



Arbitration in Cross-Border Investments: Key Takeaways from Nigeria's Recent Jet Seizure Case

Introduction:

Arbitration is crucial for resolving cross-border disputes, especially for businesses involved in international investments. The recent seizure of Nigerian government jets, following an arbitral award favouring Chinese company Zhongshan Fucheng Industrial Investment, highlights how arbitration can impact parties beyond the original dispute. Although the dispute began with the Ogun State government, the Federal Government of Nigeria's involvement in the arbitration proceedings demonstrates the broad reach of Bilateral Investment Treaties (BITs).

Bilateral Investment Treaties (BITs) are international

agreements that protect investments and promote

cross-border business activities. Nigeria has signed 29 BITs, with 15 currently in force, involving countries like China, the UK, and South Africa. These treaties grant foreign investors rights to seek redress against host governments.

How BITs Impact Businesses and Investors in Cross-Border Arbitration

1. Access to Arbitration for Investors

- BITs allow businesses from either country to initiate arbitration if their investments are mistreated by host countries.
- BITs often provide access to neutral international arbitration platforms and tribunals (such as UNCITRAL, International Centre for Settlement



of Investment Disputes, etc), offering protection from potential biases in local courts.

2. Indirect Liability Risks for Businesses

- The jet seizure case shows that businesses linked to public entities may be exposed to BIT-related arbitration claims.
- Investors should evaluate the risks of operating in BIT-participating countries, understanding that arbitration rights and obligations are enforceable under these treaties.

3. Increased Security for Cross-Border Investments

- BITs provide a safeguard for businesses expanding into foreign markets by ensuring fair treatment and protection from unlawful expropriation by host governments.
- BITs typically contain provisions that ensure regulatory stability in the host country, preventing arbitrary legal changes that could negatively impact foreign investors. The legal certainty offered by BITs encourages foreign direct investment, enabling businesses to expand confidently across borders.

4. Opportunities for Nigerian Investors Abroad

- Nigerian businesses can also benefit from BITs when investing in partner countries, leveraging arbitration to protect their investments.
- BITs offer a reciprocal framework, allowing Nigerian investors to enforce their rights and resolve disputes in international arbitration settings.

What Stakeholders Should Do to Stay Protected

• Draft Effective Arbitration Clauses:

Cross-border contracts should include well-defined arbitration clauses to ensure disputes are managed efficiently.

• Conduct Due Diligence on BITs:

Investors should understand how BITs impact their operations, especially when partnering with public entities.

• Stay Informed on Regulatory Changes:

Monitoring updates in arbitration practices and BIT-related policies can help businesses anticipate and adapt to evolving legal landscapes.

• Engagement with Local Counsel:

Collaborating with legal experts in the host country is crucial. Local lawyers can provide insights into the legal landscape, including any nuances in the enforcement of BIT provisions and potential risks related to local regulations.



Navigate Arbitration with SimmonsCooper Partners
 BITs and arbitration provide businesses with valuable tools to protect investments, resolve disputes, and explore cross-border opportunities. As Nigeria strengthens its role in international arbitration, businesses must understand the relevance of these treaties to mitigate risks and seize growth opportunities.

For strategic advice, end-to-end support, drafting arbitration clauses or representation in international disputes contact us at info@scp-law.com or visit www.scp-law.com.