LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

*(Up to date as of 23 August 2024.)*

# PRIMER: CRIMINAL PROCEDURE IN MYANMAR

## 1. Categories of offences

Offences in Myanmar are categorised as

- cognizable/non-cognizable,
- bailable/non-bailable, and
- compoundable/non-compoundable.

It is important to understand these opposing pairs as procedures and consequences differ significantly depending on how an offence is categorised.

### (a) Cognizable and non-cognizable offences

The idea behind this pair is that some offences are not severe enough to merit the expenditure of state resources each time. These are non-cognizable offences: The police may investigate them only if a judge orders the police to do so. Otherwise, the aggrieved party is reduced to investigating himself and presenting evidence and arguing his case in court, things that otherwise the police and the public prosecutor would do.

In contrast, cognizable offences are so serious that the police are compelled to investigate if a cognizable offence is reported to them, and the public prosecutor must prosecute if police investigation revealed sufficient evidence.

Officially, cognizable offences are defined as those for which the police may arrest without a warrant (section 4 (1) (f) Code of Criminal Procedure) and non-cognizable offences as those for which the police may not arrest without warrant (section 4 (1) (n) Code of Criminal Procedure).

In Burmese language texts, cognizable cases are referred to as “cases where the police may take action” and non-cognizable cases as “cases where the police may not take action”.

Whether an offence is cognizable or non-cognizable is specified in Schedule II to the Code of Criminal Procedure (for offences under the Penal Code), the respective law itself (e.g., section 60 Police Force Law 2022, section 70 Industrial Zone Law, section 94 Copyright Law), and sometimes in a by-law (e.g., rule 1 Ministry of Planning and Finance



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

Notification 44/2024, rule 43 (a) Counter-Terrorism Rules). Where no explicit specification exists, we think that the offence must be categorised as "non-cognizable".

As an overview, cognizable offences are differentiated from non-cognizable offences as in the table below:

| Sr. | Cognizable offences | Non-cognizable offences |
|---|---|---|
| 1. | Defined as an offence for which the police may arrest without warrant under "any law … in force" (s. 4 (1) (f) Code of Criminal Procedure) | Defined as an offence for which the police may not arrest without warrant (s. 4 (1) (n) Code of Criminal Procedure) |
| 2. | Police may record information received as a "first information report" and start investigating on their own (s. 154, 156 Code of Criminal Procedure) | Police shall record summary of information received and refer the informant to the magistrate; may only investigate with order of the magistrate (s. 155 Code of Criminal Procedure) |
| 3. | Offender may be arrested by any private citizen (s. 59 (1) Code of Criminal Procedure) | "Citizen arrest" not specifically allowed |
| 4. | Police may take preventive action according to s. 149-153 Code of Criminal Procedure | Police may take preventive action only with court order |
| 5. | Examples: Theft (section 378 Penal Code); criminal breach of trust (section 405 Penal Code); voluntarily causing hurt by dangerous weapons or means (section 324 Penal Code) | Examples: Cheating (fraud) (section 415 Penal Code); forgery (section 463 Penal Code); voluntarily causing hurt (section 321 Penal Code) |

**(b) Bailable and non-bailable offences**

Bailable offences are those that are explicitly specified as such in Schedule II to the Code of Criminal Procedure (for offences under the Penal Code) or in any other law. All other offences are non-bailable (section 4 (1) (a) Code of Criminal Procedure).

The English expressions are a bit misleading: At the discretion of the police or court, bail may be granted also for non-bailable offences.

Examples for bailable offences include criminal breach of trust (section 405 Penal Code), voluntarily causing hurt (section 321 Penal Code), voluntarily causing hurt by dangerous



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

weapons or means (section 324 Penal Code), cheating (fraud) (section 415 Penal Code), and forgery (section 463 Penal Code).

Examples for non-bailable offences include theft (section 378 Penal Code), forgery of valuable security (section 467 Penal Code), and counterfeiting currency notes (section 489A Penal Code).

The process for applying to be discharged on bail is as follows:

**(aa) Discharge on bail for bailable offences**

Any person accused of a bailable offence who was arrested without a warrant may at any time while in custody give bail following which he **must** be released (section 496 Code of Criminal Procedure).

If the police have not brought the accused before a court yet, he must petition the officer in charge of the police station (sections 170 (1), 496 (1) Code of Criminal Procedure). If he has in the meantime been brought before or remanded into custody by a court, he must petition the court (i.e., a magistrate), section 496 (1) Code of Criminal Procedure.

The requested guarantee amount shall not be too high and shall be determined based on whether the accused can offer a surety (i.e., a guarantor) and the seriousness of the offence (para. 1785 Police Manual).

“Giving bail” means that (i) the accused signs a bond promising to pay a certain amount of money if he does not show up for a court hearing and (ii) this bond is guaranteed by one or more than one guarantor (“surety”), section 499 Code of Criminal Procedure.

In practice, it appears that sureties must be persons with immovable property in the township who are recognised by the police or court to be suitable sureties, and that they charge a fee.

Instead of signing a bond, the officer or court may allow the accused to deposit money or government bonds (section 513 Code of Civil Procedure).

Instead of taking bail, the officer or the court may in their discretion release the accused on his executing a bond without sureties (bailable offences only).



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

**(bb) Discharge on bail for non-bailable offences**

The term "non-bailable offences" is a bit of a misnomer as, except for death penalty and some other serious cases, the officer in charge of the police station or the court is allowed to grant bail. However, this is discretionary and the reasons for so doing must be recorded in writing (section 497 (1), (3) Code of Criminal Procedure).

Case law from the 1960s holds that granting bail is the rule and not the exception (Hussain Bux Khan v. The Union of Burma, High Court 1960, Burma Law Reports p. 194). However, we understand that it is difficult to convince the police or court to grant bail in non-bailable cases.

**(c) Compoundable and non-compoundable offences**

Often, the victim of a crime institutes criminal proceedings only to pressure the perpetrator into providing some sort of compensation (e.g., the return of stolen goods, refund of embezzled money, monetary compensation for physical harm) and wishes to terminate proceedings if this goal is achieved.

The victim may cause the termination of proceedings if an offence is listed as compoundable (which means, "may be removed from prosecution") in section 345 (1) and (2) Penal Code, and in other instances.

**(aa) How the complainant may terminate a police investigation**

If the police are still investigating (either because they received a first information report on a cognizable offence or were instructed by a magistrate to investigate a non-cognizable offence) and haven't yet sent the charge sheet to court, the complainant may reach out to the police station and politely inform them of his intention to withdraw the complaint. This may require additional documents (such as an affidavit confirming that this decision was taken voluntarily or a copy of the settlement agreement).

Ideally, the police will reach out to the law office which may, among others, close a case if "investigation is suspended" (para. 1438 Police Manual). A township law officer may decide this on his own without consulting with higher hierarchy if the offence carries a penalty of not more than 7 years (rule 95 (a) Attorney-General of the Union Rules).



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

A complainant has as such no right to request law enforcement agencies to terminate an investigation once commenced, but it appears that if the offence is limited to harm to the complainant's own property or physical integrity (and is not as bad as attempted murder or the rape of a minor), termination can usually be achieved.

**(bb) How the complainant may terminate court proceedings**

If the case is pending in court because the police sent their charge sheet to the magistrate (section 173 (i) Code of Criminal Procedure) or the complainant made a private complaint with the magistrate (section 190 (1) (a) Code of Criminal Procedure), the complainant may achieve termination in the following cases:

- If (i) the case was brought before the magistrate as a private complaint, (ii) the offence is non-cognizable or compoundable (i.e., listed in section 345 (1) and (2) Code of Criminal Procedure), and (iii) the complainant is absent from any hearing, the magistrate may discharge the accused (section 259 Code of Criminal Procedure);
- in summons cases (cases where the offence is punishable with up to 6 months), the complainant may at any stage before a final order withdraw the complaint with the magistrate's permission whereupon the accused is acquitted (section 248 Code of Criminal Procedure);
- if the case is prosecuted before the court by a public prosecutor, the complainant may try to persuade the public prosecutor to withdraw the offence from prosecution (with the magistrate's consent) whereupon the accused is discharged or acquitted (section 494 Code of Criminal Procedure);
- if the offence is listed in section 345 (1) Code of Criminal Procedure, the aggrieved person may (at any stage before a final order, we assume) compound the offence (i.e., request it to be removed from prosecution) without the magistrate's permission, and if it is listed in section 345 (2), compound it with the magistrate's permission. The composition of an offence has the effect of an acquittal (section 345 (6) Code of Criminal Procedure).



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

**2. State actors in the investigation, prosecution and adjudication of crimes**

Crimes are investigated, prosecuted and adjudicated by the (i) Myanmar Police Force, (ii) law offices and (iii) courts.

**(a) The Myanmar Police Force**

The Myanmar Police Force is controlled by the Ministry of Home Affairs. The State Administration Council ("**SAC**") reorganised its structure on the basis of its Myanmar Police Force Law 2022.

The Police Force is headed by a Chief at the Union level and hierarchically organised along the lines of Regions/States (section 3 (e) Police Force Law), districts and townships (section 67 Police Force Law). Specialised departments exist within the police (section 5 (e) Police Force Law), among them the Special Intelligence Department (Special Branch), the Criminal Investigation Department and the Financial Investigation Force.

Police conduct is regulated in the Police Manual. The Police Manual is divided into 4 volumes but its paragraphs are numbered consecutively from paragraph 1 in Volume 1 to paragraph 2051 in Volume 3. Volume 4, which is available only in English on the Myanmar Police Force's website, contains appendices.

Important for criminal investigations are Volume 2 (outdated English version) and Volume 1 (outdated English version).

**(b) Law offices**

Law offices (controlled by the Ministry of Legal Affairs, newly created by the SAC in 2021 by reorganising the Union Attorney-General's Office) exist at the township, district, Region/State and Union level with the Union Attorney-General being the highest officer. In criminal proceedings, their officers in particular (i) advise on and supervise the police investigation (section 36 (a), (b), (f) and (h) Attorney-General of the Union Law), (ii) prosecute criminal cases before the court (section 36 (c)) and (iii) file appeals against acquittals (section 36 (o)).

**(c) Courts**

Courts of first instance in criminal cases are the township and the district courts.

Judges are appointed and their jurisdiction (as outlined in sections 30, 31 and 34 Code of Criminal Procedure) is determined by the Union Supreme Court (section 64 Union Judiciary Law 2010).



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

In a township court, one township judge is appointed who may (i) try a case himself or (ii) assign it to another judge. Depending on the workload of a township court, the Supreme Court may additionally appoint (i) additional township judges and (ii) deputy township judges.

Judges trying criminal cases in the first instance are called magistrates.

A township judge by virtue of his office automatically has the powers of a special magistrate who may impose prison terms of up to 7 years and unlimited fines. An additional township judge may do so only if the Supreme Court has given him the powers of a special magistrate. Deputy township judges may impose punishments as per the powers vested in them, namely:

- First class magistrates: imprisonment up to 3 years, including solitary confinement, and a fine up to MMK 100,000;
- second class magistrates: imprisonment up to 1 year, including solitary confinement, and a fine up to MMK 50,000;
- third class magistrates: imprisonment up to 3 months, and a fine up to MMK 30,000.

In a district court, one district judge is appointed who may (i) try a case himself or (ii) assign it to another judge. Additionally, the Supreme Court appoints deputy district judges.

District judges (and deputy district judges if so authorised by the Supreme Court) may impose any penalty, provided that any death sentence is subject to confirmation by the Supreme Court.

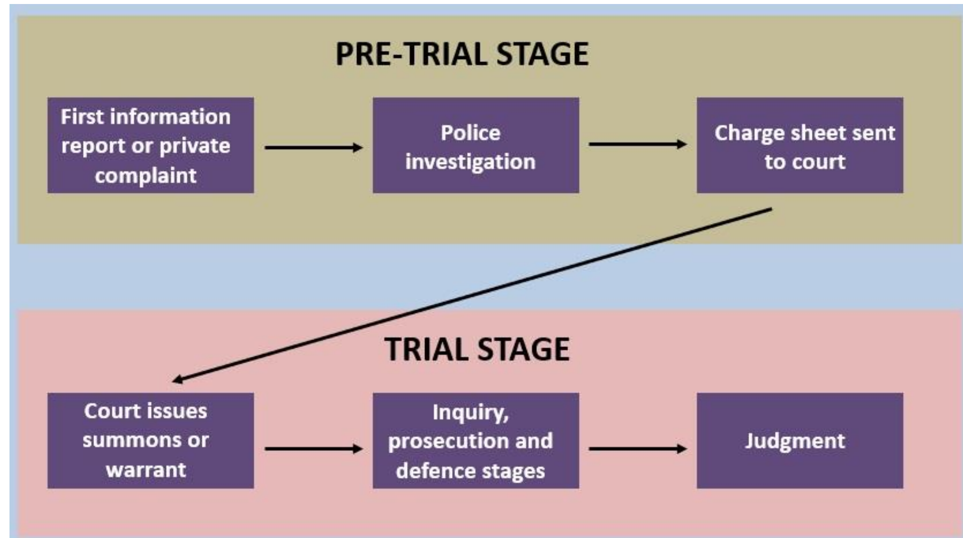
Judges at the township and district courts try cases alone; there is no bench. There is also no participation by a jury or other lay judges.

## 3. Criminal proceedings step by step

Criminal proceedings can be divided into a pre-trial stage (where the police investigate) and a trial stage (where the accused is tried in court).



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com




**(a) Pre-trial stage**

**(aa) First information report with the police (cognizable offences)**

Anybody with knowledge of a cognizable offence may approach the police to report it, irrespective of whether his knowledge is full or slight or direct or from hearsay (para. 1414 Police Manual). We understand that in practice, police officers may insist on the first information report (section 154 Code of Criminal Procedure) being made by the victim himself in person out of preference for own knowledge over hearsay, at least in cases involving money and property (e.g., criminal breach of trust by an employee).

This means that the victim may not be able to instruct a lawyer to open the case with the police and must personally come to the police station. A lawyer may, however, accompany the victim.

We understand that if the victim is a company, the first information report must be made by a director of the company (not any other manager) who must present (i) the company's certificate of incorporation and company extract and (ii) a resolution of the board of directors authorising this director to file the first information report.

Police officers seem to insist that the first information report be filed at the police station within whose limit the offence was allegedly committed as they may not investigate beyond this local area (section 156 (1) Code of Criminal Procedure).

Para. 1412 Police Manual provides that if the information is in writing, the police officer shall copy it into the First Information Book. In practice, however, one would expect the officer to request the informant to orally make the report for it to be reduced to writing. The report is then read to the informant who must sign it.

Once the first information report is countersigned by the police officer in charge, the police may start investigating.

**(bb) Complaint with the magistrate (non-cognizable offence)**

If information about a non-cognizable offence is reported to the police, the police shall only record the substance of such information in the General Diary and refer the informant to the magistrate (section 155 (1) Code of Criminal Procedure). The police may not investigate without the order of a magistrate (s. 155 (2) Code of Criminal Procedure).

Complaints of non-cognizable offences are made to the magistrate (section 190 (1) (a) Code of Criminal Procedure).

We understand that a complaint of an offence to the magistrate may not be made by proxy and that, if the victim is a company, the complaint must be made by a director.

In a first step, the magistrate shall examine the complainant under oath and reduce to writing the substance of the examination (section 200 Code of Criminal Procedure). Thereafter, there are three main options:

- The magistrate finds the complaint unconvincing and dismisses the case (section 203 Code of Criminal Procedure).
- The magistrate orders the police to investigate (section 202 (1) Code of Criminal Procedure). From then on, the case follows the same pattern as a cognizable case after the filing of a first information report with the exception that the police need a warrant to arrest the accused.
- The magistrate starts the criminal trial right away by summoning the accused for the first hearing or issuing a warrant for his arrest (section 204 Code of Criminal Procedure). The case follows the same pattern as a cognizable case after the police sent the charge sheet to the magistrate except that a public prosecutor is only involved if the magistrate



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

requests his involvement (rule 102 (c), (f) Union Attorney-General Rules). Otherwise, the complainant's lawyer will have to act as prosecutor and name and investigate witnesses, present other evidence and plead.

**(cc) Rights of the accused during the pre-trial stage**

**(aaa) "Fair Trial Guidebook" from 2018**

The Union Attorney-General published a Fair Trial Guidebook for Law Officers in 2018 which can still be accessed through the website of the Ministry of Legal Affairs under the SAC as of the date of writing of this primer. It is not known to what extent law officers may consider this guidance to have been rendered obsolete in the meantime.

**(bbb) Early access to a lawyer**

Section 25 Legal Aid Law 2016 originally read:

> *"25. Concerning a person detained or arrested, the legal aid provider:*
>
> *(a) Shall notify the families of the person detained or arrested at the police station or elsewhere and, if necessary, provide legal aid according to this law;*
>
> *(b) shall provide legal aid to defend against a remand requested in court or against continued detention through a remand;*
>
> *(c) shall provide legal aid to defend against the investigation or scrutiny by the Police Force or [other] relevant organisation that will bring charges;*
>
> *(d) shall provide necessary legal aid during the trial in court."*

On 19 April 2021, the State Administration Council ("**SAC**") decreed substantial amendments to the law. Section 25 now only reads:

> *"25. The legal aid provider shall provide necessary legal aid during the trial in court."*

As a result, accused persons do no longer seem to have the right to access a lawyer at the pre-trial stage as the Code of Criminal Procedure in section 340 grants such access only at the trial stage.

On a sidenote, paras. 1198, 74 (c) Police Manual state that a guard of a police lock-up has the duty to, among others, prevent anybody from meeting and speaking with the prisoner without permission from the



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

officer-in-command, except "judges, lawyers and police officers in charge," but we suppose that the word "lawyers" refers to law officers and not defence counsels.

There is an attorney-client privilege in Myanmar. Communication between legal practitioners (and their interpreters, clerks and servants) and their clients is in principle not admissible as evidence (sections 126, 127 Evidence Act). However, there is no right for an accused to have private conversations with his lawyer in pre-trial detention. Section 40 Prisons Act provides that (only) unconvicted criminal prisoners "under trial" may see their duly qualified legal advisers without the presence of any other person.

**(ccc) Other rights of the accused during the pre-trial stage**

| Particulars | Situation in Myanmar |
| --- | --- |
| No threat or violence during interrogation | Police officers are prohibited from offering or making inducements, threats or promises (section 163 (1) Code of Civil Procedure) and confessions gained by such methods may not be used as evidence (section 24 Evidence Act).<br><br>Inflicting hurt or grievous hurt to extract a confession or information or threatening the accused with an injury are furthermore criminal offences (sections 330, 331 and 503 Penal Code). |
| Right to remain silent | No specific provisions as such.<br><br>However, confessions made to a police officer are not admissible as evidence (section 25, 26 Evidence Act). Confessions must be recorded by a magistrate who must advise the accused that he is not obliged to confess and be satisfied that the confession is made voluntarily (section 164 Code of Criminal Procedure). |



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

| Particulars | Situation in Myanmar |
| --- | --- |
| | Conversely, a police officer may not prevent the accused from incriminating himself if his statements are made of his own free will (section 163 (2) Code of Criminal Procedure). |
| Right to be informed about the grounds for arrest | No specific provisions. |
| Presumption of innocence until convicted | No explicit provisions in any statute, but this principle is stated in case law until the 1960s (Hussain Bux Khan v. The Union of Burma, High Court 1960, Burma Law Reports p. 194) - “an accused person is presumed under the law to be innocent until his guilt is proved”).<br><br>According to this principle, grant of bail is the rule and refusal is the exception (same decision). Furthermore, unconvicted criminal prisoners must be kept apart from convicted criminal prisoners (section 27 (3) Prisons Act).<br><br>In court, prosecution must prove that the accused committed the crime (section 101 Evidence Act). |
| Right to an interpreter | The SAC’s amendment of the Legal Aid Law in 2021 removed the right to an interpreter during the pre-trial stage.<br><br>At the trial stage, the accused has the right to an interpreter when evidence is given if the accused is not represented by a pleader (section 361 (1) and (2) Code of Criminal Procedure). If the accused is examined by |



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

| Particulars | Situation in Myanmar |
|---|---|
| | the magistrate, the record of such examination must be translated to him (section 364 (1) Code of Criminal Procedure). |
| Consular assistance for foreign nationals | Should not be impeded according to art. 36 Vienna Convention on Consular Relations. The British embassy has a good explanation on its website of what consular assistance can achieve and what it cannot. |

**(dd) Police investigation**

Once the first information report has been written, the police shall immediately investigate the case if there is reason to believe that a cognizable offence was committed (para. 1423 Police Manual). Important powers of the police during investigation include the ability to arrest the accused without warrant in cognizable cases, make searches and seizures and compel witnesses to testify.

**(aaa) Arrest without warrant (cognizable cases only)**

If the accused is suspected of having committed a cognizable offence, the police may arrest him without court warrant for questioning and detain him for 24 hours (section 61 Code of Criminal Procedure).

The police officer may furthermore search the accused and place in safe custody all articles except clothes found upon him (section 51 Code of Criminal Procedure), provided that women may only be searched by women (section 52 Code of Civil Procedure).

If the investigation is not completed within 24 hours and there are reasons to believe that the accusation is well-founded, the police shall forward the accused to the nearest magistrate (section 167 (1) Code of Criminal Procedure) who must decide whether to order continued detention (section 167 (2) Code of Criminal Procedure) either in a lock-up where the court is situated or, if there is a jail, in the jail (para. 1351 Police Manual).



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

The remand period ordered by the magistrate may extend to 15 days (para. 1741 note 2 Police Manual) and may be extended by another 15 days to 30 days in total if the offence is punishable with 7 years or more (section 167 Code of Criminal Procedure.) This process may be repeated multiple times (para. 1741 note 2 Police Manual) without there being, it appears, a specific upper limit on how many times the accused may be remanded.

Unlawfull detention may be challenged before the High Court (section 491 (1) (b) Code of Criminal Procedure). Unlawful detention may furthermore be challenged before the Supreme Court with the application for a writ of habeas corpus (section 16 (a) (1) Union Judiciary Law) but not during a state of emergency as during such period the application for writs is suspended (section 296 (b) Constitution 2008).

**(bbb) Searches/seizures**

**(1) Searching for the accused**

If there is a warrant on the accused or the accused is suspected of a cognizable offence, a police officer may demand access to any place where the accused is suspected of hiding (section 47 Code of Criminal Procedure) without requiring a warrant from a court to make such request. If access is not granted, he may break into the place if the accused might otherwise escape (section 48 Code of Criminal Procedure).

**(2) Searching for documents and things**

The officer in charge of the police station may, without requiring a warrant from a court, order any person in writing to produce any document or thing considered necessary or desirable in an investigation, inquiry, trial or other proceeding (section 94 (1) Code of Civil Procedure).

Provided that such order may only be made by a district or higher court if Myanmar Post should deliver a document, parcel or thing (section 95 (1) Code of Civil Procedure). Furthermore, an order compelling a bank to produce ledgers and other books



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

used in their ordinary business may only be made by a court (section 5 Bankers' Books Evidence Act).

If there is reason to believe that the person will not produce the document or thing or if the possessor is not known, the officer may search or require subordinate officers to search for the document of thing within the limit of the police station (section 165 (1), (2) Code of Criminal Procedure) or require the officer in charge of another police station to conduct the search there (section 166 (1) Code of Civil Procedure).

The officer may, without requiring a warrant from a court, demand access to the place to be searched. If access is not granted, he may break in (sections 165 (3), 102, 48 Code of Criminal Procedure). Persons found in the premises suspected of concealing articles may be searched, provided that women may only be searched by women (sections 165 (3), 102 (3), 52 Code of Criminal Procedure).

Searches may only be conducted in the presence of two witnesses who must sign the list of articles found (sections 165 (3), 103 (2) Code of Criminal Procedure). The occupier of the premises or his representatives may attend during the search, shall sign the list of articles found and shall be given a copy thereof (sections 165 (3), 103 (3) Code of Criminal Procedure).

Paras. 1703-1717 Police Manual describe in detail how searches are to be conducted.

In addition to the police, also courts may order the production of documents or things (section 94 (1) Code of Criminal Procedure) and order searches (section 96 Code of Criminal Procedure).

**(ccc) Examination of witnesses**

Any investigating police officer may order in writing the attendance of witnesses and examine them (sections 160, 161 (1) Code of Criminal Procedure). Witnesses must answer the officer's questions unless such



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

answer might expose the witness to criminal charges (section 161 (2) Code of Criminal Procedure).

The examination may be reduced into writing, but the witness may not be compelled to sign his statement, and it may not be used as evidence in court. Rather, the witness shall be summoned again at the trial stage to give testimony, and his earlier statement may only be introduced to detect contradictions or impeach his credibility (sections 162 (1) Code of Criminal Procedure, 145, 155 Evidence Act).

**(ee) Sending the police report to the court**

At the end of the investigation period, the police must decide whether they think that there is sufficient evidence to prosecute the accused in court.

If the police think that there is sufficient evidence, the police officer in charge of the police station must (i) ask the law officer to review the case (rule 99 Attorney-General of the Union Rules), and (ii) send a police report ("charge sheet") with relevant information and documents to the magistrate (section 173 (1) Code of Criminal Procedure).

If the police think that there is not sufficient evidence, the "township police chief" (who we understand to be the officer in charge of the police station - there is only one per township) shall send the case to the township law officer who shall decide whether to close it (para. 1438 Police Manual). If the accused has been remanded into custody by a magistrate, he shall be released immediately if he signs a bond (at the discretion of the officer in charge, with or without sureties), section 169 Code of Criminal Procedure. A release without bond is only possible on the orders of a magistrate (para. 1444 Police Manual).

**(b) Trial stage**

**(aa) Inquiry by the magistrate**

**(aaa) Calling the accused to court: Summons or warrant**

After receipt of the charge sheet, the magistrate must decide whether to issue a summons (notice to the accused to appear before the court) or a warrant (order to the police to arrest the accused and bring him before the court).



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

For offences marked with "summons" in Schedule II to the Code of Criminal Procedure, the magistrate must issue a summons. For those marked with "warrant," it is in his discretion whether to issue a summons or a warrant (section 204 (1) Code of Criminal Procedure).

If the accused is already in custody, the police forwards him to the magistrate according to section 170 (1) Code of Criminal Procedure (together with the charge sheet, no doubt) and the magistrate may prolong custody by up to 15 days until the next hearing date (section 344 (1) Code of Criminal Procedure) unless the accused manages to get released on bail.

**(bbb) Inspection of court records by the accused's lawyer**

With the beginning of court proceedings, the accused's lawyer has the right to inspect court records (para. 103 (43) Court Manual) and decide which parts are so essential that he requires copies (para. 457 (2) Court Manual). The court records would contain the police's charge sheet and the documents that went with it, but not the entire police file.

**(ccc) Complainant or other victim may hire a lawyer as private prosecutor**

A complainant or other victim may hire a lawyer to act as private prosecutor under the directions of the public prosecutor (section 493 Code of Criminal Procedure). This lawyer requires permission in general from the law office (rule 115 (a) Attorney-General of the Union Rules) and for each single act that he wishes to do before the court from the law officer in charge of the case (rule 117 Attorney-General of the Union Rules).

**(ddd) Framing the charge**

In the first and subsequent hearings, the magistrate hears the complainant (if any) and takes the prosecution's evidence (witnesses, expert witnesses, documents, physical evidence); the accused may cross-examine the complainant and the prosecution's witnesses (section 252 (1) Code of Criminal Procedure).

It is reported that the prosecution's witnesses often do not show up. In this case, it appears that the magistrate often adjourns the hearing and remands the accused into custody until the next hearing date, for a



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

maximum of 15 days at a time (section 344 (1) Code of Criminal Procedure).

The magistrate may at any stage conclude that the accused did not commit the offence. in this case, he must discharge the accused there and then (section 253 (2) Code of Criminal Procedure, para. 538 Court Manual).

Conversely, the magistrate may at any stage conclude that the accused did commit the offence. In this case, he must frame in writing a charge against the accused (i.e., inform the accused what he intends to convict him of), read and explain it to him, and ask him whether he is guilty or wishes to make any defence (section 255 (1) Code of Criminal Procedure).

If the accused pleads guilty, the magistrate may convict him there and then (section 255 (2) Code of Criminal Procedure).

**(bb) Prosecution stage**

If the accused does not plead guilty and/or registers his intent to make a defence, he is given the opportunity to cross-examine (again) the prosecution's witnesses (section 256 (1) Code of Criminal Procedure). The prosecution may then call for examination, cross-examination and re-examination any remaining witnesses that were not yet examined during the magistrate's inquiry (section 256 (1) Code of Criminal Procedure).

**(cc) Defence stage**

The accused may then voluntarily take the stand as his own witness (and be cross-examined like any other witness), section 256 (2) Code of Criminal Procedure. If he decides against it, the magistrate may put questions to him which he is allowed to answer falsely or refuse to answer, but the magistrate may draw conclusions from the accused's refusal to answer (sections 256 (2), 342 (2) (iii) Code of Criminal Procedure).

Thereafter, the accused's evidence is taken; in particular, his witnesses are examined, cross-examined and re-examined (section 256 (2) Code of Criminal Procedure.



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

**(dd) Judgment**

Depending on the conclusion reached by the magistrate, the accused is acquitted or convicted (section 258 Code of Criminal Procedure).

Offenders under 21 convicted of an offence punishable with not more than 7 years, first-time offenders under 21 and first-time female offenders may be eligible for probation (section 562 Code of Criminal Procedure).

**(ee) Shortened procedure in summons cases**

The shared names are, we think, accidental: Whether an accused is called to attend court with a “summons” or forcibly brought before it by virtue of a “warrant” has nothing to do with whether the case is tried as a “summons case” or as a “warrant case.”

A warrant case relates to an offence punishable with imprisonment of more than 6 months (section 4 (1) (w) Code of Criminal Procedure). All other cases are summons cases (section 4 (1) (v) Code of Criminal Procedure.

The procedure for warrant cases is the standard procedure explained above.

In a summons case, the magistrate shall (ideally in the first hearing) state the particulars of the offence to the accused and ask him whether he has any cause to show why he should not be convicted (section 242 Code of Criminal Procedure).

If the accused admits the offence, the magistrate may convict him there and then (section 243 Code of Criminal Procedure).

Otherwise, the magistrate examines the prosecution’s evidence and the accused’s evidence and either acquits or sentences the accused (section 244, 245 Code of Criminal Procedure).

**4. Appeals**

Appeals against judgments of the township court are made with the district court (sections 407, 408 Code of Criminal Procedure) and against judgments of the district court with the High Court (section 410 Code of Criminal Procedure).

The appellate court’s decision is final and may not be challenged in its turn with an appeal to a higher court (section 417 Code of Criminal Procedure) with two important exceptions:



No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region
Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)
E-mail: info@lincolnmyanmar.com - Web: www.lincolnmyanmar.com

- The public prosecutor may appeal against an acquittal by the appellate court (sections 430, 417 Code of Criminal Procedure).
- Any party may apply to a higher court to call for and examine the record of any proceedings before a lower court to detect any errors (sections 430, 435 (1) Code of Criminal Procedure) which, in fact, seems to work like an appeal against the appellate court's decision (sections 417, 439 (1), 423 (1) Code of Criminal Procedure). A case that was originally tried in a township court may therefore end up at the Supreme Court after having gone through the relevant district court and High Court.

## About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

Sebastian Pawlita, Managing Director
E-Mail: sebastian@lincolnmyanmar.com

Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)

Office address: No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region

Web: www.lincolnmyanmar.com