Arbitration in Myanmar

- A primer -

1. Introduction

Myanmar acceded to the New York Convention on 15 July 2013 and passed a modern Arbitration Law on 5 January 2016. Since, some foreign arbitral awards have been recognised in Myanmar courts, and there is generally more clarity about the procedures in domestic and international arbitration. In this primer, we take a look at the developments.

2. Arbitration institutions in Myanmar

There is a Myanmar Arbitration Centre ("**MAC**") operated by the Union of Myanmar Federation of Chambers and Commerce and Industry ("**UMFCCI**"); it officially opened its doors on 3 August 2019.

In January this year, a potential client was adamant that our service agreement with his company should include a clause for dispute resolution "by arbitration in Myanmar according to the Myanmar Arbitration Law". Upon enquiry with UMFCCI, they could not present us with a roster of the centre's arbitrators and a list of the centre's fees (we were told that this information was available on UMFCCI's webpage, but could not find it). Both parties then refrained from choosing arbitration in Myanmar as a means of dispute resolution.

There is furthermore a Myanmar International Arbitration Centre ("**MIAC**"), but apart from its Facebook page, not much information can be found about it.

Now, arbitration as such does not depend on the existence of arbitration institutions (as the parties may appoint any arbitrators they want, and furthermore Myanmar's Arbitration Law provides a modern framework that closely mirrors the UNCITRAL Model Law), but arbitration institutions do provide an important backbone, and they still seem to be searching for their footing in Myanmar.

We therefore think that opting to have disputes resolved by local arbitral tribunals in Myanmar is currently not a viable option for most clients.

3. Do local courts honour arbitration clauses?

Arbitration is an alternative to ordinary court proceedings. It is therefore important that courts honour arbitration clauses in contracts and stay their proceedings if a party points out that the other filed its plaint in violation of an arbitration clause.

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Section 10(a) Arbitration Law provides:

> *Where an action is brought before a court in respect of a matter which is the subject of an arbitration agreement, any party may apply to the court to refer the matter to arbitration not later than when submitting his first written statement on the substance of dispute. Upon such an application, the court shall refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.*

The Union Supreme Court publishes (some) judgments in commercial cases on its webpage, and we analysed the relevant ones as to how applications to refer matters to arbitration fared. The result appears to be somewhat mixed.

Sr.	Date	Court decision	Referral to arbitration granted/denied	Reason
1	26-1-2022	Yangon Western District Court, civil miscellaneous case 68/2021, judgment Myanmar Economic Holdings Public Company Limited vs. Myanmar Brewery Limited and Kirin Holdings Singapore Pte. Ltd.	Denied	MEHL (applicant) requested the court to wind up Myanmar Brewery Limited (respondent). The court held that Myanmar Brewery Limited was not properly represented and therefore did not consider its defence, focusing instead only on questions of law that a court must consider ex officio without being prompted by a party. In this logic, it held section 10(a) Arbitration Law and an injunction by a court in Singapore restraining MEHL from pursuing the case in Myanmar to be irrelevant. The court did not comment on the factor that these points were argued by Kirin Holdings Singapore (opponent), which was properly represented, and not by the respondent.
2	30-7-2019	Union Supreme Court, civil review 183/2019; judgment upholding an order of the High Court of Yangon Region dated 24-1-2019 in civil case 129/2018 Taw Win Family Construction Co., Ltd. vs. Inno International Development Co., Ltd. +1	Granted	The Supreme Court held: Even if the place of arbitration is not expressly specified in the agreement, the court may refer the case to arbitration as the Arbitration Law has provisions that cover all situations: (i) place of arbitration in Myanmar; (ii) place of arbitration elsewhere; (iii) place of arbitration not designated or determined upon.
3	25-6-	Union Supreme Court, civil	Denied	By filing civil case 31/2017 in Yangon,

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Sr.	Date	Court decision	Referral to arbitration granted/denied	Reason
	2019	appeal 358/2018; judgment upholding an order of the High Court of Yangon Region dated 23-2-2018 in civil case 31/2017 Shiseido Singapore (Co.) Pte Limited vs. Taw Win Oo Company Limited		Taw Win Oo Company Limited was seeking damages from Shiseido for wrongful termination of a distributorship. In response, Shiseido obtained an interlocutory order from a court in Singapore restraining Taw Win Oo Company Limited from "commencing any other civil proceedings and making any claims and allegations including in, but not limited to, civil case 31/2017" in Yangon as the "exclusive distribution agreement" between the parties for the period 1-1-2016 to 31-12-2016 contained an arbitration clause according to which any dispute arising out of or in connection with the agreement was to be arbitrated in Singapore. The Supreme Court held that the Singapore interlocutory order did not hinder Taw Win Oo Company Limited from pursuing proceedings in the courts of Myanmar, except that "the Singapore court may take any separate action". Furthermore, as Taw Win Oo Company Limited "filed the case on 16-3-2017, after the contract expired," and Shiseido did not present "enough evidence to show that the agreements in the contract are still in effect after the expiration of the term," the Myanmar court did not stay proceedings to refer the case to arbitration.
4	3-4-2019	Union Supreme Court, civil appeal 724/2018; judgment upholding a judgment and decree of the High Court of Yangon Region dated 25-7-2018 in civil case 60/2017 Techo Corporation Pte. Ltd.	Granted	The Supreme Court held: The agreement specifies that disputes shall be negotiated first and then resolved through arbitration. As this process was not followed, there was no cause of action for the plaintiff, and the suit had to be dismissed according to rule 11(a) of Order 7 under the Code of Civil

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Sr.	Date	Court decision	Referral to arbitration granted/denied	Reason
		vs. Aye Family Co., Ltd.		Procedure.
5	2-2-2019	Union Supreme Court, civil appeal 389/2018; judgment upholding an order of the High Court of Yangon Region dated 27-2-2018 in civil case 61/2017 Amalgamated Telecom Management Co., Ltd. vs. Pan Asia Majestic Eagle Ltd. +2	Denied	The court held: The agreement was only signed by defendant 1, not by defendants 2 and 3, which therefore could not be parties to arbitration. The lower court additionally argued that the plaintiff wanted a permanent injunction to stop an infringement of its intellectual property in a product design, which the court held to be outside the scope of the "master agreement for site investigation, site acquisition, civil mechanical and electrical works and other tower-related services".

4. Interim measures

Interim measures are, in essence, remedies to preserve and protect the position of a party before the arbitral tribunal decides on the merits of the case. They may be ordered by the arbitral tribunal itself or by a court.

If a case is pending with a foreign arbitral tribunal, the following questions arise in this context:

Sr.	Question	Answer
1	May a court in Myanmar enforce interim measures ordered by a foreign arbitral tribunal?	Yes (sections 2(b), 31 Arbitration Law).
2	May a party to foreign arbitral proceedings request a court in Myanmar to order interim measures?	Yes (sections 2(b), 11 Arbitration Law).
3	Would a court in Myanmar enforce interim measures ordered by a foreign court?	Unlikely, as neither the Arbitration Law nor the Code of Civil Procedure provide for it. Generally speaking, section 44A Code of Civil Procedure bars the direct enforcement of foreign "decrees" (as the President has never designated any "reciprocating territory"). Section 13 may provide a work-around, but only for foreign judgments that have been given on the merits of the case, which is something for which an interim order (we think) would not qualify.

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5. Enforcement of a foreign arbitral award

(a) Requirements under the Arbitration Law

A foreign arbitral award may be enforced in Myanmar as if it were a decree of a District Court (section 46(a) Arbitration Law, para. 45 Arbitration Procedures).

Competent is "the District Court having jurisdiction over the relevant geographical area" (para. 45 Arbitration Procedures), which we understand to mean the court in whose area the judgment debtor resides or carries on business or has his property.

The statute of limitations for the judgment creditor applying for enforcement is 3 years from the date of the arbitral award (article 182 Schedule 1 to the Limitation Act). (Others say 90 days, but we think that this is an erroneous interpretation.)

In addition to the many defences that a judgment debtor has according to Order 21 under the Code of Civil Procedure (this order is a more-or-less stand-alone text governing the enforcement of court decrees), the judgment debtor may request the court to

(i) reject the application if the judgment creditor did not present the foreign arbitral award and other evidence as required by section 45 Arbitration Law, and/or

(ii) refuse enforcement of the foreign arbitral award if it suffers from any of the defects enumerated in section 46(b) and (c) Arbitration Law.

Among others, the court shall refuse enforcement if this would be "contrary to the national interest", an expression that is defined as having "effects such as environmental damage to the nation's land, water and air, infringement of the interests of all citizens, and damage to the national cultural heritage" (para. 2(e) Arbitration Proceedings).

District Courts have so far ordered (at least in principle) the recognition and enforcement of a small number of foreign arbitral awards; an English translation of one of these orders can be found annexed to this primer.

(b) Requirements under the Code of Civil Procedure

Whether, however, judgment creditors of a foreign arbitral award have so far indeed recovered money is unknown. The issue with enforcement in Myanmar is that Order 21

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under the Code of Civil Procedure provides for many gateways for dishonest judgment debtors to draw out proceedings (especially if immovable property is to be attached and sold), and indeed, the enforcement (of ordinary court decrees) seems to often take years.

Apart from the requirements under the Arbitration Law, an application for enforcement of a foreign arbitral award must contain the minimum contents specified in rule 11 of Order 21 (Appendix E, form 6). Among others, this means that the judgment creditor must tell the court what assistance the court should render, which depends on the contents of the foreign arbitral award:

Sr.	Mode of enforcement	Comment
1	Foreign arbitral award is for money	
(a)	Finding out what property the judgment debtor owns (rule 41 of Order 21)	"Where a decree is for the payment of money, the decree-holder may apply to the Court for an order that— (a) the judgment-debtor, or (b) in the case of a corporation, any officer thereof, or (c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor or officer or other person, and for the production of any books or documents." In reality, this does not seem to work very well as the judgment debtor may lie; there seems to be no mechanism to force the judgment debtor to reveal his property under oath. In practice, a judgment creditor might rather claim that the judgment debtor "is about to run away and has hidden his assets" (section 51 Code of Civil Procedure) to try to have him detained in civil prison to pressure him into disclosing his assets.
(b)	Attachment and sale of movable property (rule 43 of Order 21)	Akin to sending out the bailiff in other jurisdictions to have him seize the debtor's possessions. Judgment creditor required to provide list of the items only if they are not in the possession of the judgment debtor (rule 12 of Order 21).
(c)	Attachment and sale of immovable property (rules 54-63 of Order 21)	Judgment creditor must provide details of and documentation pertaining to the immovable property (rule 13 of Order 21), something that a judgment creditor would not always have in his possession.
(d)	Arrest and detention in civil prison	Court has discretion to deny application if made in

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Sr.	Mode of enforcement	Comment
	(sections 51, 55-59, 135, 135A Code of Civil Procedure; rules 37-40 of Order 21)	conjunction with an application to enforce in property (rule 21 of Order 21). Women may not be detained (section 56 Code of Civil Procedure). Requires bad faith on the part of the judgment debtor (section 51 Code of Civil Procedure); "being broke" alone is no reason for detention.
(e)	Attachment of a debt, share or other movable property not in the possession of the judgment debtor (rule 46 of Order 21)	A bank account could be seized in this way.
(f)	Attachment of a decree obtained by the judgment debtor in another case (rule 53 of Order 21)	
(g)	Attachment of a negotiable instrument (rule 51 of Order 21)	
(h)	Attachment of the judgment debtor's share in a partnership firm (rules 49, 50 of Order 21)	
(i)	Attachment and sale of agricultural produce (rules 44, 45 of Order 21)	
(j)	Attachment of the salary or allowances of a public officer (rule 48 of Order 21)	
2	Foreign Arbitral Award is for the delivery of specific movable property	
	Seizure and delivery (rule 31 of Order 21)	
3	Foreign arbitral award is for the delivery of specific immovable property	
	Enabling possession (rules 35, 36 of Order 21)	Not likely to happen as Myanmar law prohibits foreign ownership of immovable property
4	Foreign arbitral award is for specific performance of a contract	
	Detention in civil prison and/or attachment of property until judgment debtor performs (rule 32 of Order 21)	In case of non-performance, sale of the property after 3 months to generate money for adequate compensation
5	Foreign arbitral award is for the execution of a document	
	Document signed by a judge instead (rule 34 of Order 21)	
6	Foreign arbitral award is for an unascertained amount	
	Attachment of the property (rule 42 of Order 21)	Attachment of the property is meant to prevent the judgment debtor from alienating it before the final amount of the debt is ascertained

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(c) Impact of the recent tightening of foreign currency controls on the outbound remittance of money recovered from the enforcement of a foreign arbitral award

(aa) Exchange rate

The sale of property in Myanmar of the judgment debtor or other methods of execution of the judgment creditor's foreign arbitral award will, if successful, yield an amount in local currency (Myanmar kyats, "**MMK**").

Since 3 April 2022, the State Administration Council ("**SAC**") and its Central Bank ("**CBM**") have been operating severe foreign currency controls. Foreign currency may officially only be traded within a band of ± 0.3% from the CBM reference rate. The CBM currently sets its reference rate at MMK 2,100 for USD 1, which is significantly lower than the market rate (currently at approx. MMK 2,890).

If the foreign judgment creditor's claim out of the arbitral award is in a foreign currency, courts in Myanmar executing this award will most likely use this official exchange rate to determine the MMK amount to be passed on to the judgment creditor from the sale of the judgment debtor's property to satisfy the foreign currency debt.

(bb) Outbound remittance

As far as we are aware, there is no guidance in the public domain from the CBM on how to proceed with regard to outbound remittances due to a winning judgment or arbitral award.

Foreign currency remittances out of the country made by residents require approval from the Foreign Exchange Supervisory Committee (para. 3 CBM Directive 6/2022 dated 5 April 2022). Among others, it seems to depend on the state of the CBM's foreign currency reserves whether this approval is granted. If granted, a commercial bank should sell foreign currency at the CBM's reference rate to the approved transferor and wire the money out of the country.

A foreign judgment debtor is unlikely to be a "resident" and therefore should not require approval from the Foreign Exchange Supervisory Committee to repatriate his "win" from the successful execution of the foreign arbitral award. Without this approval, on the other hand, he may not be able to access foreign currency at the preferential CBM rate, but may have to attempt to purchase it

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at the much less favourable market rate to have funds for an outbound remittance.

(d) Impact of Myanmar withholding tax

Myanmar collects withholding tax on outbound payments for interest, royalties and service fees. Prior to making an outbound transfer, banks are required to check whether this withholding tax was paid, or whether an exemption applies pursuant to a double taxation agreement (para. 6(d) Standard Operating Procedures published by the Ministry of Planning and Finance on 25 April 2023).

To the extent of our knowledge, there is no official guidance how this may affect outbound transfers from the successful execution of a foreign arbitral award if the awarded amount includes payments for interest, royalties or service fees.

6. Annexes

Please find on the following pages our translations of the Arbitration Procedures and a recent order of the Yangon Western District Court approving the recognition and enforcement of a foreign arbitral award as English translations of these texts are not available on the internet.

Information in this primer is up-to-date as of 9 June 2023.

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CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

Republic of the Union of Myanmar
Supreme Court of the Union
Notification No. 643/2018
1380, 4th Waning Day of Dutiya Waso
(31 July 2018)

The Supreme Court of the Union has issued the following procedures in exercise of its powers under section 57 Arbitration Law.

Chapter 1
Title and definitions

1. This procedure shall be known as the Arbitration Procedures.

2. The following expressions in these procedures shall have the following meanings.

   (a) "**Law**" means the Arbitration Law.

   (b) The expression "**District Court**" includes the Court of the Self-Administered Division and the Courts of Self-Administered Zones;

   (c) "**Presiding arbitrator**" means an arbitrator appointed by two arbitrators chosen by each party to the dispute, or by the Chief Justice of the Union or the Chief Justice of the High Court of a Region or State or by any person or institution designated by him at the request of any of the parties to the dispute.

   (d) "**Independent and impartial arbitrator**" means an arbitrator who is not affiliated socially, economically or in any other way with any of the parties to the dispute.

   (e) "**Contrary to the national interest**" means effects such as environmental damage to the nation's land, water and air, infringement of the interests of all citizens, and damage to the national cultural heritage.

Chapter 2
Arbitration

Appointment of an arbitrator in an international arbitral tribunal

3. When choosing the sole arbitrator or the presiding arbitrator in an international arbitral tribunal, the parties to the dispute that shall be arbitrated shall submit the following documents to the

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Chief Justice of the Union or the person or institution designated by him so that an arbitrator may be appointed according to section 13(d) Arbitration Law:

(a) Application by a party to the dispute to appoint an arbitrator;

(b) the notice given by the claimant to the respondent that the dispute shall be resolved by arbitration;

(c) true copy of the evidence that both parties have agreed to settle the dispute through arbitration.

4. When the Chief Justice of the Union or the person or institution designated by him receives an application to appoint an arbitrator, he shall preferentially select an arbitrator with the qualifications specified in the arbitration agreement.

5. When selecting an arbitrator, an arbitrator may be selected in accordance with the wishes of any national of a country that signed a multilateral or bilateral treaty, either from international arbitration centres or from a country determined in the agreement between the parties to the dispute.

6. If the parties to the dispute are nationals of different countries, a national from a third country may be appointed as arbitrator.

7. The Chief Justice of the Union or the person or institution designated by him shall contact the head (secretary general) of an international arbitration centre, describe the nature of the dispute, and notify the desire to receive an arbitration award. A copy of the notice shall be sent to the parties to the dispute.

8. Information relating to the dispute shall be sent to the relevant international arbitration centre along with documents evidencing that the parties to the dispute agree to accept the award in accordance with the arbitration procedures.

9. If a list of arbitrators is provided by the international arbitration centre, the Chief Justice of the Union or the person or institution designated by him may make an order appointing a person on the list as arbitrator.

Appointment of an arbitrator in a domestic arbitral tribunal

10. When choosing the sole arbitrator or the presiding arbitrator in a domestic arbitral tribunal, the parties to the dispute that shall be arbitrated shall submit the following documents to the Chief

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Justice of the High Court of a Region or State or the person or institution designated by him so that an arbitrator may be appointed according to section 13(d) Arbitration Law:

(d) Application by a party to the dispute to appoint an arbitrator;

(e) the notice given by the claimant to the respondent that the dispute shall be resolved by arbitration;

(f) true copy of the evidence that both parties have agreed to settle the dispute through arbitration.

11. When the Chief Justice of the High Court of a Region or State or the person or institution designated by him receives an application to appoint an arbitrator, he shall preferentially select an arbitrator with the qualifications specified in the arbitration agreement.

12. In order to appoint qualified arbitrators depending on the type of dispute, the following organisations may be contacted in addition to the arbitration organisations registered and established in accordance with the laws in force in Myanmar:

(a) Myanmar Chamber of Commerce;

(b) Myanmar Society of Accountants;

(c) Myanmar Engineering Society;

(d) Myanmar Music Association;

(e) Myanmar Filmmakers Society;

(f) Myanmar Theatrical Association;

(g) Myanmar Writers Association;

(h) Association of Myanmar Architects;

(i) Myanmar Floriculturist Association;

(j) Myanmar Medical Association;

(k) Myanmar Health Assistant Association;

(l) Myanmar Bar Council.

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Chapter 3
Qualification of Arbitrators

13. Generally, arbitrators shall have the following qualifications:

    (a) High moral character;

    (b) keeping confidential information provided by parties to the dispute;

    (c) recognised as an accomplished expert in the relevant field of specific academic disputes;

    (d) able to make independent and unbiased judgments;

    (e) recognised as an accomplished expert in any of the following areas of commercial dispute resolution:

        (1) legal area;

        (2) commercial area;

        (3) industrial area;

        (4) financial area.

Chapter 4
Conferring jurisdiction to a court

14. Depending on the subject matter of the dispute, courts having jurisdiction in the relevant geographical area shall accept cases to determine a question of law, enforce an interim award, decide an appeal, and enforce the arbitral tribunal's award.

15. The applicant wishing to have a dispute referred to arbitration according to section 10(a) of the Law shall apply to the court where the lawsuit is filed.

16. The court may make an order referring the dispute to arbitration or rejecting to refer the dispute to arbitration even when the case is pending in court.

17. An order rejecting an application for referral to arbitration may be appealed to a higher court under section 43(c)(1) of the Law.

18. Applications according to section 11 of the Law shall be submitted to the District Courts that have jurisdiction over the relevant geographical area.

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19. If an application is submitted to the District Court under section 11, it shall open a miscellaneous civil case and proceed in accordance with the Code of Civil Procedure.

20. An appeal under section 11(e) of the Law against a decision of the court approving or rejecting an application may be filed to the High Court of the Region or State.

21. If a party to the dispute challenges an appointed arbitrator because of his qualifications and the arbitral tribunal rejects the challenge, an appeal may be filed to the High Court of the Region or State according to section 15(d) of the Law.

22. The High Court of the Region or State shall open a miscellaneous civil case and make a decision in accordance with the methods in the Code of Civil Procedure.

23. If in an application under section 15(d) of the Law the court overturns the arbitral tribunal's decision to reject the challenge, it may together with this decision decide whether the challenged arbitrator is entitled to any fees.

24. Any party to the dispute may apply to the High Court of the Region or State having jurisdiction over the geographical area to terminate the mandate of an arbitrator according to section 16(a)(1) of the Law.

25. If the High Court of the Region or State receives an application under section 16(a)(1) of the Law, it shall open a miscellaneous civil case and make a decision in accordance with the methods in the Code of Civil Procedure.

26. A party to the dispute who is not satisfied with the arbitral tribunal's ruling on a plea under section 18(b) and (c) of the Law that the arbitral tribunal does not have jurisdiction or has exceeded its mandate may appeal to the High Court of the Region or State having jurisdiction over the relevant geographical area within 30 days from the date of receiving the ruling.

27. An application may be made according to section 31 of the Law to the District Court having jurisdiction over the relevant geographical area to enforce an interim award made by the arbitral tribunal under section 19 of the Law.

28. When the District Court receives the application, it shall open a miscellaneous civil case and proceed in accordance with the methods in the Code of Civil Procedure.

29. The District Court shall make an order granting enforcement in any way or rejecting the enforcement of the arbitral tribunal's interim award.

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30. The order of the District Court granting enforcement in any way or rejecting enforcement of the arbitral tribunal's interim award may be appealed to the High Court of the Region or State according to section 43(d)(3) of the Law.

31. In domestic arbitration, the parties to the dispute may, after having given notice to the parties to the dispute on the other side, apply to the District Court having jurisdiction over the relevant geographical area to determine according to section 39(a) of the Law a question of law that has arisen.

32. The District Court may make a preliminary determination of the question of law.

33. A person who is not satisfied with the determination of the District Court of a question of law may appeal to the High Court of the Region or State according to section 43(c)(3) of the Law.

34. In domestic arbitration, a party may, after notifying the parties to the dispute on the other side, appeal to the High Court of the Region or State having jurisdiction over the relevant geographical area according to section 42(a) of the Law on a question of law arising from an award of the arbitral tribunal which the tribunal examined.

35. Any person disputing the award of the arbitral tribunal may appeal to the High Court of the Region or State having jurisdiction over the relevant geographical area according to section 42(b) of the Law. However, if there is a written agreement between the parties to the dispute not to appeal, no appeal may be filed.

36. In the application for leave to appeal, the disputed question to be decided and the grounds for allowing the appeal shall be stated.

37. There is no second appeal against the decision of the High Court to reject or allow the appeal.

38. In an appeal filed under section 42(a) and (b) of the Law, the High Court of the Region or State shall allow the appeal if it finds that

    (a) the award of the arbitral tribunal on the disputed question significantly harms the rights of a party or parties to the dispute;

    (b) the award of the arbitral tribunal on the disputed question is manifestly wrong.

39. The High Court of the Region or State may pass any of the following orders:

    (a) Enforcing the arbitral award;

    (b) modifying the arbitral award;

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(c) having the arbitral tribunal reconsider the arbitral reward in whole or in part at a suitable time;

(d) setting aside the arbitral award in whole or in part.

40. In case of an appeal against the arbitral award under section 43(b) of the Law, the order passed by the High Court of the Region or State shall have the following effect on the arbitral award:

(a) If the arbitral award is modified, the modification shall have effect as part of the arbitral award;

(b) if the court orders the arbitral tribunal to reconsider the award in whole or in part, the arbitral tribunal shall reconsider the award and decide in relation to these issues.

41. There is no right to appeal against the following orders:

(a) Order approving an application to refer a matter to arbitration according to section 10(a) of the Law;

(b) there is no right of appeal against a decision of the Chief Justice made under section 13(d) and (g) of the Law;

(c) there is no right of appeal against the decision of the court regarding the termination of the mandate of an arbitrator under section 16(b) of the Law.

Enforcement of an arbitral award

42. An application shall be made to the District Court having jurisdiction over the relevant geographical area to enforce a domestic arbitral award.

43. The District Court shall open a case in order to enforce a domestic arbitral award and enforce it according to the method in the Code of Civil Procedure for enforcing a decree.

44. If, in an application for the enforcement of a domestic arbitral award, the respondent applies to have the domestic arbitral award set aside, the court may set aside the domestic arbitral award if any of the circumstances in section 41(a) arose.

45. An application shall be made to the District Court having jurisdiction over the relevant geographical area for the recognition and enforcement of a foreign arbitral award.

46. Except when refusing to enforce it according to section 46(b) and (c) of the Law, a foreign arbitral award shall be enforced in accordance with the procedure for enforcing the decree of a court.

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47. If, in an application for the recognition and enforcement of a foreign arbitral award, the respondent applies to have the foreign arbitral award set aside, the court may refuse to enforce the foreign arbitral award if any of the circumstances in section 46(c) arose.

48. Section 47 of the Law only applies to foreign arbitration if there is an agreement that it shall be decided according to the Myanmar Arbitration Law.

Chapter 5
Miscellaneous

49. The sections in the Limitation Act referring to the Arbitration Act, 1944 shall continue to apply.

50. The procedures, notifications, orders and directives relating to the Arbitration Act, 1944 are revoked by this procedure.

Htun Htun Oo
Chief Justice of the Union

Letter No. 121/101/Pa Ta kha (1781/2018)
Date: 31 July 2018

Distribution list: *[Omitted.]*

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CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

Yangon Western District Court
August 12, 2022
Civil Case No. 122/2022

Judgment creditor	IGNESIS TECHNOLOGIE CO., LTD (Represented by Mr. ARVINE KUMAR)
Vs.	
Judgment debtor	PINNACLE ASIA COMPANY LIMITED (Represented by DAW HLA SEIN YI)

For the judgment creditor: U Thein Tun (Advocate)
For the judgment debtor: U Zeya Aung (Advocate)

Order

on an application to recognise and enforce arbitral award no. 973/2020 dated 21 January 2022 of the Singapore Arbitration Centre.

In this case, IGNESIS TECHNOLOGIE CO., LTD applied that this court should recognise and enforce an arbitral award dated 27 January 2022 no. 973/2020 made by the Singapore Arbitration Centre against the judgment debtor PINNACLE ASIA COMPANY LIMITED.

The application by the judgment creditor company states the following:

"The judgment creditor company and the judgment debtor company are companies established in Myanmar. The judgment debtor entrusted the judgment creditor with work to support the construction of telecommunication towers in Myanmar according to the master agreement signed on 9 April 2018 and amended on 14 February 2020. As disputes arose between the parties in 2020 regarding the master agreement, the judgment debtor on 22 October 2020 sent a notice of arbitration to the judgment debtor as provided for in clause 31 of the contract, to which the judgment debtor on 21 November 2020 replied with a response to the notice of arbitration, stating that it will make a counter-claim. On 1 February 2021, Ms. Sheila Ahuja from the SIAC was appointed as arbitrator. SIAC's rule 34 provides that the security for the costs of arbitration shall be determined by the SIAC registrar. On 26 October 2020, SIAC notified that the judgment creditor and the judgment debtor should each deposit half of the security for the arbitration costs. The security deposit was set at SGD 25,871.46 per party and its payment was requested. The judgment creditor fully remitted SGD 25,871.46 to SIAC whereas the judgment debtor only remitted SGD 3,800.55. On 1 March 2021, SIAC notified both the judgment

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creditor and the judgment debtor that the judgment debtor refused to make the security deposit. Therefore, since SIAC instructed the judgment creditor to pay SGD 47,942.41 on behalf of the judgment debtor, the judgment creditor had to pay this amount to SIAC on 11 August 2021. On 27 January 2021 *[sic; should probably be "2022"]*, SIAC decided to award a total of SGD 47,942.41 to the judgment creditor, including SGD 5,000 in costs. This award was sent to the court by e-mail. Therefore, in order to enforce this order, we request to allow the attachment and sale of property."

After opening this case according to the application of the judgment creditor company, the court deliberated after hearing the arguments of both sides whether to issue an order according to rule 23(1) of Order 21 under the Code of Civil Procedure and section 46 Arbitration Law to recognise and enforce the award no. 973/2020 dated 21 January 2022 made by the Singapore International Arbitration Centre.

The judgment creditor argued that rule 1 of Order 29 under the Code of Civil Procedure does not apply to the case. The judgment creditor company stated that the address of the judgment creditor and the address of the judgment debtor were submitted separately, and the company extract was also submitted. In the judgment creditor's application, it is stated that there is compliance with the Code of Civil Procedure, and it requests an order to enforce the SIAC's arbitral award.

The lawyer of the judgment debtor argued as follows:

"SIAC's arbitral award dated 27 January 2022 should not be recognised and enforced by this court. The application by the judgment debtor to open a case to recognise the foreign arbitral award should be dismissed. There is no application according to rule 1 of Order 29 and rule 1 of Order 3 under the Code of Civil Procedure. The application did not specify the address of the judgment debtor. There is no right to directly apply to open a case about a foreign arbitral award. The original or certified copy of the arbitration agreement was not presented in the judgment creditor's application. The arbitral award is contrary to the laws in force in Myanmar. There is no systematic review of the arbitral award; the subject matter of the dispute is not actionable under the laws in force in Myanmar; and the award is contrary to the national interest and public policy. Furthermore, awarding legal fees and interest at the rate of 5.35% is contrary to Myanmar's laws in force. Also, the award is a foreign award and no international treaty has been signed between Myanmar and Singapore to recognise this award. The particulars are not fully stated as would be required by rule 11(2) of Order 21 under the Code of Civil Procedure and there is no admission that they are correct, so the application should be dismissed."

When considering the arguments of both parties, it is initially necessary to review the argument of the judgment debtor that there is no application according to rule 1 of Order 29 and rule 1 of Order 3 under the Code of Civil Procedure. Order 3 under the Code of Civil Procedure is a provision related to recognised agents / lawyers (pleaders). In the original provisions of rule 1 of Order 3 under the Code of Civil Procedure, the following is prescribed:

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Rule 1 Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be **made or done by the party in person**, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Although the company is a legal person with the right to sue and be sued according to the law, it is not a natural person and cannot appear in court in person. In the above-mentioned rule 1 of Order 3, it says "made or done by the party in person" which means that the party must appear himself, so this provision does not apply to companies, and it is clear that this provision only covers the delegation of authority in order to act on behalf of a natural person before the court in this person's case. This case is a corporate dispute only between IGNESIS TECHNOLOGIE CO., LTD and PINNACLE ASIA COMPANY LIMITED, and it is not covered by rule 1 of Order 3 under the Code of Civil Procedure, which is a provision on the delegation of authority by a natural person, so this provision does not need to be considered.

In reviewing the argument referring to rule 1 of Order 29 under the Code of Civil Procedure, as Mr. ARVINE KUMAR was appointed by IGNESIS TECHNOLOGIE CO., LTD to act as the company's representative in this case, section 196 Myanmar Companies Law must be considered.

196. (a) A person may bring proceedings on behalf of a company, or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if the person is acting with leave granted under section 197 and is:

(1) …

(2) …

(b) Proceedings brought on behalf of a company must be brought in the company's name.

(c) The right of a person at general law to bring, or intervene in, proceedings on behalf of a company is abolished.

As according to section 3(d) and (g) Interpretation of Expressions Law, 1973, section 196(c) Myanmar Companies Law overrides the provisions of the Code of Civil Procedure, it is obvious that there is no need to consider the provisions of rule 1 of Order 29 under the Code of Civil Procedure in proceedings on behalf of a company. In fact, section 196(c) Myanmar Companies Law even directly abolished the

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right to act on behalf of a company according to rule 1 of Order 29 under the Code of Civil Procedure, so it is evident that this provision has turned into a defunct provision that cannot be used anymore.

According to the minutes of the meeting, Mr. ARVINE KUMAR was appointed to act on behalf of the company by the decision of the meeting of the board of directors dated 21 May 2022, and as this is in compliance with section 160(d) Myanmar Companies Law, there is no need to review the appointment of the judgment creditor company's company representative.

Although the judgment debtor argued that there is no right to directly apply to open a case about a foreign arbitral award, paragraph 46 of the Arbitration Procedures issued by the Supreme Court of the Union under section 57 Arbitration Law clearly specifies that a foreign arbitral award shall be enforced in accordance with the procedure for enforcing the decree of a court, and if we review paragraphs 43, 45 and 46 of this procedure, it is clear that the recognition and enforcement of a foreign arbitral award is to be decided only by the court.

In relation to the particulars to be submitted in the recognition and enforcement of a foreign arbitral award, section 45(a) Arbitration Law provides as follows:

> 45. (a) The party applying for the recognition and enforcement of a foreign arbitral award shall produce the following evidence to the court:
>
> (1) the original award or duly certified copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
>
> (2) the original arbitration agreement or duly certified copy thereof;
>
> (3) the evidence as may be necessary to prove that the arbitral award is a foreign arbitral award.

In this case, the judgment creditor submitted a certified true copy of the award of the Singapore International Arbitration Centre dated 27 January 2022, and a certified true copy of the master agreement signed by the judgment creditor and the judgment debtor dated 9 April 2018. Also, the authenticity of the award of the Singapore International Arbitration Centre was confirmed by the signature of Chew Kiat Jinn, notary public in Singapore, and on top of that, Melissa Goh, Head of Statutory Service of the Singapore Academy of Law, attached an additional letter of support (apostille).

In addition, as the Myanmar Embassy in Singapore endorsed the certificate of Melissa Goh, Head of Statutory Service of the Singapore Academy of Law, which endorses the notary certificate of authenticity, which in turn endorses the "partial award between IGNESIS TECHNOLOGIE CO., LTD (claimant) and PINNACLE ASIA COMPANY LIMITED (respondent)", it cannot be said the documents

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attached to the submission of the judgment creditor are not in conformity with the provisions of section 45(a)(1) referred to above.

Also, clauses 30 and 31 of the certified true copy of the master agreement dated 9 April 2018 and signed by the judgment creditor and the judgment debtor contain an arbitration clause stating that the dispute shall be resolved through arbitration at the Singapore International Arbitration Centre, so it is clear that this contract is the arbitration agreement referred to in section 45(a)(2). In addition, Singapore is a member country that has ratified the New York Convention, and the Singapore International Arbitration Centre (SIAC), which made the arbitral award, is headquartered in Singapore. SIAC's arbitral award dated 27 January 2022 for which recognition and enforcement is sought is therefore a foreign arbitral award that falls within the definition of section 3(k) Arbitration Law, so the application of the judgment creditor company is considered to be in full conformity with the provisions of section 45 Arbitration Law.

Therefore, what needs to be further reviewed is whether or not to recognise and enforce the arbitral award no. 973/2020 dated 27 January 2022 made by SIAC. In relation to the recognition and enforcement of foreign arbitral awards, section 46 Arbitration Law provides as follows:

46. (a) The court shall recognise and enforce a foreign arbitral award as if it were a decree of the court except in the case of refusal of recognition and enforcement of a foreign arbitral award under sub-sections (b) and (c).

(b) The court may refuse to recognise and enforce any foreign arbitral award, if the party against whom it is invoked can prove any of the following:

(1) the parties to the arbitration agreement were under some incapacity under the law applicable to them;

(2) the arbitration agreement is not valid under the law which the parties are subject to or, in the absence of any indication of the law applicable to the parties thereon, under the law of the country where the award was made;

(3) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator, or the arbitral proceedings were not properly conducted, or he was otherwise unable to present his case in the arbitral proceedings;

(4) the arbitral tribunal's award deals with a dispute which is not contemplated by or not falling within the terms of submission to arbitration pursuant to the arbitration agreement, or it contains decisions on matters beyond the scope of the submission to arbitration;

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(5) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;

(6) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which or under the law of which that arbitral award was made.

In fact, the provisions of section 46(b) correspond to the provisions of article 5 of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Article 5 of the New York Convention reads as follows:

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

According to the provisions of section 46(b) and article 5 of the New York Convention above, it is obvious that the applicant, the judgment debtor company, must prove that it falls within a specific category.

The judgment debtor argues that the foreign arbitral award is contrary to the laws in force in Myanmar, that it does not state that it was decided in accordance with the laws in force in Myanmar, that the subject matter of the dispute may not be settled by arbitration under Myanmar's laws in force, and that the award is contrary to Myanmar's national interest and public policy.

Paragraph 2(e) of the Arbitration Procedures issued by the Supreme Court of the Union under section 57 Arbitration Law provides the following definition of the term "contrary to the national interest":

> "Contrary to the national interest" means effects such as environmental damage to the nation's land, water and air, infringement of the interests of all citizens, and damage to the national cultural heritage.

If we look at the arguments of the judgment debtor, it can be said that there is no need to consider accepting the arguments of the judgment debtor that this foreign arbitral award is contrary to the national interest, as there is not a single sentence in it that falls within the interpretation mentioned above.

SIAC's award dated 27 January 2022 shows that the legal costs paid by the judgment creditor on behalf of the judgment debtor and the interest allowed for this were awarded as "partial award".

Section 2(1) Singapore International Arbitration Act defines the term arbitral award as follows:

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> "award" means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or **partial award**;

Rule 27(g) of the Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules) provides the following as "Additional Powers of the Tribunal":

> g. issue an order or award for the reimbursement of unpaid deposits towards the costs of the arbitration

Therefore, it cannot be said that it is contrary to the Singapore International Arbitration Act and the SIAC Rules that SIAC awarded as a partial award the legal costs paid by the judgment creditor company on behalf of the judgment debtor company and the interest allowed for this. As there is no legal provision that prohibits interest or restricts the amount determined by the court, the submission of the judgment debtor company company that SIAC's arbitration award dated 27 January 2022 is against the laws in force in Myanmar cannot be said to be correct.

We are now analysing the judgment debtor's argument that Myanmar and Singapore have not signed any international treaty for enforcing SIAC's arbitration award dated 27 January 2022. There is no provision in the Arbitration Law saying that a foreign arbitral award may only be recognised and enforced if a specific international treaty was signed between the country in which the award was made and Myanmar.

The reciprocating territory stipulation in section 44A Code of Civil Procedure is only a provision for the enforcement of a foreign decree, and this case is not about the enforcement of such a foreign decree, but a foreign arbitral award, so there is no need for there being a bilateral treaty signed between Myanmar and Singapore in order to enforce the award.

Therefore, Myanmar and Singapore may not have signed any international treaty for recognising a foreign arbitral award, but it is considered unnecessary to consider the argument presented by the judgment debtor.

We are now analysing the argument that it is contrary to section 46(a)(2) Arbitration Law that the governing law between the parties is not disclosed. Clause 31 of the "Master Agreement for the Supply and Services Relating to Tower Supply Erection and Associated Civil Works" dated 9 April 2018, which was signed by the judgment creditor and the judgment debtor, states as follows:

> 31.1 if the parties are not able to resolve a dispute within 30 day after delivery of written notice of such dispute as provided in clause 30 above, either party may submit the dispute to binding arbitration, and both parties agree to participate in such arbitration. Any such dispute shall be referred to and finally resolved by arbitration in Singapore in accordance

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with the Arbitration Rules of Singapore International Arbitration Centre for the time being in force,...

It turns out that both the judgment creditor company and the judgment debtor company are companies based in Myanmar. Section 5(2) Singapore International Arbitration Act provides as follows:

(2) Notwithstanding Article 1 (3) of the Model Law, an arbitration is international if (a) at least one of the parties to an arbitration agreement, at the time of the conclusion of the agreement, has its place of business in any State other than Singapore;

Therefore, according to the provisions of section 5(2) above, it is clear that the arbitration process in SIAC is "international arbitration" for Singapore. Section 3 Singapore International Arbitration Act stipulates that the Model Law applies in Singapore, and according to Section 2(1) of the Act, the Model Law means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law. Therefore, in international arbitration held in Singapore, the UNCITRAL Model Law is the applicable law.

Rule 1.1 of the SIAC Rules states as follows:

1.1 Where the parties have agreed to refer their disputes to SIAC for arbitration or to arbitration in accordance with the, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by SIAC in accordance with these Rules.

Because the "Master Agreement for the Supply and Services Relating to Tower Supply Erection and Associated Civil Works" signed between the judgment creditor and the judgment debtor indicates that the award will be made in accordance with the Arbitration Rules of the Singapore International Arbitration Centre, if Rule 1.1 SIAC Rules and section 5(2) and section 3 of the Singapore International Arbitration Act are read in context, the governing law in the arbitration agreement of the "Master Agreement for the Supply and Services Relating to Tower Supply Erection and Associated Civil Works" dated 9 April 2018 signed by the judgment creditor and the judgment debtor may be considered to be the UNCITRAL Model Law.

In other words, the reference to the Arbitration Rules of the Singapore International Arbitration Centre in the arbitration agreement between the judgment creditor and the judgment debtor means that the law that they must follow is the UNCITRAL Model Law, and the UNCITRAL Model Law has been adopted by Singapore, which is the seat of arbitration, according to section 3 Singapore International Arbitration Act, and therefore it cannot be said that the submission by the judgment debtor is correct that it is contrary to section 46(b)(2) Arbitration Law that the governing law between the judgment creditor and the judgment debtor is not disclosed.

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Therefore, it is ordered that the Singapore International Arbitration Center's Arbitration award no. 973/2020 dated 27 January 2022 shall be recognised and enforced.

There is no charge for this order.

(Soe Khun Phyu)
Associate District Judge (1)
Yangon Western District Court

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