

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

The Mauritius court will enforce a foreign judgment in favour of a local plaintiff against the assets of a foreign judgment debtor in Mauritius by virtue of the assets being located in Mauritius alone. Where the applicant seeking enforcement is also a foreigner, however, there must be a link between the matter giving rise to the foreign judgment and Mauritius. For example a breach of a contract subject to the laws of Mauritius, or a judgment in respect of shares held in a Mauritian entity.

Requirements for Enforcement

The general requirements for enforcement under the Reciprocal Enforcement of Judgments Act 1923 are as follows:

- The foreign court must have had jurisdiction over the parties and the subject matter of the action.
- The judgment debtor must have appeared voluntarily in the proceedings in the foreign court or must have carried on business or have been ordinarily resident there, or the defendant must have submitted to the jurisdiction of that court by contract.
- The defendant must have been served with notice of the proceedings in the foreign court.
- The judgment must not have been obtained by fraud.
- The judgment must be final in the sense that an appeal must not be pending in the foreign jurisdiction.
- Enforcement must not offend Mauritian public policy.

Special enforcement regimes are applicable to judgments emanating from certain countries.

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 under the Foreign Judgments (Reciprocal Enforcement) Act 1961 can be sought in respect of any judgment of a superior court of a foreign country as proclaimed by the President, and 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.

Authentication and Translation of Judgment

A foreign judgment must be authenticated by a competent official in the foreign jurisdiction. If it is in a language other than French, it is required to be translated into French by a sworn translator.

Procedure

Enforcement is by way of an action before the Supreme Court of Mauritius supported by 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. The 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 concerning the obtaining of the judgment and must be accompanied by an authenticated copy of the judgment. The plaintiff seeking enforcement is required to state that according to the information available and 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 must 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 if 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 must otherwise have been 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.

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.

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 such applicant is a foreign entity.

