



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

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## Revenue Appellate Tribunal Bill

### - Analysis -

Myanmar has had a revenue appellate tribunal (“**Tribunal**”) since 1954.

“**Tribunal**” is a bit of a misnomer as the body is not composed of independent members of the judiciary. Rather, it is integrated in the Ministry of Planning and Finance (“**MPF**”).

Appeals are - in comparison to other jurisdictions - a rare occurrence. Most appeals so far have been filed against decisions of the customs authorities. According to the latest figures available online (<http://tinyurl.com/yak325y6>), the Tribunal decided 1,540 cases (1,439 customs cases and 101 other tax cases) from 1 April 1989 to 31 August 2012. The experience of our firm with appeals to the Tribunal also only involves customs cases.

The present framework for revenue appeals was created by Government Notification 6/1989 and, according to reports, amended by a MPF Notification 54/2017. In addition, there are provisions in various tax laws dealing with appeals to the Tribunal, in particular section 33 Income Tax Law, section 19 Commercial Tax Law, section 21 Special Goods Tax Law and, although this is not apparent from the English text available, sections 188 and 191 Sea Customs Act.

On 15 August 2017, Parliament published the draft of a Revenue Appellate Tribunal Law (“**Bill**”). A bill is the draft of a law submitted to Parliament, it is not yet a law. We have translated the Bill; the translation is available to our premium subscribers.

If enacted, the Bill will not significantly change the appeal procedure, but provide a firmer legal basis for the existence of the Tribunal and its role.

The key features of the appeal procedure are as follows:

- (1) The Tribunal is integrated in the “Revenue Appellate Tribunal Department” (“**Department**”) of the MPF whose Director General acts as the Tribunal’s chairman. In addition to the chairman, the Tribunal consists of two to six more members who are (i) active or retired MPF officers in the rank of a director or above and/or (ii) active or retired persons from “sectors related to law, taxation, accounting and auditing” (section 6 Bill).
- (2) Tax appeals are being dealt with within the MPF and not by the ordinary courts. As an exception, the Supreme Court may decide on matters of law arising in an appeal (section 34 (c) Income Tax Law, section 19A Commercial Tax Law, section 21 (a) (3) Special Goods Tax Law, sections 2 (k)



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- and 15 Bill). We suppose that an ordinary court would refuse to accept a plaint against the tax or customs authorities and refer the plaintiff to the administrative appeals procedure.
- (3) Appeals against the Customs Department are heard directly by the Tribunal whereas for other tax cases (income tax, commercial tax, special goods tax), a “first appeal” procedure within the hierarchy of the Internal Revenue Department exists which must be exhausted before a “second appeal” can be filed with the Tribunal. This may be the reason for the preponderance of customs cases in the case load of the Tribunal.
  - (4) There are certain de-minimis thresholds for appeals. In particular, a “first appeal” in a special goods tax case can only be filed if the tax amount exceeds Ks. 1,000,000 (approx. USD 741), and a “second appeal” only if the tax burden exceeds Ks. 10,000,000 (approx. USD 7,407).
  - (5) Rules governing the actual procedure are quite rudimentary. Appeals and related applications have to be filed within certain deadlines. According to section 21 (e) Bill, “the provisions of the Code of Civil Procedure, Code of Criminal Procedure, Evidence Act and other laws, rules and directives may be used and referred to” by the Tribunal.
  - (6) A taxpayer unsatisfied with the decision of the Tribunal may request the Tribunal to re-examine the case and amend its decision.
  - (7) Decisions of the Tribunal on the facts of a case are final (matters of law may be referred to the Supreme Court). However, a taxpayer may in practice still try to appeal to the Minister of Planning and Finance to make a political decision.
  - (8) No appeal apparently lies, unfortunately, against decisions in stamp duty cases, although this is probably the most contentious area of tax law.