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### Myanmar enacts modern arbitration regime

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# Myanmar Enacts Modern Arbitration Regime

## Introduction

On 5 January 2016, Myanmar enacted a modern arbitration regime that regulates the conduct of arbitration and enforcement of arbitral awards. In so doing, Myanmar has ended a period of uncertainty where even though it had acceded in 2013 to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), there was no domestic legislation giving effect to the New York Convention.

One practical impact of this new Arbitration Law is that foreign arbitral awards from more than 150 New York Convention states may now be enforced in Myanmar. Additionally, the Arbitration Law requires the Myanmar courts to generally recognise an agreement by parties to arbitrate their disputes.

How the Myanmar courts will interpret the new Arbitration Law and develop court procedures to facilitate the same remains to be seen. Nevertheless, the enactment of the new Arbitration Law may alleviate, to some extent, the concerns of foreign investors contemplating agreements with parties that have substantial assets in Myanmar. Investors can now more confidently provide in these agreements that disputes are to be resolved by way of arbitration in a neutral state such as Singapore. In such a case, the Myanmar courts are required to give effect to the arbitration agreement, and any eventual arbitral award would be enforceable in Myanmar, subject to the specific and limited exceptions under the new Arbitration Law.

## Key Features

Under the previous Arbitration Act of 1944, the Myanmar courts retained significant supervisory powers over the conduct of the arbitration. Furthermore, to date no known foreign arbitral award has been enforced in Myanmar.

The Arbitration Act of 1944 has now been abandoned in favour of a less interventionist regime largely modelled after the UNCITRAL Model Law on International Commercial Arbitration. For instance, under the new Arbitration Law, the Myanmar courts:

1. shall not intervene in matters governed by the Law, except where so provided by the Law;
2. shall refer parties to arbitration pursuant to an arbitration agreement unless the agreement is "null and void, inoperative or incapable of being performed";
3. have certain powers to grant interim relief and provide assistance for the obtaining of evidence in support of arbitrations both seated in and out of Myanmar;
4. may enforce interim orders given by arbitral tribunals both seated in and out of Myanmar;  
and
5. may refuse the enforcement of foreign arbitral awards only on specific and limited grounds.

Other jurisdictions that have arbitration regimes modelled after the Model Law include Australia, Canada, Hong Kong, Malaysia and Singapore. Nevertheless, there is room for deviation from the precedents of other Model Law jurisdictions. For instance, our local language review of the new Act indicates that the Myanmar courts may not recognise or enforce foreign awards where to do so would go against "*naing-ngan taw ee a myoe thar a kyoe see pwar*", a phrase which carries ambiguity and can be broadly interpreted as "national interests" or "the benefit of the nation". The Model Law instead uses the phrase "public policy", and a number of Model Law jurisdictions have considered that "public policy" encompasses only the narrower concept of "international public policy", rather than "national public policy". Given that the new Arbitration Law is currently only officially available in the Myanmar language and that the Myanmar-language version will continue to take precedence over the official English translation when it is released, it is not yet certain how the Myanmar courts will interpret "national interests" as well as other local language peculiarities.

## Conclusion

The Arbitration Law follows in the footsteps of Myanmar's accession to the ASEAN Comprehensive Investment Agreement 2009, a Myanmar Foreign Investment Law in 2012, and a new Myanmar Investment Law is expected to be enacted in due course. While questions remain around the implementation of the new Act and the courts' interpretation of its key provisions, the enactment of the new Arbitration Law forms part of a continual accretion of steps Myanmar is taking to create a more conducive climate for foreign investment.

*This was co-written by Jill Kavanagh*