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THE SETTLEMENT OF DISPUTES FOR MICRO, SMALL, AND MEDIUM ENTERPRISES (MSMEs) IN MYANMAR

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Abstract

The Micro, Small, and Medium Enterprises (MSMEs) play an important part in the economy of Myanmar, making substantial contributions to both employment and gross domestic product (GDP). Nevertheless, the commercial environment for these companies is burdened with conflicts that emerge from contractual disagreements, financial transactions, and regulatory compliance constraints. Robust dispute resolution systems are essential for the long-term development of MSMEs. This study analyzes the current legal frameworks and procedures for resolving disputes among MSMEs in Myanmar, encompassing both formal judicial procedures and an alternative way of dispute resolution (ADR). The paper examines the effectiveness, availability, and financial consequences of these methods, highlighting significant obstacles such as insufficient knowledge, inappropriate legal framework, and procedural intricacies. Furthermore, it describes the impact of government efforts and international collaboration on strengthening the ability to resolve disputes. The implementation of these steps can provide a more favourable environment for the expansion and sustainability of MSMEs in Myanmar's economic progress. The findings indicate that although Myanmar has made progress in enhancing its legal system, there is a requirement for more specialized and easily accessible dispute resolution services specifically designed to meet the distinct requirements of MSMEs. The recommendations include the creation of specialized MSMEs dispute resolution centres, enhanced training for legal professionals in alternative dispute resolution (ADR) methods, and a stronger focus on preventive legal measures through educational and capacity-building initiatives for MSMEs.

Keywords: Access to Justice, Dispute Resolution, Economic Development, MSMEs, Legal Mechanism

Introduction

The Micro, Small, and Medium Enterprises (MSMEs) play an important role in the economic progress of several nations, Myanmar included. These firms provide a substantial contribution to employment, innovation, and the general economic ecosystem. Nevertheless, similar to any commercial organization, MSMEs frequently encounter conflicts that might impede their functioning and expansion. Robust dispute resolution systems are crucial for ensuring the sustained success of these enterprises. The Micro, Small, and Medium Enterprises (MSMEs) are the fundamental support system of Myanmar's economy, constituting a significant share of the corporate sector. Their operations span multiple sectors, encompassing agriculture, manufacturing, and services. The significance of MSMEs has been acknowledged by the government of Myanmar, which has therefore enacted many laws aimed at fostering their expansion and progress.

The Small and medium enterprises (SMEs) are classified according to the key criteria outlined in the Small and Medium Enterprises Development Law, 2015, including the number of employees, type of business, capital invested, and turnover level. In comparison to the Private Industrial Enterprise Law, 1990, the maximum number of employees for labour-intensive businesses, as well as the maximum values for capital and turnover, have observed an increase. The research objectives are to examine the legal framework governing dispute resolution for MSMEs in Myanmar, to assess the effectiveness of existing dispute resolution in addressing the

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needs of MSMEs, to identify the challenges and gaps in the current legal and institutional framework, and to offer recommendations for improving the dispute resolution process for MSMEs. The following Table (1) illustrated how this law categorizes MSMEs into manufacturing, labour-intensive manufacturing, wholesale, retail, services, and other sectors in order to acknowledge the importance played by industries other than manufacturing.

Table 1. Legal definition of SMEs

Classification	Employees	Capital (Kyats million)	Turnover (Kyats million)
SMALL			
Manufacturing	Up to 50	Up to 500	
Labour-intensive manufacturing	Up to 300	Up to 500	
Wholesale	Up to 30		Up to 100
Retail	Up to 30		Up to 50
Service	Up to 30		Up to 100
Other	Up to 30		Up to 50
MEDIUM			
Manufacturing	51-300	500-1,000	
Labour-intensive manufacturing	301-600	500-1,000	
Wholesale	31-60		100-300
Retail	31-60		50-100
Service	31-100		100-200
Other	31-60		50-100

Source: Myanmar Micro, Small and Medium Enterprises Survey, 2017

Research Method

This research employs the document analysis to examine the legal framework encompassing laws, procedures, policies, court rulings (including common dispute and legal precedents), reports on MSMEs development and challenges, as well as international conventions and standards for MSMEs dispute resolution. This study undertook the interviews with the government officials engaged in the development and resolution of MSMEs, legal professionals specialising in commercial law and dispute resolution, representatives of the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI), and individuals responsible for the Myanmar International Arbitration Centre (MIAC).

Research Questions

1. Which are the main legal procedures accessible to MSMEs in Myanmar for resolving disputes?
2. How does an alternate methodology of conflict resolution address the issues faced by MSMEs?

Methods for Dispute Resolution

The Small and medium-sized enterprises (SMEs) are important for their contributions to employment, innovation, economic growth and diversity.[2] While the size of SMEs varies significantly between states, many of their common features and corresponding obstacles to international dispute resolution are largely universal. In an increasingly globalized world, SMEs must be given genuine access to efficient international dispute resolution systems in order to develop and succeed. There is no shortage of effective international dispute resolution mechanisms available to entities operating across borders; however, many MSMEs are not in a position to reap the benefits of these mechanisms. Fundamentally, MSMEs involved in international trade need to have the resources, time, and insight to plan ahead and create their own route to effective dispute settlement because of the current structure of international dispute resolution.[3]

The many contractual relationships between seller and buyers, seller and issuing bank, buyer and issuing bank, and seller and shipowner that arise in the course of an international sale transaction will become sources of disputes. The different forms of dispute resolution are litigation, arbitration and mediation.[4] The most commonly used to resolve disputes between parties: negotiation, arbitration and litigation. Arbitration or litigation is typically used as the final method of dispute resolution for international transactions.[5]

Dispute settlement methods refer to established procedures or systems designed to reconcile disputes or conflicts between parties, typically without the need for litigation. These measures play a vital role in many domains, such as international trade, business, investment, and even interpersonal or labour conflicts. They assist in guaranteeing that conflicts are settled justly, effectively, and in alignment with the principles of legal governance. Dispute settlement techniques can be broadly classified into two main categories: litigation and alternative dispute resolution. The Table 2 provided different aspects of each process to allow for a quick comparison between them and to determine what can be achieved with each of them.

The Small and Medium Enterprises Development Rules, 2017 and the Arbitration Law, 2016 are the laws that deal with MSMEs and their dispute resolution procedures. If any dispute arises between entrepreneurs, between entrepreneurs and any organizations or government department in respect of the small and medium enterprises, the agency and agency branch offices shall assist to settle the dispute arisen.[6]

If the dispute cannot be settled, it shall be undertaken step by step in following ways:

(a) to be followed in accordance with the prescribed settlement mechanism if the dispute settlement mechanism is designated in the relevant agreements concluded between the entrepreneurs, any organizations or the government department;

(b) if the dispute settlement mechanism is not designated in the relevant agreement;

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[2] OECD, SMEs and Entrepreneurship: Available Online at [http://www.oecd.org/cfe/smes/] (Last accessed January 2017).

[3] Petra Butler and Hanneke van Oeveren, SMES and International Commercial Dispute Resolution, International Commercial Law Issues, 2021, p.50.

[4] Indira Carr and Peter Stone, International Trade Law, Sixth Edition, Routledge, 2018, p.499.

[5] Case Study Book on International Transaction, 2019, p.101.

[6] Rule 71, the Small and Medium Enterprises Development Rules, 2017.

(i) resolving and handing over the issues to respective department with the formation of arbitral tribunal comprising with the persons not less than three or not more than five (odd number) from the agency, agency branch office and the persons agreed by both parties

(ii) resolving in accordance with relevant existing laws if it cannot be settled.[7]

The selection of dispute resolution process for MSMEs in Myanmar is contingent upon several elements, including the intricacy of the dispute, expenses, time, and the interrelationship among the involved parties. Although negotiation and mediation are favoured for their adaptability and cost efficiency, arbitration and litigation offer more formal approaches when necessary. The use of Alternative Dispute Resolution (ADR) methods is a favourable advancement towards effective conflict resolution specifically designed for the requirements of industrial enterprises in Myanmar.

Table 2 Primary dispute resolution processes

Characteristics	Negotiation	Mediation	Arbitration	Adjudication
Voluntary/ Involuntary	Voluntary	Voluntary In some cases, involuntary (mandated mediation)	Voluntary (when based on contract clause mandatory)	Involuntary
Binding/ non-binding	If agreement, enforceable as contract	If agreement, enforceable as contract, sometimes agreement embodied in court decree	Binding, subject to review on very limited grounds.	Binding, subject to appeal
Third party	No third-party facilitator	Outside facilitator chosen by the party	Party-selected decision-maker frequently with specific knowledge	Imposed, third-party neutral decision-maker, generally with no specialist expertise in the issue subject
Degree of formality	Usually informal, unstructured	Generally informal, partially organized	Procedurally less formal than litigation; procedural rules and substantive law can be drawn up by parties	Formalized and highly structured by predetermined, rigid rules
Nature of processing	Unbounded presentation of evidence, arguments and interests	Unbounded presentation of evidence, arguments and interests	Opportunity for each party to present proofs and arguments	Opportunity for each party to present proofs and arguments

Litigation

The process of resolving disputes through the court system is referred to as litigation. For the Micro, Small, and Medium Enterprises (MSMEs) in Myanmar, litigation is one of the formal methods available for dispute resolution. The dispute is resolved in a court of law, where a judge

[7] Rule 72, the Small and Medium Enterprises Development Rules, 2017.

makes a binding decision based on the application of legal principles and evidence. Litigation is governed by the relevant procedural laws of the jurisdiction in the Code of Civil Procedure in Myanmar. Civil Procedure Codes regulate litigation processes, including the jurisdiction of courts, procedural rules, and the enforcement of judgments. While litigation is a more formal and often more costly method of dispute resolution than, it is essential for disputes that cannot be resolved through other methods.

All civil lawsuits should be subject to trial by the courts, with the exception of those whose cognizance is expressly or implicitly prohibited.[8] The Myanmar court's jurisdiction over the civil or commercial suit is generally determined under the Code of Civil Procedure.

Company A in Myanmar executed a sales agreement to purchase a machine for use in its factory from Company B, a company located in Country X. When Company A received the machine, Company A's inspection revealed that the machine contained defects and was useless. Company A brought a lawsuit against Company B in the Myanmar courts to demand the cancellation of the sales agreement and claim damages for Company B's breach of contract. The jurisdiction of the court explained the Figure 1 in respect of the sale agreements in Myanmar.

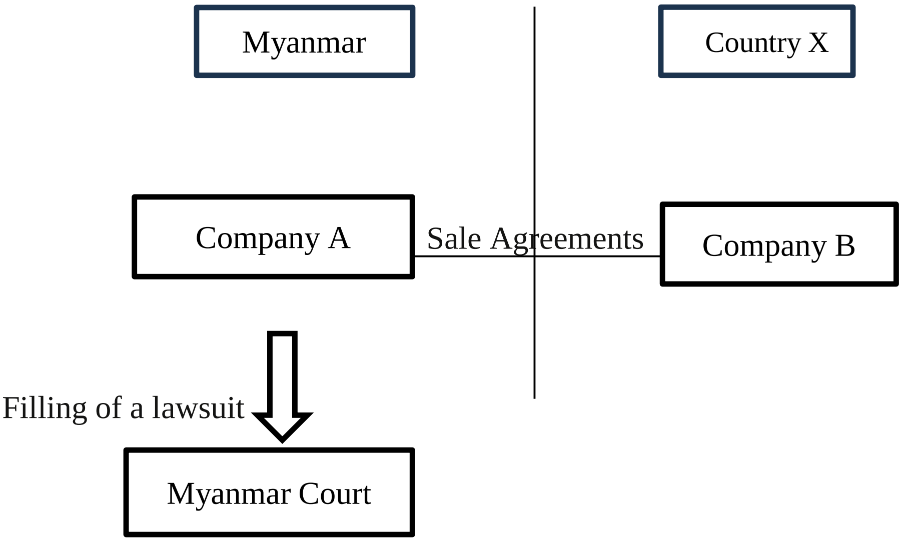

Figure 1 Jurisdiction of Myanmar Court

Each suit must be filed in a court which is situated within its local jurisdiction:

(a) the defendant, or each defendant if more than one, who, at the time the suit is filed, lives in an actual and voluntary residence, carries out business, or works for personal benefit; or

(b) any defendant if more than one, who, at the time the suit is filed, lives in an actual and voluntary residence, carries out business, or works for personal benefit, provided that in such case either the leave of the Court is given, or the defendants who are not residing, or carries out business, or works for personal benefit, as aforesaid, allow to such an institution; or

(c) the cause of action, in full or in part, arises.[9]

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[8] Section 9, the Code of Civil Procedure, 1909.

[9] Section 20, Ibid.

While litigation remains an essential tool for resolving disputes, MSMEs in Myanmar often find it challenging due to the costs, time, and complexity involved. The development of more accessible and efficient dispute resolution methods, including ADR, is crucial to support the growth and stability of MSMEs in the country.

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution is usually used as ADR, which is a process or procedure in which a neutral third party engages to help resolve matters in conflict, other than determination by a presiding judge in court proceedings.[10] The term alternative dispute resolution (ADR) describes the various ways in which conflicts can be settled out of trial. Arbitration, neutral evaluation, and mediation are common ADR processes. Compared to ordinary court proceedings, these procedures are typically less formal, more confidential, and less stressful.[11]

Other well-known types of ADR are early neutral evaluation (ENE), and mini-trial (executive tribunal) and Med-arb. In ENE, the parties present their cases in an adversarial manner, which is evaluated by a neutral third party, and the parties negotiate on the basis of this negotiation. Mini-trial is conducted with a penal comprising a third party and a senior executive from each side with no connection to the dispute. After hearing the submission, the senior executives negotiate for a settlement. In Med-arb, a hybrid of mediation and arbitration, parties start with mediation to try to find a mutually acceptable solution. In the event of failure, the mediator takes on the guise of arbitrators to issue a binding decision.[12]

Alternative Dispute Resolution (ADR) methods are widely recognized and utilized in international law as effective methods for resolving disputes involving Small and Medium Enterprises (SMEs). ADR provides alternatives to traditional litigation, offering faster, more cost-effective, and flexible solutions for cross-border disputes.

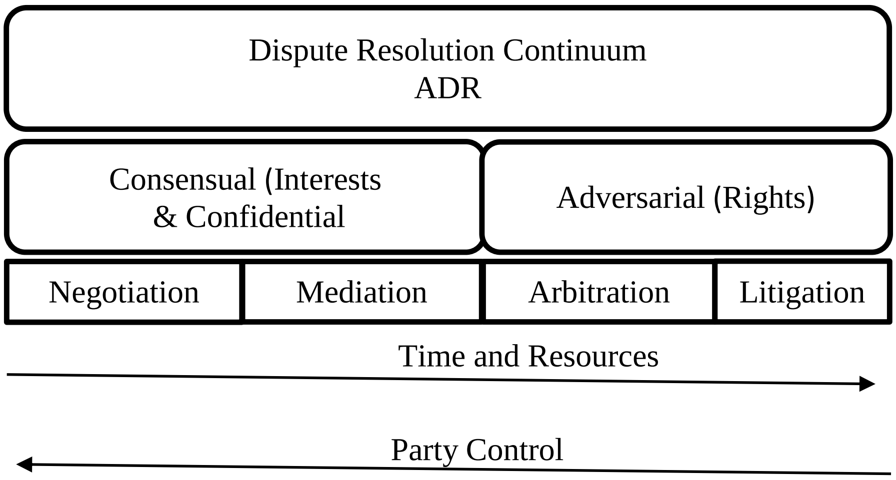

Figure 2 Dispute Resolution Continuum

[10] Alternative Dispute Resolution Manual: Implementing Commercial Mediation, Small and Medium Enterprise Department, The World Bank Group, 2006, p.167.

[11] What is ADR? Alternative Dispute Resolution, New York State Unified Court System. Available Online at [https://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtml#:~:text=These%20processes%20are%20generally %20confidential, saves%20money%20and%20speeds%20settlement.] (Last accessed March 2024).

[12] Indira Carr and Peter Stone, International Trade Law, Sixth Edition, Routledge, 2018, p.654.

Arbitration

An alternative to standard court proceedings is arbitration. Therefore, arbitration is crucial that courts recognize contract arbitration terms and stay their proceedings if a party points out that the other filed its plaint in violation of an arbitration clause. Arbitration is a form of alternative dispute resolution (ADR) that allows the disputes between the parties to be resolved outside of the traditional court system. The parties to a dispute in an arbitration case will refer it to one or more persons known as "arbitrators" or an "arbitral tribunal," whose decision or award they agree to be bound.[13] International arbitration processes can be divided into two main categories:

(1) *Ad Hoc* arbitration and
(2) Institutional arbitration

In their arbitration agreement, the parties have the right to choose between these two options. The functions and duties of the agency are advising and settling the disputes of small and medium enterprises and assisting to settle the disputes by means of arbitration.[14]

Ad Hoc Arbitration

Ad Hoc arbitration is described as “conducted without the assistance of an arbitral institution to assist the parties in the administration of the arbitration in accordance with rules established by the arbitral tribunal or agreed upon by the parties themselves”.[15]

The parties may draft their own rules, or they may choose to use the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, which are frequently used in *ad hoc* arbitration (UNCITRAL itself does not administer arbitrations and is not an arbitral institution). Almost, time and money can be saved by adopting a suitable arbitration rule of which the best known are the UNCITRAL Arbitration Rules. *Ad hoc* arbitration is an arbitration that is specifically designed by the parties for a particular dispute. According to Article 1 (2) (b) of the 1961 Geneva Convention, where *ad hoc* arbitration is defined as “settlement by arbitrators appointed for each case”.[16]

Ad hoc arbitration is more flexible than institutional, as the parties are completely free to adapt the proceedings to the particulars of the case. The advantages of *Ad hoc* arbitration are as follows: *Ad hoc* arbitration is administered and smoothly proceed in accordance with the arbitration rules of an arbitral institution. The administrative services of an arbitral institution renders include the appointment of arbitrators, the decision on the challenge of arbitrators, collecting fees, fixing the arbitrator’s fees. The parties have the maximum degree of flexibility in arbitral procedure and arbitration may be shaped to meet the wishes of the parties rather than be subjected to institutional administration or control. The parties need not to pay the charges for the administration services rendered by an arbitral institution.

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[13] Trey Hendershot, what is the difference between Arbitration and Litigation? 2021. Available online at [https://www.hchlawyers.com/blog/2021/march/what-is-the-difference-between-arbitration-and-l/] (Last accessed on 22 May 2024)

[14] Section 14 (k), Small and Medium Enterprises Law, 2015.

[15] Albert Zaw Min, The advantages and disadvantages of institutional arbitration in general in comparison with ad hoc arbitration, 2019, p.1.

[16] Ulrich G. Schroeter, *Ad Hoc* or Institutional Arbitron- A clear- Cut Distinction, A Closer Look at Borderline Cases, Asia Arbitration Journal, 2017, p-14.

On the other hand, there are also disadvantages in the *ad hoc* Arbitration. The disadvantages of *ad hoc* arbitration are as follows: The parties have to pay additionally the fees charged by an arbitral institution for its services. However, it generally does not account for the large part of the total costs. The effectiveness of arbitration depends on the cooperation between the parties and their lawyers and it is easy to delay arbitral proceeding because of not administrative supports by an arbitral institution. A time-consuming process to determine special rules for the arbitral proceedings. Practically, time and money can be saved by adopting the suitable arbitration rules of which the best known are the UNCITRAL Arbitration Rules.[17]

Institutional Arbitration

Institutional arbitration means one in which parties choose to conduct their arbitration procedure in accordance with the rules and assistances of an arbitral institution. An institutional arbitration is defined as one that is conducted in accordance with its own arbitration rules and is administered by a specialized arbitral institution.[18]

Institutional arbitration refers to the practice where parties opt to organize their arbitration process following the regulations and support provided by an arbitral institution. An institutional arbitration refers to a type of arbitration where a specialised institution, defined by its permanent nature, intervenes and takes on the responsibilities of assisting and managing the arbitral process, as stipulated by the regulations of that institution.

The advantages of institutional arbitration are the availability of pre-established rules and procedures which ensure the arbitration proceedings begin promptly. Administrative assistance from the institution will provide an arbitration court or secretariat. The primary disadvantages of institutional arbitration are the administrative costs for services and facility utilization, which can occasionally be high if this is a large amount at dispute, more than the actual amount in dispute. An institutional arbitration is administered by an arbitral institution under its own rules of arbitration and there are more than 100 arbitral institutions all over the world.[19]

The Republic of the Union of Myanmar is a signatory country of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) (the “New York Convention”), and the Myanmar’s Arbitration Law (2016) was enacted based on the New York Convention. Under this treaty and legislation, even if a party to a contract files a lawsuit to the Myanmar courts, the relevant court shall refer the parties of the suit to arbitration and issue a stay order at the request of a party if the parties have agreed in the relevant contract to resolve all disputes through arbitration.[20]

Myanmar’s accession to the New York Convention is an essential development to encourage and provide stability for interested foreign investors, as it provides parties the freedom to agree to arbitration under agreed-upon organizational rules, applying either local or international law, and taking place in a forum and jurisdiction of their choice. This is important because it gives investors control over some variable of the dispute resolution process and

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[17] U Maung Maung Ohn Myaing, General Knowledge of Arbitration, Published by Ye Aung Sapay, 1st Edition, June, 2017, p.21-22.

[18] Ulrich G. Schroeder, Ad Hoc or Institutional Arbitration- A Clear-Cut Distinction, A Closer Look At Borderline Cases, Asia Arbitration Journal, p.146.

[19] U Maung Maung Ohn Myaing, General Knowledge of Arbitration, Published by Ye Aung Sarpay, 1st Edition, June, 2017, p.22

[20] Case Study Book on International Transaction, Supreme Court of the Union, Nay Pyi Taw, 2029, p.114.

reduces risk components. It should be mentioned that foreign investors' rights to contracts for dispute settlement are expressly recognized by the recently enacted Foreign Investment Law.[21]

The “Myanmar Arbitration Centre” (MAC) in accordance with the Arbitration Law, 2016 promotes arbitration, as does the Federation of Chambers of Commerce and Industry of the Republic of the Union of Myanmar. As a result, it was created on March 11, 2019. With the creation of the new MAC, issues between local and foreign businesses can now be settled in Yangon, the commercial centre of Myanmar, saving a substantial amount of time and money, and permitting arbitrators situated in Myanmar to settle more cases under local laws. There isn't an arbitration or settlement in place right now.[22]

Arbitral awards shall be enforced by each contracting state in accordance with the rules of procedure of the local jurisdictions in which the awards are relied upon, under the conditions laid down in the following articles. The recognition or enforcement of arbitral awards to which this Convention applies shall not be imposed with substantially more onerous conditions or higher fines or charges than are imposed on the acceptance or implementation of domestic arbitral awards.[23]

Every agreement that completely prevents a party from exercising his rights under or in respect to a contract by standard legal procedures in ordinary tribunals or that places a time limit on when he can do so is null and void in that matter.[24]

The explanation of this Section explicitly affirms that a voluntary agreement to use arbitration as a means of resolving disputes is legally binding. An agreement to settle a dispute in the courts of a foreign country will not fall under the aforementioned "absolute" limitation and will be found legally binding. This notion is widely acknowledged not only in other jurisdictions of common law but also in jurisdictions of civil law. According to a renowned academic expert, the courts will dismiss a plaintiff's claim that such agreement is illegal due to its violation of public policy.

Any party may request to have the arbitration referred by the court when filing any statement regarding the content of the dispute, provided that the application is made before the court prior to which the action is brought in a matter regulated by an arbitration agreement. If the court determines that the agreement is valid, enforceable, and able to be carried out, it may submit the parties to arbitration for this application;[25] (d) the court shall order to stay the suit, if the court refers the parties to arbitration;[26] (e) no appeal shall be allowed against the court’s order which refers to arbitration applied under subsection (a);[27] (f) appeal shall be allowed upon the decision of the court which refuses to refer to arbitration applied under subsection (a).[28] In other words, when a party submits a request to the court to refer the parties to arbitration, the court must confirm the existence of an arbitration agreement.

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[21] Michael Ramirez, Arbitration of Commercial Disputes: Myanmar’s Evolution, A Guide to Doing Business in Myanmar, The-American Business, Volume 5, 2013, p.28.
[22] Interviewee 1, Myanmar Arbitration Centre, Office Staff.
[23] Article III, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.
[24] Section 28, the Contract Act, 1872.
[25] Section 10 (a), the Arbitration Law, 2016.
[26] Section 10 (d), Ibid.
[27] Section 10 (e), Ibid.
[28] Section 10 (f), Ibid.

Myanmar Economic Holdings Public Co., Ltd. (MEHL) (applicant) requested the court to wind up Myanmar Brewery Limited (respondent). The court decided that Myanmar Brewery Limited was not well represented, thus it did not take into account its defence and instead focused on questions of law that a court must make an ex officio decision without considering a party. In this logic, it was held that Section 10 (a) of the 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.[29] The court denied the referral to arbitration in this case. If the arbitration agreement cannot be fulfilled, the court may decline to set up the lawsuit and fail to send the dispute to arbitration. It has been found that enforcing an arbitration agreement is often challenging.

In the case of Taw Win Family Construction Co., Ltd. Vs. Inno International Development Co., Ltd., civil review 183/2019, the Supreme Court of the Union, it was held that even if the place of arbitration is not expressly specified in the agreement, As the Arbitration Law has provisions covering all situations, the court may decide to send the case to arbitration: (i) the arbitration will take place in Myanmar; (ii) the arbitration's place elsewhere; and (iii) place of arbitration not designated or determined upon. The parties will be referred to arbitration by the court unless it finds that the arbitration agreement is void. The court shall issue a stay unless it determines that the arbitration agreement is unlawful, inoperative, or incapable of being carried out.

Shiseido Singapore (Co.) Pte Ltd. Vs. Taw Win Oo Co. Ltd, Civil appeal No.358/2018, the Supreme Court of the Union, Taw Win Oo Co. Ltd was suing Shiseido for damages alleging that a distributorship was terminated wrongfully. In response, Shiseido obtained an interlocutory order from a court in Singapore restraining Taw Win Oo Co. Ltd from "starting any additional civil lawsuits and bringing any claims and accusations, such as those in civil case 31/2017" in Yangon, which is referred to as the “exclusive distribution agreement” between the parties for the months of January 1, 2016, through December 31, 2016, included an arbitration clause that stated that any dispute resulting from or related to the agreement was to be arbitrated in Singapore. The Supreme Court held that the Singapore interlocutory order did not hinder Taw Win Oo Co. Ltd from pursuing proceedings in the courts of Myanmar, except that “the Singapore court may take any separate action”. Furthermore, as Taw Win Oo Co. Ltd “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 term has expired,” the Myanmar court refused to stay the proceedings of the case in order to refer it to arbitration. It has been observed that the enforcement of an arbitration agreement presents considerable challenges.

Techo Corporation Pte Co.Ltd. Vs. Aye Family Co., Ltd., civil appeal 724/2018; the Supreme Court of the Union, the Supreme Court held: the agreement specifies that disputes shall be negotiated first and then resolved through arbitration. Since this process was not followed the plaintiff had no right of action, and the suit had to be dismissed according to Rule 11 (a) of Order 7 under the Code of Civil Procedure.

[29] Myanmar Economic Holdings Public Company Limited vs. Myanmar Brewery Limited and Kirin Holdings Singapore Pte. Ltd., Yangon Western District Court, civil miscellaneous case 68/2021.Available online at [https://rcms.usc.gov.mm/main]. (Last accessed February 2024).

Amalgamated Telecom Management Co., Ltd. Vs. Pan Asia Majestic Eagle Ltd. +2, civil appeal 389/2018; the Supreme Court of the Union, 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 determined that the "master agreement for site investigation, site acquisition, civil mechanical and electrical works and other tower-related services" did not apply to the scope.

Interim Measures

In essence, interim measures are remedies meant to maintain and protect a party's position until the arbitral tribunal makes a decision about the merits of the case. A court or an arbitral tribunal itself may issue them. A court may enforce interim measures ordered by a foreign arbitral tribunal in Myanmar. If the arbitration will take place in a country other than the State, or if the place of arbitration has not been chosen or decided upon.[30] Any interim award made in the State or outside of the State by an arbitral tribunal in the course of arbitration is enforceable by the court in the same way that a court's orders and decisions.[31]

A party may request a court in Myanmar for foreign arbitral proceedings to order interim measures. When a party requests to the court for any of the matters concerning the arbitral procedures, the court must have the same authority to make orders as any cases before it, unless the parties have agreed otherwise:

(i) taking of evidence;
(ii) preservation of any evidence;
(iii) making of a decision regarding any property connected to an arbitration dispute or an issue resulting from such proceedings;
(iv) examination, recording, preservation, retaining, and the capture of any property under dispute;
(v) collecting a sample from, observing, or carrying out research on any property under dispute;
(vi) granting permission for anyone to enter any land under the control or possession of a party to the arbitration for such purposes;
(vii) selling of any property that is the subject matter of the arbitration proceedings;
(viii) a receiver being appointed or an interim injunction being granted.[32]

A court would enforce interim measures ordered by a foreign court in Myanmar.

(1) When a District Court receives a certified copy of a decree from any superior Courts in any corresponding territory, the decree may be executed in the Union of Myanmar as if the District Court had allowed it.
(2) The certified copy of the decree must be filed with a certificate from the superior court describing the extent, if any, to which the decree has been satisfied or adjusted and for the purposes of the proceedings under this section, the certificate in question will be considered as conclusive proof of the degree of such adjustment or satisfaction.

[30] Section 2 (b), the Arbitration Law, 2016.
[31] Section 31 (a), Ibid.
[32] Section 11 (a), Ibid.

(3) The provisions of Section 47 will be applicable to District Court proceedings for the execution of decrees as of the filing of the certified copy of the decree under this section, and if it can be seen to the satisfaction of the Court that the decree involves within any of the exceptions stipulated in clauses (a) to (f) of Section 13, the District Court shall reject execution of such decree.

Explanation: “Reciprocating territory” refers to any nation or territory that the President may declare as such for the purposes of this Section at any time by publishing a notice in the Gazette, and ‘Superior Courts’ with reference to any such territory, refers to any courts that may be mentioned in the previous notification.

Explanation: "Decree" in the sense of a Supreme Court refers to any decree or judgement made by that Court requiring payment of a sum of money that has not previously been paid. in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in on case include an arbitration award, even though the award can be enforced as a decree or judgment.”[33] Myanmar Courts have the same authority on interim measures ordered by foreign courts. A District Court can execute a certified decree from a superior court in a reciprocating territory as if it were issued by the District Court itself. A certified copy of the decree must be filed along with a certificate detailing its satisfaction or adjustment, which serves as conclusive proof of its status. If the decree falls under specific exceptions, the District Court may reject its execution.

Enforcement of a Foreign Arbitral Award

In Myanmar, a foreign arbitral award can be enforced with the same effect as a decree of the District Court. A foreign arbitral award is presumed to be enforceable by the court and is enforced accordingly, unless the foreign arbitral award is not recognized or enforced at all under Sub-Sections (b) and (c). Competent is “the District Court having jurisdiction over the relevant geographical area”, which is 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. In addition to the many defences that a judgment debtor may request the court to;[34]

(i) reject the application in the event that the judgment creditor failed to provide the foreign arbitral award additional 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) the Arbitration Law. The court will, among others, reject enforcement if doing so would be "contrary to the national interest," which is described as having "effects such as environmental damage to the nation's air, water, and land, violation of the interests of all citizens, and damage to the national cultural heritage." District Courts have so far ordered the recognition and enforcement of a small number of foreign arbitral awards.

The issue with enforcement in Myanmar is that Rule 10 of Order 21 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 too often take years. Apart from the requirements

[33] Section 44 A, the Code of Civil Procedure, 1909.
[34] Order 21, the Code of Civil Procedure, 1909.

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.

Mediation

A neutral third party, the mediator, helps two or more disputants get to a voluntary process negotiated settlement of their disagreements through mediation, a flexible, non-binding method of resolving disputes. The parties have supreme control of the decision to settle and the terms of resolution. The mediator does not have the authority to make decisions; instead, they assist the parties in reaching a solution by using a variety of skills and strategies. The parties remain the decision makers. In general, mediation is considered an interest-based process as opposed to a rights-based procedure because it is to assist the parties in identifying any underlying motives or interests. The mediator may also assist the parties in showing the advantages and disadvantages of their respective legal positions, improving communication, considering the consequences of not settling, and generate settlement options. Sometimes mediation sessions result in creative solutions, including those where both sides can profit from the settlement terms. Consequently, mediation transforms the distributive, zero-sum game into a value-creating situation. Mediation sessions also are generally confidential. The parties sometimes enter into formal confidentiality agreements before the start of the mediation. Such agreements may prohibit a party from subsequently utilizing information or documents that were acquired during mediation but were obtained elsewhere in litigation or arbitration. Although such a confidentiality agreement is not required, mediation law often includes this confidentiality provision. Also, the fact that the parties meet the mediator privately often motivates them to share some of their private information.[35]

The intervention of an acceptable, unbiased, and neutral third party with no decision-making power into a dispute or negotiation is known as mediation. The purpose of this intervention is to help the parties in voluntarily coming to a mutually agreeable decision on issues in dispute. If the parties have been unable to start a constructive conversation or have been speaking but have come to a stalemate, it seems inviolable mediation might be useful. Similar to a facilitator, a mediator primarily provides procedural suggestions on how parties can come to an agreement. At times, a mediator may provide some substantive alternatives to motivate the parties to broaden the choices of potential solutions being considered. In many cases, a mediator collaborates with the parties separately, in caucuses, to investigate viable settlement alternatives or to develop ideas that can help the parties come near to a resolution. Mediators vary in their level of directive or control while intervening with conflicting parties. Some mediators establish the conditions for negotiation, provide few procedural recommendations, and then step in the negotiations solely to prevent or resolve a deadlock. Other mediators are significantly more engaged in deliberately fabricating the specifics of a settlement. The mediator serves as a

[35] Alternative Dispute Resolution Manual: Implementing Commercial Mediation, Small and Medium Enterprise Department, The World Bank Group, 2006, p.171.

catalyst, allowing the parties to take the initiative and move toward their own settlement of the issues at present, regardless of how directive they are.[36]

Mediation is entirely voluntary. Both parties must agree to participate. All discussions and agreements reached during mediation are confidential. The mediator is impartial and acts as a facilitator, not a judge. Parties can negotiate the mediator's fees, making mediation more accessible to MSMEs. While mediators can be experts in various fields, it's not a requirement. The mediator's primary role is to facilitate communication and help the parties reach an agreement.[37]

MSMEs should also be encouraged to include mediation clauses in their contracts. Parties to such agreements will be obliged to meet for mediation and attempt to mediate (in some jurisdictions there is also a requirement to mediate “in good faith”). Since mediation is a non-binding process, parties still can decide whether they want to settle and cannot be forced to do it. It is not clear whether mediation clauses are enforceable and how the sanctions for non-compliance will vary under different jurisdictions.[38] Two local MSMEs entered into a partnership but later disagreed on profit-sharing. They chose to mediate rather than go to court. A mediator helped them reach a settlement, preserving their business relationship and allowing the partnership to continue.

Sustainable Development Goals and MSMEs Dispute Resolution

MSMEs are vital for economic growth and employment in Myanmar. They contribute significantly to the country's GDP and provide jobs to a large portion of the population, particularly in rural areas. MSMEs in Myanmar often face challenges such as limited access to finance, technology, and markets, which can hinder their growth and sustainability in accordance with Goal 8.

Access to justice is crucial in resolving disputes that may arise in their operations. Effective dispute resolution methods are essential to ensure that MSMEs can resolve conflicts without resorting to costly and time-consuming litigation. In Myanmar, formal legal methods for dispute resolution may be challenging for MSMEs due to the complexity and cost of litigation. Alternative dispute resolution (ADR), such arbitration and mediation, can provide more convenient and effective ways to settle disputes.

Encouraging the use of ADR methods in Myanmar can help achieve both SDG 8 and SDG 16. By providing MSMEs with accessible means to resolve disputes, ADR can help maintain business continuity, foster economic growth, and reduce the burden on the formal legal system. Building the capacity of MSMEs to understand and utilize ADR mechanisms is critical. This includes training on legal rights, negotiation skills, and understanding the available dispute resolution options. The government and relevant institutions need to create policies that support the development of ADR mechanisms tailored to the needs of MSMEs. This could involve simplifying procedures, reducing costs, and ensuring that ADR services are available in local languages and regions.

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[36] Alternative Dispute Resolution Handbook, p.5-6. Available online at [https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf],(Lasted accessed19 January 2024).

[37] Interviewee 2, UMFCCI

[38] Alternative Dispute Resolution Manual: Implementing Commercial Mediation, Small and Medium Enterprise Department, The World Bank Group, 2006, p.176.

The successful implementation of dispute resolution for MSMEs in Myanmar is essential for achieving the SDGs. By promoting accessible and efficient dispute resolution options, Myanmar can support the growth and sustainability of its MSMEs, contributing to broader economic development and the establishment of strong institutions.

Discussion

Myanmar's legal framework for MSMEs dispute resolution is shaped by a combination of traditional litigation through the courts and alternative dispute resolution (ADR) methods, including mediation and arbitration. ADR methods are gaining traction, supported by institutions like the Myanmar Arbitration Centre, which provides a platform for mediation and arbitration. The court system in Myanmar faces a significant backlog, leading to delays in the resolution of disputes. This can be particularly damaging for MSMEs that require quick resolutions to maintain operations.

Both litigation and alternative dispute resolution (ADR) are significant components of the developing legal procedures for MSMEs dispute resolution in Myanmar. Nevertheless, there are still notable obstacles that persist, namely including issues of accessibility, cost, and efficiency. In order to foster a more conducive climate for small enterprises to prosper and make valuable contributions to the economic development of Myanmar, it is imperative to advocate for Alternative Dispute Resolution (ADR), enact legislative changes, and enhance awareness among MSMEs.

The legal methods for MSMEs dispute resolution in Myanmar are integral to achieving the SDGs, particularly those related to economic growth, justice, and equality. While challenges remain, there are significant opportunities to strengthen these methods through reforms, capacity building, and the promotion of ADR. By aligning dispute resolution practices with SDG goals, Myanmar can create a more supportive environment for MSMEs, fostering sustainable development across the country.

Mediation offers a viable alternative for MSMEs in Myanmar to resolve disputes without engaging in lengthy and costly litigation. The flexibility in choosing mediators, despite their lack of specialized expertise, allows parties to focus on practical solutions rather than legal formalities. However, the effectiveness of mediation may depend on the willingness of the parties to comply with the mediated agreement and the mediator's ability to facilitate a fair outcome.

Conclusion

Dispute resolution (ADR) is a feasible and frequently favoured option for small and medium-sized enterprises (SMEs) in Myanmar to settle conflicts. The legislative framework, namely the Arbitration Law (2016), endorses the use of Alternative Dispute Resolution (ADR), and with the increased awareness, it is expected to become a more fundamental for Small and Medium-sized Enterprises (SMEs). However, obstacles like as enforcement and low awareness must be overcome to optimize the potential of Alternative Dispute Resolution (ADR) for Small and Medium Enterprises (SMEs) in Myanmar.

For the small and medium-sized enterprises involved in global commerce, alternative dispute resolution (ADR) provides a valuable option to conventional litigation. Small and medium-sized enterprises (SMEs) might employ arbitration, mediation, negotiation, or conciliation as effective means to settle conflicts, preserve commercial connections, and avoid the details and expenses linked to judicial processes. Gaining a comprehensive understanding of the details of each alternative dispute resolution (ADR) approach and choosing the suitable mechanism is essential for small and medium-sized enterprises (SMEs) to safeguard their interests and attain positive results in the international conflicts.

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References

Conventions

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

The United Nations Commission on International Trade Law (UNCITRAL), 1985.

Acts and Laws

The Arbitration Law, the Pyidaungsu Hluttaw Law No.5, 2016.

The Arbitration Procedure, the Supreme Court of the Union, Notification No. 643, 2018.

The Code of Civil Procedure, 1909.

The Contract Act, 1872.

The Limitation Act, 1909.

The Small and Medium Enterprises Development Rules, Ministry of Industry, Notification No. 21, 2017.

Books

A Primer on Arbitration in Myanmar, (2023), Lincoln Legal Services (Myanmar) Limited.

Alternative Dispute Resolution Manual: Implementing Commercial Mediation, Small and Medium Enterprise Department, (2006), The World Bank Group.

Butler, Petra and Oeveren, van, Hanneke, (2021), *SMES and International Commercial Dispute Resolution, International Commercial Law Issues*.

Carr, Indira and Stone, Peter, (2018), *International Trade Law*, Sixth Edition, Routledge.

Case Study Book on International Transaction, (2019) Supreme Court of the Union, Nay Pyi Taw.

Hendershot, Trey, (2021), *what is the difference between Arbitration and Litigation?*

Maung Maung Ohn Myaing, U, (2017), *General Knowledge of Arbitration*, Published by Ye Aung Sapay, First Edition, June, 2017.

Ramirez, Michael, (2013), *Arbitration of Commercial Disputes: Myanmar's Evolution, A Guide to Doing Business in Myanmar*, The-American Business, Volume 5.

Schroeter, G., Ulrich, (2017), Ad Hoc or Institutional Arbitron- A clear- Cut Distinction, A Closer Look at Borderline Cases, A*sia Arbitration Journal*.

Zaw Min, Albert., (2019) The advantages and disadvantages of institutional arbitration in general in comparison with ad hoc arbitration.

Internet Sources

http://www.oecd.org/cfe/smes/

https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternativedispute - resolution/handbook.pdf

www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf

Cited List of the Cases

Amalgamated Telecom Management Co., Ltd. Vs. Pan Asia Majestic Eagle Ltd. +2, civil appeal 389/2018; the Supreme Court of the Union.

Myanmar Economic Holdings Public Company Limited Vs. Myanmar Brewery Limited and Kirin Holdings Singapore Pte. Ltd., civil miscellaneous case 68/2021, Yangon Western District Court.

Shiseido Singapore (Co.) Pte Limited vs. Taw Win Oo Company Limited, Civil appeal No.358/2018, the Supreme Court of the Union.

Taw Win Family Construction Co., Ltd. Vs. Inno International Development Co., Ltd., civil review 183/2019, the Supreme Court of the Union.

Techo Corporation Pte. Ltd. Vs. Aye Family Co., Ltd., civil appeal 724/2018; the Supreme Court of the Union.