# COMMONWEALTH LAWYERS CONFERENCE GOA 2023



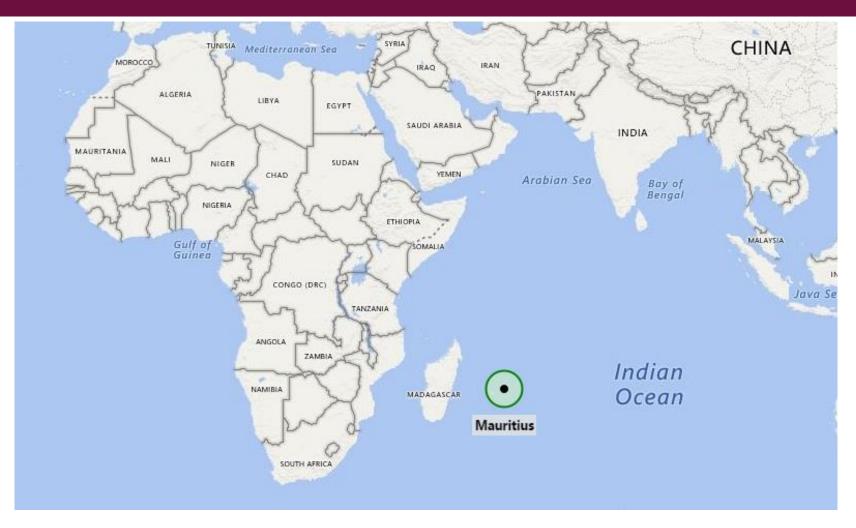
### Presentation by Mrs Narghis BUNDHUN Senior Counsel, Mauritius

### **TRANS-BORDER PROPERTY DISPUTES IN FAMILY LAW**

THE MAURITIUS PERSPECTIVE



### MAURITIUS: A BRIEF HISTORY





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- Mauritius was both a French colony (1715 1810) and British colony (1810 1968)
- Obtained its independence from the British in 1968: the British monarch, Elizabeth II remained the Head of State
- Became a Republic in 1992
- Estimate population of 1,235,260 inhabitant (2022)



### MAURITIUS: LEGAL SYSTEM

- The Mauritian Legal system is the perfect example of a mixed law system combining the codes of the French law and the Common-law of the English
- Marriages celebrated in Mauritius can only be heterosexual. At the time of celebration of such marriages, the parties can make a choice as regards the manner in which they wish their matrimonial regime to be governed
  - The Legal regime of Separation of goods
  - Marriage contract (Pre-nuptial/Ante-nuptial agreement)
  - The Default regime is that of the community of goods and property
- Civil partnerships or cohabitation do not have legal recognition however.....



### THE DEVOLUTION OF PROPERTY UPON DEATH

The division of the Estate of a deceased person has to comply with the mandatory provision of the civil code

- Descendants have a mandatory share in the estate
- Surviving spouse can have a share in the Estate as well



## WHEN WILL A DISPUTE ARISE?

- Divorce: Mauritius or abroad ?
- Divorce in Mauritius:
  - if the marriage was celebrated in Mauritius: if a contract (ante/ pre-nuptial) or legal regime = strict application of the Court
- Divorce outside of Mauritius:
  - If the marriage was celebrated in Mauritius: the parties will have to apply and obtain an exequatur of that judgment
    - The Mauritian court will not pronounce the exequatur of a foreign judgment for a mere asking: especially if the foreign Court did not take into account the legal regime that the parties had chosen at the time of the marriage in Mauritius
    - Judgment of Mrs Balgobin Mootoo v. Mootoo





## WHAT INTERNATIONAL LEGAL **ARRANGEMENTS ENSURE THAT** LITIGANTS USE THE APPROPRIATE **FORUM TO RESOLVE TRANS-BORDER** MATRIMONIAL AND FAMILY PROPERTY **DISPUTES**?

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 The Principle a non-citizen cannot own immoveable properties or shares in corporate entities that own immoveable in Mauritius Non-Citizens (Property Restriction) Act 1975,

IRS, ERS, PDS, Smart City

- The possible scenarios:
  - Marriage between:
    - 2 Mauritians who married outside Mauritius;
    - I Mauritian citizen and I foreigner (married in Mauritius or outside);
    - A Couple that owns immoveable properties in Mauritius
  - Properties: moveable/ immoveable properties that can be in the GBC/Trust



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- Considerations: if property found in Mauritius but acquired through GBC/TRUST
  - Usually companies are registered at the Registrar of Companies: public information that the public at large can consult (online)
  - GBC: very confidential = difficulties to find information including the very essential "ultimate beneficial owner"
    - Only way to find the information: ask for a Court order no Mauritian case-law on that type of disclosure yet
    - Can ask the Management Company for the information: but unlikely that they will disclose
  - Smart-City: when a property is bought through a Trust, there is still the issue of disclosure



Vignaud O. v/s. Temple Corporate Services [2011] SCJ 153



## HOW CAN CLIENTS WHOSE ERSTWHILE **SPOUSES ISSUE PROCESS OUTSIDE** THE JURISDICTION GET A FAIR HEARING, AND WHAT STEPS CAN THE **NON-RESIDENT LITIGANT'S LAWYER** TAKE TO ACHIEVE THIS?



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- A Jurisdiction that is very familiar with International dispute.
- Orders for disclosure/ freezing assets can be sought and obtained usually through the services of Mauritius solicitor and counsel





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- Judicial mediation: available and resorted to in Civil matters
- Arbitration: ad hoc or institutional (ex. Chamber of Commerce in Mauritius or Mauritius International Arbitration Centre)
  - Very confidential: do not know about any of those proceedings
  - Often encouraged by the Lawyers, but because of the bad blood between the spouses, they do not want to engage in ADR processes

