



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



DEBT COLLECTION IN MYANMAR

Seminar, 6 June 2018



AMICABLE COLLECTION

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



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AMICABLE COLLECTION

Debtor has difficulties paying:

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



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AMICABLE COLLECTION

Debtor can, but does not want to pay:

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



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AMICABLE COLLECTION

Specific issues:

- Rights of the unpaid seller limited to **(i)** refusing delivery until payment, **(ii)** sale of the goods to someone else and **(iii)** suit for payment of the purchase price (S. 46, 55 Sales of Goods Act) → Repossession of unpaid goods possible?
- Retention of title not provided for in the Sales of Goods Act, but may probably be agreed upon in the sales and purchase agreement (sec. 19 (1))
- Can we collect interest for late payment (cf. S. 61(2) Sales of Goods Act)?



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AMICABLE COLLECTION

If a Myanmar creditor seeks to recover money from a debtor residing abroad:

- **Amicable collection possible**
- **Requires the help of specialised law firms (we cooperate with several of them) or debt collection agencies abroad**
- **Collection usually on the basis of a success fee (10-15%)**
- **Debt must be sufficiently high**



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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)**
- **Dishonour of cheques?**



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COLLECTION WITH POLICE HELP

Procedure

- **Non-cognizable offences:** Filing a complaint at the township police station in whose jurisdiction the crime was committed → Police records the complaint and refers informant to the township court → court instructs police to investigate
- **Cognizable offences:** Filing a complaint the township police station in whose jurisdiction the crime was committed → Police records the complaint (“first information report”) and investigates



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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)**
 - **Non-cognizable offences: Need arrest warrant from the township court**



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COLLECTION WITH POLICE HELP

Procedure

- Cognizable offence: Police → Township Law Office → Court
- Non-cognizable offence: Police → Township court → Police → Township Law Office → Court



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COLLECTION WITH POLICE HELP

Procedure

- **If the complainant is a company registered in Myanmar:
Original corporate documents to be shown + BoD
resolution and PoA to be submitted**
- **If the complainant is a company registered abroad:
Notarized and legalized copies of the corporate documents
to be shown + notarized and legalized BoD resolution and
PoA to be submitted**



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COLLECTION WITH POLICE HELP

Procedure

- Complainant (if the complainant is a company, an employee of the company with sufficient knowledge of the case and authorized by PoA) has to personally sign the complaint and confirm that the facts are accurate and that he believes the legal implications to be correct
- If the complainant resides abroad, he has to travel to Myanmar to open a police case; this can probably not be done by proxy

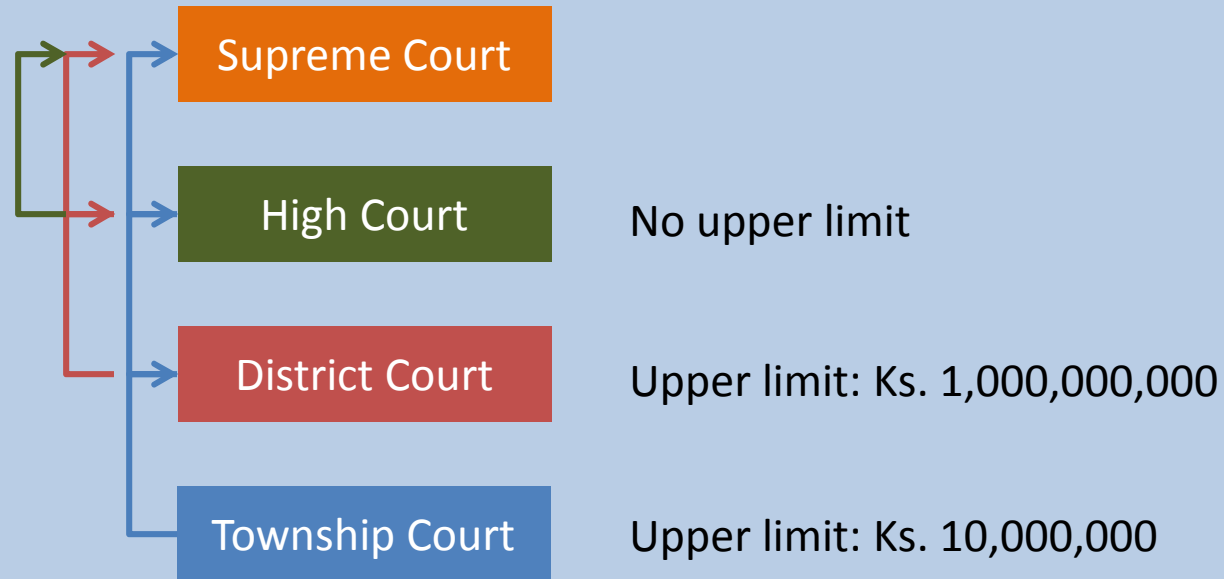


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COLLECTION WITH COURT HELP

Court structure in civil cases (simplified):



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COLLECTION WITH COURT HELP

Procedure

- Plaintiff files plaint with the court of competent jurisdiction and pays court fees
- Court serves the plaint and a writ of summons on the defendant
- Defendant appears and submits written defence
- Court calls “first hearing” (a misnomer...)
- Documentary evidence presented at first hearing
- Court frames the issues
- Court disposes of “issues of law”



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COLLECTION WITH COURT HELP

Procedure

- Court summons witnesses
- Witnesses are examined (first by the party that called them, then cross-examined if the other party so requests)
- Parties make arguments
- When judge has come to a conclusion, he pronounces judgment and writes a decree
- Losing party can appeal the decree



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COLLECTION WITH COURT HELP

Procedure

- **Once the decree is final, it has to be enforced: Winning party applies to the court for enforcement. Usually, the court 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)**



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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**
 - **Garnishee order: Court orders a third party owing money to the judgment-debtor to pay it to the judgment-creditor**
 - **Arrest and detention in prison**



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COLLECTION WITH COURT HELP

Interesting issues, in no particular order

- **Filing a plaint or defence by a company registered in Myanmar requires the production of the original corporate documents, a BoD resolution and a PoA for the company's representative (not to be confused with the company's lawyer)**
- **Filing a plaint or defence by a company registered abroad requires the production of copies of the corporate documents, a BoD resolution and a PoA for the company's representative (notarized and legalized)**



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COLLECTION WITH COURT HELP

Interesting issues, in no particular order

- The plaintiff and the defendant (if they are companies, their representative - not to be confused with their lawyers) have to sign an undertaking before the court.

(Example:

“We are signing to undertake that we personally know that the facts contained in paragraphs 1 to 8 in the plaint are correct and that we were told that the legal opinions given in the plaint are correct.”

→ Difficult for parties from abroad



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Interesting issues, in no particular order

- A pending lawsuit abroad in the same matter does not preclude the institution of a lawsuit in Myanmar (S. 10 CPC)
- Suits against the government (against state-owned enterprises?) require two months notice (S. 80 CPC)



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COLLECTION WITH COURT HELP

Interesting issues, in no particular order

- **Monetary claims have to be expressed in MMK (even if made by a foreigner residing abroad against another foreigner residing abroad) and the judgment is for a MMK amount**
- **Documentary evidence has to be submitted as originals at the “first hearing” (limited exceptions apply); otherwise it is not admissible**



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COLLECTION WITH COURT HELP

Interesting issues, in no particular order

- **There are no accelerated procedures**
- **Court of first instance may make interim judgments (e.g., in order to dispose of a question of law). The time bar for an appeal is 90 days, but better file as early as possible as the court of first instance will continue to hear (and decide) the case until the appeals court requisitions the case file.**



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Interesting issues, in no particular order

- **Serving documents on a party residing abroad: The court sends the documents to the Myanmar embassy in the respective country which then delivers them. Alternatively, the documents may be served on an “agent” of the party in Myanmar which, in practice, may be any business partner.**
- **Legal practitioners here have difficulties with the concept that a branch is not a separate legal entity from the headquarters.**



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COLLECTION WITH COURT HELP

Interesting issues, in no particular order

- Expectation that courts will know and apply complicated English case law and tort case rules are probably misguided - rather, courts will apply (i) statute, (ii) clearly worded contracts, (iii) case law rendered by the Myanmar Supreme Court and Myanmar-related case law prior to independence



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COLLECTION WITH COURT HELP

Interesting issues, in no particular order

- **Microfinance companies have difficulties collecting outstanding debt as there are a lot of debtors owing only small amounts. Solutions:**
 - **Lending to a group**
 - **Suing only the most prominent debtors to set an example**



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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**



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ENFORCING A FOREIGN ARBITRAL AWARD



- **Arbitration Law (Law No. 5/2016 dated 5 January 2016)**
- **Two steps: (i) application for recognition of the foreign arbitral award and (ii) enforcement like a decree from a Myanmar court**
- **Competent court: District Court (worth of the claim up to Ks. 1 bn.) or High Court (worth of the claim in excess of Ks. 1 bn.)**
- **Time bar: District Court 3 years, High Court 12 years (others say: 90 days)**



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ENFORCING A FOREIGN ARBITRAL AWARD



- **Recognition:** File a plaint against the debtor with notarized and legalized copies of the arbitration agreement, the arbitral award and an English (better, probably: Myanmar) translation thereof. The court then serves the plaint to the debtor who may challenge it on the grounds set forth in section 46(b) and (c) Myanmar Arbitration Law.



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ENFORCING A FOREIGN ARBITRAL AWARD



- **Enforcement:** If the court recognizes the arbitral award, the creditor has to apply for enforcement. Typically, the court attaches property of the debtor (this requires that the creditor has at least a rough idea of what property the debtor owns) which is then sold by the bailiff in public auction.



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FOREIGN EMPLOYEES

- **Mediation/arbitration not available (at least not in Yangon)**
- **Request to the Factories and General Labour Law Inspection Department to order the employer to pay outstanding wages (S. 12(b), 13(a) Payment of Wages Law) – available, but difficult**
- **If there is only the slightest problem, better run...**



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CONTACT

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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