Mauritius
INTERNATIONAL ARBITRATION

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This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Mauritius.

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1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The International Arbitration Act 2008 (the ‘IAA’) applies if the arbitration is seated in Mauritius. The Supreme Court (International Arbitration Claims) Rules 2013 set out the procedure to be followed under the IAA.

Over and above the IAA, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 applies in Mauritius.

The IAA allows for permissible derogations from its provisions except in relation to, among other things, the form of an arbitration agreement and award, the number of arbitrators, the principle of separability.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Mauritius is a signatory to the New York Convention, without any reservations.

3. What other arbitration-related treaties and conventions is your country a party to?


4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The law governing international arbitration in Mauritius is based on the text of the UNCITRAL Model Law on International Commercial Arbitration.

The Third Schedule to the IAA provides a table of corresponding provisions between the IAA and the UNCITRAL Model Law. From that table, it is clear that there are no significant differences between the two, save and except the IAA contains some additional provisions meant to enhance the efficiency of international arbitral proceedings in Mauritius such as the negative effect of competence-competence and the powers of the arbitral tribunal to deliver interim orders.

5. Are there any impending plans to reform the arbitration laws in your country?

There are no such impending plans.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Mauritius is home to two arbitral institutions: the MCCI Arbitration and Mediation Centre (MARC) and the Mauritius International Arbitration Centre (MIAC).

The MIAC Arbitration Rules came into force on 27 July 2018 and the MARC Arbitration Rules were updated in May 2018. There are no current discussions on potential amendments to any of these two rules.

7. Is there a specialist arbitration court in your country?

While there is no specialist arbitration court in Mauritius, any application or transfer to the Supreme Court of Mauritius under the IAA or any other matter arising out of an arbitration subject to the IAA is heard by a panel of 3 designated judges.
8. What are the validity requirements for an arbitration agreement under the laws of your country?

For an arbitration agreement to be valid in Mauritius, it shall be recorded in writing. However, it is important to note that the term "writing" under the IAA is afforded a wide interpretation. Indeed, an agreement will be considered to be in writing where its content is recorded in any form which can be transcribed in writing, it is concluded by way of electronic communications or its existence is stated in an exchange of statement of claim and defence and the other party does not object to such existence.

9. Are arbitration clauses considered separable from the main contract?

Yes, section 20 of the IAA provides that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract, and a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001, recognition and enforcement of an award may be refused in Mauritius if the party against whom the award is being enforced furnishes proof that the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

Regardless of whether it is domestic or foreign, a party can only be bound by an arbitration agreement if that party is privy to that arbitration agreement, and it will be bound by an award if it has been joined as a party to the arbitration proceedings. Likewise, decisions of the courts of Mauritius will only apply to a party, whether domestic or foreign, if it has been joined as a party to the court proceedings and duly summoned to attend court. There are no recent court decisions on these issues.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

With respect to international arbitration, there is no specific provision in the IAA that deals with the question of arbitrability, except that sections 39(b)(i) and (ii) provide that the subject matter of the dispute must be capable of being settled by arbitration under Mauritius law, and the award should not be in conflict with the public policy of Mauritius.

In the case of State Trading Corporation v Betamax [2019 SCJ 154], the Supreme Court of Mauritius qualified the issue of public policy and found that the courts need to have regard to the domestic public policy of the Mauritius rather than the international public policy of Mauritius. This judgment is currently under appeal before the Judicial Committee of the Privy Council (the ‘JCPC’).
Since the inception of the IAA, there has not been any court decision which specifies the subject matters are non-arbitrable. Nevertheless, it can be said that any matter that is not capable of being litigated cannot equally be subject matter of an arbitration. Nevertheless, generally, matters involving public order and the status of the person cannot be subject to arbitration.

14. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The law applicable to the substance is determined by the parties themselves. Failing such determination by the parties, the arbitral tribunal shall apply the conflict of laws rules which it considers applicable.

15. Have the courts in your country applied the UNIDROIT or any other transnational principles as the substantive law? If so, in what circumstances have such principles been applied?

No such transitional provisions have been applied in Mauritius.

16. In your country, are there any restrictions in the appointment of arbitrators?

There are no restrictions relating to the appointment of arbitrators. The parties are free to appoint arbitrators by mutual consent. However, the number of arbitrators constituting the tribunal shall always be an odd number.

17. Are there any default requirements as to the selection of a tribunal?

Where the arbitration agreement is silent on the number of arbitrators to be appointed, then the number of arbitrators shall be three. Moreover, if the parties agreed in the arbitration agreement that the number of arbitrators to be appointed shall be an even number, the agreement shall be understood as requiring the appointment of a presiding arbitrator.

18. Can the local courts intervene in the selection of arbitrators? If so, how?

No. The IAA provides the Permanent Court of Arbitration (the ‘PCA’) with exclusive jurisdiction on issues and difficulties relating to the appointment of Arbitrators.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The appointment of an arbitrator can be challenged: (a) if circumstances exist that give rise to justifiable doubts as to the impartiality or the independence of the arbitrator; and (b) if the arbitrator does not possess the prerequisite qualifications.

The parties are free to agree on the procedure which shall be adopted in order to challenge the appointment of an arbitrator. However, if under such procedure the challenge is not successful, the IAA provides that the challenging party may, within 30 days of having been notified of the fact that its challenge did not succeed, apply to the PCA to decide on the challenge. While the request with the PCA is pending, the arbitral proceedings shall continue and the arbitral tribunal may deliver award(s).

If an arbitration agreement is silent on the procedure for challenging an arbitrator’s appointment, the IAA states that an aggrieved party may challenge an arbitrator’s appointment by sending a written notice to the arbitral tribunal within 15 days of either: (a) being made aware of the composition of the arbitral tribunal; or (b) after being aware of the existence of a ground for challenging an arbitrator’s appointment.

Upon receipt of the written notice, the arbitrator may willingly resign, the other party may agree to the challenge or the arbitral tribunal may decide on the challenge.

Where the mandate of an arbitrator has been terminated, such arbitrator shall be replaced by a substitute arbitrator who shall be appointed according to the procedure applicable to the appointment of the arbitrator being replaced.

If a party or any other member of the tribunal consider(s) that an arbitrator has resigned for unacceptable reasons, refuses or fails to act without undue delay, then this party or the other member of the tribunal may apply to the PCA to request that the arbitrator be replaced or to authorise continuation of the arbitration without participation of the arbitrator in question.

20. Have there been any recent
developments concerning the duty of independence and impartiality of the arbitrators

There have not been any developments on this subject.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

In the event of a truncated tribunal, the parties or any other members of the tribunal may seek authorisation from the PCA to continue the arbitral proceedings.

22. Are arbitrators immune from liability?

Under Mauritian law, arbitrators are protected from liability in the discharge/purported discharge of their functions as arbitrators unless it can be shown that an alleged act or omission was executed in bad faith.

23. Is the principle of competence-competence recognized in your country?

The principle of competence-competence is recognised under Mauritian law as provided by section 20(1) of the IAA.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Section 5 of the IAA states that when an action is brought before any court and a party contends that the action is the subject of an arbitration agreement, that court must automatically transfer the action to the Supreme Court, provided that that party so requests not later than when submitting his first statement on the substance of the dispute. Unless the Supreme Court considers that, on a prima facie basis, there is a ‘very strong probability’ that the arbitration agreement is null and void, inoperable or incapable of being performed, it shall refer the parties to arbitration.

In Mall of Mont Choisy Limited v Pick ‘N Pay Retailers (Proprietary) Limited & Ors [2015 SCJ 10], the Court has reaffirmed that “it is clear that the legislator has opted for a non-interventionist judicial approach”.

Indeed, the preparatory works to the IAA clearly establish that Article 8 of the Model law was modified in order to provide real efficacy to the principle of competence-competence. By introducing the words ‘very strong probability’ into section 5, the legislator ensured that the parties to a possible arbitration will be referred to arbitration except in the most exceptional circumstances. Moreover, the preparatory works to the IAA further state that where doubt remains, a court shall always find in favour of referral to arbitration.

25. How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?

In Mauritius, the parties are free to decide the way by which arbitral proceedings shall be commenced. However, where the arbitration agreement is silent on the issue, arbitral proceedings are commenced by way of request from one party to another for the dispute to be referred to arbitration.

Section 41 of the IAA provides that the rules on limitation or prescription which shall apply to arbitral proceedings shall be the ones contained under the rules applicable to the dispute.

26. In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?

Section 3E of the IAA provides that the IAA shall bind the State. It is therefore not possible to invoke state immunity.

27. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

If a respondent fails to submit its statement of defence, the arbitral tribunal will continue the proceedings without treating the respondent’s failure as an admission of any of the claimant’s allegation. Moreover, if a respondent fails to appear at the hearing, the arbitral tribunal may continue the proceedings and deliver one or more award(s).

28. Can third parties voluntarily join arbitration proceedings? If all parties
agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Since the IAA is silent on those matters, the rules of the arbitral tribunal will apply.

29. Can local courts order third parties to participate in arbitration proceedings in your country?

The IAA does not grant any such power to local courts. In the event the arbitration agreement does not similarly grant such powers to local courts, then, adopting a non-interventionist approach, local courts will refrain from ordering third parties to participate in arbitration proceedings.

30. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Unless otherwise agreed between the parties, the arbitral tribunal can: (a) maintain or restore the status quo pending determination of the dispute; (b) take action that would prevent, or refrain from taking action that is like to cause current or imminent harm or prejudice to the arbitral process itself; (c) provide a means of preserving assets out of which a subsequent award may be satisfied; (b) preserve evidence that may be relevant and material to the resolution of the dispute; or (e) provide security for costs.

Section 23 of the IAA states that, unless otherwise agreed by the parties, the Supreme Court of Mauritius may issue the above-mentioned interim measures pending the constitution of the tribunal.

31. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Normally the court will not intervene in arbitral proceedings. Indeed, Section 23 (2A) clearly states that in exercising its power to issue interim measures, the court shall do so ‘in such manner as to support, and not disrupt, the existing or contemplated arbitration proceedings’.

Nevertheless, in the case of Hurry G v Leedon Ltd 2009 SCJ 270, Leedon Ltd (‘Leedon’) voluntary submitted to the jurisdiction of the Bankruptcy Division of the Supreme Court by seeking leave to intervene in the application made by the liquidators. Leave was granted and Leedon raised an issue in relation to some pre-emptive shares. The issue was rejected and Leedon appealed to the Court of Appeal, who dismissed its appeal. Leedon was then granted leave to appeal to the Judicial Committee of the JCPC. While the matter was pending before the JCPC, Leedon initiated arbitral proceedings on the subject matter of the appeal pending before the JCPC. Upon application by Hurry G, the Supreme court held that Leedon’s conduct amounted to an abuse of the process of the court and issued an anti-arbitration injunction against Leedon. By delivering such a ruling, the court established that it will intervene in proceedings only under exceptional circumstances.

32. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

There is no particular set of rules governing evidentiary matters in arbitration and the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. However, failing the existence of any agreement between the parties on evidentiary matters, the tribunal will be free to decide on the procedure to be followed and more precisely, whether to apply the rules of evidence or any other rules to the proceedings.

Moreover, the arbitral tribunal is free to determine whether to hold an oral hearing for the presentation of evidence and arguments, unless otherwise agreed by the parties.

The Supreme Court may intervene on the issue of evidence upon request from the arbitral tribunal, or a party with prior consent of the arbitral tribunal. To this effect the Supreme Court may compel a witness’ attendance by issuing summons and order a witness to submit to examination under oath before the arbitral tribunal.

33. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

It is important to note that both attorney and counsel may appear before an arbitral tribunal in Mauritius and they are therefore bound by their respective code of
ethics.

Under the IAA, arbitrators must be impartial and independent. However, there are no ethical codes applicable to arbitrators by law. Arbitral institutions usually draw up ethical codes applicable to their arbitrators. For instance, MARC has its own MARC Rules of Ethics for Arbitrator.

34. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

The IAA does not state that arbitration proceedings must be confidential as a matter of principle. Therefore, it is for the parties to agree whether the proceedings shall be confidential.

35. How are the costs of arbitration proceedings estimated and allocated?

The parties may agree on the issue of costs, failing which the tribunal may decide on such matter. When deliberating of the issue of costs, the arbitral tribunal shall apply the following general principles: (a) costs follow the event; and (b) the successful party should recover a reasonable amount of costs reflecting the actual costs of the arbitration.

36. Can pre- and post-award interest be included on the principal claim and costs incurred?

Nothing precludes a party from claiming pre- and post-award interest on the principal claim and costs incurred.

37. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

In Mauritius, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards shall apply for the recognition and enforcement of an award.

To obtain the recognition and enforcement of an award, the party applying for recognition and enforcement shall, at the time of the application supply: (a) the duly authenticated original award or a duly certified copy thereof; (b) the original agreement or a duly certified copy thereof. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

An award must state the reasons on which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms by way of settlement.

38. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The application for recognition and enforcement of an award is initially made without notice to any respondent. Upon receipt of the application and upon verification, the Chief Justice issues a provisional order granting recognition of the award or authorising the enforcement of the award. The provisional order together with the application is thereafter served on the respondent within 14 days after receipt of the provisional order. The respondent is then entitled to apply to have the provisional order set aside within 14 days of service.

The award is enforceable if the respondent’s delay to apply for setting aside has lapsed or if the respondent’s application to set aside the award has been disposed of.

Recognition and enforcement of an award generally takes 9 to 12 months in the event the respondent applies for setting aside.

39. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The grounds of review under Article V of the New York Convention apply.

40. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

The parties are free to agree on the types of remedies which they can obtain from the arbitral tribunal, as long as the remedies are not contrary to the domestic public law.
41. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Arbitration awards can be set aside by the Supreme Court of Mauritius only where:

(a) the party making the application furnishes proof that:
   (i) a party to the arbitration agreement was under some incapacity or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Mauritius law; (ii) it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case; (iii) the award deals with a dispute not contemplated by, or not falling within the terms of, the submission to arbitration, or contains a decision on a matter beyond the scope of the submission to arbitration; or (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with this Act; or

(b) the Court finds that: (i) the subject matter of the dispute is not capable of settlement by arbitration under Mauritius law; (ii) the award is in conflict with the public policy of Mauritius; (iii) the making of the award was induced or affected by fraud or corruption; or (iv) a breach of the rules of natural justice occurred during the arbitral proceedings or in connection with the making of the award by which the rights of any party have been or will be substantially prejudiced.

42. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

The parties cannot waive their right to apply to have an award set aside.

43. To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The IAA specifies that the IAA shall bind the state. A state or state entity will not be able to successfully raise a defence of state or sovereign immunity at the enforcement stage.

44. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Regardless of whether it is domestic or foreign, a party can only be bound by an award if it has been joined as a party to the arbitration proceedings. While there is no case law on this issue, a third party might be able to challenge the recognition of an award if the award is prejudicial to its rights.

45. Have courts in your jurisdiction considered third party funding in connection with arbitration proceedings recently?

While nothing precludes third-party funding, courts in Mauritius have not been called upon to decide on this issue in connection with arbitration proceedings.

46. Is emergency arbitrator relief available in your country? Is this frequently used?

Emergency arbitrator relief is gradually becoming more popular. Parties are providing for emergency arbitrator relief in their arbitration agreements and institutional rules of the country provide for it as well.

47. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

There are no such laws and rules in Mauritius.

48. Have measures been taken by arbitral institutions in your country to promote transparency in arbitration?

Information on costs is provided by arbitral institutions in Mauritius.

49. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Diversity in the choice of arbitrators and counsel is
actively promoted in Mauritius. It has been within MARC’s agenda to put forward more female arbitrators.

50. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

There are no recent court decisions in that context.

51. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

The most recent court decision on the issue of corruption is Director of Public Prosecutions v Jugnauth and another [2019] UKPC 8, delivered by JCPC. In this case, the Law Lords found that there is a presumption that Parliament does not intend to make criminals of persons who are in no way blameworthy leads to the proposition that every component element of the actus reus of a statutory offence should be associated with a corresponding mens rea unless the legislative context otherwise requires. The presumption is particularly strong where the offence is clearly of a serious character and punishable by a lengthy-term of penal servitude. As a result, there is an obligation on the prosecution to prove mens rea in relation to each element of the actus reus of the offence.

From a reading of the case of State Trading Corporation v. Betamax [2019], it can be concluded that an arbitration award will set aside on grounds of public policy if an issue of corruption is raised and the parties’ agreement violates public procurement laws.

52. Have there been any recent court decisions in your country considering the definition and application of “public policy” in the context of enforcing or setting aside an arbitral award?

The Supreme Court has consistently adopted the approach of scrutinising the grounds put forward by an applicant for the setting aside of an arbitral award, with the pronouncement in the case of Cruz City 1 Mauritius Holdings v Unitech Limited & Anor [2014] reflecting this rigid approach: “in our view, a respondent should not raise an objection to the recognition of a foreign award under Article V(2)(b) of the New York Convention injudiciously. Essentially, the respondent has to show with precision and clarity in what way and to what extent enforcement of the award would have an adverse bearing on a particular international public policy of this country. Not only must the nature of the flaw in the arbitration proceedings be unambiguously described but a specific public policy must be identified and established by the party relying on it.”

More recently, in State Trading Corporation v. Betamax [2019], on the issue of public policy, the Supreme Court held that: “the breach of the legal provisions must be flagrant, actual and concrete. But it is not any legal breach which would suffice to set aside the enforcement of an award. The threshold is quite high; it should be the breach of a fundamental legal principle, a breach which disregards the essential and broadly recognised values which form part of the basis of the national legal order, and a departure from which will be incompatible with the State’s legal and economic system.” In that judgment, it was confirmed that the IAA does not refer to international public policy but expressly provides that the arbitral award may be set aside where the Court finds that “the award is in conflict with the public policy of Mauritius.” It is clear therefore that the public policy is the domestic public policy of Mauritius. This case is currently on appeal before the JCPC.

53. Have there been any recent court decisions in your country considering the judgment of the Court of Justice of the European Union in Slovak Republic v Achmea BV (Case C-284/16) with respect to intra-European Union bilateral investment treaties or the Energy Charter Treaty? Are there any pending decisions?

No.

54. Have there been any recent decisions in your country considering the General Court of the European Union’s decision Micula & Ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?

Arbitral institutions have not published any measures with respect to the COVID-19 pandemic, but generally hearing through videoconferencing is being encouraged.
55. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

The IAA provides that an arbitration agreement is not discharged by the winding up of a party. This has to be read in line with the Insolvency Act 2009, where consent of the liquidator or the court must be obtained before a creditor proceeds with any type of enforcement against the property of a party which is in the process of winding up.

56. In your country, does the insolvency of a party affect the enforceability of an arbitration agreement?

The IAA provides that an arbitration agreement is not discharged by the winding up of a party. This has to be read in line with the Insolvency Act 2009, where consent of the liquidator or the court must be obtained before a creditor proceeds with any type of enforcement against the property of a party which is in the process of winding up.

57. Is your country a Contracting Party to the Energy Charter Treaty? If so, has it expressed any specific views as to the current negotiations on the modernization of the Treaty?

No.

58. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There have not been any recent developments on these topics in the field of arbitration.

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