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# COMMONWEALTH LAWYERS CONFERENCE GOA 2023



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# 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?**



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

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

IRS, ERS, PDS, Smart City

- The possible scenarios:
  - Marriage between:
    - 2 Mauritians who married outside Mauritius;
    - 1 Mauritian citizen and 1 foreigner (married in Mauritius or outside);
    - A Couple that owns immovable properties in Mauritius
  - Properties: moveable/ immovable 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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## WHAT ARE THE CHANCES OF ALTERNATIVE DISPUTE RESOLUTION PROCESSES BEING EMPLOYED TO RESOLVE THE ISSUES, AND HOW ARE THEIR OUTCOMES ENFORCED?

- **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