

BROAD OVERVIEW OF JURISDICTION IN CONTRACT, TORT AND INSOLVENCY MATTERS

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Part 1: Contract

<u>JURISDICTION</u>	<u>CONTRACTS</u>
1. Local presence of defendant	✓
2. Local presence of director of corporate defendant	
3. Local branch, even if claim unconnected to branch	
4. Defendant does business locally, e.g. enters into contracts or has meetings	✓
5. Contract made locally	
6. Contract governed by local law	✓
7. Contract performable locally	
8. Local nationality or domicile of plaintiff	✓
9. Local assets, however small	

Box 1: The general principle is that the action under contract in Mauritius must be entered before the Court of either the domicile or place of residence of the defendant. The general principle is found under *articles 2 and 59* of the *Mauritian Code de Procedure Civile*. As a general rule, claims of MUR 50,000 or below are to be entered before the District Court – there being 10 District Courts in Mauritius. For claims over MUR 50,000 but below MUR 500,000, the claim is then to be entered before the Intermediate Court of Mauritius. Thus, claims of over MUR 500,000 are to be entered before the Supreme Court of Mauritius. The general rule is of course subject to statutory exceptions.

Box 4: The Mauritian courts will exercise jurisdiction in a contract claim where the defendant is a company that is incorporated outside of Mauritius, but which is registered locally.

Box 8: *Article 19* of the *Civil Code* allows a Mauritian national to sue a foreigner not domiciled or who is not a resident in Mauritius in respect of matters arising out of a contract entered either in Mauritius or abroad with the Mauritian. However, the plaintiff will have to obtain leave from the court to do so by satisfying the limited conditions set out in *section 61(1)* of the *Courts (Civil Procedure) Act*, which are:

- (a) the whole subject matter of the action is immovable property situate within the jurisdiction (with or without rents or profits);
- (b) an act, deed, will, contract, obligation or liability affecting immovable property situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action;
- (c) relief is sought against a person ordinarily resident within the jurisdiction;
- (d) the action is founded on a breach or alleged breach within the jurisdiction of a contract wherever made, which ought to be performed within the jurisdiction;
- (e) an injunction is sought as to anything to be done within the jurisdiction or a nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not sought; or
- (f) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

Article 20 of the Civil Code allows a foreigner to sue a Mauritian national before a Mauritian Court for contracts entered into abroad by the Mauritian national whether or not the Mauritian national, here the defendant, is domiciled or resident in Mauritius. Where this is the case, the plaintiff would have to seek the leave of the Supreme Court or a Judge of the Supreme Court, where the action is brought before the District or Intermediate Court, in order to do so. The Supreme Court, and indeed the Judge, as the case may be, has broad discretion on whether to grant leave or not.

Part 2: Tort

<u>JURISDICTION</u>	<u>TORTS/CIVIL WRONGS</u>
1. Local presence of defendant	✓
2. Local presence of director of corporate defendant	
3. Local branch, even if claim unconnected to branch	
4. Defendant does business locally, e.g. contracts, meetings, or tort harm suffered locally	✓
5. Tort committed locally	
6. Tort governed by local law	
7. Local nationality or domicile of plaintiff	
8. Local assets, however small	
9. Other	

Box 1: For actions in Tort, once again, the general principle under *articles 2 and 59* of the Mauritian *Code de Procedure Civile* will apply. It follows that such actions must be entered before the court of either the domicile or place of residence of the defendant.

Box 7: The Mauritian courts will not be able to exercise jurisdiction over an action in tort only on the basis that the plaintiff is a Mauritian national or a company registered or incorporated in Mauritius.

Articles 19 and 20 of the *Civil Code* that provide for the jurisdiction of Mauritian Courts on the basis of the nationality of the Plaintiff only apply to actions in contract. It is useful to note that *articles 19 and 20* are in fact exactly the same as *articles 14 and 15* of the French Civil Code, which are now interpreted by French Courts to extend jurisdiction to both actions in contract or tort. While the *cursus* in Mauritius has been to follow and apply French rules of private international law, being given that the internal laws on jurisdiction in civil matters in Mauritius are almost entirely of French origin, the Supreme Court in the case of *Immobilien Development v Karla & Ors [2011 SCJ 249]* expressly declined to follow the French approach. This is because there have not been in Mauritius the same legislative developments as in France to justify adopting the interpretation of the French courts.

Part 3: Insolvency

<u>JURISDICTION</u>	<u>INSOLVENCY OF INDIVIDUALS OR CORPORATES</u>
1. Local presence of defendant	✓
2. Local presence of director of corporate defendant	
3. Local branch, even if creditor's claim is unconnected to branch	
4. Debtor does business locally, e.g. contracts or meetings locally	✓
5. Contract on which claim is based is made locally	
6. Contract on which claim is based is governed by local law	
7. Contract on which claim is based is performable locally	
8. Local nationality or domicile of plaintiff	
9. Local assets, however small	
10. Other	

Boxes 1, 3 and 4

The general principle under the Insolvency Act is that a bankruptcy order may only be made against a debtor who is domiciled in Mauritius. In addition, the debtor must be present on the day on which the petition for bankruptcy order is presented, or have at any time, during the preceding 3 years to the date of the petition for the bankruptcy order, been ordinarily resident, or had a place of residence in Mauritius, or have carried on business in Mauritius. Section 5 of the Insolvency Act further states that a debtor will be deemed to have carried on a business where the debtor did so through a partnership or through an agent or manager of such partnership or where the debtor did so through an agent or manager.

The Courts in Mauritius will also have jurisdiction to wind up a company where the company is either incorporated or registered under laws of Mauritius. It follows that the Mauritian Courts will have jurisdiction in insolvency matters over a company incorporated outside Mauritius, but which is registered in Mauritius.

It is useful to note that the jurisdiction of Mauritian Courts is generally grounded on the French law notion of 'domicile'. Similar to French law and in accordance with the provisions of *article 3* of the *Civil Code*, the question of domicile before a Mauritian Court will necessarily have to be determined in accordance with the *lex fori*, that is the laws of Mauritius. In this exercise, Mauritian Courts will be guided by *article 102* of the *Civil Code* to determine the place of the debtor's main establishment.

As regard the notion of 'residence', guidance can also usefully be sought from other statutes. The *Non-Citizens (Property Restrictions) Act* provides, in relation to an individual, that a resident in Mauritius is a person who has his domicile in Mauritius, in relation to a body corporate, a body incorporated or registered under the laws of Mauritius. Guidance may also be sought from the definition of residence under *section 73* of the *Income Tax Act*. Of note under *section 73*, are the definitions of a resident company, société, trust, foundation and association of persons.