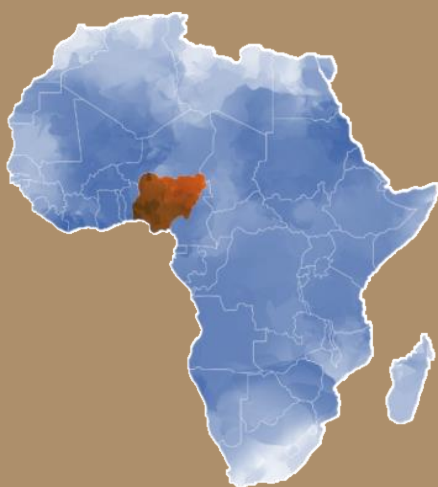


GHR *beyond* - Africa Edition

6th Issue – March 2024

Nigeria

GHR beyond is our informative newsletter on intercontinental topics. In the Africa edition, we provide concise information once a quarter on important key figures of a destination country in Africa and what entrepreneurs should consider from here to there and from there to here. Today we are traveling to one of the most important economies in West Africa - Nigeria.



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Overview

Economic relations between Switzerland and Nigeria have been diverse and stable for years. Swiss investments span various sectors in Nigeria, including telecommunications, banking and agriculture, and contribute to the country's economic development. In return, Nigeria offers Switzerland access to West Africa's resources and markets, which is of strategic importance to Swiss companies. The two countries also work together on joint initiatives to tackle challenges such as trade barriers and corruption and are committed to deepening cooperation.

There is an investment protection agreement between Switzerland and Nigeria, while a double taxation agreement does not yet exist. Switzerland imported more than 1 million tons of goods worth around CHF 880 million from Nigeria in 2022, while it exported around 15,200 tons of goods worth CHF 170 million to Nigeria. By far the most important import from Nigeria is mineral oil, followed by gold, while exports mainly consist of chemical and pharmaceutical products as well as dyes, cosmetics, fabrics, machinery and watches.

Around 210 Swiss nationals live in Nigeria, while around 2,200 Nigerians live in Switzerland.

In this issue of GHR *beyond*, we focus on the most important legal issues for trade relations with Nigeria.

From Switzerland to Nigeria

Nigerian Land Ownership for Foreigners An Analysis



Introduction

As Nigeria confronts the challenges of globalization, increased investment, and socio-economic growth, the topic of foreign land ownership becomes a central focus of discussion, policy formulation, and legal examination. Against the backdrop of Nigeria's diverse land tenure systems and vibrant cultural heritage, the nation's stance on foreign land ownership embodies a nuanced equilibrium which the delicate interplay between promoting foreign investment and preserving national sovereignty.

Land acquisition and ownership in Nigeria are predominantly regulated, governed, and safeguarded by a blend of statutory and constitutional provisions. The Land Use Act of 1978 stands as the primary statute governing property rights acquisition in Nigerian land, while the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees protection of these rights. This article delves into the intricacies of foreign land ownership in Nigeria, examining its implications for both personal and commercial endeavours.

Land Use Act 1978

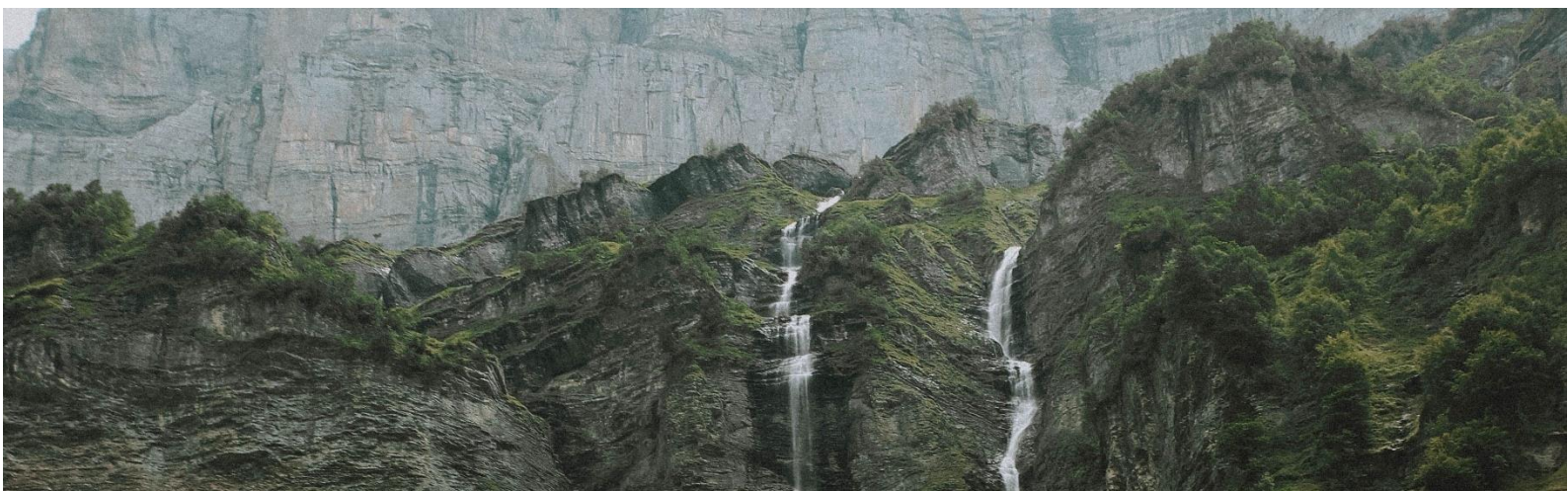
At the heart of land ownership in Nigeria lies the Land Use Act 1978 which consolidates the control of all

lands in each state under the government. The act vests the entire ownership and control of all lands within the territory of a state in the Governor of that state, except land vested in the Federal Government or its agencies. Section 1 of the Land Use Act provides: "Subject to the provision of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerian in accordance with the provisions of this Act". This evinces the centralization of control of land in the Governor of the State. Consequently, the Governor of a State, being the trustee of the land in the State, determines the beneficiary of property rights in the state land, in accordance with the law.

Ownership of Land in Nigeria by Foreigners/Aliens

The distinction between "Alien" and "Foreigner" is crucial, as they are often used interchangeably but possess distinct meanings. While a Foreigner generally refers to someone from another country in a given context, an Alien specifically denotes a person lacking citizenship in the country where they reside or work.

In the case of *Gerhard Huebner v. Aeronautical Industrial Engineering and Project Management Company Limited* (2017) 14 NWLR (pt. 1586) 397,





the Court considered Section 1 of the Land Use Act which states that such land should be held in trust and "*administered for the use and common benefit of all Nigerians...*" and deemed that the phrase "*for the use and common benefit of all Nigerians*" excludes foreigners. Thus generally, under the Nigerian law, foreigners are prohibited from directly owning land without approval from the Government of the State else shall be guilty of an offence and liable on summary conviction to a fine or imprisonment. However, said foreigners may acquire interest in a landed property in Nigeria in the form of short-term leases not exceeding a period of 3 years, with the option of renewal (which shall not exceed a total of 25 years) pursuant to Sections 2 and 4 of the Acquisition of Land by Aliens Law of Lagos State. Interestingly, there is no ceiling as to the number of years under the Land Tenure Law of Northern Nigeria.

It is important to note that when a foreigner, legally acquires an interest or ownership right in land from a Nigerian citizen, and that interest or right becomes subject to being sold under any legal process, then the sale must first be offered to the State Government. If the State Government declines to purchase the land interest or right, then it may be offered to a Nigerian citizen for purchase.

A foreigner or foreign investor can indirectly acquire property right in Nigeria through a Company duly incorporated in Nigeria. A Company duly registered in

Nigeria attains the status of a juristic person (an artificial citizen) and as such can acquire land and possess property rights in Nigeria like every other Nigerian citizen, howbeit, wholly or partly owned by foreigners. This right is protected by **Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)** which provides for the right of a citizen of Nigeria (natural or artificial) to acquire and own immovable property anywhere in Nigeria.

Please note that Nigeria does not offer a specific residency-by-investment program associated with real estate purchases, unlike some other nations. Consequently, the mere act of buying property in Nigeria does not guarantee residency status for foreigners.

Conclusion

The Land Use Act of 1978, the main law governing land ownership, reserves land ownership exclusively for Nigerian citizens. However, foreigners and foreign investors can obtain land interests in Nigeria having obtained approval from the Government of the state; or through leases not exceeding 3 years or by establishing a company registered in Nigeria, which is considered a legal entity akin to a Nigerian citizen. Foreigners interested in acquiring property rights in Nigerian land should seek legal counsel for guidance.



From Nigeria to Switzerland

Recognition of foreign arbitral awards under the New York Convention

Introduction

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 internationalized and facilitated the enforcement of arbitral awards. Especially for trade relations, it is of decisive importance to obtain decisions in dispute proceedings relatively quickly, and to have them relatively easily enforceable internationally. The New York Convention (NYC), which is recognized by a large majority of the world's jurisdictions, aims to achieve such standardization.

In this section, we will explain how an arbitral award issued under the New York Convention in Nigeria against a Swiss company can be enforced in Switzerland.

The Problem

Court proceedings are often lengthy and costly, as court rulings can be contested across several instances and it can therefore sometimes take years before a final, legally binding decision is reached. If this decision then has to be enforced abroad, it must be recognized by the state courts of the destination country, whereby recognition is often again governed by national law. The risk that the local courts will assess the same case again on the merits and ultimately refuse to enforce the original judgment for a variety of possible reasons cannot be excluded. International court proceedings therefore regularly require patience and readiness to deal with uncertain outcomes.

The Solution Approached by the NYC

In international contracts reaching a certain material relevance, the parties often agree that an arbitration tribunal should decide on disputes instead of state courts - i.e. a private court appointed by the parties, which issues a binding arbitration award, i.e. a judgment, according to rules defined by the parties. The advantages lie in the fact that an arbitration award can only be contested to a very limited extent and the

arbitration tribunal, as it is composed by the parties, can be equipped with arbitrators who have extensive expertise in specific areas or cases.

The NYC addresses such arbitral awards by having the member states (i) generally recognize arbitral awards as valid, and (ii) regulate the enforcement of arbitral awards in an internationally (more) uniform manner. **The aim of the NYC is therefore to speed up dispute proceedings and promote legal certainty when it comes to international enforcement.**

General Recognition of the Arbitration Award

An arbitration award must generally be based on a written arbitration clause in a contract and itself be issued in writing in accordance with arbitration rules agreed by the parties or, in the absence of such an agreement, applicable state arbitration rules (i.e. a set of rules governing the arbitration proceedings). Private arbitration rules are, for example, the Swiss Arbitration Rules or the ICC Rules of Arbitration of the International Court of Justice. State arbitration rules are, for example, the provisions on arbitration of the Swiss Code of Civil Procedure, or the Nigerian Arbitration Act.

If the arbitral award is validly rendered in accordance with those rules, e.g. in Nigeria, it normally requires no further recognition in Nigeria. In practice, validity can only be denied if the award is not in writing, if a party was unable to participate properly in the arbitration proceedings or if the arbitral tribunal did not meet the requirements of impartiality.

Recognition of the Nigerian Arbitration Award in Switzerland

The party seeking enforcement in Switzerland must apply to a Swiss court for recognition and enforcement of the arbitral award. This application should include a certified copy of the contract with the arbitration clause, a certified copy of the arbitration award and a certified translation into the official language of the competent Swiss court (either German, French or Italian, depending on the region). The court at the

location of the Swiss party against whom the arbitration award is to be enforced has jurisdiction.

Examination of the recognition requirements

The Swiss court only examines whether the arbitral award meets the formal requirements of the NYC. If these are fulfilled, it is obliged to recognize the arbitral award unless either (i) Swiss law prohibits the possibility to settle the dispute matter by arbitration, or (ii) the recognition and enforcement of the arbitral award would be contrary to Swiss *ordre public*. However, these are both special cases that only apply in somewhat extraordinary situations (e.g. violation of fundamental Swiss rights such as racist or otherwise discriminatory motives, etc.).

Only if a party (usually the defendant) raises and sufficiently proves one of the following points, the Swiss court may refuse to recognize the Nigerian arbitral award:

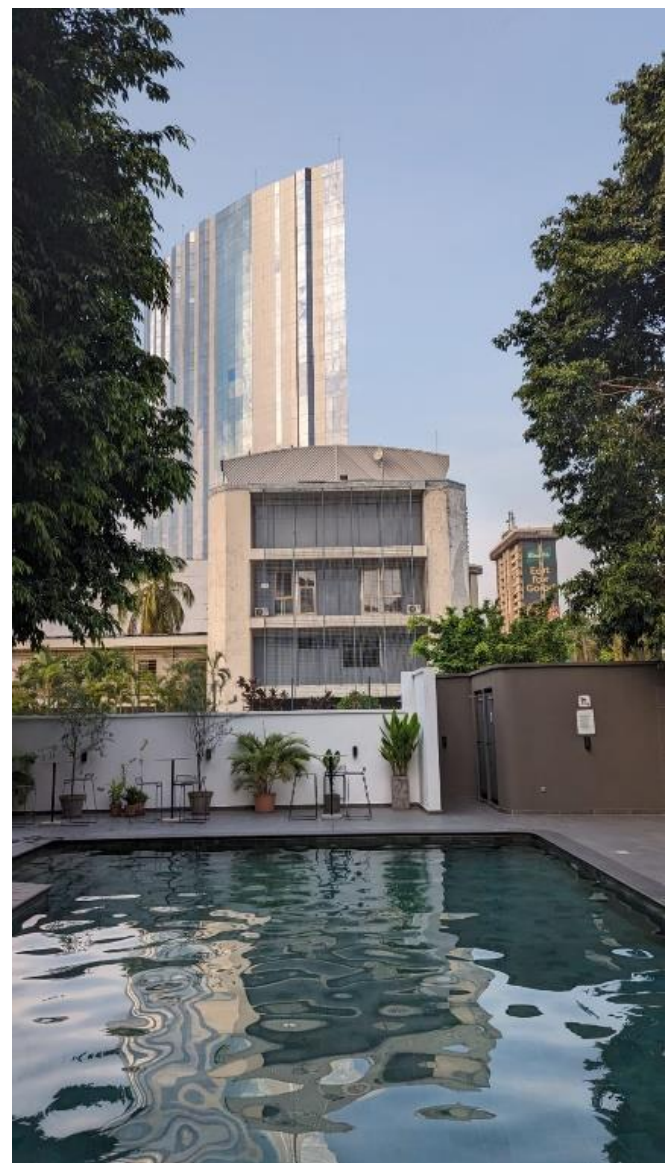
- not all parties to the arbitration proceedings were personally capable of participating in arbitration at all, or the arbitration award was invalid;
- a party was not duly invited or was unable to exercise its procedural rights properly;
- the arbitral award relates in whole or in part to an issue which is not covered by the arbitration clause agreed between the parties;
- the arbitral tribunal was not duly appointed;
- the arbitral award is not final.

Enforcement of the recognized arbitration award

Once the Nigerian arbitration award has been recognized, enforcement in Switzerland can take place in the same way as with a Swiss court judgment. The party seeking enforcement must still initiate enforcement measures (e.g. seizure, arrest of assets, bankruptcy proceedings, etc.), but is now very likely to be successful. The recognized arbitral award also serves as judicial entitlement for the opening of legal proceedings in order to reasonably quickly eliminate any legal appeals raised by the Swiss counterparty in the course of debt enforcement proceedings.

Conclusion

The enforcement of an arbitral award rendered under the NYC in Nigeria against a Swiss company in Switzerland requires the recognition of the arbitral award in Switzerland. Thus, there is no automatism, but the international standardization of the rules combined with the general efficiency advantages of arbitration make NYC arbitral awards a powerful tool for private law enforcement. The international recognition and enforcement of arbitral awards under the NYC thus facilitates global trade and the resolution of disputes between companies and parties worldwide.

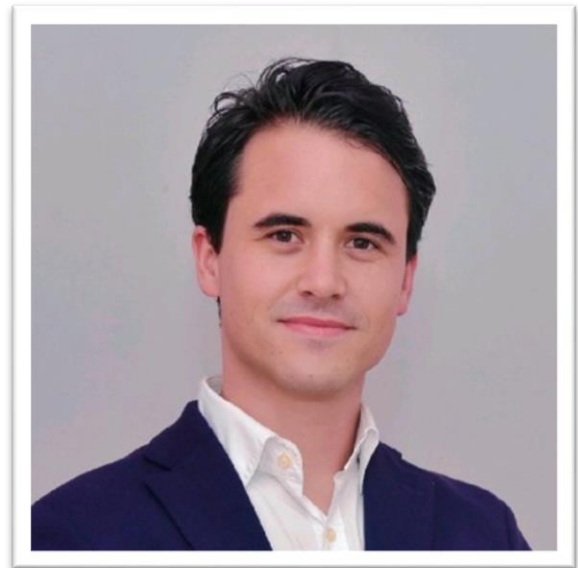


How it is in Practice

Knowing the legal requirements for intercontinental business relationships is only one side of the coin. It is at least as important to get involved in local everyday life and to be able to deal with the peculiarities and customs.

Nigeria is a large and unique market, full of opportunities as well as risks for investors who have too little knowledge of local conditions, or who spend too little time familiarizing themselves with them.

Somebody who knows is Leonard Stiegeler. In our interview, he gave us exciting and unique insights into his projects and experiences in and in connection with Nigeria. Leo Stiegeler is an entrepreneur and investor and, amongst other, co-owner of Bern-based Africa Unlimited.



www.africaunlimited.xyz

May you introduce yourself to our readers?

I am an entrepreneur and investor with a focus on technology and media. I was educated in Europe, but now based in the United Arab Emirates and investing globally. I have founded several companies and supported projects in Africa in general and Nigeria in particular.

Among other things, I was the founder and publicist of Pulse, a news and entertainment company focused on informing and empowering young people in Africa, with news offerings in six countries. In addition to Pulse, the company publishes the pan-African magazine "Business Insider Africa". Pulse was acquired by Ringier AG in 2023, and since then I have been supporting the Board of Directors as an advisor.

My passion is discovering potential and developing opportunities - with and for my partners.

What do you do?

As an investor, I focus on venture capital and start-ups and support selected companies further as an advisor. In addition to South Africa, Nigeria has always been one of my focus countries.

How did you come to build the bridge between Europe and Nigeria?

It happened. As a student, I worked in a fairtrade store for food and other goods in Germany, and I was interested in the origin and history behind the goods I was selling. When I was 17, I visited Ghana for the first time and stayed there for month. Later, I spent a year in Uganda working for GIZ. After completing my studies, I finally set up an e-commerce company for fashion items in South Africa together with a German investor, and then my first e-commerce company in Nigeria – the latter thus with a broader, more full-range approach of products.

What do you particularly like about this activity, where do you see the greatest opportunities?

Projects and companies in Nigeria often work on fundamentally important issues that are generally taken for granted in the so-called Global North. One example is the entire credit system, which is still under development in many areas of life in Nigeria, while comprehensive credit systems have been established in Europe and the USA since long, and their central importance for the national economy been recognized. Another example is the almost trivial-sounding access to goods, for example via e-commerce systems. While this is taken for granted in Europe, there is still a lot going on in Nigeria.

My central motivation as an investor in Nigeria is, on the one hand, to take advantage of the many opportunities that arise and, on the other hand, to support and promote positive impact for the local population through these opportunities.

I have come to know Nigerians as hard-working, passionate and smart people. The only thing they need is a chance to showcase their talents.

Where do you see the greatest challenges and opportunities for improvement?

Nigeria has various complexities. The first complexity for foreign investors is the Nigerian Naira. As the currency is not pegged to a "hard" currency such as the US Dollar or the Euro, the Naira is subject to relatively high devaluation - which deters many investors. Those who invest successfully have a long-term investment horizon

and focus on economic sectors with very high growth rates in order to compensate for the negative effects of the Naira.

A further complexity arises from the problems of non-existent or inadequate public infrastructure - starting with water supply. Of course, these deficits also offer opportunities, but the associated problems should not be underestimated.

Legal uncertainty is another issue, although from my own experience I perceive this to be less significant than others.

In your opinion, what should be considered when doing business between Switzerland and Nigeria?

Nigeria works Nigerian, and an investor or entrepreneur is well advised to take a close look at the local conditions, to really take the time to understand the country and its people. The size of the country, the neighbouring states, bottlenecks in electricity and general supply, relevant poverty and its associated problems as well as the climate form the country to what we know to be Nigeria.

In my view, the most important success factor is to find reliable local partners who can provide support with their knowledge of local conditions and who can react to changes on the ground at short notice and at any time.



Each issue of *GHR beyond* is intercontinental, but also very local. We always prepare content with one of our local partners, with whom we collaborate on legal issues with local relevance. We sincerely thank our partners for this tremendous effort and the opportunity to build intercontinental bridges with local expertise on this side and the other.

This edition of *GHR beyond* - Africa Edition has been produced by the following authors and law firms. Please contact the authors at any time if you have any questions or require further information on a particular topic.

**For content
related to Swiss law**



**For content
related to Nigerian law**



GHR Rechtsanwälte AG

Tavelweg 2	Seidengasse 13
3074 Bern Muri	8001 Zurich
Switzerland	Switzerland

www.ghr.ch

+41 58 356 50 50



Punuka Attorneys & Solicitors

International Law Center
Plot 45 Oyibo Adjarho Street
Off Ayinde Akinmade Street
Off Admiralty Way
Lekki Peninsula Phase 1
Lagos, Nigeria.

www.punuka.com

+234-(1) 270 4789



Stephan A. Hofer
Partner

stephanhofer@ghr.ch



Dr. Anthony Idigbe, SAN
Senior Partner

a.idigbe@punuka.com



Sharon Juwah
Associate

s.juwah@punuka.com



Japhet Olayemi
Associate

j.olayemi@punuka.com