

MAURITIUS

DELOS GUIDE TO ARBITRATION PLACES (GAP)

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Mauritius is a stable, accessible, reliable, efficient and neutral arbitration seat. It is a welcoming and inclusive bilingual place which benefits from both civil law and common law legal cultures and which possesses all infrastructural and logistical requirements for the efficient conduct of arbitral proceedings.

While it has a separate domestic arbitration regime, its international arbitration law, set forth in the International Arbitration Act 2008, is based on the UNCITRAL Model Law, which is widely acknowledged as representing the best standards in the field worldwide. In addition, its law contains provisions which further enhance arbitral autonomy, confidentiality in appropriate cases, and above all, neutrality.

Local courts have a reduced role in relation to international arbitration proceedings. Only in very exceptional cases will the courts verify arbitration clauses before or during arbitration proceedings, thus avoiding parallel proceedings. Arbitrator appointments or challenges are decided upon by the Permanent Court of Arbitration of The Hague. Interim measures must normally be requested from arbitrators directly and the courts will order such measures strictly in support of arbitral proceedings. Any case relating to an international arbitration that is put to a local court is heard expeditiously by a panel of three specialised judges and parties have a direct right of appeal to the Judicial Committee of the Privy Council (UK).

Key places of arbitration in the jurisdiction	Port Louis.
Civil law / Common law environment?	Mauritius has a combination of both common law and civil law so that lawyers from both jurisdictions will be at least familiar with its legal system.
Confidentiality of arbitrations?	Confidentiality clauses will be upheld and arbitration-related cases before domestic courts may be heard in private.
Requirement to retain (local) counsel?	Parties are free to choose foreign or non-legal counsel for arbitration proceedings.
Ability to present party employee witness testimony?	Party employee witness testimony is not prohibited.
Ability to hold meetings and/or hearings outside of the seat?	Hearings and meetings may be held outside the seat as the arbitral tribunal considers appropriate.
Availability of interest as a remedy?	Interest may be awarded.
Ability to claim for reasonable costs incurred for the arbitration?	Reasonable costs incurred for the arbitration may be claimed.
Restrictions regarding contingency fee arrangements and/or third-party funding?	No restrictions exist on contingency fee arrangements and/or third-party funding.
Party to the New York Convention?	Yes.
Other key points to note	Awards in French and English do not have to be translated in order to be enforced.
WJP Civil Justice score (2018)	ϕ

ARBITRATION PRACTITIONER SUMMARY

The Mauritian legal system comprises a combination of common law and civil law principles. Its international arbitration law is modern and efficient. Intervention by the local courts has been drastically reduced, and the autonomy of arbitration proceedings has been considerably enhanced. For instance, the International Arbitration Act 2008, which is based on the UNCITRAL Model Law, additionally includes the negative effect of the principle of competence-competence. In relation to interim measures, only in cases of urgency, or where all parties agree or the arbitral tribunal so permits, will applications for such measures be entertained by the courts, and so only to the extent that the arbitrator(s) cannot act effectively. Further, key judicial functions, such as the appointment of arbitrators or resolving difficulties encountered in the setting up of the arbitral tribunal, and challenge to arbitrators, are carried out by the Permanent Court of Arbitration in the Hague, rather than by domestic courts. Arbitration-related cases before the courts are submitted to a three-judge panel of specialised judges, with a sole and final possibility of appeal to the Judicial Committee of the Privy Council (UK).

Mauritius has distinct legal regimes for domestic and international arbitrations, but parties may choose to apply the international arbitration law to arbitrations which would otherwise be considered as domestic. Therefore, in order to ensure that parties benefit from the highly efficient and more up-to-date regime, arbitration clauses should specify that the arbitration will be governed by the International Arbitration Act 2008.

Date of arbitration law?	The International Arbitration law is dated 2008 and was revised in 2013.
UNCITRAL Model Law? If so, any key changes thereto?	It is based on the UNCITRAL Model Law, with enhancements such as: <ul style="list-style-type: none"> • the negative effect of the principle of competence-competence; and • the priority of the arbitral tribunal to order interim measures.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Arbitration-related cases are heard by a panel of three specialised judges. In the light of their recent judgments, the panel of specialised arbitration judges can be said to be arbitration-friendly.
Availability of <i>ex parte</i> pre-arbitration interim measures?	<i>Ex parte</i> interim measures are available in case of urgency.
Courts' attitude towards the competence-competence principle?	The competence-competence principle is applied.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Two additional grounds for annulment of an award can be relied on, namely: <ul style="list-style-type: none"> • where its making was induced or affected by fraud or corruption; and • where there has been a breach of natural justice during the arbitral proceedings or in connection with the making of the award, by which the rights of any party have been or will be substantially prejudiced.

Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	It is arguable that awards annulled at the seat may be enforced in Mauritius in exceptional cases.
Other key points to note?	<ul style="list-style-type: none">• There is a time-limit of three months to seek annulment, triggered by receipt of the award by the party seeking annulment.• Awards in French and English do not have to be translated to be enforced.• Arbitration-related proceedings before the courts are fast and efficient.

JURISDICTION DETAILED ANALYSIS

1. Is the arbitration Law based on the UNCITRAL Model Law?

The International Arbitration Act 2008 (“IAA 2008”) is based on the UNCITRAL Model Law. Its Section 2B, makes clear that in applying and interpreting the IAA 2008, consideration should be given to the origin of the Model Law as well as to the general principles on which it is based. Recourse may also be had to international materials relating to the Amended Model Law such as UNCITRAL reports, doctrinal commentaries and relevant case law from other Model Law jurisdictions.

It should be noted that Mauritius has separate legislation governing domestic arbitrations. However, parties may expressly agree to apply the IAA 2008 irrespective of whether the arbitration would otherwise have been considered as being a domestic one. The answers below refer to the IAA 2008 and do not apply to domestic arbitration.

1.1 If yes, what key modifications, if any have been made to it?

Various key modifications have been made to the Model Law in enacting the IAA 2008:

The IAA 2008 contains the negative effect of the principle of competence-competence. Whenever a party to an action before any Court contends that the matter brought before that Court is the subject matter of an arbitration agreement, the matter is automatically transferred to the Mauritian Supreme Court before a panel of three designated arbitration judges who will, in accordance with Section 5 of the IAA 2008, only verify on a prima facie basis whether there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed. Short of finding, prima facie, a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed, they will refer the parties to arbitration. It is only if prima facie the Supreme Court finds that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed, that the Supreme Court is allowed to determine whether the agreement is actually null and void, inoperative or incapable of being performed. This is therefore to be contrasted with Article 8 of the UNCITRAL Model Law, which directly allows national courts to determine whether the agreement is null and void, inoperative or incapable of being performed.

Section 8 of the IAA 2008 expressly allows arbitration involving a consumer, provided that the relevant arbitration clause is confirmed after the dispute has arisen by means of a separate written agreement of the parties.

Section 18 of the IAA 2008 makes the parties jointly and severally liable to pay the reasonable fees and expenses of arbitrators.

Under Section 23(5) of the IAA 2008, save in circumstances of urgency, the Supreme Court can order interim measures only if the applicant has obtained the permission of the arbitral tribunal or written agreement of the other parties. In all cases, the Supreme Court can act only if and to the extent that the arbitral tribunal and any other arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively. This is to be contrasted with the Article 17 J of the UNCITRAL Model Law which does not limit the court’s power to issue interim measures.

In relation to the annulment (setting aside) of arbitral awards, in addition to the grounds contained in Article 34(2)(b) of the UNCITRAL Model Law, two further grounds for seeking annulment have been included in Section 39(2)(b) of the IAA 2008, namely, where the making of the award was induced or affected by fraud or corruption, and where there has been a breach of natural justice during the arbitral proceedings or in connection with the making of the award by which the rights of any party have been or will be substantially prejudiced.

Section 39A of the IAA 2008 provides for that in addition to issuing an order to set aside an arbitral award, the Supreme Court may also give such other directives as it considers appropriate. These directives may relate, for example, to the remittance of the matter to the arbitral tribunal or to the commencement of a new arbitration.

1.2 When was the Arbitration Law last revised?

The IAA 2008 was last revised and amended in 2013.

2. The Arbitration Agreement

2.1 How do Courts in the jurisdiction determine the law governing the arbitration agreement?

The only judgment involving this question was given in the case of *Cruz City 1 Mauritius Holdings v Unitech Limited & Anor* (2014 SCJ 100), where the Courts appear not to have applied the rules of conflict of laws in order to determine any law applicable to the arbitration clause.

In that case, the Court simply “considered the factual scope of the jurisdictional challenge”. It further commented: “For us the issue is a factual one which depends on the common intention of the parties”.

Therefore, there is reason to believe that Mauritian Courts will apply an arbitration clause factually without attempting to find the law governing the arbitration clause.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Under Section 20(2) of the IAA 2008, for the purposes of the arbitral tribunal ruling on its own jurisdiction, including on any objection with respect to the existence or validity of the arbitration agreement, the arbitration agreement is to be treated as being an agreement independent of the other terms of the contract.

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

According to Section 4(1) of the IAA 2008, an arbitration agreement must be in writing. Section 4(2) of the IAA 2008 lists the different situations where the arbitration agreement is deemed to be in writing, such as where the agreement is concluded orally, but has been recorded in electronic form. Section 4(3) of the IAA 2008 provides that the reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement in writing.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by the said arbitration agreement?

There is currently no clear answer to the question of the extension of an arbitration clause to a third party under Mauritian law as it has not yet been decided upon by the Supreme Court.

3. Are there restrictions to arbitrability?

There are no specific restrictions in our arbitration law in relation to arbitrability.

In the case of *Cruz City 1 Mauritius Holdings v Unitech Limited & Anor* (2014 SCJ 100), it was held that under the Constitution, an individual is free to dispose of his or her rights or property which by law are available to him or her to dispose of as he or she wishes. In our view, matters which would normally lie outside the purview of freely disposable rights, for example, divorce, would theoretically not be arbitrable. It is expected that the courts may determine any issue of arbitrability on a case by case basis.

Further, it is unlikely that disputes for which the law grants exclusive jurisdiction to the courts or other judicial bodies, for example, a domestic taxation dispute with the relevant authority, will be held to be arbitrable.

4. Intervention of domestic courts

4.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

There is a specific procedure governing this issue under Section 5(1) and (2) of the IAA 2008, which provides that an action before any court shall be transferred to the designated arbitration judges of the Supreme Court, if:

- a party contends that the action is the subject of an arbitration agreement; and
- that party requests that the matter be so transferred not later than when submitting his first statement on the substance of the dispute.

Upon such a transfer, the Supreme Court will refer the parties to arbitration unless a party 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. If the party succeeds in satisfying this stringent test, the Supreme Court will then carry out an in-depth verification of the arbitration clause. If it then finds that the clause is null and void, inoperative or incapable of being performed, it will transfer the matter back to the court which made the transfer. If it finds that the arbitration clause is valid, the Supreme Court will refer the parties to arbitration.

4.1.1 If the place of the arbitration is inside of the jurisdiction?

Yes. Under Section 3A(2) of the IAA 2008, the above procedure applies to every international arbitration, whether or not its juridical seat is in Mauritius.

4.1.2 If the place of the arbitration is outside of the jurisdiction?

Yes. See above.

4.2 How do courts treat injunctions by arbitrators enjoining such courts to stay litigation proceedings?

No precedent has been found where an arbitrator has ordered the stay of court proceedings in Mauritius. Given that Section 5 of the IAA 2008 in effect provides for the negative effect of the principle of competence-competence, it is unlikely that such a situation will arise.

4.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunctions but not only)

Normally, courts will not intervene in arbitrations seated outside the jurisdiction. For instance, under Section 23(2A), the Supreme Court can only exercise its power to issue interim measures in such a manner as to support, and not to disrupt, arbitration proceedings seated in Mauritius or abroad.

In an exceptional case, *Hurry v Leedon* (2009 SCJ 270), the parties had initially submitted to the jurisdiction of the Bankruptcy Division of the Supreme Court and, following its decision, one of the parties had commenced arbitration in order to relitigate the same issue which had already been decided by the courts. The Supreme Court issued an anti-suit injunction restraining that party from pursuing arbitration proceedings on the basis, inter alia, that this would be an abuse of the process of the Court and would be vexatious and oppressive.

5. The conduct of the proceedings

5.1 Can parties retain counsel or be self-represented?

Section 31 of the IAA 2008 provides that, unless otherwise agreed by the parties, parties may be represented in the arbitral proceedings either by a law practitioner or other any person chosen by them, who need not be qualified to practise law in Mauritius or in any other jurisdiction.

In our view, parties can therefore retain counsel or choose to be self-represented in arbitral proceedings.

5.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Please note that the courts have no jurisdiction to determine challenges under the IAA 2008. Section 14(3) of the IAA 2008 provides that where a party has not successfully challenged the arbitrator before the arbitral tribunal or through any other procedure agreed between the parties, it may within 30 days of having been notified of a decision regarding that challenge, request the Permanent Court of Arbitration having its seat at The Hague, acting through its Secretary-General ("PCA") to decide on the challenge.

5.3 The grounds for challenge under the IAA 2008 are identical to those contained in the Model Law, and therefore it is our view that an arbitrator's failure to disclose suffices.

No challenge under the IAA has so far been submitted to the PCA.

5.4 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of ad hoc arbitration)?

Here also, pursuant to Section 12 of the IAA 2008, it is the PCA which can assist in the constitution of the arbitral tribunal or in the appointment of arbitrators. The circumstances in which the PCA may intervene are wide and include, for instance, where any party fails to appoint an arbitrator or fails to act in accordance with an appointment procedure agreed between the parties; where any third party, including an institution, fails to act; or in the event of any other failure to constitute the arbitral tribunal which cannot be resolved under any agreement between the parties on the appointment procedure.

5.5 Do courts have the power to issue interim measures in connection with arbitrations?

Under Section 23 of the IAA 2008, the Supreme Court is empowered to issue interim measures in relation to arbitration proceedings. Its power is limited as follows:

- the power must be exercised in such a way as to support, and not to disrupt, the existing or contemplated arbitration proceedings, and
- the Supreme Court shall only act if or to the extent that the arbitral tribunal or any other arbitral or other institution or person vested with power in that regard, has no power or is unable for the time being to act effectively.

5.5.1 If so, are they willing to consider ex-parte requests?

Under Section 23(3) of the IAA 2008, the Supreme Court may consider ex-parte requests where the matter is one of urgency.

5.6 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

5.6.1 Does it provide for the confidentiality of arbitration proceedings?

The IAA 2008 does not expressly provide for a general rule of confidentiality of arbitration proceedings. It is however understood that parties may do so contractually.

As far as hearings before the Supreme Court in relation to international arbitration are concerned, the Supreme Court may, upon the application of a party, exclude from the proceedings persons other than the parties and their legal representatives, where all the parties so agree or where it considers it necessary or expedient, taking into account "the specific features of international arbitration, including any expectation of

confidentiality the parties may have had when concluding their arbitration agreement or any need to protect confidential information” [Section 42(1B) of the IAA 2008].

5.6.2 Does it regulate the length of arbitration proceedings?

There is no such provision in the IAA 2008. Under Section 24(1)(b) of the IAA 2008, it is the duty of every arbitral tribunal to adopt procedures suitable to the circumstances of the case and avoid unnecessary delay and expenses so as to provide a fair and efficient means of resolving the dispute.

5.6.3 Does it regulate the place where hearings and/or meetings may be held?

Under Section 10(2) the IAA 2008, unless otherwise agreed by the parties, the arbitral tribunal may meet at any geographical location it considers appropriate for meetings or hearings.

5.6.4 Does it allow for arbitrators to issue interim measures?

Pursuant to Section 21 of the IAA 2008, unless otherwise agreed by the parties, arbitrators may, at the request of a party to the arbitral proceedings, grant interim measures.

5.6.4.1 In the affirmative, under what conditions?

Under Section 21(2) and (3) of the IAA 2008, the party requesting an interim measure should satisfy the arbitral tribunal that:

- harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

5.6.5 Does it regulate the arbitrators' right to admit/exclude evidence?

Parties are free to agree on the procedure to be followed by the arbitral tribunal. Failing such agreement, the arbitral tribunal may determine all procedural and evidential matters, including the admissibility of evidence [Section 24(3) of the IAA 2008].

5.6.5.1 For example, are there any restrictions to the presentation of testimony by a party employee?

There is no such restriction under the IAA 2008.

5.6.6 Does it make it mandatory to hold a hearing?

The IAA 2008 does not make it mandatory to hold a hearing. Section 26(1) of the IAA 2008 provides that unless otherwise agreed by the parties, it is for the arbitral tribunal to decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.

However, under Section 26(2) of the IAA 2008, unless otherwise agreed by the parties, the arbitral tribunal must hold a hearing at an appropriate stage of the proceedings, if so requested by a party. Only where there is such a request will it be mandatory to hold a hearing.

5.6.7 Does it prescribe principles governing the awarding of interest?

Section 33(1)(d) of the IAA 2008 provides that, unless otherwise agreed by the parties, the arbitral tribunal may award simple or compound interest for such period and at such rate as it considers meets the justice of the case.

5.6.8 Does it prescribe principles governing the allocation of arbitration costs?

Section 33(2) of the IAA 2008 prescribes the general principles that the arbitral tribunal should apply in the allocation of arbitration costs, unless the parties have otherwise agreed. The general principles are the following:

- costs should follow the event except where it appears to the arbitral tribunal that this rule should not be applied or not be fully applied in the circumstances of the case; and
- the successful party should recover a reasonable amount reflecting the actual costs of the arbitration, and not only a nominal amount.

5.7 Liability

5.7.1 Do arbitrators benefit from immunity to civil liability?

Under Section 19(1) of the IAA 2008, arbitrators benefit from immunity to civil liability for anything done or omitted in the discharge of their functions as arbitrator unless the act or omission is shown to have been in bad faith.

5.7.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

There are no such concerns.

6. The award

6.1 Can parties waive the requirement for an award to provide reasons?

Yes, under Section 36(4) of the IAA 2008, parties may agree that the arbitral award give no reasons.

6.2 Can parties waive the right to seek the annulment of the award?

The IAA 2008 does not provide for such a waiver.

6.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

No atypical mandatory requirements have been identified.

6.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

There is no possibility of appealing against an arbitral award.

6.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Mauritius is a party to the New York Convention which governs the recognition and enforcement of arbitral awards pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 ("NYC Act").

Under Section 4B of the NYC Act, there is no limitation or prescription period applicable to the recognition and enforcement of an arbitral award under the Act.

The NYC Act applies to all foreign awards as well as to arbitration awards deemed to have been made in Mauritius under the IAA 2008. Different rules apply in domestic arbitration.

6.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award in the jurisdiction?

No. Under Article VI of the New York Convention, domestic courts have a discretion to adjourn proceedings for the recognition and enforcement of arbitral awards if annulment proceedings have been initiated. It follows that the introduction of annulment proceedings before the Supreme Court will not automatically suspend the exercise of the right to enforce an award.

6.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Pursuant to Article V(1)(e) of the New York Convention, which Mauritius is a party to, the Supreme Court may refuse the recognition and enforcement of the foreign arbitral award at the request of the party against whom it is invoked, where the foreign arbitral award has been set aside by a competent authority of the seat of arbitration.

Although this point has not yet been decided by Mauritian courts, on the basis of the reasoning of the Supreme Court in *Cruz City 1 Mauritius Holdings v Unitech Limited & Anor* (2014 SCJ 100), it is our view that enforcement of a foreign award which has been annulled at its seat may remain possible in exceptional cases.

6.8 Are foreign awards readily enforceable in practice?

Yes. Once the application for the enforcement of a foreign arbitral award has been granted by the Supreme Court, the arbitral award has the same executory effect as that of a judgment of the courts.

7. Funding arrangements: Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

If so, what is the practical and/or legal impact of such restrictions?

There is no provision restricting the use of contingency or alternative fee arrangements or third-party funding of arbitration proceedings under the IAA 2008.

8. Is there likely to be any significant reform of the arbitration law in the near future?

No significant reform of the IAA 2008 is expected in the near future. Domestic arbitration law may however need to be significantly reformed.