

Mauritius

by

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I. PRESENT ATTITUDE TOWARD ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

A. Describe the receptiveness of your government (including courts) toward enforcement of foreign money judgments.

There is no prohibition be it from the Executive or from the Judiciary toward the enforcement of a foreign money judgment in Mauritius. This procedure is called EXEQUATUR. Indeed ever since 13 October 1923, well before Mauritius became Independent (12.3.1968) , a legislation entitled *The Reciprocal Enforcement of Judgments Act* came into operation. In 1961 another enactment was passed, the *Foreign Judgments (Reciprocal Enforcement) Act 1961*. Subject to their particular application, there is nothing under Mauritian law which prevents or restrains the execution of a foreign judgment in Mauritius.

B. Briefly describe recent illustrative attempts, whether successful or unsuccessful, to enforce a foreign money judgment in your country, particularly with regard to enforcement of any judgments from United States courts.

There are some new judgments namely *Dallah Albaraka (Ireland) Ltd v Pentasoft Technologies Limited* 2015 SCJ 168 where the foreign judgment was declared executory under the conditions mentioned in 111 (A) (2) below. We have indeed recently had an application from a U.S Corporation namely "*Bayer Healthcare LLC v Suvaman Trading Limited* 2015 SCJ 356 "and pursuant to the same principles the court non suited the Applicant, as it has failed to adduce expert evidence to show that the foreign judgment in question is still capable of execution in the country where it was delivered which is the first essential condition for the foreign judgment to be declared executory.

Among other cases, "*Crédit Lyonnais S.A v/s Patrick Lincoln* 2008 SCJ 98*" where a French judgment from the Tribunal de Grande Instance of Perigneux dated 18 May 2004 was declared executory in Mauritius on 9 April 2008. Subject to the compliance of the conditions as established by our case law, any foreign judgment will be declared executory without witnesses being heard anew.

C. Describe any proposed legislation or other governmental action in your country that could significantly affect the enforcement of foreign money judgments.

Our Law Reform Commission has been amending several legislations recently, but the legislation in respect of Exequatur has remained the same for over more than half of a century. To my knowledge there is no forthcoming legislation which could significantly affect the enforcement of foreign money judgments.

II. PROCEDURE TO ENFORCE A FOREIGN MONEY JUDGMENT

A. General Summary of Procedure

- 1. Briefly summarize the procedure and expected length of time necessary to enforce a foreign money judgment if a treaty provides for enforcement of judgments from the country of origin.**
- 2. Briefly summarize the procedure and expected length of time necessary to enforce a foreign money judgment if no treaty provides for enforcement of judgments from the country of origin.**

An application is made under the provisions of Article 546 of our “Code de Procédure Civile” by way of motion plus affidavit.

The existence or non existence of a treaty has no relevance on the procedural aspect of the application. Once it is lodged before the Supreme Court the same rules will apply. With the newly constituted Commercial Division of the Supreme Court, should it be a commercial money judgment, the application will be lodged before that jurisdiction where matters go faster as it used to be. Should it be a judgment of a civil nature, it will be lodged before the Civil Division of the Supreme Court where the expected length of time might be slightly more. Our Supreme Court has, however, given new impetus to the expediting of matters and indeed the cases seem to be heard faster as they used to be some 10 years ago.

Usually the length of time will depend on whether the application is resisted or not. It might take 6 months, one year or even more.

As regards the procedure when the judgment debtor is outside the country, it is as follows:

The procedure governing the motion of exequatur is described in this paragraph.

An order authorising initial service outside the jurisdiction of Mauritius together with an order fixing the time at which the judgment debtor should appear should be made before a Judge in Chambers in Mauritius. The Judge in Chambers will normally fix the delay during which the papers will have to be served on the respondent, due consideration being taken for affording the respondent ample time to make his stand known in Court on the returnable day.

On the returnable date, the Court will deal with the following:

1. Declaration of the foreign judgment as executory in Mauritius. When considering whether or not to make this declaration, the Court will evaluate whether the foreign judgment is contrary to any principles of public order in Mauritius; and
2. Direction to the Master and Registrar of the Court to forward to the Registrar General's office of Mauritius a certified copy of the judgment and the Order of the Court within the prescribed time for registration purposes.

B. Detailed Discussion of Procedure

1. Indicate the courts in your country that are competent (i.e., have jurisdiction) to grant enforcement of a judgment.

We have the Commercial Division of the Supreme Court dealing with all commercial foreign money judgments and as well the Civil Division of the Supreme Court with its powers to deal with Civil matters.

2. Describe any requirements regarding translation and authentication of the documents evidencing the original judgment.

English is the official language before our Courts and French is allowed. If the judgments are pronounced in English or French, they will be accepted as they are and they will form the basis of the affidavit sworn by the representative of the judgment creditor. There will be no need for the translation of the French judgment. Should the judgment be in any other foreign language it will have to be translated into English. It is worth noting that for the purposes of their authenticity all foreign judgments should bear the apostille of the Hague Convention.

3. Indicate whether jurisdiction over the judgment debtor must be obtained by your courts in the enforcement action.

Normally for the purposes of having the foreign judgment declared executory in Mauritius, the Supreme Court must have jurisdiction over the territory where the judgment debtor dwells. Our Courts cannot declare a foreign judgment executory in a foreign jurisdiction save in Mauritius. This territory would normally cover the local place of business or residence of the judgment debtor and as well where the judgment debtor has some economical interest. It would defeat the purpose of such procedure should the judgment debtor have no interest at all in our country.

4. If the original judgment is in a foreign currency, describe whether the judgment need be converted into local currency.

Given that the purpose of such procedure is to declare executory a foreign judgment awarded at a certain point in time, our Supreme Court will have to grant the order as per the terms of the foreign judgment. I have seen some judgments from our Supreme Court namely *D'Arifat and ors v/s Lesueur 1949 MR 191***, *F.Renggli v/s Davie Shaw & anor 1998 MR 143* and *Crédit Lyonnais S.A v/s Patrick Lincoln 2008 SCJ 98** and a more recent one *S.A. Epson France v/s Société Intervenant Technologie Ltd 2012 SCJ 114* where their Lordship would always grant the application as per the terms of the foreign judgment without any other qualification. As regards the calculation requested above, I have not come across any case law to the point. In the case of *Renggli* and *Credit Lyonnais* cited above, the foreign judgments were for the amounts of GBP 313,700 together with interest of GBP 16,433.64 and EUR 119,010.49 respectively. Their

Lordships only granted the application as per its wording and did at no point in time make any conversation. For practical purposes, the amount claimed should be converted based on the rate prevailing at the date of the judgment of the original court, *i.e* the country where the judgment was originally delivered.

5. Indicate whether the judgment creditor can receive interest on the original judgment amount regardless of whether the original judgment amount included interest.

When the original judgment will become executory, the Supreme Court in Mauritius will only confirm the contents thereof as obtained before the original jurisdiction. It will not award additional interest as it did not hear the matter and therefore cannot make an award on matters which were not canvassed before it. In the case of *S.A. Epson France v/s Société Intervenant Technologie Ltd 2012 SCJ 114*, the application was in respect of a foreign judgment obtained before the Tribunal de Commerce de Paris in respect of a principal amount along with interest and the Judge in Mauritius declared it executory as such.

6. Indicate whether the successful judgment creditor is entitled to reimbursement of its attorneys fees or court costs incurred in bringing the enforcement proceeding.

This will become possible only if such prayers formed part of the original judgment; otherwise the Mauritian Court will not award new items as its role is to confirm or not the foreign judgment as it stands.

7. Describe the conditions under which the losing party may appeal your court's decision whether or not to enforce a judgment.

This is quite rare and my research work has not led me towards any appeal case on such matters. Our laws do in fact provide for appeal procedures and normally the losing party will have a delay of 21 days to file the grounds of appeal and the matter will be fixed to be heard.

8. Describe any other procedures which could seriously affect the enforcement action.

Save when it is resisted, there is no procedure which could seriously affect the enforcement action.

III. REQUIREMENTS FOR ENFORCEMENT OF A FOREIGN MONEY JUDGMENT

A. General Summary of Requirements

- 1. Assuming the proper procedure is followed as set out in Section II, briefly summarize the requirements which must be met to enforce a foreign money judgment if a treaty provides for enforcement of judgments from the country of origin.**
- 2. Assuming the proper procedure is followed as set out in Section II, briefly summarize the requirements which must be met to enforce a foreign money judgment if no treaty provides for enforcement of judgments from the country of origin.**

The existence or not of a treaty has no relevance to the application. The general rule was set down in the case of *D'Arifat and ors v/s Lesueur 1949 MR 191*** where their Lordships of our Supreme Court decided as follows:

An Exequatur of a foreign judgment can only be granted if the judgment satisfies the following conditions:

- (1) the judgment must still be valid and capable of execution in the country where it was delivered;
- (2) it must not be contrary to any principle affecting public order;
- (3) the defendant must have been regularly summoned to attend the proceedings; and
- (4) the court which delivered the judgment must have had jurisdiction to deal with the matter submitted to it.

B. Detailed Discussion of Requirements

- 1. Describe any requirements of your country with regard to the jurisdiction (i.e., competence) of the court of origin over the parties and subject matter of the original action**

Please refer to the criteria referred to above under III A.2 where the possible hurdles are deemed to be exhausted.

2. Describe any requirements of your country with regard to notice to the defendant in the original action.

The service should be personal and all documents should be personally served on the defendant by an usher of our Supreme Court. The defendant must be duly summoned according to the laws of Mauritius.

3. Describe any requirements of your country with regard to finality and non-appealability of the court of origin's judgment.

The winning party should, before starting proceedings in Mauritius ascertain the finality of the foreign judgment. Any appeal lodged within delay in the foreign country will automatically frustrate all proceedings before our jurisdiction. So far the requirements as laid down under *D'Arifat and ors v/s Lesueur 1949 MR 191*** are met with, there will be no problem.

4. Describe the position of your country with regard to refusal to enforce a judgment on grounds of public policy, particularly with respect to whether your courts will refuse to enforce a judgment if the original claim could not have been brought under the laws of your country.

Should it be the case, the application will be set aside as it does not fall within the ambit of the criteria as laid down in the case of *D'Arifat v/s Lesueur* cited above.

5. Describe any requirements of your country with regard to showing reciprocity between the court of origin and your country.

Our court will not have to probe into that aspect as there is no requirement of reciprocity between the countries.

6. Indicate whether the courts of your country will review the merits of the case before granting enforcement.

The answer is negative.

- 7. Describe whether the courts of your country will examine if the court of origin applied the same rules of law which a court in your country would have followed had it heard the case originally (i.e., the proper choice of law).**

The answer is negative.

- 8. Describe whether enforcement of a judgment will be denied if the underlying cause of action is barred under your country's statute of limitations.**

The answer is negative.

- 9. Describe any other requirements or defenses which could prevent the enforcement of a judgment.**

So far the validity of the judgment is not challenged on ground of fraud in the country of origin, it will therefore remain in full force and our court will not look into such matters. Given that our court will not hear the matter anew, whatever fraud which exists should be thrashed out in the country of origin. Our court will base itself on the well established criteria and should there be compliance thereto the application prayed for will be granted.

Bibliography**Legislation referred to:**

The Reciprocal Enforcement of Judgments Act 1923 – Act 14/1923
The Foreign Judgments (Reciprocal Enforcement) Act 1961 – Act
35/1961
Article 546 of the “Code de Procédure Civile”

Cases cited:

D’Arifat and ors v/s Lesueur 1949 MR 191**
F.Renggli v/s Davie Shaw & anor 1998 MR 143
Crédit Lyonnais S.A v/s Patrick Lincoln 2008 SCJ 98*
S.A. Epson France v/s Société Intervenant Technologie Ltd 2012 SCJ
114
Dallah Albaraka (Ireland) Ltd v Pentasoft Technologies Limited 2015
SCJ 168
Bayer Healthcare LLC v Suvaman Trading Limited 2015 SCJ 356

2008 SCJ 98* means 2008 Supreme Court Judgment 98
1949 MR 191** means 1949 Mauritius Reports page 191

