ABSTRACT

Promoting the foreign investment can be done in the way of providing economic incentive and legal protection for the foreign investors to protect their rights. Myanmar provides the incentive for the foreign investment to promote the economy but in respect of the aspect of legal protection, Arbitration Act of Myanmar 1944 is not the efficient and effective means to settle the investor-State disputes. It is because the Myanmar Arbitration Act 1944 under the Geneva Convention on Execution of Foreign Arbitral Award became obsolete since the New York Convention had succeeded.

Since Myanmar became the member of ASEAN, Myanmar shall take part in the economic development of ASEAN nations and implement the promotion and protection of foreign investors from contracting countries. ASEAN Comprehensive Investment Agreement (ACIA) is one of the multilateral treaties, which promotes the foreign investment and provides dispute settlement protocol for the investor-State dispute with a view to protect the benefits of both foreign investors and host government. The procedure of dispute resolution by ACIA resembles to the procedure of ICSID arbitration mechanism. Application of ACIA is limited in the territory, which is within the ASEAN countries. Myanmar expects foreign investment made by the investors not only in ASEAN members but also investors from non-ASEAN members. In the international commercial arbitration, ICSID Arbitration rules and New York Convention are assumed to be the most applied by all countries. The most significant difference between these two Conventions is procedures of enforcement of foreign arbitral award. Arbitral award under New York Convention is sought in a court of a Member State merely as an award and the Court may consider validity of the award and if no misconduct of arbitrators is seen, the Court will impose the enforcement of such award of which no appeal shall be made. Turning to the ICSID Convention, Member State agreed that an award made by ICSID Convention shall be final and binding as a judgment of the Court of the State where the award is sought.
As for Myanmar, it is compulsory that Myanmar shall implement the dispute resolution mechanism under ACIA, which is enforcement of foreign arbitral award. To expand the territory of enforcement of foreign arbitral award, Myanmar should accede both ICSID Convention and New York Convention. Therefore, foreign investors will feel secure for their legal rights against the hostile act of host government due to having more options over the choice of International Enforcement of foreign arbitral award in Myanmar or any other country.