



FAQ ON INJUNCTION ORDERS FOR CIVIL DISPUTES: DFDL MYANMAR

JANUARY 2023

NO.	KEY QUESTIONS	ANSWERS
1.	<p>How is an injunction defined, and what are the different categories and characteristics of the available injunctions?</p>	<p>I. Definition:</p> <p>The Code of Civil Procedure (“CPC”) has no definition of an injunction. However, in the words of Lord Halsbury, “Injunction is a judicial process whereby a party seeks to refrain someone from doing something or seeks a direction from a court to direct a person to perform a certain act.”</p> <p>II. Categories:</p> <p>Generally, there are two types of injunctions:</p> <ol style="list-style-type: none"> 1. Temporary Injunction 2. Perpetual/Permanent Injunction <p>Temporary injunctions are interim remedies granted for a specific period or until the court gives further orders regarding the matter in concern. Section 53 of the Specific Relief Act (“Act”) states “Temporary Injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure, 1908 (Act V of 1908). Order XXXIX of CPC lays down rules for temporary injunctions.</p> <p>Perpetual/Permanent injunctions, as defined in Section 53 of the Act, can be granted by the court by passing a decree and only after hearing and upon the merits of the suit. The defendant is perpetually prohibited from assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. Furthermore, Section 54 of the Act lays down the circumstances under which the court may grant a perpetual injunction.</p> <p>Mandatory Injunction</p> <p>Section 55 of the Act stipulates “When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”</p>

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2.	<p>Under what circumstances may a party apply for an injunction? Please factor in all types of injunctions and, if necessary, sub-divide the responses by the form of the injunction.</p>	<p>I. Temporary injunction</p> <p>An application for temporary injunction may be filed by the plaintiff during the proceedings. As per Rule 1, Order 39 of CPC, the court can grant an order for temporary injunction for any property in dispute in the following cases:</p> <ol style="list-style-type: none"> i. The property runs the danger of being wasted, damaged or alienated by any party to the suit; ii. the defendant threatens or intends to remove or dispose his property to defraud his creditors. This is specific to defendant solely. <p>II. Perpetual Injunction</p> <p>As per Section 54 of the Act, a perpetual injunction is granted to prevent the breach of an obligation existing in favour of the applicant, whether implicit or explicit. The Court may grant a perpetual injunction when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, in the following cases:</p> <ol style="list-style-type: none"> i. where the defendant is trustee of the property for the plaintiff ; ii. where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion; iii. where the invasion is such that pecuniary compensation would not afford adequate relief; iv. where it is probable that pecuniary compensation cannot be got for the invasion; (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.
3.	<p>At which stage of a proceeding may a petition for injunction be filed, and can an injunction be an independent proceeding without the need to file a suit as sine qua non?</p>	<p>Temporary injunction - At any stage of the suit. Perpetual injunction - At any stage of the suit but the court can only grant perpetual injunction by the decree made at the hearing and upon the merits of the suit.</p> <p>The courts have taken the view that an application for temporary injunction is not independent of the original suit. It is a derivative of the original suit and owe their birth to the original proceedings. A pending suit is <i>sine qua non</i> for initiating an application for injunctive relief. Hence, application for injunctive relief should originate from the original proceedings.</p>

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		<p>However, in cases of a suit simpliciter for perpetual injunction, courts have taken the view that it must be accompanied with a prayer for declaration of title.</p> <p>A mandatory injunction may be granted on an interlocutory application as well as at the hearing, but only under rare and exceptional circumstances.</p>
4.	<p>What objective indicators are needed to understand my eligibility for an injunction?</p>	<p>Injunction is granted at the discretion of the courts, and thus, the following elements must be satisfied by the Applicant:</p> <ol style="list-style-type: none"> 1. Existence of a prima facie case in favor of the plaintiff and against the defendant. 2. Irreparable injury may be caused to the plaintiff, which cannot be compensated monetarily. 3. Balance of Convenience in favor of the plaintiff 4. The dispute raised is bona fide and there is a probability of the applicant being entitled to the injunctive relief claimed by them.
5.	<p>What is the procedure for initiating an injunctive proceeding?</p>	<p>At any stage of the pending suit, parties can file for an interlocutory application for interim injunctions. The plaintiff has to undertake to compensate the respondent if it is subsequently determined that the interim injunction was not warranted. It is to be proved by affidavit or otherwise, that any property in dispute is in danger of being dissipated, damaged or alienated by any party to the suit. Another condition is the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors. The court can order a temporary injunction for the purpose of preventing the wasting, damaging, alienation, sale, removal or disposition of the property until the disposal of the suit or until further orders under Order 39, rule 1 of the CPC. Perpetual injunctions are governed by Sections 54 to 57 of the Specific Relief Act, 1877 and can only be granted by way of a decree.</p>
6.	<p>What would be an appropriate forum in your jurisdiction to present a</p>	<p>The hierarchy of courts in Myanmar has four levels listed below (from the highest to lowest):</p> <ol style="list-style-type: none"> 1. Supreme Court of the Union

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	<p>petition for the granting of injunctions?</p>	<ol style="list-style-type: none"> 2. High Courts of the States or Regions (“High Court”) 3. District Courts 4. Township Courts. <p>All these courts are vested with the power to adjudicate civil and commercial matters. This pecuniary jurisdiction is subject to certain financial limits.</p> <p>The following is the pecuniary jurisdiction of the courts in Myanmar:</p> <ol style="list-style-type: none"> 1. Township Courts: up to MMK 10,000,000; 2. District Courts: up to MMK 3,000,000,000; 3. High Courts of regions and states: No limits 4. Supreme Court: No limits <p>All the four categories of courts have original jurisdiction, with Supreme Court being the highest appellate authority. The Supreme Court of the Union can also be the court of first instance.</p>
<p>7.</p>	<p>How much does the judge's discretion influence allowing or disallowing a grant of injunction?</p>	<p>Injunctions are a discretionary relief. It is not available as a remedy as of right. The court is required to satisfy itself on the following grounds:</p> <ol style="list-style-type: none"> 1. Existence of a prima facie case in favor of the plaintiff and against the defendant. 2. Irreparable injury may be caused to the plaintiff, which cannot be compensated monetarily. 3. Balance of Convenience in favor of the plaintiff 4. The dispute raised is bona fide and there is a probability of the applicant being entitled to the injunctive relief claimed by them.
<p>8.</p>	<p>How are injunctions enforced, and what are the</p>	

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	<p>consequences for not complying with an injunction order?</p>	<p>There is no specific provision for implementation of an injunction order. However, Part II of the CPC provides for execution of decrees which shall, so far as applicable, be deemed to apply to the execution of orders (Section 36). The injunction order may be executed either by the Court which passed it, or by the Court to which it is sent for execution. An application has to be made by the applicant of the injunction against the judgement-debtor. The Court may, thereafter, order for the execution of the decree/injunction order by:</p> <ol style="list-style-type: none"> i. Delivery of any property specifically decreed; ii. Attachment and sale or by sale without attachment of any property; iii. Arrest and detention in prison; iv. Appointing a receiver; or v. In such manner as the nature of the relief granted may require. <p>As per Section 94 of the CPC, the party committing disobedience will be subject to civil prison and the property belonging to the party may be attached and sold.</p> <p>Generally, the Contempt of Courts Law stipulates provisions for civil contempt of courts. Civil Contempt of Courts means disobedience of Judgement, Decree, order, Directive, or Summon intentionally. If anyone is convicted of committing civil contempt, in our case, defying an injunction order or decree, they shall be punished with a fine not exceeding MMK 100,000. If it is assumed that it is not enough with a fine, he shall be punished with civil imprisonment for a term not exceeding three months.</p>
9.	<p>What processes can be followed to assail an unsatisfactory injunction order? Is there a statute of limitations to take up such a process?</p>	<p>An appeal can be filed against an order or decree of injunction passed by any court exercising original jurisdiction before the Court vested with the power to entertain such appeals (Section 96 of the CPC). An appeal may also lie from an original decree passed <i>ex parte</i>. An appeal from an injunction order under Rule 1, 2, 4 and 10 of Order XXXIX is also governed by Section 104 read with Order XLIII. The District Courts, High Courts, and the Supreme Court are all vested with appellate jurisdiction.</p>

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		<p>The Limitation Act of 1908, governs the limit for civil suits and prescribes limitation period according to the nature of cause of action. Appeals can be made within 60 days from the date of the decree passed by the District Court and 90 days from the date of the decree passed by the High Court.</p>
10.	<p>Is injunctive relief by the courts in private arbitration available in your jurisdiction?</p>	<p>As per Section 11 of the Arbitration Law of 2016, the courts have the power to intervene in arbitration on the request of a party, unless otherwise agreed by the parties. The party may seek the assistance of the court, <i>inter alia</i>, to issue interim injunction or appoint a receiver. The courts can also participate in the arbitral proceedings by granting a stay of suit.</p>

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