THE GLOBAL LEGAL POST

# MAURITIUS

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This chapter forms part of:

COMMERCIAL LITIGATION

*Law Over Borders Comparative Guide 2026*

*www.globallegalpost.com/lawoverborders*



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### 1. What is the structure and organisation of local courts dealing with commercial claims?

The Supreme Court is administratively divided into several divisions, including a Commercial Division, which has original jurisdiction to hear and determine:

- any matter under the Insolvency Act 2009 and the Companies Act 2001 of Mauritius;
- any matter relating to banking, bills of exchange, offshore business, patents and trademarks or passing off; and
- any matter arising out of a contract as the Honourable Chief Justice may direct.

Monetary claims exceeding MUR 2 million must be entered before the Supreme Court of Mauritius. Monetary claims of a lesser amount may be entered before the district courts or Intermediate Court, subject to the jurisdictional thresholds which are as follows:

- District courts: any claim not exceeding MUR 250,000.
- Intermediate Court: any claim between MUR 250,000 and not exceeding MUR 2 million.

### 2. What are the main procedural rules governing commercial litigation?

A commercial action before the Supreme Court of Mauritius is entered by way of:

- a plaint with summons (which is in the form of a statement of claim setting out the facts of the matter, cause(s) of action and prayers of the plaintiff);
- a motion paper supported by affidavit evidence (for matters requiring celerity); or
- a *proecipe* supported by affidavit evidence (for matters entered before a judge in chambers — which include actions in the form of injunctive reliefs, attachment proceedings, freezing/Mareva injunctions, and such other reliefs as may be provided under other enactments).

Winding up and bankruptcy proceedings are initiated by way of petition supported by affidavit evidence.

Actions before any district courts and the Intermediate Court of Mauritius are entered by way of a plaint, also called a *proecipe*.

### 3. What pre-action considerations apply?

Depending on the facts of the case, a plaintiff may cause a legal notice (commonly known as a "*Mise-en-Demeure*") to be served on the defaulting/opposing party, prior to initiating a legal action. This is an extra-judicial process whereby the legal notice is signed by an attorney-at-law and served by a registered usher.

In the context of a contractual dispute, the plaintiff must serve a legal notice on the defaulting party, prior to initiating his or her claim. The legal notice serves to notify the defaulting party of the breach and to remedy the breach or to pay an amount, within a time specified in the legal notice, failing which the plaintiff will be entitled to claim for damages together with interests, as from the date of service of the legal notice.

Another important pre-action requirement is when a person intends to sue the State of Mauritius. The limitation period to sue the State of Mauritius is two years



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as from the date the cause of action has arisen. Prior to lodging a claim against the State of Mauritius, the plaintiff must give one month's prior written notice of the intended action, suit, or proceedings and of the subject matter of the complaint to the State of Mauritius. Failure to comply with these statutory requirements is fatal to the action.

## 4. What are the main alternative dispute resolution (ADR) methods used to settle large commercial disputes?

The main alternative dispute resolution mechanisms that are used to settle large commercial disputes are either mediation or arbitration.

### Mediation

Parties may, at any point in time, choose to mediate their disputes. Any matter which is pending before the Supreme Court may be referred to a judge of the Supreme Court for mediation either by the Chief Justice or at the request of both parties upon an application made by them to the Chief Justice setting out the reasons for making such application. The primary purpose of mediation is to dispose of the dispute by common agreement of the parties or to narrow down the issues in dispute. If, by the end of the mediation process, the parties are unable to reach a settlement, the mediation judge will refer the case back to the relevant division/judge of the Supreme Court for the matter to be proceeded with on the merits.

### Arbitration

Where a dispute is subject to an arbitration agreement/clause, the parties must refer the matter to arbitration, unless it is found that the arbitration agreement/clause is null and void, inoperative or incapable of being performed. For instance, commercial disputes arising from commercial contracts, shareholders agreements, or insurance contracts are often resolved by way of arbitration.

## 5. How long, on average, do court proceedings take to reach trial?

The duration of a litigation before the courts of Mauritius depends on the nature and complexity of the dispute before the court. A commercial court case may take anywhere from six months to two years or more before reaching trial stage, although there are rules of procedure which set out the time limits within which pleadings ought to be exchanged. Generally, insolvency or bankruptcy proceedings can take six to 12 months before reaching trial stage.

## 6. What disclosure obligations apply? Are parties required to disclose unhelpful documents as well as those on which they rely?

Under Mauritian law, there is strictly no obligation on any party to disclose any unhelpful documents in civil suits.

Pursuant to the procedural rules applicable to proceedings entered before the Supreme Court, a plaintiff must describe, in a notice accompanying the plaint



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with summons, the documents which he or she intends to adduce at the hearing of the case and make those documents available for inspection by the opposing party, usually at the office of the plaintiff's attorney within a reasonable time before the hearing of the case.

Additionally, the opposing party is entitled to request for any particulars and communication of documents pertaining to each averment of the plaint with summons to know what case he or she has to meet. Such a request is generally restricted to documents in support of material facts and should not be a fishing expedition for evidence. The same principle applies in cases before the district courts and Intermediate Court of Mauritius, save and except that the plaintiff is not required to describe the list of documents he or she intends to adduce as evidence at the hearing of the case in its plaint.

Disclosure may be refused if the document or information is confidential by statute, such as a matter falling under the Official Secrets Act 1972 of Mauritius, which relates to privileged legal advice or the request for disclosure amounts to a fishing expedition.

## 7. Can witnesses be required to attend trial and face cross-examination?

Trials in Mauritius follow an adversarial process. Each party is entitled to call their own witnesses to give evidence and to produce documents in support of their case before a trial court. Once a witness has testified, the witness is tendered for cross-examination. The opposing counsel may then cross-examine the witness.

To secure the attendance of a witness, the relevant witness must be summoned, and such summons must be served on a day:

- no later than eight days before the trial date for Supreme Court cases (unless otherwise ordered); and
- no later than four days before the trial date for cases before the lower courts, that is, the district courts and Intermediate Court of Mauritius.

Should a duly summoned witness fail to attend court without any valid justification, the said witness may face an imprisonment of up to two years and be inflicted a fine not exceeding MUR 100,000. The judge can also issue a warrant for the recalcitrant witness to be brought in court to give evidence. It is to be noted that more often it is a fine which is imposed.

Cases entered by way of motion paper and affidavit before the judge in chambers are normally determined on affidavit evidence and on the oral/written submissions of counsel. Exceptionally, a witness may be subject to cross-examination on the contents of his affidavit, if a request to that effect has been made and has been acceded to by the judge.

## 8. What discretion do the courts have in making costs orders?

The courts have discretionary powers in making costs orders either during the proceedings or upon delivering a judgment or upon the withdrawal of a case.

These include *inter alia*:

- **Security for costs orders.** A defendant/adverse party may make a request for security for costs against a foreign plaintiff who does not have any immovable



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property in Mauritius. The court has the discretion to decide on the quantum of security for costs to be awarded, if any. The law does not provide for security for costs in respect of commercial cases. However, the court, in the exercise of its equitable powers, has the discretion to order security for costs in cases not contemplated by the law and can even order a foreign plaintiff to provide security in respect of a commercial action.

- **Wasted costs orders.** These are costs incurred by a party as a result of any improper, unreasonable, or negligent act or omission on the part of any legal representative.
- **Adjournment costs orders.** These are costs incurred by a party as a result of an adjournment sought by the other party to the case.
- **Costs orders in exaggerated claims.** Where the court is of the opinion that a claim for any sum of money was exaggerated and could have appropriately been entered before a court of lesser jurisdiction.
- **Costs awarded by the court to a winning party upon giving its judgment.** The winning party must cause a bill of costs to be drawn up setting out the costs and disbursements incurred in the proceedings and have the bill of costs taxed by the Registrar of the relevant court. Thereupon, the winning party can claim such costs from the losing party. The quantum to be awarded by the Registrar is prescribed by the law and is nominal. It must, however, be noted that in the context of an international arbitration matter, the Supreme Court may allow a winning party to recover most of the real costs incurred on a standard or indemnity basis under the Supreme Court (International Arbitration Claims) Rules 2013.

### 9. What are the main types of interim remedies available?

The main types of interim remedies available are:

- interim writ of injunctions in the nature of either a prohibition from doing an act or a mandatory order compelling a party to do an act;
- interim freezing orders (*Mareva* injunctions);
- provisional attachment orders (*saisie-arrêt*); and
- restraining orders (*saisie conservatoire*).

### 10. What approach do the local courts adopt with respect to arbitration? What arbitration law applies and is it based on the UNCITRAL Model Law?

Our courts follow a non-interventionist approach when dealing with disputes which are subject to either domestic or international arbitration. Where a party to a court litigation raises an objection as to the jurisdiction of the court on the basis that the dispute is subject to an arbitration agreement/clause, the court will declare itself incompetent to hear the matter, unless such arbitration agreement/clause is manifestly null and void.

Domestic arbitration is governed primarily by the *Code de Procedure Civile* 1808.

International arbitration is governed by the International Arbitration Act 2008 (IAA) which is modelled on the UNCITRAL Model Law. The rules of procedure applicable to a domestic arbitration are distinct from those applicable to



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international arbitration. The rules applicable to international arbitration include the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 (relating to the recognition and enforcement of arbitral awards) and the Supreme Court (International Arbitration Claims) Rules 2013 ("IAA Rules").

## 11. Can arbitrators grant interim relief?

In international arbitrations under the IAA, unless otherwise agreed by the parties, the arbitrator/arbitral tribunal may, at the request of a party, grant interim measures in the form of an award or in another form, at any time before making the award.

Interim orders which can be granted by the arbitrator/arbitral tribunal include:

- a security for costs order;
- injunctions to prevent or refrain a party from doing certain acts which would prejudice the arbitral process;
- an order to preserve assets;
- an order to preserve relevant and material evidence; and
- an order to maintain or restore the *status quo* pending the determination of the dispute.

The arbitrator/arbitral tribunal also has the power to modify, suspend or terminate an interim measure on its own initiative in exceptional circumstances after notifying the parties. The interim relief order given by the arbitrator/arbitral tribunal is binding and can be enforced on an application to the Supreme Court, irrespective of the country in which it was issued.

There are no express provisions in the *Code de Procedure Civile* on whether an arbitrator/arbitral tribunal may grant interim reliefs in domestic arbitration. However, if the parties have elected that the arbitration be governed by institutional rules, the arbitrator/arbitral tribunal can issue interim measures if the institutional rules provide for this.

## 12. On what grounds can an arbitration award be appealed?

### Domestic arbitration

The *Code de Procedure Civile* provides that an arbitral award is appealable, unless the parties to the arbitration have waived their right to appeal against the award. However, if the arbitration has been appointed as *amiable compositeur* (in which case the arbitrator will settle the dispute on principles of fairness and equity rather than on strict application of the law), there is no right of appeal unless the parties have expressly reserved their right to do so in the arbitration agreement.

If the parties have waived their right of appeal or have not expressly reserved their right of appeal in the arbitration agreement (as the case may be), they can still seek the annulment of the arbitral award on certain specific grounds as provided in the *Code de Procedure Civile*, which include *inter alia*:

- the arbitrator(s) have made an award without a valid arbitration agreement;
- the arbitral tribunal was improperly constituted, or the sole arbitrator was irregularly appointed;
- the arbitrator(s) acted beyond their mandate;



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- the parties were not given an opportunity to present their case;
- the arbitrator(s) violated the public policy of Mauritius; and
- the arbitrator(s) did not justify their decision.

#### International arbitration

While there is no automatic right of appeal against an arbitral award, the parties have a limited right of appeal pursuant to Schedule 1 of the IAA, on any question of law arising out of an award with the leave of the court, provided they have expressly agreed to be bound by the first Schedule of the IAA or any specific provisions thereof. It is worth noting that any dispute arising out of the constitution of a Global Business Licence Company which includes an arbitration clause will be subject to the provisions of Schedule 1 of the IAA.

The IAA, however, provides for limited grounds on which a party can seek the setting aside of an arbitral award, as follows:

- invalid arbitration agreement or incapacity of a party;
- lack of notice or inability to present one's case;
- where the award exceeds the scope of the arbitration agreement;
- improper tribunal composition or procedure;
- where the dispute is not arbitrable under Mauritian law;
- where the award conflicts with the public policy of Mauritius;
- where there has been fraud or corruption in the making of the award; and
- breach of natural justice causing substantial prejudice.

### 13. What international conventions and agreements on enforcement of judgments or arbitral awards is Mauritius a party to?

#### Foreign judgments

Mauritius is not a party to a specific convention or treaty pertaining to the enforcement of foreign judgments. However, foreign judgments can be enforced and rendered executory under Mauritian laws by way of an application to the Supreme Court of Mauritius (called an *exequatur*).

#### Arbitral awards

Mauritius is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) since 1996, which has been domesticated by virtue of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001.

Mauritius is also a party to the International Centre for Settlement of Investment Disputes (ICSID) Convention pertaining to the recognition and enforcement of ICSID awards and has enacted the Investment Disputes (Enforcement of Awards) Act 1969.

### 14. What types of judgments in commercial matters are enforceable and what types are excluded?

Monetary and commercial judgments of any nature can be enforced, provided they are final, not subject to any appeal and do not contravene the public policy of Mauritius.



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Before recognising and enforcing a foreign judgment, the Supreme Court will also have regard to certain criteria which have been established in case law, namely whether: the judgment is still valid and capable of execution in the country it was delivered; it is not contrary to any principle affecting public order; the defendant has been regularly summoned to attend the proceedings; and the court which delivered the judgment had jurisdiction to deal with the matter.

## 15. What is the process for registration of foreign judgments and arbitral awards?

Judgments delivered by a superior court of the United Kingdom may be registered in Mauritius under the Reciprocal Enforcement of Judgments Act 1923, provided that such an application is made within 12 months of the date of the judgment (or such longer period as may be allowed by the Supreme Court).

Otherwise, the process for recognising and enforcing a foreign judgment in Mauritius is done by way of *exequatur*.

The same procedure applies to enforce a domestic arbitral award.

International arbitral awards may be recognised and enforced under the provisions of the IAA and IAA Rules through the prescribed procedure. The application is made by way of motion (supported by a witness statement) to the Supreme Court. The application must also be accompanied by either the original or a certified true copy of the arbitral agreement and the arbitral award, as well as a draft provisional order for the recognition and enforcement of the arbitral award. If, based on the application and documents attached to the application, the court is satisfied that the arbitral award is valid and in existence, it will grant a provisional order for the recognition and enforcement of the award. The provisional order must be served on the opposing party within 14 days from the date of the order. The opposing party has 14 days to apply to the court, if he wishes to do so, to have the arbitral award set aside (on the limited grounds mentioned under Question 12, above), failing which the provisional order becomes permanent and can be enforced as a judgment of the court.

## 16. Once the judgment or award is registered, what are the available methods of execution?

The most common execution routes to enforce a judgment or award (subject to being declared executory in Mauritius) are:

- by way of attachment of monies held by the judgment/award debtor in its bank account(s);
- insolvency or bankruptcy proceedings;
- seizure and sale of immovable property(ies) belonging to the judgment/award debtor in Mauritius; and
- seizure and sale of movable property(ies) belonging to the debtor.



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### 17. What interim measures are available pending enforcement?

The available interim measures pending enforcement include but are not limited to:

- interim writs of Mareva/freezing injunctions;
- provisional attachment orders; and
- appointment of a provisional liquidator pending insolvency proceedings to prevent the dissipation of the judgment/award debtor's assets.

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Trishala Mohabir is an Associate at BLC Robert & Associates in the Dispute Resolution team. Her practice is anchored in civil and commercial litigation. Trishala also manages a variety of contentious matters, with a particular focus on insurance, employment and contractual disputes. She regularly represents clients before the relevant courts and tribunals in Mauritius. In addition to her litigation practice, Trishala is also involved in advisory work, and the drafting and reviewing of contracts. Prior to joining BLC Robert & Associates, Trishala gained valuable experience appearing as junior counsel in complex commercial matters before the Commercial Division of the Supreme Court.

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