

Trends and Developments

Contributed by:

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Steven and Associates

Steven and Associates is a globally oriented law firm in Mauritius, offering counsel and guidance on Mauritius law as well as international law concerning cross-border insolvency, international arbitration, dispute resolution, corporate and commercial law, legal opinions, general litigation in the Supreme Court of Mauritius, and Privy Council matters before the judicial committee of the Privy Council (UK). The firm's objective is to deliver precise, succinct and practical advice rooted in a profound understanding of the legal, regulatory and commercial land-

scape in Mauritius. Steven and Associates has gained recognition for its exceptional business acumen and unwavering commitment to its clientele. The team excels at assisting clients in devising innovative strategies while remaining adaptable to change. Steven and Associates boasts a unique offshore legal approach, enabling the firm to assemble elite legal teams from across the world. This international model provides the clarity needed to comprehend the challenges encountered by clients in both their local and global contexts.

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is a practising solicitor of England in Wales and the co-founder and managing partner of Steven and Associates. Steven is the

founder and president of the Mauritius branch of the International Law Association (ILA), demonstrating his profound influence in international law, and in this role has organised international conferences that provide valuable insights into emerging trends in international commercial arbitration. He excels in dispute resolution, litigation, corporate law and insolvency law, and has a key role in high-profile appeals. Steven's expertise, commitment, and innovative thinking continue to drive the legal conversation forward, marking him as a leader in the field of international dispute resolution and litigation.

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Introduction

The landscape of international arbitration in Mauritius is witnessing a notable expansion, marked by a significant rise in disputes governed by the International Arbitration Act 2008. The adjudication of these disputes by the Supreme Court of Mauritius has notably contributed to enhancing clarity and transparency within the realm of international arbitration in the Mauritian jurisdiction.

Evidencing a broader trend of escalating disputes resolved through arbitration on a global scale, these developments underscore a favourable momentum towards an increasingly pro-enforcement posture. The recent series of judgments delivered by the Supreme Court of Mauritius not only signifies a growing caseload but also underscores the judiciary's commitment to upholding and enforcing arbitration agreements in line with internationally recognised principles.

This trend not only reflects Mauritius' commitment to providing a robust framework for resolving international disputes but also reinforces the jurisdiction's attractiveness as a forum for parties seeking efficient and effective resolution

mechanisms. The consistent pro-enforcement stance adopted by the Mauritian courts serves to enhance confidence in the arbitral process and promotes certainty and predictability for parties engaged in cross-border transactions.

In conclusion, the rising prominence of international arbitration under the auspices of the International Arbitration Act 2008 in Mauritius, coupled with the judicious approach taken by the Supreme Court, underscores a growing trend towards fostering an environment conducive to dispute resolution through arbitration. This evolution not only positions Mauritius as an attractive hub for resolving international disputes but also underscores its commitment to upholding best practices and promoting fairness and equity within its legal framework.

Detailed Judgment Summary of OGD Services Holdings Ltd v Norscot Rig Management Pvt Limited (Mauritius) (2023 SCJ 455)

In a landmark decision rendered on 06 November 2023, the Supreme Court of Mauritius reaffirmed the fundamental principles governing the enforcement of arbitration awards under the

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Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”) and the robust International Arbitration Act (IAA) of 2008. In a resounding victory for the award creditor, the court underscored that the enforcement process is governed by a distinct and autonomous procedural framework, untethered by the conventional procedural rules that govern civil matters. Notably, the court emphasised that enforcement claims need not adhere to the procedural strictures imposed by statutes such as the Deposit of Powers of Attorney Act. This seminal judgment not only upholds the sanctity of arbitration awards but also underscores the primacy of the enforcement regime in safeguarding the rights of award creditors.

Background

The application was made under Article V of the New York Convention, which is enforced in Mauritius under Section 3 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act and Section 39 of the IAA.

A dispute arose between OGD (the applicant) and Norscot (the respondent), leading to arbitration in London, England. The sole arbitrator – Rt Hon Sir Phillip Otton, a former Lord Justice of the English Court of Appeal – awarded in favour of Norscot, including the costs of litigation funding. OGD acknowledged the award and made the payment but contested the decision to award litigation funding costs.

Amended motion paper

The orders sought by the OGD are:

- declaration that the arbitrator erred in ruling he had jurisdiction to award litigation funding costs;
- setting aside of the costs award made by the arbitrator;

- setting aside of the provisional order granting recognition and enforcement of the final award; and
- any other order the court deems fit.

Preliminary issues raised by OGD

OGD raised the following preliminary issues.

- Power of attorney issue – OGD argued that the power of attorney was not properly deposited, making the application void ab initio.
- Forum shopping and litispence – OGD raised concerns about potential overpayment due to enforcement in multiple jurisdictions.
- Exceeding jurisdiction – OGD questioned whether the arbitrator exceeded his jurisdiction in awarding litigation funding costs.
- Complete costs – OGD questioned whether “other costs” could include the full litigation funding costs.
- Public order in Mauritius – OGD argued that the enforcement of the award would breach Mauritian public order principles.

Court’s analysis

Power of attorney issue

Article IV of the New York Convention specifies the documents required for recognition and enforcement, which were verified by the Chief Justice. The documents required were:

- the duly authenticated original award or a duly certified copy; and
- the original arbitration agreement or a duly certified copy.

If the documents are not in an official language of the country, a certified translation is required.

The court found that compliance with the Deposit of Powers of Attorney Act was not required for

the enforcement claim. Rule 15 and Article IV set out the necessary documents, which were sufficient for the Chief Justice to issue the provisional order.

As regards legal precedents, the court referenced previous judgments (eg, *Digame Investment Company Limited & Ors v Apex Fund and Corporate Services (Mauritius) Ltd*) to affirm that an attorney does not require a special mandate to initiate proceedings.

Forum shopping and litispentence

The court referenced legal texts (eg, Gary B Born, Emmanuel Gaillard) supporting the legitimacy of seeking enforcement in multiple jurisdictions to locate assets. It was noted that parallel enforcement does not constitute true *lis pendens*, as it seeks relief against different assets.

Exceeding jurisdiction and complete costs

The arbitration and costs were governed by English law. The arbitrator's decision to award litigation funding costs was within his discretion and was upheld by the English courts. The court found these issues meritless as they had been previously adjudicated.

Public order in Mauritius

OGD failed to precisely state which public policy was contravened. The court emphasised that the applicable law was English law and that the issue of public policy should concern the award itself, not the costs. The court referenced the judgment in *Betamax Ltd v State Trading Corporation (Mauritius)* to underline the limited scope of public policy considerations in setting aside international arbitration awards.

Substantive application consideration

Section 39 of the IAA was not applicable as the juridical seat of arbitration was not in Mauritius.

The application did not fall within the scope of Section 39(2)(a)(i)–(iv) or Section 39(2)(b)(i)–(iv) of the IAA.

Article V of the New York Convention does not allow for declaratory orders or setting aside awards as requested by OGD. Article V states that “recognition and enforcement of the award may be refused”, not that the award can be declared erroneous or set aside.

Conclusion

In terms of the provisional order, the court found the arbitrator's decision on litigation costs was not a jurisdictional determination but an exercise of discretion, upheld by the English High Court. OGD's arguments regarding public policy were found to be without substance. The application was set aside with costs.

Mauritius Courts' Support for International Arbitration

Legal framework

Mauritius has adopted the New York Convention and the IAA, providing a robust legal framework for the enforcement of both domestic and international arbitral awards.

The Supreme Court (International Arbitration Claims) Rules 2013 rules provide specific procedural guidelines for the recognition and enforcement of international arbitration awards in Mauritius.

Case law supporting enforcement

Digame Investment Company Limited & Ors v Apex Fund and Corporate Services (Mauritius) Ltd (2023 SCJ 273) affirmed that an attorney does not require a special mandate to initiate proceedings, supporting the procedural aspects of enforcement.

Cruz City 1 Mauritius Holdings v Unitech Limited (2014 SCJ 100) emphasised that the jurisdictional objections verified by the supervisory court of the seat of arbitration should not be re-verified unless exceptional circumstances are present.

Betamax Ltd v State Trading Corporation (Mauritius) (2021 UKPC 14) clarified the limited scope of public policy considerations in setting aside international arbitration awards, reinforcing the finality and enforceability of arbitral decisions.

Support for international arbitration

The Supreme Court's analysis and decisions in *OGD v Norscot* reaffirm Mauritius' commitment to upholding the enforceability of international arbitration awards. The court consistently applied international principles and respected the decisions of supervisory courts from other jurisdictions.

The Supreme Court maintained a narrow interpretation of public policy exceptions and jurisdictional challenges, aligning with international arbitration standards and promoting a pro-enforcement stance.

Conclusion

The *OGD v Norscot* judgment demonstrates Mauritius' strong support for international arbitration and its alignment with global standards. The Supreme Court's decisions reflect a commitment to ensuring that arbitral awards are recognised and enforced, thus fostering a favourable environment for international arbitration in Mauritius.