



MEMORANDUM OF GUIDANCE AS TO ENFORCEMENT OF MONEY JUDGMENTS
BETWEEN
THE SUPREME COURT OF THE UNION, REPUBLIC OF THE UNION OF MYANMAR
AND
THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

Introduction

1. The purpose of this Memorandum of Guidance (“Memorandum”) is to set out the parties’ understanding of the procedures for the enforcement of each party’s money judgments in the other party’s courts. This Memorandum is concerned only with judgments requiring a person to pay a sum of money to another person.
2. This Memorandum does not create any binding legal obligations on the parties. This Memorandum does not constitute a treaty or legislation, is not binding on the judicial officers of either party and does not supersede any existing or future laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing or future legal rights or relations or to create any binding arrangements for the reciprocal enforcement of each party’s money judgments in the other party’s courts.
3. The parties desire and believe that the cooperation demonstrated by this Memorandum will provide a mutual understanding of their laws and judicial processes and will improve public perception and understanding.

The Supreme Court of Singapore

4. The Supreme Court of Singapore is a superior court of law. It comprises the Singapore High Court and the Singapore Court of Appeal. The Singapore International Commercial Court is a division of the Singapore High Court and part of the Supreme Court of Singapore. As used in this Memorandum, “court of Singapore” refers to the Supreme Court of Singapore or the State Courts of Singapore and “courts of Singapore” refers collectively to both these courts.

The Supreme Court of the Republic of the Union of Myanmar

5. The Supreme Court of the Republic of the Union of Myanmar is the highest court of the Union and the court of final appeal, without affecting the powers of the Constitutional Tribunal and the Courts-Martial. As used in this Memorandum, “Myanmar court” or “Myanmar courts” refers to the Supreme Court of the Republic of the Union of Myanmar, 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 of the Republic of the Union of Myanmar.

The requirements for enforcing judgments of the Myanmar courts in the courts of Singapore

6. A foreign judgment in a civil or commercial matter may be recognised and enforced under Singapore law pursuant to — (a) the Reciprocal Enforcement of Commonwealth Judgments Act (Cap.264); (b) the Reciprocal Enforcement of Foreign Judgments Act (Cap.265); or (c) the Choice of Court Agreements Act (Cap. 39A).
7. There is currently no treaty in place pursuant to which either party's judgments may be enforced by the other party's courts. In the absence of a relevant treaty, a foreign judgment may be enforced in the courts of Singapore by a claim made at common law.
8. The approach of the courts of Singapore is similar to the position found in the English common law. Where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another (i.e., a money judgment), a legal obligation arises on the debtor to pay that judgment debt. This legal obligation to pay is separate from the underlying cause of action that gave rise to the judgment. The creditor may then bring a claim at common law to enforce that obligation as a debt.
9. The judgment of the Myanmar courts must be final and conclusive on the merits of the case, and for a fixed or ascertainable sum of money. The fact that there is an appeal to a higher court does not prevent the judgment from being final and conclusive.
10. The courts of Singapore will not enforce a judgment of the Myanmar courts which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law, or that orders the person against whom the judgment was given to do anything else apart from the payment of the judgment sum.
11. The Myanmar courts must have had jurisdiction, according to the conflict of laws rules determined to be applicable by the courts of Singapore, to determine the subject matter of the dispute. The courts of Singapore will generally consider the Myanmar courts to have had the required jurisdiction only where the person against whom the judgment was given:

- (a) was, at the time the proceedings were commenced, present or resident in the jurisdiction of the Myanmar courts;
 - (b) was the claimant, or counterclaimant, in the proceedings;
 - (c) submitted to the jurisdiction of the Myanmar courts; or
 - (d) agreed, before commencement of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the Myanmar courts.
12. Where the above requirements are established to the satisfaction of the courts of Singapore, a judgment of the Myanmar courts may be challenged in the courts of Singapore only on limited grounds. Those grounds include, but are not limited to:
- (a) where the judgment was procured by fraud;
 - (b) where the enforcement of the judgment would be contrary to Singapore public policy; and
 - (c) where the proceedings in which the judgment was obtained were conducted in a manner which the courts of Singapore regard as contrary to the principles of natural justice.
13. The courts of Singapore will not re-examine the merits of a judgment of the Myanmar courts. The judgment may not be challenged on the grounds that it contains an error of fact or law. A judgment of the Myanmar courts will be enforced on the basis that the judgment debtor has a legal obligation, recognised by the courts of Singapore, to satisfy a judgment of the Myanmar courts.

The requirements for enforcing judgments of the courts of Singapore in the Myanmar courts

14. There is currently no treaty in place pursuant to which either party's judgments may be enforced by the other party's courts. Recognition and enforcement of foreign judgments is generally a matter for national law. In order to recognize and enforce a foreign judgment in Myanmar, there is a need to notify "Reciprocating Territory" and 'Superior Court' of such country by the President as provided for under section 44A of the Code of Civil Procedure (1908).
15. In order to be enforced in any Myanmar court of competent jurisdiction, a judgment of a court of Singapore shall be conclusive as to any matter thereby directly adjudicated upon between the same litigating parties, or between litigating parties under whom they or any of them claim litigation under the same legal suit. The fact that there is an appeal to a higher court does not prevent the judgment from being conclusive.
16. The Myanmar courts will not enforce a judgment of the courts of Singapore for the payment of taxes or the payment of a similar nature or for a fine or other penalty.

17. The Myanmar courts will generally consider the courts of Singapore to have had the required jurisdiction only where the person against whom the judgment was given:
- (a) was, at the time when the proceedings were commenced, present or resident in the jurisdiction of the courts of Singapore;
 - (b) was the claimant, or counterclaimant, in the proceedings;
 - (c) submitted to the jurisdiction of the courts of Singapore by voluntarily appearing in the proceedings; or
 - (d) agreed, before commencement of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the courts of Singapore.
18. Where the requirements in paragraph 17 are established to the satisfaction of a Myanmar court, a judgment of the courts of Singapore will be considered conclusive, except:
- (a) where it has not been pronounced by a court of competent jurisdiction;
 - (b) where it has not been given on the merits of the case;
 - (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the laws of the Republic of the Union of Myanmar in cases in which such law is applicable;
 - (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
 - (e) where it has been obtained by fraud;
 - (f) where it sustains a claim founded on a breach of any law in force in the Republic of the Union of Myanmar.
19. A Myanmar court will execute a judgment of a court of Singapore unless the Myanmar court is satisfied that the judgment falls within any of the exceptions in paragraph 18(a) to (f).

The procedure for enforcement of judgments of the Myanmar courts in the courts of Singapore

20. In order to enforce a judgment of the Myanmar courts in the courts of Singapore, the judgment creditor must commence an action by filing a writ of summons in the courts of Singapore, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the writ.
21. A judgment creditor may obtain a certified copy of a Myanmar court judgment by making an application to the Myanmar courts. The application may be made without notice and must exhibit a copy of the judgment which is required to be certified. Where the Myanmar courts provide a certified copy of a Myanmar court judgment, it will provide a copy of the judgment on which will be endorsed a certificate that it is a true copy. The certificate will be signed by a Judge or by the Registrar. The certified copy of the judgment will be sealed with the seal of the Myanmar courts.

22. Where the judgment debtor is outside of Singapore, the judgment creditor will have to seek the leave of court to serve the writ out of jurisdiction in accordance with Order 11 of the Singapore Rules of Court. The application for leave should be supported by an affidavit:
 - (a) exhibiting a certified copy of the Myanmar court judgment;
 - (b) stating that the claim is brought to enforce a Myanmar court judgment (see Order 11, Rule 1(m) of the Singapore Rules of Court);
 - (c) stating that the judgment creditor believes that it has a good cause of action; and
 - (d) stating the place or country the judgment debtor is, or probably may be found.
23. If, following service, the judgment debtor does not respond to the claim by entering an appearance, the judgment creditor will be entitled to obtain judgment in default of appearance under Order 13 of the Singapore Rules of Court.
24. If the judgment debtor acknowledges service and enters an appearance, the judgment creditor must file and serve a statement of claim setting out the material facts which are relied upon for the claim, and the necessary particulars of the claim.
25. In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Order 14 of the Singapore Rules of Court, unless the judgment debtor can show that there is a triable issue in relation to a defence, which include, but are not limited to, the grounds set out in paragraph 12 above. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.
26. If the claim on the Myanmar court judgment is successful, the judgment creditor will then have the benefit of a judgment of a court of Singapore. The judgment creditor will be entitled, if necessary, to use the procedures of the courts of Singapore to enforce the judgment under Order 45 of the Singapore Rules of Court.

The procedure for enforcement of judgments of the courts of Singapore in the Myanmar courts

27. In order to enforce a judgment of the courts of Singapore in the Myanmar courts, a certified copy of a judgment of a court of Singapore has to be filed in the Myanmar court of competent jurisdiction. That judgment may be enforced in the Republic of the Union of Myanmar as if it has been passed by a Myanmar court of competent jurisdiction.
28. In order to enforce a judgment of a court of Singapore in the Myanmar courts, every application for the enforcement of the judgment shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in tabular form the following particulars, namely:
 - (a) the reference number of the legal suit;

- (b) the names of the parties;
 - (c) the date of the judgment;
 - (d) whether any appeals have been preferred from the judgment;
 - (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequent to the judgment;
 - (f) whether any, and (if any) what, previous applications have been made for the enforcement of the judgment, the date of such applications and their results;
 - (g) the amount with interest (if any) due upon the judgment, or relief granted thereby, together with particulars of any cross-judgment, whether passed before or after the date of the judgment sought to be enforced;
 - (h) the amount of the costs (if any) awarded;
 - (i) the name of the person against whom enforcement of the judgment is sought; and
 - (j) the mode in which the assistance of the Court is required, whether:
 - (i) by the attachment and sale, or by the sale without attachment, of any property;
 - (ii) by the arrest and detention in prison of any person;
 - (iii) by the appointment of a receiver;
 - (iv) otherwise, as the nature of the relief granted may require.
29. Together with the certified copy of the judgment of the court of Singapore, a certificate (or an equivalent Order of Court) from the court of Singapore, stating the extent, if any, to which the judgment has been satisfied or adjusted, shall be filed and such a certificate (or an equivalent Order of Court), shall, for the purpose of proceedings, be conclusive proof of the extent of such satisfaction or adjustment.
30. A judgment creditor may obtain a certified copy of a judgment of the court of Singapore by making an application in accordance with the respective Practice Directions of the courts of Singapore.
31. Where an application is made for the enforcement of a judgment of a court of Singapore, the Myanmar court enforcing the judgment shall issue a notice to the person against whom the enforcement is applied requiring him to show cause, on a date to be fixed, why the judgment should not be enforced against him. Where the defendant resides out of the Republic of the Union of Myanmar and has no agent in the Republic of the Union of Myanmar empowered to accept service, the notice may be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Myanmar court is situated.

32. Where the person to whom notice is issued under paragraph 31 does not appear or does not show cause to the satisfaction of the Myanmar court why the judgment of the court of Singapore should not be enforced, the Myanmar court shall order the judgment to be enforced.
33. Where such a person offers any objection to the enforcement of the judgment of the court of Singapore, the Myanmar court shall consider such an objection and make such order as it thinks fit.
34. The Myanmar courts shall apply the provisions of section 47 of the Code of Civil Procedure (1908).
35. Subject to such conditions and limitations as may be prescribed, the Myanmar courts may, on the application of the judgment creditor, order the enforcement of the judgment of the courts of Singapore:
 - (a) by attachment and sale or by sale without attachment of any property;
 - (b) by arrest and detention in prison;
 - (c) by appointing a receiver;
 - (d) by such other manner as the nature of the relief granted may require.

Term of Memorandum

36. This Memorandum shall commence on the date of signing by both parties. Either party may terminate this Memorandum by giving the other party six (6) months' prior notice in writing.

Modification of Memorandum

37. This Memorandum may be modified in writing and any such modification shall be signed by both parties.

Contacting the Parties

38. Further information about the Supreme Court of Singapore can be obtained:
 - (a) by visiting the website of the Supreme Court of Singapore at <https://www.supremecourt.gov.sg>; or

- (b) by contacting the Registry of the Supreme Court of Singapore:
- (i) at Level 2, 1 Supreme Court Lane, Singapore 178879;
 - (ii) by telephone at +65 6336 0644; or
 - (iii) by email at supcourt_registry@supcourt.gov.sg.
39. Further information about the Myanmar courts can be obtained:
- (a) by visiting the website of the Supreme Court of the Union at <http://www.unionsupremecourt.gov.mm>;
 - (b) by contacting the Director General of the Office of the Union Judiciary Supervision:
 - (i) at Office No. 54, Nay Pyi Taw, the Republic of the Union of Myanmar;
 - (ii) by telephone at +95 67 3430355; or
 - (iii) by email at scunionoff.dgjudicial@mptmail.net.mm.

SIGNED on the 10th day of February 2020.



The Hon. Sundaresh Menon
Chief Justice
Supreme Court
Republic of Singapore



The Hon. Htun Htun Oo
Chief Justice of the Union
Supreme Court of the Union
Republic of the Union of Myanmar