



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



DISPUTE RESOLUTION IN MYANMAR

16th January 2021

Types of dispute resolution

- Amicable
- With the help of the police (if a crime was committed)
- With the help of the civil courts
- Arbitration



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CIVIL LITIGATION



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Shift away from English common law

- Independence **1948**: English common law (only) to be used, so far as it is applicable to Myanmar society and circumstances, as a guide to justice, equity and good conscience under section 13 (3) Myanmar Laws Act (*B.L.R. 1948 HC 278*)
- **1962**: Military coup to control the entire country and establish a “Burmese Way to Socialism”; colonial and foreign elements removed from the legal system over the next years



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Shift away from English common law

- Courts Manual **1973** (since replaced) directed judges to refrain from referring to any decisions from other countries
- Constitution in **1974** formalised the establishment of a socialist system
- Socialism replaced by a “market-oriented economy” in **1988**, but link of the current legal system to its pre-independence predecessors remains largely broken



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Shift away from English common law

- Proceedings and judgments are conducted and written in the Myanmar language only at all levels (in contrast to India, Pakistan, Bangladesh, Malaysia, Singapore, Sri Lanka...)
- Expectation that courts will know and apply complicated English case law and tort rules tend to be misguided - rather, courts will apply (i) statute, (ii) clearly worded contracts, (iii) precedence established by the Myanmar Supreme Court (previously, High Court) and Myanmar-related case law prior to independence



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Court structure

Court structure in civil cases (simplified):



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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 as well as for 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 and lawyer (notarized and legalized)**



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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)
- Foreign documentary evidence - legalisation required?



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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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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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Enforcing a foreign judgment

It is not possible to enforce a foreign judgment in Myanmar!

(Section 44A Code of Civil Procedure requires that a “reciprocating territory” be declared as such by the president in a notification, and no such notification has been made so far.)



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ARBITRATION



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Domestic arbitration - international arbitration - foreign arbitral award (Arbitration Law 2016)

	Domestic arbitration	International arbitration	Foreign arbitral award
Applies to what parties?	Parties with place of business (only) in Myanmar	At least one party has place of business abroad	Any party
Place (seat) of arbitration	Myanmar	Myanmar	Abroad
Venue	Can be anywhere	Can be anywhere	Can be anywhere
Arbitral award where made?	Myanmar	Myanmar	Abroad
Law governing the dispute	Myanmar	Parties may decide	Parties may decide
Enforcement	Procedure exists	NO PROCEDURE!	Procedure exists



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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 or High Court, depending on the worth of the claim**
- **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 a 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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THANK YOU FOR YOUR ATTENTION!



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