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Mauritius

Enforcement of Judgments in Civil and Commercial Matters

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Mauritius.

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Mauritius: Enforcement of Judgments in Civil and Commercial Matters

1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

- i. Mauritius is not a signatory to any international convention, treaty, or arrangement governing the recognition and enforcement of foreign judgments.
- ii. As far as recognition and enforcement of conclusive monetary judgments issued by **UK courts are concerned**, the **Reciprocal Enforcement of Judgments Act 1923** ("the **Act**") would find its application. Under this Act, judgments from the UK (and other Commonwealth jurisdictions extending the Act) can be **registered** and enforced in Mauritius, subject to satisfaction of the requirements laid down in our law. It is further to be noted that the application for recognition and enforcement must be made within 12 months of the date the foreign judgment was rendered in UK.

2. What, if any, reservations has your jurisdiction made to such treaties?

Not applicable as no such treaty.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

- i. Yes, foreign judgments can be enforced under Mauritian law even in the absence of a convention or treaty.
- ii. Under Mauritian law, the general rule is that a foreign judgment needs *exequatur* to be recognized and become executory in Mauritius of a foreign. The *exequatur procedure* is governed by Article 546 of the *Code de Procédure Civile*. The landmark case of *D'Arifat v Lesueur* [1949 MR 191] has laid down the conditions to be satisfied for the granting of *exequatur* of a foreign judgment under article 546 of the *Code de Procédure Civile*.

- iii. Once *exequatur* is granted, the foreign judgment acquires the same enforceability as a local Mauritian judgment.
- iv. The enforcement of pecuniary judgments originating from the United Kingdom is governed by the *Reciprocal Enforcement of Judgments Act 1923* ("the **Act**").
- v. Nevertheless, in *Dallah Albaraka (Ireland) Ltd. v Pentasoft Technologies Limited & Anor* [2012 SCJ 463], the Supreme Court of Mauritius affirmed that a judgment creditor may also opt to enforce a UK judgment via the *exequatur* procedure under the *Code de Procédure Civile*, notwithstanding the availability of the statutory framework provided by the Act.
- vi. In such a case, the conditions which apply for an *exequatur* to be granted under the *Code de Procédure Civile* would also apply when registration of a judgment is sought under the Act.

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

- a. The *Code de Procédure Civile* does not expressly outline the criteria for granting an *exequatur*. However, the applicable legal principles have been established by the landmark case of *D'Arifat v Lesueur* [1949 MR 191]. According to this authority, a foreign judgment or order that is final and conclusive may be enforced in Mauritius without any reconsideration of the merits, provided the following conditions are met:
 - i. the judgment remains valid and enforceable in the jurisdiction where it was originally issued – in other words, the judgment must be conclusive and not be subject to any pending appeal before any forum, at the time that its recognition and enforcement is being sought in Mauritius. This would be evidenced through a statement to that effect from the registry of the court giving the final judgment, in the country where it was delivered ;
 - ii. its enforcement does not conflict with Mauritian public policy ("ordre public");
 - iii. the defendant was properly served and had the opportunity to participate in the original proceedings – this relates to the fundamental principle of natural justice whereby a person must

be subject to a fair and equitable trial; and (iv) the foreign court had proper jurisdiction over the matter.

- b. A Foreign Judgment will not be enforceable in the following cases:
 - i. where it has not been given on the merits of the case;
 - ii. where it has been obtained by fraud; and
 - iii. where it appears on the face of the proceedings to be grounded on an incorrect view of international law or a refusal to recognise the law of Mauritius where such law is applicable.
- c. The exequatur procedure may be invoked in respect of any form of relief granted by a foreign court. In contrast, enforcement under the Reciprocal Enforcement of Judgments Act 1923 is limited solely to monetary judgments rendered by superior courts in the United Kingdom. However, it can be noted that the conditions which apply for an exequatur to be granted under the Code de Procedure Civile would also apply when registration of a judgment is sought under the Act.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Not applicable.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

- a. Exequatur proceedings are entered before the Supreme Court of Mauritius by way of motion paper. The motion paper must be accompanied by the affidavit of the applicant and a copy of the Foreign Judgement duly authenticated.
- b. For the authentication of a Foreign Judgment the following conditions must be fulfilled:
 - i. the Foreign Judgement must be duly authenticated that is each page of the Foreign Judgment must bear the seal of the relevant foreign court and the last page must be signed by the Chief Registrar of that court; and
 - ii. if the requirements set out in paragraph (a) above are satisfied, a copy of the Foreign Judgement will suffice for the 'exequatur' procedure.
 - iii. The copy of the Foreign Judgement must also be duly apostilled in accordance with the provisions of the Hague Convention if the country in which the judgement is given is a signatory of the said Convention.

- c. Upon lodging of the application, the Supreme Court will set a time period for the opposing party to challenge the application, if he so wishes. It is apposite to note that if the application is being lodged against a foreigner (a party which is not Mauritian), then leave of the Supreme Court must be sought prior to lodging the application for exequatur to seek permission of the Court, to initiate the procedure against an *absent* party and to set down the period of time within which service of the legal process must be effected on that party. Typically the Supreme Court would set a time line not exceeding two months—within which the respondent may contest the request for exequatur.
- d. If no opposition is filed within that timeframe, the court will proceed to register the judgment and declare it executory in Mauritius should the conditions as laid down in our law requiring *exequatur* are duly satisfied.

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

- a. A copy of the Foreign Judgment duly authenticated must be annexed to the affidavit in support of the application for enforcement of the Foreign Judgment.
- b. For the authentication of a Foreign Judgment the following conditions must be fulfilled:
 - i. the Foreign Judgement must be duly authenticated that is each page of the Foreign Judgment must bear the seal of the relevant foreign court and the last page must be signed by the Chief Registrar of that court; and
 - ii. if the requirements set out in paragraph (a) above are satisfied, a copy of the Foreign Judgement will suffice for the 'exequatur' procedure.
 - iii. The copy of the Foreign Judgement must also be duly apostilled in accordance with the provisions of the Hague Convention if the country in which the judgement is given is a signatory of the said Convention.
- c. Furthermore, any judgment rendered in a language other than English or French must be translated into one of these languages, and the translation must be duly certified for use in court.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

It will typically take 2 to 6 months for such an application

to be heard, following which we can expect judgment to be delivered in the next 3 to 6 months.

There is no summary procedure available.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Yes, the courts in Mauritius have the authority to issue Interim measures including freezing orders to restrain judgment debtors from disposing of or dealing with their assets pending determination of an application for enforcement of a foreign judgment. Such relief will be granted upon satisfaction of the common law principles in assessing interim relief applications notably, whether there is a serious case to be tried, the existence of assets within the jurisdiction belonging to the debtor, and a real risk of asset dissipation with the intent to frustrate enforcement of the judgment by the judgment creditor.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

There is no statutory time limit for initiating exequatur proceedings to enforce a foreign judgment in Mauritius. Such a judgment may be enforced at any time, provided it remains valid and enforceable in the jurisdiction where it was originally rendered.

In contrast, applications for the registration and enforcement of monetary judgments issued by superior courts in the United Kingdom under the Reciprocal Enforcement of Judgments Act 1923 should be filed within 12 months of the judgment date. Nevertheless, the Supreme Court retains discretion to allow registration beyond this period where justified.

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

The grounds on which an application for exequatur may be opposed include the following:

- Finality of the Foreign Judgment : whether the foreign judgment is subject to a pending appeal before any forum
- Jurisdiction : whether the court which delivered the Foreign Judgment retained the requisite jurisdiction over the subject matter of the dispute; Public policy;

- Fair Hearing : whether the judgment debtor was effectively summoned before the foreign court and whether he had been given a fair hearing; or
- Fraud : whether the judgment was procured through fraudulent means.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

The short answer is No. At the stage of exequatur, the Judge is not permitted to reassess the substantive merits of the foreign judgment. This principle was affirmed in *S.A. Epson France v Societe Intervenant Technologie Ltd* [2012 SCJ 114], with reference to the French decision *Munzer, Cour de Cassation*, dated 7 January 1964. The judge's role in exequatur proceedings is confined to assessing whether the following conditions are met:

- The foreign court had proper jurisdiction to adjudicate the dispute underlying the judgment;
- The judgment is not inconsistent with Mauritian public policy—either in terms of substance or procedure, particularly with respect to the rights of the defendant, including whether they were duly summoned and afforded a fair trial; and
- The judgment was not procured by fraud.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Yes. Considerations to be taken by the Exequatur Judge include:

- Jurisdiction : whether the court which delivered the Foreign Judgment retained the requisite jurisdiction over the subject matter of the dispute; and
- Fair Hearing : whether the judgment debtor was effectively summoned before the foreign court and whether he had been given a fair hearing.

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

Mauritian courts will be bound by the laws of service which apply in the jurisdiction in which the foreign judgment was delivered. One of the criteria to be satisfied upon granting an application for exequatur is ensuring that the judgment debtor was effectively summoned

before the foreign court and whether he had been given a fair hearing. Judgments delivered by default may also be enforceable, provided all other necessary conditions outlined in this guide are met.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

There are specific objective criteria to be satisfied for the granting of exequatur of foreign judgments vide *D'Arifat v Lesueur* [1949 MR 191]. Mauritian courts do not retain discretion in assessing such applications. If such an application is rejected, the Applicant may appeal.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

Foreign judgments that conflict with Mauritian public policy are not eligible for enforcement. While punitive damages have not been explicitly deemed incompatible with public policy, Mauritian courts award them only in rare and exceptional circumstances.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

Exequatur applications of foreign judgments will be successfully granted as far as foreign judgments which are final and conclusive are concerned. If an appeal is *pending* in the jurisdiction where the judgment was delivered, an application to have it recognized in Mauritius is more likely to be rejected on ground of finality.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

Yes, a judgment declining to declare executory a foreign judgment is appealable to the Court of Civil Appeal within 21 days from the date of the judgment.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

The Supreme Court of Mauritius upholds the terms of the

foreign judgment as rendered, without supplementing it with further interest or reconsidering matters not previously decided.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

No specific requirement exists regarding currency conversion for the enforcement application itself.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

If the application was resisted by the Judgment debtor, then following a hearing, the losing party may be ordered to pay costs of the successful party. However, the costs awarded by the Court are taxed costs which are governed by the Legal Fees and Costs Rules, which set minimum thresholds and often fall short of covering the applicant's full legal expenses, as opposed to actual costs.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Mauritian legislation does not specifically regulate third-party litigation funding, and as such, there are no legal restrictions on its use. Moreover, third-party funders cannot be held liable for legal costs, as there is no statutory provision imposing such responsibility.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

Mauritius has experienced a rise in foreign direct investment over recent years, which could potentially lead to an increase in cross-border disputes moving forward. In the recent Supreme Court decision of *Hobler v Harker* [2024 SCJ 159], it was established that a judgment debtor need not hold assets within Mauritius for a foreign judgment to be recognised against them here. Aligning with the stance of the French Cour de Cassation, our courts now accept that a judgment creditor who demonstrates a legitimate interest in enforcing a foreign

judgment against a debtor—regardless of whether the debtor possesses assets in Mauritius—will be granted enforcement provided all exequatur conditions are satisfied. This development suggests that enforcement applications may become more frequent in the future.

Additionally, it will be noteworthy to observe whether Mauritius chooses to ratify the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. Such ratification would streamline the process of enforcing Mauritian judgments abroad and foreign judgments within Mauritius.

24. Has your country ratified the Hague Choice of Courts Convention 2005, and if so when did it (or

will it) come into force? If not, do you expect it to in the foreseeable future?

Mauritius has not ratified the Hague Choice of Courts Convention 2005, and it is unlikely to do so in the near future.

25. Has your country ratified the Hague Judgments Convention 2019, and if so when did it (or will it) come into force? If not, do you expect it to in the foreseeable future?

Mauritius has not yet ratified the 2019 Hague Judgments Convention; however, its adoption would be a valuable enhancement to our legal framework for enforcement.

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