



緬甸勞動法及勞動紛爭解決

-July 2020





- **個案一（改編案例，非真實事件）**
- 某廠A在緬甸有幾個廠，其中一個在仰光近郊的蘭達雅鎮，另有幾個在較遠的地方。近年，蘭達雅的工運頻傳，員工流動過快，經營環境惡化，因此，A擬關閉蘭達雅廠。該廠有約**1000**名員工。
- A正式公告，表示完全依法資遣、補償。部分員工同意，大部分員工反對，進行罷工，該罷工未經核准。
- A與員工歷次協商，歷次都部分員工接受，停止了罷工。
- 最後一小批員工，在法定程序中，最後也同意補償方案。



■ 個案二（改編案例，非真實事件）

- 某廠B，從CCTV中發現約10個員工趁黑夜偷出工廠的原料。經證據蒐集充分後，在一個人贓俱獲的現場，B要求員工主動辭職。
- 事後，員工提起勞動仲裁，要求給付工資、並聘回該10名員工。
- 仲裁結果認為B不需要給付工資、不需並聘回該10名員工。
- 員工於遲誤上訴期限後，上訴，上訴仲裁仍接受，裁決認為B應給付資遣費、但是不需並聘回該10名員工。
- B向法院起訴，法院駁回。此時，B以遲誤裁決要求的期限，需多賠償20%。
- B向員工提起刑案，但迄未有回覆。



■ 個案三（改編案例，非真實事件）

- 某廠C，是國際知名品牌的成衣代工廠。在緬甸有一廠，約數百名員工，登記負責人甲通常不在緬甸現場。
- 因管理風格差異（雇主實施「軍事化管理」，外籍主管使用廁所習慣不好），衝突發生，外籍經理被打傷。該100多名員工與工廠就此相持了半年。員工透過社群媒體，直接攻擊品牌聲譽。
- 在品牌壓力下，C決定完全滿足員工超出法律、市場合情的要求。
- 在糾紛解決過程中，甲因為無法應訴，被法院通緝。
- 主管乙在一次衝突中，與女員工推擠，被控性騷擾。
- 在某次調解中，被發現使用人頭代持土地，相關人員被送辦。



勞動紛爭解決

I 準備階段

- 依法簽署勞動合同、依法登記
- 合法合規經營
- 依法管理紛爭前階段

II 爭議現場

- 避免激化、複雜化糾紛
- 分批談判
- 尋求當地勞動官員協助

III 法律程序

- 個別紛爭解決
- 集體紛爭解決
- 罷工及臨時關廠



■ 依法簽署勞動合同、依法登記

- 用工日起**30**天內，應簽署勞動合同，違犯者，得處**6**個月以內有期徒刑或併處罰金)。僱傭契約應向鎮區勞工辦公室提交備查，實務上，對於未滿**5**人企業，鎮區勞工辦公室並不受理備查。

- **Employment and Skill Development Law (2013) Sec.5 (a)**



■ 勞動合同應記載事項

- **Employment and Skill Development Law (2013) Sec.5 (b)**



- 五人以上，即應簽署，應提交鎮區勞動辦公室同意、登記

- **MoL Notification 140/2017**



■ 合法合規經營

- 例如：使用人頭代持土地、未依法繳稅、未取得相應的證照核准、未按時提供公司法（每年）/投資法（每季）的申報、企業轉讓未取得核准等
- 在勞動糾紛發生時，違法狀態成為被攻擊的致命傷



■ 合法合規經營 (cont.) – 最低工資

- 4800緬幣(每天)，每日8小時計，每小時600緬幣。
- 10人或 family business（舊制為15人）以下不適用
- Notification no. 1/2018
- 不得低於法定最低工資；男女同工同酬。
- Minimum Wage Law (2013) Sec 12, 14
-
- 100人以下，當月結束日給付；100以上，當月結束5日內給付。
雇主解僱員工，2天內給付。
- Payment of Wage Act (2016) Sec 4

■ 合法合規經營 (cont.) – 工時

- 一天最多8小時，一周最多48小時。至少周休1日。
- Shops and Establishment Law (2016) Sec 11 (a)
- 加班限制：每週加班不超過12小時；特殊情況時，不超過16小時。
- Shops and Establishment Law (2016) Sec 11 (b)
- 連續工作4小時，應至少休息30分鐘。
- (雇員上下班及休息時間**AM8:30-12:30/13:30-17:30**午休**12:30-13:30**)
- 每日加班含休息時間不得超過11小時
- Shops and Establishment Law (2016) Sec 11 (a)



■ 合法合規經營 (cont.) – 培訓期及試用期

- 勞動契約得約定培訓期（於適用期之前），不長於**3**個月，試用期間薪水不少於**50%**
- [Redacted]
- 勞動契約得約定試用期，不長於**3**個月，試用期間薪水不少於**75%**
- [Redacted]
- Minimum Wage Rules (2013) Sec. 43 (I)



■ 合法合規經營 (cont.) – 休假

- 休假 (有給)：
 - 公共假日(約26天)
 - 連續任職超過12個月(每月工作超過20天，若該月未工作滿20天，則扣除1天休假)，得享有10天年假。年假沒有用完，需補薪(過去30天的平均薪資)，需2天內給付。
 - 若採日曆年，例如，第一年若只有6個月，第二年則享有5天。服務年則無此問題。
- 事假 (有給)：
 - 1年6天(除宗教、習俗、葬禮外，1次不超過3天)，不得與其他假別併用。事假沒用完，即放棄。
 - 任職即享有，無論在職多長。
- 病假 (有給)：一年不超過30天，需醫生證明。(工作滿6個月後享有給病假)。
- 產假 (有給)：
 - 分娩前6週；分娩後8週。若為雙胞胎可再增加4週。流產則至多6週。
 - 配偶可享有15天產後育嬰假。

■ 合法合規經營 (cont.) – 社保

- 分攤比例:投保費用占雇員月薪5%。雇主負擔2%(Health and social care Insurance System)+1% (Employment Injury Benefit Insurance System)。雇員負擔2%(Health and social care Insurance System)。
- 薪資以**MMK300,000**封頂，繳交**5%**（雇主**MMK9,000** / 僱員**MMK6,000**）
- Social Security Law (2012), Social Security Rules (2014)



■ 合法合規經營 (cont.) – 辭職及資遣

- 1. 辭職：雇員需於1個月前提交辭職信。雇員自請辭職者，雇主毋須支付資遣費。確認辭職後，員工應交還雇主託付之薪資卡、員工卡、工作相關設備、材料、帳戶、錢等公司資產。（此屬契約自由事項）
- 2. 資遣
- 資遣程序：雇員違反契約條款或工作規則之一般違紀第1次接受口頭告誡，第2次接受書面告誡，第3次違紀則需簽署「承諾書」。倘12個月內第4次違紀則可以資遣並無須支付資遣費，12個月內無再犯紀錄則重新計算。雇員嚴重違紀可以不經事前通知，逕行資遣(e.g. physical abuse)，並無須支付資遣費。
- 2017年版模範勞動契約, Sec. 15
- 雇主應依法定理由解雇員工：至少1個月前通知，並支付資遣費。（法定理由依據勞工法及僱傭契約相關規定）。
- Ministry of Labour, Employment and Social Security, Notification No. 84/2015



■ 合法合規經營 (cont.) – 資遣費

任職期限	資遣費
6個月至1年	0.5個月薪資
1-2年	1個月薪資
2-3年	1.5個月薪資
3-4年	3個月薪資
4-6年	4個月薪資
6-8年	5個月薪資
8-10年	6個月薪資
10-20年	8個月薪資
20-25年	10個月薪資
25年以上	13個月薪資



■ 依法管理紛爭前階段

- 蒐集、保留證據
- 人資部門的角色、經驗
- 提早為紛爭解決程序做準備



■ II 爭議現場

- 避免激化、複雜化糾紛
- 分批談判
- 尋求當地勞動官員協助



■ III 法律程序

- 個別紛爭解決
- 集體紛爭解決
- 罷工及臨時關廠



相關法規

- Settlement of Labor Dispute Law, 2012 (“**SLDL 2012**”)
- Law Amending to the Settlement of Labor Dispute Law, 2014 (“**SLDL 2014**”)
- Law Amending to the Settlement of Labor Dispute Law, 2019 (“**SLDL 2019**”)
- The Settlement of Labor Dispute Rule, 2012 (“**SLDR 2012**”)
- Labour Organization Law 2012
- Labour Organization Rules 2012
- Law on the application of Writ (2014)



勞動糾紛分類

Individual Dispute 個別糾紛

(Dispute relating to Rights)

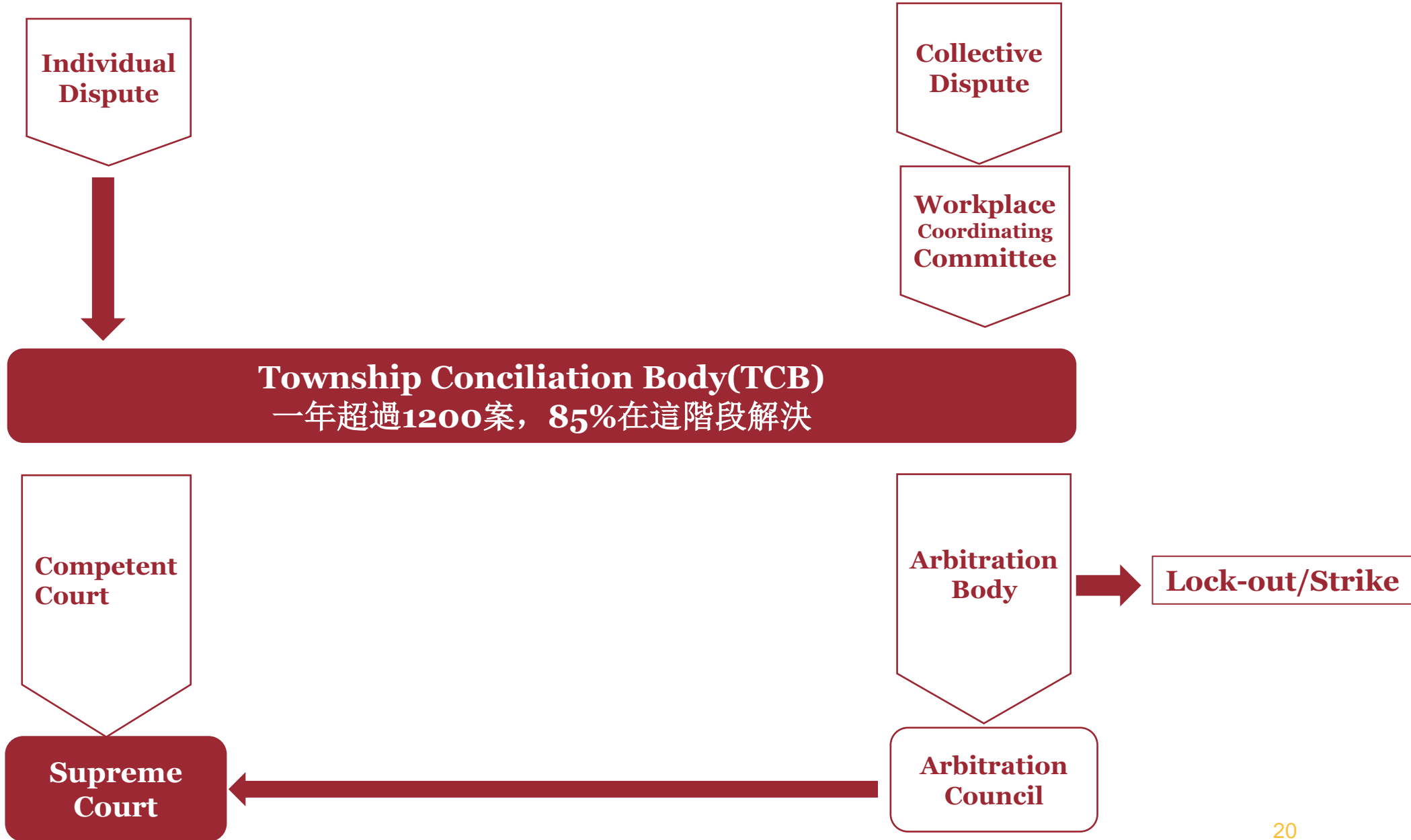
- Between an individual employee and his or her employer
- Arise from the existing entitlements (“rights”)

Collective Dispute 集體糾紛

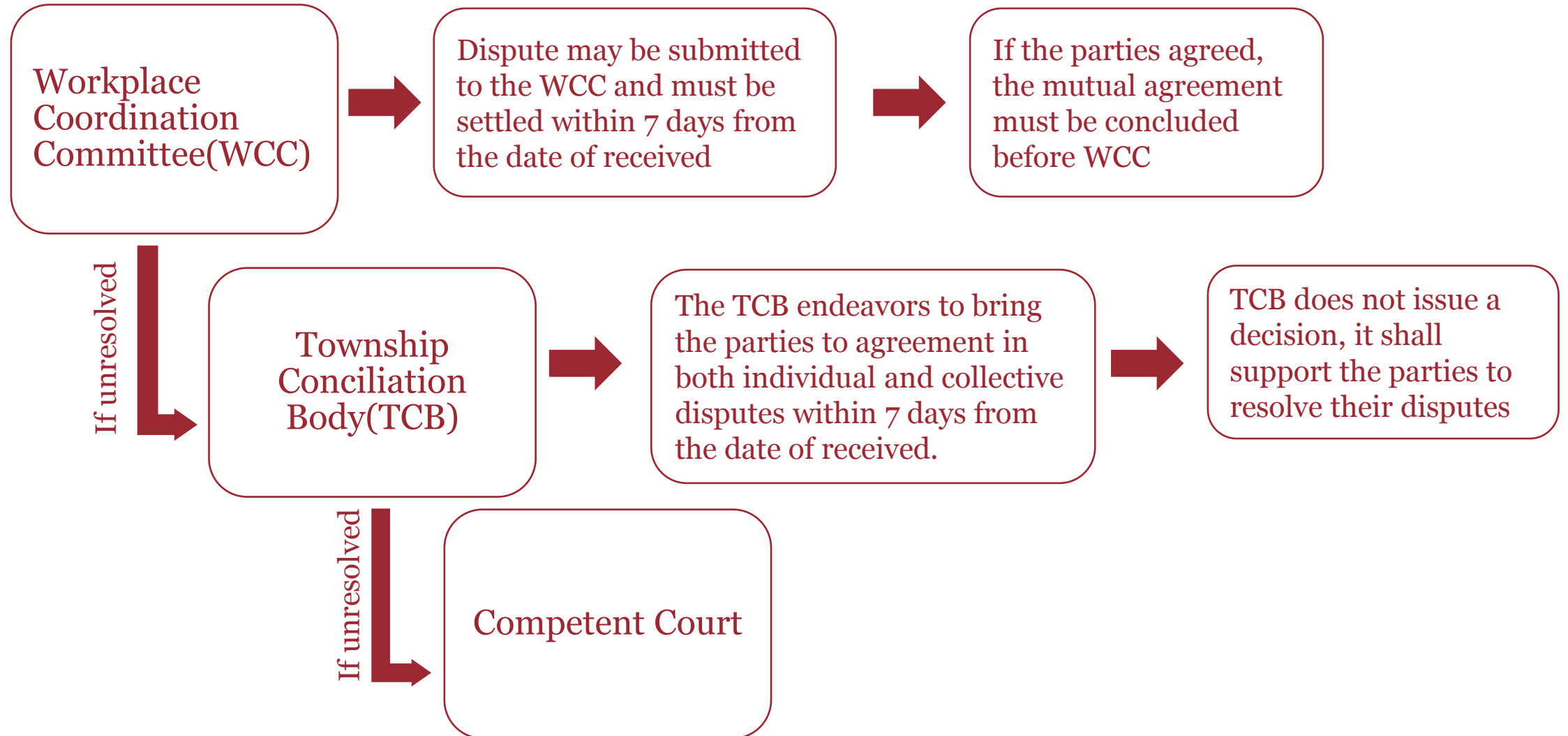
(Dispute relating to Rights or Interests)

- Between an employer (or employers’ organizations) and employees or Labor Organization(s)
- Arise to negotiate over a new collective an agreement or new terms in employment (“rights or interests”)

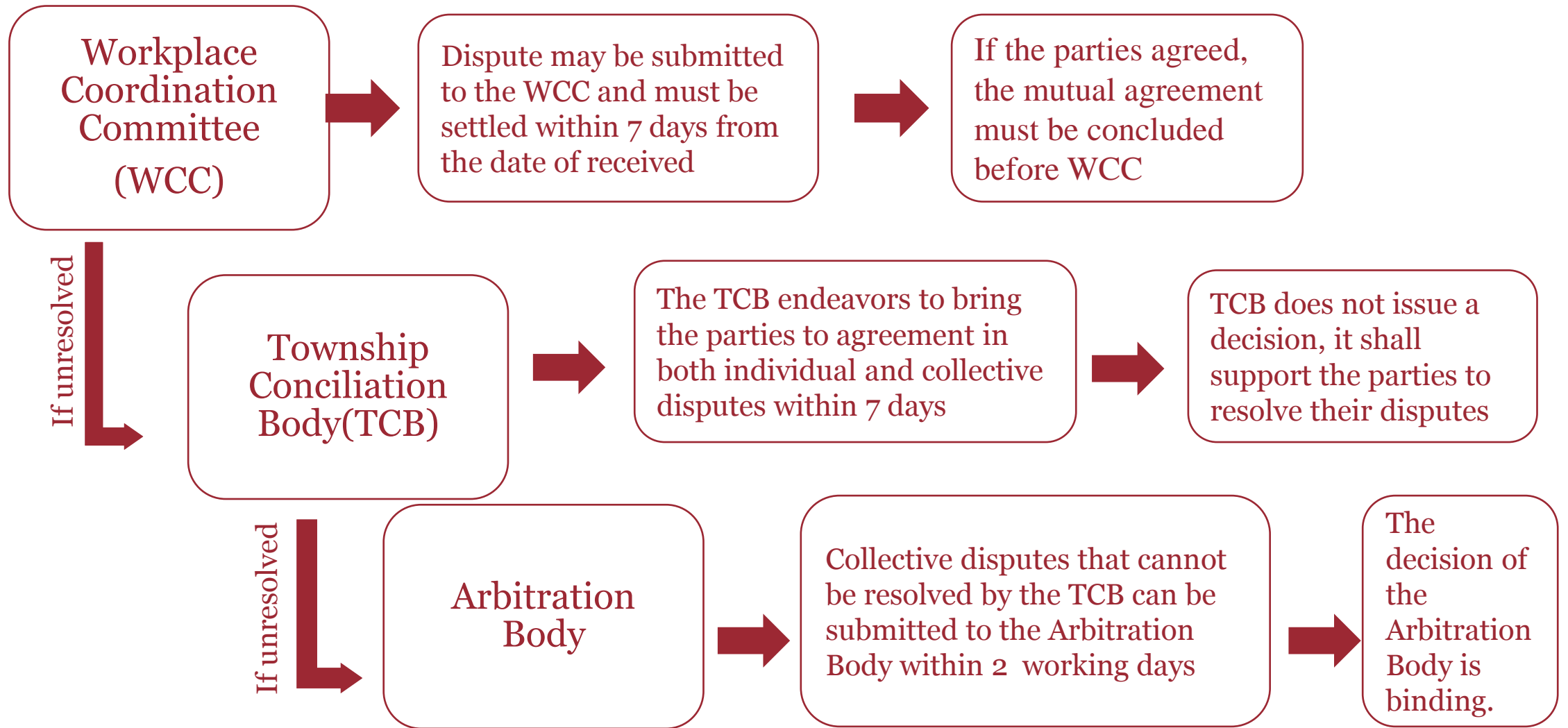
三階段：內部協商、政府調解、中立裁決



個別糾紛解決程序

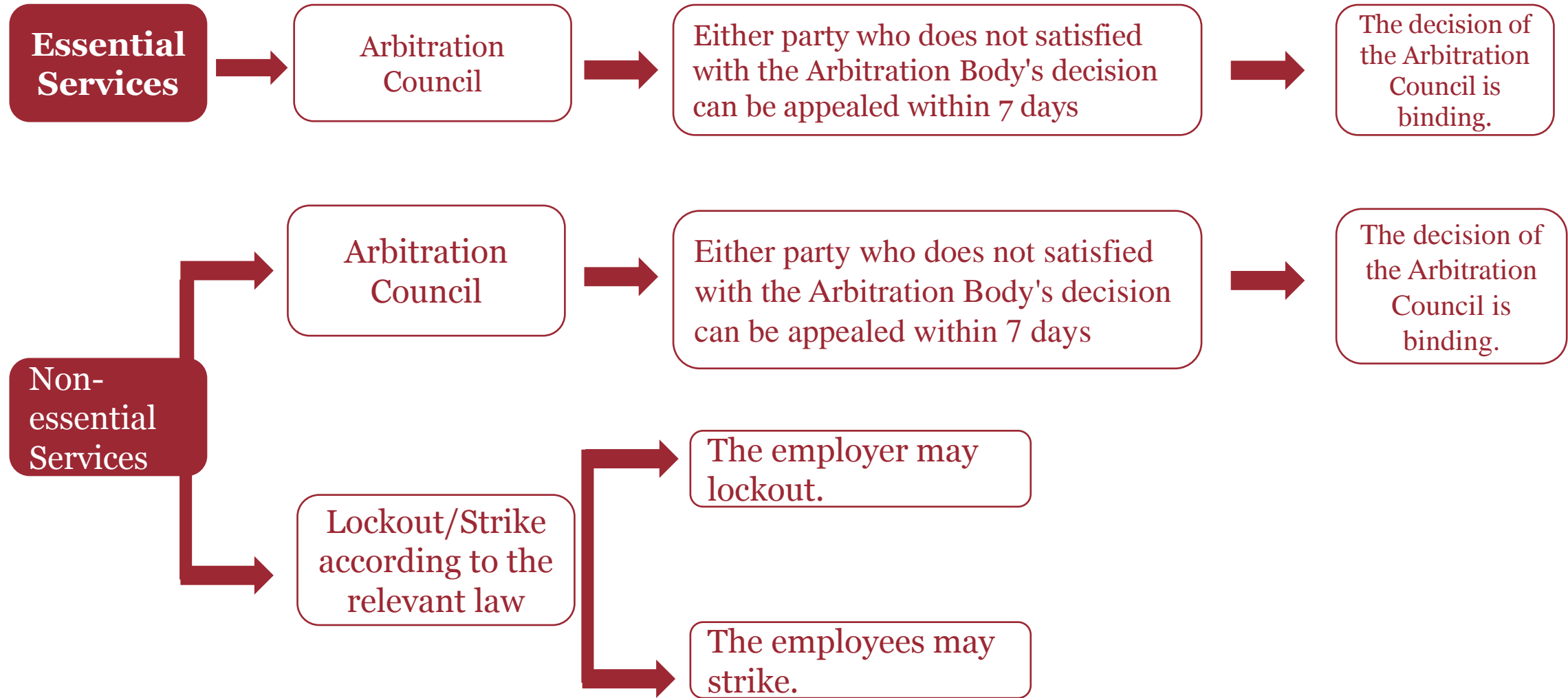


集體糾紛解決程序





If either party is dissatisfied the decision of the Arbitration Body,





If either party who does not satisfied the decision of the Arbitration Council may appeal to the Supreme Court for a writ of certiorari, so they may take their dispute to court, which must be issued within 2 years.

❑ [Law on the application of writ 2014, Sec: 16]



Workplace Coordination Committee

More than 30 employees

If there is any labor organization,

- ✓ (3) representatives of employees nominated by each of the labor organization;
- ✓ an equivalent number of representatives of employer.

If there is no labor organization,

- ✓ (3) representatives of employees elected by employees
- ✓ (3) representatives of employer

Less than 30 employees

- ✓ If the grievance is requested to the employer, the employer shall negotiate, coordinate and settle with the employees or with their representatives.

- The WCC resolves the dispute within 7 days from the day of the receipt of the request.
- The WCC keeps the record of settlement and send it to the relevant Conciliation Body.

❖ Term of a Workplace Coordinating Committee is two (2) year.



Township Conciliation Body

Consist of total 9 persons

- ✓ a person assigned duty by relevant State or Regional Government and Nay Pyi Taw's Council,
- ✓ three representatives elected by the employers or employer organization,
- ✓ three representatives elected by employees or the labor organizations,
- ✓ a departmental representative of the relevant township level and
- ✓ a person assigned duty by the Ministry

- TCB shall conciliate until the settlement is reached within **7 days**, not including the official holidays, after knowing or receiving the dispute.
- It does not issue a decision, but shall support the parties to reach a mutual agreement and resolve the dispute.
- If no conciliation is reached, the Township Conciliation Body shall inform the Regional/State Arbitration Body and parties within **2 working days**.

❖ The term of a Township Conciliation Body is three (3) year.



Arbitration Body

Consists of fifteen (15) members:

- ✓ one (1) government members,
- ✓ five(5) members nominated by employer organizations,
- ✓ five(5) members nominated by labour organizations,
- ✓ three (3) representatives of the relevant township level governmental office and
- ✓ a person assigned duty by the Ministry

- Arbitration Body shall carry out in accord with the working methods, procedures and programs stipulated by the Arbitration Council.
- Arbitration Body shall make the decision within **7 days** from the date of receipt of the dispute and shall send the decision of the Arbitration Body to the parties in dispute within **2 days** from the date of decision not including the official holidays.

- ❖ The term of the Arbitration Body is three (3) year.



Enforcement of the decision of the Arbitration Body

- ❑ If the employer fails to pay the money in stipulated time, he shall pay the additional **20%** for each default month.
- ❑ The employer shall be prosecuted if the defaulting period to pay cash benefit is over **3 months**.



Arbitration Council

Consists of 15 members

- ✓ five (5) members selected by the Ministry,
- ✓ five (5) members nominated by employer organizations and
- ✓ five (5) members nominated by labor organizations.

- ❖ The term of the Arbitration Council is three (3) year.

- shall carry out in accordance with the procedures stipulated by the Ministry.
- shall form a Tribunal in **2 days** with **three members** comprising a person selected by the side of employer in dispute.
- make decision within **14 days** for the non-essential services' business from the day of receipt of collective dispute and shall send it to the parties within **2 days** not including official holidays.
- make decision within **7 days** for the essential services' business from the day of receipt of collective dispute and shall send it to the parties within **2 days** not including official holidays.



Enforcement of the decision of the Arbitration Council

- ❑ If the employer fails to pay the money within 30 days from the decision, he shall pay the additional 20% for each default month.
- ❑ The employer shall be prosecuted if the defaulting period to pay cash benefit is over 3 months. However, as an employer, he can submit the strong reason to Arbitration Council showing that he should not be sued.
- ❑ The Arbitration Council shall make a decision within 15 days of receipt of the employer's submission letter, whether it is required to sue or not.



Lock-out and Strike

Lock-out

The temporary closing of the workplace by the employer.

Strike

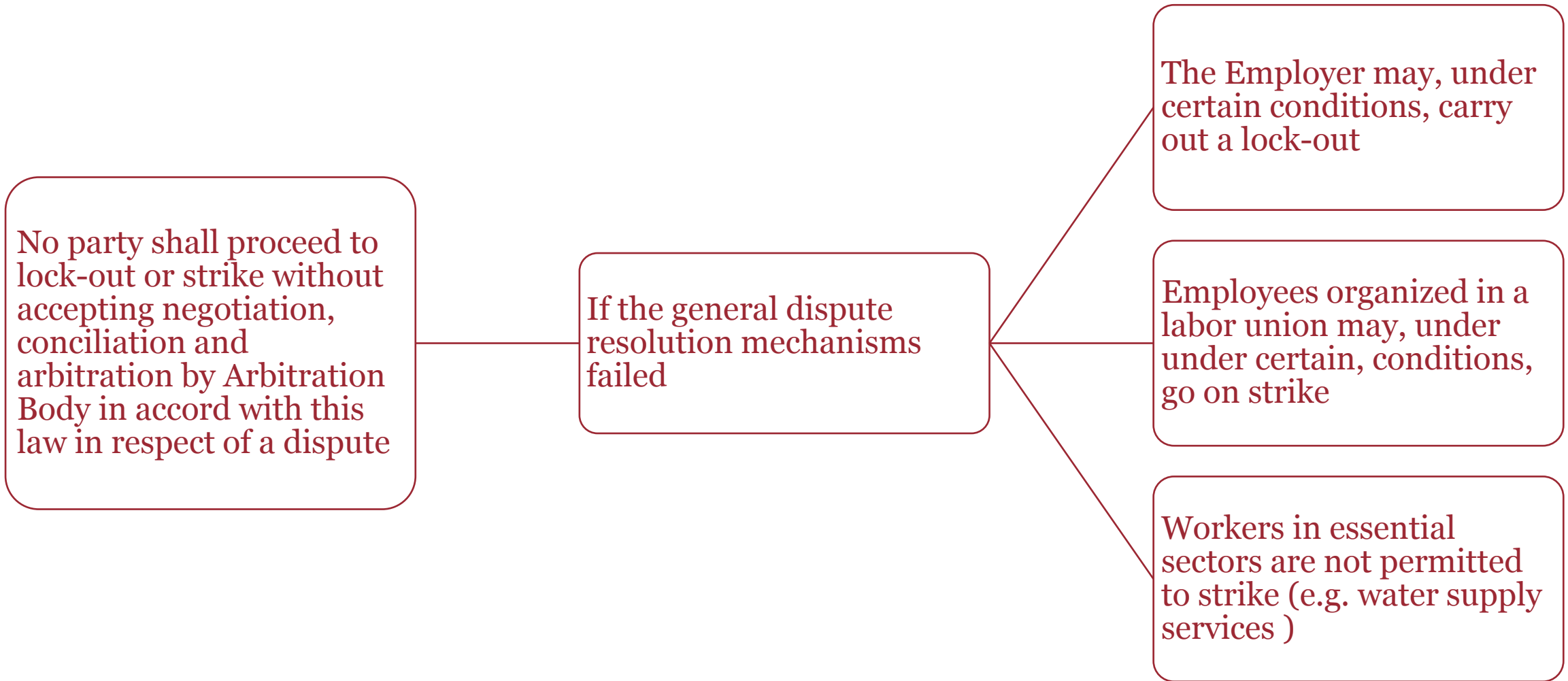
Collective action taken by decision of some or all workers resulting in

- ✓ a suspension of work,
- ✓ a refusal to work or
- ✓ to continue to work,
- ✓ or a slow-down or
- ✓ other collective actions.

This expression does not include workers' exercise of their right to remove themselves, having reasonable justification to believe that the work situation presents a sudden and serious danger to their life or health.



Restriction on Lockout and Strike



Procedures of Strike



罷工構成勞動合同臨時中止，期間無需支薪。



Procedures of Lock-out

Can conduct the lock-out only after when dispute resolution failed

Employer shall inform to the township labor organization and the relevant conciliation body 14 days in advance

Permission from the conciliation body must be obtained





Ministry of Investment and Foreign Economic Relations



Myanmar Centre for Responsible Business



Do NOT greet people by holding two hands, palms together in front of your chest. This gesture is reserved for greeting or listening to monks.



Ministry of Investment and Foreign Economic Relations



Myanmar Centre for Responsible Business



Myanmar people may fold (cross) their arms when they are listening: this shows respect.



Do not lose your temper or raise your voice or scold your Myanmar staff, particularly in front of others. In Myanmar this is regarded as a weakness and will result in a loss of 'face' for you and your staff.



The head of a person is considered sacred. Do not touch someone's head, cheeks or hair, and do not pass objects over their head.



Don't point or touch objects with your feet, because feet, as the lowermost part of our body, are considered unclean.



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Many Myanmar people do not drink alcohol, particularly women. Avoid organising work events which involve a lot of drinking.



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Do not make fun of, or insult, Myanmar culture and customs.



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Be aware that there may be diverse religious and ethnic groups in the workplace. Allow them to respect their holy days. These include official Gazetted Holidays, for major Buddhist holidays, Christmas, Bakari Eid and Deepawali days when staff should be granted leave.



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It is not considered rude to ask how much you earn. As a result, the salary market is very transparent in Myanmar.



■ 結論

- 紛爭解決程序繁複、但是期限明確
- 不一定依照法律標準決定賠償數額
- 勞方罷工不一定依法取得審批、依法通知資方
- **Facebook, viber**, 等成為造勢、動員的利器
- 嚴格依法經營
- 尊重當地習慣
- 避免直觀借用外國經驗



Thank You 謝謝聆聽

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