



Commissioned by JPO

**Report on Mauritius' Intellectual Property System
and Operation**

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Japan External Trade Organization

Dubai Office

Intellectual Property Department

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1. EXECUTIVE SUMMARY

The purpose of this manual is to provide a practical overview to the nature, identification, protection, and management of intellectual property in Mauritius and how it functionally operates. It is intended to provide educational information and to raise awareness of the unique issues that surround intellectual property and its management in Mauritius.

Intellectual property is an asset for modern businesses. The various types of intellectual property rights comprise of patents, trademarks, industrial designs and models, utility models, layout Designs, copyright, plant breeder's rights, and trade secrets that serve to protect company ideas, technology, names, and products. Different strategies will apply for different companies, depending on their nature, size, and business strategy. Awareness concerning intellectual property rights is an increasingly important issue for researchers and business entities. The value of intellectual property is contingent upon the mode and efficacy of its utilisation/commercialisation. Adopting a systematic approach to the effective use and commercialisation of intellectual property will ensure good returns on the investment in intellectual property assets.

As a member of the World Trade Organization, Mauritius is obliged to comply with the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") Agreement, which came into effect in 1995. IP legislation in Mauritius is consistent with international norms.

An important consideration for Intellectual Property in Mauritius, is that Mauritius is currently not a member of the Patent Cooperation Treaty (PCT) nor the Madrid Protocol for Trademarks. The Industrial Property Act 2019 of Mauritius makes provision to adhere to the Patent Cooperation treaty and the Madrid Protocol for trademarks. On December 15, 2022, the Government of Mauritius deposited its instrument of accession to the Patent Cooperation Treaty. The PCT will enter into force for Mauritius on 15 March 2023.¹

1.1.1 Outline of Mauritius economics

Mauritius, officially the Republic of Mauritius, is an island nation in the Indian Ocean, which is known for its beaches, lagoons and reefs with Port Louis being the capital city. The most prominent languages you will hear on an everyday level are Mauritian Creole, French and English. Mauritian Creole is a French-based Creole and estimated to be spoken by around 90% of the population. French is the language that tends to be used in education and media, while English is the official language in Parliament, however most members will be eloquent in the French language. For government administration and the business of courts, French and English are generally accepted as the official languages.²

Mauritius spans a land mass of 2.040 km² (790 square miles), and has according to a 2019 estimate a population of approximately 1.265 million having a variety of ethnic, linguistic, and religious groups. In Mauritius 48.54% of the population are Hindu, 32.71% are Christian, 17.30% are Islam, and 1.45% practised other faiths.³

On 12 March 1968, Mauritius became independent and was a constitutional monarchy with the British monarch as head of State. In 1991 the constitutional monarchy was replaced by a republican form of government with a president as head of state. In Mauritius legislative power is vested in the National Assembly whereas executive power is exercised by the Council of Ministers.⁴

Mauritius is a member of the African Union, the Economic Community of West African States (ECOWAS), and the Commonwealth of Nations.

Minerals are some of the most critical natural resources in Mauritius as they contribute significantly to the economy. The chief minerals extracted from the island include basalts and lime. Mauritian basalt is of high quality and is primarily used in building and construction. Lime in Mauritius is obtained from two primary sources, the

¹ https://www.wipo.int/pct/en/news/2022/news_0056.html

² <https://www.nationsonline.org/oneworld/mauritius.htm> accessed as at 17 November 2022

³ <https://en.wikipedia.org/wiki/Mauritius> accessed as at 17 November 2022

⁴ <https://www.britannica.com/place/Mauritius> accessed as at 17 November 2022

coral sand around the island and the local coral limestone. There are several deposits of polymetallic nodules within the waters around Mauritius that are believed to be extremely valuable. Research has shown that the nodules contain high quantities of manganese and iron as well as small quantities of Cobalt.⁵

Since the 1970 there has been a steady increase in manufacturing in Mauritius, with textiles, food processing, metal and metal products, and chemical products being economically important manufactures. Foreign Investment into Mauritius has been increased due to the Mauritius Export Processing Zone. This concentrates on labour-intensive processing of imported raw materials or semifinished goods for the export market.⁶

The Stock Exchange of Mauritius Ltd (SEM) is the principal stock exchange in Mauritius and the local currency used is the Mauritian Rupee.⁷ The gross domestic product (GDP) of Mauritius is 11.157 billion USD.⁸

2. OVERVIEW OF THE IPR SYSTEM IN MAURITIUS

In 2017, the Intellectual Property Development Plan (IPDP) was developed with the assistance of the World Intellectual Property Organization (WIPO). The IPDP was developed due to the important role that Intellectual Property (IP) plays on the economic and cultural development and to reinforce the Intellectual Property policy of Mauritius.

The purpose of the IPDP is to ensure that the potential users, organisations involved in IP enforcement, and generators of IP have the technical capacity and know-how to use IP as a tool to promote research, innovation, investment, and economic growth.⁹

The following were recommended by the IPDP and have subsequently been implemented:

- Finalize and enact the Industrial Property Bill;
- Expedite the accession process to the Madrid Protocol and Hague Agreement;
- Established a single IP office based on international best experiences; and
- Strengthen the legal framework to cover protection of new plant varieties.

The IDP also recommended that the following be implemented and which is currently still ongoing:

- Expedite the accession process to the PCT;
- Provide IP promotional materials such as the PANORAMA Multimedia Toolkit and WIPO comic books and support their translation into the country's national languages; and
- Design and implement intellectual property awareness programs tailored to meet the needs of enforcement officers and create and strengthen awareness of consumers on the adverse impact of IPRs infringement.

2.1 Recent IP updates

The Industrial Property Act 2019 (hereinafter referred to as “the Act”) was passed by the Mauritius Parliament on 30 July 2019. The objective of the Act is to update and strengthen Intellectual Property Protection in order to deal with challenges which are currently being faced in the globalized economy. The Act was approved on 9 August 2019 by the Interim President of the Republic of Mauritius and published in the Mauritius Government Gazette on 10th August 2019. On 31 January 2022, the Act was proclaimed and came into force in Mauritius. The Industrial Property Regulations 2022, made under the Act, also came into force on 31 January 2022.¹⁰

The Industrial Property Act 2019 consists of several measures that will make the Mauritian Intellectual Property system more responsive to the needs of researchers, investors, and entrepreneurs. The Industrial Property

⁵ <https://www.worldatlas.com/articles/what-are-the-major-natural-resources-of-mauritius.html> - accessed as at 9 November 2022.

⁶ <https://www.britannica.com/place/Mauritius/Resources-power-and-manufacturing> - accessed as at 9 November 2022

⁷ <https://www.stockexchangeofmauritius.com/about-us/sem-at-a-glance> accessed as at 17 November 2022

⁸ <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=MU> accessed as at 17 November 2022

⁹ <https://www.mauritiustrade.mu/en/intellectual-property-policy> accessed as at 17 November 2022

¹⁰ <https://www.kashishworld.com/blog/introduction-of-the-industrial-property-act-2019-mauritius/>

Act2019 is now a combined Act covering all industrial property related issues in one Act, including patents, designs, utility models, trademarks, geographical and plant varieties and repealed the following Acts:

- The Geographical Indications Act;
- The Layout Designs (Topographies) of Integrated Circuits Act; and
- The Patents, Industrial Designs and Trademarks Act, 2002.¹¹

2.1.1 Changes brought about by the approval of the Industrial Property Act 2019

2.1.1.1 Trademarks

As per section 2 of the Act, the definition of a mark has been updated to:

“(a) means a visually perceptible sign or combination of signs, capable of distinguishing the goods or services of an enterprise from those of other enterprises; and

(b) includes –

(i) a certification mark and a collective mark; and

(ii) words, letters, numerals, figures, pictures, a combination of colours, the shape of goods or parts of goods, or the packaging or other conditioning of goods”

The change in the definition of a trademark brings about the recognition of a certification mark, colour, and shape marks, as well as expressly recognizing packaging as a mark.

The Regulations specify the types of marks as word marks, figurative marks, shape marks, position marks and colour marks, which can consist of only one colour or a combination of colours.

Further important changes which has been brought about by the Act includes:

- Protection of Geographical Indications (GI);
- The Act makes provision for trademark filings via the Madrid Protocol. It is however important to note that Mauritius is currently not a signatory to the Madrid Protocol Trademark;
- Honest Concurrent User permitted;¹²
- Registration of Certification trademarks;¹³
- Division of applications permitted;¹⁴
- 6 months renewal grace period;¹⁵
- Recordal and publication of licenses;
- An increase in official fees;
- The jurisdiction of the Industrial Property Tribunal now specifically allows for an appeal relating to the rejection of an application for a certificate, the rejection of an opposition to the registration of an industrial property; and an application by any interested person, for the invalidation of, inter alia, a mark or geographical indication. It is noted, however, that the Regulations refer to a request for removal on the ground of non-use and for cancellation to be made to the Director;
- Separate absolute grounds for refusal of a mark from relative grounds of refusal, based on third party rights;¹⁶
- Absolute grounds of refusal now include the mark being devoid of any distinctive character; the mark consisting solely of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of goods or of rendering of services, or other characteristics of goods or services; the mark consisting solely of a sign or indication that has become generic in current language or in the bona fide established practices of the trade, or is a usual or recognized technical or scientific name of a product or service; consists solely of a shape that results from the nature of the goods or provides a technical result, functional advantage or substantial value to the goods;

¹¹ <https://www.mondaq.com/patent/842718/the-industrial-property-act-2019> - accessed as at 17 November 2022

¹² Section 91(3)(b) of the Act

¹³ Section 102 of the Act

¹⁴ Section 95 of the Act

¹⁵ Section 97(3) of the Act

¹⁶ Section 122 and 123 of the Act

- In addition to a prior registration and well-known rights, relative grounds of refusal now include the general ground that “the mark cannot be used in Mauritius by virtue of any law” and allow for opposition based on prior use only (absent a registration or pending application) and where evidence of prior use is submitted; and
- The grounds for invalidation of the registration of a mark have been expanded to include invalidation based on the registration mark does not comply with the definition of a ‘mark’ as well as where the mark does not comply with the requirements of the Act as discussed under paragraph 3.2.2.

2.1.1.2 Patents/Designs

The Act introduces provisions relating to the protection of Plant Varieties and Utility Models which were not protected under the previous legislation.

Quite surprisingly, the Act also includes provisions for protection for designs registered via the Hague Agreement and Patents via the Patent Co-Operation Treaty (PCT). Mauritius is currently a signatory of the Hague Agreement but more than 2 years after its Promulgation, it is still not a member of the PCT. On December 15, 2022, the Government of Mauritius deposited its instrument of accession to the Patent Cooperation Treaty. The PCT will enter into force for Mauritius on 15 March 2023.¹⁷

Finally, the Industrial Property Regulations 2022 include increases to the official fees payable for all IP matters and, much to the relief of patent owners, now makes provision for the restoration of a patent which was removed from the register due to non-payment of renewal fees.¹⁸

2.2 Overview of IP Office

The Act provides for a department within the Ministry, named The Industrial Property Office of Mauritius (IPOM), and which is administered by a Director. The Director is a public officer appointed by the Public Service Commission and is responsible for controlling, operating, and managing the daily operations of the IPOM. The new IPOM implements and administers the Act and further assists in the development, promotion, and protection of the industrial property governed by the Act 2019.¹⁹

The details of the Industrial Property Office of Mauritius are as follows:

| | |
|-----------|---|
| Address | 11th Floor, Sterling House, Lislet Geoffroy Street, Port Louis, Republic of Mauritius |
| Telephone | (230) 213 8231, 208 5714, 208 7352 |
| Telefax | (230) 210 9702 |
| Email | rbeergaunot@govmu.org (Ranjive Beergaunot – Acting Controller) |
| Website | http://foreign.govmu.org/English/AboutUs/Pages/International-Trade-Division.aspx |

Other responsibilities of the IPOM include implementing strategies and actions for the development of the industrial property, compiling, and maintaining a database for the industrial property, devising, and assisting in the preparation of educational and sensitization programs on industrial property, and assisting in researching industrial property.

2.2.1 Formation of the Intellectual Property Council

The Act also makes provision for the formation of an Intellectual Property Council, an independent overarching institution in Mauritius, looking at all the IP-related issues. It will regroup representatives from several departments, ministries, and private sectors involved in the generation, enforcement, and protection of IP assets and portfolio services.²⁰

¹⁷ https://www.wipo.int/pct/en/news/2022/news_0056.html

¹⁸ Section 22(3) of the Act

¹⁹ <https://foreign.govmu.org/Pages/Industrial%20Property%20Office/ABOUT-US0409-2313.aspx>

²⁰ <https://foreign.govmu.org/Pages/Industrial%20Property%20Office/ABOUT-US0409-2313.aspx>

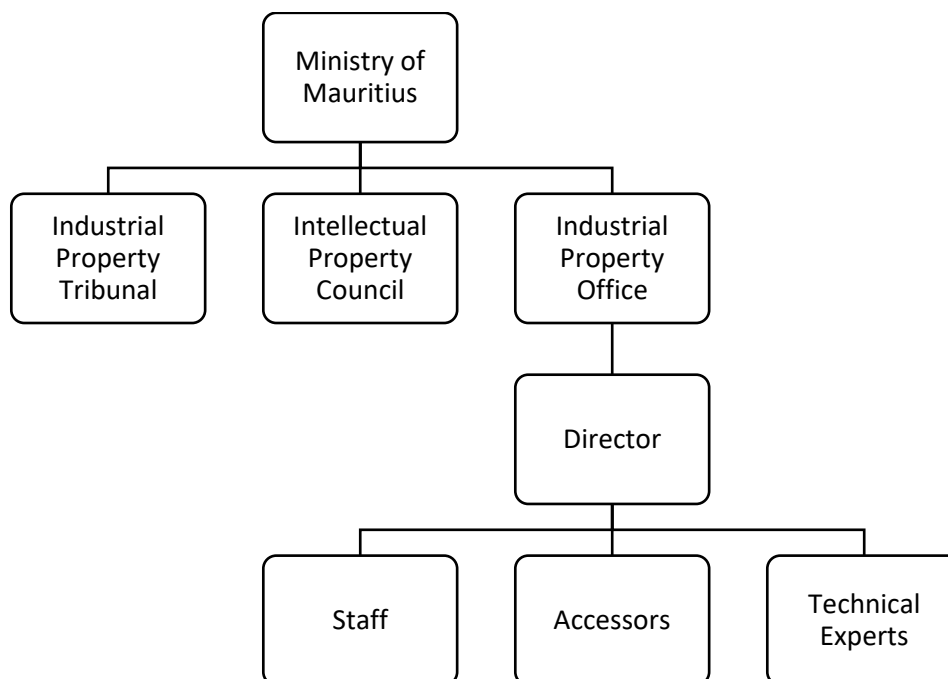
The Intellectual Property Council shall advise the Minister on matters related to Intellectual Property and ensure coordination among the public and private sectors in the formulation of intellectual property policies, and enforcement of intellectual property rights.²¹

2.2.2 Industrial Property Tribunal

The Act also makes provision for the formation of an Industrial Property Tribunal. The Tribunal shall have jurisdiction to hear and determine:

- An appeal by any person who feels aggrieved by a decision of the Director to reject his application for a certificate;
- An appeal by any person who feels aggrieved by a decision of the Director to reject his opposition to the registration of an industrial property; and
- An application by any interested person, to the Tribunal, to invalidate the grant of a patent or the protection of a plant variety, or the registration of a utility model, a layout-design, an industrial design, a mark, or a geographical indication.

2.2.3 Organizational Structure



2.2.4 Number of Staffs and Examiners

The last available data for the number of staff and examiners was published in 2016, where the staff consisted of 10 technical officers with a support staff of 7 officers.

The Act makes provision for the Director, subject to the approval of the Minister, appoint accessors and technical experts on such terms and conditions as he/she may determine.

2.2.5 Existence of Formal and Substantive Examination

The Act makes provision for both substantive and formal examination of IP in Mauritius. From information gathered as of writing only formal examination is conducted and there is no indication when substantive examination will be started.

²¹ <https://foreign.govmu.org/Pages/Industrial%20Property%20Office/ABOUT-US0409-2313.aspx>

As the process of examination differs between the different type of Intellectual Property rights, the process is discussed under each Intellectual Property right.

2.2.6 Obtaining information from the Official Gazette

The IPOM unlike other African jurisdictions does not have its own publication journal. The IPOM prepares publication notices that are generated from the system and these are sent to the local Mauritius governmental printing office, responsible for the publication of all notices in the Government Gazette. An interested party can purchase the Gazette by paying the appropriate fees to the printing office.²² A legal representative in Mauritius will be able to obtain the Gazette from the printing office on behalf of a client.

Mauritius does not have an online register or an online gazette.

2.2.7 Budget

No indication of the current budget of the Industrial Property Office of Mauritius is publicly available.

2.3 National IP Laws and Regulations

Main IP laws²³

- The Industrial Property Act 2019 (Act No. 15 of 2019)
- The Copyright Act 2014 (Act No. 2 of 2014)

IP related Laws²⁴

- Customs Act 1988 (Act No.47 of 1988, as amended up to Act No. 7 of 2020)
- The Code de Commerce (Amendment) Act 2018 (Act No. 9 of 2018)
- Consumer Protection (Price and Supplies Control) Act 1998 (Act No. 12 of 1998, as amended up to Regulations No. 115 of 2016)
- Business Registration Act 2002 (Act No. 40 of 2002, as amended up to Regulation No. 231 of 2012)
- Consumer Protection Act 1991 (Act No. 11 of 1991, as amended by Act No. 27 of 2013)
- The Open University of Mauritius Act 2010 (Act No. 2 of 2010)
- Competition Act 2007 (Act No. 25 of 2007, as amended by Act No. 27 of 2012)
- Fair Trading Act 1979 (Act No. 26 of 1979, as amended up to Act No. 25 of 2007)
- Genetically Modified Organisms Act 2004
- The Protection Against Unfair Practices (Industrial Property Rights) Act 2002
- Information Technology (Miscellaneous Provisions) Act 1998

Implementing Rules/Regulations relating to Intellectual Property²⁵

- Copyright Regulations 2020
- Customs Regulations 1989 (Regulations No. 46/1989, as amended up to Regulations No. 247 of 2020)
- Consumer Protection (Consumer Goods) (Maximum Mark-Up) Regulations 1998 (Regulations No. 150 of 1998, as amended up to Regulations No. 212 of 2016)
- Commodities (Indication of Origin) (Amendment) Regulations (Regulations No. 50 of 2005)
- Commodities (Indication of Origin) Regulations 1981 (Regulations No. 170 of 1981, as amended by Regulations No. 50 of 2005)
- The Industrial Property Regulations 2022

²² https://www.wipo.int/edocs/mdocs/africa/en/wipo_ip_mpt_16/wipo_ip_mpt_16_t_8_i.pdf

²³ WIPO Lex, Member Profile, Mauritius accessed as at 11 November 2020.

²⁴ WIPO Lex, Member Profile, Mauritius accessed as at 11 November 2020.

²⁵ WIPO Lex, Member Profile, Mauritius accessed as at 11 November 2020.

2.4 Is IP law based on common law, civil law, or a mixture of both?

As a member of the World Trade Organization (“WTO”), Mauritius is obliged to comply with the Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) Agreement, which came into effect in 1995. IP legislation in Mauritius is consistent with international norms.

The basic substantive content of part of Mauritian law is thus derived from the French codes: the Civil Code which has been amended over the years to adapt the local context, the Penal Code which has been re-enacted as the Criminal Code and the Code of Commerce has been included to a lesser extent. While on the other hand, the law of procedure and evidence are from the English Law, provisions of the Code de Procedure Civile are still in force. This is an inevitable result of the adoption of a court structure and the remedies which they provide in the tradition of the common law. The Mauritian constitution follows the “Westminster model”. The Mauritian legal system has borrowed law relating to trade and commerce. Shipping, finance, banking, company law, negotiable and bankruptcy instrument. The legislation and statutory interpretation have been largely inspired by English Law and Jurisprudence. The Mauritian law has emerged from a mixture of both English and French Law and thus has its own authentic Identity.

2.5 Examination Guidelines

Currently no examination guidelines are available, as substantive examination in relation to patents, industrial designs, and utility models is currently not conducted. The act does make provision for the substantive examination but to date no substantive examination is currently conducted..

2.6 International Treaties that Mauritius joins²⁶

Mauritius is a member of the following International Treaties and Conventions relating to Intellectual Property:

- Berne Convention for the Protection of Literary and Artistic Works;
- Convention Establishing the World Intellectual Property Organization;
- International Plant Protection Convention;
- Paris Convention for the Protection of Industrial Property;
- Protocol 1 annexed to the Universal Copyright Convention as signed at Geneva on 6 September 1952 concerning the application of that Convention to works of stateless persons and refugees;
- Protocol 2 annexed to the Universal Copyright Convention as signed at Geneva on 6 September 1952 concerning the application of that Convention the works of certain international organizations;
- Protocol 3 annexed to the Universal Copyright Convention as signed at Geneva on 6 September 1952 concerning the effective date of instruments of ratification or acceptance of or accession to that Convention;
- Universal Copyright Convention of 6 September 1952, with Appendix Declaration relating to Article XVII and Resolution concerning Article XI; and
- World Trade Organization (WTO) - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994).

²⁶ [WIPO Lex, Member Profile, Mauritius](#) accessed as at 11 November 2020.

2.7 IP Statistics²⁷

2.7.1 IP filing statistics

| Year | Patents | | | Trademarks | | | Industrial Designs | | |
|------|----------|--------------|-------|------------|--------------|-------|--------------------|--------------|-------|
| | Resident | Non-Resident | Total | Resident | Non-Resident | Total | Resident | Non-Resident | Total |
| 2011 | 1 | 19 | 20 | 826 | 1058 | 1884 | 62 | 20 | 82 |
| 2012 | 4 | 14 | 18 | 839 | 997 | 1836 | 19 | 52 | 71 |
| 2013 | 2 | 18 | 20 | 787 | 971 | 1758 | 10 | 5 | 15 |
| 2014 | 3 | 18 | 21 | 855 | 1000 | 1855 | 0 | 0 | 0 |
| 2015 | 1 | 20 | 21 | 991 | 1058 | 2049 | 0 | 0 | 0 |
| 2016 | 2 | 36 | 38 | 1110 | 1218 | 2328 | 0 | 0 | 0 |
| 2017 | 1 | 18 | 19 | 1035 | 1057 | 2092 | 0 | 0 | 0 |
| 2018 | 16 | 13 | 29 | 2523 | 2704 | 5227 | 75 | 24 | 99 |
| 2019 | 4 | 23 | 27 | 2565 | 2048 | 4613 | 115 | 11 | 126 |
| 2020 | 6 | 19 | 25 | 2466 | 1968 | 4434 | 84 | 2 | 86 |

Table 1: Mauritius IP filing statistics

Table 1 above shows the patent, industrial design, and trademark filing statistics between 2011 and 2020. The filings are divided into resident filing, which refers to an application filed by a resident of Mauritius, and non-resident filing, which refers to an application filed by a foreign applicant.

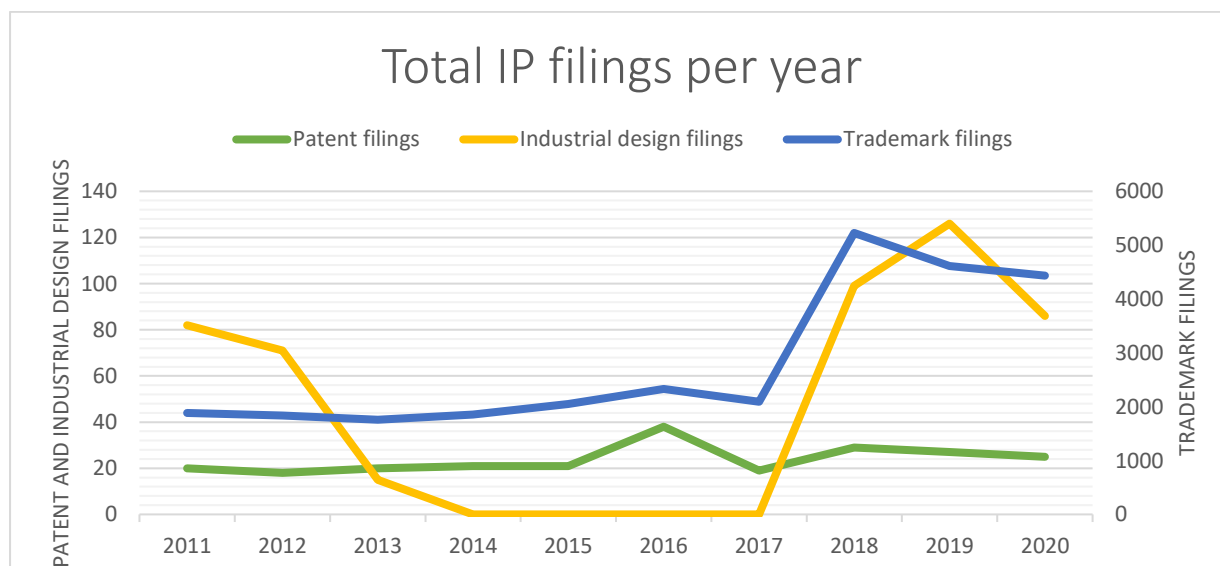


Chart 1: IP filings in Mauritius between 2011 and 2020

Chart 1 shows the total patents, Industrial designs, and trademarks filed in Mauritius between 2011 and 2020.

²⁷ https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=MU

2.7.2 IP Grant/Registration Statistics

| Year | Patents | | | Trademarks | | | Industrial Designs | | |
|------|----------|--------------|-------|------------|--------------|-------|--------------------|--------------|-------|
| | Resident | Non-Resident | Total | Resident | Non-Resident | Total | Resident | Non-Resident | Total |
| 2011 | 0 | 2 | 2 | 828 | 1118 | 1946 | 47 | 12 | 59 |
| 2012 | 0 | 6 | 6 | 736 | 834 | 1570 | 25 | 10 | 35 |
| 2013 | 0 | 5 | 5 | 747 | 1050 | 1797 | 14 | 52 | 66 |
| 2014 | 0 | 9 | 9 | 717 | 833 | 1550 | 0 | 0 | 0 |
| 2015 | 0 | 4 | 4 | 907 | 1018 | 1925 | 0 | 0 | 0 |
| 2016 | 0 | 2 | 2 | 914 | 1147 | 2061 | 0 | 0 | 0 |
| 2017 | 0 | 4 | 4 | 1048 | 953 | 2001 | 0 | 0 | 0 |
| 2018 | 0 | 7 | 7 | 2315 | 2549 | 4864 | 7 | 16 | 23 |
| 2019 | 3 | 1 | 4 | 2219 | 1752 | 3971 | 86 | 20 | 106 |
| 2020 | 1 | 16 | 17 | 2180 | 1957 | 4137 | 98 | 4 | 102 |

Table 2: Mauritius IP grant/registration statistics

Table 2 above shows the granted/registered patents, industrial designs, and trademarks between 2011 and 2020. The filings are divided into resident filing, which refers to an application filed by a resident of Mauritius, and non-resident filing, which refers to an application filed by a foreign applicant.

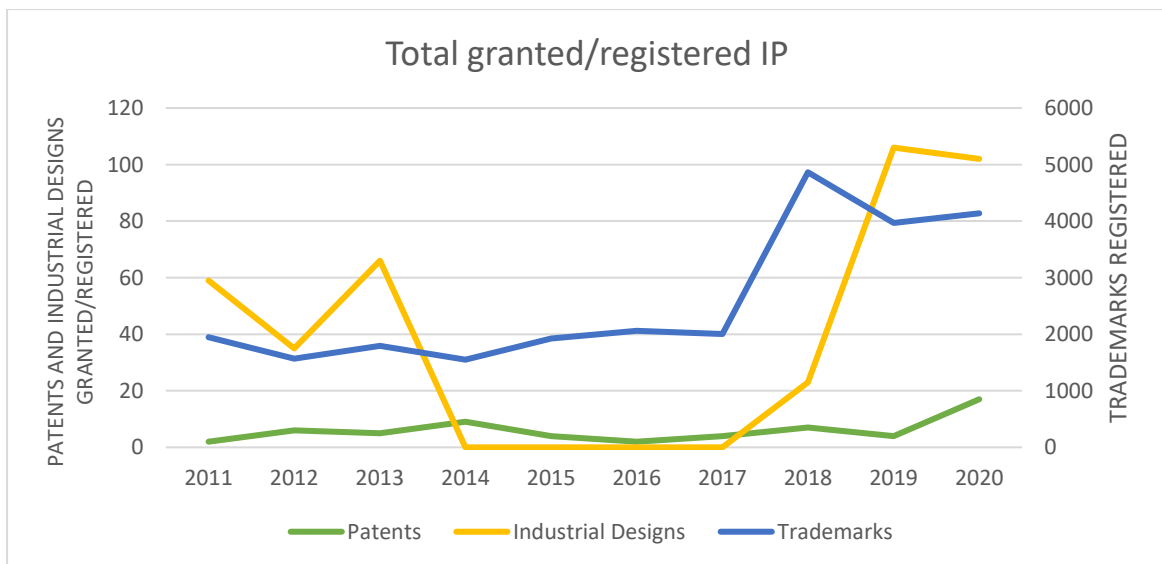


Figure 2: Granted/registered IP in Mauritius between 2011 and 2020

3. Definition of IP Rights and Requirements for Qualified Applications

3.1 Patents

Patents in Mauritius are governed by the Industrial Property Act, 2019 and the Industrial Property Regulations 2022 which repealed the Patents, Industrial Designs and Trademarks Act, 2002.

Mauritius is a Member State of the World Intellectual Property Organization (WIPO) through the Stockholm Act (1967) of the WIPO Convention²⁸. Mauritius is also a party to:

- The Paris Convention for the Protection of Industrial Property (since 24 September 1976)²⁹; and
- The African Regional Intellectual Property Organization (ARIPO).³⁰

Mauritius is also a signatory of the Trade Related aspects of the Intellectual Property Rights (TRIPS).³¹

It is important to note that as at November 2022, Mauritius is not a party to the Patent Cooperation Treaty (PCT) for the international registration of Patents. The Industrial Property Act 2019 does however make provision for Mauritius to adhere to the Patent Cooperation Treaty. The process of accession to the PCT is however expected to be initiated by the Government of Mauritius in due course. Until the process of accession to the PCT is completed, an applicant is therefore unable to file a national phase application in Mauritius based on a PCT application. It is important to note that on December 15, 2022, the Government of Mauritius deposited its instrument of accession to the Patent Cooperation Treaty. The PCT will enter into force for Mauritius on 15 March 2023.³²

An international patent application under the Patent Cooperation Treaty, (a “PCT Application”) may however still be filed through ARIPO with Mauritius as designated state.. After 15 March 2023 an applicant can file either a national phase application in Mauritius based on a PCT application or a Regional ARIPO application where Mauritius is designated.

A national application in the first instance or an application in terms of the Paris convention, must be filed with the Mauritius Industrial Property Office. The application is after filing subject to both examinations as to formalities and substantive examination.

An ARIPO regional application, with Mauritius as a designated country may be filed with either the ARIPO Patent Office or the Industrial Property Office of any contracting state.

3.1.1 Definition

A patent means the title granted to protect an invention. The title is awarded only temporarily and shall expire twenty years after the filing date of the application for the patent.³³

Mauritius law grants patents to inventions, which is defined as an idea of an inventor which provides, in practice, the solution to a specific problem in the field of technology and which may be, or may relate to, a product or a process.³⁴

²⁸ <https://wipolex.wipo.int/en/treaties/ShowResults?code=MU> as accessed on 17 November 2022

²⁹ <https://wipolex.wipo.int/en/treaties/ShowResults?code=MU> as accessed on 17 November 2022

³⁰ <https://www.aripo.org/member-states/> as accessed on 17 November 2022

³¹ <https://wipolex.wipo.int/en/treaties/ShowResults?code=MU> as accessed on 17 November 2022

³² https://www.wipo.int/pct/en/news/2022/news_0056.html

³³ Definition of a patent as per section 2 of the Act

³⁴ Definition of an Invention as per Section 2 of the Act

3.1.2 Requirements

An invention is patentable if it is:

- new;
- involves an inventive step; and
- is industrially applicable.³⁵

3.1.2.1 Novelty

In Mauritius absolute novelty is required and an invention shall be new where it is not anticipated by prior art.³⁶

The prior art shall include anything disclosed publicly anywhere in the world, before the filing date or, where applicable, the priority date whether by publication in tangible form, by oral disclosure, by use or in any other manner.

A disclosure shall not be considered as prior art when occurred: –

- within the 12 months preceding the filing date or the priority date; and
- following an act committed by the applicant or his predecessor in title or an abuse by a third party with regard to the applicant or his predecessor in title³⁷

Mauritius therefore has a 12-month grace period in respect of a disclosure which was made by the applicant or his predecessor in title or an abuse by a third party.

3.1.2.2 Inventive Step

An invention shall involve an inventive step where, having regard to the differences and similarities between the claimed invention and the prior art, the claimed invention as a whole would not have been obvious to a person having ordinary skill in the art at the filing date or, where applicable, the priority date of the claimed invention.³⁸

3.1.2.3 Industrial Applicability

An invention shall be industrially applicable where it can be made or used in an industry.³⁹

3.1.2.4 Unpatentable subject matter

The following inventions are excluded from patent protection:⁴⁰

- discoveries, scientific theories, and mathematical methods;
- literary, dramatic, musical, or artistic works and any other aesthetic creation;
- schemes, rules, or methods for doing business, performing purely mental acts and playing games;
- computer programmes;
- methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods practised on the human or animal body;
- known substances for which a new use has been discovered and not applicable to the use itself, where they constitute a patentable invention
- plants and animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes; and
- an invention, the primary or intended use of which would be contrary to public order or morality, or whether the commercial exploitation of the invention is prohibited by law.

³⁵ Section 11(1) of the Act

³⁶ Section 11(2) of the Act

³⁷ Definition of Prior Art as per Section 2 of the Act

³⁸ Section 11(3) of the Act

³⁹ Section 11(4) of the Act

⁴⁰ Section 10(a)-(h) of the Act

3.1.3 Term of Protection

A patent shall expire 20 years after the filing date of the application for a patent subject to the payment of annual fees as described below. In Mauritius the Gregorian calendar is used.⁴¹

In the case of an ARIPO regional phase application, claiming priority from a PCT application, where Mauritius is designated, the patent shall expire 20 years after the filing date of the PCT application.

3.1.4 Application/Registration Procedure

3.1.4.1 Place of Application

Patents of Invention are filed with the Director of the Industrial Property Office of Mauritius (IPOM) on the prescribed form and must be accompanied by payment of the application fee, which is currently 10,000 MUR (30,245.63 JPY)⁴². The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis.

3.1.4.2 Eligibility

The right to a patent shall belong to the inventor.⁴³ Where two or more persons have jointly made an invention, the right to the patent shall be long to them jointly.⁴⁴ In the absence of an agreement to the contrary, each inventor shall have equal undivided shares in the right to the patent.

Where two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the patent, if the application is not withdrawn, abandoned, or rejected.⁴⁵

Where an invention is made in the execution of, or under, an employment contract, the right to the patent shall, in the absence of any contrary contractual provision, belong to the employer. It is important to note that where the economic gains obtained by the employer are disproportionately high as compared to the employee's salary and the reasonable expectations of gain that the employer had from his employee's inventive output at the time the employer hired the employee, the employee shall be entitled to appropriate compensation which shall not be less than one third of the net direct and indirect gains obtained by the employer from the exploitation of the invention.⁴⁶

Where:

- an invention is made by an employee, otherwise than in the execution of, or under, an employment contract; but
- the employee used material, data or know-how of the employer to make the invention,
- the right to the patent shall, in the absence of any contrary contractual provision, belong to the employer, but the employee shall be entitled to appropriate compensation which shall not be less than one third of the net direct and indirect gains obtained by the employer from the exploitation of the invention.⁴⁷

Any invention claimed in an application for a patent filed by an employee within one year from the date of termination of an employment contract which falls within the scope of the former employer's main business shall be presumed to have been made under the terminated contract, unless the employee produces proof to the contrary.⁴⁸

⁴¹ Section 22(1) of the Act.

⁴² Based on foreign exchange rate at 9 January 2022 of 1 MUR = 3.02456 JPY

⁴³ Section 12(1) of the Act

⁴⁴ Section 12(2) of the Act

⁴⁵ Section 12(3) of the Act

⁴⁶ Section 12(4)(a) and 12(4)(b) of the Act

⁴⁷ Section 12(5) of the Act

⁴⁸ Section 12(6) of the Act

It is important to note that any promise made or undertaking given by an inventor to his employer to the effect that he waives any remuneration he is entitled to under this section shall be void and of no effect.⁴⁹

The obligation of an employer to pay compensation shall arise from the making, and the exploitation, of a patentable invention. The failure or negligence of an employer to successfully procure a patent shall not exempt him from paying compensation to the employee.⁵⁰

An employer may, within 60 days from the date of receipt of a communication from an employee about the making of the invention, give written notice to the employee that he is not interested in the invention and that the employee may procure the right to the patent exclusively. Where an employer fails to give the said notice he shall be deemed to be interested in the invention.⁵¹

Where an employee carries out the commercial exploitation of an invention, the employer shall be entitled to compensation that is proportionate to the economic value of the materials, data or know-how used by the employee in making the invention.⁵²

If an employer fails to file an application for a patent within one year from the date, he received written notification from an employee of the making of an invention, the right to the patent shall belong to the employee.⁵³

Any right to a patent may be assigned or may be transferred by succession.⁵⁴

An inventor shall be named as such in the patent unless he requests the Director, in writing, not to do so. Any promise made or undertaking given by an inventor to any person to the effect that he will make the said request not to be named as the inventor shall be void and of no effect.⁵⁵

3.1.4.3 Requirements

Patents of Invention are manually filed with the Director of the Industrial Property Office of Mauritius using the prescribed form and must be accompanied by payment of the application fee, which is currently 10,000 MUR (30,245.63 JPY). Where the application fee is not paid, the Director shall notify the applicant, in writing, that the application shall be considered not to have been filed unless payment is made within 2 months from the date of receipt of the notification.⁵⁶

The application for a patent must include:

- power of Attorney (notarised) (must be filed together with the applicant or, where the power of attorney is not available at the time the application is filed, it shall be filed within 2 months from the filing date of the application);
- title, a description of the invention and the claims, including any drawing and an abstract in English (required on the day of filing);
- assignment of Invention, if applicable (can be late filed, no set deadline); and
- priority document with verified English translation (if filed late, the applicant shall within 3 months of a written request from the Director furnish the priority document. The 3 months deadline may be extended by Director on good cause shown. If the priority document is not in English, an English translation must be furnished within 6 months from the date of request).⁵⁷

Where the residence or principal place of business of an applicant is outside of Mauritius, a law practitioner resident and practicing in Mauritius or an agent approved by the Minister, shall represent him.⁵⁸

⁴⁹ Section 12(7) of the Act

⁵⁰ Section 12(8)(a) of the Act

⁵¹ Section 12(8)(b) of the Act

⁵² Section 12(8)(c) of the Act

⁵³ Section 12(9) of the Act

⁵⁴ Section 12(10) of the Act.

⁵⁵ Section 12(11) of the Act.

⁵⁶ Section 13(1) and 13(7) of the Act

⁵⁷ Section 12(2) of the Act

⁵⁸ Section 136 of the Act.

Where a disclosure occurred following an act by the applicant or his predecessor in title or an abuse by a third party with regard to the applicant or his predecessor in title the applicant shall indicate in the application form and shall furnish in writing, together with the application or within one month from the filing of the application, full particulars of the disclosure.⁵⁹

Where the disclosure was made at an exhibition, the applicant shall file a duly authenticated certificate issued by the authority or person responsible for the exhibition. Said certificate shall contain particulars of the exhibition together with a statement to the effect that the invention was in fact exhibited there.⁶⁰

3.1.4.3.1 Contents of the description

The description shall –

- explain and disclose the invention in a manner which is sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art; and
- indicate the best mode for carrying out the invention, which is known to the inventor at the filing date or, where applicable, at the priority date of the application.⁶¹

Where a patent for an invention is claimed and the process for making that invention is not generally known, including by means of its description in the specifications of another patent application, the patent application shall describe it in a manner which is sufficiently clear and complete for that process to be carried out by a person having ordinary skill in the art.⁶²

Where the description provides sufficient information to allow the invention to be made and used by a person skilled in the art on the filing date, without undue experimentation, the description of the claimed invention shall be sufficiently clear and complete.⁶³

The description shall where applicable contain a clear identification

- of the origin of genetic or biological resources collected in Mauritius and directly or indirectly used in the making of the invention; and
- any element of traditional knowledge associated or not associated with those resources, which was, with the prior informed consent of Mauritius, directly or indirectly used in the making of the claimed invention.⁶⁴

The Director may, at any time before the grant of a patent, require the description in a foreign patent application to be adapted to the ordinary skill in the art of a citizen of Mauritius in order to ensure technology dissemination.⁶⁵

3.1.4.3.2 Claims

The claims of the application shall:

- define the matter for which protection is sought;
- be clear and concise; and
- be fully supported by the description, where the claim reasonably conveys to a person having ordinary skill in the art that the applicant was in possession of the claimed invention at the filing date.⁶⁶

3.1.4.3.3 Drawings

The applicant shall include drawings in the application where they are necessary for understanding the invention.⁶⁷ Where the application refers to drawings which are not included in the application, the Director may

⁵⁹ Regulation 10(1) of the Industrial Property Regulations.

⁶⁰ Regulation 10(2) of the Industrial Property Regulations.

⁶¹ Section 12(3)(a) of the act

⁶² Section 13(3)(b) of the Act.

⁶³ Section 13(3)(c) of the act

⁶⁴ Section 13(3)(d) of the Act

⁶⁵ Section 13(3)(e) of the Act

⁶⁶ Section 13(4) of the Act

⁶⁷ Section 13(5) of the Act

request the applicant to furnish the missing drawings. If the applicant fails to comply with the request the Director shall treat any reference to the said drawings as non-existent.⁶⁸

3.1.4.3.4 Abstract

The abstract of the specification shall:

- be concise and precise;
- only serve as technical information;
- not be considered for the purpose of interpreting the scope of the protection; and
- unless otherwise indicated by the Director, be of not less than 50 nor more than 150 words.⁶⁹

3.1.4.3.5 Deposit of microorganisms⁷⁰

Where an invention claiming patent protection involves the use of or concerns microorganisms which are not available to the public and which cannot be described in a patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the following requirements must be complied with:

- a sample must be deposited with an international depository authority, in accordance with the Budapest Treaty;
- the application must contain all the information known to the applicant relating to the deposited microorganisms;
- the applicant must indicate the name of the authorised institution and is accompanied by a copy of the receipt of the deposit issued by the international depository authority.

The copy of the receipt of the deposit of the international depository authority should be furnished within 3 months from the date of filing the application. If a request for early publication is filed the said copy of the receipt must be filed before such request if filed.⁷¹

3.1.4.3.6 Information Concerning foreign application⁷²

An applicant may be requested by the Director of the Industrial Property Office, to furnish the date and particulars of any application for a patent filed abroad by him or his predecessor relating to the same or essentially the same invention as that claimed in the application.

The applicant shall, in relation to said foreign application furnish a copy of –

- any communication received by him concerning the results of any search or examination carried out in respect of the foreign application;
- the patent granted based on the foreign application;
- any final decision rejecting the foreign application or refusing the grant requested in the application; and
- any final decision invalidating the patent.

The applicant shall within 3 months from the date of said request furnish the information in relation to the foreign application. On good cause shown the Director may extend the period of 3 months by such period as he may determine.

3.1.4.3.7 Filing date

Where the application is accompanied by the prescribed fee and contains the following:

- an express or implied indication that the granting of a patent is sought;
- an indication of the identity of the applicant and the place where he may be contacted by the Office; and
- a description of the invention as described under paragraph 3.1.4.3⁷³

⁶⁸ Regulation 37(6)(b) of the Industrial Property Regulations.

⁶⁹ Section 13(6) of the Act

⁷⁰ Section 13(f) of the Act

⁷¹ Regulation 11(2) of the Industrial Property Regulations.

⁷² Section 16 of the Act

⁷³ Section 17(1) of the Act

the Director of the Industrial Property Office shall issue a notification of the filing date within 1 week of the application date. The date of receipt shall then be considered as the filing date.

Where the application does not, at the time of receipt, comply with the requirements as described above, the Director shall invite the applicant to file the required correction within such time as he may determine.⁷⁴ If the applicant does not file the necessary correction within the required time limit, the application shall be considered to have been abandoned.⁷⁵

Where the application refers to drawings which are not included in the application, the Director may request the applicant to furnish the missing drawing. The Director shall grant the date of receipt of the missing drawings as the filing date. If the applicant fails to furnish the missing drawing the Director shall grant as the filing date, the date of receipt of the application and treat any reference to the drawings as non-existent.⁷⁶

The Director shall, after granting a filing date to the application, proceed to classify the invention in accordance with the International Classification.⁷⁷

3.1.4.3.8 Withdrawal of application

An applicant may, before an application is granted, withdraw the application on payment of the prescribed fee, which is currently 1,000 MUR (3,024.56 JPY). The application may be withdrawn by manually filing the prescribed form with the Director of the Industrial Property Office.⁷⁸

Where an application is withdrawn without having been open for public inspection and no rights have been claimed or are outstanding in connection with the application, a subsequent application may be made in respect of the same invention.⁷⁹ The withdrawn application shall therefore not form part of the prior art in respect of the subsequent application.

No priority right may be claimed on the withdrawn application upon the lodging of the subsequent application.⁸⁰

3.1.4.4 Examination

The Director shall conduct formal examination to verify whether any formal information that is required has been furnished.⁸¹ If all the documents for the application are in order, the Director of the Industrial Property office shall issue a notification of filing date within one week of the application date.

According to the Act, the Director of the Industrial Property office shall, after classifying the invention, conduct substantive examine to verify whether that the invention is new, involves an inventive step, and is industrially applicable. Currently, the Director of the Industrial Property office does not conduct substantive examination but does however request information regarding substantive examination in other jurisdictions to determine if the invention as claimed in the patent application is in fact new and involves an inventive step.

The Director of the Industrial Property office may also conduct additional searches and request additional information.

Where the application does not fulfil the requirements, the Director of the Industrial Property office shall request the applicant to correct the defect the application within such time as he may determine. Where the said request is not complied with within the required time limit, the application shall be considered to have been abandoned.⁸²

⁷⁴ Section 17(2)(a) of the act

⁷⁵ Section 17(2)(b) of the act

⁷⁶ Section 17(3), 17(4) and 17(5) of the Act

⁷⁷ Section 17(6) of the Act

⁷⁸ Section 13(8)(a) of the Act.

⁷⁹ Section 13(8)(b) of the Act.

⁸⁰ Section 13(8)(v) of the Act.

⁸¹ Section 19(1) of the Act

⁸² Section 19(2) and 19(3) of the Act

3.1.4.5 Publication

After 18 months from the filing date, the Director of the Industrial Property office shall open the patent application for public inspection and give notice in the Gazette of the opening of the application for inspection.⁸³

The notice in the Gazette will include:⁸⁴

- the number and the filing date of the application;
- the title of the invention;
- the priority date, where applicable;
- the name of the applicant or applicants and of the inventor or inventors;
- the name and address of the approved agent, if any;
- the International Classification;
- one drawing, if any, that depicts the main elements of the invention; and
- the abstract.

After becoming open for public inspection any interested person shall, on payment of the prescribed fee, which is currently 300 MUR (907.37 JPY) per page, receive a copy of a patent application open for public inspection.⁸⁵

An applicant for a patent may, on payment of the prescribed fee, which is currently 5,000 MUR (15,122.80 JPY), at any time from the filing date till the end of the period of 18 months referred to above, request the Director of the Industrial Property office to open the application for public inspection and to give the notice referred to in that subsection.⁸⁶

Mauritius does not have an online register or an online gazette. An interested party can purchase a hard copy of the Gazette by paying the appropriate fee, which is currently 25 MUR (75.61 JPY), to the printing office. Legal representative in Mauritius usually obtains copies of the Gazette from the printing office.

3.1.4.6 Amendment of application

An applicant can make changes in the text or drawings of the patent by manually filing a request and making payment of the prescribed fee, which is currently 5,000 MUR (15,122.80 JPY), at the of the Industrial Property office. The changes requested by the applicant may however only be done to in order to limit the extent of the protection conferred.⁸⁷

The Director of the Industrial Property office shall however not make any change which shall result in the protection conferred under the patent going beyond the protection claimed in the initial application.⁸⁸

3.1.4.7 Opposition

A 3-month opposition period is available in Mauritius, wherein an interested party may oppose the grant of a patent. An interested person may, by way of a notice in the form set out in the administrative procedures, file a notice of opposition within a period of 3 months from the date an application for a patent is open for public inspection.

The said notice of opposition, in addition to the identity of the opponent and specify the grounds, including all relevant evidence, which the opponent considers relevant to object to the grant of the patent shall include:

- specify the nature of his interest;
- be filed in duplicate;
- be accompanied by the appropriate fee, which is currently 5,000 MUR (15,122.80 JPY).

The applicant for a patent shall, within 3 months from the date of receipt of a notice of opposition, file a counter-statement. The counter-statement shall state the grounds on which the applicant relies for his application and shall be accompanied by all relevant evidence. The Director of the Industrial Property office may conduct a

⁸³ Section 18(1)(a) of the Act

⁸⁴ Section 18(1)(b) of the Act

⁸⁵ Section 18(d) of the Act

⁸⁶ Section 18(2) of the Act

⁸⁷ Section 20(4)(a) of the Act

⁸⁸ Section 20(4)(b) of the Act

hearing for the applicant and the opponent to argue their case and submit additional evidence, where available, including oral evidence.

Where a notice of opposition is filed by an agent, it shall be accompanied by a power of attorney authorising the filing of the notice.

3.1.4.8 Grant or refusal

If a patent application complies with the substantive and formal requirements, the patent shall be granted. Where the application is refused the applicant shall receive a notification in writing of such refusal.

Where a patent is granted:

- the applicant shall receive a certificate of the grant of the patent and a copy of the patent;
- the patent shall be recorded in the appropriate register;
- the grant of the patent shall be published in the Gazette; and

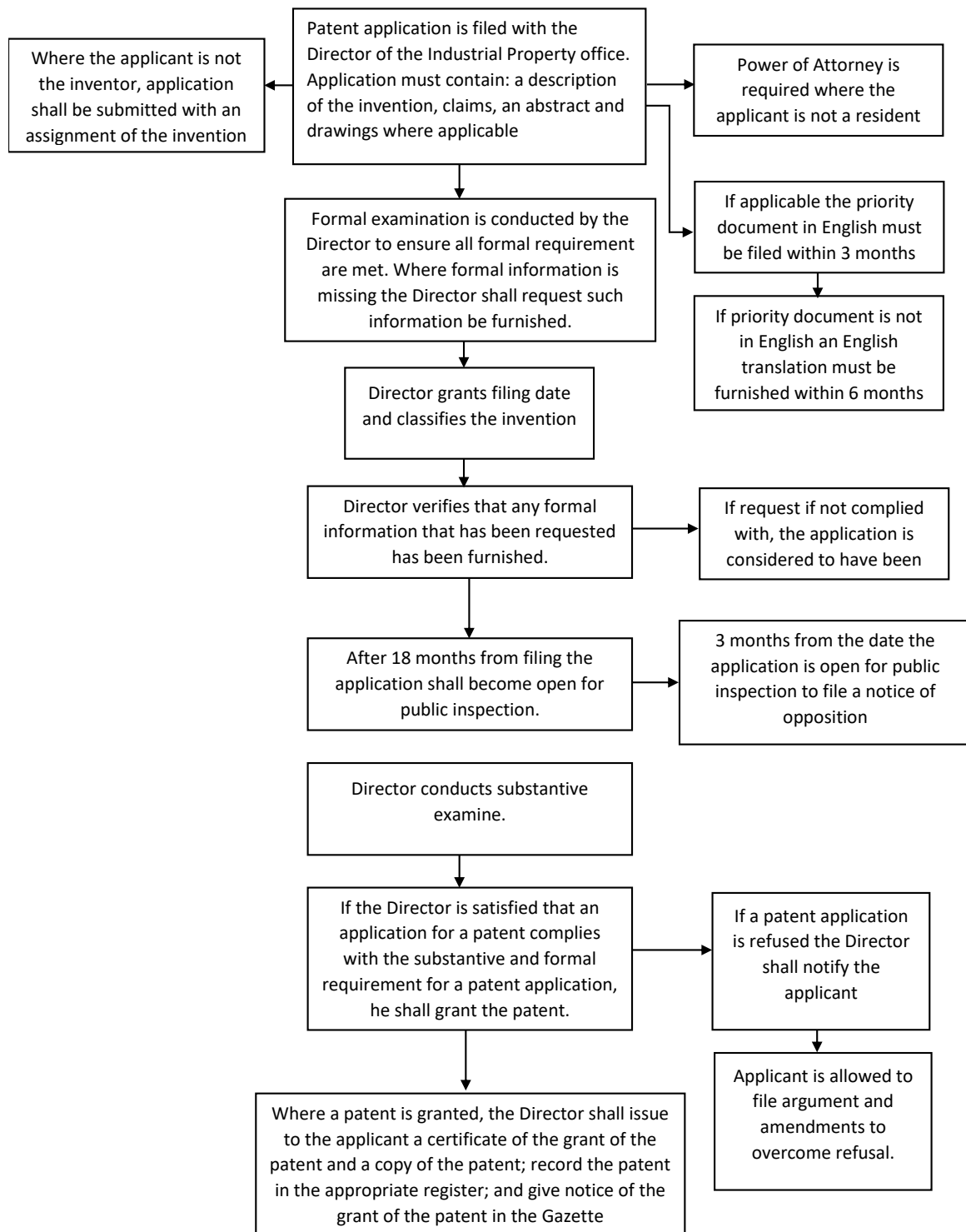
An interested party may obtain copies of the patent on payment of such fee as may be prescribed, which is currently 300 MUR (907.37 JPY) per page.

3.1.4.9 Period of Entire Registration Process

As the Industrial Property Act, 2019 and the Industrial Property Regulations 2022 came into force on 31 January 2022, there is no indication of when first office actions are expected, the time limits for applicants to respond, or ways to respond to office actions.

The time an application takes from filing to grant is difficult to estimate as this is based on a case-by-case basis and will depend whether all the documents requested by the Industrial Property office have been provided. It may take at least three years to receive the certificate of grant.

3.1.4.10 Flow Chart of Registration Process



3.1.5 Post-Registration

3.1.5.1 Registration Fees

Currently no registration fees are payable when a patent is granted. There is also no provision made for official registration fees in the Act.

3.1.5.2 Rights of the Right Holder

A patent shall confer on its owner the right to prevent any person from exploiting the patented invention.⁸⁹ Exploiting means, in relation to-

- A patented invention which is a product
 - to make, import, offer to sell, sell or use the product; or
 - to stock the product for any of the purposes referred to in subparagraph (i);
- a patented invention which is a process
 - to make use of the process; or
 - to make, import, offer to sell, sell or use the product which was obtained directly by means of the process.⁹⁰

The rights of the owner shall be defined by the claims set out in the application for the patent.⁹¹

The rights conferred by the grant of a patent shall not extend to:

- acts in respect of articles which are put on the market in Mauritius or abroad by the owner of the patent or with his consent;
- the use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;
- acts done privately and on a non-commercial scale or for a non-commercial purpose, which do not significantly prejudice the economic interests of the patent owner;
- acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical practitioner, a dental specialist or a dental surgeon;
- acts done for experimental and scientific research on or with the subject matter of the patented invention;
- acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the patent owner;
- acts performed by any person who, in good faith, before the filing date or, where applicable, the priority date of the application on which the patent is granted, was using the invention or was making effective and serious preparations for such use in Mauritius; or
- acts performed by any person to make, construct, use or sell the patented invention solely for any use reasonably related to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.⁹²

3.1.5.3 Fees related to successful registration

Currently no fees are payable for successful registration of a patent when it is granted. There is also no provision made for official registration fees in the Act.

Only annual maintenance fees are due to maintain patent after registration. Please refer to paragraph 3.1.5.5 for the annual maintenance fees as at 11 January 2023.

⁸⁹ Section 21(1)(a) of the Act

⁹⁰ Definition of exploit in terms of section 2 of the Act.

⁹¹ Section 21(1)(b) of the Act

⁹² Section 21(2) of the act

3.1.5.4 Licensing

3.1.5.4.1 Compulsory License

A third party may apply for the issue of a compulsory licence to the permanent secretary of the Ministry. Currently the fee for a compulsory license is 100,000 MUR (30,2456.00 JPY).

The permanent secretary of the Ministry shall grant the compulsory license when the following criteria has been met:

- the public interest, including national security, nutrition, health, or the development of other vital sectors of the national economy, so requires;
- a judicial or administrative body has determined that the manner of exploitation, by the owner of a patent or his licensee, is anti-competitive, and that the exploitation of the invention in accordance with this subsection would remedy such practice;
- the owner of the patent is abusively exercising his exclusive rights or neglecting to take measures to prevent his licensee from abusively exercising those rights; or
- the invention is not available in sufficient quantities or quality or at predetermined reasonable prices in Mauritius, he may, without the consent of the owner of the patent, authorise a government agency or a third party to exploit the patented invention

Mauritius does not have a working requirement but it is important to note that after a period of-

- 4 years from the filing date of the application for the patent; or
- 3 years from the date of the grant of the patent, whichever period expires last

a third party may apply for a compulsory license on the ground of insufficient availability.

Where the owner of the patent can justify his inaction or insufficient action by legitimate reasons, a request for compulsory license will be refused.

The owner of a patent or any interested party may make a request to be heard by the permanent secretary of the Ministry before it decides to grant or refuse a request for a compulsory license.

Where a compulsory license is granted, the exploitation of the invention shall be –

- limited to the purpose for which it was licensed; and
- subject to the payment of an adequate remuneration, to be determined by the permanent secretary of the Ministry depending on the circumstances of each case, to the owner of the patent.

The permanent secretary of the Ministry shall, in determining the remuneration stated above, take into account

- the economic value of his decision; and
- the need to correct anti-competitive practices.

The permanent secretary of the Ministry shall, in determining the remuneration with respect to the compulsory licence for a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, prescribe an alternative process of making the same product which is not known or is unavailable.

The owner of a patent or holder of a compulsory licence may request the permanent secretary of the Ministry to vary the terms of the decision authorising the exploitation of the patented invention on the ground of changed circumstances after hearing the parties.

The owner of a patent may make a written request to the permanent secretary of the Ministry to terminate a compulsory licence.

Where, after hearing the parties, the permanent secretary of the Ministry is satisfied that –

- the circumstances which led to its decision to grant a compulsory license have ceased to exist and are unlikely to recur;
- the holder of a compulsory licence has failed to comply with the terms of its decision; or
- the need for adequate protection of the legitimate interests of the holder of the licence does not justify the maintenance of its decision,

he shall terminate the compulsory licence.

A compulsory licence may only be transferred to –

- the enterprise or business of the holder of the licence; or
- the part of the enterprise or business where the patented invention is being exploited.

A compulsory licence shall be non-exclusive and shall not exclude –

- the exploitation of the invention by the patent owner himself, through manufacture in Mauritius or through importation, or both;
- the conclusion of licence contracts by the owner of the patent; and
- the continued exercise, by the owner of the patent, of his rights conferred to him under the patent.

The exploitation of an invention by the holder of a compulsory licence shall predominantly be for the supply of the market in Mauritius except where –

- it is permitted to remedy a practice which is anti-competitive as determined by a judicial or administrative body;
- the compulsory licence concerns a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, and the purpose of the licence is to export the patented products;
- the products manufactured by the patented process are for a foreign territory or country with no, or with insufficient, manufacturing capacity, in accordance with the terms and conditions of the decision of 30 August 2003.

Where a compulsory licence is granted –

- the owner of the first patent shall be entitled to a cross-licence, on reasonable terms, to use the invention claimed in the second patent; and
- the use authorised in respect of the first patent shall be non-assignable except with the assignment of the second patent.

An applicant for a patent or the owner of a patent may appeal by judicial review to the Supreme Court against a decision of the permanent secretary of the Ministry regarding the grant of a compulsory licence or remuneration payable.

3.1.5.4.2 Dependent patent

An applicant for a new patent may apply for a compulsory licence if the new patent would infringe a first patent. The applicant would however have to show that the invention in the new patent involves an important technical advancement of considerable economic significance in relation to an invention claimed in the first patent. If the permanent secretary of the Ministry is satisfied it may without the consent of the owner of the first patent, issue a compulsory licence to the inventor of the new patent on payment of the prescribed fee.⁹³

The application for the issue of a compulsory licence shall be made to the permanent secretary of the Ministry in the form set out in the administrative procedures and shall be accompanied by the payment of such non-refundable fee as may be prescribed.⁹⁴

The application for the compulsory licence shall be accompanied by evidence that the owner of the patent has received, from the person seeking the compulsory licence, a request for an authorisation to exploit the second patent, but that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time which shall, unless the permanent secretary of the Ministry in exceptional circumstances otherwise determines, be 6 months from the date on which the request for authorisation to exploit the second patent was made.⁹⁵

However, in the cases of national emergency, circumstances of extreme urgency, cases of public non-commercial use or where the compulsory licence is to be granted to remedy a practice determined, after judicial or administrative process, to be anti-competitive no evidence of said request for authorisation is required if the

⁹³ Section 23(2)(a) of the Act.

⁹⁴ Section 23(2)(b) of the Act.

⁹⁵ Section 23(3) of the Act.

owner of the patent is, as soon as reasonably practicable, notified of the decision of the permanent secretary of the Ministry.⁹⁶

3.1.5.5 Renewal of Registration

In Mauritius, for the purpose of maintaining a patent or a patent application, annual renewal fees must be paid.⁹⁷ The current annual fees are indicated below.

| Annual fee for- | MUR | JPY |
|------------------|--------|------------|
| 1st anniversary | NIL | NIL |
| 2nd anniversary | NIL | NIL |
| 3rd anniversary | 3,000 | 9,073.68 |
| 4th anniversary | 3,000 | 9,073.68 |
| 5th anniversary | 10,000 | 30,245.60 |
| 6th anniversary | 10,000 | 30,245.60 |
| 7th anniversary | 10,000 | 30,245.60 |
| 8th anniversary | 10,000 | 30,245.60 |
| 9th anniversary | 10,000 | 30,245.60 |
| 10th anniversary | 30,000 | 90,736.80 |
| 11th anniversary | 30,000 | 90,736.80 |
| 12th anniversary | 30,000 | 90,736.80 |
| 13th anniversary | 30,000 | 90,736.80 |
| 14th anniversary | 30,000 | 90,736.80 |
| 15th anniversary | 50,000 | 151,228.00 |
| 16th anniversary | 50,000 | 151,228.00 |
| 17th anniversary | 50,000 | 151,228.00 |
| 18th anniversary | 50,000 | 151,228.00 |
| 19th anniversary | 50,000 | 151,228.00 |

The annual fee for maintaining a patent or patent application must be paid less than 2 weeks before the expiry of every period of one year.⁹⁸

Where such annual fee is not paid within the prescribed time, the applicant can obtain an extension of 6 months for the payment of the annual fee and such surcharge as may be prescribed.⁹⁹ Currently the surcharge for late payment of annual fee is 2,000 MUR (6,049.12 JPY).

Where the prescribed annual fee is not paid in accordance with this subsection the application for the patent shall be considered to have been withdrawn and the patent shall lapse.¹⁰⁰

3.1.5.6 Restoration of lapsed patent

Where a patent or patent application has lapsed due to non-payment of the annual fee, the applicant may apply for the restoration of the lapsed patent. The non-payment of the annual fee must however be due to a reasonable excuse and any rights of third parties should not have unreasonably infringed. Currently the fee for the restoration of a lapsed patent is 10,000 MUR (30,245.60 JPY)¹⁰¹.

⁹⁶ Section 23(4) of the Act.

⁹⁷ Section 22(2)(a) of the Act

⁹⁸ Section 22(2)(a) of the Act

⁹⁹ Section 22(2)(b) of the Act

¹⁰⁰ Section 22(2)(c) of the Act.

¹⁰¹ Section 22(2)(d) of the Act.

A patent owner may make an application to the Director for the restoration of a lapsed patent, in the form set out in the administrative procedures.¹⁰²

For the purpose of determining if the non-payment was due to a reasonable excuse the Director may request the applicant to provide such written explanations, information, and documents as he considers appropriate.¹⁰³

Where the Director is satisfied that a lapsed patent may be restored, he shall inform the applicant accordingly and request the payment of the appropriate fee, currently 10,000 MUR (30,245.30 JPY), within such time as he may specify. The Director shall, on payment of the fee, restore the lapsed patent and record the restoration of a lapsed patent in the appropriate register and cause it to be published.¹⁰⁴

3.1.5.7 Working Requirement

Mauritius law does not provide a use requirement, but insufficient use may be a ground for the grant of a compulsory license as discussed under paragraph 3.1.5.4.1.

3.1.5.8 Invalidation of patent

An interested person may apply to the Industrial Property Tribunal for the invalidation of a patent where:

- the invention as claimed in the patent is excluded from patent protection;
- the application is not new, involve and inventive step or is not industrially applicable;
- the owner of the patent is not the inventor or his successor in title; or
- the owner of the patent is shown to have engaged in inequitable conduct in order to be granted the patent.¹⁰⁵

Where the ground for invalidation is proved as regards a part of the invention, only that corresponding claim shall be invalidated.¹⁰⁶ An invalidated patent shall however be considered as null and void ab initio.

The decision of the Tribunal shall be notified to the Director of the Industrial Property office who shall record it and forthwith give notice of the decision in the Gazette.¹⁰⁷

Any person who is dissatisfied with a determination of the Tribunal as being erroneous in law may appeal to the Supreme Court. An appeal under this section shall be prosecuted in the manner provided by the rules made by the Supreme Court. Any appeal to the Supreme Court shall be made within 21 days from the determination of the Tribunal.¹⁰⁸

3.1.6 Enforcement of Rights

In practice it is possible to use both criminal and civil routes in the case of Patent Infringement. The courts and enforcement agencies are used more frequently in cases related to patent infringement. As mentioned above the Industrial Property Act 2019 only came into force on 31 January 2022 and as such there have been no patent infringement cases under the new Act. To our knowledge there has also not been any cases under the previous act involving patent infringement in Mauritius.

Enforcement of rights are not done at the level of the Industrial Property office. Depending on the circumstances, an aggrieved person may start a court action in court or complain to the Police in order to enforce their IP rights. A person may also apply for border protection with the Mauritius Revenue Authority to stop parallel or illegal importation. The judicial system, enforcement agency and different remedies based on civil and criminal enforcement are discussed below.

¹⁰² Regulation 26(1) of the Industrial Property Regulations

¹⁰³ Regulation 26(2) of the Industrial Property Regulations

¹⁰⁴ Regulation 26(3) of the Industrial Property Regulations

¹⁰⁵ Section 25(1) of the Act

¹⁰⁶ Section 25(2) of the Act.

¹⁰⁷ Section 25(4) of the Act.

¹⁰⁸ Section 138 of the Act.

3.1.6.1 Enforcement Agency

As stated above enforcement of patent rights is not done by Industrial Property office. In the case of civil action an aggrieved person may start a court action in any one of the District Courts, Intermediate Court or the Commercial division of Supreme Court of Mauritius or complain at the Police which may open a criminal proceeding against the alleged infringer. A person may also apply for border protection with the Mauritius Revenue Authority to stop parallel or illegal importation.

3.1.6.2 Judicial System and courts regarding IP Protection¹⁰⁹

Mauritius has a single-structured judicial system consisting of two tiers - the Supreme Court and subordinate courts. The Supreme Court sitting as Court of First Instance is composed of various Divisions exercising jurisdiction such as the Master's Court, the Family Division, the Commercial Division, the Criminal Division, the Mediation Division and as an Appellate jurisdiction (it hears and determines civil & criminal appeals from decisions of the subordinate courts), sits as Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from decisions of the Supreme Court sitting in the exercise of its original jurisdiction in civil and in criminal matters). Subordinate courts consist of the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court and the Court of Rodrigues.

3.1.6.2.1 The Supreme Court

The Supreme Court is composed of the Chief Justice, the Senior Puisne Judge and nineteen Puisne Judges. It is a superior Court of Record and has unlimited jurisdiction to hear and determine any civil and criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with the necessary powers and authority to exercise its jurisdiction as a Court of Equity. The Supreme Court also exercises supervisory jurisdiction over subordinate courts in order to ensure that justice is duly delivered. The Supreme Court has the sole power to determine whether any provision of the Constitution has been contravened, including the power to determine whether any law enacted by Parliament contravenes any provision of the Constitution.

Commercial Division of the Supreme Court

The Commercial Division of the Supreme Court was set up administratively in 2009. Two Puisne Judges designated by the Chief Justice sit in that Division. It entertains, hears and determines matters arising under the Insolvency Act 2009 and the Companies Act, disputes relating to banking, bills of exchange, offshore business, patents and trademarks or passing off, disputes between traders and related matters and generally deals with anything which is of a commercial nature.

Criminal Division of the Supreme Court

The Supreme Court in the exercise of its criminal jurisdiction has the power to try any person charged with having committed a crime or a misdemeanour.

In the case of criminal proceeding, an aggrieved party may lodge a complaint with the Director of Public Prosecution which may institute prosecution on behalf and at the expense of the State. Where the Director of Public Prosecutions declined to institute a prosecution, the aggrieved party or his representative may institute a prosecution. Criminal trials are either held before a Presiding judge and jury consisting of nine people or before a Presiding judge without a jury. Most commonly criminal trials for counterfeiting take place before a Judge without a Jury.

3.1.6.2.2 Subordinate Courts

Intermediate Court

The Intermediate Court is established under the Courts Act and has island wide civil and criminal jurisdiction, including Rodrigues. It consists of two Presidents, two Vice-Presidents and any such number of Magistrates of the Intermediate Court established under the Civil Establishment Act.

¹⁰⁹ Section 137 of the Act.

Civil Jurisdiction of the Intermediate Court

The Intermediate Court has jurisdiction in all civil cases where the claim or matter dispute, whether in balance of account or otherwise, does not exceed 500,000 MUR (1,512,280 JPY). The Bench of the Intermediate Court is constituted by one or more Magistrates, as may be decided by the President.

Criminal Jurisdiction

The Intermediate Court has jurisdiction to hear and determine serious criminal offences referred to it by the Director of Public Prosecutions under specific sections of the Criminal Code and any other offence that can be tried by the Intermediate Court under any other enactment. It has power to inflict penal servitude on convicted offenders for a period not exceeding fifteen years and imprisonment for a period not exceeding ten years.

3.1.6.2.3 Districts Courts

There are ten District Courts on the Island of Mauritius and one in Rodrigues. District Courts have jurisdiction to try and determine both civil and criminal cases as provided for by law. Each District Court is presided by a District Magistrate and any such number of District Magistrates as may be decided by the Chief Justice.

Civil Jurisdiction of the District Court

The District Court has jurisdiction in all civil cases where the claim or matter in dispute does not exceed 50,000 MUR (151,228 JPY).

Criminal Jurisdiction

District Courts have power and jurisdiction to hear and determine criminal cases punishable by a term of imprisonment not exceeding five years and a fine not exceeding 100,000 MUR (302,456 JPY).

3.1.6.2.4 The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council in the United Kingdom is the ultimate appellate jurisdiction for Mauritius. To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases, there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

3.1.6.3 Remedies¹¹⁰

A patent shall confer on its owner the rights to prevent any other person from exploiting the patented invention. The rights of the patent owner shall be defined by the claims set out in the application for the patent. In terms of section 139 the exploitation of the patented invention in Mauritius by any other person other than the owner of the title of protection or the licensee and without the agreement of the owner shall be unlawful. Any person who knowingly exploits the patented invention shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR (756,140.00 JPY) and to imprisonment for a term not exceeding 5 years.

According to section 140 of the Act, exploiting a patented invention shall further amount to an act of unfair practice and may give rise to a claim in damages and shall be prosecuted in accordance with the Protection Against Unfair Practices Act 2002. In terms of Protection Against Unfair Practices Act 2002 any act or practice which in the course of any industrial or commercial activity, is contrary to honest commercial practice, shall be unlawful. On conviction the person who commits such an act or practice shall be liable to a fine not exceeding 250,000 MUR (756,140.00 JPY) and to imprisonment for a term not exceeding 5 years.

¹¹⁰ Section 139 and 140 of the Act.

3.2 Trademarks

3.2.1 Definition

Protection for a trademark, whether already in use or proposed to be used in Mauritius, is obtained by way of registration under the Industrial Property Act, Act number 15 of 2019, along with the corresponding Regulations of 2022¹¹¹.

According to the Act, a Mark is defined under Section 2 of the Act as follows:

“mark” –

(a) means a visually perceptible sign or combination of signs, capable of distinguishing the goods or services of an enterprise from those of other enterprises; and

(b) includes –

(i) a certification mark and a collective mark; and

(ii) words, letters, numerals, figures, pictures, a combination of colours, the shape of goods or parts of the goods, or the packaging or other conditioning of goods;

The Regulations provide for a variety of practical matters and measures to attend to various steps at the Industrial Property office, situated in Port Louis, Mauritius. These include matters such as Director’s search of applications, acceptance or refusal of applications, advertisement of applications, fees, forms to be used, as well as various other practical considerations¹¹². The Regulations provide the Director with powers to attend to various other matters referred to in the Act, such as a discretionary power¹¹³, the power to award costs and to call upon any person seeking to register a trademark to provide proof of title to such trademark.

3.2.2 Requirements

Mauritius is a signatory country and member of the Paris Convention for the Protection of Industrial Property 1883 (as amended). Accordingly, international convention priority can be claimed in Mauritius within a period of 6 months from the date of filing of a national application in another Paris Convention country.

Mauritius is currently not a signatory to the Madrid Protocol. However, Mauritius is expected to become a signatory of the Madrid Protocol in the coming months whereby National Legislation has already been enacted to practically accede to the Madrid Protocol. This means that while it is currently not possible to include Mauritius as a designation of an international registration, it will, however, be possible in the near future whereby such designation will be enforcement due to the implementation of national legislation that ratifies the Protocol.

The Act makes provision for the protection of conventional and non-conventional marks for goods and services, for internationally well-known marks that are also well-known in Mauritius, and container marks, and collective marks¹¹⁴. More specifically, a container mark is a mark that protects, for example, a bottle that contains goods such as a unique and distinctive perfume bottle – such bottle can be protected as a container for goods and will be protected in the perfume class i.e. the class that covers the goods contained therein. A collective mark is a mark that is used by members of an association to indicate that goods are compliant with the standards and regulations of that particular association¹¹⁵. The purpose of a collective mark is to distinguish the quality of goods or service marks of members of the association from goods and services of others¹¹⁶. Whilst the Act does not explicitly allow for the filing of colour, shape marks such as 3D shape marks, hologram, and sound marks, it is permitted in practice. Olfactory marks i.e., specific scents and smells are not allowed to be filed as a trademark in terms of the Act nor in practice. Additionally, the Act recognises both statutory and common law trademarks¹¹⁷.

¹¹¹ Industrial Property Act, Act number 15 of 2019, along with the corresponding Regulations of 2022

¹¹² Industrial Property Regulations of 2022

¹¹³ Section 4 of the Industrial Property Act, number 15 of 2019

¹¹⁴ Section 77(3) Industrial Property Act, Act number 15 of 2019

¹¹⁵ Section 77(3) Industrial Property Act, Act number 15 of 2019

¹¹⁶ Section 77(3) Industrial Property Act, Act number 15 of 2019

¹¹⁷ Section 91(4) Industrial Property Act, Act number 15 of 2019

The requirements for registrability of a trademark in Mauritius are largely dictated by a process of elimination, and the following types of mark are not deemed to be registrable trademarks in accordance with Section 91(2) of the Act. The Act dictates as follows:

No sign shall be registered as a mark where it¹¹⁸ –

- a) is devoid of any distinctive character or is incapable of distinguishing the goods or services of one enterprise from those of other enterprises;
- b) consists solely of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of goods or of rendering of services, or other characteristics of goods or services;
- c) consists solely of a sign or indication that has become generic in current language or in the bona fide established practices of the trade, or is a usual or recognised technical or scientific name of a product or service;
- d) consists solely of a shape that results from the nature of the goods or provides a technical result, functional advantage or substantial value to the goods;
- e) is contrary to public order or morality;
- f) is likely to mislead, in particular as regards the geographical origin of the goods or services concerned or their nature, quality or other characteristics; or
- g) contains, as the armorial bearing, the flag or other emblem of a State party to the Paris Convention or an international organisation, an official sign indicating control warranty adopted by any such State or organisation, or constitutes an imitation of those signs from a heraldic point of view.

Additionally, Section 91(3) of the Act states as follows¹¹⁹:

- a) A mark shall not be registered where it conflicts with a third party right in force in Mauritius, in particular where the mark –
 - i. is similar to a mark registered earlier or to a mark having an earlier filing or priority date, in respect of similar goods or services, or so nearly resembles such a mark as to be likely to cause confusion;
 - ii. constitutes a reproduction, imitation or translation liable to create confusion with a mark that is well known in Mauritius in respect of similar goods or services of another enterprise; or
 - iii. is registered in Mauritius for goods or services which are not identical or similar to those in respect of which registration is applied for and the use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use; and
 - iv. cannot be used in Mauritius by virtue of any law.

The absolute and relative grounds of refusal as noted under Section 91(2) and 91(3) above deal with the aforementioned possible bars to registration and includes marks that are not registrable in terms of the Act. However, if marks are registered despite the operation of Section 91(2) and 91(3), these marks will then be liable to be removed from the register of trademarks.

3.2.3 Term of Protection

After grant of a trademark application, the registration remains in force for a period of 10 (ten) years from the date of application for registration, which becomes the effective date of the registration and which determines its 10-yearly renewal date (or its “anniversary” date)¹²⁰.

¹¹⁸ Section 91(2) Industrial Property Act, Act number 15 of 2019

¹¹⁹ Section 91(3) Industrial Property Act, Act number 15 of 2019

¹²⁰ Section 84 of the Industrial Property Act of 2019

3.2.4 Application/Registration Procedure

3.2.4.1 Place of Application

The Industrial Property office of Mauritius which administers trademark applications is located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis, and all applications for registration of trademarks must be filed manually at that office in English and in the prescribed manner.

3.2.4.2 Eligibility

An address for service in Mauritius must be provided upon registration of the mark. Said address for service is empowered to apply for a trademark application in Mauritius on behalf of the trademark applicant. For example, the application must specify the name and street address of a law firm situated in Mauritius or the applicant itself. The Director of Trademarks will not correspond with a law firm located outside Mauritius, and it should be mentioned in this regard that only a law firm in Mauritius can act as the address for service in filing an application for registration on behalf of an applicant. Alternatively, the trademark proprietor can apply for the trademark themselves directly at the Industrial Property office.

3.2.4.3 Requirements and/or how to apply

Where a trademark or application consists of or contains a word in characters other than Latin characters or numerals (other than Arabic or Roman numerals), such mark must be accompanied by a translation of the mark as well as details of the exact language to which each element of the mark belongs¹²¹.

The prescribed application form (TM1) must be completed and filed. The Industrial Property Office recognises a multi class filing system; therefore, separate applications need not be filed per mark and per class. The Director will attend to a search to determine whether there are any conflicting marks to the relevant application. The requirements for filing are that the filing must specify¹²²:

- the full name of the applicant for registration, together with the full street address and country where the applicant is situated,
- where applicable, a statement indicating the type of mark and any specific requirements applicable to that type of mark;
- a representation of the mark itself,
- must accompany the prescribed fee;
- the relevant class of interest, and the goods and services to be designated; and
- any priority details, if applicable.

3.2.4.4 Examination

The Director of the Industrial Property Office will conduct a full examination of the trademark application on absolute and relative grounds approximately two months after the trademark filing date.

The Director will then issue an examination report which will indicate his acceptance of the application; or he may accept the application subject to such amendments, modifications, conditions, or limitations, as he may consider necessary; or he may provisionally refuse the application. The prosecution period to respond to an examination report is two months and a further extension of two months can be obtained to respond to the examination report (with good cause shown).

A common condition that may be required by the Director is for an amendment of the goods or services included in the specification. The purpose of this is to restrict use of a trademark to only certain goods or services as specified in the application in order to avoid deception or confusion. Alternatively, the Registrar may require that a disclaimer be entered against any common and/or reasonably required elements of the mark in the particular class.

When the Director's conditions have been met a notice of acceptance will be issued. Where examination conditions have been complied with, the Director causes the application to be published and invites opposition

¹²¹ Section 75 of the Industrial Property Regulations of 2022

¹²² Section 92(2)(a) Industrial Property Act 2019 and Section 74(3) Industrial Property Regulations 2022

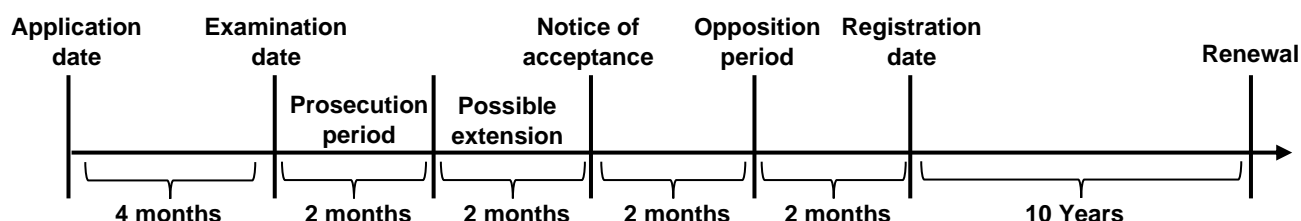
from the public. Publication signifies an acceptance of compliance with examination conditions. The mark will then be published in the official Gazette.

Each application published in the Journal is open to opposition by third parties for a period of 2 months.

If no opposition to an application is entered, or no extension of the opposition period is requested, the application will proceed to grant and registration, and the Director will in due course issue the official registration certificate.

3.2.4.5 Period of Entire Registration Process

The period from application date until registration will take approximately 12-18 months on the assumption that no obstacles are encountered during the examination and advertisement period.



3.2.5 Post-Registration

3.2.5.1 Registration Fees

The official fee for filing an application up until registration of one mark in one class is US\$150. A fee of US\$55 is applicable for each additional class of the identical mark. Please note that these fees are paid concurrently as an “all-inclusive fee” required by law and no additional fees are required later for publication of the relevant marks.

3.2.5.2 Rights of the Right Holder

The owner of a registered trademark is entitled to take action against a third party’s violation of the trademark owner’s registered rights by way of infringement proceedings instituted at the High Court of Mauritius. In circumstances where the trademark owner elects not to institute trademark infringement proceedings in its own name, a licensee that is designated as a registered user may do so in their own name.

3.2.5.3 Fees related to successful registration

The all-inclusive fees of a successful registration are detailed above.

3.2.5.4 Licensing

A trademark owner may licence the rights obtained through trademark registration to third-parties. Both an exclusive and non-exclusive license is recognised in Mauritius.

For a licence to be valid against third-parties it must be recorded against the trademark registration. An application for recordal must include¹²³:

- A power of attorney by the licensor (simply signed); and
- The licence agreement signed by both parties (or certified copy).

¹²³ Section 135(2) of the Industrial Property Act of 2019

3.2.5.5 Renewal of Registration

After grant of a trademark application, the registration remains in force for a period of 10 (ten) years from the date of application for registration, which becomes the effective date of the registration and which determines its 10-yearly renewal date (or its “anniversary” date)¹²⁴.

The registration may then be renewed every 10 years thereafter. The prescribed renewal payment fee may be submitted to the Director up to 6 months before the renewal date¹²⁵.

Should a change of ownership in the form of an assignment be warranted, the Act makes provision for procedures to allow for the change of ownership. In order for an assignment to be valid it must be reduced to writing and filed with the Director.

Importantly, the Acts invalidates a change of ownership whereby said recordal is likely to lead to deception or confusion with regard to the nature, origin, manufacturing process, characteristics or suitability for the purpose of the goods or services to which the mark is applied.

Renewal of a registration presents an opportunity to revise or correct the classification and/or specification of goods or services of a registration. Such an amendment may warrant the filing of a new trademark application.

If a renewal payment is not made timeously, the registration will lapse and will be removed from the Register of Trademarks. The trademark proprietor will be extended a 6-month grace period following the renewal date which requires that a penalty fee must be paid during the subsistence of the grace period¹²⁶. For purposes of any application for registration made by another party, the lapsed or removed mark will not pose a bar to the registrability of a third-party mark although it appears on the Trademarks Office database.

In the event of the lapsing of a registration, the trademark proprietor will not have an opportunity to restore the registration to the register (save for the 6-month grace period noted above). The trademark application will need to be refiled if not renewed within the 6-month grace period.

The maintenance of a trademark registration also requires the on-going use of the mark in good faith in by the proprietor. Non-use cancellation of a trademark may be based on no such use of a mark in Mauritius for a period of 3 years or longer¹²⁷. Failure to use the trademark as aforementioned, may result in an interested third party applying for the removal of the registration from the register of Trademarks.

The Act does not appear to provide for hypothecated of a Trademark by way of a deed of security, and therefore a mark may not be attached to found or confirm jurisdiction.

3.2.6 Enforcement of Rights

As mentioned above the Industrial Property Act 2019 only came into force on 31 January 2022 and as such there have been no trademark infringement cases under the new Act.

3.2.6.1 Enforcement Agency

Enforcement of rights are not done at the level of the Industrial Property office. Depending on the circumstances, an aggrieved person may start a court action in court or complain to the Police in order to enforce their IP rights. A person may also apply for border protection with the Mauritius Revenue Authority to stop parallel or illegal importation. The judicial system, enforcement agency and different remedies based on civil and criminal enforcement are discussed below.

¹²⁴ Section 84 of the Industrial Property Act of 2019

¹²⁵ Section 84 of the Industrial Property Act of 2019

¹²⁶ Section 84 of the Industrial Property Act of 2019

¹²⁷ Section 85 of the Industrial Property Act of 2019

3.2.6.2 Judicial System and courts regarding IP Protection

Mauritius has a single-structured judicial system consisting of two tiers - the Supreme Court and subordinate courts. The Supreme Court sitting as Court of First Instance is composed of various Divisions exercising jurisdiction such as the Master's Court, the Family Division, the Commercial Division, the Criminal Division, the Mediation Division and as an Appellate jurisdiction (it hears and determines civil & criminal appeals from decisions of the subordinate courts), sits as Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from decisions of the Supreme Court sitting in the exercise of its original jurisdiction in civil and in criminal matters). Subordinate courts consist of the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court and the Court of Rodrigues.

3.2.6.2.1 The Supreme Court

The Supreme Court is composed of the Chief Justice, the Senior Puisne Judge and nineteen Puisne Judges. It is a superior Court of Record and has unlimited jurisdiction to hear and determine any civil and criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with the necessary powers and authority to exercise its jurisdiction as a Court of Equity. The Supreme Court also exercises supervisory jurisdiction over subordinate courts in order to ensure that justice is duly delivered. The Supreme Court has the sole power to determine whether any provision of the Constitution has been contravened, including the power to determine whether any law enacted by Parliament contravenes any provision of the Constitution.

Commercial Division of the Supreme Court

The Commercial Division of the Supreme Court was set up administratively in 2009. Two Puisne Judges designated by the Chief Justice sit in that Division. It entertains, hears and determines matters arising under the Insolvency Act 2009 and the Companies Act, disputes relating to banking, bills of exchange, offshore business, patents and trademarks or passing off, disputes between traders and related matters and generally deals with anything which is of a commercial nature.

Criminal Division of the Supreme Court

The Supreme Court in the exercise of its criminal jurisdiction has the power to try any person charged with having committed a crime or a misdemeanour.

In the case of criminal proceeding, an aggrieved party may lodge a complaint with the Director of Public Prosecution which may institute prosecution on behalf and at the expense of the State. Where the Director of Public Prosecutions declined to institute a prosecution, the aggrieved party or his representative may institute a prosecution. Criminal trials are either held before a Presiding judge and jury consisting of nine people or before a Presiding judge without a jury. Most commonly criminal trials for counterfeiting take place before a Judge without a Jury.

3.2.6.2.2 Subordinate Courts

Intermediate Court

The Intermediate Court is established under the Courts Act and has island wide civil and criminal jurisdiction, including Rodrigues. It consists of two Presidents, two Vice-Presidents and any such number of Magistrates of the Intermediate Court established under the Civil Establishment Act.

Civil Jurisdiction of the Intermediate Court

The Intermediate Court has jurisdiction in all civil cases where the claim or matter dispute, whether in balance of account or otherwise, does not exceed Rs 500,000. The Bench of the Intermediate Court is constituted by one or more Magistrates, as may be decided by the President.

Criminal Jurisdiction

The Intermediate Court has jurisdiction to hear and determine serious criminal offences referred to it by the Director of Public Prosecutions under specific sections of the Criminal Code and any other offence that can be tried by the Intermediate Court under any other enactment. It has power to inflict penal servitude on convicted offenders for a period not exceeding fifteen years and imprisonment for a period not exceeding ten years.

3.2.6.2.3 Districts Courts

There are ten District Courts on the Island of Mauritius and one in Rodrigues. District Courts have jurisdiction to try and determine both civil and criminal cases as provided for by law. Each District Court is presided by a District Magistrate and any such number of District Magistrates as may be decided by the Chief Justice.

Civil Jurisdiction of the District Court

The District Court has jurisdiction in all civil cases where the claim or matter in dispute does not exceed 50,000 MUR (151,228 JPY).

Criminal Jurisdiction

District Courts have power and jurisdiction to hear and determine criminal cases punishable by a term of imprisonment not exceeding five years and a fine not exceeding 100,000 MUR (302,456 JPY).

3.2.6.2.4 The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council in the United Kingdom is the ultimate appellate jurisdiction for Mauritius. To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases, there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

3.2.6.3 Remedies

3.2.6.3.1 Civil remedies

A party may apply to the Intermediate Court / Supreme Court for the following remedies or reliefs in relation to infringement of IP rights: (i) injunction to prevent unfair practice or unlawful act; (ii) damages; and/or (iii) forfeiture and destruction of any article or thing that were used in, or gave rise to, an act of unfair practice as the court thinks fit.

3.2.6.3.2 Criminal actions

In the case of criminal proceeding, an aggrieved party may lodge a complaint with the Director of Public Prosecution which may institute prosecution on behalf and at the expense of the State. Where the Director of Public Prosecutions declined to institute a prosecution, the aggrieved party or his representative may institute a prosecution. Criminal trials are either held before a Presiding judge and jury consisting of nine people or before a Presiding judge without a jury. Most commonly criminal trials for counterfeiting take place before a Judge without a Jury.

IP Act 2019: Fine not exceeding 250,000 MUR (756,140 JPY) and to imprisonment for a term not exceeding 5 years.

Copyright Act 2014: Fine not exceeding 300,000 MUR (907,368 JPY) (first conviction) or 500,000 MUR (1,512,280 JPY) (second conviction) and to imprisonment for a term not exceeding 2 years (first conviction) or 8 years (second conviction).

Protection Against Unfair Practices (Industrial Property Rights) Act 2002: Fine not exceeding 250,000 MUR (756,140 JPY) and to imprisonment for a term not exceeding 5 years.

3.2.6.4 Summary of the remedies with Comparison table

| <u>Civil remedies</u> | <u>Criminal actions</u> |
|--|--|
| An injunction Damages Forfeiture and destruction of infringing article | IP Act 2019 and Protection Against Unfair Practices (Industrial Property Rights) Act 2002: Fine not exceeding 250,000 MUR (756,140 JPY) and/or imprisonment for a term not exceeding 5 years Copyright Act 2014: 1 st conviction – fine not exceeding 300,000 MUR (907,368 JPY) and/or imprisonment for a term not exceeding 2 years 2 nd conviction – fine not exceeding 500,000 MUR (1,512,208 JPY) and/or imprisonment for a term not exceeding 8 years |

3.2.6.5 Flowchart of the process of the Enforcement

Infringing act → institute Court proceedings in accordance with relevant laws of Mauritius which protect copyright, patents, industrial designs, marks, layout-designs of integrated circuits and, geographical indications



3.3 Copyrights

3.3.1 Introduction

Mauritian copyright law is governed and regulated by Copyright (Amendment) Act no 02 of 2014, amended by Copyright (Amendment) Act no 13 of 2017¹²⁸. The Law provides that the person whose name is indicated as being the author shall be afforded with copyright or related rights that shall exist for different categories of works. The relevant rights include the economic and moral rights relating to a particular copyright work. The author shall enjoy the exclusive right to carry out, prohibit or authorize various acts related to such works and shall be the first owner of the moral and economic rights in respect of his work.

The author of any protected copyright work has the exclusive economic right in respect of the work to do or authorise the doing of any of the following¹²⁹:

- The reproduction of the work in any manner or form,
- The translation of a work;
- The adaptation, arrangement or any other transformation of the work; including its cinematographic adaption;
- The public performance of a work;
- The broadcasting of a work;
- and communication of the work to the public
- the distribution to the public of originals or fixed copies of the work; and
- the rental to the public of originals or fixed copies of the work.

Independently of his economic rights and even after the transfer of those rights, the author of a work has the sole moral right¹³⁰:

- to claim authorship of the work;
- to object to any distortion, mutilation or other modification of, or derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation

The moral rights in the work will subsist beyond the death of the author and will remain until the expiry of the economic rights vesting in the work¹³¹.

3.3.2 Requirements

A work is deemed eligible for copyright protection where the work is fixed in some material form and irrespective of its mode or form of expression¹³².

There is no minimum artistic quality requirement for which a work must satisfy in order for copyright to subsist and the purpose for which the author created the work does not affect its eligibility for copyright protection.

Copyright protection shall not extend to ideas, concepts, procedures, methods or other things of a similar nature but will only vest in the material expression of such ideas, concepts, procedures, methods or other things of a similar nature which ought to be deemed original in nature¹³³.

3.3.3 Term of Protection

In general, and unless otherwise specified in the Law, works are protected during the author's lifetime and for 70 years after his death. For a work of joint ownership, the economic and moral rights shall be protected during the life of the last surviving author and for 70 years after his death¹³⁴.

¹²⁸ Copyright (Amendment) Act no 02 of 2014, amended by Copyright (Amendment) Act no 13 of 2017.

¹²⁹ Section 6 of the Copyright (Amendment) Act no 02 of 2014

¹³⁰ Section 7 of the Copyright (Amendment) Act no 02 of 2014

¹³¹ Section 7 of the Copyright (Amendment) Act no 02 of 2014

¹³² Section 3 and 05 of the Copyright (Amendment) Act no 02 of 2014

¹³³ Ibid.

¹³⁴ Section 15 of the Copyright (Amendment) Act no 02 of 2014

The following provides the duration of protection for specific categories of work¹³⁵:

- Audio-visual work or phonogram - The economic rights shall be protected for 70 years from the date on which the work was made or first made available to the public by publication; or by any other means, whichever date is the latest;
- For a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for 70 years from the date on which the work was made or first made available to the public, by publication or by any other means, whichever date is the latest, where the author's identity is revealed or is no longer in doubt before the expiration of the said period, above provisions shall apply.
- For a work of applied art, the economic and moral rights shall be protected for 25 years from the making of the work.

Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

3.3.4 Application/Registration Procedure

3.3.4.1 Place of Application

It is not possible to register copyright in Mauritius. Rather, copyright will subsist automatically in a copyright work where such work meets the requirements for copyright protection.

3.3.4.2 Categories of works eligible for copyright protection

An author, co-author, or joint author of any of the following works is entitled to the copyright and protection afforded to that work:

- Literary work;
- Artistic work;
- Scientific work;
- Derivative work.

3.3.5 Copyright ownership

Under the law, the default position is that the author of a work shall be regarded as the first owner of copyright and other rights in the work (including a joint ownership of the copyright work). However, there are currently certain exceptions to this position. Some exceptions include¹³⁶:

- Employed authors – In the absence of any contract to the contrary, the economic rights of a work shall vest in an employer or a person who commissions the work where the employed or commissioned author has created the work in the course of the employment or commission;
- Audio visual works – The original owner of the economic rights will be the producer of the work, unless otherwise provided by the Act.
- Co-Authors of Audio-visual works and the authors of pre-existing works – shall maintain their economic rights in their contribution or pre-existing work, respectively.

3.3.6 Forms of copyright infringement

The Law provides for several acts that are considered both unlawful and an infringement of the rights of the author. Any person who commits one of the below acts will be liable for committing an offence.

- (a) without the express authorisation of the author or owner of the copyright¹³⁷—
- (i) publishes, distributes, or reproduces a work for commercial purposes;
 - (ii) performs a work for the public for gain or against remuneration;
 - (iii) communicates a work to the public for gain or against remuneration;
 - (iv) broadcasts a work for gain or remuneration;

¹³⁵ Section 15 of the Copyright (Amendment) Act no 02 of 2014

¹³⁶ Section 09 of the Copyright (Amendment) Act no 02 of 2014

¹³⁷ Section 56 of the Copyright (Amendment) Act no 02 of 2014

- (v) makes a derivative work for gain or against remuneration;
 - (vi) imports, otherwise than exclusively for his own private and personal use, sells, exposes, or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made Mauritius;
- (b) without the express authorisation of the owner of the related rights, infringes the exclusive rights of performers, producers of phonograms and broadcasting organisations for gain against remuneration;
- (c) manufactures, imports for sale or rental, or provides such services as offering for sale, rental or distribution any device or means which is —
- (i) specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of any copy made thereof; or
 - (ii) susceptible to enable or assist in the reception or further distribution of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;
- (d) has in his possession in the course of trade any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work or for a purpose referred to in paragraph (b);
- (e) intentionally or recklessly deprives the copyright owner or author of his rights, for gain or against remuneration.

3.3.7 Permitted uses of copyright

The Law provides that use of certain works shall be permitted, without the authorization of the owner, and in no violation of the right of the author, in the following circumstances¹³⁸:

- Private Reproduction of a legally obtained published work in a single copy shall be permitted;
- Temporary reproduction of a work;
- Quotations from a work where such quotation is in line with fair practice and does not exceed the extent justified by the purpose or is used for caricature, parody or pastiche;
- Reproduction, broadcasting and other communications to the public for informatory purposes shall be permitted where the source and name of the author is clearly indicated;
- If the work has been made public, use of the work by way of illustration in publications, broadcasts of sound or visual recordings for teaching, not more than necessary for the purpose or the communication for teaching purposes of the work, broadcast for use in educational institutions or the utilisation of the work for professional training or public education;
 - The reproduction of works of art or architecture where permanently located in a public place or used only by way of background or incidental representation in an audio-visual work for cinema or television or in a broadcast by television and the communication to the public;
 - Where use is exclusively for the purpose of reporting fresh events or new information, the reproduction in the media or the communication to the public of political speeches delivered in public, speeches delivered in public during legal proceedings or works of a similar nature delivered in public. Use must be limited to what is required in the particular circumstances.
- In relation to a computer program reproduced or adapted where the reproduction, in a single copy, or the adaptation of a computer program by the copyright owner of that computer program is not an infringement:
 - If the use of the computer program with a computer is for the purpose and extent for which the computer program has been obtained or for archival purposes and the replacement of lawfully owned copy of the computer program in the event that the computer programme is lost, destroyed or rendered unusable. Should the continued possession of the reproduction or adaptation become unlawful, it shall be destroyed.

¹³⁸ Section 16-28 of the Copyright (Amendment) Act no 02 of 2014

- Visually impaired persons may, without the authorisation of the author or owner of the copyright work, reproduce a published work for persons who are blind, visually impaired or otherwise print disabled in a manner which can be enjoyed by such person.
- A library and archive with activities that do not serve direct or indirect commercial gain, may without the authorisation of the author, lend to a member of the public a copy of a work, other than a computer programme, which is part of the permanent collection of the library or archive.
- Infringement does not occur in the accidental or incidental inclusion of a work in the reporting of a news broadcast, fresh events or new information and the publication of the portrait of a person is not an infringement of the rights of the author or other person having an interest in the portrait in relation to scientific, educational or cultural purposes in general or publicly occurring fact or events.
- With regard to ephemeral recordings, there is no infringement:
 - Where a work is broadcast, the broadcast, the broadcaster may make a recording of the broadcast with their own facilities and for their own use on condition that the copies be destroyed six months of manufacture thereof unless of exceptional documentary character.
- Importation of a copy of a work, by a physical person, for his personal purposes shall be permitted without the consent of the author and/or owner.
- With regard to the production of sound recordings:
 - On notice given to the copyright owner or authorised collective administration society, a manufacturer, producer or production company of sound recordings may make copies of any musical work or a similar adaptation, if the copies of the musical work or similar adaptation of them have previously been made in or imported into Mauritius for the purpose of retail sale and the copies were made with the licence of or imported by the owner of the copyright or authorised collective administration society. The aforementioned provision of Section 24 of the Law is subject to a mechanical royalty payment on each copy of the sound recording due to the copyright owner or authorised collective administration society.

3.3.8 Transfer of copyright and related formalities

The owner of copyright may transfer the economic rights therein to another person either in whole or in part. On the other hand, moral rights by their very nature are non-transferrable.

Copyright may be transferred by means of an assignment agreement which must be reduced to writing and signed by both parties to the agreement¹³⁹. Where the agreement for the assignment of an economic right fails to mention the duration of the assignment, the assignment shall then so terminate after 10 years.

Where copyright is the subject of joint authorship, an assignment or licence in respect of the work shall be subject to the authorisation of the joint authors. Should a joint author withhold consent, the matter shall be referred to the High Court to determine whether consent should be granted in respect of the assignment or licence.

3.3.9 Implications of the Berne Convention on copyright protection

Mauritius is a member of the Berne Convention. The Berne Convention is aimed at obliging member countries to provide for certain minimum standards of copyright protection. Mauritius also adheres to the World Trade Organization (WTO) Agreement and the Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS). In terms of its obligations under the latter Agreement, Mauritius must afford to works emanating from other member countries, the same protection as it affords to Mauritius works. This is referred to as the principle of national treatment.

¹³⁹ Section 12 of the Copyright (Amendment) Act no 02 of 2014

3.3.10 Enforcement of Rights

3.3.10.1 Judicial System and court regarding IP Protection

Mauritius has a single-structured judicial system consisting of two tiers - the Supreme Court and subordinate courts. The Supreme Court sitting as Court of First Instance is composed of various Divisions exercising jurisdiction such as the Master's Court, the Family Division, the Commercial Division, the Criminal Division, the Mediation Division and as an Appellate jurisdiction (it hears and determines civil & criminal appeals from decisions of the subordinate courts), sits as Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from decisions of the Supreme Court sitting in the exercise of its original jurisdiction in civil and in criminal matters). Subordinate courts consist of the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court and the Court of Rodrigues.

In terms of the Copyright Act the Magistrate of the Intermediate Court shall have exclusive jurisdiction to try any person at first instance charged with an offence as defined in paragraph 3.3.6.

3.3.10.1.1 The Supreme Court

The Supreme Court is composed of the Chief Justice, the Senior Puisne Judge and nineteen Puisne Judges. It is a superior Court of Record and has unlimited jurisdiction to hear and determine any civil and criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with the necessary powers and authority to exercise its jurisdiction as a Court of Equity. The Supreme Court also exercises supervisory jurisdiction over subordinate courts in order to ensure that justice is duly delivered. The Supreme Court has the sole power to determine whether any provision of the Constitution has been contravened, including the power to determine whether any law enacted by Parliament contravenes any provision of the Constitution.

Commercial Division of the Supreme Court

The Commercial Division of the Supreme Court was set up administratively in 2009. Two Puisne Judges designated by the Chief Justice sit in that Division. It entertains, hears and determines matters arising under the Insolvency Act 2009 and the Companies Act, disputes relating to banking, bills of exchange, offshore business, patents and trademarks or passing off, disputes between traders and related matters and generally deals with anything which is of a commercial nature.

Criminal Division of the Supreme Court

The Supreme Court in the exercise of its criminal jurisdiction has the power to try any person charged with having committed a crime or a misdemeanour.

In the case of criminal proceeding, an aggrieved party may lodge a complaint with the Director of Public Prosecution which may institute prosecution on behalf and at the expense of the State. Where the Director of Public Prosecutions declined to institute a prosecution, the aggrieved party or his representative may institute a prosecution. Criminal trials are either held before a Presiding judge and jury consisting of nine people or before a Presiding judge without a jury. Most commonly criminal trials for counterfeiting take place before a Judge without a Jury.

3.3.10.1.2 Subordinate Courts

Intermediate Court

The Intermediate Court is established under the Courts Act and has island wide civil and criminal jurisdiction, including Rodrigues. It consists of two Presidents, two Vice-Presidents and any such number of Magistrates of the Intermediate Court established under the Civil Establishment Act.

Civil Jurisdiction of the Intermediate Court

The Intermediate Court has jurisdiction in all civil cases where the claim or matter dispute, whether in balance of account or otherwise, does not exceed 500,000 MUR (1,512,280 JPY). The Bench of the Intermediate Court is constituted by one or more Magistrates, as may be decided by the President.

Criminal Jurisdiction

The Intermediate Court has jurisdiction to hear and determine serious criminal offences referred to it by the Director of Public Prosecutions under specific sections of the Criminal Code and any other offence that can be tried by the Intermediate Court under any other enactment. It has power to inflict penal servitude on convicted offenders for a period not exceeding fifteen years and imprisonment for a period not exceeding ten years.

3.3.10.1.3 Districts Courts

There are ten District Courts on the Island of Mauritius and one in Rodrigues. District Courts have jurisdiction to try and determine both civil and criminal cases as provided for by law. Each District Court is presided by a District Magistrate and any such number of District Magistrates as may be decided by the Chief Justice.

Civil Jurisdiction of the District Court

The District Court has jurisdiction in all civil cases where the claim or matter in dispute does not exceed 50,000 MUR (151,228 JPY).

Criminal Jurisdiction

District Courts have power and jurisdiction to hear and determine criminal cases punishable by a term of imprisonment not exceeding five years and a fine not exceeding 100,000 MUR (302,456 JPY).

3.3.10.1.4 The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council in the United Kingdom is the ultimate appellate jurisdiction for Mauritius. To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases, there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

3.3.10.2 Special Remedies

In terms of section 52 of the Copyright Act, the Supreme Court may, notwithstanding any other enactment and without prejudice to such action as the author or right holder may have under such other enactment, grant such remedies, by way of damages, injunction, forfeiture of any infringing copy and of any apparatus, article or thing used for the making of the infringing copy or otherwise, as the Court thinks fit. The order may include:

- the forfeiture or seizure of any infringing copy or any apparatus, article or thing used for the making of the infringing copy;
- handing over to the copyright owner or author any infringing copy.

Without prejudice to any action or claim which he may have, a copyright owner or author may apply to a Judge in Chambers for an injunction or order for a *mesure conservatoire* as is appropriate in the circumstances, for the protection against infringement of his rights.

Any person who commits one of the below acts will be liable for committing an offence.

(a) without the express authorisation of the author or owner of the copyright ¹⁴⁰—

- (i) publishes, distributes, or reproduces a work for commercial purposes;
- (ii) performs a work for the public for gain or against remuneration;
- (iii) communicates a work to the public for gain or against remuneration;
- (iv) broadcasts a work for gain or remuneration;
- (v) makes a derivative work for gain or against remuneration;
- (vi) imports, otherwise than exclusively for his own private and personal use, sells, exposes, or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made Mauritius;

¹⁴⁰ Section 56 of the Copyright (Amendment) Act no 02 of 2014

(b) without the express authorisation of the owner of the related rights, infringes the exclusive rights of performers, producers or phonograms and broadcasting organisations for gain against remuneration;

(c) manufactures, imports for sale or rental, or provides such services as offering for sale, rental or distribution any device or means which is —

- (i) specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of any copy made thereof; or
- (ii) susceptible to enable or assist in the reception or further distribution of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;

(d) has in his possession in the course of trade any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work or for a purpose referred to in paragraph (b);

(e) intentionally or recklessly deprives the copyright owner or author of his rights, for gain or against remuneration.

Any person who commits an offence shall—

- on a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years;
- on a second or subsequent offence, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.

3.4 Geographical Indication

3.4.1 Definition

A Geographical Indication means an indication which identifies a good as originating in the territory of a country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin¹⁴¹.

In certain circumstances, the Director may permit concurrent use of a registered Geographical Indication in the name of two independent proprietors on the condition that such co-existence will not lead to any deception or confusion in the course of trade¹⁴².

3.4.2 Requirements

A Geographical Indication must be filed in the prescribed form and subject to payment of non-refundable fees.

3.4.3 Term of Protection

The term of protection for a Geographical Indication is identical to our comments on an ordinary trademark application.

3.4.4 Application/Registration Procedure

3.4.4.1 Place of Application

The Industrial Property Office of Mauritius is located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis, and all applications for registration of trademarks have to be filed manually at that office in English and in the prescribed manner.

3.4.4.2 Eligibility

In the case of Geographical Indications, such trademark applications are limited to a certain group of peoples in the commercial space including a group of producers, or a legal entity that groups the producers, that operates in a specified geographical area to produce specified goods, or a government department, on behalf of the group of producers or legal entity, may apply for registration of a geographical indication¹⁴³.

3.4.4.3 Requirements

The Act incorporates very specific requirements that must be met in order for a Geographical Indication to qualify for registration as a trademark. The requirements for registration are as follows¹⁴⁴:

An application for the registration of a geographical indication shall contain –

- the name, address and domicile of the person filing the application;
- the geographical indication for which registration is sought;
- the geographical area to which the geographical indication applies;
- the goods designated by the geographical indication;
- the specific characteristics of the goods for which the geographical indication is used;
- the area and method of production of the goods;
- the link between the characteristics of the goods and the area and method of production;
- the manner in which the specific characteristics are controlled;
- the Code of Practice which establishes the rules for the use of the geographical indication;
- proof that the name of the product is protected in the country of origin;

¹⁴¹ Section 2 of the Industrial Property Act of 2019.

¹⁴² Section 106 of the Industrial Property Act of 2019.

¹⁴³ Section 106 of the Industrial Property Act of 2019.

¹⁴⁴ Section 106 of the Industrial Property Act of 2019.

- the Internal Control Plan relating to the geographical indication.

An applicant may, at any time, withdraw his application for the registration of a geographical indication.

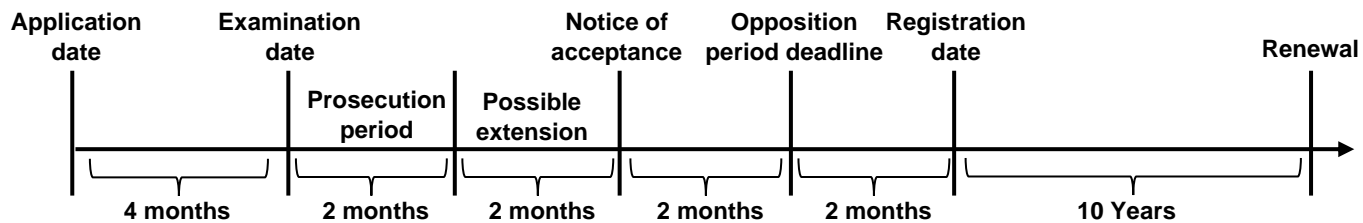
Additionally, the filing date of the Geographical Indication will be regarded as the date on which all of the requirements above have been met¹⁴⁵. Where the requirements have not been met timeously, the application will be deemed abandoned.

3.4.4.4 Examination

The process of examination of Geographical Indication differs slightly to an ordinary trademark application as the Director will consider the ordinary requirements and limitations for trademark registration, coupled with the above requirements and bars to registration¹⁴⁶. Additionally, the Director will consider whether the Geographical Indication complies with the definition of a Geographical Indication¹⁴⁷.

3.4.4.5 Period of Entire Registration Process

The process from application to registration ordinarily takes between 6-12 months on the assumption that no obstacles to registration are encountered during the examination and opposition periods.



3.4.5 Post-Registration

3.4.5.1 Registration Fees

The official fee for filing an application up until registration of one mark in one class is US\$150. A fee of US\$55 is applicable for each additional class of the identical mark. Please note that these fees are paid concurrently as an “all-inclusive fee” required by law and no additional fees are required at a later date for publication of the relevant marks.

3.4.5.2 Rights of the Right Holder

A Geographical Indication has a very particular scope of rights whereby no person, other than a group of producers or a legal entity that groups the producers, and carrying on an activity in the relevant geographical area, shall have the right to use a registered geographical indication in the course of trade with respect to the goods specified in the relevant register¹⁴⁸.

In light of the above, a proprietor who does not meet this requirement will be barred from registration of a Geographical Indication¹⁴⁹.

3.4.5.3 Fees related to successful registration

The all-inclusive fees of a successful registration are detailed above.

¹⁴⁵ Section 107 of the Industrial Property Act of 2019.

¹⁴⁶ Section 108 of the Industrial Property Act of 2019.

¹⁴⁷ Section 108 of the Industrial Property Act of 2019.

¹⁴⁸ Section 109 of the Industrial Property Act of 2019.

¹⁴⁹ Section 109 of the Industrial Property Act of 2019.

3.4.5.4 Licensing

A trademark owner may licence the rights obtained through trademark registration to third-parties. Both an exclusive and non-exclusive license is recognised in Mauritius.

For a licence to be valid against third-parties it must be recorded against the trademark registration. An application for recordal must include¹⁵⁰:

- A power of attorney by the licensor (simply signed); and
- The licence agreement signed by both parties (or certified copy).

3.4.5.5 Renewal of Registration

A registration for a Geographical Indication will be valid for 10 years starting from the filing date of the application for registration¹⁵¹. On expiry of the initial 10-year term, the Geographical Indication will be subject to renewal for an infinite period of additional 10 year terms of registration, subject to payment of the prescribed fee¹⁵².

3.4.6 Enforcement of Rights

As mentioned above the Industrial Property Act 2019 only came into force on 31 January 2022 and as such there have been no geographical indication infringement cases under the new Act.

3.4.6.1 Enforcement Agency

Enforcement of rights are not done at the level of the Industrial Property office. Depending on the circumstances, an aggrieved person may start a court action in court or complain to the Police in order to enforce their IP rights. A person may also apply for border protection with the Mauritius Revenue Authority to stop parallel or illegal importation. The judicial system, enforcement agency and different remedies based on civil and criminal enforcement are discussed below.

3.4.6.2 Judicial System and courts regarding IP Protection

Mauritius has a single-structured judicial system consisting of two tiers - the Supreme Court and subordinate courts. The Supreme Court sitting as Court of First Instance is composed of various Divisions exercising jurisdiction such as the Master's Court, the Family Division, the Commercial Division, the Criminal Division, the Mediation Division and as an Appellate jurisdiction (it hears and determines civil & criminal appeals from decisions of the subordinate courts), sits as Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from decisions of the Supreme Court sitting in the exercise of its original jurisdiction in civil and in criminal matters). Subordinate courts consist of the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court and the Court of Rodrigues.

3.4.6.2.1 The Supreme Court

The Supreme Court is composed of the Chief Justice, the Senior Puisne Judge and nineteen Puisne Judges. It is a superior Court of Record and has unlimited jurisdiction to hear and determine any civil and criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with the necessary powers and authority to exercise its jurisdiction as a Court of Equity. The Supreme Court also exercises supervisory jurisdiction over subordinate courts in order to ensure that justice is duly delivered. The Supreme Court has the sole power to determine whether any provision of the Constitution has been contravened, including the power to determine whether any law enacted by Parliament contravenes any provision of the Constitution.

Commercial Division of the Supreme Court

The Commercial Division of the Supreme Court was set up administratively in 2009. Two Puisne Judges designated by the Chief Justice sit in that Division. It entertains, hears and determines matters arising under the Insolvency Act 2009 and the Companies Act, disputes relating to banking, bills of exchange, offshore business,

¹⁵⁰ Section 135(2) of the Industrial Property Act of 2019

¹⁵¹ Section 111 of the Industrial Property Act of 2019.

¹⁵² Section 111 of the Industrial Property Act of 2019.

patents and trademarks or passing off, disputes between traders and related matters and generally deals with anything which is of a commercial nature.

Criminal Division of the Supreme Court

The Supreme Court in the exercise of its criminal jurisdiction has the power to try any person charged with having committed a crime or a misdemeanour.

In the case of criminal proceeding, an aggrieved party may lodge a complaint with the Director of Public Prosecution which may institute prosecution on behalf and at the expense of the State. Where the Director of Public Prosecutions declined to institute a prosecution, the aggrieved party or his representative may institute a prosecution. Criminal trials are either held before a Presiding judge and jury consisting of nine people or before a Presiding judge without a jury. Most commonly criminal trials for counterfeiting take place before a Judge without a Jury.

3.4.6.2.2 Subordinate Courts

Intermediate Court

The Intermediate Court is established under the Courts Act and has island wide civil and criminal jurisdiction, including Rodrigues. It consists of two Presidents, two Vice-Presidents and any such number of Magistrates of the Intermediate Court established under the Civil Establishment Act.

Civil Jurisdiction of the Intermediate Court

The Intermediate Court has jurisdiction in all civil cases where the claim or matter dispute, whether in balance of account or otherwise, does not exceed 500,000 MUR (1,512,280 JPY). The Bench of the Intermediate Court is constituted by one or more Magistrates, as may be decided by the President.

Criminal Jurisdiction

The Intermediate Court has jurisdiction to hear and determine serious criminal offences referred to it by the Director of Public Prosecutions under specific sections of the Criminal Code and any other offence that can be tried by the Intermediate Court under any other enactment. It has power to inflict penal servitude on convicted offenders for a period not exceeding fifteen years and imprisonment for a period not exceeding ten years.

3.4.6.2.3 Districts Courts

There are ten District Courts on the Island of Mauritius and one in Rodrigues. District Courts have jurisdiction to try and determine both civil and criminal cases as provided for by law. Each District Court is presided by a District Magistrate and any such number of District Magistrates as may be decided by the Chief Justice.

Civil Jurisdiction of the District Court

The District Court has jurisdiction in all civil cases where the claim or matter in dispute does not exceed 50,000 MUR (151,228 JPY).

Criminal Jurisdiction

District Courts have power and jurisdiction to hear and determine criminal cases punishable by a term of imprisonment not exceeding five years and a fine not exceeding 100,000 MUR (302,456 JPY).

3.4.6.2.4 The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council in the United Kingdom is the ultimate appellate jurisdiction for Mauritius. To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases, there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

3.4.6.3 Remedies

3.4.6.3.1 Civil remedies

A person who without the written agreement of the registered owner, uses a registered mark in relation to goods and services for which it has been registered shall infringe the geographical indication.

In terms of section 139 the exploitation of the mark in Mauritius by any other person other than the owner of the title of protection or the licensee and without the agreement of the owner shall be unlawful. Any person who knowingly exploits uses the registered mark shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR (756140.00 JPY) and to imprisonment for a term not exceeding 5 years.

According to section 140 of the Act, using a registered mark shall further amount to an act of unfair practice and may give rise to a claim in damages and shall be prosecuted in accordance with the Protection Against Unfair Practices Act 2002. In terms of Protection Against Unfair Practices Act 2002 any act or practice which in the course of any industrial or commercial activity, is contrary to honest commercial practice, shall be unlawful. On conviction the person who commits such an act or practice shall be liable to a fine not exceeding 250,000 MUR (756,140.00 JPY) and to imprisonment for a term not exceeding 5 years.

3.5 Industrial Design

Industrial designs in Mauritius are governed by the Industrial Property Act 2019, the Industrial Property Regulations 2022, and the Hague Agreement Concerning the International Registration of Industrial Designs. An industrial design constitutes the ornamental aspect of an article. An industrial design may consist of three-dimensional features such as shape of an article, or two-dimensional features such as patterns, lines or colour.

Industrial designs can be applied to a wide variety of products and includes handcrafted and industrially manufactured items from packages and containers to furnishing and household goods, from lighting equipment to jewellery, and from electronic devices to textiles.

It is important to note that as at November 2022, Mauritius is not a party to the Hague System for the international registration of Industrial Designs. The Industrial Property Act 2019 does however make provision for Mauritius to adhere to the Hague System. The process of accession to the Hague System is however expected to be initiated by the Government of Mauritius in due course. Once Mauritius has acceded to the Hague System applicants will be able to apply for International Registration of Industrial Designs for registering up to 100 designs in more than 90 countries with Mauritius designated.

3.5.1 Definition

An Industrial design means the appearance of a product resulting from its features, particularly the shape, lines, contours, colours, textures or materials of the product or its ornamentation.¹⁵³

3.5.2 Requirements

An industrial design shall be protected where it is new and original.¹⁵⁴

For the purpose of determining novelty and originality, no disclosure of an industrial design shall be taken into consideration where it occurred –

- within 12 months before the filing date or, where applicable, the priority date, of the application; and
- by reason of or in consequence of –
 - an abuse committed by a third party with regard to the applicant or his predecessor in title; or
 - an act committed by the applicant or his predecessor in title, other than the filing of an application to register, or otherwise obtain legal protection for, the industrial design with an industrial property authority.¹⁵⁵

3.5.2.1 Novelty

An industrial design shall be considered to be new where it has not been disclosed to the public anywhere in the world by publication in tangible form, exhibition, use in trade or in any other way. As stated above industrial designs in Mauritius has a 12 months grace period.¹⁵⁶

An industrial design applied to, or embodied in, a product that is a component part of a complex product shall be considered to be new where the component part remains visible during the normal use of the complex product. The term “normal use” means use by an end user; but does not include maintenance, servicing or repair work.¹⁵⁷

3.5.2.2 Originality

An industrial design shall not be considered to be original where it does not significantly differ from known designs or combinations of known designs features.¹⁵⁸

¹⁵³ Definition as per section 2 of the Act.

¹⁵⁴ Section 73(1)(a) of the Act.

¹⁵⁵ Section 73(2) of the Act.

¹⁵⁶ Section 73(1)(b) of the Act.

¹⁵⁷ Section 73(1)(c) of the Act.

¹⁵⁸ Section 73(1)(d) of the Act.

3.5.2.3 Matters excluded from being registered as industrial design¹⁵⁹

An industrial design shall not be registered where –

- its features are solely dictated by technical or functional considerations; or
- its commercial exploitation may be contrary to public order or morality.

3.5.3 Term of Protection

The registration of an industrial design shall be valid for a period of 5 years from the filing date of the application for registration. The registration of an industrial design may be renewed for 3 further consecutive periods of 5 years.¹⁶⁰

3.5.4 Application/Registration Procedure

3.5.4.1 Place of Application

An application for the registration of an industrial design shall be filed with the Director in such form and manner as he may determine, which is currently 4,000 MUR (12,098.24 JPY).¹⁶¹ The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis.

3.5.4.2 Eligibility¹⁶²

The exclusive right to use an industrial design shall be acquired by registration.

The right to an industrial design –

- shall belong to the creator of the design;
- may be assigned or may be transferred by succession.

Where 2 or more persons have created the same industrial design, the right to the industrial design shall belong to them jointly.

Where 2 or more persons have created the same industrial design independently of each other, the person whose application has the earliest filing date or, where priority is claimed, the earliest validly claimed priority date, shall have the right to the industrial design, provided that the said application is not withdrawn, abandoned, or rejected.

Where an industrial design is made in the execution of an employment contract, the purpose of which is to create one or more designs, the right to the industrial design shall belong, in the absence of any contrary contractual provision, to the employer.

The creator of an industrial design shall be named as such in the industrial design unless he makes a declaration, in writing, to the Office that he does not wish to be so named. Any promise or undertaking made or given by the creator of an industrial design to the effect that he will make a declaration under paragraph (a) shall be void and of no effect.

3.5.4.3 Requirements¹⁶³

An application for the registration of an industrial design shall –

- be filed manually filed with the Director at the Industrial Property offices in such form and manner as he may determine;
- contain a graphic representation of the industrial design;

¹⁵⁹ Section 74 of the Act

¹⁶⁰ Section 84 of the Act.

¹⁶¹ Section 76(1)(a) of the Act.

¹⁶² Section 75 of the Act.

¹⁶³ Section 76 of the Act.

- an indication of the article which constitutes the industrial design or in relation to which the industrial design is to be used; and
- be accompanied by such non-refundable fee as may be prescribed.

Where an applicant is not the creator of an industrial design, the application shall include a statement justifying the right of the applicant to the registration of the industrial design.

An application for the registered design may further contain –

- up to 100 industrial designs provided they all refer to products that belong to the same class of the International Classification; and
- a request that publication of the industrial design be deferred for a specified period not exceeding 12 months from the filing date or, where applicable, from the priority date of the application.¹⁶⁴

An application for the registration of an industrial design should contain a brief description, not exceeding 100 words, of the characteristic features of the industrial design, including any colours, the features characterising the industrial design in accordance with its filed representation or specimen, but shall not refer to technical particulars related to the operation of the product incorporating the industrial design, its possible uses, or the manufacturing material.

The graphic representation or drawing of the industrial design should not exceed 10 centimetres by 20 centimetres. The drawings, photographs or graphic representations should represent the industrial design; or the product in relation to which the industrial design is to be used, excluding any other object, accessory, person, or animal.

A graphic representation of an industrial design which contains dimensions and explanatory text shall not be accepted.

3.5.4.3.1 Prior Disclosure

If the applicant is aware, at the time of filing his application, of any prior disclosure and wishes to avail himself of the exception set out in terms prior art purposes for determining novelty and originality, he/she should mention the prior disclosure in his application form and provide full particulars of the disclosure.¹⁶⁵

3.5.4.3.2 Right of Priority¹⁶⁶

An application for registration may contain a declaration claiming, in accordance with the Paris Convention, the priority date of one or more earlier applications filed for the same industrial design by the applicant or his predecessor in title, in or for any State party to the Convention or any member of the World Trade Organization, at any time not earlier than 6 months from the filing date of the earlier application.

- If the application claims priority, the applicant should furnish: a copy of the earlier application, certified as correct by the foreign authority;
- a certificate from that authority showing the date of filing; and
- an English translation of the document.

Where the Director finds that the conditions for the right of priority or the requirements for claiming priority have not been satisfied, the declaration claiming priority shall be considered not to have been made.

Where an application contains a declaration claiming the priority date –

- the application may not be refused because of an act done during the six-month period, as provided for in the Paris Convention; and
- no such act shall give rise to any third party right or right of personal possession.

¹⁶⁴ Regulation 57 of the Industrial Property Regulations

¹⁶⁵ Regulation 59 of the Industrial Property Regulations

¹⁶⁶ Section 78 of the Act.

3.5.4.3.3 Filing date¹⁶⁷

Where the application is accompanied by the prescribed fee and contains the following:

–

- indications allowing the identity of the applicant to be established and allowing the applicant to be contacted; and
- graphic representations of the industrial design for which registration is sought

the Director shall issue a notification of the filing date within 1 week of the application date. The date of receipt shall then be considered as the filing date.

3.5.4.3.4 Amendment and Withdrawal of application

An applicant may amend an application at any time while it is being processed by manually filing a request at the IPOM. However, no amendment shall be accepted where it involves a change in, or addition to, any of the designs contained in the application for registration.¹⁶⁸

An applicant may, at any time before an industrial design is registered, withdraw the application entirely or in respect of one or more designs, on payment of such fee as may be prescribed, which is currently 1,000 MUR (3,024.56 JPY).¹⁶⁹

3.5.4.4 Examination

The Director shall examine and determine whether an application for registration of an industrial design complies with the requirements of novelty and originality and with the definition of industrial design as stated above.¹⁷⁰

Where the application does not comply with the requirements of novelty and originality and the definition as defined above, the Director shall request the applicant, in writing, to correct the application within 2 months from the date of receipt of the request or such further period as he may determine.¹⁷¹

Where the required correction is not made within the specified period, the application shall be considered to have been withdrawn.¹⁷²

Currently only formal examination is conducted by the Industrial Property Office with substantive examination coming into effect at a date still to be determined.

3.5.4.5 Registration and Publication

Where the conditions for novelty and originality are satisfied, the industrial design shall be registered on payment of the registration fee of 6,000 MUR (18,147.36 JPY). When the industrial design is registered details thereof shall be published and the applicant shall receive a certificate of registration of the industrial design.¹⁷³

Where an application does not satisfy the requirements of novelty and originality, the application shall be rejected.¹⁷⁴

Where a request has been made under for deferment of publication, the applicant should ensure that –

- the application and the representation of the design are not open for public inspection; and
- the application is not published until the expiry of the period of deferment.¹⁷⁵

The Director shall, at the expiry of the period of deferment, give public notice of the application in the Gazette.¹⁷⁶

¹⁶⁷ Section 79 of the Act.

¹⁶⁸ Section 77(1) of the Act.

¹⁶⁹ Section 77(2) of the Act.

¹⁷⁰ Section 80(1)(a) of the Act.

¹⁷¹ Section 80(1)(b) of the Act.

¹⁷² Section 80(1)(c) of the Act.

¹⁷³ Section 81(1)(a) of the Act.

¹⁷⁴ Section 81(1)(b) of the Act.

¹⁷⁵ Section 81(1)(c) of the Act.

¹⁷⁶ Section 81(2) of the Act.

3.5.5 Post-Registration

3.5.5.1 Registration Fees

The registration fee for an industrial design is currently 6,000 MUR (18,147.36 JPY). The registration fee is payable upon receipt that the application is to be registered.

3.5.5.2 Rights of the Right Holder

Where any person, other than the registered owner, exploits a registered industrial design in Mauritius, he shall require the written consent of the registered owner.¹⁷⁷

Where an industrial design is registered for a part of a product that is integral and inseparable from that product, any infringement of the registered design shall be assessed considering the overall appearance of the product embodying the registered design, and not only that part in isolation.¹⁷⁸

No right conferred by the registration of an industrial design shall prohibit –

- an act in respect of a product that embodies the industrial design, after the product has been put on the market in Mauritius or abroad by the registered holder or by a person acting with the holder's consent or having an economic tie to the holder;
- the use of the industrial design in the body or gear of any aircraft, land vehicle or vessel that temporarily or accidentally enters Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, land vehicle or vessel.
- an act done –
 - privately and for a non-commercial purpose;
 - for the purpose of teaching, education or scientific research in academic, educational or research institutions; or
 - only for experimental purposes relating to the industrial design;
- the reproduction of any features of the industrial design –
 - dictated solely by functional or technical considerations or necessary to fulfil a technical purpose;
 - in their exact form in order to permit the product in which the design is embodied to be mechanically connected to or placed in, around or against, another product so that each product may perform its function; or
 - embodied in a component part of a complex product, where that part is used for the purpose of repairing that product so as to restore its original appearance.¹⁷⁹

3.5.5.3 Fees related to successful registration

Only annual maintenance fees are due to maintain Industrial design after registration.

3.5.5.4 Licensing

The Act only makes provision for a third party to require written consent from the registered owner to exploit the registered industrial design in Mauritius.

3.5.5.5 Renewal of Registration¹⁸⁰

The registration of an industrial design shall be valid for a period of 5 years from the filing date of the application for registration.

The registration of an industrial design may be renewed for 3 further consecutive periods of 5 years

- on payment of the prescribed fee; and
- subject to the conditions determined by the Director having been complied with.

¹⁷⁷Section 82(1) of the Act.

¹⁷⁸ Section 82(2) of the Act.

¹⁷⁹ Section 82 of the Act.

¹⁸⁰ Section 84 of the Act.

The fees for the renewal of the registration of an industrial design are:

| | Renewal fee in MUR | Renewal fee in JPY |
|---|--------------------|--------------------|
| First term (due 5 years after filing) | 5,000 | 15,122,80 |
| Second term (due 10 years after filing) | 7,000 | 21,171,92 |
| Third term (due 15 years after filing) | 10,000 | 30,245,60 |

The Director may allow a delay of 6 months for the late payment of the prescribed renewal fee subject to the payment of such surcharge as may be prescribed. The surcharge for late payment of renewal fee is currently 2,000 MUR (6,049.12 JPY). Where the renewal is not affected in accordance with this section, the registration of the industrial design shall lapse.

3.5.5.6 Invalidation of registered design¹⁸¹

Any interested person may apply to the Tribunal for the invalidation of the registration of an industrial design where –

- the industrial design is not entitled to protection due to the requirements of novelty and originality;
- the right holder is not entitled to protection;
- the registered owner of the industrial design is not the creator or his successor in title.

Where a ground for invalidation is proved with respect to only one or some of the designs included in the registration, that design or those designs, as the case may be, shall be invalidated. An invalidated industrial design shall be null and void ab initio.

The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

Any person who is dissatisfied with a determination of the Tribunal as being erroneous in law may appeal to the Supreme Court. An appeal under this section shall be prosecuted in the manner provided by the rules made by the Supreme Court. Any appeal to the Supreme Court shall be made within 21 days from the determination of the Tribunal.

3.5.6 Enforcement of Rights

3.5.6.1 Enforcement Agency

Enforcement of rights are not done at the level of the Industrial Property office. Depending on the circumstances, an aggrieved person may start a court action in court or complain to the Police in order to enforce their IP rights. A person may also apply for border protection with the Mauritius Revenue Authority to stop parallel or illegal importation.

As mentioned above the Industrial Property Act 2019 only came into force on 31 January 2022 and as such there have been no Industrial design infringement cases under the new Act. To our knowledge there has also not been any cases involving industrial design infringement in Mauritius.

The judicial system, enforcement agency and different remedies based on civil and criminal enforcement are discussed below.

¹⁸¹ Section 85 of the Act.

3.5.6.2 Judicial System and courts regarding IP Protection

Mauritius has a single-structured judicial system consisting of two tiers - the Supreme Court and subordinate courts. The Supreme Court sitting as Court of First Instance is composed of various Divisions exercising jurisdiction such as the Master's Court, the Family Division, the Commercial Division, the Criminal Division, the Mediation Division and as an Appellate jurisdiction (it hears and determines civil & criminal appeals from decisions of the subordinate courts), sits as Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from decisions of the Supreme Court sitting in the exercise of its original jurisdiction in civil and in criminal matters). Subordinate courts consist of the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court and the Court of Rodrigues.

3.5.6.2.1 The Supreme Court

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District Courts have power and jurisdiction to hear and determine criminal cases punishable by a term of imprisonment not exceeding five years and a fine not exceeding 100,000 MUR (302,456 JPY).

3.5.6.2.4 The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council in the United Kingdom is the ultimate appellate jurisdiction for Mauritius. To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases, there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

3.5.6.3 Remedies

An Industrial design shall confer on its owner the rights to prevent any unauthorised person from exploiting the design. Where an industrial design is registered for a part of a product that is integral and inseparable from that product, any infringement of the registered design shall be assessed taking into account the overall appearance of the product embodying the registered design, and not only that part in isolation.

In terms of section 139 the exploitation of the design in Mauritius by any other person other than the owner of the title of protection or the licensee and without the agreement of the owner shall be unlawful. Any person who knowingly exploits the design shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR (756140.00 JPY) and to imprisonment for a term not exceeding 5 years.

According to section 140 of the Act, exploiting industrial design shall further amount to an act of unfair practice and may give rise to a claim in damages and shall be prosecuted in accordance with the Protection Against Unfair Practices Act 2002. In terms of Protection Against Unfair Practices Act 2002 any act or practice which in the course of any industrial or commercial activity, is contrary to honest commercial practice, shall be unlawful. On conviction the person who commits such an act or practice shall be liable to a fine not exceeding 250,000 MUR (756,140.00 JPY) and to imprisonment for a term not exceeding 5 years.

3.5.7 Industrial design under the Hague Agreement

An application for international design registration may be filed directly with the International Bureau or with the Office, on the official application form of the International Bureau.¹⁸² As of November 2022, Mauritius is not yet a party to the Hague Agreement for the international registration of Industrial Designs. The process of Accession to the Hauge Agreement is expected to be initiated. Effect of International Registration

An international registration that designates Mauritius as a Contracting Party shall, as from the date of the international registration, have the same effect as an application for registration filed under the Industrial Property Act 2019.¹⁸³

Where, in accordance with the Hague Agreement signed in Geneva on July 2, 1999 and the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement:

- no refusal has been notified to the International Bureau; or

¹⁸² Section 86 of the Act.

¹⁸³ Section 87 of the Act.

- a refusal has been notified to the International Bureau, but has been withdrawn subsequently, the international registration shall have the same effect, from the date of the international registration, as a registration of industrial design granted by the Director under the Industrial Property Act 2019.¹⁸⁴

A recording made in the International Register in respect of an international registration designating Mauritius as a Contracting Party shall have the same effect as a recording in the relevant register.

Subject to renewal, an international registration designating Mauritius shall have the same duration of protection provided under this Act. The renewal shall be requested from the International Bureau and be recorded in the International Register.

3.5.7.1 Examination of international registration and notification to International Bureau¹⁸⁵

Where an international registration designating Mauritius does not comply with the prescribed requirements, but is compatible with Article 12(1) of the 1999 Act, the Director shall, before the expiry of the refusal period applicable under the Common Regulations, notify a refusal of protection to the International Bureau in accordance with the Common Regulations.

Article 12(1) of the 1999 Act states:

“The Office of any designated Contracting Party may, where the conditions for the grant of protection under the law of that Contracting Party are not met in respect of any or all of the industrial designs that are the subject of an international registration, refuse the effects, in part or in whole, of the international registration in the territory of the said Contracting Party, provided that no Office may refuse the effects, in part or in whole, of any international registration on the ground that requirements relating to the form or contents of the international application that are provided for in this Act or the Regulations or are additional to, or different from, those requirements have not been satisfied under the law of the Contracting Party concerned.”¹⁸⁶

Where a notification of refusal has been issued in terms of novelty or originality the Director shall request the applicant, in writing, to correct the application within 3 months of receipt of the request.

Where a notification of refusal has been and the refusal is withdrawn subsequently, the Director shall send to the International Bureau a statement to that effect in accordance with the Common Regulations.

Where no notification of refusal has been issued, the Director shall, within the prescribed refusal period, send a statement to the effect that protection is granted to the industrial designs that are the subject of international registration to the International Bureau in accordance with the Common Regulations.

Where the international registration is invalidated in Mauritius and the invalidation is not subject to appeal, the Director shall notify the International Bureau in accordance with the Common Regulations.

The holder of the international registration who received a notification of refusal shall enjoy the same remedies which are available to the applicant for the registration of an industrial design under the Industrial Property Act 2019.

The holder of an international registration involved in an invalidation procedure shall be afforded the same opportunity of defending the right as is available to the holder of an industrial design registered under this Act.

3.5.7.2 Conflict between the Industrial Property Act and the Hague Agreement¹⁸⁷

In the event of conflict between the Industrial Property Act 2019 and the 1999 Act and the Common Regulations, the provisions of the 1999 Act and the Common Regulations shall prevail.

¹⁸⁴ Section 88 of the Act.

¹⁸⁵ Section 89 of the Act.

¹⁸⁶ Article 12(1) of the Act of the Hague Agreement signed in Geneva on July 2, 1999

¹⁸⁷ Section 90 of the Act.

3.6 Layout-Designs of Integrated Circuits

Layout-Designs of Integrated Circuits in Mauritius are governed by the Industrial Property Act, 2019 and the Industrial Property Regulations 2022.

An integrated circuit (or 'chip') is an electronic device that incorporates individual electronic components within a single 'integrated' platform of semi-conductor material, typically silicon, configured so as to perform a complex electronic function.

An integrated circuit is thus formed when a miniaturized electrical circuit is embodied within a chip. All the active and passive components are created in the semi-conductor wafer during the fabrication process itself and are therefore inseparable once the chip has been produced.

A layout-design, also known as an integrated circuit topography, is defined in Article 2(ii) of the IPIC Treaty, as incorporated into the TRIPS Agreement, as the three-dimensional disposition, however expressed, of the elements at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture. In other words, a layout-design is the three-dimensional layout of an integrated circuit, i.e., the arrangement in a chip (usually made of semi-conductor crystal) of active and passive electronic components.¹⁸⁸

3.6.1 Definition

A layout-designs means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and some or all the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.¹⁸⁹

3.6.2 Requirements

An application for layout-design may be registered if the layout-design is original and has not been commercially exploited or has been exploited for not more than 2 years.¹⁹⁰

3.6.2.1 Originality

A layout-design shall be original where it is –

- the result of its creator's own intellectual effort; and
- not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.¹⁹¹

A layout-design consisting of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original.¹⁹²

3.6.3 Term of Protection

Any protection granted in respect of a layout-design under this Act shall commence –

- on the date of the first commercial exploitation anywhere in the world, of the layout-design by or with the consent of the right holder, provided that an application for protection is filed by the right holder with the Director;
- on the filing date granted to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.¹⁹³

¹⁸⁸ Treaty on Intellectual Property in Respect of Integrated Circuits 1989

¹⁸⁹ Definition as per Section 2 of the Act.

¹⁹⁰ Section 44 of the Act.

¹⁹¹ Section 45(1) of the Act.

¹⁹² Section 45(2) of the Act.

¹⁹³ Section 48(1) of the Act

Any protection granted in respect of a layout-design under this Act shall lapse at the end of 10 years from the date of commencement of the protection.¹⁹⁴

3.6.4 Application/Registration Procedure

3.6.4.1 Place of Application

Layout designs are filed with the Director of the IP office in such a manner as he may determine and must be accompanied by payment of the application fee, which is currently 10,000 MUR (30,245.60 JPY).¹⁹⁵ The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis.

3.6.4.2 Eligibility

The right to a layout-design which has been registered shall belong to the creator of the layout-design. The right to a layout-design may be assigned or transferred by succession.¹⁹⁶

Where several persons have jointly created a layout-design, the right to the layout-design shall belong to them jointly.¹⁹⁷

Where 2 or more persons have created the same layout-design independently of each other, the person whose application has the earliest filing date shall have the right to the layout-design where his application for registration is not withdrawn, abandoned, or rejected.¹⁹⁸

Where a creation is made in the execution of, or under, an employment contract, the right to the creation shall belong, in the absence of any express provision to the contrary, to the employer.¹⁹⁹

A layout-design shall contain the name of the creator unless he indicates, in a special written declaration signed by him and addressed to the Director, that he does not wish to be named. Any promise or undertaking made or given by the creator to any person to the effect that he will make a declaration that he does not wish to be named shall be void and of no effect.²⁰⁰

3.6.4.3 Requirements

The filing date of an application for registration of a layout-design shall be the date on which the application containing-

- The identity of the applicant and his contact information; and
 - Graphic representation of the layout design for which registration is sought,
- is received by the Office.²⁰¹

Where the prescribed fee is not paid, the applicant shall be notified, in writing, that the application shall be considered not to have been filed unless payment is made within 2 months from the date of receipt of the notification.

The application for a layout design must include:

- a brief and precise designation of the layout-design;
- indicate the name, address and nationality of the applicant and, where applicable, the habitual residence of the applicant;
- a copy or drawing of the layout-design, together with information defining the electronic function which the integrated circuit is intended to perform;

¹⁹⁴ Section 48(2) of the Act

¹⁹⁵ Section 42(1)(a) of the Act.

¹⁹⁶ Section 46(1) of the Act.

¹⁹⁷ Section 46(2) of the Act.

¹⁹⁸ Section 46(3) of the Act.

¹⁹⁹ Section 46(4) of the Act.

²⁰⁰ Section 46(5) of the Act.

²⁰¹ Section 43(1) of the Act.

- specify the date of the first commercial exploitation of the layout-design anywhere in the world or indicate whether the exploitation has been commenced or not; and
- provide particulars justifying the right to protection.²⁰²

Any copy or drawing may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, where the parts submitted are sufficient to allow the identification of the layout-design.²⁰³

Where the application does not, at the time of receipt, contain all the relevant information as listed above, the applicant shall receive a written notification of the non-compliance with a request to file the required correction within 2 months from the date of receipt of the notification.²⁰⁴ If the applicant does not file the necessary correction within the required time limit, the application shall be considered to have been abandoned.²⁰⁵

3.6.4.3.1 Withdrawal of application

No provision in the Industrial Property act for the withdrawal of an application for a Layout-design. An application for a Layout-design can however be withdrawn by manually filing a request at the Industrial Property Office.

3.6.4.4 Examination

The director shall, after classifying the layout design, conduct substantive examine to verify whether that the layout design is original and has not been commercially exploited or has been exploited for not more than 2 years. The director shall also conduct formal examination to verify whether any formal information that has been requested has been furnished.²⁰⁶

Currently only formal examination is conducted by the Industrial Property Office with substantive examination coming into effect at a date still to be determined.

3.6.4.5 Amendment of application

No provision in the Industrial Property Act for the amendment of an application for a Layout-design. A request to amend an application for a Layout-design can however be manually filed at the Industrial Property Office.

3.6.4.6 Grant or refusal

An application for a layout design shall be registered if the layout design complies with the formal and substantive requirements. Once the application is registered the applicant shall receive a certificate with the registration recorded in the register. The register shall contain:

- the title of the layout-design; and
- where appropriate –
 - the date of the first commercial exploitation of the layout-design anywhere in the world; and
 - the name and address of the right holder and such other particulars as the Director may determine.²⁰⁷

The registration of a layout-design shall be published in such form and manner as the Director of the Industrial Property Office may determine.²⁰⁸

3.6.5 Post-Registration

3.6.5.1 Registration Fees

No registration fees payable.

²⁰² Section 42(3) of the Act.

²⁰³ Section 42(4) of the Act.

²⁰⁴ Section 42(2) of the Act.

²⁰⁵ Section 42(3) of the Act.

²⁰⁶ Section 44(1) of the Act.

²⁰⁷ Section 44(2) of the Act.

²⁰⁸ Section 44(3) of the Act.

3.6.5.2 Rights of the Right Holder

The registration of a layout-design shall confer on its registered holder the right to prevent any unauthorised person from exploiting the design.²⁰⁹

Exploit means in relation to a registered layout-design-

- by incorporation in an integrated circuit or otherwise, reproduce the design, in whole or in part, otherwise than by reproducing a part that does not comply with the requirement of originality as described above; or
- import, sell or otherwise distribute for commercial purposes the design, an integrated circuit in which the design is incorporated or an article incorporating the integrated circuit in so far as it continues to contain the design.²¹⁰

The rights conferred by the registration of a layout-design shall not prevent:

- the reproduction or use of the protected layout-design for private non-commercial purposes;
- acts done in respect of the protected layout-design for the purpose of teaching, education or scientific research in academic, educational or research institutions;
- the reproduction or use of the protected layout-design for the sole purpose of its evaluation or analysis;
- the incorporation, in an integrated circuit, of a layout-design created on the basis of evaluation or analysis and which is original;
- the performance of any act where the integrated circuit in which such a layout-design is incorporated, or the article incorporating such an integrated circuit, has been put on the market in Mauritius or in another State by the right holder or by a person acting with the right holder's consent or having an economic tie with the right holder;
- the performance of any act in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering the act did not know and had no reasonable ground to know, when acquiring the integrated circuit or the article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design;
- the performance of anywhere the act is performed in respect of an identical layout-design which is original and has been created independently by a third party; or
- the use of an integrated circuit in which the layout-design is incorporated, or of an article incorporating such an integrated circuit, in the body or gear of an aircraft, a land vehicle or vessel that temporarily or accidentally enters the jurisdiction of Mauritius, or the importation of spare parts or accessories for the purpose of repairing such aircraft, vehicle or vessel.²¹¹

Where a person receives notice that a layout-design was unlawfully reproduced, he –

- may import, sell or otherwise distribute for commercial purposes the design, an integrated circuit in which the design is incorporated or an article incorporating the integrated circuit in so far as it continues to contain the design only with respect to stock in hand or ordered before he received the notice; and
- shall be liable to pay to the right holder a sum equivalent to the reasonable royalty that would be payable under a freshly negotiated licence.²¹²

3.6.5.3 Fees related to successful registration

No fees payable in relation to successful registration.

3.6.5.4 Renewal of Registration

No maintenance fee payable for registered layout design.

3.6.5.5 Invalidation of Layout design

An interested person may apply to the Tribunal for the invalidation of the registration of a layout-design where-

²⁰⁹ Section 47(1) of the Act.

²¹⁰ Definition as per section 2 of the Act.

²¹¹ Section 47(2) of the Act.

²¹² Section 47(3) of the Act.

- The layout design is not original and has been commercially exploited for more than 2 years.
- The right holder is not entitled to protection.²¹³

Where the ground for invalidation is proved as regards a part of the layout-design, only that corresponding part of the registration shall be invalidated. An invalidated layout design shall be considered as null and void ab initio.²¹⁴

The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.

Any person who is dissatisfied with a determination of the Tribunal as being erroneous in law may appeal to the Supreme Court. An appeal under this section shall be prosecuted in the manner provided by the rules made by the Supreme Court. Any appeal to the Supreme Court shall be made within 21 days from the determination of the Tribunal.²¹⁵

3.6.6 Exploitation by Government agency or third person

A third party or a government agency may request to exploit a registered layout design, and if the permanent secretary of the Ministry: –

- is satisfied that the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy requires the exploitation of a protected layout-design for public non-commercial use; or
- has, on an application by any party, determined that the manner of exploitation of a protected layout-design, by the right holder or his licensee, is anti-competitive, and after such determination, the permanent secretary of the Ministry is satisfied that it is necessary to remedy such anti-competitive practice,

he may, grant such a request without the consent of the right holder²¹⁶

The exploitation of the layout-design shall be –

- limited, in scope and duration, to the purpose for which it was authorised;
- non-exclusive; and
- subject to the payment to the right holder of an adequate remuneration which takes into account the economic value of the authorisation of the permanent secretary of the Ministry and, where applicable, the need to correct anti-competitive practices.²¹⁷

Upon a request from the right holder or the beneficiary of the authorisation, the permanent secretary of the Ministry may, after hearing the parties, vary the terms of the decision authorising the exploitation of the layout-design where changed circumstances justify such variation.²¹⁸

Upon a request from the right holder, the permanent secretary of the Ministry shall terminate the non-voluntary licence where he is satisfied that the circumstances which led to his decision have ceased to exist and are unlikely to recur or that the beneficiary of the authorisation has failed to comply with the terms of the authorisation.²¹⁹

Notwithstanding the above, the permanent secretary of the Ministry shall not terminate an authorisation where he is satisfied that the adequate protection of the legitimate interests of the beneficiary of the authorisation justifies the maintenance of the authorisation.²²⁰

²¹³ Section 49(1) of the Act.

²¹⁴ Section 49(2) of the Act.

²¹⁵ Section 138 of the Act.

²¹⁶ Section 50(1) of the Act.

²¹⁷ Section 50(2) of the Act.

²¹⁸ Section 50(3) of the Act.

²¹⁹ Section 50(4) of the Act.

²²⁰ Section 50(5) of the Act.

Where a third person has been designated by the permanent secretary of the Ministry, the authorisation may only be transferred with the enterprise or business of the beneficiary of the authorisation or with the part of the enterprise or business within which the layout-design is being exploited.²²¹

A request for the authorisation of the permanent secretary of the Ministry shall be accompanied by evidence that the right holder has received, from the person seeking the authorisation, a request for a contractual licence but that person has been unable to obtain such a licence on reasonable commercial terms and conditions and within a reasonable time.²²²

Any interested person may, within 2 months from the date of a decision of the permanent secretary of the Ministry under this section, make an application to the Supreme Court for a judicial review of the decision.²²³

3.6.7 Enforcement of Rights

As mentioned above the Industrial Property Act 2019 only came into force on 31 January 2022 and as such there have been no layout design infringement cases under the new Act. To our knowledge there has also not been any cases under the previous act involving layout design infringement in Mauritius.

3.6.7.1 Enforcement Agency

Enforcement of rights are not done at the level of the Industrial Property office. Depending on the circumstances, an aggrieved person may start a court action in court or complain to the Police in order to enforce their IP rights. A person may also apply for border protection with the Mauritius Revenue Authority to stop parallel or illegal importation. The judicial system, enforcement agency and different remedies based on civil and criminal enforcement are discussed below.

3.6.7.2 Judicial System and courts regarding IP Protection

Mauritius has a single-structured judicial system consisting of two tiers - the Supreme Court and subordinate courts. The Supreme Court sitting as Court of First Instance is composed of various Divisions exercising jurisdiction such as the Master's Court, the Family Division, the Commercial Division, the Criminal Division, the Mediation Division and as an Appellate jurisdiction (it hears and determines civil & criminal appeals from decisions of the subordinate courts), sits as Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from decisions of the Supreme Court sitting in the exercise of its original jurisdiction in civil and in criminal matters). Subordinate courts consist of the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court and the Court of Rodrigues.

3.6.7.2.1 The Supreme Court

The Supreme Court is composed of the Chief Justice, the Senior Puisne Judge and nineteen Puisne Judges. It is a superior Court of Record and has unlimited jurisdiction to hear and determine any civil and criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with the necessary powers and authority to exercise its jurisdiction as a Court of Equity. The Supreme Court also exercises supervisory jurisdiction over subordinate courts in order to ensure that justice is duly delivered. The Supreme Court has the sole power to determine whether any provision of the Constitution has been contravened, including the power to determine whether any law enacted by Parliament contravenes any provision of the Constitution.

Commercial Division of the Supreme Court

The Commercial Division of the Supreme Court was set up administratively in 2009. Two Puisne Judges designated by the Chief Justice sit in that Division. It entertains, hears and determines matters arising under the Insolvency Act 2009 and the Companies Act, disputes relating to banking, bills of exchange, offshore business, patents and trademarks or passing off, disputes between traders and related matters and generally deals with anything which is of a commercial nature.

²²¹ Section 50(6) of the Act.

²²² Section 50(7) of the Act.

²²³ Section 50(8) of the Act.

Criminal Division of the Supreme Court

The Supreme Court in the exercise of its criminal jurisdiction has the power to try any person charged with having committed a crime or a misdemeanour.

In the case of criminal proceeding, an aggrieved party may lodge a complaint with the Director of Public Prosecution which may institute prosecution on behalf and at the expense of the State. Where the Director of Public Prosecutions declined to institute a prosecution, the aggrieved party or his representative may institute a prosecution. Criminal trials are either held before a Presiding judge and jury consisting of nine people or before a Presiding judge without a jury. Most commonly criminal trials for counterfeiting take place before a Judge without a Jury.

3.6.7.2.2 Subordinate Courts

Intermediate Court

The Intermediate Court is established under the Courts Act and has island wide civil and criminal jurisdiction, including Rodrigues. It consists of two Presidents, two Vice-Presidents and any such number of Magistrates of the Intermediate Court established under the Civil Establishment Act.

Civil Jurisdiction of the Intermediate Court

The Intermediate Court has jurisdiction in all civil cases where the claim or matter dispute, whether in balance of account or otherwise, does not exceed 500,000 MUR (1,512,280 JPY). The Bench of the Intermediate Court is constituted by one or more Magistrates, as may be decided by the President.

Criminal Jurisdiction

The Intermediate Court has jurisdiction to hear and determine serious criminal offences referred to it by the Director of Public Prosecutions under specific sections of the Criminal Code and any other offence that can be tried by the Intermediate Court under any other enactment. It has power to inflict penal servitude on convicted offenders for a period not exceeding fifteen years and imprisonment for a period not exceeding ten years.

3.6.7.2.3 Districts Courts

There are ten District Courts on the Island of Mauritius and one in Rodrigues. District Courts have jurisdiction to try and determine both civil and criminal cases as provided for by law. Each District Court is presided by a District Magistrate and any such number of District Magistrates as may be decided by the Chief Justice.

Civil Jurisdiction of the District Court

The District Court has jurisdiction in all civil cases where the claim or matter in dispute does not exceed 50,000 MUR (151,228 JPY).

Criminal Jurisdiction

District Courts have power and jurisdiction to hear and determine criminal cases punishable by a term of imprisonment not exceeding five years and a fine not exceeding 100,000 MUR (302,456 JPY).

3.6.7.2.4 The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council in the United Kingdom is the ultimate appellate jurisdiction for Mauritius. To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases, there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

3.6.7.3 Remedies

A layout design shall confer on its owner the rights to prevent any unauthorised person from exploiting the design. In terms of section 139 the exploitation of the design in Mauritius by any other person other than the owner of the title of protection or the licensee and without the agreement of the owner shall be unlawful. Any

person who knowingly exploits the design shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR (756140.00 JPY) and to imprisonment for a term not exceeding 5 years.

According to section 140 of the Act, exploiting a layout design shall further amount to an act of unfair practice and may give rise to a claim in damages and shall be prosecuted in accordance with the Protection Against Unfair Practices Act 2002. In terms of Protection Against Unfair Practices Act 2002 any act or practice which in the course of any industrial or commercial activity, is contrary to honest commercial practice, shall be unlawful. On conviction the person who commits such an act or practice shall be liable to a fine not exceeding 250,000 MUR (756,140.00 JPY) and to imprisonment for a term not exceeding 5 years.

3.7 Utility Model

Utility models in Mauritius are governed by the Industrial Property Act, 2019 and the Industrial Property Regulations 2022.

Like patents, utility models protect new technical inventions through granting a limited exclusive right to prevent others from commercially exploiting the protected invention without consents of the right holders. Utility models also known as a petty patent) is any new technical solution related to the modification of existing devices, configuration, or disposition of elements of some appliance, instrument, handicraft, mechanizations, and products including products of genetic resources, herbal as well as nutritional formulations which have practical use and give new effects.

The difference between a patent and a utility model is that an invention does not have to involve an inventive step to be registered as a utility model.

3.7.1 Definition

A utility model means a technical creation that consist of a new shape or configuration, or component, of an object that increases its functionality or utility.²²⁴

3.7.2 Requirements

An invention may be registered as a utility model if it is new and is industrially applicable.²²⁵

3.7.2.1 Novelty

In Mauritius absolute novelty is required and an invention shall be new where it is not anticipated by prior art.²²⁶

The prior art shall include anything disclosed publicly anywhere in the world, before the filing date or, where applicable, the priority date, of an application for a certificate, whether by publication in tangible form, by oral disclosure, by use or in any other manner.

A disclosure which occurred –

- within the 12 months preceding the filing date or the priority date; and
- following an act committed by the applicant or his predecessor in title or an abuse by a third party with regard to the applicant or his predecessor in title²²⁷

shall not be considered as prior art.

Mauritius therefore has a 12-month grace period in respect of a disclosure which was made by the applicant or his predecessor in title or an abuse by a third party.

²²⁴ Definition as per section 2 of the Act.

²²⁵ Section 27(1) of the Act

²²⁶ Section 27(2) of the Act.

²²⁷ Definition as per section 2 of the Act.

3.7.2.2 Industrial Applicability

An invention shall be industrially applicable where it can be made or used in an industry.²²⁸

3.7.2.3 Matters excluded from utility model protection²²⁹

The following inventions are excluded from utility model protection:

- discoveries, scientific theories and mathematical methods;
- literary, dramatic, musical or artistic work and any other aesthetic creation;
- schemes, rules or methods for doing business, performing purely mental acts and playing games;
- computer programmes;
- plants and animals, including their parts, other than microorganisms, and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes;
- inventions, the primary or intended use of which would be contrary to public order or morality; and
- inventions having as subject matter a process or a method.

3.7.3 Term of Protection

The registration of a utility model shall be for a period of 6 years from the filing date of the application for registration.²³⁰ The registration may be renewed for 2 further consecutive periods of 2 years.²³¹

3.7.4 Application/Registration Procedure

3.7.4.1 Place of Application

Utility model applications are filed with the Director of the Industrial Property office in such a manner as he may determine and must be accompanied by payment of the application fee, which is currently 10,000 MUR (30,245.60 JPY).²³² The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis.

3.7.4.2 Eligibility

The right to a utility model shall belong to the inventor.²³³ Where two or more persons have jointly made an invention, the right to the utility model shall be long to them jointly.²³⁴ In the absence of an agreement to the contrary, each inventor shall have equal undivided shares in the right to the utility model.

Where two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the utility model, if the application is not withdrawn, abandoned or rejected.²³⁵

Where an invention is made in the execution of, or under, an employment contract, the right to the utility model shall, in the absence of any contrary contractual provision, belong to the employer. It is important to note that where the economic gains obtained by the employer are disproportionately high as compared to the employee's salary and the reasonable expectations of gain that the employer had from his employee's inventive output at the time the employer hired the employee, the employee shall be entitled to appropriate compensation which shall not be less than one third of the net direct and indirect gains obtained by the employer from the exploitation of the invention.²³⁶

²²⁸ Section 27(3) of the Act

²²⁹ Section 26 of the Act.

²³⁰ Section 32 of the Act.

²³¹ Section 32(2) of the Act.

²³² Section 28(a) of the Act.

²³³ Section 12(1) of the Act

²³⁴ Section 12(2)

²³⁵ Section 12(3)

²³⁶ Section 12(4)(a) and 12(4)(b) of the Act.

Where:

- an invention is made by an employee, otherwise than in the execution of, or under, an employment contract; but
- the employee used material, data or know-how of the employer to make the invention,
- the right to the utility model shall, in the absence of any contrary contractual provision, belong to the employer, but the employee shall be entitled to appropriate compensation which shall not be less than one third of the net direct and indirect gains obtained by the employer from the exploitation of the invention.²³⁷

Any invention claimed in an application for a utility model filed by an employee within one year from the date of termination of an employment contract which falls within the scope of the former employer's main business shall be presumed to have been made under the terminated contract, unless the employee produces proof to the contrary.²³⁸

It is important to note that any promise made or undertaking given by an inventor to his employer to the effect that he waives any remuneration he is entitled to under this section shall be void and of no effect.

The obligation of an employer to pay compensation shall arise from the making, and the exploitation, of an invention for which a utility model can be registered. The failure or negligence of an employer to successfully procure a utility model shall not exempt him from paying compensation to the employee.²³⁹

An employer may, within 60 days from the date of receipt of a communication from an employee about the making of the invention, give written notice to the employee that he is not interested in the invention and that the employee may procure the right to the utility model exclusively. Where an employer fails to give the said notice he shall be deemed to be interested in the invention.²⁴⁰

Where an employee carries out the commercial exploitation of an invention, the employer shall be entitled to compensation that is proportionate to the economic value of the materials, data or know-how used by the employee in making the invention.²⁴¹

If an employer fails to file an application for a utility model within one year from the date, he received written notification from an employee of the making of an invention, the right to the utility model shall belong to the employee.²⁴²

Any right to a utility model may be assigned or may be transferred by succession.²⁴³

An inventor shall be named as such in the utility model unless he requests the Director, in writing, not to do so. Any promise made or undertaking given by an inventor to any person to the effect that he will make the said request not to be named as the inventor shall be void and of no effect.²⁴⁴

3.7.4.3 Requirements

Utility models are manually filed with the Director of the Industrial Property Office using the prescribed form and must be accompanied by payment of the fee as prescribed. Where the prescribed fee is not paid, the Director shall notify the applicant, in writing, that the application shall be considered not to have been filed unless payment is made within 2 months from the date of receipt of the notification.

The application for a utility model must include:

- power of attorney (notarised) (must be filed together with the applicant or, where the power of attorney is not available at the time the application is filed, it shall be filed within 2 months from the filing date of the application);

²³⁷ Section 12(5) of the Act.

²³⁸ Section 12(6) of the Act.

²³⁹ Section 12(8)(a) of the Act.

²⁴⁰ Section 12(8)(b) of the Act.

²⁴¹ Section 12(8)(c) of the Act.

²⁴² Section 12(9) of the Act.

²⁴³ Section 12(10) of the Act.

²⁴⁴ Section 12(11) of the Act.

- title and description of the invention and the claims, including any drawing and an abstract in English (required on the day of filing);
- assignment of Invention, if applicable (can be late filed, no set deadline); and
- priority document with verified English translation (if filed late, the applicant shall within 3 months of a written request from the Director furnish the priority document. May be extended by Director on good cause shown. If not in English an English translation must be furnished within 6 months from the date of request).²⁴⁵

Where the residence or principal place of business of an applicant is outside of Mauritius, a law practitioner resident and practicing in Mauritius or an agent approved by the Minister, shall represent him.²⁴⁶

Where a disclosure occurred following an act by the applicant or his predecessor in title or an abuse by a third party regarding the applicant or his predecessor in title the applicant shall indicate in the application form and shall furnish in writing, together with the application or within one month from the filing of the application, full particulars of the disclosure.²⁴⁷

Where the disclosure was made at an exhibition, the applicant shall file a duly authenticated certificate issued by the authority or person responsible for the exhibition. Said certificate shall contain particulars of the exhibition together with a statement to the effect that the invention was in fact exhibited there.²⁴⁸

3.7.4.3.1 Contents of the description

The description shall –

- explain and disclose the invention in a manner which is sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art; and
- indicate the best mode for carrying out the invention, which is known to the inventor at the filing date or, where applicable, at the priority date of the application.²⁴⁹

Where a utility model for an invention is claimed and the process for making that invention is not generally known, including by means of its description in the specifications of another utility model application, the utility model application shall describe it in a manner which is sufficiently clear and complete for that process to be carried out by a person having ordinary skill in the art.

Where the description provides sufficient information to allow the invention to be made and used by a person skilled in the art on the filing date, without undue experimentation, the description of the claimed invention shall be sufficiently clear and complete.

The description shall where applicable contain a clear identification of

- the origin of genetic or biological resources collected in Mauritius and directly or indirectly used in the making of the invention; and
- any element of traditional knowledge associated or not associated with those resources, which was, with the prior informed consent of Mauritius, directly or indirectly used in the making of the claimed invention.²⁵⁰

The Director may, at any time before the grant of a utility model, require the description in a foreign utility model application to be adapted to the ordinary skill in the art of a citizen of Mauritius in order to ensure technology dissemination.

3.7.4.3.2 Claims²⁵¹

The claims of the application shall:

- define the matter for which protection is sought;

²⁴⁵ Section 29(1) of the Act.

²⁴⁶ Section 136 of the Act.

²⁴⁷ Regulation 12(1) of the Industrial Property Regulations

²⁴⁸ Regulation 12(1) of the Industrial Property Regulations

²⁴⁹ Section 13(3)(a) of the Act.

²⁵⁰ Section 13(3)(d) of the Act.

²⁵¹ Section 13(4) of the Act.

- be clear and concise; and
- be fully supported by the description, where the claim reasonably conveys to a person having ordinary skill in the art that the applicant was in possession of the claimed invention at the filing date.

3.7.4.3.3 Drawings

The applicant shall include drawings in the application where they are necessary for understanding the invention.²⁵²

Where the application refers to drawings which are not included in the application, the Director may request the applicant to furnish the missing drawings. If the applicant fails to comply with the request the Director shall treat any reference to the said drawings as non-existent.²⁵³

3.7.4.3.4 Abstract

The abstract of the specification shall be:

- be concise and precise;
- only serve as technical information;
- not be taken into account for the purpose of interpreting the scope of the protection; and
- unless otherwise indicated by the Director, be of not less than 50 nor more than 150 words.²⁵⁴

3.7.4.3.5 Deposit of microorganisms²⁵⁵

Where an invention claiming utility model protection involves the use of or concerns microorganisms which are not available to the public and which cannot be described in a utility model application in such a manner as to enable the invention to be carried out by a person skilled in the art, the following requirements must be complied with:

- a sample must be deposited with an international depository authority, in accordance with the Budapest Treaty;
- the application must contain all the information known to the applicant relating to the deposited microorganisms;
- the applicant must indicate the name of the authorised institution and is accompanied by a copy of the receipt of the deposit issued by the international depository authority.

The copy of the receipt of the deposit of the international depository authority should be furnished within 3 months from the date of filing the application. If a request for early publication is filed the said copy of the receipt must be filed before such request if filed²⁵⁶

3.7.4.3.6 Filing date

Where the application is accompanied by the prescribed fee and contains the following:

- an express or implied indication that the registration of a utility model is sought;
- an indication of the identity of the applicant and the place where he may be contacted by the Office; and
- a description of the invention as described under paragraph 3.7.4.3.1²⁵⁷

the Director shall issue a notification of the filing date within 1 week of the application date. The date of receipt shall then be considered as the filing date.

Where the application does not, at the time of receipt, comply the requirements as described above, the Director shall invite the applicant to file the required correction within such time as he may determine.²⁵⁸ If the applicant

²⁵² Section 13(5) of the Act.

²⁵³ Section 17(5) of the Act.

²⁵⁴ Section 13(6) of the Act.

²⁵⁵ Section 13(3)(f) of the Act and Regulation 11(1) of the Industrial Property Regulations

²⁵⁶ Regulation 11(2) of the Industrial Property Regulations

²⁵⁷ Section 29(1) of the Act.

²⁵⁸ Section 29(2)(a) of the Act.

does not file the necessary correction within the required time limit, the application shall be considered to have been abandoned.²⁵⁹

Where the application refers to drawings which are not included in the application, the Director may request the applicant to furnish the missing drawing. The Director shall grant the date of receipt of the missing drawings as the filing date. If the applicant fails to furnish the missing drawing the Director shall grant as the filing date, the date of receipt of the application and treat any reference to the drawings as non-existent.²⁶⁰

The Director shall, after granting a filing date to the application, proceed to classify the invention in accordance with the International Classification.²⁶¹

3.7.4.3.7 Withdrawal of application

An applicant may, before an application is granted, withdraw the application on payment of the prescribed fee. The application may be withdrawn by manually filing the prescribed form at the Industrial Property office.²⁶²

Where an application is withdrawn without having been open for public inspection and no rights have been claimed or are outstanding in connection with the application, a subsequent application may be made in respect of the same invention.²⁶³ The withdrawn application shall therefore not form part of the prior art in respect of the subsequent application.

No priority right may be claimed on the withdrawn application upon the lodging of the subsequent application.²⁶⁴

3.7.4.4 Examination

The director shall, after classifying the invention, conduct substantive examine to verify whether that the invention is new and is industrially applicable. The director shall also conduct formal examination to verify whether any formal information that has been requested has been furnished.²⁶⁵

Currently only formal examination is conducted by Industrial Property office with substantive examination coming into effect at a date still to be determined.

3.7.4.5 Amendment of application

The owner of the utility model may manually file a request and subject to the payment of such fee as may be prescribed, currently no indication of the prescribed fee, make changes in the text or drawings of the utility model in order to limit the extent of the protection conferred.²⁶⁶ Any change which shall result in the protection conferred under the utility model going beyond the protection claimed in the initial application shall not be allowed.

3.7.4.6 Grant or refusal

If an application for a utility model complies with the formal requirements the utility model shall be registered.

Where a utility model is registered;

- the registration of the utility model shall be recorded in the appropriate register;
- the applicant shall receive a certificate of registration of the utility model and a copy of the description of the utility model;
- the details shall be published Gazette ²⁶⁷

An interested party may obtain copies of the utility model on payment of such fee as may be prescribed.

²⁵⁹ Section 29(2)(b) of the Act.

²⁶⁰ Section 17(3) of the Act.

²⁶¹ Section 17(4) of the Act.

²⁶² Section 13(8)(a) of the Act.

²⁶³ Section 13(8)(b) of the Act.

²⁶⁴ Section 13(8)(c) of the Act.

²⁶⁵ Section 30 of the Act.

²⁶⁶ Section 14(2) of the Act

²⁶⁷ Section 30 of the Act.

Where the application is refused the applicant shall receive a notification in writing of such refusal.

3.7.4.7 Conversion of patent application or utility model

At any time before the grant or refusal of a patent, an applicant for a patent may, on payment of the prescribed fee, convert his application into an application for a utility model. At any time before a utility model certificate is granted or refused, the applicant for a utility model certificate may, on payment of the prescribed fee, convert his application into an application for a patent.²⁶⁸

The converted application shall be attributed the filing date of the initial application for a patent or utility model, as the case may be. An application for the conversion of a patent or utility model shall not be made more than once.²⁶⁹

3.7.5 Post-Registration

3.7.5.1 Registration Fees

No registration fees are payable.

3.7.5.2 Rights of the Right Holder

A registration for a utility model shall confer on its owner the right to prevent any person from exploiting the invention as contained in the registered utility model.²⁷⁰

Exploiting means, in relation to-

A utility model invention which is a product

- make, import, offer to sell, sell or use the product; or
- stock the product for any of the purposes above;

A utility model invention which is a process

- make use of the process; or
- do any act referred to in paragraph (a) in respect of a product obtained directly by means of the process.²⁷¹

The rights of the owner shall be defined by the claims set out in the application for the utility model.²⁷²

The rights conferred by the registration of a utility model shall not extend to:

- acts in respect of articles which are put on the market in Mauritius or abroad by the owner of the utility model or with his consent;
- the use of articles on aircrafts, land vehicles or vessels of other States which temporarily or accidentally enter the airspace, territory or waters of Mauritius;
- acts done privately and on a non-commercial scale or for non-commercial purpose, which do not significantly prejudice the economic interests of the utility model owner;
- acts of extemporaneous preparation in a pharmacy as regards medicine for an individual in accordance with a prescription given by a registered medical practitioner, a dental specialist or a dental surgeon;
- acts done for experimental and scientific research on or with the subject matter of the utility model invention;
- acts performed in the academic environment where the results of those activities are to be made available for public use, and they do not significantly prejudice the economic interests of the utility model owner;
- acts performed by any person who in good faith, before the filing date or, where applicable, the priority date of the application on which the utility model is granted, was using the invention or was making effective and serious preparations for such use in Mauritius; or

²⁶⁸ Section 33(1)(a) and (b) of the Act.

²⁶⁹ Section 33(1)(c) of the Act.

²⁷⁰ Section 31(1)(a) of the Act.

²⁷¹ Definition as per Section 2 of the Act.

²⁷² Section 31(1)(b) of the Act.

- acts performed by any person in order to make, construct, use or sell the utility model invention solely for any use reasonably related to the development and submission of information required under any law of Mauritius or a foreign State that regulates the manufacture, construction, use or sale of any product.²⁷³

3.7.5.3 Fees related to successful registration

Only annual maintenance fees due to maintain utility model after registration.

3.7.5.4 Renewal of Registration

The registration of a utility model may be renewed for 2 further consecutive periods of 2 years

- on payment of such renewal fee, within such time, as may be prescribed; and
- subject to compliance with such conditions as may be prescribed.²⁷⁴

The renewal fee is indicated in the table below:

| | | |
|------------------|-------|----------|
| Renewal fee for- | | |
| First term | 3,000 | 9,073,68 |
| Second term | 5,000 | 15,122,8 |

Where the said renewal fee is not paid within the time prescribed, the Director may grant to the utility model owner a delay of 6 months for the payment of the renewal fee and a surcharge of 1,000 MUR (3,024.56 JPY). If the renewal fee is not paid within in 6 months the registration of the utility model shall lapse.²⁷⁵

3.7.5.5 Invalidation of utility model

An interested person may apply to the Industrial Property Tribunal for the invalidation of the registration of a utility model where:

- the invention as claimed in the utility model is excluded from utility model protection;
- the application is not new or is not industrially applicable;
- the owner of the utility model is not the inventor or his successor in title; or
- the owner of the utility model is shown to have engaged in inequitable conduct in order to have the utility model registered.²⁷⁶

Where the ground for invalidation is proved as regards a part of the invention, only that corresponding claim shall be invalidated. An invalidated utility model shall be considered as null and void ab initio.²⁷⁷

The decision of the Tribunal shall be notified to the Director who shall record it and forthwith give notice of the decision in the Gazette.²⁷⁸

Any person who is dissatisfied with a determination of the Tribunal as being erroneous in law may appeal to the Supreme Court. An appeal under this section shall be prosecuted in the manner provided by the rules made by the Supreme Court. Any appeal to the Supreme Court shall be made within 21 days from the determination of the Tribunal.²⁷⁹

²⁷³ Section 31(2) of the Act.

²⁷⁴ Section 32(2) of the Act.

²⁷⁵ Section 32(3) and 4 of the Act.

²⁷⁶ Section 34(1) of the Act.

²⁷⁷ Section 34(2) of the Act.

²⁷⁸ Section 34(4) of the Act.

²⁷⁹ Section 138 of the Act.

3.7.6 Enforcement of Rights

3.7.6.1 Enforcement Agency

As mentioned above the Industrial Property Act 2019 only came into force on 31 January 2022 and as such there have been no utility model infringement cases under the new Act. To our knowledge there has also not been any cases under the previous act involving utility model infringement in Mauritius.

3.7.6.2 Judicial System and courts regarding IP Protection

Mauritius has a single-structured judicial system consisting of two tiers - the Supreme Court and subordinate courts. The Supreme Court sitting as Court of First Instance is composed of various Divisions exercising jurisdiction such as the Master's Court, the Family Division, the Commercial Division, the Criminal Division, the Mediation Division and as an Appellate jurisdiction (it hears and determines civil & criminal appeals from decisions of the subordinate courts), sits as Court of Civil Appeal and the Court of Criminal Appeal (to hear and determine appeals from decisions of the Supreme Court sitting in the exercise of its original jurisdiction in civil and in criminal matters). Subordinate courts consist of the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court and the Court of Rodrigues.

3.7.6.2.1 The Supreme Court

The Supreme Court is composed of the Chief Justice, the Senior Puisne Judge and nineteen Puisne Judges. It is a superior Court of Record and has unlimited jurisdiction to hear and determine any civil and criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with the necessary powers and authority to exercise its jurisdiction as a Court of Equity. The Supreme Court also exercises supervisory jurisdiction over subordinate courts in order to ensure that justice is duly delivered. The Supreme Court has the sole power to determine whether any provision of the Constitution has been contravened, including the power to determine whether any law enacted by Parliament contravenes any provision of the Constitution.

Commercial Division of the Supreme Court

The Commercial Division of the Supreme Court was set up administratively in 2009. Two Puisne Judges designated by the Chief Justice sit in that Division. It entertains, hears and determines matters arising under the Insolvency Act 2009 and the Companies Act, disputes relating to banking, bills of exchange, offshore business, patents and trademarks or passing off, disputes between traders and related matters and generally deals with anything which is of a commercial nature.

Criminal Division of the Supreme Court

The Supreme Court in the exercise of its criminal jurisdiction has the power to try any person charged with having committed a crime or a misdemeanour.

In the case of criminal proceeding, an aggrieved party may lodge a complaint with the Director of Public Prosecution which may institute prosecution on behalf and at the expense of the State. Where the Director of Public Prosecutions declined to institute a prosecution, the aggrieved party or his representative may institute a prosecution. Criminal trials are either held before a Presiding judge and jury consisting of nine people or before a Presiding judge without a jury. Most commonly criminal trials for counterfeiting take place before a Judge without a Jury.

3.7.6.2.2 Subordinate Courts

Intermediate Court

The Intermediate Court is established under the Courts Act and has island wide civil and criminal jurisdiction, including Rodrigues. It consists of two Presidents, two Vice-Presidents and any such number of Magistrates of the Intermediate Court established under the Civil Establishment Act.

Civil Jurisdiction of the Intermediate Court

The Intermediate Court has jurisdiction in all civil cases where the claim or matter dispute, whether in balance of account or otherwise, does not exceed 500,000 MUR (1,512,280 JPY). The Bench of the Intermediate Court is constituted by one or more Magistrates, as may be decided by the President.

Criminal Jurisdiction

The Intermediate Court has jurisdiction to hear and determine serious criminal offences referred to it by the Director of Public Prosecutions under specific sections of the Criminal Code and any other offence that can be tried by the Intermediate Court under any other enactment. It has power to inflict penal servitude on convicted offenders for a period not exceeding fifteen years and imprisonment for a period not exceeding ten years.

3.7.6.2.3 Districts Courts

There are ten District Courts on the Island of Mauritius and one in Rodrigues. District Courts have jurisdiction to try and determine both civil and criminal cases as provided for by law. Each District Court is presided by a District Magistrate and any such number of District Magistrates as may be decided by the Chief Justice.

Civil Jurisdiction of the District Court

The District Court has jurisdiction in all civil cases where the claim or matter in dispute does not exceed Rs 50,000.

Criminal Jurisdiction

District Courts have power and jurisdiction to hear and determine criminal cases punishable by a term of imprisonment not exceeding five years and a fine not exceeding 100,000 MUR (302,456 JPY).

3.7.6.2.4 The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council in the United Kingdom is the ultimate appellate jurisdiction for Mauritius. To bring an appeal to the Judicial Committee of the Privy Council, you must have been granted leave by the lower court whose decision you are appealing. In the absence of leave, permission to appeal must be granted by the Board. In some cases, there is an appeal as of right and a slightly different procedure applies.

In civil cases, the lower court will generally grant you leave to appeal if the court is satisfied that your case raises a point of general public importance.

3.7.6.3 Remedies

A utility model shall confer on its owner the rights to prevent any unauthorised person from exploiting the invention. The rights of the utility model shall be defined by the claims set out in the application for the utility model.

In terms of section 139 the exploitation of the invention protected by a utility model in Mauritius by any other person other than the owner of the title of protection or the licensee and without the agreement of the owner shall be unlawful. Any person who knowingly exploits the invention shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR (756140.00 JPY) and to imprisonment for a term not exceeding 5 years.

According to section 140 of the Act, exploiting the invention as defined by the utility model shall further amount to an act of unfair practice and may give rise to a claim in damages and shall be prosecuted in accordance with the Protection Against Unfair Practices Act 2002. In terms of Protection Against Unfair Practices Act 2002 any act or practice which in the course of any industrial or commercial activity, is contrary to honest commercial practice, shall be unlawful. On conviction the person who commits such an act or practice shall be liable to a fine not exceeding 250,000 MUR (756,140.00 JPY) and to imprisonment for a term not exceeding 5 years.

4. Counterfeits and Piracy Products in Mauritius

4.1 Definition of the counterfeits and piracy products in Mauritius

The Act defines a mark as a visually perceptible sign or combination of signs, capable of distinguishing the goods or services of an enterprise from those of other enterprises.²⁸⁰ This includes words, letters, numerals, figures, pictures, a combination of colours, the shape of goods or parts of the goods, or the packaging or other conditioning of goods.²⁸¹

The exclusive right to any mark is acquired by registration. The written agreement of the registered owner of the trademark is required before a third party may use the registered mark in relation to goods and services for which it has been registered. Failure to obtain a written agreement allows the owner of the registered mark to institute court proceedings against any person who uses the mark, or does any act likely to cause an infringement.

4.2 Current situation of Counterfeits and Piracy Products

Mauritius is both a manufacturer of counterfeit goods as well as a transit country for goods coming from Asia and going into Africa and the European Union. Counterfeit products range from textile, cosmetic products and watches to pharmaceutical products and cigarettes. Within the island, counterfeit clothes and accessories from high-end brands are widely available, including in tourist shops.

Mauritius is not considered the hub of counterfeits in Africa. The hub of counterfeits in Africa is South Africa and Mozambique. These markets are closely followed by Nigeria.

Counterfeit goods in Mauritius are not limited to any industry. It is possible to find counterfeit automotive goods and fashion goods next to each other. Mauritius has primary counterfeiters and pirates who sell the infringing products deceptively to consumers while portraying that their goods are legitimate, thereby competing directly with the brand owners, as well as secondary counterfeiters and pirates – where the infringement is more blatant in that the prices are reduced significantly and the consumers are aware that they are purchasing counterfeits and pirated goods.

Pirated products are distributed via media (soft products which do not use physical components to share) or physically (through hard products such as discs containing a movie or video game or music).

4.2.1 Names and Places of Market

Suitable names and places of market invariably depends on the type of products concerned. For example, counterfeit luxury brands for clothing can be found in both high-end tourist shop but also at local clothes market. Counterfeit pharmaceutical products have been found in pharmacies dealing with both authentic and counterfeit products. Spare parts can be seen at both.

Counterfeit goods in Mauritius are found at the following markets:

Port Louis Central Market, located at 9 Corderie Street. This market is not safe and possess a very high risk when enforcing or conducting raids, however, raids can be done with the presence of Customs. Counterfeit goods typically found in this market are textiles, clothes, glass sculptures and and musical instruments.

Grand Baie Bazaar is another market located in the town of Grand Baie. The risk associated with this market is high (although not as high as Port Louis) and the goods commonly found in this market are jewellery, handbags and cashmere. The infringers of this market may display the original product but swap the goods with counterfeit

²⁸⁰ Definition as per Section 2 of the Act

²⁸¹ Definition as per Section 2 of the Act

goods when delivering to the customer. Detailed investigations are required for this market in order to determine the warehouses in order for raids to be conducted successfully.

Quatre-Bornes Market Fair is located in the Plains Wilhems District and possesses a high risk. Goods typically sold in this market are necklaces, perfumes and fashion items. There are large crowds found in this market and speedy raids result in the best success.

Mahebourg Market is located in Mahebourg and sells electronics and fashion items. This market possess a high risk as it has complicated entry and exit points due to ir being very narrow.

All the above markets may be still be raided with the assistance of Customs.

4.2.2 Counterfeits and piracy products subject in the Markets

Almost all branded products are subject to counterfeiting in Mauritius. These products consist of DVDs, music (audio and video), computer games, business software, fashion products, automotives, alcohol and cigarettes and toys. A large part of consumers purchasing counterfeit goods is due to a lack of information into the negative effects of consuming counterfeit goods. The health risk and/or danger or loss of life are very serious implications of consuming counterfeit goods. The best wat in which we believe this could be address is by conducting several brand identification training seminars to Customs and Police authorities, who will assist in driving the detection and elimination of counterfeit goods in Mauritius.

4.2.3 Distribution Channels

Distribution channels are largely dependent on the type of products concerned. Most of the time the importer of the product is also the direct seller to the customer. However, there are times where the importer merely sells to other businesses which then sell to customers.

- *Country of origin/shipper*

So far, we have encountered counterfeits from China, India, Thailand, and Bangladesh. China has been traced to be the source of all counterfeit goods. Countries such as India, Thailand and Bangladesh have been identified as the source of goods such as shawls, religious artifacts, and Cashmere.

- *Purchaser*

Mostly businesses are involved in counterfeiting. Seldomly, there are consumers who buy counterfeit goods online.

4.2.4 Statistics

This is not available.

4.2.5 Enforcement

As long as the trademarks are registered in Mauritius, the products will be protected. Japanese brands have been enforced in Mauritius.

Most of the counterfeit goods in Mauritius are targeting tourists. The best enforcement strategy would begin with conducting investigations to determine the infringers selling the counterfeit goods as well as their positions. This investigation also assists in determine the estimated quantities of goods available for sale from each infringer. The next step would be to conduct raids on all the stalls or infringers identified in the investigation. The intention would be to remove the infringing goods and for the infringers to give up their source. Once the source has been identified, another raid should be conducted at the source which will stop the entire supply chain. After a period of two months, further investigations will be done to determine any other pop-up stalls and infringers. If there are any, a market sweep together with Customs and the Police will be conducted to ensure that the counterfeit

goods remain off the market. Market sweep refers to arrange a law number of enforcement authorities and inspecting each stall in the area to determine whether the goods are counterfeit or genuine. If counterfeit, they will be seized. This approach also shows the infringers that the brand is taking action and actively monitoring the markets.

- **Number of cases**

The table below shows the number of criminal offences disposed of as well as the convicted criminal offences for intellectual property offences based on breach of Copyright Act.

| Year | Number of Criminal offences disposed of: | Convicted offences | | | |
|------|--|---------------------------------------|--------------|-------------------|------|
| | | Number of Convicted criminal offences | Imprisonment | Community Service | Fine |
| 2021 | 9 | 3 | 0 | 0 | 3 |
| 2020 | 25 | 8 | 0 | 0 | 8 |
| 2019 | 50 | 42 | 1 | 0 | 41 |
| 2018 | 46 | 23 | 1 | 1 | 21 |
| 2017 | 132 | 72 | 0 | 6 | 66 |

The table below shows the number of convicted criminal offences per court.

| Years | Port Louis district court | Rose Hill district court | Riviere du Rempart district court | Intermediate Court | Curepipe district court |
|-------|---------------------------|--------------------------|-----------------------------------|--------------------|-------------------------|
| 2021 | 1 | 2 | 0 | 0 | 0 |
| 2020 | 4 | 0 | 2 | 2 | 0 |
| 2019 | 16 | 0 | 2 | 22 | 0 |
| 2018 | 11 | 0 | 4 | 3 | 1 |

- **Summary of Cases**

This data is not available.

4.2.6 Countermeasures to Combat Counterfeit

The client can opt for border protection with customs to stop counterfeits. As customs can carry inland detention, customs can be requested to detain the products on the territory as well. There are also the Anti-Piracy Unit of Police who acts against counterfeit products however it is not advisable to take the criminal route as it is a very lengthy and costly process.

4.2.7 Effective and Recommended measures with a comparison table

A comparison table is not available as it is highly recommended that both border protection and in-market operations be conducted. They are both effective and complement each other. Therefore, it is not recommended an election of one over the other but rather the use of both simultaneously.

- **Border**

Border protection application at customs is available in Mauritius.

- **Market**

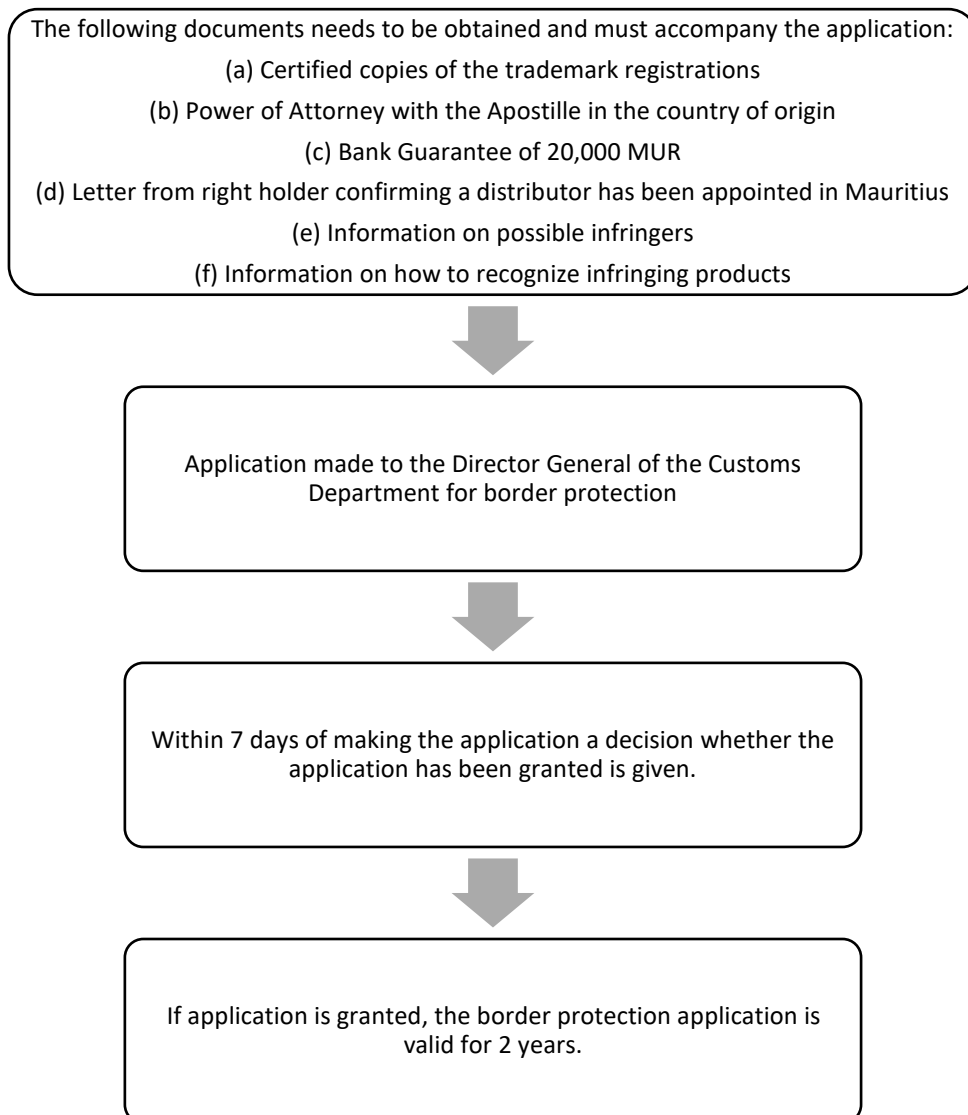
Customs can be requested to act inland in various markets.

- **Online**

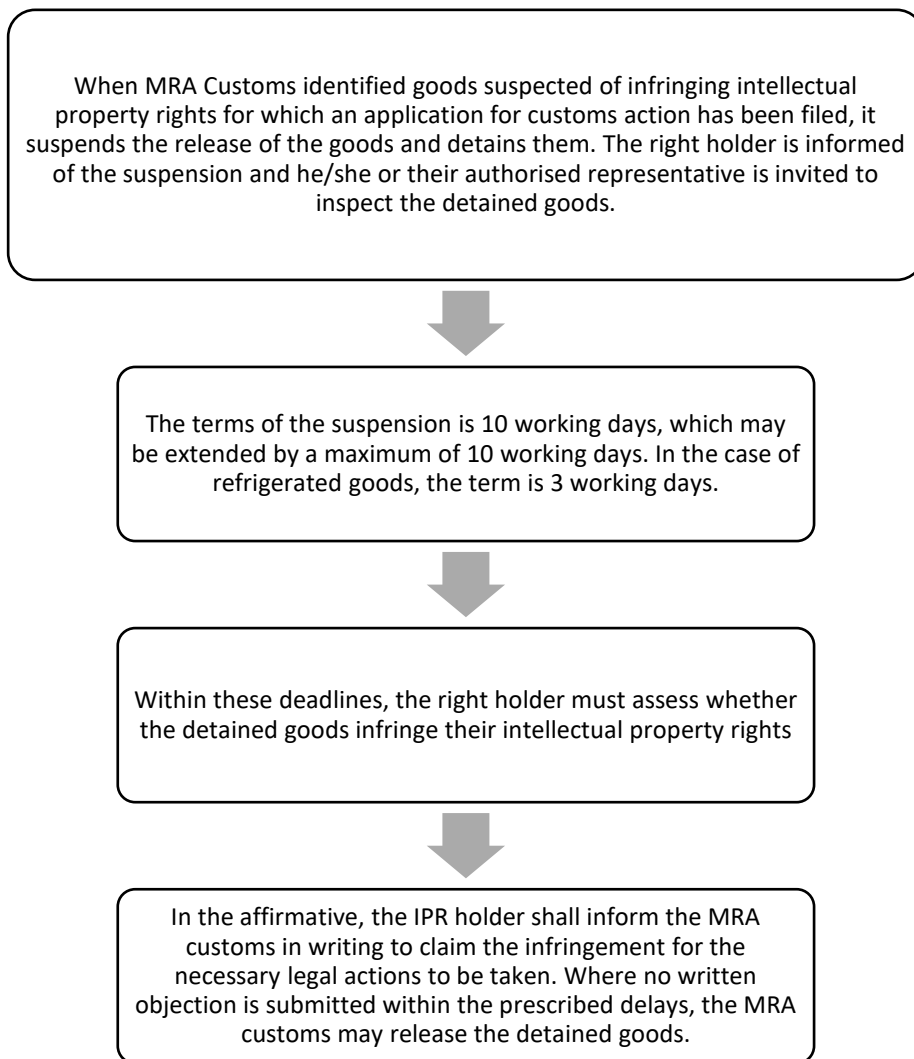
This is not available.

4.2.8 Flowchart of the process and timeline/lead time

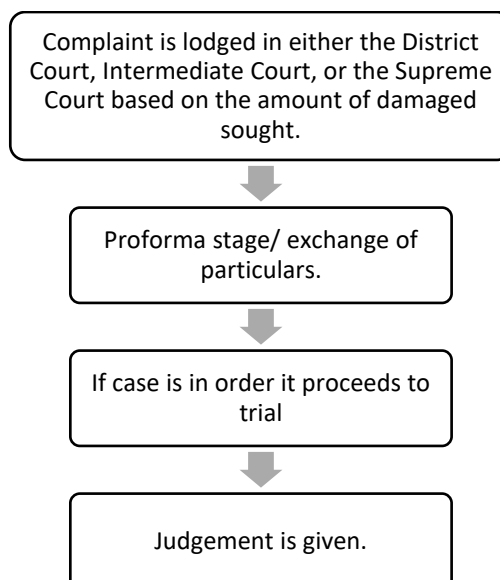
4.2.8.1 Border Protection Application



4.2.8.2 Suspension of clearance

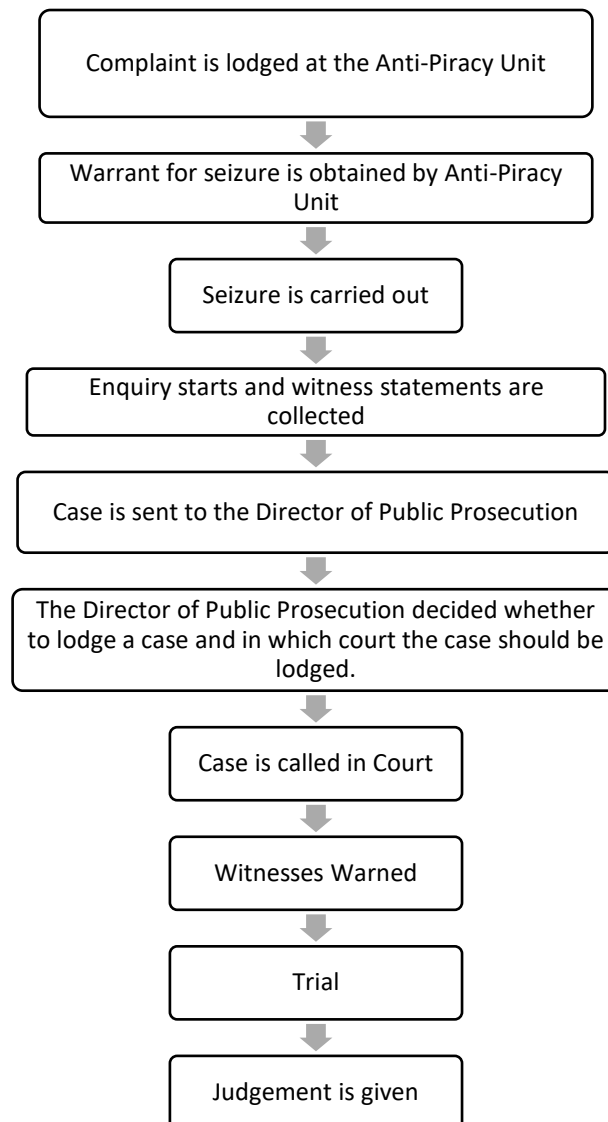


4.2.8.3 Civil Case



From when the complaint is lodged up until judgement is given would take approximately 3 years.

4.2.8.4 Criminal Case



From when the complaint is lodged up until judgement is given would take approximately 7 to 10 years.

4.2.9 Table of Fees for each countermeasure

4.2.9.1 Border protection application

According to the Customs Act²⁸², the owner of a trademark can apply to the Director General of the Customs Department of the Mauritius Revenue Authority (MRA) to suspend the clearance of goods imported or exported on grounds that the trademark is being or is likely to be infringed. The owner of the trademark is the registered owner of the trademark as it is at the Industrial Property office. The agent's fees will be approximately 1 500 USD (192,832,50 JPY) – 2 000 USD (257,110.00 JPY).

Please see below the documents required as well as the costs involved for the border protection application.

4.2.9.1.1 Documents required for border protection application

Please note that the application must be filed with the Customs Department of the MRA. The following supporting documents need to be submitted together with the application:

²⁸² Customs Act of 1998

- Certified copies of the rights for which the intervention of customs is sought. The certified copies of the trademark registrations must be annexed to the POA (please see below).
- Power of attorney form, duly legalised with the Apostille in the country of origin and duly notarised, registered with the Registrar General and published at the Supreme Court of Mauritius. This power of attorney needs to include a list of all relevant IP right(s) for which the application is filed and copies of the relevant registration certificate(s) as annexures.

Moreover, please note that the owner of the trademarks is the owner as it appears in the registers of the Industrial Property Office for the concerned trademarks.

- Bank guarantee of 20,000 MUR (60,491.20 JPY).
- Letter from right-holder confirming whether an (exclusive) distributor has been appointed in Mauritius.
- Information on possible infringers – only if available.
- Information material on how to recognise infringing products – only if available.

Once all these documents are at hand and the application has been filed, a decision of the Director of whether the application has been granted or not will be given within 7 working days. Usually, the Director only refuses an application if the above formal requirements have not been met.

4.2.9.2 Filing of the application and normal monitoring

A legal representative can assist in preparing the power of attorney form and obtaining the local notarisation, retrieve the certified copies of the IP rights for which the application is filed. A legal representative can obtain the bank guarantee of 20,000 MUR (60,491.20 JPY) on an applicant's behalf. A legal representative can further assist in drafting the letter identifying the local distributor, prepare and file the application for border protection and supervise the customs application. For this entire process, a legal representative could charge between 2,000 USD (257,110.00 JPY) and 3,000 USD (385,665.00 JPY) for their legal fees per border protection application.

This border protection application is valid for 2 years.

Please find hereunder a list of indicative administrative costs for the bank guarantee, the notarisation and registration of the power of attorney, and for obtaining the certified copies from the Industrial Property Office which a legal representative could charge: (charges are usually provided in United States Dollars (USD))

| Customs application | | |
|--|-------------------------------------|---|
| Administrative costs | Charges USD | Charges JPY |
| Bank Charges for one Bank Guarantee | 125 USD per year | 16,069.38 JPY per year |
| | | |
| Notarisation and registration of Power of Attorney and registration certificates: | | |
| <u>For one PoA without annexures</u> | | |
| Stamp duty: | 12 USD | 1,542.66 JPY |
| Notary fees: | 85 USD | 10,927.18 JPY |
| Notary fees on publication of Power of Attorney: | 30 USD | 3,856.65 JPY |
| Publication charges: | 6 USD | 771.33 JPY |
| In case there are annexures: | 14 USD per annexure | 1,799.77 JPY per annexure |
| For additional copies of Power of Attorney: | 30 USD per copy | 3,856.65 JPY per copy |
| | | |
| Industrial Property Office | | |
| Certified copy of registration certificate | 12 USD per registration certificate | 1,542.66 JPY per registration certificate |

Please note that the fees for the notary will vary depending on the number of pages and annexes. The above prices are only indicative.

4.2.9.3 Suspension of clearance of goods

In the event of a suspension of clearance, the goods will be suspended for a period of 10 working days which can be further extended by another period of 10 working days. During the period of suspension, the Director must be informed in writing that legal proceedings have been initiated by the applicant.

Here below is provided an indication of professional fees that may be charged by a legal representative for the suspension of clearance of goods:

- 370 USD (47,565.35 JPY) per file in cases concerning authorised shipments. The legal representative may notify the applicant of any seizure by customs and ask customs to release the products once the applicant confirms that the goods are legitimate. For an extension of the deadline, a legal representative may charge an additional 53 USD (6,813.41 JPY).
- 740 USD (95,130.70 JPY) per file in cases where the amount of unauthorised goods is between 1 to 10 products and of which photos need to be taken at the customs offices and a formal notice is served to the infringer (without making use of the bailiff). This fee may comprise: attending customs to take photos, the sending of a cease-and-desist letter by registered mail and the follow-up until an amicable settlement is found with the infringer (inclusive of any extension of deadline).
- 1100 USD (141,410.50 JPY) per file in cases where the number of unauthorised products exceed 10 products and where photos need to be taken and a formal notice is served to the infringer (without making use of the bailiff). This fee may comprise: attending customs to take photos, the sending of a cease-and-desist letter by registered mail and the follow-up until an amicable settlement is found with the infringer (inclusive of any extension of delay).
- 430 USD (55,278.65 JPY) could be added to the above mention fee, where the infringer does not respond, and a second letter must be sent through a bailiff.

Please note that in the event that the infringer does not respond, an applicant shall have to initiate legal proceedings. Under Mauritian law and practice there is unfortunately no simplified procedure or presumption that the goods are abandoned.

4.2.9.4 Legal Proceedings

Under Mauritian laws and practice, the court in which a complaint is lodged is determined by the number of damages sought. For damages between 250,000 MUR (756,140 JPY) to 2,000,000 MUR (6,049,120 JPY), the Intermediate Court is competent. For any claim exceeding 2,000,000 MUR (6,049,120 JPY) the Supreme Court is competent.

Here below is provided an indication of professional fees that may be charged by a legal representative for the legal proceedings:

- 2,270 USD (291,819.85 JPY) for lodging a case before the District Court and conducting a follow-up until judgment is obtained. Where the public bailiff is unable to serve the defendant, a legal representative must have recourse to a private bailiff. The agent's fees will be approximately 1,200 USD (154,266.00 JPY) – 1,500 USD (192,832.50 JPY). Supplementary bailiff fees for a private bailiff vary from 150 USD (19,283.25 JPY) to 270 USD (34,709.85 JPY) as this depends on where the defendant resides. Court fees amount to 16 USD (2,056.88 JPY).
- 3,500 USD (449,942.50 JPY) for lodging a case before the Intermediate Court and conducting a follow-up until judgment is obtained. The agent's fees will be approximately 2,800 USD (359,954.00 JPY) – 3,000 USD (385,665.00 JPY). Where the public bailiff is unable to serve the defendant, a legal representative must have recourse to a private bailiff. Supplementary bailiff fees for a private bailiff vary from 150 USD (19,283.25 JPY) to 270 USD (34,709.85 JPY) as this depends on where the defendant resides. Court fees amount to between 16 USD (2,056.88 JPY) and 70 USD (8,998.85 JPY).
- 4,700 USD (604,208.50 JPY) for lodging a case before the Supreme Court and conducting a follow-up until judgment is obtained. The agent's fees will be approximately 4,175 USD (536,717.13 JPY) – 4,300

USD (552,786.50 JPY). Where the public bailiff is unable to serve the defendant, a legal representative must have recourse to a private bailiff. Supplementary bailiff fees for a private bailiff vary from 150 USD (19,283.25 JPY) to 270 USD (34,709.85 JPY) as this depends on where the defendant resides. Court fees amount to 70 USD (8,998.85 JPY).

5. Cases on Obtaining Rights and Enforcement

5.1 Notable or Important Court Cases

Judgements in two Trademark cases, namely *Shangri-La Tours Ltd v Shangri-La International Hotel Management Limited* and the Controller of Industrial Property Office, 14 October 2019, were recently handed down in Mauritius. Even though these cases do not contain any ground breaking law they do however highlight the focus of the Mauritian authorities to attract foreign investment by making trademark protection and enforcement easily accessible by following foreign precedents closely.

The judgments in the cases of *Shangri-La Tours Ltd v Shangri-La International Hotel Management Limited* and the Controller of Industrial Property Office, 14 October 2019, were decisions given by the Industrial Property Tribunal. The cases were based on a local company who applied to the Industrial Property Tribunal to cancel various trademark registrations belonging to a foreign company. The Tribunal however found against the local company, and refused to cancel the registrations of the foreign company.

Several aspects of these cases are worth noting:

- The Industrial Property Tribunal based their judgement on several UK and EU trademark judgements and authorities;
- The Tribunal mentioned that the Government is committed to create an investment-friendly environment in the country' whilst also 'meeting our obligations towards the international community';
- The applicant for cancellation alleged that the word Shangri-La is non-distinctive, because it is both a common word and a "fancy geographical name" that should be available to all. Dealing with this the Tribunal made reference to the "availability rule". It said this: "The question to be asked is whether other traders would in good faith legitimately want to use the word in the course of business... if the answer is in the affirmative, it follows that the enterprise wishing to register the mark should not be granted a monopoly of the word." The tribunal however said that Shangri-La has a further connotation. It is very relevant that the registrant has used the name Shangri-La for many years and in many countries, and that it has trademark registrations around the world: "Given the unchallenged worldwide registration of marks (including Mauritius) that are branded with the words Shangri-La... what it evokes in the modern context... [is] an enjoyable, almost idyllic hideaway or place of leisure and relaxation in luxurious settings."
- The local company claimed that the foreign company's registration was contrary to public order and morality because giving exclusivity to the word Shangri-La would allow "wealthy and big businesses to have undue, improper and immoral upper hands-on small businesses". The Tribunal dismissed this claim. In doing so, it relied on various UK authorities which say that issues of morality relate simply to 'intrinsic qualities of the mark itself' rather than 'circumstances relating to the conduct of the applicant' or 'the way in which the applicant uses the mark'
- The local company claimed that it had used the word Shangri-La as a company name, and that it had therefore acquired trademark rights to it. The Tribunal rejected this claim. It said that there is a clear difference between a company registration and a trademark registration. It said that "the exclusive right to a corporate name acquired by registration under the Companies Act 2001 does not therefore confer the exclusive right to a company to the use of the corporate name" under the trademark legislation. This meant that the applicant, a local company called Shangri-La Tours Ltd, acquired no exclusivity to the word Shangri-La in a trademark sense.²⁸³

²⁸³ <https://www.golegal.co.za/mauritius-trademark-multinationals/>

6. Successful Cases

Out-of-court settlements are encouraged in Mauritius because Mauritian courts work very slowly and are extremely procedural. Many cases drag on for years and are sometimes won or lost purely on procedural matters. The following is a good example of a settlement: the case related to the suspension of clearance by customs of 1 193 counterfeit purses. Agent in Mauritius were able to obtain a settlement in the amount of 100,000 MUR (302,456 JPY). This is a rather exceptional settlement. In these types of cases, depending on the type or number of products concerned, legal representatives are usually able to negotiate between 2500 MUR (7,561.40 JPY) to 20,000 MUR (60,491.20 JPY) as damages together with an abandonment of the products for destruction at the expense of the importer and to avoid court proceedings which can be lengthy and costly. Indeed, there are recurring storage fees charged monthly at the expense of the right holder by customs until the final judgement is obtained.

Under Mauritian laws, customs are empowered to carry out inland detention. For a high-end French luxury brand, customs seized hundreds of counterfeit goods which were displayed in a luxurious boutique, giving the impression that the goods were authentic. The prices of the goods were also very high. For example, a handbag was being sold at 200,000 MUR (604,912 JPY). Following the inland detention, the client legal representative lodged a case at the commercial division of the Supreme Court. The legal representative made the case for the French luxury brand by testifying as their agent. The day in which the defendant had to testify; the barrister came with a settlement proposal of 700,000 MUR (2,117,192 JPY) when the client initially requested 2 million MUR (6,049,120 JPY). It must be noted that under Mauritian practice, most barristers wait until the last minute to make settlement proposal. The French luxury brand accepted the settlement proposal.

For another high-end French sportswear brand, where 5 counterfeit bracelets were seized by customs on importation, withier legal representative obtained a favourable judgement for their client where the importer was ordered to forfeit the goods for destruction, reimburse all storage fees, to bear destruction costs and to reimburse legal costs. However, the legal representative was not able to obtain economic damages. Please note that under Mauritian precedents, there are no rules governing the calculation of economic damages. So far, Mauritian judges have been reluctant to provide economic damages for goods which are suspended at the border because it is their opinion the products have never reached the Mauritian market and therefore, we cannot ascertain that the products which have been sold at a high price. As you can conclude, this reasoning is flawed. However, we have not been able to obtain high economic damages so far in our cases due to this flawed reasoning. The defendant in this matter was inops consili (he represented himself).

For the same client in a case before the civil division of the intermediate court, the legal representative was able to obtain damages in the amount of 2 million MUR (6,049,120 JPY) which was the amount that the client asked for. However, this case was undefended, and we obtained a default judgement.

As we stated before, most barristers and defendants wait until the last minute to make settlement proposal which means that we go through all the steps of the formal matters (exchange of particulars) and right before the trial is called, they make a settlement proposal.

Below follows a few cases which proceeded to judgement without an approved settlement offer.

6.1 SKECHERS U.S.A, Inc v AMF LTD (case no. 170/2020) in the Intermediate court of Mauritius

Skechers who is the owner of the "SKETCHERS" and "S" design trademarks with AMF LTD a domestic company in Mauritius.

On the 17th of February 2020, the Skechers U.S.A, Inc was notified by the Mauritius Revenue Authority that 199 pairs of Slippers bearing logo 'S' caused to be imported by AMF LTD were detained by the Mauritius Revenue Authority since the products were suspected to be infringing the intellectual property rights of Skechers. Skechers U.S.A, Inc avers that it has never authorised the AMF LTD to commercialise and/or import products bearing the 'Skechers' trademarks. Further, the examination of the said slippers have revealed that they are

counterfeit products of sub-standard quality, the logo is a clear imitation and the packaging does not respect Skechers' standard.

The Court found that AMF LTD did infringe the intellectual property rights of Sketchers and gave judgement on the 9th of December 2021 in favour of Skechers U.S.A as follows:

- a. that the 199 pairs of slippers are offending products which infringe the rights of Skechers;
- b. the forfeiture of the offending products detained by the Mauritius Revenue Authority and Skechers to destroy the offending products or cause them to be destroyed with the collaboration of the Mauritius Revenue Authority;
- c. that AMF LTD pay Skechers U.S.A the sum of 2,000 MUR (6,049.12 JPY) as destruction cost;
- d. that AMF LTD pay Skechers the sum of USD 4,150 (532,741.72 JPY) as legal cost as well as 39,890 MUR (120,649.70 JPY) as storage fees.

6.2 LACOSTE S.A.S VS MR TASHEEL BOODHOO (case no. CN 438/19) in the district court of Lower Plaine Wilhems)

The Lacoste S.A.S case was that it is the registered owner of different Lacoste trademarks in Mauritius including the Lacoste crocodile logo and the "Lacoste" trademark. On 8 October 2019, it was informed by the Mauritius Revenue Authority that the Products, which had been imported by the Mr Boodhoo, were being detained on suspicion that Lacoste S.A.S rights were being infringed upon. Upon examination of the Products, same revealed that they did not respect the "Lacoste" quality standards and that they were counterfeits. Further, the Mr Boodhoo was not authorised by the Lacoste S.A.S to import the said Products.

As per the testimony of the Customs Officer of the Mauritius Revenue Authority, the Products were caused to be imported by the Mr Boodhoo. Further, the evidence, to the effect that the Products were counterfeits, bore the Lacoste S.A. S's registered marks, and were imported by the Mr Boodhoo without any authorisation, remains un rebutted.

The court found that the Lacoste S.A.S had established, on a balance of probabilities, that the Mr Boodhoo, in importing the counterfeited Products, without the authorisation of the Lacoste S.A.S, has acted in breach of its intellectual property rights under section 40 of the Patents, Industrial Designs and Trademark Act of 2002.

The court made the following order on 14 January 2021:

- a. that Mr Boodhoo refrain from importing, trading, commercializing and dealing with products imitation and/or reproducing the "Lacoste" trademarks without the consent of Lacoste S.A.S;
- b. the forfeiture and destruction of the infringing products at the cost of Mr Boodhoo;
- c. that Mr Boodhoo pays the storage fees incurred by Lacoste S.A.S which amounts to 16,370 MUR (49,512 JPY)
- d. that Mr Boodhoo pays Lacoste S.A.S the sum of 1,695€ (235,753,31 JPY) as legal cost.

It is important to note that Lacoste S.A.S also claimed moral and economic damages which they did not receive. The court found that the infringing products were not sold, commercialized and/or distributed on the Mauritian market since they were suspended for clearance by the Mauritius Revenue Authority upon their importation into Mauritius. Accordingly, the court made no award regarding the Lacoste S.A.S's claim for economic and moral damages,

6.3 LACOSTE S.A.S VS T.R.G (Mtius) Ltd (Case no CN 75/2020) in the Intermediate Court of Mauritius

On 8 January 2020 the Intellectual Property Rights unit of the Mauritius Revenue Authority suspended the clearance of 6 pieces of T-Shirts bearing the "Lacoste" trademarks imported by T.R.G (Mtius). The representative for Lacoste S.A.S confirmed that the said T-Shirts are counterfeit products as the said T-Shirts are of a substandard quality, the crocodile logo does not respect the Lacoste guidelines and the hangtag is incorrect.

She further stated that the Lacoste S.A.S never authorised the T.R.G (Mtius) to commercialise and/or import products bearing the “Lacoste” trade marks in Mauritius.

Lacoste S.A.S prayed for judgment condemning and ordering T.R.G (Mtius) to pay to the Plaintiff damages in the sum of 260,000 MUR (786,385.60 JPY) /-representing economic and moral damages, lawyers’ and trademark enforcers’ fees plus storage fees and destruction costs. Lacoste S.A.S claimed that as a result of such acts and doings of T.R.G (Mtius), Lacoste S.A.S has suffered prejudice, trouble and damages estimated at 260,000 MUR (786,385.60 JPY). It was further explained that the sum of 132,955 MUR (402,130.37 JPY)/-represents moral damages since the goodwill associated with Lacoste trademark has been affected and the present legal proceedings had to be initiated to enforce its rights.

The Court, gave judgment on 26 April 2022 in favour of the Plaintiff and ordered the following:

- a. that T.R.G (Mtius) refrain itself or any of his agent and préposé through whom it may act from importing, trading, commercialising and dealing with products imitating and/or reproducing the “Lacoste” trademarks;
- b. the forfeiture and destruction of the 6 pieces T-Shirts bearing the “Lacoste” trademarks detained by the Mauritius Revenue Authority; and
- c. that T.R.G (Mtius) pay Lacoste S.A.S the sum of 260,000 MUR (786,385.60 JPY) which represents economic and moral damages, lawyers’ and trade mark enforcers’ fees, storage fees and destruction costs which must be paid to the Mauritius Revenue Authority.

6.4 POLICE VS FAST CLICK LTD (Case no 1186/2017) in the Intermediate Court of Mauritius

Fast Click Ltd (the accused company) holds a shop in Bagatelle(the shop)which deals in computers and other electronic devices. The wordmark and logo ‘BOSE’ are trademarks which have been duly registered with the Industrial Property Office, Ministry of Foreign Affairs, Regional Integration and International Trade, in the name of Bose B.V., since 07 July 1992

On 29 December 2015, a field operator from Geroudis Management Services, the company managing the protection of the trademark BOSE, made a test purchase of a mini speaker BOSE from the shop. The said speaker was brought to the relevant office for verification purposes.

On 03 January 2016, the said field operator, made a complaint to the Anti-Piracy Unit (APU) in respect of a mini speaker BOSE and he produced a receipt bearing the name of the accused company at its header, purportedly issued upon the purchase of the said speaker

On 06 January 2016, a search was subsequently carried out on the premises of the shop, in the course of which, the police had secured from a shelf an empty box bearing the label ‘BOSE’ and a mini speaker BOSE which was kept in a ‘rear counter drawer’(sic).

It is alleged that (a) the accused company had on 29 December 2015 sold the impugned mini speaker without the authorization of the legal agent of Bose B.V and (b) the impugned mini speaker was a ‘fake’ (sic) product.

Bose B.V was however unsuccessful to prove that the accused company was dealing in a trademark without the agreement of the owner, This was based on the fact that evidence is given viva voce in the accusatorial system of Mauritius to enable the court to assess the credence to be given to such evidence. The declaration and/or contents of a witness statement are not evidence against an accused party and the pre-trial identification of the impugned mini speakers would only be admitted as evidence of the identifying witness’s consistency. Such pre-trial identification is not a substitute for the evidence the witness has failed to give in Court and it cannot fill the gap in the absence of any real identification evidence to link the mini speakers and the receipt produced in Court with the testimony of the field operator

7. Stakeholder's Voice on IP issues and interests in Mauritius

While IP legislation in Mauritius is consistent with international norms, enforcement is relatively weak. According to a leading IPR law firm, the authorities will normally only take action in cases where the IPR owner has an official representative in Mauritius because the courts require a representative to testify that the products seized are counterfeit or otherwise legally problematic. It is however important to note that the Industrial Property Act was only recently came into force in Mauritius and as such it is still uncertain how enforcement of IP will change under the new act.

It is important to note that even though IP enforcement may have been relatively weak, Mauritius does rank 1st among the 26 Sub-Saharan African economies and 9th among the 37 upper middle-income group economies featured in the Global Innovation Index (GII). Mauritius has multiple bilateral trade agreements with African countries, which shall permit the foreign companies to have preferential access to key African markets. It is politically and economically stable and it has a very friendly tax regime given that there are no foreign exchange controls and foreign companies enjoy free repatriation of profits. Mauritius also eliminated double taxation with several countries. As a result, it attracted more than 32,000 offshore companies, emerging 1st for the domiciliation of international companies investing in the African continent.²⁸⁴

²⁸⁴ <https://www.privacyshield.gov/article?id=Mauritius-Protecting-Intellectual-Property>

8. Summary Table

| | PATENT | TRADEMARK | COPYRIGHT | GEOGRAPHICAL INDICATION | INDUSTRIAL DESIGN | UTILITY MODEL |
|---------------------|---|---|--|--|--|---|
| Definition | The title granted to protect an idea of an inventor which provides, in practice, the solution to a specific problem in the field of technology and which may be, or may relate to, a product or a process | Means a visually perceptible sign or combination of signs, capable of distinguishing the goods or services of an enterprise from those of other enterprises; and includes (i) a certification mark and a collective mark; and (ii) words, letters, numerals, figures, pictures, a combination of colours, the shape of goods or parts of the goods, or the packaging or other conditioning of goods | Copyright means the economic and moral rights subsisting in a work; | A Geographical Indication means an indication which identifies a good as originating in the territory of a country, or a region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin ²⁸⁵ . | The appearance of a product resulting from its features, particularly the shape, lines, contours, colours, textures or materials of the product or its ornamentation | A technical creation that consists of a new shape or configuration, or component, of an object that increases its functionality or utility. |
| Requirements | New, involves an inventive step, and is industrially applicable. | No sign shall be registered as a mark where it ²⁸⁶ – (a) is devoid of any distinctive character or is incapable of distinguishing the | A work is deemed eligible for copyright protection where the work is fixed in some material form and irrespective of its | A Geographical Indication must be filed in the prescribed form and subject to payment of non-refundable fees. | New and original. | New and industrially applicable |

²⁸⁵ Section 2 of the Industrial Property Act of 2019.

²⁸⁶ Section 91(2) Industrial Property Act, Act number 15 of 2019

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|--|--|--|--|---|--|--|
| | | <p>goods or services of one enterprise from those of other enterprises;</p> <p>(b) consists solely of a sign or indication that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin or time of production of goods or of rendering of services, or other characteristics of goods or services;</p> <p>(c) consists solely of a sign or indication that has become generic in current language or in the bona fide established practices of the trade, or is a usual or recognised technical or scientific name of a product or service;</p> <p>(d) consists solely of a shape that results from the nature of the goods or provides a technical result, functional advantage</p> | <p>mode or form of expression²⁸⁸.</p> | <p>The Act incorporates very specific requirements that must be met in order for a Geographical Indication to qualify for registration as a trademark. The requirements for registration are as follows²⁸⁹:</p> <p>An application for the registration of a geographical indication shall contain –</p> <ul style="list-style-type: none"> • the name, address and domicile of the person filing the application; • the geographical indication for which registration is sought; • the geographical area to which the geographical indication applies; • the goods designated by the geographical indication; | | |
|--|--|--|--|---|--|--|

²⁸⁸ Section 3 and 05 of the Copyright (Amendment) Act no 02 of 2014

²⁸⁹ Section 106 of the Industrial Property Act of 2019.

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| | | <p>or substantial value to the goods; (e) is contrary to public order or morality; (f) is likely to mislead, in particular as regards the geographical origin of the goods or services concerned or their nature, quality or other characteristics; or (g) contains, as the armorial bearing, the flag or other emblem of a State party to the Paris Convention or an international organisation, an official sign indicating control warranty adopted by any such State or organisation, or constitutes an imitation of those signs from a heraldic point of view.</p> <p>Additionally, Section 91(3) of the Act states as follows²⁸⁷:</p> <p>(a) A mark shall not be registered where it conflicts with a third party right in force in</p> | | <ul style="list-style-type: none"> • the specific characteristics of the goods for which the geographical indication is used; • the area and method of production of the goods; • the link between the characteristics of the goods and the area and method of production; • the manner in which the specific characteristics are controlled; • the Code of Practice which establishes the rules for the use of the geographical indication; • proof that the name of the product is protected in the country of origin; • the Internal Control Plan | | |
|--|--|--|--|---|--|--|

²⁸⁷ Section 91(3) Industrial Property Act, Act number 15 of 2019

| | | | | | | |
|--|--|--|--|---|--|--|
| | | <p>Mauritius, in particular where the mark –</p> <p>(i) is similar to a mark registered earlier or to a mark having an earlier filing or priority date, in respect of similar goods or services, or so nearly resembles such a mark as to be likely to cause confusion;</p> <p>(ii) constitutes a reproduction, imitation or translation liable to create confusion with a mark that is well known in Mauritius in respect of similar goods or services of another enterprise; or</p> <p>(iii) is registered in Mauritius for goods or services which are not identical or similar to those in respect of which registration is applied for and the use of the mark in relation to those goods or services would indicate a connection between those goods or services and the</p> | | <p>relating to the geographical indication.</p> <p>An applicant may, at any time, withdraw his application for the registration of a geographical indication.</p> <p>Additionally, the filing date of the Geographical Indication will be regarded as the date on which all of the requirements above have been met ²⁹⁰. Where the requirements have not been met timeously, the application will be deemed abandoned.</p> | | |
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²⁹⁰ Section 107 of the Industrial Property Act of 2019.

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| | | owner of the well known mark and that the interests of the owner of the well known mark are likely to be damaged by such use; and (iv) cannot be used in Mauritius by virtue of any law. | | | | |
| Term of Protection | 20 years from the filing date of the patent | 10 (ten) years from the date of application for registration | In general, and unless otherwise specified in the Law, works are protected during the author's lifetime and for 70 years after his death. For a work of joint ownership, the economic and moral rights shall be protected during the life of the last surviving author and for 70 years after his death ²⁹¹ . | 10 (ten) years from the date of application for registration | 5 years from the filing date. Registration may be renewed for 3 further consecutive periods of 5 years. | 6 years. The registration may be renewed for 2 further consecutive periods of 2 years. |
| Laws | The Industrial Property Act 2019 | The Industrial Property Act 2019 | Copyright (Amendment) Act no 02 of 2014 | The Industrial Property Act 2019 | The Industrial Property Act 2019 | The Industrial Property Act 2019 |
| Application/Registration Procedures | Patents of Invention are filed with the Director of the IP office on the prescribed form and | The prescribed application form (TM1) must be completed and filed. The Mauritius | Copyright cannot be registered in Mauritius as it vests automatically provided the | The application procedure follows the same as an ordinary trademark, however, additional | An application for the registration of an industrial design shall be filed with the Director in such form | Utility model applications are filed with the Director of the IP office in such a manner as he may |

²⁹¹ Section 15 of the Copyright (Amendment) Act no 02 of 2014

| | | | | | | |
|--|---|--|------------------------------|---|---|---|
| | <p>must be accompanied by payment of the application fee, which is currently 10,000 MUR. The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis.</p> <p>Application must be accompanied by:</p> <ul style="list-style-type: none"> • Power of Attorney • Title, description of the invention and claims, including drawings and abstract • Assignment if applicable; • Priority document if applicable. | <p>Trademarks Office recognises a multi class filing system; therefore, separate applications need not be filed per mark and per class. The Director will attend to a search to determine whether there are any conflicting marks to the relevant application. The requirements for filing are that the filing must specify²⁹²:</p> <ul style="list-style-type: none"> • the full name of the applicant for registration, together with the full street address and country where the applicant is situated, • where applicable, a statement indicating the type of mark and any specific requirements applicable to that type of mark; • a representation of the mark itself, | <p>requirements are met.</p> | <p>considerations apply as per above.</p> | <p>and manner as he may determine, which is currently 4,000 MUR. The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis.</p> <p>Where the application is accompanied by the prescribed fee and contains the following:</p> <ul style="list-style-type: none"> • indications allowing the identity of the applicant to be established and allowing the applicant to be contacted; and • graphic representations of the industrial design for which registration is sought <p>the Director shall issue a notification of the filing date within 1 week of the</p> | <p>determine and must be accompanied by payment of the application fee, which is currently 10,000 MUR. The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis.</p> <p>Application must be accompanied by:</p> <ul style="list-style-type: none"> • Power of Attorney • Title, description of the invention and claims, including drawings and abstract • Assignment if applicable; • Priority document if applicable. |
|--|---|--|------------------------------|---|---|---|

²⁹² Section 92(2)(a) Industrial Property Act 2019 and Section 74(3) Industrial Property Regulations 2022

| | | | | | | |
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| | | <ul style="list-style-type: none"> • must accompany the prescribed fee; • the relevant class of interest, and the goods and services to be designated; and • any priority details, if applicable. | | | application date. The date of receipt shall then be considered as the filing date. | |
| Who Can Apply? | The inventor or a person who acquired the right to apply from the inventor | An address for service in Mauritius must be provided upon registration of the mark. Said address for service is empowered to apply for a trademark application in Mauritius on behalf of the trademark applicant. For example, the application must specify the name and street address of a law firm situated in Mauritius or the applicant itself. The Director of Trademarks will not correspond with a law firm located outside Mauritius, and it should be mentioned in this regard that | The author of a work shall be regarded as the first owner of copyright and other rights in the work (including a joint ownership of the copyright work). However, there are currently certain exceptions to this position. Some exceptions include: <ul style="list-style-type: none"> • Employed authors – In the absence of any contract to the contrary, the economic rights of a work shall vest in an employer or a person who commissions the work where the employed or commissioner author has created the work in the course of the | In the case of Geographical Indications, such trademark applications are limited to a certain group of peoples in the commercial space including a group of producers, or a legal entity that groups the producers, that operates in a specified geographical area to produce specified goods, or a government department, on behalf of the group of producers or legal entity, may apply for registration of a | The right to an industrial design shall belong to the creator of the design and may be assigned or may be transferred by succession. | The inventor or a person who acquired the right to apply from the inventor |

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| | | only a law firm in Mauritius can act as the address for service in filing an application for registration on behalf of an applicant. Alternatively, the trademark proprietor can apply for the trademark themselves directly at the Industrial Property Office. | employment or commission; <ul style="list-style-type: none"> • Audio visual works – The original owner of the economic rights will be the producer of the work, unless otherwise provided by the Act. • Co-Authors of Audio-visual works and the authors of pre-existing works – shall maintain their economic rights in their contribution or pre-existing work, respectively. | geographical indication | | |
| Where To Apply? | The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis. | The Mauritius Trademarks Office is located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis, and all applications for registration of trademarks must be filed manually at that office in English and in the prescribed manner. | It is not possible to register copyright in Mauritius. Rather, copyright will subsist automatically in a copyright work where such works meets the requirements for copyright protection. | The Mauritius Trademarks Office is located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis, and all applications for registration of trademarks must be filed manually at that office in English and in the prescribed manner. | The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis. | The application must be filed manually at the Industrial Property Office located at the 11th Floor, Sterling House, Lislet Geoffroy Street in Port Louis. |
| Examination | Director of the Industrial Property office shall conduct substantive examine | The Director will conduct a full examination of the trademark application | No examination conducted as it is not possible to register copyright in Mauritius. | The process of examination of Geographical Indication differs | Director of the Industrial Property office shall conduct substantive examine | Director of the Industrial Property office shall conduct substantive examine |

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| | <p>to verify whether that the invention is new, involves an inventive step, and is industrially applicable. Currently, the Director of the Industrial Property office does not conduct substantive examination but does however request information regarding substantive examination in other jurisdictions.</p> | <p>on absolute and relative grounds approximately two months after the trademark filing date.</p> | | <p>slightly to an ordinary trademark application as the Director will consider the ordinary requirements and limitations for trademark registration, coupled with the above requirements and bars to registration²⁹³. Additionally, the Director will consider whether the Geographical Indication complies with the definition of a Geographical Indication²⁹⁴.</p> | <p>to verify whether that the industrial design is new and original.</p> <p>Currently only formal examination is conducted by the Industrial Property Office with substantive examination coming into effect at a date still to be determined.</p> | <p>to verify whether that the utility model is new and is industrially applicable.</p> <p>Currently only formal examination is conducted by Industrial Property office with substantive examination coming into effect at a date still to be determined.</p> |
| Rights | <p>A patent shall confer on its owner the right to prevent any person from exploiting the patented invention.</p> | <p>The owner of a registered trademark is entitled to take action against a third party's violation of the trademark owner's registered rights by way of infringement proceedings instituted at the High Court of Mauritius. In circumstances where the trademark owner elects not to institute trademark infringement</p> | <p>The relevant rights include the economic and moral rights relating to a particular copyright work</p> | <p>A Geographical Indication has a very particular scope of rights whereby no person, other than a group of producers or a legal entity that groups the producers, and carrying on an activity in the relevant geographical area, shall have the right to use a registered geographical indication in the</p> | <p>Where any person, other than the registered owner, exploits a registered industrial design in Mauritius, he shall require the written consent of the registered owner</p> | <p>A registration for a utility model shall confer on its owner the right to prevent any person from exploiting the invention as contained in the registered utility model</p> |

²⁹³ Section 108 of the Industrial Property Act of 2019.

²⁹⁴ Section 108 of the Industrial Property Act of 2019.

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| | | proceedings in its own name, a licensee that is designated as a registered user may do so in their own name. | | course of trade with respect to the goods specified in the relevant register ²⁹⁵ . | | |
| Cancellation | <p>Application can be withdrawn.</p> <p>An interested party may apply for the invalidation of a patent where certain requirements are met.</p> | <p>Non-use cancellation of a trademark may be based on no such use of a mark in Mauritius for a period of 3 years or longer . Failure to use the trademark as aforementioned, may result in an interested third party applying for the removal of the registration from the register of Trademarks.</p> | Not applicable. | <p>Non-use cancellation of a trademark may be based on no such use of a mark in Mauritius for a period of 3 years or longer . Failure to use the trademark as aforementioned, may result in an interested third party applying for the removal of the registration from the register of Trademarks.</p> | <p>An applicant may, at any time before an industrial design is registered, withdraw the application entirely or in respect of one or more designs.</p> <p>An interest person may apply for the invalidation of an industrial design where certain requirements are met</p> | <p>Application can be withdrawn.</p> <p>An interested party may apply for the invalidation of a utility model where certain requirements are met.</p> |
| Licensing | Compulsory license and well as license for dependent patent available. | A trademark owner may licence the rights obtained through trademark registration to third-parties. Both an exclusive and non-exclusive license is recognised in Mauritius. | The owner of copyright may licence the economic rights therein to another person either in whole or in part. On the other hand, moral rights by their very nature are non-transferrable and cannot be licenced. | A trademark owner may licence the rights obtained through trademark registration to third-parties. Both an exclusive and non-exclusive license is recognised in Mauritius. | The Act only makes provision for a third party to require written consent from the registered owner to exploit the registered industrial design in Mauritius. | The Act does not make provision for license for a utility model. |

²⁹⁵ Section 109 of the Industrial Property Act of 2019.

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| Assignments | Any right to a patent may be assigned or transferred by succession. | <p>The Act makes provision for procedures to allow for the change of ownership. In order for an assignment to be valid it must be reduced to writing and filed with the Director.</p> <p>Importantly, the Acts invalidates a change of ownership whereby said Recordal is likely to lead to deception or confusion with regard to the nature, origin, manufacturing process, characteristics or suitability for the purpose of the goods or services to which the mark is applied.</p> | The owner of copyright may transfer the economic rights therein to another person either in whole or in part. On the other hand, moral rights by their very nature are non-transferrable. | <p>The Act makes provision for procedures to allow for the change of ownership. In order for an assignment to be valid it must be reduced to writing and filed with the Director.</p> <p>Importantly, the Acts invalidates a change of ownership whereby said recordal is likely to lead to deception or confusion with regard to the nature, origin, manufacturing process, characteristics or suitability for the purpose of the goods or services to which the mark is applied</p> | Any right to an industrial design may be assigned or transferred by succession. | Any right to an utility model may be assigned or transferred by succession. |
| Civil Enforcement | <p>A party may apply to the Intermediate Court / Supreme Court for the following remedies or reliefs in relation to infringement of IP rights:</p> <ul style="list-style-type: none"> - injunction to prevent unfair | <p>A party may apply to the Intermediate Court / Supreme Court for the following remedies or reliefs in relation to infringement of IP rights:</p> <ul style="list-style-type: none"> - injunction to prevent unfair | | <p>A party may apply to the Intermediate Court / Supreme Court for the following remedies or reliefs in relation to infringement of IP rights:</p> <ul style="list-style-type: none"> - injunction to prevent unfair | <p>A party may apply to the Intermediate Court / Supreme Court for the following remedies or reliefs in relation to infringement of IP rights:</p> <ul style="list-style-type: none"> - injunction to prevent unfair | <p>A party may apply to the Intermediate Court / Supreme Court for the following remedies or reliefs in relation to infringement of IP rights:</p> <ul style="list-style-type: none"> - injunction to prevent unfair |

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| | practice or unlawful act - damages - forfeiture and destruction of any article or thing that were used in, or gave rise to, an act of unfair practice as the court thinks fit. | practice or unlawful act - damages - forfeiture and destruction of any article or thing that were used in, or gave rise to, an act of unfair practice as the court thinks fit. | | practice or unlawful act - damages - forfeiture and destruction of any article or thing that were used in, or gave rise to, an act of unfair practice as the court thinks fit. | practice or unlawful act - damages - forfeiture and destruction of any article or thing that were used in, or gave rise to, an act of unfair practice as the court thinks fit. | practice or unlawful act - damages - forfeiture and destruction of any article or thing that were used in, or gave rise to, an act of unfair practice as the court thinks fit. |
| Criminal Enforcement | Any person who knowingly exploits the patented invention shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR and to imprisonment for a term not exceeding 5 years. | Any person who knowingly exploits the registered mark shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR and to imprisonment for a term not exceeding 5 years. | | Any person who knowingly exploits the registered mark shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR and to imprisonment for a term not exceeding 5 years. | Any person who knowingly exploits the industrial design shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR and to imprisonment for a term not exceeding 5 years. | Any person who knowingly exploits the utility model shall commit an offence and shall, on conviction be liable to a fine not exceeding 250,000 MUR and to imprisonment for a term not exceeding 5 years. |
| Administrative | The Industrial Property Office of Mauritius ("IPO"), The Industrial Property Tribunal, The Supreme Court and/or The Judicial Committee of the Privy Council. | The Industrial Property Office of Mauritius ("IPO"), The Industrial Property Tribunal, The Supreme Court and/or The Judicial Committee of the Privy Council. | The Industrial Property Office of Mauritius ("IPO"), The Industrial Property Tribunal, The Supreme Court and/or The Judicial Committee of the Privy Council. | The Industrial Property Office of Mauritius ("IPO"), The Industrial Property Tribunal, The Supreme Court and/or The Judicial Committee of the Privy Council. | The Industrial Property Office of Mauritius ("IPO"), The Industrial Property Tribunal, The Supreme Court and/or The Judicial Committee of the Privy Council. | The Industrial Property Office of Mauritius ("IPO"), The Industrial Property Tribunal, The Supreme Court and/or The Judicial Committee of the Privy Council. |
| Counterfeiting Measures | The client can opt for border protection with customs to stop counterfeits. As | The client can opt for border protection with customs to stop counterfeits. As | The client can opt for border protection with customs to stop counterfeits. As | The client can opt for border protection with customs to stop counterfeits. As | The client can opt for border protection with customs to stop counterfeits. As | The client can opt for border protection with customs to stop counterfeits. As |

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| | <p>customs can carry inland detention, customs can be requested to detain the products on the territory as well. There is also the Anti-Piracy Unit of Police who acts against counterfeit products however it is not advisable to take the criminal route as it is a very lengthy and costly process.</p> | <p>customs can carry inland detention, customs can be requested to detain the products on the territory as well. There is also the Anti-Piracy Unit of Police who acts against counterfeit products however it is not advisable to take the criminal route as it is a very lengthy and costly process.</p> | <p>customs can carry inland detention, customs can be requested to detain the products on the territory as well. There is also the Anti-Piracy Unit of Police who acts against counterfeit products however it is not advisable to take the criminal route as it is a very lengthy and costly process.</p> | <p>customs can carry inland detention, customs can be requested to detain the products on the territory as well. There is also the Anti-Piracy Unit of Police who acts against counterfeit products however it is not advisable to take the criminal route as it is a very lengthy and costly process.</p> | <p>customs can carry inland detention, customs can be requested to detain the products on the territory as well. There is also the Anti-Piracy Unit of Police who acts against counterfeit products however it is not advisable to take the criminal route as it is a very lengthy and costly process.</p> | <p>customs can carry inland detention, customs can be requested to detain the products on the territory as well. There is also the Anti-Piracy Unit of Police who acts against counterfeit products however it is not advisable to take the criminal route as it is a very lengthy and costly process.</p> |
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10. Schedule A

Official fees, accurate as at November 2022, in relation to Intellectual Property in Mauritius.

10.1 Patents:

| | Rate (MUR) | Rate (JPY) |
|--|--------------|-----------------|
| Application for patent | 10,000 | 30,245,60 |
| Withdrawal of application | 1,000 | 30,24,56 |
| Early publication of application | 2,000 | 6,049,12 |
| Opposition | 5,000 | 15,122,80 |
| Copy of patent | 300 per page | 907,37 per page |
| Request for change in text or drawing | 5,000 | 15,122,80 |
| Annual fee for- | | |
| 1st anniversary | NIL | |
| 2nd anniversary | NIL | |
| 3rd anniversary | 3,000 | 9,073,68 |
| 4th anniversary | 3,000 | 9,073,68 |
| 5th anniversary | 10,000 | 3,0245,60 |
| 6th anniversary | 10,000 | 3,0245,60 |
| 7th anniversary | 10,000 | 30,245,60 |
| 8th anniversary | 10,000 | 30,245,60 |
| 9th anniversary | 10,000 | 30,245,60 |
| 10th anniversary | 30,000 | 90,736,80 |
| 11th anniversary | 30,000 | 90,736,80 |
| 12th anniversary | 30,000 | 90,736,80 |
| 13th anniversary | 30,000 | 90,736,80 |
| 14th anniversary | 30,000 | 90,736,80 |
| 15th anniversary | 50,000 | 151,228,00 |
| 16th anniversary | 50,000 | 151,228,00 |
| 17th anniversary | 50,000 | 151,228,00 |
| 18th anniversary | 50,000 | 151,228,00 |
| 19th anniversary | 50,000 | 151,228,00 |
| Surcharge for late payment of annual fee | 2,000 | 6,049,12 |
| Restoration of lapsed patent | 10,000 | 30,245,60 |
| Application for compulsory license | 100,000 | 302,456,00 |
| Transmittal fee | 5,000 | 15,122,80 |

10.2 Utility Models:

| | Rate (MUR) | Rate (JPY) |
|---|------------|------------|
| Application for registration of utility model | 6,000 | 18,147,36 |
| Renewal fee for- | | 0 |
| First term | 3,000 | 9,073,68 |
| Second term | 5,000 | 15,122,8 |
| Surcharge for late payment of renewal fee | 1,000 | 3,024,56 |
| Fee for conversion of application for patent into application for utility model | 1,000 | 3,024,56 |
| Fee for conversion of application for utility model into application for patent | 5,000 | 15,122,8 |

10.3 Layout-designs

| | Rate (MUR) | Rate (JPY) |
|---|------------|------------|
| Application for registration of layout design | 10,000 | 30,245,6 |

10.4 Industrial-design

| | Rate (MUR) | Rate (JPY) |
|---|------------|------------|
| Application for registration of industrial design | 4,000 | 12,098,24 |
| Withdrawal of application | 1,000 | 3,024,56 |
| Registration fee | 6,000 | 18,147,36 |
| Application for renewal of registration for - | | |
| First term | 5,000 | 15,122,8 |
| Second term | 7,000 | 21,171,92 |
| Third term | 10,000 | 3,0245,6 |
| Surcharge for late payment of renewal fee | 2,000 | 6,049,12 |

[Commissioned by JPO]

Report on Mauritius' Intellectual Property System and Operation

March 2023

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Kisch Global Limited

Japan External Trade Organization

Dubai Office

Intellectual Property Department