
Dispute Resolution

Five Years On: The Development of Arbitration Laws and Institutions in Myanmar

Introduction

It has been five years since Myanmar enacted its Arbitration Law 2016 to begin its journey of modernising its legal framework to promote arbitration as a viable mode of alternative dispute resolution in Myanmar. Over the past five years, whilst important strides have been taken to move forward on the development of the necessary framework and institutions, significant roadblocks have also been encountered, most recently with the COVID-19 pandemic and the military coup.

In this Update, we will take stock of the current development of arbitration in Myanmar, covering (a) the legislative framework; (b) the domestic arbitral institution, namely the Myanmar Arbitration Centre; (c) the recognition and authentication of Myanmar arbitral awards in foreign jurisdictions; and (d) the treatment of arbitration processes by the Myanmar Courts.

Legislative Framework for Arbitration in Myanmar

Arbitration Law 2016

Myanmar acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 ("**New York Convention**") on 15 July 2013 and enacted the Arbitration Law 2016 ("**Arbitration Law**") on 5 January 2016 to give effect to the New York Convention, repealing the previous Myanmar Arbitration Act 1944. The Arbitration Law is the principal legislation that governs arbitration in Myanmar and was crafted in accordance with the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**").

In line with the fundamental principle of party autonomy in arbitral proceedings, the Arbitration Law allows parties to an arbitration the freedom to agree on the specific rules and procedures that would apply to an arbitration, and only sets out certain default rules to be applied in the absence of any such agreement between the parties. The Arbitration Law also delineates the interface between court and arbitration processes in Myanmar, including the:

1. powers of the Myanmar courts to intervene in an arbitration (Section 11);
2. powers of an arbitral tribunal to issue interim orders (Section 19);

Dispute Resolution

3. powers of the Myanmar courts to enforce such interim orders (Section 31);
4. enforcement and challenge of domestic arbitral awards (Chapter 9); and
5. recognition, enforcement and challenge of foreign arbitral awards (Chapter 10).

Arbitration Rules

On 31 July 2018, the Union Supreme Court in Myanmar issued, by way of Notification No. 643/2018, a set of arbitration rules and procedures to supplement the provisions of the Arbitration Law ("**Arbitration Rules**").

The Arbitration Rules provide a detailed explanation of matters such as:

1. the process for submitting a request to the Chief Justice of the Union for the appointment of an arbitrator (Chapter 2, Rules 3-12);
2. the necessary qualifications of arbitrators (Chapter 3, Rule 13);
3. circumstances where the Court can intervene in arbitration proceedings in Myanmar (Chapter 4, Rules 14-41); and
4. the procedure to be followed for the enforcement of arbitral awards in Myanmar (Chapter 5, Rules 42-48).

The Arbitration Rules also provide definitions for certain key terms used in the Arbitration Law. For example, Rule 2(e) of the Arbitration Rules defines the term "against national interest" as used in Sections 41(a)(7) (grounds for setting aside a domestic arbitral award) and 46(c)(2) (grounds for refusal to enforce a foreign arbitral award) of the Arbitration Law to mean "*the damaging of the environment in the state-owned land, water and air, the damaging of the interest of National Citizens [and] the damaging of the National Culture and Heritage.*"

Arbitration Procedures for Myanmar Arbitration Centre

As a further step towards the development of arbitration practice in Myanmar, the Union of Myanmar Federation of Chambers of Commerce and Industry ("**UMFCCI**") issued a set of "Arbitration Procedures for the Myanmar Arbitration Centre" on 24 August 2018 ("**Arbitration Procedures**") and officially launched the Myanmar Arbitration Centre ("**MAC**") on 3 August 2019.

These Arbitration Procedures are in dual language (Myanmar language and English) and are fairly detailed, containing various provisions regarding the appointment of arbitrator(s), the procedure to commence arbitral proceedings, the conduct of hearings and the taking of evidence from witnesses, the issuance of arbitral awards, and the award of costs. They also provide a model arbitration clause to be inserted into contracts to refer disputes for arbitration under MAC.

Dispute Resolution

Arbitral Institution – The Myanmar Arbitration Centre

To date, we are not aware of any arbitrations taking place under the auspices of MAC, and practical details such as MAC's administrative fees for the conduct of an arbitration have yet to be published.

MAC is also responsible for selecting, training, and certifying industry experts and legal practitioners to become arbitrators. To this end, the Myanmar College of Arbitrators ("**MCA**") was established at the same time as MAC to help with the selection, training and accreditation of arbitrators. However, apart from several short introductory courses on arbitration, there has been little further development on training and accreditation of arbitrators to hear arbitrations under MAC.

To assist in establishing Myanmar's arbitration infrastructure, experts from various international arbitration institutions – such as the Chartered Institute of Arbitrations (CIArb), the China International Economic and Trade Arbitration Commission (CIETAC), the Hong Kong International Arbitration Centre (HKIAC), and the Singapore International Arbitration Centre (SIAC) – have conducted various trainings and workshops on arbitration in Myanmar over the past few years. Rajah & Tann Myanmar also partnered with the UMFCCI in 2019 to conduct a training workshop for Myanmar judges on arbitration.

Treatment of Arbitration Processes by the Myanmar Courts

Although it has been five years since the enactment of the Arbitration Law, very little is known about the treatment of arbitration-related applications by the Myanmar courts. Our team at Rajah & Tann Myanmar has successfully represented a client in applying for a stay of Myanmar court proceedings in favour of arbitration. However, anecdotally, we are also aware of several cases in which an application for a stay of proceedings in favour of arbitration was refused.

Separately, we understand that there have been at least two successful applications for the enforcement of arbitral awards granted by the Yangon Region High Court, although one of these applications is currently pending an appeal to the Union Supreme Court.

Recognition and Authentication of Myanmar Arbitral Awards

On 19 January 2021, the Union Supreme Court issued Notification No. 42/2021 on the Authentication and Certification Procedure for Domestic Awards and Arbitration Agreements. This is to facilitate the recognition and enforcement of Myanmar arbitral awards in foreign jurisdictions. The Notification sets out the relevant documents and procedures necessary to obtain an authenticated copy of an arbitral award issued in Myanmar for enforcement in a foreign jurisdiction. The documents are:

Dispute Resolution

1. the original or true copy of the arbitration agreement;
2. the notice of arbitration;
3. the notice of appointment of arbitrator(s);
4. the communication from the arbitrator(s) accepting the appointment; and
5. the arbitral award.

The fee for authentication of an original domestic arbitral award is MMK 30,000 while the fee for certification of a stamped copy of the award is MMK 10,000. At present, the Union Supreme Court in Myanmar has indicated that this authentication and certification process will only be done in the Myanmar language.

Conclusion

Myanmar has taken the necessary steps in the right direction to develop arbitration practice in Myanmar over the past five years. However, the challenge now is to apply the finishing touches to convince would-be litigants of the viability and advantages of seeking resolution of their disputes via arbitration instead of through the Myanmar courts.

For domestic arbitrations, MAC and MCA would need to push forward with the training and accreditation of local arbitrators. Without breaching confidentiality requirements, information on successful arbitrations being administered and enforced in the Myanmar courts can also be published to increase the public's confidence in the use of arbitrations for resolution of their disputes.

In the wake of the military coup on 1 February 2021, the resulting economic crisis and disruptions to the usual operations of the Myanmar courts have led to a greater demand for viable and cost-effective alternative ways to resolve disputes in Myanmar. If the right steps are taken during this period to promote the use of arbitration for parties to resolve their disputes, this could go a long way in establishing the use of arbitration in Myanmar.

For further queries, please feel free to contact our team below.

Contacts



Dr Min Thein
Managing Partner

D +959 7304 0763
F +951 9345 348
min.thein@rajahtann.com



Lester Chua
Partner

D +959 979 524 285
+65 6232 0561
F +951 9345 348
lester.chua@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

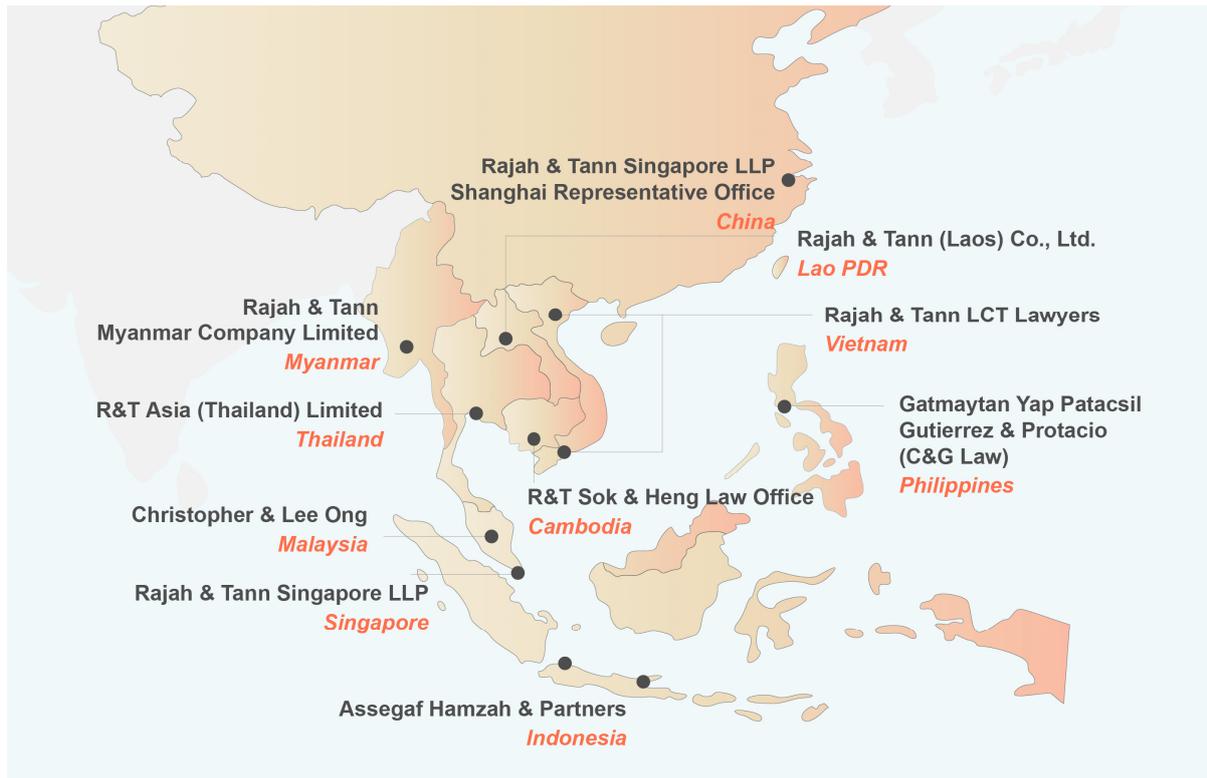
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Myanmar Company Limited has a multi-faceted talent pool of lawyers in a range of practice areas who are able to provide end-to-end legal services in Myanmar. Given this, we are positioned to provide you with sound and practical legal advice from the inception of investments and acquisitions in Myanmar, to business operations during the life of the projects, managing disputes and enforcement of rights and claims.

Rajah & Tann Myanmar Company Limited is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Myanmar Company Limited and subject to copyright protection under the laws of Myanmar and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Myanmar Company Limited.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Myanmar Company Limited.