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MYANMAR

Law and Practice

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1. Basis of Insurance and Reinsurance Law

1.1 Sources of Insurance and Reinsurance Law

Contract law is the main source of insurance and reinsurance law. Myanmar does not have a specific substantive law on insurance and reinsurance, therefore, insurance and reinsurance are based on contracts. Myanmar's Contracts Act dates back to 1872 and it is based on the Indian Contracts Act and English contract law principles.

In addition to Contract law, in the case of marine insurance, reference is also made to the Marine Insurance Act 1906 (from the UK) which, although it is not enacted in Myanmar, is persuasive in the event of any disputes which fall outside of the sphere of Contract law.

2. Regulation of Insurance and Reinsurance

2.1 Regulatory Bodies and Legislative Guidance

Myanmar enacted the Insurance Business Law (IBL) in 1996 and its Rules in 1997. Under Section 7 of the IBL, the Insurance Business Regulatory Board (IBRB) is the regulator of insurance business. The IBRB consists of seven members (Section 4).

2.2 The Writing of Insurance and Reinsurance

Section 35 of the IBL provides that the IBL is not applicable to the state-owned "Myanma Insurance", although Section 35 was repealed on 22 December 2015. However, Myanma Insurance was previously established under the Myanma Insurance Law and underwrites marine and non-marine insurance, totaling 30 kinds of insurance. Private insurance companies, of which there are currently 11, can underwrite initially only six kinds of insurance under Section 8 of the IBL, namely:

- life insurance;
- fire insurance;
- comprehensive motor insurance;
- cash in transit insurance;
- cash in safe insurance; and
- fidelity insurance.

The IBRB is authorised, pursuant to Section 8(g), to permit more kinds of insurance and, at the time of writing, private insurance companies are underwriting marine and non-marine insurance as well.

Under Section 10 of the IBL, the IBRB issued 12 Insurance Business Licenses in 2012. Out of the 12 licenses issued, one license was surrendered. Life and general insurance licenses are

separated and there were three life insurance business licenses and eight general insurance business licenses issued. If the state-owned "Myanma Insurance" is included, there are a total of 12 local insurance companies at the time of writing.

The minimum paid up capital requirement for life business license is MMK30 million and for general insurance license, it is MMK200 million.

Reinsurance is not yet allowed to be underwritten but Myanma Insurance can buy reinsurance covers from foreign reinsurers.

2.3 The Taxation of Premium

There is no such thing as special taxation on premium. Premium income is regarded as the revenue income and it is taxable under Income Tax Law 1974. The current rate is 25%. Insurance companies would also need to pay commercial tax for insurance transactions, with the exception of life insurance, under Section 4 of the Commercial Tax Law of 1974. The tax rate for this is 5%.

3. Overseas Firms Doing Business in this Jurisdiction

3.1 Overseas-Based Insurers or Reinsurers

Very recently, five foreign life insurers were allowed to underwrite life insurance in Myanmar. Furthermore, three foreign based general insurance companies and three foreign based life insurance companies were also recently allowed to form joint venture insurance companies with local insurers. Foreign participation is allowed up to 35% in accordance with the "foreign company" thresholds pursuant to the Myanmar Companies Law 2017 (MCL 2017).

Foreign insurance companies may also operate an Insurance Representative Office in Myanmar with the approval of IBRB.

3.2 Fronting

Fronting business is allowed only for the state-owned Myanma Insurance. Myanma Insurance will retain 30% of the risk and 70% will be transferred to a foreign insurer.

4. Transaction Activity

4.1 M&A Activities Relating to Insurance Companies

Since the insurance market in Myanmar is young (about seven years old), prior to the recent foreign insurer participation as stated in **3.1 Overseas-Based Insurers or Reinsurers**, there were previously no reported M&A activities. As stated, equity participation is allowed up to 35%, pursuant to the MCL 2017,

and, as such, three joint-ventures in general insurance and three joint-ventures in life insurance have arisen in Myanmar in recent years.

5. Distribution

5.1 Distribution of Insurance and Reinsurance Products

Distribution of insurance products in Myanmar is done mainly through the use of insurance agents. Insurance products are also distributed via direct sales through branches of insurance companies. Attempts have been made for online distribution but it has yet to fully take place in Myanmar.

6. Making an Insurance Contract

6.1 Obligations of the Insured and Insurer

Myanmar does not have a specific insurance law but it follows the general contract law principles, as mentioned in **1.1 Sources of Insurance and Reinsurance Law**. Therefore, the tenets of contract, being offer, acceptance and consideration, are observed.

6.2 Failure to Comply With Obligations

Failure to comply with contractual obligations result in breach of contract and, depending on whether the breach is, a warranty or condition would give rise to termination and a claim in damages.

6.3 Intermediary Involvement

No intermediary is allowed in insurance transactions at this point in time. However, this might be changed with the advent of foreign insurance companies being permitted to operate in Myanmar.

6.4 Legal Requirements and Distinguishing Features of an Insurance Contract

Myanmar's legal system is based on the common law system and Myanmar follows the principles of the English contract law. Therefore, common law principles are also followed in insurance matters. For example, Myanmar does not as yet have a Marine Insurance Law, however, Myanmar observes the English Marine Insurance Act 1906 in order to resolve legal issues in connection with marine insurance for both cargo and hull covers. For example, the English insurance principles that are referred to include matters such as indemnity, proximate cause, subrogation, etc.

As in other countries, Myanmar regards insurance policies not as a contract but similar to bills of lading, as an evidence of an

insurance contract. Myanmar is still using old British policy wordings for all kinds of insurance.

6.5 Multiple Insured or Potential Beneficiaries

There shall not be multiple insureds. Companies or other separate legal entities consisting of shareholders or members, are regarded as one insured only. Beneficiaries under a contract of insurance are insureds except in the case of life insurance wherein an insured can nominate beneficiaries other than him or herself.

6.6 Consumer Contracts or Reinsurance Contracts

The making of consumer contracts or reinsurance contracts follows the general principles of the usual insurance contracts.

7. Alternative Risk Transfer

7.1 ART Transactions

Myanmar's insurance market is a young market, being only seven years old, and there is no official guideline as to an Alternative Risk Transfer (ART) mechanism. In practice, however, local insurance companies are using a form of simplistic ART that is co-insurance. Local insurance companies enter into a collective co-insurance agreement (there are only 12 insurance companies) to transfer their risks and the state-owned Myanmar Insurance takes the lion share.

7.2 Foreign ART Transactions

Almost non-existent in Myanmar, only state-owned Myanmar Insurance uses the traditional method of risk transfer mechanism that is "reinsurance" through international brokers. Myanmar Insurance enters into aviation, marine and fire Reinsurance Treaties every year. It uses the "tender" method in selecting the best rates, terms and conditions. Myanmar Insurance usually utilises the "excess of loss" method.

8. Interpreting an Insurance Contract

8.1 Contractual Interpretation and Use of Extraneous Evidence

Myanmar enacted "The Interpretation of Expression Law" in 1973 and contracts inclusive of insurance contracts observe those rules as guidelines. Those rules are similar as practiced in common law countries.

8.2 Warranties

Warranties are generally defined as those contractual terms breached of which would not invalidate the contract. Conditions are opposite of warranties. Breach of conditions can

invalidate the contracts. In insurance, however, warranties are important and breaches of warranties could invalidate the contract. Parties that suffer as a result of breach of warranties would have legal recourse, claim for damages and discharge themselves from liability.

8.3 Conditions Precedent

Fraudulent Claims

It is a universal principle that fraud can void contracts ab initio. This rule applies in insurance contracts as well. Therefore, if there is a fraudulent claim, insurers are not liable to indemnify the claim and they can even recover what they have paid as indemnity when they discover the fraudulent claim or act.

Freedom of Contract

The legal doctrine of the freedom of contract is observed but all forms of policy wordings shall be submitted to and approved by the IBRB in advance. The market practice is to use the wordings of the State-owned Myanma Insurance.

9. Disputes

9.1 Disputes Over Coverage

As common in other countries, there are dispute settlement mechanisms contained in insurance contracts in Myanmar. However, any disputes over coverage are usually referred to IBRB for a final decision.

9.2 Disputes Over Jurisdiction and Choice of Law

There are no disputes in the local insurance market because all local insurance contracts are subject to Myanmar jurisdiction and law. Myanma Insurance has entered into reinsurance contracts with international reinsurance companies and usually disputes are referred to a third country's jurisdiction.

9.3 Litigation Process

Insurance contract disputes fall within the ambit of civil law and litigation process complies with the Civil Procedure Code of 1908 (CPC). The procedure is similar to that in other common law countries. In brief, the civil suit starts with a notice served on the other party (defendant) followed by submission of a written plaint by the plaintiff/complainant to the competent court having jurisdiction over the matter (determined in accordance with the CPC). Then the court will serve a summons for the defendant to appear in court. Thereafter, the Court conducts a preliminary hearing to decide whether to admit/hear the case based on the arguments and evidence submitted by both parties.

If the Court decides not to admit the case, the matter is dismissed. If, however, Court decides to admit the case, then the matter will progress to case management and Court will pro-

ceed to trial to hear the testimony of witnesses, examine evidence presented and, finally, respective counsels of the parties will submit legal arguments. Based on the merits of the case, the court will render judgement. The parties who are not satisfied with the court's decision will have a right of appeal to a higher court.

9.4 The Enforcement of Judgments

The CPC was enacted in 1908 but and it still applies as the framework for civil disputes in Myanmar. The CPC provides for the enforcement of foreign judgements in two categories. The first category is with a reciprocating country. Section 44A of the CPC provides that a certified copy of a degree of any of the judgement of a reciprocating country, if filed in a District Court, may be executed in Myanmar as if it had been passed by the District Court. The reciprocating country shall be announced by the President however it is noted that so far no announcements of any reciprocating country has been made.

The other category is with any country and it is provided under Section 13 of the CPC that "a foreign judgement shall be conclusive adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except:

- where it has not been pronounced by a Court of competent jurisdiction;
- where it has not been given on the merits of the case;
- 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 law of India in cases in which such law is applicable;
- where the proceedings in which the judgement was obtained are opposed to natural justice;
- where it has been obtained by fraud; and
- where it sustains a claim founded on a breach of any law in force in Myanmar".

It is noted that Section 13(c) of the CPC refers to the law of "India" as the CPC in Myanmar was initially adopted from India. To date, there have been no amendments to Section 13(c) but this shall generally now be interpreted with reference to the laws of Myanmar.

9.5 The Enforcement of Arbitration Clauses

On 15 July 2013, Myanmar became a signatory to the New York Convention on Enforcement of Foreign Arbitral Awards. In 2016, Myanmar enacted its domestic Arbitration Law 2016 ("AL 2016"). By virtue of the legal framework set forth in the AL 2016, arbitration clauses are recognised and may be enforced in Myanmar. Pursuant to Section 10(A) of the AL 2016, if there is

an arbitration clause, the local courts have to stay any proceedings which is the subject of an arbitration agreement.

9.6 The Enforcement of Awards

Enforcement of foreign arbitral awards is provided under Sections 45 to 48 of the AL 2016. There are currently no reported cases on the enforcement of foreign arbitral awards in Myanmar.

9.7 Alternative Dispute Resolution

Mediation is common in commercial disputes. The Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) has a special mediation mechanism which works well in commercial disputes. Moreover, the UMFCCI has recently, in 2019, set up an arbitration centre (Myanmar Arbitration Centre) as a means of alternative dispute resolution in Myanmar.

9.8 Penalties for Late Payment of Claims

It is generally regarded that claims should be paid within a reasonable time. Insurance companies can generally pay small and straight forward claims quite quickly. However, it might be a different scenario when it comes to complex and large claims. In this kind of scenario, fact finding (investigation) might take more time and adjustment of the claim would also be time consuming. Therefore, the term “reasonable time” is a variable factor. In Myanmar, the general rule is that claims should be processed and paid as quickly as possible. There are no implied or express terms as to the time of payment of claims.

10. Insurtech

10.1 Insurtech Developments

The Myanmar insurance market is in its nascent stage and insurance companies are unlikely to be looking at sophisticated Insurtech mechanisms at this time. However, they are considering e-commerce and examining models to establish whether insurance may be sold online.

10.2 Regulatory Response

The authors are of the view that the IBRB is in favour of insurtech and is encouraging insurance companies to utilise insurtech as much as possible as the Myanmar insurance market develops.

11. Emerging Risks and New Products

11.1 Emerging Risks

Myanmar ranked second out of 183 countries most affected by extreme weather events between 1995 and 2014, in the Global Climate Risk Index. Climate change threatens to compound the frequency and intensity of these events. For the period from

1998 to 2017, Puerto Rico, Honduras and Myanmar ranked highest, based on the Global Climate Risk Index 2019. Though extreme weather events are threats, the insurance cover is sold as an additional cover and most of the insured do not purchase such additional cover. Therefore insurance payment for losses caused by extreme weather risks are not high in Myanmar.

Cyber Risks

Myanmar has 18 million internet users out of a population of 53 million. E-commerce is worth USD3.5 million and e-payments are increasing. Therefore, Cyber Risk, although at present is not yet a threat, may become ever more prevalent within the next three to four years.

11.2 New Products or Alternative Solutions

Myanmar insurance market now has foreign players and joint ventures working side by side, therefore it is anticipated that there will be new insurance products made available in Myanmar in the near future. It can be reasonably expected that medical insurance, education insurance, new life insurance products, such as investment-link-life insurance, would be the usual kind of products first made available and launched within the next two to three years. New products must first have a regulatory approval under the IBL. So far, there is no alternative solution considered in the market but Myanmar is a member of SEADRIF (South East Asia Disaster Risk Insurance Facility) and the first alternative solution under it will be to set up a regional catastrophe risk insurance program for Myanmar.

12. Recent and Forthcoming Legal Developments

12.1 Developments Impacting on Insurers or Insurance Products

The IBRB is currently drafting a new Insurance Business Law which will annul the existing Insurance Business Law enacted in 1996. It might give more regulatory power to the IBRB and more liberalisation to the insurance companies. Solvency margin of insurance companies may be provided in line with the international practice.

13. Other Developments

13.1 Additional Market Developments

Myanmar has seen two kinds of liberalisation, the liberalisation of the market and the liberalisation of products. Before 2012, there was one insurance company and it was the state-owned “Myanma Insurance” formed under the Myanma Insurance Law of 1993. In 1996, the Insurance Business Law was enacted and, in 2012, as previously mentioned, insurance licences were

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issued to the private sector. Very recently, five foreign life insurance companies and six joint-ventures were allowed to underwrite life and non-life insurance in Myanmar. It is anticipated that product liberalisation will take place soon in Myanmar.

ZICO Law Myanmar was established in 2013 and operates as a full-service law firm that has developed a strong local grounding and expertise in the local market, legal systems and business practices. The firm's insurance practice is led by Dr Maung Maung Thein, a former Deputy Minister of Finance with over 40 years' experience and a key figure instrumental in the establishment and liberalisation of the Myanmar Insurance market. The firm also advises on a wide range of areas such as foreign investments, corporate commercial, communications, media and technology, M&A, projects, infrastructure and utilities,

oil and gas and real estate. The firm was selected to advise the Myanmar government in the South East Asia Disaster Relief Insurance Fund, an ASEAN+3 initiative backed by the World Bank, and regularly advises private companies in their insurance claims as well. The Yangon office is supported by a team of local Myanmar lawyers and a number of regional secondees lawyers from ZICO Law, a network of leading integrated local firms focused on ASEAN. It has a presence in 18 cities in all ten ASEAN member countries and over 300 lawyers.

Authors



Dr Maung Maung Thein is the executive chairman of ZICO Law Myanmar. He is a former Deputy Minister of Finance with over 40 years' experience working in the public and private sectors. He is a well-known insurance expert who was instrumental in the establishment and

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