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Litigation

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Chambers Global Practice Guides

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1. General

1.1 General Characteristics of the Legal System

Mauritius has a hybrid legal system, reflecting its past colonisation by both France and Great Britain. The main areas of private law are based on a civilian model and contained in French-inspired codes that were enacted in the early nineteenth century the *Code Civil Mauricien* (Civil Code) and *Code de Commerce* (Commercial Code). At the same time, a French-inspired *Code de Procédure Civile* (Code of Civil Procedure) was also enacted. The substantive criminal law was also originally based on a *Code Pénal* (Penal Code) enacted by the French administration – it is still in force today, although it has been amended over the years.

As the island lived under British rule after its independence in 1968, it adopted a Westminster style of passing legislation; and several English-inspired statutes were enacted, such as, the Companies Act. As a general rule, matters of evidence and criminal procedure also follow English rules. It is commonplace for judges and magistrates to refer to both English and French sources of law for guidance, in the appropriate contexts, when applying Mauritian law to a case. In cases involving the interpretation of the Companies Act and Insolvency Act, judges also refer to jurisprudence from Australia and New Zealand.

Trials are conducted in an adversarial manner. Submissions at first instance are made orally but it is not uncommon, at the discretion of the trial judge or magistrate, to require written submissions after evidence has been adduced. In appeals before the Supreme Court, applications made under the Supreme Court (International Arbitration Claims) Rules 2013 and appeals before the Judicial Committee of the Privy Council, arguments in writing are required to be filed in advance of the hearings and are supplemented by oral submissions.

1.2 Court System

Section 76 of the Constitution provides that there will be a Supreme Court for Mauritius having unlimited jurisdiction to hear any civil or criminal proceedings under any law other than a disciplinary law, and such

jurisdiction and powers as may be conferred upon it by the Constitution or any other law. The Supreme Court consists of the chief justice, the senior puisne judge and other puisne judges.

The Supreme Court also exercises appellate jurisdiction over the lower courts.

Supreme Court Divisions and Lower Courts

The Supreme Court includes several divisions, namely:

- the Court of Civil Appeal;
- the Court of Criminal Appeal;
- the Bankruptcy Division;
- the Commercial Division;
- the Family Division;
- the Financial Crimes Division;
- the Land Division;
- the Mediation Division; and
- the Supreme Court also extends its powers to a puisne judge acting as the judge-in-chambers to determine matters involving an element of urgency and speed, and to grant interim injunctions.

The lower courts are the district courts (located in various districts of Mauritius), the intermediate court (located in the capital Port-Louis) and the industrial court (also located in Port-Louis). The criminal jurisdiction of the district courts and the intermediate court depends on the seriousness or nature of the offences committed, whereas the civil jurisdiction of those courts depends on the amount in dispute: in civil cases, a district court has jurisdiction over disputes not exceeding MUR250,000 and the intermediate court has jurisdiction over disputes not exceeding MUR2 million. The intermediate court also has a Financial Crimes Division which hears and determines financial crime offences. The industrial court hears employment-related disputes under specified enactments and there is no monetary limit for the amount that can be claimed before it.

A district court has jurisdiction in any civil action to hear and determine the action in accordance with a small claims procedure set out in Part IIA of the District and Intermediate Courts (Civil Jurisdiction) Act.

A small claim is where the sum claimed or matter in dispute does not exceed MUR100,000.

Several statutes also make provision for the setting-up of tribunals or commissions to deal with specialised areas of law. The provisions of the statutes can provide for a right of appeal or judicial review before the Supreme Court.

The Court of Civil Appeal and the Court of Criminal Appeal, which consist of at least two judges, hear appeals from a decision of a Supreme Court judge in the exercise of the latter's original civil or criminal jurisdiction (as appropriate).

Appeals from a decision delivered by two or more judges can only be heard by the Judicial Committee of the Privy Council sitting in London.

1.3 Court Filings and Proceedings

Court proceedings, their records and judgments are generally public. Certain proceedings are held in private, such as those before judges in chambers and, where the court so orders, applications under the Supreme Court (International Arbitration Claims) Rules 2013. Section 161A of the Courts Act empowers a judge or magistrate, where they consider it necessary or expedient, to exclude from proceedings (except the announcement of the decision) any person other than the parties to the trial and their legal representatives:

- in circumstances where publicity would prejudice the interests of justice or of public morality;
- in order to safeguard the welfare of persons under the age of 18;
- in order to protect the privacy of persons concerned in the proceedings; or
- in the interests of defence, public safety or public order.

1.4 Legal Representation in Court

A legal representative must be qualified as a barrister or attorney under the Law Practitioners Act. Barristers have unlimited rights of audience, whereas attorneys have rights of audience before the district courts and a judge in chambers, and have a right of audience in formal matters before the master's court and the Bankruptcy Division of the Supreme Court. In specific

cases, where the special nature or circumstances of proceedings before the Supreme Court so require, a foreign barrister may have a right of audience before the Supreme Court, subject to obtaining permission from the chief justice.

2. Litigation Funding

2.1 Third-Party Litigation Funding

Mauritian law is silent on third-party funding and there is no applicable restriction on such funding.

2.2 Third-Party Funding: Lawsuits

This is not applicable in Mauritius.

2.3 Third-Party Funding for Plaintiff and Defendant

This is not applicable in Mauritius.

2.4 Minimum and Maximum Amounts of Third-Party Funding

This is not applicable in Mauritius.

2.5 Types of Costs Considered Under Third-Party Funding

This is not applicable in Mauritius.

2.6 Contingency Fees

Contingency fees are permitted for both barristers and attorneys. In the case of attorneys, their code of ethics provides that contingency fees must be reasonable and the practice is for these to be 10% of the amount recovered. In the case of barristers, this cap of 10% is formally recorded in their code of ethics.

2.7 Time Limit for Obtaining Third-Party Funding

This is not applicable in Mauritius.

3. Initiating a Lawsuit

3.1 Rules on Pre-Action Conduct

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 the claim. The legal notice serves to notify the defaulting party of the breach and to request that they remedy the breach or 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 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.

For certain applications such as judicial review, actions are not possible unless all other remedies have been exhausted (eg, appeals before an executive body or tribunal).

Before certain cases are entered against a foreign defendant, leave of the judge in chambers to enter the action and serve it on that party must be obtained.

3.2 Statutes of Limitations

The general rule for personal actions is ten years from when the plaintiff has an actionable claim against the defendant, although certain statutes provide for shorter prescription periods.

The prescription period for actions in rem is 30 years.

Under Section 4 of the Public Officers Protection Act, every civil or criminal action, suit or proceeding, by a person other than the State, for any fact, act or omission against public officers or persons engaged in the performance of any public duty or persons assisting such persons must, under pain of nullity, be instituted within two years from the date of the fact, act or omis-

sion which has given rise to the action, suit or other proceeding.

Applications for judicial review of an executive decision must be made promptly and in any event within three months of the decision being challenged. The real requirement is one of promptness and an application may be set aside even if made within the three-month limit.

3.3 Jurisdictional Requirements for a Defendant

Any defendant of Mauritian nationality is subject to the jurisdiction of the Mauritian courts, even in respect of obligations contracted outside Mauritius.

In respect of a foreign defendant, the Supreme Court will allow initiation and service of proceedings against the defendant if one of the conditions in the Courts (Civil Procedure) Act is met, namely:

- the whole subject matter of the action is immovable property situated within Mauritius;
- an act, deed, will, contract, obligation or liability affecting immovable property situated within Mauritius is sought to be construed, rectified, set aside, or enforced in the action;
- relief is sought against a person ordinarily resident within Mauritius;
- the action is founded on a breach or alleged breach within Mauritius of a contract wherever made, which ought to be performed within Mauritius;
- an injunction is sought as to anything to be done within Mauritius, or a nuisance within Mauritius is sought to be prevented or removed, whether damages are or are not sought;
- any person outside of Mauritius is a necessary or proper party to an action properly brought against some other person duly served within Mauritius; or
- any action, relief, dispute or third-party claim in which a corporation holding a global business licence, an authorised company, a collective investment scheme or a protected cell company is one of the parties.

If an action concerns a contract containing a jurisdiction clause in favour of another jurisdiction, the Mau-

ritian court will decline jurisdiction unless the choice of jurisdiction is against the public policy of Mauritius.

If the action concerns a dispute which is covered by the scope of an arbitration agreement, the Mauritian court will decline jurisdiction if the defendant raises their objection before filing a defence on the merits (in the case of a domestic arbitration). In the case of an international arbitration, the defendant must (again, before filing a defence on the merits) ask that the case be referred to a panel of three designated judges of the Supreme Court to decide whether the parties should be referred to arbitration or whether, on a prima facie basis, there is a very strong probability that the arbitration agreement is null and void, inoperative or incapable of being performed.

3.4 Initial Complaint

Before the Supreme Court, the originating document is a plaint with summons. In the lower courts, the originating document is called a *proecipe* (which serves the same purpose as a plaint with summons).

Before a judge in chambers, the originating document is also called a *proecipe*, but it is a simpler document setting out the request, relief or damages sought by the applicant. The *proecipe* must be supported by affidavit evidence.

Certain procedures which require urgency (eg, a judicial review) or which are made under specific enactments (eg, the Companies Act or the Insolvency Act) are initiated by way of a motion paper supported by affidavit evidence. In judicial review applications, the application must also be accompanied by a statement setting out the grounds of review.

The general rule is that originating documents and other pleadings can be amended at any time if the amendment does not cause prejudice to other parties and the latter have an opportunity to respond to the amendments. This follows the principle that the purpose of pleadings is to identify the real issues in controversy which the trial court must determine.

A judge is unlikely to exercise discretion to allow amendments made after witnesses have started to

depone, or those made to circumvent a valid objection in law raised by another party.

3.5 Rules of Service

When service is effected in Mauritius, it has to be effected by a private usher retained by the plaintiff or by a court usher. The usher's return is conclusive evidence that service has been effected (if successful). If service is unsuccessful, the court will order that fresh service be attempted and if there are still unsuccessful attempts, the court may order that the defendant be informed of the case by way of substituted service in several forms, which may include publication in daily newspapers or affixing the document to be served at the door of the party's last known residence. Service on a company is effected by leaving the documents at its registered office or address of service, by delivering them to one of its directors whose name figures on the register of companies, by delivering them to an employee at the head office or principal place of business, or in accordance with a prior agreement with the company.

When ordering that service be effected on a foreign party in accordance with the provisions of the Courts (Civil Procedure) Act, the Supreme Court will order that such service be effected in accordance with the laws of the country where service is being effected. It is the plaintiff who bears the responsibility of arranging service on a foreign party, including arranging for the evidence of service to be properly legalised before it can be relied upon before a Mauritian court.

3.6 Failure to Respond

If a defendant does not respond to a lawsuit (after having been properly served with the court papers), the court will order the case to be heard in the absence of the defendant but will also order that, before the hearing, the defendant is served with a "notice of trial".

At the hearing, the continued absence of the defendant does not mean that judgment is automatically given in favour of the plaintiff. It is still incumbent on the plaintiff to prove its case on the balance of probabilities and call one or more witnesses to give evidence and produce documents in support of its case. A default judgment will only be delivered if the court

is satisfied that the plaintiff has indeed established its case according to the required standard of proof.

3.7 Representative or Collective Actions

Class actions are not permitted in Mauritius. All persons who seek a remedy from the court need to be individually named as parties, although they may select one of them to be the representative of the others during the case (eg, for the purpose of attendance in court and/or giving evidence).

3.8 Requirements for Cost Estimate

There is no requirement to provide clients with a cost estimate at the outset. The obligation of law practitioners is to charge, as a matter of ethics, what is fair and reasonable, and the fee arrangement must be fully disclosed to the client.

4. Pre-Trial Proceedings

4.1 Interim Applications/Motions

It is possible, before a trial or substantive hearing of a claim, for a party to apply to a judge in chambers to obtain interim relief pending the determination of the main case. Such reliefs are not limited to case management issues and are generally granted to preserve the status quo ante and, in cases where injunctive relief is sought, it must be shown that damages would not be an adequate remedy.

It is also possible, before the case is ready to be heard on its substantive merits (ie, before it is “in shape”), to obtain procedural directions (either at a hearing or by way of court circular) either from the trial judge (in cases before the Commercial or Family Divisions of the Supreme Court), the trial magistrate (in cases before the district courts or the intermediate court), the master and registrar (in cases before other divisions of the Supreme Court) and the chief justice (in cases entered by way of motion).

A trial judge also has discretion to order case management directions ahead of or during a trial.

4.2 Early Judgment Applications Procedures and Legal Standards

The courts do not deliver early judgment on some of the issues, preferring to deal with all the issues in one go.

The court may allow certain points of law to be raised at the outset (in *limine litis*) which can be heard and determined without evidence (ie, on the face of the plaint or other originating document) or after production of a limited amount of evidence. The defendant must generally, at the time of filing the plea in *limine*, also file a plea on the substantive merits of the case and the trial judge/magistrate may then hold a hearing to hear arguments on the plea in *limine*.

Objections as to the jurisdiction of the court must be taken before any defence on the merits is advanced, and it is permissible for a defendant to raise such an objection even without putting in a defence on the merits. The court proceeds to hear the objection on the jurisdiction and a limited amount of evidence may be adduced (usually, it is the contract which contains an arbitration agreement or a choice-of-court clause). Similarly, applications for security for costs are dealt with in *limine*.

4.3 Dispositive Motions

Dispositive motions that are commonly made are the following:

- that the subject matter of a plaint is time-barred;
- that an appeal has been lodged and/or served outside delay;
- that the court does not have jurisdiction, eg, because of the existence of an arbitration agreement or a valid choice-of-court clause;
- there is a more appropriate forum (*forum conveniens*) to try the case, eg, having regard to factors such as the location of parties and witnesses, the law which has to be applied to the obligations in issue, and whether a foreign court has already accepted jurisdiction to hear the case;
- that the case is closely connected with pending litigation before another competent jurisdiction outside Mauritius (*litis pendens*);

- that the subject matter of the case is *res judicata*, ie, raising the same cause of action between the same parties in a previously decided case;
- a motion to strike out certain paragraphs of pleadings on the grounds that they are unnecessary, made vexatiously or made with unnecessary prolixity;
- a motion to strike out a pleading on the ground that it does not disclose a reasonable cause of action or defence;
- a motion to dismiss a case on the ground that it constitutes an abuse of process of the court; and
- a motion by one party to the case to be put out of cause on the ground that it is not a necessary and proper party to the case.

4.4 Requirements for Interested Parties to Join a Lawsuit

If a non-party wishes to intervene in proceedings, they can apply to a judge and show cause that they have an interest in or are a necessary party to the case.

A defendant to a case, before filing a defence to the plaintiff's claim, may file a third-party procedure against a non-party requesting that the latter takes up its defence and indemnifies it. The third-party procedure can itself be a contested procedure.

On application by one of the parties to an existing case, the master and registrar or the court have discretion to order, at any time before the trial, that the name of a party that should not have been joined in the action, be struck out, and for a party that should have been added, to be joined as a party and served with the proceedings.

4.5 Applications for Security for Defendant's Costs

If the plaintiff is a foreign party, the case does not involve a commercial matter and the plaintiff does not own immovable property in Mauritius, the court will order the plaintiff to furnish security for costs as a matter of course. The defendant may support the amount claimed as security by way of evidence and the amount can be contested by the plaintiff – ultimately, the amount of security will be at the discretion of the trial judge who will balance the need to provide

security against the objective of not stifling a plaintiff to pursue its claim.

In other cases, the court also retains discretion to order security for costs (whether the plaintiff is Mauritian or foreign, and whether the case involves a commercial matter), for example, if the plaintiff is shown to be impecunious.

4.6 Costs of Interim Applications/Motions

A judge dealing with the costs of interim applications/motions will usually order the costs to be the costs in the main proceedings.

4.7 Application/Motion Timeframe

The usual timeframe to deal with a motion may vary from within a few days to approximately 12 months, depending on whether the motion is contested and requires evidence to be exchanged by way of affidavits and submissions to be heard. A party may request that a motion be dealt with on an urgent basis and it will be within the discretion of the judge whether to accede to such request.

5. Discovery

5.1 Discovery and Civil Cases

The defendant or any other party to a case may apply for particulars of the plaint, and to inspect documents which the plaintiff intends to rely on in the case. Similarly, the plaintiff may apply for particulars of the plea or counterclaim and to inspect documents which the defendant or other party intends to adduce in evidence.

In addition, in any cause or matter, the court may, on the application of either party or on its own motion, inspect a movable or immovable property or make a visit to the locus when such an inspection may be material to the proper determination of the question in dispute.

5.2 Discovery and Third Parties

Some reported judgments have ordered a third party (ie, a non-party to disclose information (a Norwich Pharmacal order)) where:

- a wrong has been carried out, or arguably carried out, by an ultimate wrongdoer;
- there is a need for an order to enable an action to be brought against the ultimate wrongdoer; and
- the person against whom the order is sought must:
 - (a) be mixed up in the matter so as to have facilitated the wrongdoing; and
 - (b) likely be able to provide the information necessary to enable the wrongdoer to be sued.

5.3 Discovery in This Jurisdiction

See 5.1 Discovery and Civil Cases.

5.4 Alternatives to Discovery Mechanisms

Each party that intends to rely on documents in support of its claim or defence must communicate those documents to the other parties prior to the trial at the stage of exchanges of pleadings. Each document then has to be produced by witnesses called by the party in court.

5.5 Legal Privilege

Both legal advice privilege and litigation privilege are recognised in Mauritian law.

There are not many cases which have considered all the nuances surrounding legal professional privilege. It is likely that Mauritian courts will opt to follow the principles set out in English case law.

5.6 Rules Disallowing Disclosure of a Document

Disclosure may be refused as an exception to the general rule, where a matter is protected by a statute as confidential or an official secret. Disclosure may still be made in circumstances made permissible by a statute or by order of the judge.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

The judge in chambers of the Supreme Court has broad powers to issue injunctions, to subsequently vary the order made, discharge the order or set it aside. The judge in chambers may issue different types of injunctions including prohibitory injunctions, mandatory injunctions, Mareva injunctions, Anton Pill-

er orders and anti-suit injunctions. Given that these types of orders are equitable remedies, Mauritian courts tend to follow English law principles governing such orders.

Common Interim Remedies

The most common types of interim remedies granted are prohibitory orders, provisional attachment orders and Mareva injunctions aimed at preserving the status quo ante and/or to preserve assets pending the determination of a main case.

Prohibitory orders

Prohibitory orders are usually granted where:

- there is a serious issue to be tried;
- damages would not be an adequate remedy; and
- the balance of convenience lies in favour of granting the interim injunction.

Mareva injunctions

Mareva injunctions are granted where:

- the applicant has a good arguable claim;
- the respondent owns assets in Mauritius and there is a real risk of dissipation of assets; and
- it is just and convenient to grant the order.

Provisional attachments orders

Provisional attachment orders temporarily freeze a debtor's assets held by a third party to secure a creditor's claim. This is a conservatory measure under the *Code de Procédure Civile*, granted when there is a well-founded debt and risk of asset dissipation.

Interim injunctions

An applicant for an interim injunction has to comply with certain undertakings, namely:

- to make full and frank disclosure of material facts at the time of making the application;
- to enter a main case within a reasonable time; and
- to give an undertaking in damages should it later turn out that the injunction was wrongly granted.

A judge in chambers may discharge an interim injunction if one or more of the above undertakings are not complied with.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

When an application for an interim injunction is made, the file is allocated to a judge in chambers who examines the papers to decide whether such an order should be granted pending a returnable date when the respondent can appear before the judge in chambers. The decision of whether to grant the interim order is usually given within one or two days of the application.

In certain very exceptional cases (not usually concerning commercial cases but mainly those relating to restraint of publication in the press or those concerning personal liberty) an applicant's attorney may contact the chief justice or the senior puisne judge to ask for a judge to be available outside normal hours.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctive relief can be obtained on an ex parte basis.

6.4 Liability for Damages for the Applicant

An applicant may be held liable for damages suffered by a respondent if the injunction is later discharged. There is no reported case where an applicant has been found to be so liable.

In appropriate cases, the judge in chambers has the discretion to order that an undertaking in damages be fortified by means of a cash deposit in court or a bank guarantee.

6.5 Respondent's Worldwide Assets and Injunctive Relief

A judge in chambers has the power to order a worldwide freezing order. In practice, however, judges are reluctant to issue worldwide freezing orders, and it is more common for a judge to freeze assets which are located in Mauritius.

6.6 Third Parties and Injunctive Relief

It is possible for injunctive relief to be granted against third parties, such as in the case of a Norwich Pharmacal order.

6.7 Consequences of a Respondent's Non-Compliance

A respondent who fails to comply with the terms of an injunction may be held to be in contempt of court and either ordered to pay a fine or (in very exceptional cases) be sentenced to imprisonment. In court proceedings, the trial judge would also have discretion not to allow the respondent to be heard until it has purged the contempt of court.

7. Trials and Hearings

7.1 Trial Proceedings

Trials in Mauritius take place in an adversarial format. Each party calls its own witnesses to give evidence and produces documents in support of its case, with counsel for the other parties being able to cross-examine those witnesses. After a party has called all its witnesses, it closes its case and when all the parties have closed their cases, their respective counsel make oral submissions on the facts and the law and the judge reserves judgment. In certain complex cases, the judge may also request that oral submissions be supplemented by written submissions.

In hearings of cases entered before a judge in chambers or those entered by way of motion and affidavit, the judge will consider the evidence as set out in the affidavits and submissions (written and/or oral) of counsel. There is no live examination of witnesses on the contents of their affidavits unless a motion is made to that effect, and the judge grants the motion in exceptional circumstances.

7.2 Case Management Hearings

Case management is left to the discretion of the trial judge.

7.3 Jury Trials in Civil Cases

There are no jury trials in civil cases in Mauritius.

7.4 Rules That Govern Admission of Evidence

In civil and commercial matters, the court may be quite flexible on the admissibility of evidence, but there are certain principles to bear in mind:

- contractual obligations (except in commercial cases) worth more than MUR5,000 need to be supported by a written document, and parole evidence is not admissible;
- in any claim to rent or indemnity for the occupation of immovable property, oral evidence will be admissible, when a lease is denied and is not completely established in writing, to prove or disprove the occupation and the amount or payment of the indemnity, and the party suing will be entitled to the indemnity although it may result from the oral evidence given that the occupation existed under a lease; and
- the Courts Act 1945, in Sections 181A to 181E, makes provision (subject to conditions) for the admissibility of the following items:
 - (a) copies or prints made from microfilms;
 - (b) out-of-court statements;
 - (c) documents being or forming part of records compiled by a person acting under a duty; and
 - (d) statements produced by computers.

Regarding contractual obligations (in non-commercial cases) worth more than MUR5,000, if no written obligation exists, the party seeking to prove such obligation may adduce other forms of written evidence as “beginning of proof in writing” (“*a commencement de preuve par écrit*”) from which one could reasonably infer the existence of the obligation. In cases where even beginning of proof is not available, a party may call the other party or a representative of the other party to examine the latter on personal answers; the answers are recorded by the court and any admission in the record can be used as proof of the existence of an obligation.

In relation to an out-of-court statement where a document is or forms part of a compiled record or statement produced by a computer, the obligation may be proved by the production of that document or by the production of a copy thereof, or a material part thereof, authenticated in such a manner as the court deems fit.

7.5 Expert Testimony

On issues which require expert evidence, each party will call its own expert witnesses. The report of each expert witness is typically tendered before the trial.

The court will not itself seek expert testimony. It is open to the parties to agree to file joint expert reports in the proceedings.

7.6 Extent to Which Hearings Are Open to the Public

Access to hearings is allowed to members of the public, and transcripts and minutes of the proceedings can be consulted at the registry of the court dealing with the case. Records and minutes of cases before the judge in chambers are not available to the public, while records and transcripts of cases before the Commercial Division are not easily accessible without justification.

7.7 Level of Intervention by a Judge

The judge acts as an arbiter to ensure that rules of evidence and procedure are being followed and that neither counsel embarks on irrelevant lines of questioning. A judge may sometimes ask clarification questions of a witness but would be cautious about the extent of doing so in order to avoid a later argument that a party has not had a fair hearing.

After hearing the evidence and considering submissions of counsel, the judge would typically reserve judgment. In straightforward matters, the judge may deliver a ruling from the bench. It is not the usual practice of Mauritian courts for the judge to give a ruling on the bench and provide reasons at a later date.

7.8 General Timeframes for Proceedings

The typical duration of trials in commercial disputes is one to two years from commencement.

8. Settlement

8.1 Court Approval

Court approval is not required to settle a lawsuit.

Parties often choose that the settlement agreement they have reached be read in court and made a judgment of the court, after the parties have ratified the terms of the settlement agreement. If the parties are not present, judges and magistrates may allow counsel or attorneys to inform the court that an agreement has been reached, and the agreement is recorded

without the parties formally ratifying it. The agreement then has the same effect as a judgment, with the following consequences:

- any breach of the agreement would be a contempt of court; and
- if there is a breach of the agreement, the innocent party can proceed directly to execute the agreement against the assets of the defaulting party without needing to initiate fresh proceedings for breach of contract.

There is also a mediation division of the Supreme Court where any agreement reached between the parties must be set down in writing and signed by the parties and the mediation judge for it to be valid.

8.2 Settlement of Lawsuits and Confidentiality

The parties can elect that the agreement remains confidential, and agreements reached before a mediation judge are confidential. A carve-out from the confidentiality obligation is usually included and exists to allow disclosure to a trial court which may have to deal with a breach of agreement or a contempt-of-court complaint.

8.3 Enforcement of Settlement Agreements

If a settlement agreement is not made a judgment of the court, the innocent party would need to initiate a fresh action against the defaulting party for breach of contract.

If the settlement agreement has been made a judgment of the court, it can be enforced using the usual execution methods against the assets of the judgment debtor and/or the judgment creditor may initiate contempt-of-court proceedings against the judgment debtor.

8.4 Setting Aside Settlement Agreements

The settlement agreement can be set aside on the same grounds as any other contract, namely:

- if the agreement was concluded under physical or economic duress;
- if the agreement was concluded on the basis of intentional misrepresentation (which may include intentional concealment of material acts); or

- if the agreement was concluded on the basis of a mistake.

A party may then initiate court proceedings within five years to set aside the agreement. In cases of duress, the five-year time limit begins when the duress has ceased, and in cases of misrepresentation it begins when the misrepresentation became known.

If the settlement agreement is reached by way of a “transaction” under the *Code Civil Mauricien*, there are special provisions for such agreements to be set aside.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

The awards or remedies that are usually available to a successful litigant are as follows:

- payment of a sum of money or damages;
- interest on the judgment debt;
- declarations of the existence of certain facts;
- prohibitory injunctions;
- mandatory injunctions;
- specific performance; and
- costs.

9.2 Rules Regarding Damages

There are no punitive damages provided for in Mauritian law. The courts would seek to provide full compensation (*réparation intégrale*) to a plaintiff for prejudice suffered. In breach of contract claims, the measure of damages is foreseeable loss unless the breach is intentional or grossly negligent, in which case, the measure is all the damages that are a direct and certain consequence of the breach. In tort cases, the plaintiff is entitled to recover damages representing the direct and certain consequences of the tort caused by the fault or negligence of the defendant.

9.3 Pre-Judgment and Post-Judgment Interest

In cases involving the payment of a sum of money, interest may, according to the provisions of the *Code Civil Mauricien*, run as from the date on which a request

to pay was served on the defendant. The trial judge retains discretion as to whether pre-judgment interest should include the length of the trial, depending on the conduct of the plaintiff (in particular, whether the latter has been diligent in pursuing its case). It is not uncommon for the trial judge to award interest to the winning party as from the date of judgment only.

In cases before the industrial court, the court may award interest as from the date of dismissal. In cases of road accidents or accidents at work, the court may award interest as from the date the action was started unless there are good reasons to order interest as from the date when the pleadings were closed.

9.4 Enforcement Mechanisms of a Domestic Judgment

The typical enforcement mechanisms are as follows:

- execution by way of warrant to levy;
- execution by way of writ of execution;
- attachment (eg, of receivables or bank accounts);
- inscribing a judicial mortgage on immovable property, and seizure and sale of immovable properties in accordance with the provisions of the Sale of Immovable Property Act; and/or
- filing for the bankruptcy or winding-up of a judgment debtor.

In respect of intermediate court judgments, movable properties must be seized and sold before immovable properties are sold.

9.5 Enforcement of a Judgment From a Foreign Country

This is done according to a procedure known as exequatur. An application is made to the Supreme Court by way of a motion and supporting affidavit. The evidence has to show that the conditions for exequatur of the foreign judgment are met, namely:

- the foreign judgment is still valid and capable of execution in the country where it was delivered;
- the foreign judgment must not be contrary to any principle affecting public order (meaning international, rather than domestic, public order);

- the defendant must have been regularly summoned to attend the proceedings in which the foreign judgment was delivered; and
- the court which delivered the judgment must have jurisdiction to deal with the matter submitted to it.

Once the Supreme Court has granted the exequatur, the foreign judgment can then be enforced in Mauritius in the same way as a domestic judgment.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

Mechanisms for appeals include:

- in civil cases, appeals against the decision of a judge of the Supreme Court exercising original jurisdiction are heard by the Court of Civil Appeal which is composed of two judges;
- appeals against the Bankruptcy Division of the Supreme Court, the master and registrar, the intermediate court, the industrial court and the children's court are heard by the Supreme Court exercising its appellate jurisdiction; and
- appeals against a decision of two or more judges of the Supreme Court are heard by the Judicial Committee of the Privy Council, if such appeals are possible (leave to appeal must first be obtained, as not all cases are appealable before the Judicial Committee).

Mechanisms for review include:

- applications for judicial review to the Supreme Court, where two judges will review the decision-making process of an administrative body; or
- applications to the chief justice to review the decision of the master and registrar.

10.2 Rules Concerning Appeals of Judgments

Appeals before the Supreme Court in its appellate jurisdiction or to the Court of Civil Appeal are not conditional on leave being granted – that is, they are as of right, provided that the appeal concerns a final decision.

An appeal to the Court of Civil Appeal may lie (upon leave being granted) in cases where the decision of the judge is not final, in the following instances:

- an appeal against an order as to costs only;
- an appeal against an order made by consent of the parties; or
- an appeal against an interlocutory judgment or order.

An appeal to the Judicial Committee of the Privy Council lies as of right:

- against final decisions in civil and criminal proceedings on questions of interpretation of the Constitution;
- against final decisions in civil cases where the matter in dispute is at least MUR10,000, or the appeal involves a claim to or a question respecting property or a right to the value of MUR10,000 upwards;
- against final decisions in constitutional relief cases;
- against decisions of a bench of three designated judges in applications made under the International Arbitration Act or the Convention for the Recognition and Enforcement of Foreign Arbitral Awards Act; or
- in such other cases as may be prescribed by parliament.

In other cases, an appeal to the Judicial Committee of the Privy Council lies with leave of the court (either from the Supreme Court or, if the latter refuses leave, by special leave of the Judicial Committee of the Privy Council):

- where, in the opinion of the court, the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Judicial Committee of the Privy Council;
- against final decisions in any civil proceedings; or
- in such other cases as may be prescribed by parliament.

10.3 Procedure for Taking an Appeal

Appeal to the Court of Civil Appeal

An appeal against a judgment of a judge of the Supreme Court must be lodged with the registry of

the court and served on the respondent(s) within 21 days of the date of the judgment appealed, unless the appellant can show good cause why it was not possible to comply with the 21-day period (in which case, a separate application for an extension of time must be made or a statute must provide otherwise). A respondent who wishes to resist an appeal must file a notice to this effect with the registry of the Supreme Court and serve such notice to resist appeal on the appellant no later than two months after being served with the appeal.

An appeal before the Court of Civil Appeal will operate as a stay of execution of proceedings under the judgment or order appealed against.

Appeal to the Supreme Court

Appeals against a judgment of a district court, intermediate court or industrial court must be notified to the clerk of that court within 21 days of the date of judgment. The magistrate will immediately bind the party giving such notice, together with one or more sureties, by recognisance in favour of the respondent(s). The appellant is given a fortnight from the day on which the recognisance has been provided to lodge the appeal with the registry of the Supreme Court and serve the notice of appeal on the respondent(s).

In appeals before the Supreme Court in its appellate jurisdiction, a stay is not automatic and must be sought from the appellate court.

Appeal to the Judicial Committee of the Privy Council

In relation to appeals to the Judicial Committee of the Privy Council (even in cases of appeal as of right), application for leave to appeal must first be made with the Supreme Court. Conditional leave is first applied for and if the conditions (mainly to provide security for costs and sending the reference to the Judicial Committee of the Privy Council) are complied with, then final leave is applied for. Once final leave is obtained, the procedure before the Judicial Committee of the Privy Council can take place.

Applications for conditional leave and final leave are made by way of motion or petition supported by affidavit evidence; the motion or petition must be made

within 21 days of the judgment being appealed, and the applicant must give all other parties concerned notice of its intended application. When considering the leave application, the court has discretion as to whether to order a stay of execution of the judgment appealed.

10.4 Issues Considered by the Appeal Court at an Appeal

The Appellate Court will not conduct a rehearing of the first instance case and hear witnesses anew. The Appellate Court will typically review the transcript of proceedings, the evidence adduced and consider written and oral submissions of counsel with the aim of deciding whether the lower court has committed errors of law. The Appellate Court will not typically overturn findings of fact unless they are perverse, in the sense that no reasonable judge or magistrate could have made such findings based on the evidence on record.

New pleadings of fact cannot be taken on appeal, although the Appellate Court may in certain circumstances allow new evidence to be adduced on appeal where such evidence could not have been available to a party in the lower court and the evidence is relevant to issues to be determined in the appeal. It is possible (subject to the discretion of the Appellate Court) to argue points of law which were not raised before the lower court.

10.5 Court-Imposed Conditions on Granting an Appeal

Appeals before the Supreme Court in the exercise of its appellate jurisdiction over lower courts or before the Court of Civil Appeal are subject to furnishing an amount of about MUR25,000 as security for costs.

Appeals before the Judicial Committee of the Privy Council are subject to furnishing MUR150,000 as security for costs.

10.6 Powers of the Appellate Court After an Appeal Hearing

An appellate court may:

- dismiss the appeal if none of the grounds for appeal have any merit;

- quash the judgment of the lower court if one or more grounds of appeal are well taken, and itself draw any inferences of fact and give any judgment and make any order which ought to have been made, and make such further order as the case may require;
- quash the judgment of the lower court if one or more grounds of appeal are well taken and, if it thinks fit, order that the judgment or order appealed be set aside, and that a new trial be started – a new trial may be ordered on any question without interfering with the finding or decision upon any other question; and
- make such order as to the whole or any part of the costs of the appeal or the costs incurred in the lower court, as seems just.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

During litigation, each party bears its ongoing costs.

The general rule is that the losing party pays the winning party's costs. In certain circumstances, the court may consider that the justice of the case requires that no order be made as to costs, for example, where the winning party has not conducted its case diligently or where both a claim and a counterclaim have succeeded, or where the parties reached an amicable settlement early in the proceedings – this is a matter left to the discretion of the judge. The court may also order:

- a party to pay amounts determined by the judge for unreasonable conduct (eg, repeated applications for extension of time); and/or
- a legal representative to pay wasted costs orders in cases of improper, unreasonable or negligent acts or omissions.

Costs would include the counsel and attorney costs of the winning party, court filing costs, costs relating to attendance of witnesses and costs of ancillary pre-trial applications. Most of these items are subject to very low prescribed amounts set out in the relevant court rules such as the Legal Fees and Costs Rules 2000 and the Supreme Court (Electronic Filing of Doc-

uments) Rules 2012. Therefore, in practice, the costs recovered are far from the actual legal expenses of the winning party. Exceptions to that are: (i) applications made in international arbitration matters, whereby the Supreme Court (International Arbitration Claims) Rules 2013 may allow a winning party to recover close to its real costs on a standard basis or indemnity basis; and (ii) appeals before the Judicial Committee of the Privy Council.

The quantum of costs is taxed by the master and registrar, who would apply the relevant court rules and might also award reasonable out-of-pocket expenses to the winning party, such as the travel and accommodation costs of witnesses from overseas. The rulings of the master and registrar are rarely challenged, as the amount of costs awarded, especially in commercial disputes, is fairly low, although there may be some debate about the quantum of out-of-pocket expenses awarded (ie, whether they are reasonable).

11.2 Factors Considered When Awarding Costs

The court exercises wide discretion when it comes to awarding costs. Some factors which will be considered are:

- the facts of the case;
- the parties' conduct during the proceedings;
- the circumstances leading to the litigation;
- the merits of the case; and
- the nature and complexity of the case.

11.3 Interest Awarded on Costs

Interest is not usually awarded on costs.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

Commercial parties are becoming more aware of the existence of alternative dispute resolution (ADR) mechanisms and are increasingly willing to try mediation and arbitration instead of litigating in court. The main reasons are that ADR procedures are less time-consuming and can also be less costly. In the case of

mediation, business relationships can also be maintained or mended.

12.2 ADR Within the Legal System

Parties are, at any point in time, free to decide to mediate their disputes. There is, however, no compulsion to do so and no sanction for refusing to mediate.

The Supreme Court (Mediation) Rules 2010 and the Intermediate Court (Mediation) Rules 2019 provide frameworks whereby parties can request that their dispute be referred to mediation before a mediation judge or a mediation magistrate, and to make binding and executory any agreement reached by the parties before the mediation judge or magistrate. Without compulsion, any party to a civil suit, action, cause or matter which is pending before the Supreme Court or the intermediate court may apply (with reasons) to the chief justice or to the president of the civil division of the intermediate court (as applicable) for the action to be referred for mediation.

The Industrial Court Act also empowers a magistrate of that court to offer guidance and advice, and to use their best endeavours to secure a settlement between parties to an existing or likely dispute. Where a settlement is reached, it is signed by the magistrate and by the parties, and it has the same effect as a judgment of the court.

Arbitration Agreements

When the subject matter of a dispute is subject to an arbitration agreement:

- In the case of a domestic arbitration, the court seized with the dispute will decline jurisdiction if the defendant objects to the jurisdiction of the court (but before having filed any defence on the merits of the case).
- In the case of an international arbitration, when an action is brought before any court and a party (usually the defendant) contends that the action is the subject of an arbitration agreement, that court will automatically refer the case to the chief justice for the latter to constitute a panel of three designated judges under the International Arbitration Act. Once the matter is referred to the panel of three designated judges, unless the plaintiff shows, on a

prima facie basis, that there is a very strong probability that the arbitration agreement is null and void, inoperative or incapable of being performed, the panel will refer the parties to arbitration.

Adjudication of construction disputes is yet to be provided in legislation, but there is nothing preventing contracting parties from tailor-making their own dispute resolution procedure contractually to provide for resolution by adjudication or expert determination. Expert determinations are not uncommon in valuation disputes.

12.3 ADR Institutions

Institutions offering and promoting ADR, such as the Mediation and Arbitration Centre Mauritius (MARC) and the Mauritius International Arbitration Centre (MIAC), are well organised and equipped with modern and internationally oriented rules and adequate physical infrastructure.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

Domestic arbitrations are governed by the *Code de Procédure Civile*.

International arbitrations are governed by the International Arbitration Act 2008 (based on the UNCITRAL Model Law on International Commercial Arbitrations), the Convention for the Recognition and Enforcement of Foreign Arbitral Awards Act (which transposes the New York Convention into Mauritian law) and the Supreme Court (International Arbitration Claims) Rules 2013 (which contain procedural rules for applications before the Supreme Court relating to international arbitration matters).

13.2 Subject Matters Not Referred to Arbitration

It is commonly thought that matters relating to the following are not arbitrable:

- bankruptcy and winding up;
- taxation;
- the capacity of persons;

- inheritance and succession;
- divorce;
- custody of children; and
- criminal proceedings.

13.3 Circumstances to Challenge an Arbitral Award

An award in a domestic arbitration may be challenged before the Supreme Court on one or more of the following grounds:

- by way of appeal on law or facts if the parties did not renounce their right of appeal in the arbitration agreement;
- by the *Ministère Public* if they consider that the enforcement of the award is against the public interest;
- where the arbitrator rendered the award in the absence of an arbitration agreement or the arbitration agreement was null or void or no longer in force;
- if the arbitral tribunal was irregularly constituted or the sole arbitrator irregularly appointed;
- if the arbitrator has decided the dispute otherwise than in accordance with the reference to them;
- the principles of a fair hearing have not been respected;
- if the award fails to contain the contentions of the parties, their grounds in support of the contentions and the reasons for the award;
- if the award fails to mention the names of the arbitrators and the date of the award;
- if the award is not signed by all the arbitrators and fails to mention that fact; and/or
- if the arbitrator has violated a rule of public order.

An award in an international arbitration may be challenged on one or more of the following grounds:

- the party making the application furnishes proof that:
 - (a) 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; or
 - (b) it was not given proper notice of the appointment of an arbitrator or of the arbitration pro-

ceedings or was otherwise unable to present its case; or

- (c) 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 submission to arbitration; or
 - (d) the composition of the arbitral tribunal or the arbitration procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the International Arbitration Act; and/or
- the court finds that:
 - (a) the subject matter of the dispute cannot be settled by arbitration under Mauritius law; or
 - (b) the award is in conflict with the public policy of Mauritius; or
 - (c) the making of the award was induced or affected by fraud or corruption; or
 - (d) a breach of the rules of natural justice occurred during the arbitration proceedings or in connection with the making of the award, by which the rights of any party have been, or will be, substantially prejudiced.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Domestic Arbitral Award

In respect of a domestic arbitral award, an application for exequatur of the award is made before the judge in chambers. Once the exequatur is granted, execution measures (such as seizure, attachment or winding up) can be taken in order to enforce the award.

Foreign Arbitral Award

In respect of a foreign arbitral award (which includes an award in an international arbitration where the seat was Mauritius), an application is made before the chief justice for provisional registration of the award. The application and provisional order must then be served on the respondent and the latter has 14 days from service (or such longer period as the chief justice may order if the respondent has to be served outside the jurisdiction) to apply to set aside the provisional registration on one or more grounds set out in the New York Convention.

If the respondent fails to make an application to set aside the provisional registration or is unsuccessful in such application, the award may be enforced in the same manner as a judgment of the court.

14. Outlook

14.1 Proposals for Dispute Resolution Reform

Following the announcement of the new government in their Government Programme 2025–2029 in January 2025, for the creation of a Court of Appeal to hear appeals from the Supreme Court and arbitral tribunals, the Court of Civil Appeal Act (Act No 21 of 2025) was passed by the National Assembly on 7 October 2025, but is however not yet in force.

14.2 Growth Areas

The main areas of growth for commercial disputes are shareholder disputes, construction, trusts litigation and fraud involving financial institutions.

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