

Court-led Mediation in Myanmar: Practical Tips for Favourable Outcomes

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Introduction

As part of its ongoing efforts to effectively manage the increasing caseloads of the Myanmar Courts, the Supreme Court of the Republic of the Union of Myanmar ("**USC**") introduced a court-led mediation programme ("**Mediation Programme**") in March 2019 with the assistance of the Japan International Cooperation Agency (JICA). The Mediation Programme aims to provide an alternative time- and cost-saving means for litigants to resolve their disputes. The pilot Mediation Programme was first implemented at eight Township Courts and two District Courts, and subsequently at all state and regional High Courts.

On 11 October 2021, the Myanmar Civil Procedure Code ("**CPC**") was amended to formally introduce court-led mediation by law as one of the avenues for the resolution of civil disputes. The CPC now provides that the following types of cases should be first referred to court-led mediation to see if a settlement can be reached:

1. monetary claims, family disputes, and commercial disputes; and/or
2. cases which are referred to mediation either voluntarily by mutual consent of the parties or by any law or notification of the USC after the defendant has entered his appearance in the case.

In this article, we share our observations on how court-led mediation is currently being conducted, together with practical tips on how to maximise your chances for a successful outcome.

Statement of Issues / Mediation Case Statement

Unlike many other mediation programmes around the world, the Mediation Programme in Myanmar does not require the parties (or their solicitors) to submit a statement of issues or mediation case statement prior to the mediation. Parties

are only required to submit a copy of the Complaint and the Written Statement (akin to a "Defence" in other common law jurisdictions) together with the supporting documents attached to these pleadings, so as to provide the mediator with the necessary context to the dispute. All documents, communications and submissions shared during the mediation sessions are regarded as being shared on a "without-prejudice" basis.

Appointed Mediators

Parties are not able to choose their mediator under court-led mediation. Instead, the mediator will be assigned by the mediation centre from a panel of judicial officers who have completed a specialised mediation training programme. An advantage is that the appointed mediator would be well-placed to understand the relevant legal issues arising in each case. They would also be able to comment on the likely outcomes should the mediation be unsuccessful and parties continue with litigation in the Myanmar courts.

However, on the flip side, such mediators may sometimes be too focussed with looking at the dispute from a judicial perspective. This may result in them placing pressure on parties to reach a settlement in line with what the mediator thinks the outcome of the case should be.

General Procedure and Timeline

For cases referred to mediation within the Yangon Region, mediation would be conducted within the mediation centre set up at the premises of the Yangon Region High Court. The entire mediation process is typically scheduled to take place over two or three separate sessions, each usually lasting around one to two hours.

In total, the mediation process is to be completed within one month from the start of the mediation. However, the timeline can be extended with the mediator's consent if the mediator considers that a settlement can be achieved between parties.

In terms of attendees, mediators would generally require parties' respective company representatives to attend the mediation, as well as persons with sufficient authority to make decisions on behalf of the company. Legal counsel or advisors are also allowed to be present at the mediations. However, the mediators almost always prefer to hear from the parties' representatives directly rather than through their legal counsel or advisors.

Settlement Procedure

If parties are successful in reaching a settlement, a settlement agreement will be drawn up under the direction of the mediator for execution by the parties. After the settlement agreement is executed, the mediator will then report internally to the original court hearing the dispute. The parties would also be required to provide an update to the original court at the next scheduled hearing date. The original court will then issue a compromise decree which reflects the agreed terms of settlement.

If parties are unsuccessful in reaching a settlement through the mediation process, the case will resume as per the usual procedures in the original court.

Practical Tips and Concluding Remarks

The Mediation Programme is a good example of the Myanmar judiciary's efforts to continue to improve its processes and manage its caseloads. However, anecdotally speaking, the percentage of successfully mediated cases through this programme is still not high. This could be due to litigants and legal advisors needing time to familiarise themselves with

the processes and how to optimise their chances of a successful mediated settlement. In this regard, we would like to offer the following practical tips on how to best prepare for a court-led mediation:

1. Although parties are not required to submit a statement of issues or case statement ahead of the mediation sessions, we would recommend that parties do so. The case statement should be concise and clearly set out the relevant facts and evidence in support of your case, as well as your position on settlement. This would facilitate discussions and tend to sway the mediator's opinions in your favour.
2. Brief your company representative on the relevant legal and commercial arguments in support of your case, so that he/she will be able to effectively communicate these arguments to the mediator and to the other party.
3. Work out a negotiations strategy which takes into account that there would likely be three separate mediation sessions (i.e. three separate rounds of negotiations). As such, you should work out an opening offer along with two or three possible intermediate fallback positions, and what your "bottom-line" would be, prior to the start of the mediation.

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