Arbitration of Commercial Disputes: Myanmar’s Evolution

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Myanmar is in the throes of substantial political and economic reform. Investors are eager to engage in the economic opportunity Myanmar has on offer, but are understandably concerned about the lack of certainty in the legal process and particularly when it comes to the resolution of commercial disputes. One reason for such caution is the fact that during its extended period of isolation, there has been a substantial and near total absence of large scale commercial litigation in the Myanmar courts. There are also concerns that domestic court procedures are time consuming, unpredictable and may not ultimately lead to recovery.

**ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION**

Contracting for arbitration offers a means by which investors may limit the uncertainty of the dispute resolution process. Historically, the use of arbitration in Myanmar contracts has been limited. This is due, in part, to the fact that enforcement of foreign arbitral awards has not been generally recognized by the Myanmar courts. Further, Myanmar’s current arbitration law, the Arbitration Act of 1944, while laying down clear guidelines for reference of disputes, conduct and appeals of arbitral award, also allows the courts the discretion to oversee the arbitration itself.

These rules, while offering a means for arbitration of disputes, can encumber the ability of parties to an investment contract to adequately tailor private arbitration of commercial disputes to an international standard. A fundamental relaxation of the arbitration rules and of the domestic enforcement process is a requisite for open and committed foreign investment.

**MYANMAR ACCEDES TO THE NEW YORK CONVENTION**

Recognizing the necessity for reform, on July 15, 2013, Myanmar formally acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”). The New York Convention will require Myanmar’s courts to recognize and enforce foreign arbitral awards. It also requires the courts to recognize the agreements of parties to privately contract for the resolution of commercial disputes through agreed arbitration mechanisms. Such recognition is a requirement, subject to some limited exceptions permissible on mostly due process or public policy grounds.

Myanmar’s accession to the New York Convention is an essential development to encourage and provide stability for interested foreign investors, as it provides parties with the freedom to contract for arbitration conducted in a jurisdiction and forum of their choice.....