subject are illustrative:

- Uganda fails to knock out rail-claim award
- Iranian state entity fails to overturn billion-euro award
- US Supreme Court rejects Petrobras bribery appeal
- Spanish court sets high bar for award scrutiny
- Swiss award against Glencore upheld on third attempt
- Tajik state airline escapes Lithuanian award
- Dutch court refuses to stay Yukos awards
- Undisclosed expert ties prove fatal to ICSID award
- Brazilian airline's award enforced in Cayman Islands
- ICC arbitrators targeted in Kenyan mobile dispute

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, in summer 2017, I raised the possibility of doing a book on the subject with David Samuels (Global Arbitration Review's publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project. It was a dreadful shock to learn of Emmanuel's sudden death in early April. Emmanuel was an arbitration visionary. He was one of the first to recognise the revolutionary changes that were taking place in the world of international arbitration in the 1990s and the early years of the new century. From a tiny group defined principally by academic antiquity, we had become a thriving, multicultural global community, drawn from the youngest associate to the foremost practitioner. Emmanuel will be remembered for the enormous contribution he made to that remarkable evolution.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said almost 40 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide begins with a particularly welcome and inciteful foreword by Alan Redfern, recognised worldwide as one of the most thoughtful and experienced practitioners in our field. The guide is then structured to include, in Part I, coverage of general issues that will always need to be considered by parties, wherever situate, when faced with the need to enforce or to challenge an award. In this second edition, the 14 chapters in Part I deal with subjects that include initial strategic considerations in relation to prospective proceedings; how best to achieve an enforceable award; challenges generally and a variety of specific types of challenges; enforcement generally and enforcement against sovereigns; enforcement of interim measures; how to prevent asset stripping; grounds to refuse enforcement; and the special case of ICSID awards.

Part II of the guide is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This edition includes reports on 26 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 51 questions. All relate to essential, practical information about the local approach and requirements relating to challenging or seeking to enforce awards. Obviously, the answers to a common set of questions will provide readers with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

With this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors those colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach even further.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this second edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

London
April 2021

Part II

Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How

33

Nigeria

Gbolahan Elias SAN, Lawal Ijaodola, Athanasius Akor and Oluwaseun Oyekan[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form?

Pursuant to the Arbitration and Conciliation Act 1988 (AC Act), an award must be in writing and signed by the arbitrator. If the tribunal consists of more than one arbitrator, the signatures of a majority of the members suffices, provided the reason for the minority not signing is stated. Unless the parties have agreed that no reasons are to be given, or the award is a consent award (Section 25), the award shall state the reasons on which its conclusions are based. The award shall state the date on which it was made and the place of arbitration. A copy of the award shall be delivered to the parties (Section 26). Finally, the award can be made public only with the consent of all the parties (Arbitration Rules, Article 32).

Applicable procedural law for recourse against an award

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retractation or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)?

A party may, within 30 days of receipt of an award and with notice to the other party, request the tribunal to (1) correct in the award any errors in computation, any clerical or

1 Gbolahan Elias SAN is a partner and Lawal Ijaodola, Athanasius Akor and Oluwaseun Oyekan are associates at G Elias & Co.

typographical errors or any errors of a similar nature, and (2) give an interpretation of a specific point or part of the award. The tribunal shall revert within 30 days. The tribunal may also on its own volition, within 30 days of the date of the award, correct any error. A party can also request the tribunal to make an additional award as to the claims presented in the arbitration but omitted from the award. An additional award shall be made within 60 days of the request (AC Act, Section 28). There are no provisions on the retraction of an award.

Appeals from an award

3 May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

An award is final and is not subject to an appeal. An award can be set aside if (1) there is misconduct by the arbitrators, (2) in the award, the arbitrators exceeded their jurisdiction, (3) the award was improperly procured or obtained by fraud, or (4) there is an error on the face of the award (AC Act, Sections 29 and 30).

Although an appeal may attack the merits and complain about errors in the content of the award, a setting-aside application is essentially a complaint only about the process followed in making the award or to the effect that the content of the award is not just erroneous but actually perverse.

Applicable procedural law for setting aside of arbitral awards

Time limit

4 Is there a time limit for applying for the setting aside of an arbitral award?

A party who is aggrieved by an award may request the court to set aside the award, provided this is done within three months of the date either of the award or of the request for an additional award being disposed of by the arbitral tribunal (AC Act, Section 29).

Award

5 What kind of arbitral decision can be set aside in your jurisdiction? Can courts set aside partial or interim awards?

All kinds of award can be set aside (AC Act, Sections 29 and 30).

Competent court

6 Which court has jurisdiction over an application for the setting aside of an arbitral award?

The Federal High Court (FHC) and the high courts of the states (AC Act, Sections 29, 30 and 57).

Form of application and required documentation

7 What documentation is required when applying for the setting aside of an arbitral award?

An originating motion supported by an affidavit (exhibiting a certified copy of the award) and a written submission are needed (FHC Rules, 2019, Order 52, Rule 15). An applicant must furnish to the court as 'many copies of the process as there are defendants to be served' (FHC Rules, Order 3, Rule 12).

Translation of required documentation

8 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with the application for the setting aside of an arbitral award? If yes, in what form must the translation be?

The language of the court is English. Any document not written in English must be accompanied by a translation into English (*Gundiri v. Nyako* (2014) 2 NWLR (Pt 1391) 211; *Ogidi v. State* (2005) 5 NWLR (Pt. 918) 286).

Other practical requirements

9 What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

An applicant must pay the applicable filing fee to be assessed by the registrar of the court. The language of the court is English. Depending on the court involved, written submissions may not exceed 20 pages (e.g., Order 35, Rule 3 of Lagos State High Court Rules, 2019). In principle, there are 38 court systems: the high court of each of the 36 states, the High Court of the Federal Capital Territory, and the Federal High Court system, which has divisions nationwide.

Form of the setting-aside proceedings

10 What are the different steps of the proceedings?

An applicant is required to file an originating motion supported by an affidavit (exhibiting a certified copy of the award) and a written address. The respondent is required to file a counter-affidavit and written address if he or she intends to oppose the application. At the hearing of the application, the court will rely on affidavit evidence and written submissions already filed by the parties.

Suspensive effect

11 Do setting-aside proceedings have suspensive effect? May an arbitral award be recognised or enforced pending the setting-aside proceedings in your jurisdiction?

An application for the refusal to recognise an award has a suspensive effect on the application for the recognition and enforcement of the award until the recognition and enforcement application is determined (*Shell Trustees (Nig) Ltd v. Imani Sons Ltd* (2000) 6 NWLR (Pt. 662) 639).

Grounds for setting aside an arbitral award

12 What are the grounds on which an arbitral award may be set aside?

An award can be set aside if (1) there is misconduct by the arbitrators, (2) in the award, the arbitrators exceeded their jurisdiction, (3) the award was improperly procured or obtained by fraud, or (4) there is an error on the face of the award (AC Act, Sections 29 and 30).

Decision on the setting-aside application

13 What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges are available?

When an award is set aside, the judgment creditor loses the right to enforce the award. An appeal can lie against the setting-aside decision.

Effects of decisions rendered in other jurisdictions

14 Will courts take into consideration decisions rendered in the same matter in other jurisdictions or give effect to them?

Yes.

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

15 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

The AC Act is the applicable procedural statute for the recognition and enforcement of an award. The Lagos State Arbitration Law 2009 (Lagos Law) will apply to arbitrations that it governs (AC Act, Section 51; Lagos Law, Section 56). Foreign awards may be enforced under the Foreign Judgments (Reciprocal Enforcement) Act 1961 and the Reciprocal Enforcement of Judgments Act 1922.

Nigeria is a signatory to, and has ratified, the Convention on the Recognition and Enforcement of Foreign Awards of 1958 (the New York Convention (NYC)) (AC Act,

Section 54, Second Schedule). An award made by the International Centre for Settlement of Investment Disputes (ICSID) is enforceable in Nigeria under the ICSID (Enforcement of Awards) Act 1967.

The New York Convention

16 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under Article I(3) of the Convention?

Nigeria is a signatory to, and has ratified, the NYC. Nigeria acceded to the NYC on 17 March 1970. Nigeria ratified NYC by virtue of Section 54 and the Second Schedule to the AC Act.

Nigeria made a reservation under Article I(3) of the NYC to the effect that the NYC would apply to an award made in Nigeria or in any contracting state provided that (1) the contracting state has reciprocal legislation recognising the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the NYC, and (2) the NYC shall apply only to differences arising out of a legal relationship that is contractual (AC Act, Section 54).

Recognition proceedings

Time limit

17 Is there a time limit for applying for the recognition and enforcement of an arbitral award?

An action to enforce an arbitration award cannot be brought after six years of accrual of the cause of action (Limitation Act 1966 (LA), Section 7(a)). If an arbitration agreement is under seal, an action to enforce the award cannot be brought after 12 years of the accrual of the cause of action (LA, Section 11(b)). The cause of action for enforcement accrues from the date when the claimant either acquired a right of action or a right to require that an arbitration takes place on the dispute concerned (*Murmansk State Steamship Line v. Kano Oil Millers Ltd* (1974) 12 SC 1; *City Eng (Nig) Ltd v. NAA* (1999) 11 NWLR (Pt. 625) 76).

Competent court

18 Which court has jurisdiction over an application for recognition and enforcement of an arbitral award?

The FHC and the high courts of the states (AC Act, Sections 29, 30 and 57). However, in respect of an ICSID award, the Supreme Court of Nigeria has original jurisdiction to entertain enforcement proceedings (ICSID (Enforcement of Awards) Act 1967, Section 1).

Jurisdictional and admissibility issues

19 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

For the court to have jurisdiction over an application for recognition and enforcement of an award, it must have jurisdiction over the award debtor by the debtor being in Nigeria or being a Nigerian, or the assets sought to be enforced must be within Nigeria. To exercise jurisdiction, the court must be satisfied that the recognition and enforcement processes have been properly served on the award debtor.

For the purpose of recognition proceedings, there is no requirement that an applicant must identify assets within the jurisdiction of the Nigerian court that will be the subject of enforcement.

Form of the recognition proceedings

20 Are the recognition proceedings in your jurisdiction adversarial or *ex parte*? What are the different steps of the proceedings?

Recognition proceedings in respect of an arbitral award are usually adversarial, as most of the applicable rules of court provide that recognition proceedings shall be 'on notice'. However, in principle, the proceedings may be commenced *ex parte* under Order 52, Rule 16(1) of the FHC (Civil Procedure) Rules 2019 and the Reciprocal Enforcement of Judgments Ordinance 1922.

Form of application and required documentation

21 What documentation is required to obtain recognition?

An originating motion supported by an affidavit and written submission are needed to obtain recognition. The affidavit must contain (1) the duly authenticated original award or a duly certified copy thereof, (2) the original arbitration agreement or a duly certified copy thereof, and (3) if an award or arbitration agreement is not made in English, a duly certified translation thereof into English (AC Act, Section 52).

Translation of required documentation

22 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition? If yes, in what form must the translation be?

Yes. It is necessary to submit a duly certified full translation of the required documentation (AC Act, Section 51(2)(c)).

Other practical requirements

23 What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

An applicant must pay the applicable filing fee, which is assessed by the registrar of the court. The language of the court is English. Depending on the court involved, written submissions may not exceed 20 pages (e.g., Lagos State High Court Rules 2019, Order 35, Rule 3).

Recognition of interim or partial awards

24 Do courts recognise and enforce partial or interim awards?

Yes. The courts will recognise and enforce a partial award insofar as it is a final determination of the substantive issues and questions in a reference, as distinct from procedural orders and directions. A partial award was enforced in *Celtel Nigeria BV v. Econet Wireless Ltd* (2014) LPELR – 22430(CA).

Grounds for refusing recognition of an arbitral award

25 What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from those provided under Article V of the New York Convention?

An award can be denied recognition if (1) the party against whom it is sought to be enforced furnishes proof of the presence of vitiating elements or that the award has been set aside by a court at the seat of arbitration, or (2) the court finds that the subject matter of the dispute is not arbitrable under Nigerian law, or that the enforcement of the award would be against public policy (AC Act, Section 52(2)).

Effect of a decision recognising an arbitral award

26 What is the effect of a decision recognising an arbitral award in your jurisdiction?

Once the proceedings for recognition and enforcement of an award are properly initiated, and the award is recognised, it is immediately enforceable as if it were a judgment of a court in Nigeria (*Shell Trustees (Nig) Ltd v. Imani & Sons (Nig) Ltd* (2000) 6 NWLR (Pt 662) 639). An appeal can lie against the decision recognising the award. The court may order a stay of execution of the award pending the resolution of the appeal.

Decisions refusing to recognise an arbitral award

27 What challenges are available against a decision refusing recognition in your jurisdiction?

An appeal can lie against the decision refusing to recognise an award. The court may make preservative orders pending the resolution of the appeal.

Recognition or enforcement proceedings pending annulment proceedings

28 What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?

One of the grounds for the refusal of recognition and enforcement of an award is that the award has been set aside or suspended by a court in which, or under the law of which, the award was made. It is therefore highly likely that the courts will adjourn recognition or enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration.

Security

29 If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?

If an application to set aside an award has been made at the seat, the court before which the recognition or enforcement is sought may postpone its decision and also, on application by the party claiming recognition or enforcement of the award, order the other party to provide appropriate security (AC Act, Section 52(3)). There is no Nigerian case law on this point as yet.

Recognition or enforcement of an award set aside at the seat

30 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?

The court will refuse to recognise and enforce an award if it is demonstrated to the court that the award has been suspended or set aside in the seat of the arbitration (AC Act, Section 52(2)(a)(viii)).

If an award is set aside after the decision recognising the award has been issued, the award debtor can apply back to the court to vary the order or appeal against it in view of new evidence. In such a case, the award debtor cannot be without a remedy in law.

Service

Service in your jurisdiction

31 What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction? If the extrajudicial and judicial documents are drafted in a language other than the official language of your jurisdiction, is it necessary to serve these documents with a translation?

The rules of courts require personal service of originating court documents on the defendant. Other court documents can be served on a defendant through its counsel. An application for the enforcement of an award is not an originating process that requires personal service (*Shell Trustees (Nig) Ltd v. Imani Sons Ltd* (2000) 6 NWLR (Pt. 662) 639). The language of the court is English. Any court document not written in English must be accompanied by a translation into English (*Gundiri v. Nyako* (2014) 2 NWLR (Pt. 1391) 211; *Ogidi v. State* (2005) 5 NWLR (Pt 918) 286).

Service out of your jurisdiction

32 What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents with a translation in the language of this jurisdiction?

The leave of a court is required for the service of the process of the court on any defendant outside the jurisdiction of the court. The language of the court is English. Any court document not written in English must be accompanied by a translation into English (*Gundiri v. Nyako* (2014) 2 NWLR (Pt. 1391) 211; *Ogidi v. State* (2005) 5 NWLR (Pt. 918) 286).

Identification of assets

Asset databases

33 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction?

There are no publicly available registers allowing the identification of an award debtor's assets in Nigeria. There are publicly available registers by which the ownership status of known assets may be confirmed or verified; for example, information about land ownership can be found at the land registry in each state.

Information available through judicial proceedings

34 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

A judgment summons may be used for the disclosure of information about an award debtor within the jurisdiction.

An award creditor may apply to a court for the issuance of a judgment summons compelling the award debtor to appear and be examined on oath in respect of his or her means and assets (Sheriffs and Civil Process Act 1945, Section 55).

Enforcement proceedings

Attachable property

35 What kinds of assets can be attached within your jurisdiction?

All kinds of assets within the jurisdiction may be attached.

Availability of interim measures

36 Are interim measures against assets available in your jurisdiction?

Interim measures are available in Nigeria. The courts have wide powers (either unconditionally or on relevant terms and conditions, and in accordance with the law) to grant interim and preservative measures in all cases in which it appears to them to be just or convenient so to do.

Procedure for interim measures

37 What is the procedure to apply interim measures against assets in your jurisdiction?

An application for interim measures may be commenced by a motion *ex parte* or on notice. If it is commenced *ex parte*, the application must be accompanied by a motion on notice, which is to be heard and determined shortly after the interim measures are granted. There are certain conditions that must be satisfied before a court can grant interim relief; for example, the applicant must show that the assets are on the verge of being dissipated.

Interim measures against immovable property

38 What is the procedure for interim measures against immovable property within your jurisdiction?

An application for interim measures against immovable property may be commenced by a motion *ex parte* or on notice. If it is commenced *ex parte*, the application must be accompanied by a motion on notice. The applicant must show, among other points, that unless the preservation order is made against the immovable asset, the applicant may have no remedy if, at the time of enforcement, the asset has been dissipated.

Interim measures against movable property

39 What is the procedure for interim measures against movable property within your jurisdiction?

An application for interim measures against movable property may be commenced by a motion *ex parte* or on notice. If it is commenced *ex parte*, the application must be accompanied by a motion on notice. The applicant must show, among other points, that unless the preservation order is made against the movable asset, the applicant may have no remedy if, at the time of enforcement, the asset has been dissipated.

Interim measures against intangible property

40 What is the procedure for interim measures against intangible property within your jurisdiction?

An application for interim measures against intangible property may be commenced by a motion *ex parte* or on notice. If it is commenced *ex parte*, the application must be accompanied by a motion on notice. The applicant must show, among other points, that unless the preservation order is made against the intangible asset, the applicant will have no remedy if, at the time of enforcement, the asset has been dissipated.

Attachment proceedings

41 What is the procedure to attach assets in your jurisdiction?

It depends on the owner, custodian and kind of the asset. There are different procedures for attachments against movable, immovable, intangible and monetary assets.

There are some statutory limitations in place against attachment or execution against certain state-controlled assets; for example, the consent of the Attorney-General of either the Federation or the state in question must be obtained before attaching any property in the lawful custody and control of a public officer (Sheriffs and Civil Processes Act 1945 (SCPA), Section 84).

Attachment against immovable property

42 What is the procedure for enforcement measures against immovable property within your jurisdiction?

An award creditor can apply to the court for a writ of execution against the immovable property of the award debtor if no movable property of the award debtor can, with reasonable diligence, be found, or if the movable property is insufficient to satisfy the award and the costs of execution (SCPA, Section 44).

Attachment against movable property

43 What is the procedure for enforcement measures against movable property within your jurisdiction?

Attachment against movable property can come in different forms, one being a writ of *fieri facias*, which empowers the sheriff to seize and sell an adequate quantity of goods belonging to the award debtor until the award debt is satisfied (SCPA, Section 25).

Garnishee proceedings may be commenced to order a third party who is indebted to, or in custody of funds belonging to, the award debtor to pay directly to the award creditor the debt due or as much of the debt as may be sufficient to satisfy the award and the costs of the enforcement proceedings. Garnishee proceedings are commenced by motion *ex parte* (SCPA, Section 83).

Finally, an award creditor may apply to a court for the issuance of a judgment summons compelling the award debtor to appear and be examined on oath as to his or her means and assets (SCPA, Section 55). If the court is satisfied that the debtor can pay but chooses not to, he or she may be committed to prison. If, however, it is proven that the debtor has genuine difficulty in paying, the court can make orders, such as for the payment of the debt in instalments.

Attachment against intangible property

44 What is the procedure for enforcement measures against intangible property within your jurisdiction?

Enforcement can lie against intangible property by a writ of *fieri facias*, which empowers the sheriff to seize and sell an adequate quantity of goods belonging to the award debtor until the judgment debt is satisfied. 'Goods' include bank notes, bills of exchange, promissory notes, bonds, specialities or securities for money belonging to the award debtor (SCPA, Section 25).

Attachments against bank accounts

45 Is it possible in your jurisdiction to attach bank accounts opened in a branch or subsidiary of a foreign bank located in your jurisdiction or abroad? Is it possible in your jurisdiction to attach the bank accounts opened in a branch or subsidiary of a domestic bank located abroad?

Yes. If any bank within the jurisdiction (whether a parent or a subsidiary) is indebted to the award debtor, garnishee proceedings may be commenced to order the bank to pay directly to the award creditor the debt due, or as much of the debt as may be sufficient to satisfy the award and the costs of the enforcement proceedings. Garnishee proceedings are commenced by motion *ex parte* (SCPA, Section 83).

Enforcement against foreign states

Applicable law

46 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

There are no specific rules.

Availability of interim measures

47 May award creditors apply interim measures against assets owned by a sovereign state?

The Diplomatic Immunities and Privileges Act 1962 (DIPA) recognises the diplomatic immunity of sovereign states from suits and legal process. Save where immunity is waived, any writ issued against such a state is void.

Service of documents to a foreign state

48 What is the procedure for service of extrajudicial and judicial documents to a foreign state? Is it necessary to serve extrajudicial and judicial documents with a translation in the language of the foreign state?

Service of court processes on other states is done through diplomatic channels or the judicial authorities of the foreign state. The service documents must be accompanied by a certified translation in the language of the country in which the service is to be effected (Federal High Court Rules 2019, Order 7, Rule 20).

Immunity from enforcement

49 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? Are there exceptions to immunity?

The DIPA protects the official residence and offices of the envoy of a foreign state from attachment or seizure by judicial process in Nigeria. Furthermore, the common law doctrine of sovereign immunity will avail, in the absence of an express waiver, to protect the assets of foreign sovereigns from attachment in Nigeria.

Waiver of immunity from enforcement

50 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?

It is possible for a state to waive sovereign immunity in Nigeria (DIPA, Section 2).

Piercing the corporate veil and alter ego

51 Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction?

No. Envoys and consular officers of foreign sovereign states, including members of their families, domestic staff and members of the families of their domestic staff, enjoy diplomatic immunity from suit and legal process and the inviolability of their residences, offices and official archives (DIPA, Section 1).

Appendix 1

About the Authors

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Professor Gbolahan Elias is a partner in G Elias & Co. It is a leading Nigerian business law firm that is a member of the Africa Legal Network, the premier alliance of African business law firms. Gbolahan Elias's practice is unusually wide-ranging.

He was called to the Nigerian Bar in 1981 and the New York Bar in 1990. He became a Senior Advocate of Nigeria (equivalent to Queen's Counsel) in 2005 and is the first African member of the International Association of Defense Counsel.

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Critical court cases and large London-seated arbitrations are major aspects of his practice. His clients range from Nigerian technology start-ups to Pan-African supranational and global multinational enterprises headquarters in the United States of America, the United Kingdom, France, South Africa, India, Japan and China.

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Enforcement used to be an irrelevance in international arbitration. Most losing parties simply paid. Not so any more. The time spent on post-award matters has increased vastly.

The Guide to Challenging and Enforcing Arbitration Awards is a comprehensive volume that addresses this new reality. It offers practical know-how on both sides of the coin: challenging, and enforcing, awards. Part I provides a full thematic overview, while Part II delves into the specifics seat by seat, covering 26 jurisdictions.

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