

## GUIDE TO ARBITRATION PLACES (GAP)

# MAURITIUS

CHAPTER PREPARED BY

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### JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ⊞ |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

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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 any and all responsibility.

## 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.

Its international arbitration law, set forth in the International Arbitration Act 2008 ("**IAA 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. Mauritius also has a separate and considerably older domestic arbitration regime, but parties can agree, while signing their arbitration clause or later, to apply the more recent International Arbitration Act to their otherwise purely domestic arbitration.

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 ("**PCA**"). 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?	The main place of arbitration is the capital, 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 and/or remotely?	Hearings and meetings may be held outside the seat as the arbitral tribunal considers appropriate. They can also be held remotely, as long as they provide a fair and efficient means of resolution of the dispute.
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?	Mauritius is a party to the New York Convention.
Party to the ICSID Convention?	Mauritius is a party to the ICSID Convention.
Compatibility with the Delos Rules?	The IAA 2008 is compatible with Delos Rules.
Default time-limitation period for civil actions (including contractual)?	The default time-limitation period for civil actions is 10 years.
Other key points to note?	Awards in French and English do not have to be translated in order to be enforced.
<a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020, if available?	66.0
<a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2022, if available?	0,63

## 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 IAA 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 PCA, 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 more recent and modern International Arbitration Act 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 IAA 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"> <li>the negative effect of the principle of competence-competence; and</li> <li>the priority of the arbitral tribunal to order interim measures.</li> </ul>
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.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Provided the parties so agree, an arbitral tribunal can render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award.
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"> <li>where its making was induced or affected by fraud or corruption; and</li> <li>where there has been a breach of natural justice during the arbitral proceedings or in connection with the making of the</li> </ul>

	award, by which the rights of any party have been or will be substantially prejudiced.
Do annulment proceedings typically suspend enforcement proceedings?	<p>The court has discretion to stay the enforcement proceedings pending annulment proceedings and the tendency seems to be to stay enforcement.</p> <p>It is arguable that awards annulled at the seat may be enforced in Mauritius in exceptional cases.</p> <p>There is a time-limit of three months to seek annulment, triggered by receipt of the award by the party seeking annulment.</p>
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	<p>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.</p> <p>Although this point has not yet been decided by Mauritian courts, on the basis of the reasoning of the Supreme Court in <i>Cruz City 1 Mauritius Holdings v Unitech Limited &amp; Anor</i> (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.</p>
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	It is undecided whether or when an order by the arbitral tribunal for a hearing to be heard remotely (in whole or in part) despite a party's objection would affect the recognition or enforceability of an ensuing award in the jurisdiction.
Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	<p>There are two key points to note in relation to arbitration with and enforcement of awards against public bodies:</p> <ul style="list-style-type: none"> <li>• in certain cases, it is a requirement for the party entering an arbitration claim against a public body, to give one month's written notice of the action and of the subject matter of the claim to the public body; and</li> <li>• once an award is enforced, the order issued by the court must be served in the prescribed form upon the attorney for the State or for the Government department or officer concerned.</li> </ul>
Is the validity of blockchain-based evidence recognised?	It is undecided whether or when blockchain-based evidence would be recognised as valid.

Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	<p>Under Mauritian law an arbitration agreement must be in writing. Under section 4 (a) of the IAA 2008 for an arbitration agreement to be in writing it can be recorded in any form. Further, under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001, the Mauritian Courts will not interpret the circumstances under article II paragraph 2 as exhaustive. Therefore, it is very likely that the arbitration agreement recorded on a blockchain will be recognized as valid.</p> <p>Under section 36 (3) of the IAA 2008 an award must be made in writing and signed. It is undecided whether or when an award recorded on blockchain is to be recognised as valid.</p>
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	It is undecided whether or when a court would consider a blockchain award as originals for the purposes of recognition and enforcement. In line with the above, it is likely that the arbitration agreement recorded on blockchain will be considered as an original for the purposes of recognition and enforcement.
Other key points to note?	φ

## JURISDICTION DETAILED ANALYSIS

### 1. The legal framework of the jurisdiction

#### 1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

The IAA 2008 is based on the UNCITRAL Model Law (2006 version). 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, in their arbitration agreement or subsequently, to apply the more recent and modern 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, the domestic arbitration regime being beyond the scope of this report.

##### 1.1.1 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 recognises 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 the courts in the jurisdiction determine the law governing the arbitration agreement?**

In relation to foreign-seated arbitration, 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.

As for international arbitration seated in Mauritius, in accordance with Section 39(2)(a)(i) of the IAA 2008, where the parties have not indicated which law is to apply to the arbitration agreement, Mauritian law will be applied.

### **2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?**

It is expected that the courts will interpret “place” as being the juridical seat of arbitration given that it corresponds to “place” under the UNCITRAL Model Law which is the basis of the IAA 2008.

As for the “venue” it is more likely to be considered as the geographical location where the tribunal will meet for hearings.

### **2.3 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.

### **2.4 What are 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.



## **2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by 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.

## **2.6 Are there restrictions to arbitrability? In the affirmative:**

### **2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?**

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

### **2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?**

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.

Finally, note that 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.

## **3. Intervention of domestic courts**

### **3.1 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.

Finally, 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.

### **3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw 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.

### **3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, 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.

## **4. The conduct of the proceedings**

### **4.1 Can parties retain foreign 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.

### **4.2 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?**

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 PCA, acting through its Secretary-General to decide on the challenge.

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.

### **4.3 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.

### **4.4 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.

#### **4.5 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.

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

##### **4.6.1 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].

##### **4.6.2 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.

##### **4.6.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

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.

Under Section 24 of the IAA 2008, the tribunal has wide powers to adopt suitable procedures in order to provide a fair and efficient means of resolution of disputes. Where parties do not agree, the tribunal may conduct the arbitration in such manner as it considers appropriate and determine all procedural and evidential matters. Therefore, hearings and/or meetings can be held remotely even if a party objects, as long as they provide a fair and efficient means of resolution of the dispute.

##### **4.6.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

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.

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.

#### **4.6.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?**

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].

There is no restriction to the presentation of testimony by a party employee under the IAA 2008.

#### **4.6.6 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.

#### **4.6.7 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.

#### **4.6.8 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.

### **4.7 Liability**

#### **4.7.1 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.

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

There are no such concerns.

## **5. The award**

### **5.1 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.

**5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?**

The IAA 2008 does not provide for such a waiver.

**5.3 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.

**5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?**

There is no possibility of appealing against an arbitral award.

**5.5 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.

**5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?**

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.

**5.7 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.

**5.8 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.

## 6. Funding arrangements

### 6.1 Are there laws or regulations relating to, or 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 laws, regulations or 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.

## 7. Arbitration and technology

### 7.1 Is the validity of blockchain-based evidence recognised?

It is undecided whether such evidence would be recognised as valid.

### 7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Under Mauritian law an arbitration agreement must be in writing. Under Section 4(a) of the IAA 2008 for an arbitration agreement to be in writing it can be recorded in any form. Further, under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Acts 2001, the Mauritian Courts will not interpret the circumstances under article II paragraph 2 as exhaustive. Therefore, it is very likely that the arbitration agreement recorded on a blockchain will be recognized as valid.

Under Section 36(3) of the IAA 2008, an award must be made in writing and signed. It is undecided whether or when an award recorded on blockchain is to be recognised as valid.

### 7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

In line with the above, it is likely that the blockchain arbitration agreement will be considered as an original for the purposes of recognition and enforcement.

It is undecided whether or when a court would consider a blockchain award as an original for the purposes of recognition and enforcement.

### 7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

These issues are undecided. It is however expected that courts will be flexible given the provisions relating to arbitral awards and the legislative approach adopted in relation to arbitration agreements.

## 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.

## 9. Compatibility of the Delos Rules with local arbitration law

Delos Rules are compatible with the local arbitration law which is the IAA 2008.

## 10. Further Reading

Practical Law: Arbitration procedures and practice in Mauritius: overview (<https://uk.practicallaw.thomsonreuters.com>)

## ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

Mauritius has well-developed and reliable arbitration infrastructure. It hosts two arbitration institutions, the Mediation and Arbitration Centre ("**MARC**") which is the alternative dispute resolution arm of the Mauritius Chamber of Commerce and Industry ("MCCI"), and the Mauritius International Arbitration Centre ("**MIAC**").

The MARC and the MIAC administer arbitrations in several languages and have a wide regional and international outreach.

Both arbitral institutions are located in the capital, Port Louis, and have excellent hearing and meeting rooms and provide other hearing-related facilities and services. These venues are very accessible by various modes of transportation. Parties may also choose hotels or conference centres as good venues for hearings.

Mauritius is situated at the centre of the Indian Ocean, adjacent to the Asian and African continents. In normal times, Mauritius has daily flights from various destinations in Europe, Africa and Asia. Its time zone is fairly convenient for European, African and Asian parties.

The excellent quality of the internet connection in Mauritius must also be highlighted for hearings which are being conducted online.

Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team?	<a href="#">MARC</a> <a href="#">MIAC</a>
Main arbitration hearing facilities for in-person hearings?	Both the MARC and the MIAC offer excellent hearing and meeting room facilities at their respective premises in Port Louis, Mauritius.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	There are several reprographic facilities in reasonable proximity to the above arbitration providers.
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Transcription services can be arranged from freelance individuals or international service providers, but international providers do not have offices in Mauritius.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	English is widely used, but some arbitrations are also conducted in French. Interpretation services are provided by freelance interpreters or international providers.
Other leading arbitral bodies with offices in the jurisdiction?	There is a permanent branch of the PCA in Mauritius. The PCA Mauritius Office is located in the capital, at the Port Louis Waterfront. The PCA has a judicial role under the IAA. It is the default authority that appoints, and decides on challenges against, arbitrators.