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Nigeria
Investment Treaty Arbitration

Contributor

Templars

Adewale Atake, SAN

Partner & Head, Dispute Resolution | wale.atake@templars-law.com

Orji Uka, MCIArb

Managing Counsel | orji.uka@templars-law.com

Iyunoluwa Fakunle

Associate | iyunoluwa.fakunle@templars-law.com

This country-specific Q&A provides an overview of investment treaty arbitration laws and regulations applicable in Nigeria.

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Nigeria: Investment Treaty Arbitration

1. Has your home state signed and / or ratified the ICSID Convention? If so, has the state made any notifications and / or designations on signing or ratifying the treaty?

Nigeria signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention") on 13 July 1965. On 23 August 1965, Nigeria deposited its instrument of ratification and on 14 October 1966, the ICSID Convention entered into force for Nigeria.

Notifications/Designations

a. On 11 May 1978, the Nigerian National Petroleum Corporation (now the Nigerian National Petroleum Company Limited- "NNPCL") was designated as a subdivision/ agency consenting to ICSID arbitration under Article 25(1) and (3) of the ICSID Convention.
b. By virtue of Section 1(1) of the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act 1967, Nigeria's Supreme Court is designated as the relevant court for the purpose of recognising and enforcing awards rendered pursuant to the ICSID Convention as provided for under Article 54(2) of the ICSID Convention.
c. Nigeria has given no notifications concerning a class or classes of disputes which Nigeria would or would not consider submitting to the jurisdiction of ICSID under Article 25(4) of the ICSID Convention.
d. Nigeria has also given no notifications on exclusion of territories to which the ICSID Convention shall apply under Article 70 of the ICSID Convention.[1]

Footnote(s):

[1] https://icsid.worldbank.org/about/member-states/database-of-member-states/member-state-details?state=ST102.

2. Has your home state signed and / or ratified the New York Convention? If so, has it made any declarations and / or reservations on signing or ratifying the treaty?

Nigeria acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the "New York Convention") on 17 March 1970.[2] The New York Convention came into force on 15 June 1970.[3] The Arbitration and Mediation Act 2023 implements the New York Convention in Nigeria, making it applicable to any award arising out of international commercial arbitration, made in Nigeria or in any contracting state.

Reservations

a. Nigeria adopts both the reciprocity and commercial declarations/reservations. In accordance with paragraph 3 of Article 1 of the New York Convention, Nigeria declared that it would apply the New York Convention on the basis of reciprocity to the recognition and enforcement of awards made only in the territory of a State party to the Convention and to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under Nigerian law.

Footnote(s):

[2] https://www.newyorkconvention.org/contracting-states.

[3] Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention") | United Nations Commission On International Trade Law.

3. Does your home state have a Model BIT? If yes, does the Model BIT adopt or omit any language which restricts or broadens the investor's rights?

Nigeria has a Model Bilateral Investment Treaty (BIT). However, for reasons that are unclear, the Nigeria Model BIT remains unavailable to the general public.

The Nigeria Model BIT contains the following key provisions found in standard BITs:

a. National Treatment and Most Favoured Nation provisions – which mandates treatment of foreign investors in conditions no less favourable than that accorded in like circumstances, to investors from the host State or those of another third State (Article 6).
b. Compensation in the event of nationalisation or

expropriation except for a public purpose, in a non-discriminatory manner, on payment of prompt and adequate compensation, and in accordance with due process of law. (Article 8)

c. Compensation in the event of losses due to war, armed conflict, revolution, insurrection, etc (Article 9).
d. Right of foreign investors to repatriate and freely transfer profits in a freely usable currency at the prevailing market rate (Article 11).
e. Settlement of disputes under the ICSID Convention or under ad-hoc arbitral tribunals (Article 28).

One notable provision of the Nigeria Model BIT is the absence of a standalone Fair and Equitable Treatment (FET) standard. Instead, the Nigeria Model BIT in Article 7 provides for the Minimum Standard of Treatment which encompasses the FET standard and the full protection and security standard. The said Article 7 of the Nigeria Model BIT makes clear that neither the FET standard nor the full protection and security standard requires treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens as established in the landmark case of ***Neer v. Mexico***.[4]

Additionally, the Nigeria Model BIT provides for the establishment of a Joint Committee for the administration of the agreement (Article 5) and contains an obligation to ensure that all measures that affect investment are administered in a reasonable, objective and impartial manner according to the host State's legal system (Article 10). Articles 13 and 14 of the Nigeria Model BIT contain a recognition that the environmental laws and policies of the host State play an important role in protecting the environment and impose on investors and investments to comply with environmental assessment screening and assessment processes applicable to their proposed investments prior to their establishment as required by the laws of the host State.

The Nigeria Model BIT does not, however, contain an 'umbrella clause' which is the clause whereby the host State agrees to honour all its obligations that it has entered into vis-à-vis the investors of the home State.

Footnote(s):

[4] *Neer and Neer (U.S.A.) v. United Mexican States*, The Mexican-United States General Claim Commission, Decision dated 15 October 1926, para. 4

4. Please list all treaties facilitating investments (e.g. BITs, FTAs, MITs) currently in force that your home state has signed and / or ratified. To what extent do such treaties adopt or omit any of the language in your state's Model BIT or otherwise restrict or broaden the investor's rights? In particular: a) Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the Achmea decisions, political opposition to the Energy Charter Treaty, or other changes in policy)? b) Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor state proceedings (whether due to the operation of the Mauritius Convention or otherwise). c) Does your jurisdiction publish any official guidelines, notes verbales or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

Nigeria is signatory to a total of 31 BITs, with 14 currently in force.[5] The treaties facilitating investment, or International Investment Agreements (IIAs) signed by Nigeria, that are currently in force are listed below.

S/N	BITs	FTAs	MITs
1.	France – Nigeria BIT Signed: 27-02-1990 Entered into force: 19-08-1991	African Continental Free Trade Area Agreement (AfCFTA)	General Agreement on Tariffs and Trade (GATT)
2.	Nigeria – United Kingdom BIT Signed: 11-12-1990 Entered into force: 11-12-1990	WTO Trade Facilitation Agreement	ECOWAS Trade Liberalisation Scheme
3.	Netherlands – Nigeria BIT Signed: 02-11-1992 Entered into force: 01-02-1994	Cotonou Agreement (2000)	ECOWAS Common Investment Code (2019)
4.	Nigeria – Taiwan Province of China BIT Signed: 07-04-1994 Entered into force: 07-04-1994		OIC Investment Agreement (1981)
5.	Republic of Korea – Nigeria BIT Signed: 27-03-1998 Entered into force: 01-02-1999		ECOWAS Supplementary Act on Investments (2008)
6.	Nigeria – Romania BIT Signed: 18-12-1998 Entered into force: 03-06-2005		
7.	Germany – Nigeria BIT Signed: 28-03-2000 Entered into force: 20-09-2007		
8.	Nigeria – South Africa BIT Signed: 29-04-2000 Entered into force: 27-07-2005		
9.	Italy – Nigeria BIT Signed: 27-09-2000 Entered into force: 22-08-2005		
10.	Nigeria – Switzerland BIT Signed: 30-11-2000 Entered into force: 01-04-2003		
11.	China – Nigeria Signed: 27-08-2001 Entered into force: 18-02-2010		
12.	Nigeria – Sweden Signed: 18-04-2002 Entered into force: 01-12-2006		
13.	Nigeria – Spain Signed: 09-07-2002 Entered into force: 19-01-2006		
14.	Finland – Nigeria Signed: 22-06-2005 Entered into force: 20-04-2007		

Nigeria has also signed BITs with 16 other countries. However, these are yet to enter into force. The bulk of Nigeria's IIAs predate the Nigeria Model BIT and belong to the class of IIAs now commonly referred to as 'old generation IIAs'.

As noted by Poulsen, old generation BITs: provide investors with a right to compensation for a wide range of regulatory conduct based on very vague treaty language; obligate host states to compensate investors for direct or indirect expropriation; entitle investors to free repatriation of their profits and other capital out of host states; entitle the investors to bring a claim for damage occasioned by war, insurrection, or other armed conflicts; oblige the host states to treat the investors in the same way that they did nationals of the host state (national treatment) or investors of other third countries (most favoured nation treatment); and almost always include the vague provision mandating host states to provide investors with fair and equitable treatment (FET).[6] The Nigeria Modet BIT therefore has no bearing on these BITs. The foregoing state of affairs is also understandable. As a capital importing country, Nigeria was always more likely to defer to the preferences of the capital exporting counterpart during BIT negotiation or renegotiations.

These old generation BITs can be contrasted with the next generation BITs which contain provisions introduced by States to address the problems noted in the old generation BITs. Incidentally, two of Nigeria's BITs, the Canada–Nigeria BIT (2014)[7] and the Morocco–Nigeria BIT (2016),[8] have been widely acclaimed as being representative of the prototype of the modern BIT. This is a theme to which we shall return shortly.

In particular:

a. Has your state exercised termination rights or indicated any intention to do so? If so, on what basis (e.g. impact of the *Achmea* decisions, political opposition to the Energy Charter Treaty, or other changes in policy)?

Nigeria has not exercised termination rights in any investment treaties. In fact, only two of Nigeria's BITs have been terminated, the China – Nigeria BIT 1997 which was terminated and replaced with the China – Nigeria BIT 2000 as well as the Nigeria – Türkiye BIT, 1997 which was replaced by the Nigeria – Türkiye BIT, 2011. There is also no indication that Nigeria intends to withdraw from any of its existing investment treaties.

It is however noteworthy that Nigeria has not signed a new BIT since the signing of the Morocco–Nigeria BIT in December 2016 and none of Nigeria's existing BITs has entered into force since the China – Nigeria BIT entered into force 15 years ago. The foregoing, without more, should not be interpreted as being indicative of a change in Nigeria's BIT policy. It is also worthy to note that in November 2024, the Attorney General of the Federation, and Nigeria's Chief Law Officer inaugurated a committee to review Nigeria's existing BITs and the Nigerian Investment Promotion Commission (NIPC) Act.[9] The committee has a 4-month deadline to submit their report by which time, the new direction of Nigeria's BIT policy will become clearer.

b. Do any of the treaties reflect (i) changes in environmental and energy policies, (ii) the advent of emergent technology, (iii) the regulation of investment procured by corruption, and (iv) transparency of investor state proceedings (whether due to the operation of the Mauritius Convention or otherwise).

We had earlier noted that the Canada–Nigeria BIT (2014) and the Morocco–Nigeria BIT (2016) are representative of some of the most progressive BITs anywhere in the world. In fact, the Morocco-Nigeria BIT has been described as a new breed of investment treaty,[10]

One general theme that runs through the provisions of the Canada–Nigeria BIT, is the aim to strike a better balance between the interests of the State and those of the investors. The preamble to the BIT makes clear that at the core of the BIT's objectives is the promotion of sustainable development goals. Indeed, Article 15 (1) of the BIT contains an explicit condition that States should not compromise health, safety or environmental standards to attract foreign investments.

While the Morocco–Nigeria BIT also aims to strike a balance between investor protection and the interests of the host State, it even goes a step further than the Canada–Nigeria BIT. Under Articles 13, 14 and 15 of the Morocco–Nigeria BIT, each contracting party reserves the right to adopt, maintain or enforce any measure to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental and social concerns. The BIT also imposes environmental obligations on investors and provides for the recognition and enforcement of labour and human rights protection appropriate to each contracting party's economic and social situation.

Another innovative feature of the Morocco–Nigeria BIT is that investors have clear and unambiguous anti-corruption obligations imposed on them, and a breach of the anti-corruption provisions of the treaty is deemed to constitute a breach of the domestic law of the host state concerning the establishment and operation of an investment.[11] Very importantly too, each host state reserves the right to take regulatory or other measures to ensure that development in its territory is consistent with the goals and principles of sustainable development, and with other legitimate social and economic policy objectives.

The Morocco-Nigeria BIT contains mandatory provisions on the exhaustion of local remedies. Article 26 provides that, before resorting to arbitration, any dispute is to be assessed through consultations and negotiations by the Joint Committee, which comprises representatives appointed by both contracting parties. The submission of a dispute concerning a specific question of interest to an investor to the Joint Committee can only be initiated by a contracting party. If the dispute cannot be resolved within six months, the investor may only resort to international arbitration mechanisms after the exhaustion of local remedies or the domestic courts of the host state.

Article 10 of the BIT provides that arbitral proceedings must be transparent, awards and decisions of an arbitral tribunal should be available to the public while Article 14 of the BIT imposes a duty on investors and investments to comply with environmental assessment screening and assessment processes applicable to their proposed investments prior to their establishment as required by the laws of the host State. In this regard, investors are obligated to conduct a social impact assessment of the potential investment. Thus, it is the Morocco-Nigeria BIT that most closely resembles the Nigeria Model BIT.

Likewise, the Nigeria – Türkiye BIT (2011) provides that contracting state parties are at liberty to apply non-discriminatory legal measures that are designed and applied to protect life, health or the environment or to conserve exhaustible natural resources (Article 6(1)).

c. Does your jurisdiction publish any official guidelines, *notes verbales* or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under the treaties?

Nigeria publishes official treaty guidelines for tax treaties, through the Federal Inland Revenue Service.[12] There are no other official published guidelines, *notes verbales* or diplomatic notes concerning the interpretation of treaty provisions and other issues arising under treaties. In light of the renewed interests in Nigeria's BIT Policy and pending the report of the committee on the review of Nigeria's existing BITs, it is expected that official guidelines or *notes verbales* will be introduced into Nigeria's BIT regime.

Footnote(s):

5 https://investmentpolicy.unctad.org/international-investment-agreements/countries/153/nigeria

6 Poulsen, LNS (2017) Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries, Cambridge: Cambridge University Press.

7 Agreement between Canada and the Federal Republic of Nigeria for the Promotion and Protection of Investments (Canada–Nigeria BIT) signed on 6 May 2014.

8 The Reciprocal Investment Promotion and Protection Agreement between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria (Morocco–Nigeria BIT) signed on 3 December 2016.

9 https://fmino.gov.ng/agf-raises-committee-to-review-bilateral-investment-treaties-nipc-act/#:~:text=The%20Attorney%20General%20of%20the,Promotion%20Commission%20(NIPC)%20ACT.

10 http://arbitrationblog.practicallaw.com/the-morocco-nigeria-bit-a-new-breed-of-investment-treaty/

11 Article 17 of the Morocco – Nigeria BIT 2016.

12 https://www.firs.gov.ng/tax-treaties-and-related-matters

5. Does your home state have any legislation / instrument facilitating direct foreign investment. If so: a) Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment; b) Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument; c) Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation / instrument; and d) Does this legislation regulate the use of third-party funding and other non-conventional means of financing.

The principal legislation for regulating foreign investments in Nigeria is the Nigeria Investments Promotion Commission ("NIPC") Act, 1995.[13] The NIPC Act applies to both Nigerian and foreign nationals and companies and applies on the basis of a liberal, open door policy to investments, with a view to stimulating local and foreign investments. However, the common view is that the NIPC Act is not considered as an effective

or self-contained national investment legislation.[14] The NIPC Act is currently undergoing review with a view to enacting a more robust invest facilitating legislation.

Other legislation/instruments that also facilitate foreign investment in Nigeria include the Constitution of the Federal Republic of Nigeria 1999 (as amended); the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995; the Federal Competition and Consumer Protection Act 2018; the Companies and Allied Matters Act 2020; the Arbitration and Mediation Act 2023, etc.

If so:

a. Please list out any formal criteria imposed by such legislation / instrument (if any) concerning the admission and divestment of foreign investment;

(a) Formal criteria for admission of foreign direct investment include:

1. Incorporation of a company with foreign direct investment ("FDI") with the Corporate Affairs Commission.[15]
2. Registration of the incorporated company with the Nigerian Investment Promotion Commission before commencing business in Nigeria.[16]
3. If FDI is to be by way of a merger, the Federal Competition and Consumer Protection Commission must approve the merger.[17]

(b) Formal criteria for divestment of foreign investment – The Central Bank of Nigeria requires every divestment or repatriation of foreign investment to be accompanied by (a) evidence of electronic certificate of capital importation and (b) evidence of redemption of investment in local currency assets.[18]

b. Please list out what substantive right(s) and protection(s) foreign investors enjoy under such legislation / instrument;

1. **Legal protection of property**: the Constitution of the Federal Republic of Nigeria 1999 affords protection against the compulsory acquisition by the State of property, without adequate compensation, and gives room for judicial scrutiny of such acquisition.[19]
2. **Guaranteed unconditional transferability of funds**: the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995 provides that foreign currency that is imported into Nigeria and invested in any enterprise is guaranteed unconditional transferability of funds, through an Authorised Dealer in freely convertible currency[20]. The NIPC Act equally provides that foreign investors engaged in enterprise under the NIPC Act are guaranteed unconditional transferability of funds through an authorised dealer, in freely convertible currency.[21]
3. **Guarantees against expropriation**: the NIPC Act guarantees against the nationalisation or expropriation of any enterprise except for national interest or for a public purpose (which is subject to fair and adequate compensation and judicial scrutiny of such expropriation.[22]

c. Please list out what recourse (if any) a foreign investor has against the home state in respect of its rights under such legislation / instrument; and

1. Foreign investors may enforce their rights, under the various legislation listed above, through the national courts established under the 1999 Constitution or through arbitral tribunals established under the Arbitration and Mediation Act 2023 or foreign or international arbitration whose awards are capable of being recognised and enforced in Nigeria.
2. Foreign investors may enjoy recognition and enforcement of foreign arbitral awards as Nigeria is a party to the New York Convention,
3. Foreign judgments may also be recognised and enforced under the Foreign Judgment (Reciprocal Enforcement) Act[23] or the Reciprocal Enforcement of Foreign Judgments Ordinance 1922.[24]

d. Does this legislation regulate the use of third-party funding and other non-conventional means of financing.

The Arbitration and Mediation Act 2023 expressly provides for the use of third party funding in arbitration where there is a contract between the Third-Party Funder and a disputing party; an affiliate of that party, or a law firm representing that party, in order to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and the financing is provided either through a donation or grant or in return for reimbursement dependent on the outcome of the dispute or in return for a premium payment.[25]

Footnote(s):

[13] The legislation was promulgated by the Federal Military Government as a Decree in 1995. In line with Section 315 CFRN, it is now deemed an Act of the National Assembly and contained in Cap. N117 of the Laws of the Federation of Nigeria.

[14] See for example Khrushchev Ekwueme, 'Nigeria's Principal Investment Law in the Context of International Law and Practice' (2004) 49 (2) JAL

https://www.jstor.org/stable/27607946.

[15] The Companies and Allied Matters Act ("CAMA") 2020 requires foreign companies in the pursuit of foreign direct investment (doing business in Nigeria) to obtain incorporation as a separate entity in Nigeria in the form of a company (section 78 CAMA). In practice, the Corporate Affairs Commission only approves the registration of companies with foreign participation, having a minimum share capital of N100 million (One Hundred Million Naira). Foreign companies may be exempted from this requirement if such exemption is provided under a treaty to which Nigeria is a party or if exemption from incorporation is granted by the Minister of Trade.

[16] Section 20 of the Nigerian Investment Promotion Commission Act ("NIPC Act") 1995. The NIPC Act enables foreigners to invest and participate in the operation of any enterprise in Nigeria (section 17 NIPC Act), subject to exceptions such as industries or enterprises that are on the "negative list". The negative list means the list of those sectors of investment prohibited to both foreign and Nigerian investors, that is: (a) production of arms, ammunition, etc.; (b) production of and dealing in narcotic drugs and psychotropic substances; (c) production of military and para-military wears and accoutrement, including those of the Police and the Customs, Immigration and Prison Services; and (d) such other items as the Federal Executive Council may, from time to time, determine.

[17] Section 93 of the Federal Competition and Consumer Protection Act 2018.

[18] https://www.cbn.gov.ng/Out/2024/TED/Circular%20on%20Memorandum%2020-22%20of%20FX%20Manual.pdf

[19] Section 41 (1) (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

[20] Section 15 of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995.

[21] Section 24 of the NIPC Act.

[22] Section 25 of the NIPC Act.

[23] Applicable to judgements of Commonwealth countries.

[24] Applicable to judgments of courts of England, Ireland and Scotland; and by proclamation (made pursuant to section 5 of the Ordinance) was extended to judgments from courts of the Gold Coast Colony and the Colony and Protectorate of Sierra Leone, the Colony of Gambia, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, Newfoundland, New South Wales, St. Lucia, St. Vincent, Trinidad and Tobago and Victoria.

[25] Section 91 (1) of the Arbitration and Mediation Act 2023.

6. Has your home state appeared as a respondent in any investment treaty arbitrations? If so, please outline any notable practices adopted by your state in such proceedings (e.g. participation in proceedings, jurisdictional challenges, preliminary applications / objections, approach to awards rendered against it, etc.)

There have been seven known ISDS cases against Nigeria. Three of those cases were settled with the terms not made public.[26] The fourth case, ***Interocean Oil Development Company & Interocean Oil Exploration Company v. Federal Republic of Nigeria***[27] was heard on the merits and was subsequently decided in Nigeria's favour, marking Nigeria's first victory in investment treaty arbitration. Nigeria however suffered its first defeat in investment treaty arbitration in the case of ***Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria,***[28] which was an ad-hoc investment treaty arbitration under the UNCITRAL Rules.

In 2020 and 2023, two new ICSID claims were registered against Nigeria in Eni International B.V., Eni Oil Holdings B.V. and Nigerian Agip Exploration Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/20/41) and Korea National Oil Corporation, KNOC Nigerian West Oil Company Limited, and KNOC Nigerian East Oil Company Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/23/19) respectively. Both claims are currently pending before two ICSID Tribunals.

Nigeria often participates actively in these proceedings and is represented by a consortium of counsel (in addition to the Federal Ministry of Justice). In dealing with these cases, however, Nigeria has often raised jurisdictional challenges, by way of preliminary objections,[29] and even sought to disqualify arbitrators.[30]

Nigeria has in the past raised the issue of the distinct legal personality of the NNPC as a defence in previous international arbitration proceedings against Nigeria. In ***Interocean Oil Development Company & Anor v. Federal Republic of Nigeria***,[31] Nigeria contended that it has designated the NNPC as "the competent

agency/subdivision that is subject to the jurisdiction of ICSID" since 11 May 1978. Nigeria also contended that the NNPC, which has a distinct legal personality from Nigeria, was the counterparty to the Joint Venture Agreement that was at issue in that arbitration, and hence Nigeria was not a proper party to the proceedings.

In the ***Interocean*** arbitration, it was also the argument of Nigeria that the claimants' investment vehicle, was not registered with the NIPC as required by the NIPC Act [Sections 20 and 31 of NIPC Act], and the claimants were therefore not "qualified for protection" under the NIPC Act. Consequently, Nigeria argued that these provisions limited the consent to arbitration under Section 26 of the NIPC Act to only those enterprises with foreign participation that are registered with the NIPC.

The procedural and substantive defences raised by Nigeria in the ***Zhongshan Fucheng v. Nigeria***[32] arbitration also give an indication of the approach that Nigeria typically takes in proceedings of this nature. As detailed in the Final Award dated 26 March 2021, Nigeria raised five procedural defences including the fact that having commenced proceedings before Nigerian courts, the claimant was precluded by the "fork in the road" provisions in Article 9(3) of the China – Nigeria BIT 2001 from bringing the treaty claim.

At the enforcement stage, Nigeria often raises the sovereign immunity defence as a shield to enforcement of the award against it as was the case in *Zhongshan Fucheng Industrial Investment Co. Ltd. v Federal Republic of Nigeria*[33], where Nigeria unsuccessfully raised sovereign immunity as well as the signature defence of corruption which has historically been a last resort defence for Nigeria in challenging arbitral awards or resisting their enforcement. This latter defence came to the fore especially in the case of ***Process & Industrial Development Limited v. Nigeria.***[34]

The Nigerian government also makes effort to reach a negotiated settlement with disputant investors which has resulted in the settlement and withdrawal of three out of the seven investment treaties brought against Nigeria.[35]

Footnote(s):

[26] *Guadalupe Gas Products Corporation v. Nigeria* (ICSID Case No. ARB/78/1); *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/07/18); and *Shell Petroleum N.V. and The Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/21/7).

[27] Interocean Oil Development Company & Interocean Oil Exploration Company v. Federal Republic of Nigeria, ICSID Case No. ARB/13/20, Final Award 6 October 2020.

[28] https://www.italaw.com/cases/9287 Final Award 26 March 2021.

[29] Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria (ICSID Case No. ARB/13/20); Zhongshan Fucheng Industrial Investment Co. Ltd. v Federal Republic of Nigeria.

[30] Shell Petroleum N.V. and The Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/21/7); Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria (ICSID Case No. ARB/13/20); Eni International B.V., Eni Oil Holdings B.V. and Nigerian Agip Exploration Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/20/41).

[31] ICSID Case No. ARB/13/20 Final Award published on 6 October 2020. Tribunal's Decision on Nigeria's Preliminary Objections issued on 29 October 2014

[32] Final Award published on 26 March 2021

[33] https://www.italaw.com/cases/9287

[34] https://www.judiciary.uk/wp-content/uploads/2023/10/Nigeria-v-PID-judgment.pdf

[35] *Guadalupe Gas Products Corporation v. Nigeria* (ICSID Case No. ARB/78/1); *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/07/18); and *Shell Petroleum N.V. and The Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/21/7).

7. Has jurisdiction been used to seat non-ICSID investment treaty proceedings? If so, please provide details.

There is no publicly available record of non-ICSID investment treaty proceedings seated in Nigeria. Investment treaties concluded by Nigeria typically refer disputes arising from any foreign investment in Nigeria to be determined by the local courts of the host state, ICSID or UNCITRAL ad hoc arbitration, at the election of the investor. However, non-ICSID, and contractual based investment proceedings may be seated in Nigeria and would be governed by the Arbitration and Mediation Act 2023 (and before that, the Arbitration and Conciliation Act

1988).

8. Please set out (i) the interim and / or preliminary measures available in your jurisdiction in support of investment treaty proceedings, and (ii) the court practice in granting such measures.

(i) Interim and/ or preliminary measures in aid of arbitration available under the Arbitration and Mediation Act 2023 may be granted to:

a. Maintain or restore status quo pending determination of a dispute;
b. Order that an action be taken, or be refrained from being taken which is likely to cause harm or prejudice an arbitral process;
c. Provide a means of preserving assets out of which a subsequent award may be satisfied;
d. Preserve evidence that may be relevant and material to the resolution of a dispute;
e. Preserve the subject matter of an arbitration.

(ii) Nigeria is yet to develop court practice in respect of interim and/ or preliminary measures in support of investment treaty proceedings. However, outside investment treaty proceedings, courts are generally supportive of arbitration and will grant interim measures when an applicant satisfies the conditions for grant of an interim measure.

9. Please set out any default procedures applicable to appointment of arbitrators and also the Court's practice of invoking such procedures particularly in the context of investment treaty arbitrations seated in your home state.

Under the Arbitration and Mediation Act 2023, parties may agree on a procedure for appointing an arbitrator. Where parties are unable to agree on the number of arbitrators, by default, the arbitral tribunal would consist of a sole arbitrator.[36] There is no applicable court practice in relation to the appointment of arbitrators in investment treaty arbitrations.

Footnote(s):

[36] Section 6 of the Arbitration and Mediation 2023.

10. In the context of awards issued in non-ICSID investment treaty arbitrations seated in your jurisdiction, please set out (i) the grounds available in your jurisdiction on which such awards can be annulled or set aside, and (ii) the court practice in applying these grounds.

Non-ICSID investment treaty arbitrations have not been seated in Nigeria, nor have they been sought to be set aside in Nigeria. There is no applicable court practice for the annulment or setting aside of non-ICSID investment treaty arbitrations.

11. In the context of ICSID awards, please set out: (i) the grounds available in your jurisdiction on which such awards can be challenged and (ii) the court practice in applying these grounds.

There is no applicable court practice for challenging ICSID awards. However, under the Arbitration and Mediation Act 2023, an award may be set aside on several bases including: if a party to the arbitration agreement was under some legal incapacity; the arbitration agreement is not valid under the law to which the parties subjected it or, failing such indication, under the laws of Nigeria; the party applying to set-aside the award was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present its case; the award deals with a dispute that is not contemplated by or that does not fall within the terms of the submission to arbitration or the award is against the public policy of Nigeria; etc.[37]

Footnote(s):

[37] Section 55 of the Arbitration and Mediation Act 2023.

12. To what extent can sovereign immunity (from suit and/or execution) be invoked in your jurisdiction in the context of enforcement of investment treaty awards.

Nigeria has not invoked sovereign immunity as a substantive defence from suit in the context of investment treaty proceedings. However, sovereign immunity was unsuccessfully raised as a shield to execution of an award in *Zhongshan Fucheng Industrial Investment Co. Ltd. v Federal Republic of Nigeria*[38] in the first award ever made against Nigeria in an investment treaty arbitration pursuant to the China- Nigeria BIT 2001.

Outside investment treaty proceedings, Nigeria also unsuccessfully attempted to rely on sovereign immunity

as a shield to resist the enforcement of the arbitral award in *Process and Industrial Developments Ltd. v Federal Republic of Nigeria*[39] before the award was ultimately set aside.

Footnote(s):

[38] https://www.italaw.com/cases/9287

[39] https://www.italaw.com/sites/default/files/case-documents/italaw170063.pdf

13. Please outline the grounds on which recognition and enforcement of ICSID awards can be resisted under any relevant legislation or case law. Please also set out any notable examples of how such grounds have been applied in practice.

ICSID awards are required to be filed in the Supreme Court by the party seeking its recognition for enforcement in Nigeria.[40] There is only one recorded case where an application has been filed to recognise an ICSID award in Nigeria.[41]

The Arbitration and Mediation Act 2023 may be relied upon for any challenge to the recognition and enforcement of such an award. The grounds for challenge are:

a. if a party to the arbitration agreement was under some legal incapacity;
b. the arbitration agreement is not valid under the law to which the parties subjected it or, failing such indication, under the laws of Nigeria;
c. the party making the setting-aside application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present its case;
d. the award deals with a dispute that is not contemplated by or that does not fall within the terms of the submission to arbitration;
e. the award contains decisions on matters which are beyond the scope of the submission to arbitration;
f. the composition of the arbitral tribunal, or the arbitral procedure was not in accordance with the agreement of the parties;
g. where there is no between the parties in relation to the composition of the arbitral tribunal;
h. the award is not capable of settlement by arbitration under Nigerian law;
i. the award is against public policy of Nigeria.[42]

There is no applicable court practice for the application of such grounds to ICSID awards.

Footnote(s):

[40] International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act.

[41] Federal Republic of Nigeria v Interocean Oil Development Company & Anor Suit No. SC/CV/986/2021 in relation to the Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria (ICSID Case No. ARB/13/20) Award.

[42] Section 55 of the Arbitration and Mediation Act 2023.

14. Please outline the practice in your jurisdiction, as requested in the above question, but in relation to non-ICSID investment treaty awards.

Non-ICSID investment treaty awards may be recognised and enforced pursuant to the New York Convention. Please see (13) above for the grounds of challenge to such awards. There is no applicable court practice for the application of such grounds to non-ICSID investment treaty awards.

15. To what extent does your jurisdiction permit awards against states to be enforced against state-owned assets or the assets of state-owned or state-linked entities?

Under the provisions of section 84(1) of the Sheriffs and Civil Process Act, the consent of the Attorney General of the Federation is required before the funds held by a public officer can be attached to enforce a money judgment against state-owned assets or state-linked assets. In the case of state-owned assets in foreign jurisdictions, Nigeria typically raises sovereign immunity as a shield in enforcement proceedings against state-owned assets.

16. Please highlight any recent trends, legal, political or otherwise, that might affect your jurisdiction's use of arbitration generally or ISDS specifically.

The contract-based investment arbitration in *Process and Industrial Developments Ltd. v Federal Republic of Nigeria*,[43] influenced national discussions of a national arbitration policy – to promote the conduct of arbitrations

in Nigeria, in response to the negative sentiments generated by the ***Process and Industrial Developments Limited v. Nigeria*** dispute.[44] This is also what directly led to the establishment of another committee to audit agreements on accelerated gas development projects executed by Nigeria.[45] Nigeria however remains keen to develop greater use of arbitration for the resolution of disputes.

In February 2025, the Federal Executive Council of Nigeria approved the National Policy on Arbitration and Alternative Dispute Resolution (ADR) for 2024-2028, representing a significant milestone in advancing Nigeria's justice system and promoting sustainable dispute resolution.

Footnote(s):

43
https://www.italaw.com/sites/default/files/case-documents/italaw170063.pdf

44
https://fmino.gov.ng/national-arbitration-policy-aims-at-making-nigeria-africas-arbitration-hub-jedy-agba/#:~:text=The%20goal%20of%20National%20Arbitration,contracts%20especially%20with%20foreign%20entities.

45
https://guardian.ng/features/law/agf-appoints-shasore-as-legal-audit-committee-chair/

17. Please highlight any other investment treaty related developments in your jurisdiction to the extent not covered above (for e.g., impact of the Achmea decisions, decisions concerning treaty interpretation, appointment of and challenges to arbitrators, immunity of arbitrators, third-party funding and other non-conventional means of financing such proceedings).

There are no further related developments to highlight at this time.

Contributors

Adewale Atake, SAN
Partner & Head, Dispute Resolution
wale.atake@templars-law.com

Orji Uka, MCIArb
Managing Counsel
orji.uka@templars-law.com

Iyunoluwa Fakunle
Associate
iyunoluwa.fakunle@templars-law.com