



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



**DEBT COLLECTION IN MYANMAR**

Seminar, 7 July 2016



## **AMICABLE COLLECTION**

- Officially starts with a letter of demand
- Phone calls
- Personal visits



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



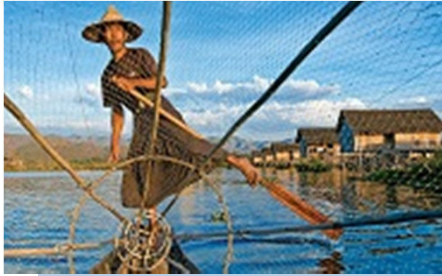
# AMICABLE COLLECTION

Debtor has difficulties paying:

- Offer payment in installments, interest factored in
- Offer a discount



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## **AMICABLE COLLECTION**

**Debtor can, but does not want to pay:**

- **Argue with reputational and credit risks (inform suppliers and customers, blacklisting)**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# AMICABLE COLLECTION

## Specific issues:

- Repossession of goods: Only legal if provided in the contract
- Electronic locks
- Collection agencies
- Factoring
- Trade insurance companies
- Can we collect interest for late payment?



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## **COLLECTION WITH POLICE HELP**

**Relevant criminal offences, among others:**

- **Cheating (section 415 Penal Code)**
- **Criminal breach of trust (section 405 Penal Code)**
- **Forgery (section 463 Penal Code)**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**





# COLLECTION WITH POLICE HELP

## Procedure

- **Non-cognizable offences:** Filing a complaint with the township court (magistrate) in whose jurisdiction the crime was committed → court instructs police to investigate
- **Cognizable offences:** Filing a complaint the township police station in whose jurisdiction the crime was committed



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **COLLECTION WITH POLICE HELP**

## **Procedure**

- **Powers of the township police within its jurisdiction**
  - **Summon witnesses**
  - **Search premises without warrant**
  - **Cognizable offences: Arrest a suspect and keep in custody for 24 hours without warrant (may initially be prolonged to 15/30 days by order of the township court, further prolongation possible)**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**





# **COLLECTION WITH POLICE HELP**

## **Procedure**

- **Cognizable offence: Police → Township Law Office → Court**
- **Non-cognizable offence: Township court (magistrate) → Police → Township Law Office → Court**

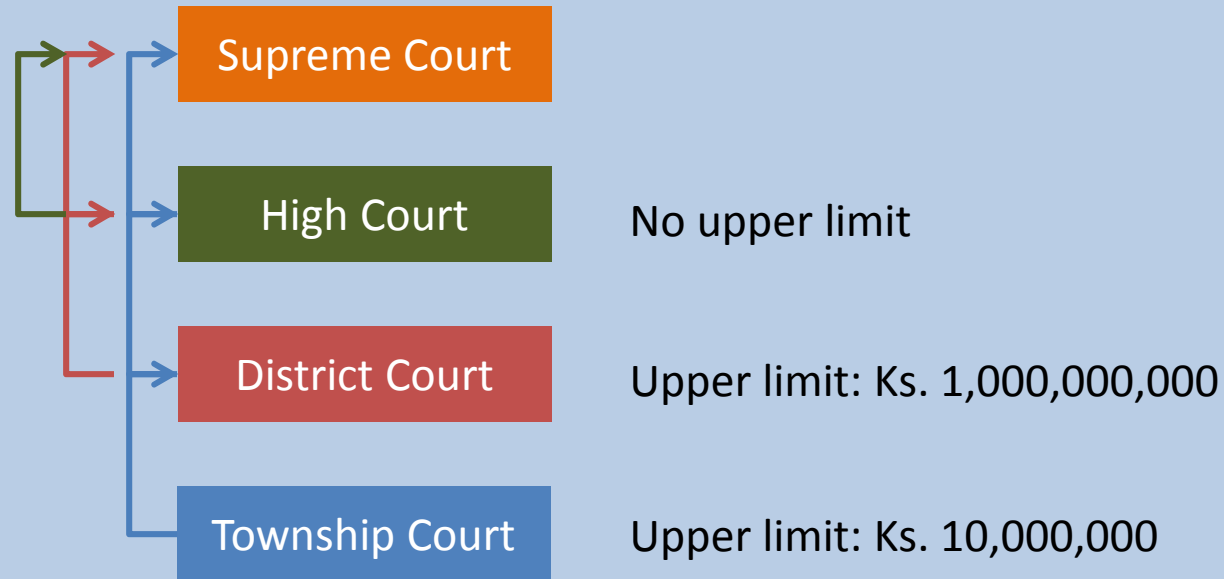


**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

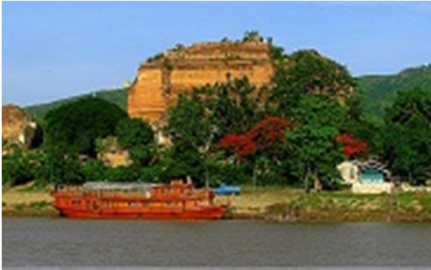


# COLLECTION WITH COURT HELP

## Court structure in civil cases (simplified):



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **COLLECTION WITH COURT HELP**

## **Procedure**

- **Plaintiff files plaint with the court of competent jurisdiction and pays court fees**
- **Judge sets a date for the first hearing and notifies (“summons”) the defendant**
- **At the first hearing, judge typically tells the defendant to get a lawyer and reply to the suit in writing within 15 days**
- **Judge frames the issues**
- **Judge summons witnesses**
- **Parties make arguments**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **COLLECTION WITH COURT HELP**

## **Procedure**

- **When judge has come to a conclusion, he pronounces judgment and writes a decree**
- **Losing party can appeal the decree**
- **Once the decree is final, it has to be enforced: Winning party applies to the judge for enforcement. Usually, judge notifies debtor and the debtor (hopefully) pays the creditor in a lump-sum or in installments in front of the judge or another authorized person (e.g. ward or police officer)**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# COLLECTION WITH COURT HELP

## Procedure

- Options of the court to enforce a monetary judgment:
  - Attachment and sale, or sale without attachment, of any property of the debtor
  - Arrest and detention in prison



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **TAKING AND ENFORCING SECURITY**

## **Traditional security**

- **Mortgage of immovable property**
- **Pledge**
- **Guarantee**
- **Irrevocable power of attorney**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**





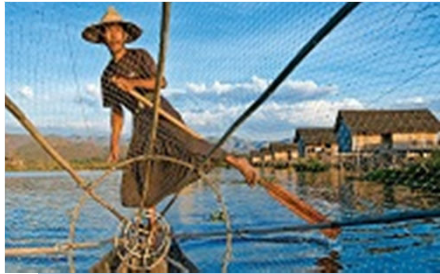
# TAKING AND ENFORCING SECURITY

## Mortgage

- **“Mortgage by deposit of title-deeds”**
- **No need to register**
- **Banks use this mortgage to prevent borrower from disposing of the asset**
- **Enforcement: (i) Bank sues borrower for payment and then (ii) enforces against the property. Time frame: At least five years**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# TAKING AND ENFORCING SECURITY

## Pledge

- Lender takes possession of the pawn
- Enforcement: Sale of the pawn by the lender (section 176 Contract Act)



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# TAKING AND ENFORCING SECURITY

## Guarantee

- Contract to perform the promise, or discharge the liability, of a third person in case of his default
- Enforcement: (i) Suing the guarantor (“surety”) for payment and (ii) enforcing the winning judgment against the guarantor



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **TAKING AND ENFORCING SECURITY**

## **Irrevocable power of attorney**

- **“Where an agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest”**
- **Enforcement: E.g. Using the power of attorney to sell the property**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **TAKING AND ENFORCING SECURITY**

**Security in sophisticated transactions (e.g. cross-border deals)**

- **Project bank account**
- **Step-in rights**
- **Mortgage taken by local security agent**
- **Share “pledge”**
- **Floating charge on receivables (“book debt”) and/or inventory**
- **Fixed charge on machines**
- **Assignment of rights; assignment of licenses**
- **Security over intellectual property rights**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **TAKING AND ENFORCING SECURITY**

## **Project bank account**

- **Bank in Myanmar acts as the security agent of the foreign lender**
- **Revenue from the project is paid into a bank account provided by the security agent**
- **Security agent repays, from this bank account, the loan**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**





# TAKING AND ENFORCING SECURITY

## Step-in rights

- E.g. in a lease agreement with the government: “Landlord acknowledges that Tenant may obtain financing from third parties and allows Tenant to offer to such third parties to step into this lease agreement instead of Tenant with all rights and obligations of Tenant.”
- Probably not available in Myanmar at the moment



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## **TAKING AND ENFORCING SECURITY**

**Mortgage taken by local security agent**

- **Foreign lenders cannot take mortgage of immovable property**
- **Local bank can act as security agent and take mortgage on behalf of the foreign lender**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



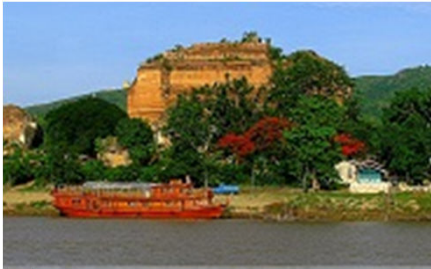
# TAKING AND ENFORCING SECURITY

## Share “pledge”

- Share pledge agreement and BoD resolution approving the share pledge agreement
- Handing over form 6, bank statement proving payment of paid-up capital, irrevocable power of attorney, signed undated share transfer form, signed undated resignation letters, signed undated cover letter



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## **TAKING AND ENFORCING SECURITY**

**Floating charge on receivables (“book debt”) and/or inventory**

- **Requires registration with DICA (section 109 Companies Act), but DICA does not register such things**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## **TAKING AND ENFORCING SECURITY**

### **Fixed charge on machines**

- **Requires registration with DICA (section 109 Companies Act), but DICA does not register such things**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



# **TAKING AND ENFORCING SECURITY**

## **Assignment of rights; assignment of licenses**

- **Regulated in Chapter VIII Transfer of Property Act 1882**
- **Assignment of licenses usually not possible as licenses are usually not transferrable (exception: telecom-related licenses, section 23(c) Licensing Rules, but prior approval required)**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**





# TAKING AND ENFORCING SECURITY

## Security over intellectual property

- **“Pledging” a trademark: Pledge agreement + handing over signed undated BoD resolution, signed undated application to delete trademark, original certificate of incorporation, irrevocable power of attorney**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## ENFORCING A FOREIGN JUDGMENT

- Foreign judgment for a specific sum of money: May theoretically be enforced (specimen form of plaint: Form 11 in Appendix A to the Civil Procedure Rules)
- Other foreign judgments cannot be enforced. However, it may be possible to sue the other party in Myanmar and persuade the judge to treat the facts stated in the foreign judgment as undisputed between the parties
- Further reading: Adrian Briggs, Private International Law in Myanmar, 2015



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**

# ENFORCING A FOREIGN ARBITRAL AWARD



- Arbitration Law (Law No. 5/2016 dated 5 January 2016)
- Competent court: District Court (worth of the claim up to Ks. 500,000,000) or High Court (worth of the claim in excess of Ks. 500,000,000)
- Time bars: District Court 3 years, High Court 12 years
- Produce original award and original arbitration agreement (or “duly certified” copies)



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**



## **CONTACT**

**Lincoln Legal Services (Myanmar) Ltd.**

**La Pyi Wun Plaza, Room 103 (ground floor),  
37, Alan Pya Pagoda Road, Dagon Township,  
Yangon, Myanmar**

**Phone: +95-9-262546284**

**E-mail: [info@lincolnmyanmar.com](mailto:info@lincolnmyanmar.com)**

**Homepage: Coming soon...**



**LINCOLN LEGAL SERVICES (MYANMAR) LIMITED**