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**BE PITILESS OR BE PENNILESS:
PRACTICAL POINTERS ON ENFORCING
COMMERCIAL DEBTS IN MYANMAR**

The legal system of the Union of Myanmar in general

The legal system of the Union of Myanmar is a unique combination of customary law, codified English common law and recent Myanmar legislation. The principles of English common and statutory law were established in Myanmar through the British law codes as applied in the pre-independence India statutes. These statutory laws, based on and incorporating the English common and statutory law of the time, include the Arbitration Act, Companies Act, Contract Act, Evidence Act, General Clauses Act, Negotiable Instrument Act, Registration Act, Sale of Goods Act, Transfer of Property Act, Trusts Act and the Civil and Criminal Procedure Codes.

Where there is no statute regulating a particular matter, the courts are to apply Myanmar's general law, which is based on the English common law as adopted and molded by Myanmar case law, and embodies the rules of equity, justice and good conscience. Where there is no relevant statutory general law on point, the Myanmar courts are obliged to decide the matter according to justice, equity and good conscience.

1. What is the structure of the court system in Myanmar? What is the jurisdiction of each court? Are there specialized courts or tribunals in Myanmar? (e.g. labor)

Courts of the Union were established under the 2008 Constitution and these include the Supreme Court of the Union, High Courts of the Region, High Courts of the State, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts,

Township Courts and the other Courts constituted by law; Courts-Martial; and Constitutional Tribunal of the Union [section 293, the 2008 Constitution].

The Supreme Court of the Union

The Supreme Court is the highest Court of the Union. The Supreme Court is situated in Nay Pyi Taw and is headed by the Chief Justice of the Union. The Supreme Court is comprised of at least seven, but no more than eleven judges, including the Chief Justice. The President can appoint the Chief Justice and Judges of the Supreme Court after seeking approval from the Pyidaungsu Hluttaw.

The Supreme Court has original jurisdiction in matters arising out of bilateral treaties concluded by the Union; in disputes, between government units; over piracy and other offences committed in violation of international law; and in other matters as prescribed by any law. It has appellate jurisdiction to decide judgments passed by the High Courts of the Regions or the States. It possesses the power to issue Writ of Habeas Corpus; Writ of Mandamus; Writ of Prohibition; Writ of Quo Warranto; and Writ of Certiorari.

However, the court's power to issue writs is suspended in areas where a state of emergency has been declared [section 296, the 2008 Constitution; section 16, the Union Judiciary Law 2010]. The decisions of the Supreme Court are final and conclusive, and thus it is the final court of appeal for the entire Union.

High Courts of the Region and High Courts of the State

A high court has been established for every Region and the State of the Union. Each High Court is headed by a Chief

Justice of the High Court of the Region or the Chief Justice of the High Court of the State. The High Court consists of at least three, but no more than seven judges including the Chief Justice of the High Court. The President may appoint the Chief Justice and the Judges of the High Court in co-ordination with the Chief Justice of the Union and the Chief Minister of the respective Region or State after seeking approval from the respective Region or State Hluttaw.

Every High Court of the Region or State has jurisdiction to adjudicate civil cases (in which the amount exceeds MMK1,000,000,000 / USD \$725,000), appellate matters, and other matters prescribed by law. The High Court has appellate jurisdiction over judgments, decrees and orders passed by all other subordinate courts. It also has supervisory jurisdiction over lower Courts. Furthermore, it has jurisdiction to transfer a case from a court to itself or to any other court within the respective Region or State [section 40, the Union Judiciary Law 2010]. Finally, it has unlimited jurisdiction to hear and decide both criminal and civil suits.

District Courts, Courts of the Self-Administered Division and Courts of the Self-Administered Zone

District Courts, Courts of the Self-Administered Division, and Courts of the Self-Administered Zone have jurisdiction over both criminal as well as civil cases, appellate cases, revision cases and other matters prescribed by any law [section 315, the 2008 Constitution; sections 53, 54 the Union Judiciary Law 2010]. The respective High Court of the Region or State supervises the appointment of judges at this level of courts [section 318(a), the 2008 Constitution]. Judges





at this level are granted the right to try serious criminal cases and civil suits not exceeding MMK1,000 million (\$USD 725,000).

Township Courts

Township Courts have jurisdiction over both criminal as well as civil cases and other matters prescribed by any law [section 316, the 2008 Constitution; section 56, the Union Judiciary Law 2010]. The respective High Court of the Region or State supervises the appointment of judges at this level [section 318(a), the 2008 Constitution]. Courts at this level are mainly courts of original jurisdiction. Judges at this level can pass a sentence up to seven years imprisonment. They can try civil suits in which the amount in dispute or value of the subject matters does not exceeding MMK10 million (\$USD 7,250). They also exercise jurisdiction over juvenile cases.

OTHER COURTS AND TRIBUNALS

Courts-Martial

The Courts-Martial were established under the 2008 Constitution in order to adjudicate matter involving military members. [section 319, 2008 Constitution].

The Constitutional Tribunal Court

A specialized court has been established to decide matters of constitutional interpretation. According to section 320 of the 2008 Constitution, the Constitutional Tribunal of the Union shall be formed with nine members including a chairperson. The President shall submit a list of proposed candidates - three members chosen by him, three members chosen by the Speaker of the Pyithu Hluttaw and three members chosen by the Speaker of the Amyotha Hluttaw. One member from these nine members will be appointed as the Chairperson of the Constitutional Tribunal of the Union with the approval of Pyidaungsu Hluttaw. (Section 321 of the constitution law 2008)

The resolution of the Constitutional Tribunal of the Union shall be final and conclusive. (Section 324 of the constitution law 2008)

Miscellaneous Tribunals

There are also other courts with specific jurisdiction, such as Juvenile Courts, to try offences committed by minors, Municipal Courts to try municipal offences and Motor Vehicle Courts to try road traffic offences. Labour tribunals were created by the Labour Dispute Settlement law.

In terms of hierarchy, Township Courts are courts of first instance; District Courts, Courts of the Self-Administered Division, and Courts of the Self-Administered Zone are courts of first appeal; the High Courts of the Regions and the High Courts of the States are courts of second appeal; and the Supreme Court is the court of final appeal.

2. What is the structure of the legal profession? Can a qualified lawyer represent in any court or are additional qualifications required?

In Myanmar, lawyers in private practice fall into one of the two categories that date back to the British colonial rule: higher grade pleaders and advocates.

Section 6, 7, and 8 of the Legal Practitioners Act 1879 governs the admission of higher-grade pleaders. Section 9 of the Bar Council Act governs the admission of an advocate and the Court Manual's Chapter 1 provides further details in relation to qualifications and admission processes for both classes of lawyers. Both high grade pleaders and advocates must be Myanmar citizens and have to get a Bachelor of Law degree in Myanmar as prescribed in the above sections.

Higher Grade Pleaders may only represent clients in Township and District Courts while Advocates can represent clients in all courts. After three years of practice, a Higher Grade Pleader can apply for an advocate's license.

3. Who appoints judges? For how long? What are the requirements?

The President appoints the Chief Justice and judges of the Supreme Court after seeking approval from the Pyidaungsu Hluttaw, which has no right to refuse the candidate unless it can be proven that the person does not meet all the required qualifications for the post [sections 299 (c) and (d), the 2008 Constitution].

Township and District Court Judges are appointed by the Supreme Court of Myanmar. They are permanent positions. Judges are appointed through a two-step recruitment process. Applicants have to pass both written and oral exams on civil and criminal laws organized once every year by the Supreme Court of Myanmar. The exam dates are announced in national and regional newspapers.

	Jurisdictional Amount	Timeline
Supreme Court	Appellate Jurisdiction and Writs	1 year
High Court (Region/State)	> 1,000,000,000 MMK (750,000 USD)	1-2 year
District Court	< 1,000,000,000 MMK (750,000 USD)	Default: 2-4 weeks Normal: 6 months-1 year
Township Court	10,000,000 MMK (7,500 USD)	Default: 2-4 weeks Normal: 6 months-1 year

4. Is the approach adversarial or inquisitorial? Is there a jury in civil cases, in criminal cases? Does it involve a single judge or multiple judges?

The approach is adversarial and there is no jury in civil cases or criminal cases. From the Township to District Court, there is only one judge to examine the case.

5. What is the state of limitations?

The period of limitation depends on the case. The following table provides a summary of more common cases.

Matter	Limitation period
Recover possession from tenant	6 months
Invoices, Sales, Breach of Contract	3 years
Torts (loss of goods, non-delivery)	1 year
Shareholder and other specific performance contract disputes	3 years
Construction Claims	3 years
Conversion	3 years
Promissory note	3 years

6. What procedural steps can be taken to suspend the limitation period?

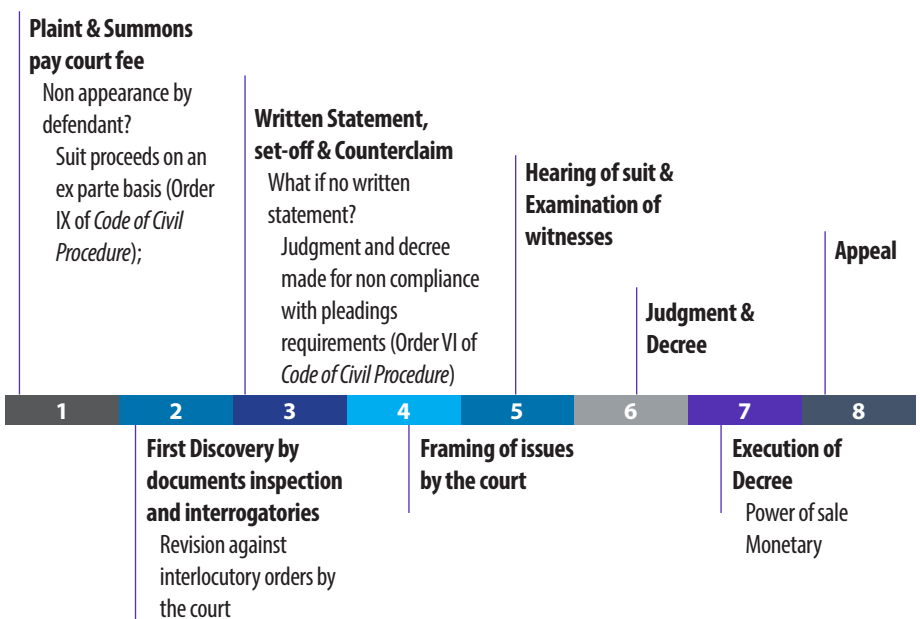
The limitation period can be brought to an end by sending notice to the defendant or an oral or documented agreement between the two parties.

7. Does the limitation period from a foreign country apply before a Myanmar court if the claim arose in a foreign country?

Yes, if the claim arose in foreign country. A suit to enforce a foreign judgment must commence within six years of issuance.

8. What are the milestones or steps in a civil proceeding?

The milestones and steps in a legal proceeding in Myanmar are as follows:



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Highlights of this note

- Facts of the case
- On what basis did the successful plaintiff bring his claim?
- Supreme Court reasons the lower court decision
- Supreme Court decision under appeal

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Civil case:

- 1. Plaintiff** - A plaintiff can directly file a case at the court. The court will first examine the plaintiff according to the Civil Procedure Code ("CPC"), order-7. It will accept the plaintiff, if complete information about the case and all the necessary documents are provided.
- 2. Summons** - The court will issue summons according to order-5 of the CPC.
- 3. Written statement** - The defendant must submit their written statement to the court according to order -8, rule-1 under CPC.
- 4. Documentary evidence** - Both parties have to submit documentary evidence of every description in their possession which they intend to rely on during trial. This must be submitted to the Court during the first hearing, according to order 13, rule 1 under the CPC.

The plaintiff's lawyer will conduct the first examination and defendant lawyer will cross examine the plaintiff and their witnesses. The defendant and his witnesses will be examined by his lawyer and by plaintiff's lawyer by cross examination, after which the court will hear arguments from the two lawyers. Based on this, the plaintiff will get an order or decree from the court. The decree must be executed within three years from the date of issue.



9. How does a civil case typically commence?

A civil case begins with the plaintiff, according to order 6 and 7 of CPC. After the plaintiff decides to sue a defendant, the plaintiff sends a demand or notice letter to the defendant. Though the demand letter is only mandatory in landlord/tenant cases, it is the customary practice in Myanmar to issue demand letters in other types of cases as well. If the defendant refuses to perform, the lawsuit then follows.

10. How is the pre-trial exchange of evidence organized, and how is this evidence presented during trial?

If either the plaintiff or defendant's answer does not sufficiently support a party's case, the other party may ask for further

information through interrogatories and discovery of documents, in order to be familiar with the issues for the hearing.

A party to a suit may, by application to the court, also seek discovery of documents relating to the matters in question that are in the opposing party's possession. Document inspection is done by parties present at the court. All parties will be given time to give notice to other parties, or to produce and take copies of original evidences that are required at the trial, according to order 11, rule 15 of CPC.

During the first hearing, parties and their pleaders must submit documentary evidence of every item in their possession that they intend to rely on during trial, according to order 13, rule 1 of the CPC. All other evidence the

parties intend to rely on during trial can be submitted in compliance with The Evidence Act.

11. Can parties influence the timetable of the proceedings?

No, the proceeding timetable is set according to the Court Manual and Court notifications. Only the hearing timetable can be influenced in some cases.

12. Are there any procedures available to get a judgment without trial, like a summary judgment or a default judgment? When should the claimant make this request?

There are procedures available to get a judgement without trial, e.g. a default judgment.

Where the plaintiff appears and the defendant does not appear during the hearing, and it is proven that summons was duly served, the court may proceed ex parte (Order 9, Rule 6 of CPC).

In this situation, if a plaintiff makes a request, the court will examine the plaintiff and their witnesses, and the judge will decide whether the plaintiff is entitled to get a decree.

If it appears from the plaintiff and the debtor's admissions that the creditor is entitled to judgment, the court can grant judgment in accordance with Order 12, Rule 6, CPC.

If the defendant appears before the court





and a plaintiff does not, the court shall order that the suit be dismissed, unless the defendant agrees with plaintiff's claim. (Order 9, Rule 8, CPC)

13. What are the available remedies? E.g. money and others such as specific performance?

Several such remedies are available in Myanmar. The main ones are recovering possession of real or personal property, recovery of debt, specific performance of a contract, correction of instruments, to rescind contracts, the cancellation of instruments, the issuance of declaratory decrees, and injunctive relief.

14. Is there a regime for class actions?

Class actions are not permitted.

15. Should the documents be preserved before a trial or when trial is imminent? What about criminal sanction?

Yes, documents must be preserved before a trial or when a trial is imminent. Hiding or destroying documents that have to be produced as evidence in a Court of justice shall result in a fine or up to 2 years imprisonment or both, according to section 204 of the Penal Code.

16. If a particular court has agreed to hear a case, does that affect the jurisdiction of another court that has also agreed to hear the same case?

A Myanmar claimant can still sue defendant in a Myanmar court despite the fact that a foreign proceeding has already started. The pendency of a suit in a foreign country does not preclude the court in the Union of Myanmar from trying a suit that is based on the same cause of action.

According to section 10 of the CPC, "No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other court in the Union of Myanmar having jurisdiction to grant the relief claimed or before (the Supreme Court)".

However, in its discretion the court would be at liberty to stay the Myanmar proceedings to await the outcome of the foreign proceedings.

17. Can a party start litigation without prior consultations with the defendant?

Yes, a party can do so.

18. Is interim relief available in Myanmar? E.g. freezing, injunction

Yes, interim relief is available in Myanmar. Injunctions can be issued under CPC order-39- rule-1. A case must be pending for an injunction to issue.

19. When is a court likely to agree to a freezing order? Are parties expected to offer an undertaking as to damages?

The court may grant temporary injunction to restrain property in the following cases:

- a. if the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or
- b. the defendant threatens, or intends to remove or dispose his property to defraud his creditors. (Order -39 of CPC)

A permanent injunction (called here a "perpetual" injunction) (such as use of a trademark) may be granted by the court under section 54 of the Specific Relief Act 1877, which says:

"When a freezing order is issued, there is no requirement to give the undertaking as to damages. However, if a temporary injunction freezing assets is granted but the creditor later loses at trial, he may be liable for damages incurred by the debtor."



20. Is there usually an appeal? Is someone's approval needed for an appeal? Is it necessary to give a bond or pay a deposit? Is there also a revision? In which situations?

Appeals are common in Myanmar just as in other common law countries. Appeals are governed by section 96 and 100, CPC.

21. What are the court filing fees that must be paid to initiate a case? How much are the court fees for 1M MMK, 10M MMK, 100M MMK claim?

Filing fees are as follows: Demand of MMK 1 million = MMK500; for MMK 10 million = MMK50, 000; and for MMK100 million = MMK 500,000, which is the highest court fee in Myanmar, according to no.1, table 1 of the Court Fee Act.

22. Can the claimant win the costs back if he/she wins the case?

In the absence of a contractual provision on the subject, the claimant cannot claim such costs, but claimant can add these costs "mentioned as compensation or interest in the plaint".

23. How long does a typical litigation take, including appeals?

In criminal matters, it typically takes 7 months to 1 year. In civil matters, a default judgment can be obtained in two to four weeks. A formal trial may take 1 to 2 years for the proceedings to be completed and for a decree/order to issue. An appeal can add one year.

24. Is there a process for document discovery? What all does it include? Does it include emails?

A document inspection, including emails, must be conducted before the first hearing, according to order-11, rule-15. If a party wishes to inspect documents, they must give notice of inspection to the opposite party. The party who receives the notice must submit all the required documents as mentioned in the notice. If a document is not presented at the time of inspection, it cannot be submitted as evidence in future.

25. How does one obtain evidence from witnesses for court proceedings? Written or oral? Is there cross-examination?

Both written and oral evidence can be presented at the court hearing. There will be cross examination of each witness after the examination by the opposing lawyer.

26. Is there legal advice privilege and litigation privilege in Myanmar? Does it apply to in-house lawyers and legal consultants?

Disclosures made to both higher grade pleaders and advocates are protected. In practice, this may apply to in-house lawyers and legal consultants, particularly if they are licensed attorneys (Section- 126 of the Evidence Act).

27. If an internal investigation is conducted by a lawyer, in-house lawyer or a consultant, is it protected from disclosure?

Yes, such information is protected from disclosure under Section 126 of the Evidence Act)

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28. Is there a requirement that documents submitted to a court must be in Burmese?

There is no such requirement in Myanmar. It is usually done to make the process easier and quicker. The court finds it easier to examine the case in Burmese.

29. How can a foreign litigant be a claimant in a Myanmar court?

According to CPC section- 83, a foreign litigant can be a claimant before a Myanmar court.

30. What are the conditions for a foreign judgement to be enforced in Myanmar? Attach relevant cases.

A foreign judgment can be enforced in Myanmar by an action on a debt to enforce the judgment. The foreign judgment must be final in the foreign court. Additionally, the plaintiff must show that the foreign court made a



final conclusion that established the existence of legal liability. The judgment is then considered *res judicata* between the parties.

However, a foreign judgment will not operate as *res judicata* on any matter not directly decided. Generally, in suits on a foreign judgment, courts cannot inquire into the merits of the original claim or the propriety of the decision. In other words, Myanmar courts cannot sit in appeal over a foreign judgment because it proceeded on grounds that would not be adequate in Myanmar.

Three of the criteria that most often arise when challenging the enforcement of a foreign judgment in Myanmar are whether (i) the foreign court had jurisdiction, (ii) the case was decided on the merits, or (iii) the proceedings were in accordance with natural justice. A foreign judgment must have been decided on the merits of the case for it to be enforceable in Myanmar. Courts in Myanmar have the power to examine the judgment to determine whether it was decided on the merits. A

default judgment does not qualify as a decision on the merits. Notwithstanding the nonappearance of a duly served defendant, when evidence is taken on behalf of the plaintiff and judgment is given on such evidence, the case will be considered to have been decided on the merits. Myanmar courts insist on strict proof of service of process to show that the defendant had an opportunity to be heard.

31. What is the process to enforce a foreign judgment in Myanmar?

To enforce a foreign judgment, a copy of the foreign judgment along with relevant original documents must be submitted to the court of competent jurisdiction, according to order 21, CPC. A suit to enforce a foreign judgment must be brought within six years of issuance.

32. Is there a legal basis for mediation?

There is no legal basis for mediation process under the CPC.

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Edwin is a prominent foreign legal advisor living and working in Myanmar since 2012. He frequently advises the Government on privatizations and transactions in the energy, transport and telecommunications areas. He and our Banking team act for international financial institutions and DFIs, including on their largest ever Myanmar financing, and had a role on virtually every completed project financing transaction. In 2016, Edwin and his team obtained MIC permits for an astounding 25% to 33% of approved FDI in Myanmar, and helped establish a foreign bank. With our firm's Energy team, Edwin worked on 5 out of 7 power projects signed in 2016, and advised 4 of the "supermajors". Supported by an exclusively dedicated telecom team, he helped clients obtain and negotiate Myanmar's first new spectrum and IGW licenses this year.

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DISPUTES TEAM



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VDB Loi's Disputes team comprises Myanmar qualified trial lawyers, litigators and foreign arbitration specialists (resident in Myanmar) who exclusively work on litigation and arbitration matters. We focus on a broad range of commercial disputes, labour cases, construction disputes, insolvency and debt enforcement. In 2016, the disputes team booked a significant win when it was able to secure the release and clear the employee of a foreign state agency from criminal charges in connection with a fatal accident.

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