

# MAURITIUS

## Law and Practice

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practice groups covering business law, M&A, employment, taxation, real estate and hospitality, insolvency, capital markets, and technology, media and telecommunications. The lawyers understand clients' commercial realities and proactively engage with the clients at the advisory stage and with opponents where there is a possibility of preventing or settling disputes by way of negotiation or mediation. The team has extensive experience in appearing before arbitral tribunals and all courts of Mauritius in high-value commercial disputes in a variety of industry sectors.

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## 1. Identifying Assets in the Jurisdiction

### 1.1 Options to Identify Another Party's Asset Position

The available options to identify the asset position of another party are as follows.

#### Conducting a Search at the Office of the Conservator of Mortgages to Obtain the List of a Party's Immovable Property (Casier Hypothécaire)

Where that immovable property is burdened by a charge or a mortgage, such information will also be available at the office of the Conservator of Mortgages. This search is available to the general public, upon the payment of a fee.

#### Lodging a Court Application for Disclosure Orders Against the Party or Against Banks

In practice, the application is made against all banks in Mauritius, as the applicant is unlikely to be aware of which bank/s a respondent has an account with. This application is made before the judge in chambers, by way of praecipe and affidavit. The disclosure order is usually made with a view to lodging subsequent application to secure the assets disclosed by the banks.

However, under Mauritius banking law, there exists a duty of secrecy owed by a financial institution to its customer. The bank will only be able to forgo its duty of confidentiality if one of the exceptions set out under the Banking Act is applicable. The duty of confidentiality will not be applicable where, for instance:

- under Section 64(3)(g) of the Banking Act, the financial institution has been served with a garnishee order attaching monies in the account of its customers; or

- under Section 64(3)(h) of the Banking Act, a summons is issued to appear before a court or a judge in Mauritius and as a result of which a disclosure order is made by the judge or a court.

Section 64(9) of the Act provides an exhaustive list of designated authorities who may apply to a judge in chambers for the disclosure of any information relating to the transactions and accounts of any person. The court is empowered to make a disclosure order but will not do so on the mere asking. Section 64(10) of the Banking Act sets out the prerequisites which must be present to satisfy the judge in chambers that a disclosure order is necessary in the circumstances, and this involves the purposes of combatting serious crime, tax evasion, money laundering, fraud or corruption. In a recent judgment of the Supreme Court, which forms the subject matter of an appeal before the Judicial Committee of the Privy Council, the Supreme Court held that after reading the Banking Act as a whole, it is mandatory that the applicant for a disclosure order under Section 64(10) be one of the designated authorities those listed in Section 64(9) of the Banking Act. The Judicial Committee of the Privy Council has already announced its decision that the appeal will be allowed but the reasoned judgment is not out at time of writing (July 2023).

#### Making a Written Request to the Registrar of Companies to Inspect the File of a Party That Is a Domestic Company Registered Under the Laws of Mauritius

Companies are obliged to file the details of charges taken by them. For domestic companies, these filings are publicly available upon the payment of a fee. In addition to searches, written request can be made to obtain certified copies of documents filed by the domestic company

with the Registrar of Companies, which is an obligation of most of the companies under the Companies Act.

## 2. Domestic Judgments

### 2.1 Types of Domestic Judgments

The following different types of domestic judgments are available.

- Judgment delivered by a judge (Supreme Court):
  - (a) judgment in default (make out case);
  - (b) contradictory judgment;
  - (c) interlocutory judgment, following an argument on particulars or on a point of law (“plea in limine litis”);
  - (d) declaratory judgment; and
  - (e) winding-up order.
- Judgment delivered by a magistrate (district courts, intermediate court or industrial court):
  - (a) judgment in default (make out case);
  - (b) contradictory judgment; and declaratory judgment.
- Judgment delivered by the judge sitting in chambers:
  - (a) interim order of injunction;
  - (b) attachments;
  - (c) interlocutory order; and
  - (d) writ of habere facias possessionem – ie, an order for the eviction of illegal occupiers.
- Judgment delivered by a judge sitting in chambers and/or the court:
  - (a) a settlement agreement recorded and embodied in a judgment of the court.

### 2.2 Enforcement of Domestic Judgments Insolvency Proceedings

#### *Statutory demand*

Where the amount to be claimed exceeds MUR250,000 (approximately USD5,727) and the debt is that of a company, a creditor can serve a statutory demand on the debtor. The statutory demand is in a prescribed form that gives the debtor the option to:

- pay the debt;
- enter into a compromise or otherwise cooperate with the creditor; or
- give a charge over its property to secure payment of the debt within one month of the date of service of the statutory demand, or such longer period as the court may order.

A statutory demand can only be served if the debt is certain, liquid and due. A statutory demand is an out-of-court procedure, but the creditor has to file a court application to set aside this statutory demand. There are strict prescribed delays that must be followed, failing which the debtor company will not be in a position to apply to the court to set aside the statutory demand, but an option available to it is to request the court to extend the delay for complying with the requirements and exigencies of the notice statutory demand.

#### *Winding-up proceedings*

Where a company has failed to comply with the terms of the statutory demand or a judgment for payment, the creditor can present a winding-up petition against that company. A winding-up petition is accompanied by an affidavit sworn by the creditor’s representative and filed in court. The representative deputed by the company must be duly mandated by a valid board resolution or written resolution of the directors, prior to the swearing of the affidavit. Prior to the presen-

tation of the petition for winding up, a security for costs of MUR25,000 (approximately USD550) must be paid by the petitioner company. Once the winding-up petition is lodged in court, the court will order that the petition is notified to the other potential creditors through publication in two dailies of wide circulation and served on the respondent for them to file their respective stand. The debtor still has the opportunity to resist the petition for winding-up.

### *Bankruptcy notice*

Where an individual has failed to comply with the terms of a judgment for payment of more than MUR100,000 (approximately USD2,290), a bankruptcy notice is served on the debtor ordering them to settle the sums due within 14 days, failing which a bankruptcy petition will be lodged in court within a period of 42 days from the date of service of the bankruptcy notice. If the debtor did not comply with the said bankruptcy notice, the creditor will present a bankruptcy petition to the Bankruptcy Division of the Supreme Court. The petition will be accompanied by an affidavit. If the creditor is a company, it will have to depute a representative who must be duly mandated and such mandate must be evidenced by a board resolution or a written resolution of the directors.

### *Attachment*

A judgment obtained can be enforced by attaching the assets of the judgment debtor that are in the hands of a third party (the garnishee). An attachment can be made against the judgment debtor's salary, but only one third of the salary can be attached.

### *Before the Supreme Court*

The application for attachment is a two-step procedure made by way of praecipe and affidavit before the judge in chambers. The judge will

initially issue a provisional order for attachment, which will be served on the respondent and the garnishee. The application for validation of the attachment has to be lodged and served within eight days. The garnishee has to file an affidavit confirming the amount they owe (affirmative declaration), further to which the attachment is validated. However, if the garnishee states that they have no debt or owe less than the amount claimed, the judge will have to hear the matter and ultimately validate the attachment or not.

### *Before the lower courts*

District courts and the intermediate court also have the jurisdiction to issue provisional attachment orders pending the judgment in the main case or provisional seizure attachment orders, but only in matters of non-payment of alimony.

### *Seizure and Sale of the Judgment Debtor's Property*

#### *Movable property*

Failure to pay a money judgment given by either the district court or intermediate court can result in the seizure and sale of movable property belonging to the party against whom the order is made. The judgment creditor may apply for a warrant of execution to be executed against the movable property of the debtor.

An application in the district court where the debtor resides or in the intermediate court must be made by the party who seeks to enforce the money judgment. A warrant of execution will then be issued under the seal of the court to one of the ushers of the court, who is then empowered to levy by distress and sell the movable property belonging to the defaulting party. All movable property can be seized, except that which cannot be seized by law, such as, pensions, alimony, clothes and personal belongings, or apparel needed by the debtor for work. The

magistrate can issue a writ of execution against any immovable property belonging to the debtor, if the amount levied by distress is insufficient. Before the lower courts, unlike the judgments delivered before the Supreme Court, the judgment creditor must seize the movables prior to seizing the immovables.

Regarding judgments delivered by the Supreme Court, the party who obtained judgment in their favour can apply to the Master and Registrar of the Supreme Court for a writ of execution. At the request of the party who obtained the judgment or order, the Master and Registrar must issue a warrant of execution against movable and/or immovable property, under the seal of the court. The writ is executed by an usher without any other formality.

### *Immovable property*

The seizure of immovable property is preceded by a notice that is served on the judgment debtor in person, at least ten days before. In the notice, the creditor must elect a domicile at the office of its attorney at law, where all acts in connection with the proceedings will be served, and notify the judgment debtor that, on failure to pay the amount claimed, immovable property will be seized. Once the writ of execution is issued, it is executed by the usher, who seizes the immovable property belonging to the judgment debtor.

The procedure to be followed after the seizure is set out in the Sale of Immovable Property Act 1864. An application is heard before the Master and Registrar of the Supreme Court, regardless of the value of the property, and notice of it is given to the debtor and invited creditors.

The sale of the immovable property is effected by public auction before the Master and Registrar of the Supreme Court of Mauritius.

## 2.3 Costs and Time Taken to Enforce Domestic Judgments

The time it takes to enforce a judgment is as follows:

- insolvency proceedings will take between six months and one year;
- the attachment of earnings for an amount not exceeding one third of the salary will take between six months and one year;
- other attachments will take between nine months and one year;
- in the seizure and sale of movable property by an usher, the time between the application for the seizure and sale to the court and the date of the sale will be around one year; and
- the time for the seizure and sale of immovable property will be around one year, if the application is not defended.

In terms of efficiency, insolvency proceedings will put more pressure on the debtor to effect payment, since the result of any such proceedings will be the winding-up of the company/bankruptcy of the individual and the latter's inability to trade if they are adjudged bankrupt. Attachments are useful tools in cases where assets are in danger of being disposed of. Indeed, a provisional order for attachment is granted quite rapidly after an application is made, and will prevent the garnishee from disposing of the asset that has been provisionally attached. In situations where there is real risk of dissipation of the assets, the creditor may also apply for a freezing order which is made on an ex parte basis and which, if the risk is fully substantiated, is obtained speedily as it involves an element of celerity.

The costs involved for each of the above procedures will usually be capped at approximately 20% of the amount claimed, if the

amount exceeds MUR2 million (approximately USD45,819). For lower amounts, fixed fees are usually applied, ranging from approximately USD2,000 to USD5,000. Where applicable, attorney's commissions and VAT thereon will be added.

## 2.4 Post-judgment Procedures for Determining Defendants' Assets

The post-judgment procedures for determining what assets the defendant holds and where they are located are the same as described at 1.1. **Options to Identify Another Party's Asset Position.**

## 2.5 Challenging Enforcement of Domestic Judgments

The defendant may appeal against a judgment within 21 days of it being delivered, after which time the judgment is enforced. The notice of appeal containing the grounds of appeal has to be filed and served on the respondent(s) within that 21-day period. The effect of the appeal of the judgment will be a stay on the execution of the judgment.

The defendant can apply for a new trial and has to satisfy the court of the following:

- that fraud, violence or an error has been committed;
- that new evidence that was not available or was not within the knowledge of the party at the time of the hearing has come to light; or
- that the new trial is necessary for the achievement of justice.

The application for a new trial must contain a claim for a stay of execution of the judgment.

Before the lower courts, the application for a new trial must be made within 15 days of the

date of the judgment if the judgment has been given in the presence of both parties, or within 15 days of the execution of such judgment when it has been given for the plaintiff, in the absence of the defendant.

The debtor may file a defence in winding-up proceedings on the grounds that the enforcement procedures have not been properly followed, or in attachment proceedings on the ground that the timeframes have not been complied with.

The debtor may also file an incidental application when an application for the sale of immovable property is lodged. The purpose of an incidental application is to resist the seizure and sale procedure, and it can be made on any valid ground. The incidental application is lodged by petition and is served on the parties' attorneys.

## 2.6 Unenforceable Domestic Judgments

All types of judgments can be enforced. Enforcement procedures need to be lodged within the following timeframes:

- judgments given in the absence of the debtor are enforceable for a period of six months after the judgment; and
- other judgments can be enforced within three years of the judgment being delivered for district and intermediate court judgments, and within ten years for Supreme Court judgments.

## 2.7 Register of Domestic Judgments

There is no central register of all judgments. Judgments can be accessed from the website of the Supreme Court of Mauritius, but it should be noted that not all judgments are reported.



## 3. Foreign Judgments

### 3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Foreign judgments can be enforced in two ways.

UK judgments are enforceable in accordance with the Enforcement under the Reciprocal Enforcement of Judgments Act 1923 (Reciprocal Enforcement Act). However, this procedure is only available for money judgments rendered by superior courts in the UK.

All judgments are enforceable through exequatur, in accordance with the Code of Civil Procedure. Exequatur can only be availed of if the foreign judgment is final and has not been appealed against. However, it is worth noting that a divorce judgment delivered outside the jurisdiction of Mauritius does not need to be enforced through an exequatur proceeding, provided the foreign judgment relates to the status or capacity of the divorced persons only. However, if in the same divorce judgment, there has been any order as to the property of the parties, or custody of a child, then such divorce judgment must be enforced by way of an exequatur because of its coercive effect.

Mauritius is not party to any treaty/convention in respect of foreign judgments.

Foreign judgments cannot be enforced in Mauritius when they are against public order.

### 3.2 Variations in Approach to Enforcement of Foreign Judgments

Only money judgments can be enforced under the Reciprocal Enforcement Act.

### 3.3 Categories of Foreign Judgments Not Enforced

Any judgment that is final (ie, not subject to appeal or review) can be enforced, unless it is contrary to public order in Mauritius. As specified at **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**, divorce judgments are partially exempted from the exequatur proceedings.

### 3.4 Process of Enforcing Foreign Judgments

#### Judgments Delivered in the UK *Registration of the judgment*

To enforce a judgment obtained in a superior court in the UK, a judgment creditor must seek leave from the Supreme Court 12 months after the date of the judgment so it can be registered. The Supreme Court has the discretion to allow a longer period. It may order the judgment to be registered if it is considered just and convenient that the judgment should be enforced in Mauritius, taking all the circumstances of the case into account. The application to seek leave must be made ex parte or by summons to a judge. If the application is made ex parte, the judge to whom it is made may direct a summons to be issued.

The application must be supported by an affidavit of the facts exhibiting the judgment, or a verified or certified or otherwise duly authenticated copy thereof. The affidavit must state the following:

- That the judgment creditor is entitled to enforce the judgment, to the deponent's best information and belief. Evidence must be adduced to the effect that the judgment is still valid to all intents and purposes and the authenticity of the judgment is not in issue and is still enforceable in the country in which it was delivered. This evidence is usually



adduced in the form of a certificate of non-appeal.

- That the judgment does not fall within any of the cases for which a judgment cannot properly be ordered to be registered.
- The full name, title, trade or business and usual or last known place of abode or business of the judgment creditor and judgment debtor, so far as the deponent can provide such information.

Upon receipt of the application, the Supreme Court fixes the time limit (normally a maximum of two months) within which the judgment debtor can apply to set aside the application for registration. If no application is made within the time limit, the judgment must be registered and will be declared executory in Mauritius.

Notice in writing of the registration of the judgment must be served on the judgment debtor within a reasonable time. The notice must contain the period within which the judgment debtor can apply to set aside the registration. The party serving the notice must endorse on the notice (or a copy of it) the day, week and month of service, within three days after service, otherwise the judgment creditor cannot execute the judgment.

It is a statutory principle that a foreign plaintiff with no immovable property in Mauritius initiating enforcement proceedings in Mauritius must provide security for costs. In certain cases, the court has departed from the general principle that security for costs is not required from foreign plaintiffs in commercial matters, and made it possible for security for costs to be granted in commercial matters as well.

From the date of registration, the judgment shall have the same force and effect as if it had been a judgment originally obtained further to a claim

entered before the Supreme Court. Regarding execution, the Supreme Court will have the same control and jurisdiction over the judgment as it has over similar judgments given by the Supreme Court.

## Exequatur Judgments

A foreign judgment can be enforced as long as it is still valid and capable of execution in the country where it has been delivered.

An application for the exequatur is made to the Supreme Court by way of motion supported by affidavit, requesting an order making executory the judgment delivered in another jurisdiction. A duly authenticated certificate evidencing the fact that the judgment is final and has not been appealed against must be annexed to the affidavit.

An application to enforce a foreign judgment must be accompanied by an affidavit relating the facts exhibiting the judgment, along with a verified, certified or duly authenticated copy of the judgment itself. Documents that are in neither English nor French must be translated and certified. The documents submitted at the time of the application must be legalised.

A party seeking to enforce a judgment from a country that is a signatory to the HCCH Convention Abolishing the Requirement of Legalisation for Foreign Public Documents 1961 (Apostille Convention) need not legalise the judgment through diplomatic or consular means. However, the following requirements must be fulfilled:

- the foreign judgment must bear the seal of the foreign court;
- the last page of the judgment must bear the signature of an officer from the foreign court;

- a certificate of the foreign court stating that the judgment has not been appealed against must be provided; and
- the judgment must be apostilled.

A party seeking to enforce a judgment from a country that is not a signatory to the Apostille Convention can do so through Mauritian diplomatic agents or consular agents, who certify:

- the authenticity of the signature;
- the capacity in which the person signing the document has acted; and
- where appropriate, the identity of any seal or stamp.

Once a judgment is rendered executory, a party can seek to enforce it after the 21-day appeal period has elapsed, in the same way as it would have enforced a judgment delivered by a domestic court, as described in **2.2 Enforcement of Domestic Judgments** and **2.3 Costs and Time Taken to Enforce Domestic Judgments**.

### 3.5 Costs and Time Taken to Enforce Foreign Judgments

The enforcement of a foreign judgment may take around 24 months, taking into account the application for the exequatur of the judgment, the service of the application for the exequatur on the defendant, the potential challenge that can be raised by the defendant as per the procedures listed in **2.3 Costs and Time Taken to Enforce Domestic Judgments** and **2.5 Challenging Enforcement of Domestic Judgments**, and the hearing of the application.

Typical costs for the enforcement may vary between USD3,000 and USD7,500.

### 3.6 Challenging Enforcement of Foreign Judgments

The exequatur of a foreign judgment can be challenged for the reasons stated in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**.

No United Kingdom judgment shall be ordered to be registered where:

- the original court acted without jurisdiction;
- the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;
- the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
- the judgment was obtained by fraud;
- the judgment debtor satisfies the Supreme Court either that an appeal is pending or that they are entitled and intend to appeal against the judgment; or
- the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the Supreme Court.

At any time within the period stipulated in the order giving leave to register after service on them of the notice of the registration of the judgment, the judgment debtor may apply by summons to a judge to set aside the registration or to suspend execution of the judgment. Upon such application, if satisfied that the case is one in which no judgment can be ordered to

be registered or that it is not just or convenient for the judgment to be enforced in Mauritius or for other sufficient reason, the judge may order that the registration be set aside or execution of the judgment suspended either unconditionally or on such terms as they think fit and either altogether or until such time as they shall direct.

The Supreme Court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but only insofar as relates to the execution of the judgment.

The enforcement can be challenged as described in **2.5 Challenging Enforcement of Domestic Judgments**.

## 4. Arbitral Awards

### 4.1 Legal Issues Concerning Enforcement of Arbitral Awards Domestic Awards

The main legal issue when enforcing an award is whether the award is against public order.

The court enforcing the award does not review service of the arbitral award or original proceedings. However, an award can be set aside on the grounds that the adversary principle is not respected. The adversary principle involves the arbitrator playing a passive role and granting the parties a free choice in deciding which arguments to present.

#### Foreign Awards

The court can refuse to enforce a foreign award if the party against whom the award is being enforced provides proof that it was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or that it was otherwise unable to present a case. There

are no specific methods that are unacceptable. A court will not consider the issue of service of the original proceedings on its own initiative.

The court can also refuse to enforce a foreign award when it is against the public order.

### 4.2 Variations in Approach to Enforcement of Arbitral Awards

A distinction is made between domestic and foreign awards, as set out in **4.1 Legal Issues Concerning Enforcement of Arbitral Awards**.

### 4.3 Categories of Arbitral Awards Not Enforced

Awards that are against public order and arbitration relating to a subject matter that is not subject to arbitration, such as divorce, will not be enforced.

### 4.4 Process of Enforcing Arbitral Awards

The recognition and enforcement of international awards are made by an application to the Supreme Court of Mauritius by way of motion paper and affidavit. The application is served on the other party, who will have the opportunity to defend the application on the grounds mentioned in **4.6 Challenging Enforcement of Arbitral Awards**.

The respondent in the recognition and enforcement application may, at this junction, apply for the setting aside of the provisional order within 14 days of service of the application.

#### Domestic Awards

The recognition and enforcement of domestic awards are made by an application for the exequatur of the award before the judge in chambers.

## 4.5 Costs and Time Taken to Enforce Arbitral Awards

Domestic awards may take between six and 12 months to be enforced. Typical costs may vary between USD3,000 and USD7,500.

The same timeframe applies to the enforcement of international awards. The typical costs are between USD3,000 and USD9,000.

## 4.6 Challenging Enforcement of Arbitral Awards

Article V of the New York Convention contains the following list of grounds to challenge an award:

- the incapacity of the parties to the agreement;
- the agreement is not valid under the law to which the parties have subjected it or under the law of the country where the award was made;
- failure to give proper notice of the appointment of the arbitrator or that arbitration proceedings have been instituted, or that the defendant was otherwise unable to present their case;
- the agreement was not valid on grounds of public order;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement;
- the award has not become binding on the parties or has been set aside or suspended by a competent authority;
- the issue between the parties is not capable of settlement by arbitration;
- the recognition or enforcement of the award would be contrary to public policy;
- the award deals with an issue that is not contemplated by or does not fall within the terms of the submission to arbitration;
- the award contains decisions on matters that are beyond the scope of the submission to arbitration;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties; and
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the law of the country where the arbitration took place.