

MAURITIUS

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ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

What Laws Regulate Enforcement?

The statutes regulating the enforcement of foreign money judgments in Mauritius are as follows:

- The Foreign Judgments (Reciprocal Enforcement) Act 1961;
- The Reciprocal Enforcement of Judgments Act 1923; and
- Article 546 of the Mauritian Code of Civil Procedure (“exequatur” proceedings).

Treaties

Mauritius is not party to any treaty regarding the reciprocal enforcement of foreign commercial judgments.

Jurisdiction over foreign judgment debtors

In respect of local judgment creditors, the Mauritius court will enforce a foreign judgment if the enforcement is in respect of the debtor’s assets located in the Mauritian jurisdiction. In cases of enforcement by foreign judgment creditors, the subject matter of the judgment must in addition have a link to the Mauritian jurisdiction, for example a breach of contract subject to the laws of Mauritius, or a judgment in respect of shares held in a Mauritian entity.

Requirements for Enforcement

The law under which a foreign judgment is recognized and enforced in Mauritius is Article 546 of the Mauritian Code of Civil Procedure. It provides for what are known as “exequatur” proceedings. The Code of Civil Procedure does not actually set out the conditions that are to be fulfilled for an application for “exequatur”. These conditions have however been established under case law. In the case of *D’Arifat v Lesueur* [1949 MR 191], the Supreme Court set the conditions to be fulfilled for an exequatur application to be granted. Any final judgment or order obtained in a foreign court will be enforceable in Mauritius without re-examination of the merits of the case, provided that:

- The foreign judgment is still valid and capable of execution in the country where it was delivered;
- It is not contrary to Mauritian public policy;
- The defendant was given proper notice of the proceedings; and
- The court which delivered the judgment had jurisdiction to deal with the matter.

Where enforcement is sought against a non-Mauritian resident, it was held by the Supreme Court of Mauritius in *Dallah Albaraka (Ireland) Ltd v Pentasoft Technologies Limited & anor* 2015 SCJ 168, that the mere fact that a foreign defendant had assets in Mauritius was sufficient to establish the jurisdiction of a Mauritian court in enforcement proceedings. The case concerned an application to enforce an order issued by the High Court of England, Queen’s Bench Division, between two foreign parties. It was held that it was legitimate for a judgment creditor armed with a judgment against a debtor without assets within the jurisdiction where the judgment was obtained, to enforce the judgment in the country where the assets are located. The physical location of the debtor’s assets is an important factor in determining the jurisdiction in which the judgment creditor seeks to have the judgment recognized and enforced. In these circumstances, the judgment creditor should not be denied access to justice and to all the enforcement remedies on grounds of inadequate connection, or on the ground that the parties to the judgment are foreign. Hence, it was held that the Mauritian court was competent to deal with the enforcement.

Moreover, special enforcement regimes are applicable to judgments emanating from certain countries.

In this respect, under the Reciprocal Enforcement of Judgments Act 1923, a judgment obtained in the Superior courts of England and Wales will be enforced by the Mauritian Supreme Court if those courts had jurisdiction in terms of their own laws, and if:

- The judgment was not obtained by fraud;
- The judgment debtor was duly served with the process of the original court and appeared either voluntarily in the proceedings or submitted to the jurisdiction of the court by contract;
- The judgment debtor either carried on business or was ordinarily resident within the jurisdiction of the court or voluntarily appeared in the proceedings before the original court or agreed to submit itself to the jurisdiction of the court;
- The judgment is final and conclusive. In this sense final means unalterable by the court which gave the judgment.
- Enforcement must not offend Mauritian public policy.



Moreover, enforcement under the Foreign Judgments (Reciprocal Enforcement) Act 1961 can be sought on any judgment of a superior court of a foreign country, as proclaimed by the President, if:

- It is final and conclusive between the parties;
- It is not in respect of taxes, a fine or a penalty.

However, it should be noted that as yet, no such proclamation has been made by the President.

Authentication and Translation of Judgment

A foreign judgment must be translated and authenticated by a competent official in the foreign jurisdiction.

Procedure

Enforcement is by way of an action before the Supreme Court of Mauritius supported by an affidavit requesting the court to make the foreign judgment executory.

An authenticated copy of the foreign judgment must be annexed to the affidavit and, where possible, an authenticated certificate from the foreign court confirming that the judgment has not been appealed must be provided.

Once in receipt of the application, the court will fix a time limit (a maximum of 2 months) within which the defendant may apply to set aside the application for registration. If no such application is made within the time limit, the judge will order the registration of the judgment and it will be declared executory in Mauritius.

If the defendant is a foreigner, an order authorising initial service outside the jurisdiction of Mauritius together with an order fixing the time in which the judgment debtor should appear before a judge in chambers in Mauritius should be served on the defendant. A judge in chambers will normally fix the period during which the enforcement papers must be served on the defendant and the time in which he must respond. On the return day the court may declare the foreign judgment executory in Mauritius after satisfying itself that the requirements for enforcement have been met.

The procedure for registration of judgments emanating from the United Kingdom under the Reciprocal Enforcement of Judgments Act 1923 is as follows:

- Leave must first be obtained to register the judgment in the Supreme Court of Mauritius. The application is made ex parte or by summons to a judge. If the application is made ex parte, the judge seized with the matter may direct that summons be issued.
- The application must be supported by an affidavit containing the facts on how the judgment was obtained and must be accompanied by an authenticated copy of the judgment. The plaintiff seeking enforcement is required to state that to the best of his belief, he is entitled to enforce the judgment and that the judgment does not fall within any of the cases for which a judgment cannot properly be registered. The affidavit must also contain, as far as the plaintiff can give them, the full name, title, trade or business and usual or last

known place of abode or business of the judgment creditor and the judgment debtor.

How long does Enforcement take?

The duration will depend largely on whether the application is opposed or not. Usually, enforcement takes between 6 to 18 months.

Judgments in a Foreign Currency

The Mauritian Court has the power to enforce a foreign judgment in its foreign currency.

Interest

The Mauritian courts will enforce the interest portion of a foreign judgment. However, it will not award additional interest as the matter was not heard on the merits before it.

Merits

A Mauritian court will not re-examine the merits of the case giving rise to the foreign judgment.

Limitation

Under the Reciprocal Enforcement of Judgments Act, there is a requirement that the application for enforcement be lodged with the Supreme Court within a period of 12 months from the date of the judgment.

Security for Costs

A respondent opposing enforcement is entitled to seek security for costs where the applicant is a foreign entity.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Mauritius is party to the New York Convention and gives effect to it by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 ("Enforcement Act").

Mauritius acceded to the New York Convention without reservation.

Requirements for Enforcement

A Mauritian court may enforce a foreign arbitral award if the following requirements are fulfilled:

- The parties to the arbitration agreement must, under the applicable law, have had capacity to contract and the agreement must have been valid under the governing law;
- The defendant must have had proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise able to present his case;
- The award must deal with an issue contemplated by or falling within the terms of reference to the arbitration and it must contain only decisions within the scope of the arbitrator's mandate;
- The composition of the arbitral tribunal must have been in accordance of the arbitration agreement, or failing that in accordance with the governing law;



- The award must have become binding on the parties and must not have been set aside or suspended by a competent authority in the country of origin;
- The plaintiff seeking enforcement must provide the original agreement to arbitrate and the award, or authenticated copies of them.

More recently in *State Trading Corporation ("STC") v Betamax Ltd* 2019 SCJ 154 the Supreme Court of Mauritius set aside an international arbitration award (of the Singapore International Arbitration Centre) in favour of Betamax on the ground of public policy because the contract out of which the dispute arose breached Mauritius procurement laws. It was held that to enforce the award would be contrary to Mauritius public policy within the meaning of the International Arbitration Act.

The public policy of Mauritius is therefore an essential aspect that has to be taken into account for the enforcement of a foreign arbitral award. It is important to note however the Supreme Court's finding that there is a high threshold for public policy to be an effective challenge to the enforcement of an arbitral award. Indeed, the breach of public policy must be flagrant, actual and concrete. In the *Betamax* case, a breach of public procurement laws was considered to be a breach of Mauritian public policy and therefore justified the annulment of the international arbitration award.

Procedure

Enforcement is by way of motion before the Supreme Court of Mauritius supported by affidavit requesting the court to make the foreign award executory.

Authentication

An authenticated copy of the foreign award must be annexed to the affidavit.

Limitation

No limitation or prescription period applies to the enforcement of foreign arbitral awards in Mauritius.

How long will Enforcement take?

Depending on whether the application is opposed or not, enforcement can take anywhere between 6 to 18 months.

Security for Costs

A respondent is entitled to claim from an applicant security for costs if the applicant is a foreign entity.

