

Overview of Arbitration in Afghanistan

A Practical Approach

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Introduction

Afghanistan has been in the midst of a series of major legal reforms in various areas over the past 5 years, of particular relevance is the developments in the commercial sector. The commercial market has managed to cope with the rapidly growing dispute resolution mechanisms in Afghanistan with which the latter has tried to incorporate in its legal system. Based on the recorded statistics for January 2019, it was reported that 390 laws and regulations have been passed in the past four and a half years in Afghanistan and a large number of them affect the commercial sector. The question which the authors wish to address in this piece is whether the rapid reforms taking place in Afghanistan have had any significant development in the field of arbitration.

In Part I of this paper, the authors will provide an overview of the Arbitration regime in Afghanistan

against the historical backdrop. Part II addresses the current arbitration mechanism on a holistic approach. Part III of this paper analyzes the current reforms with a case analysis. In Part IV, the authors offer their conclusion as to what the future of arbitration in Afghanistan holds for the commercial sector.

PART I: Arbitration in Afghanistan

Out of court dispute resolution have an ancient history in Afghanistan. The Afghan communities have used the traditional Jirga (Council of Elders) for the resolution of different categories of disputes in accordance with the overriding customs of a particular region. The history of the Jirga dates back to about 500 BC in which Aryan tribes used to live in the territory of present day Afghanistan¹. But, Jirgas have not always been successful in serving justice in the best possible way.

As reported by Karin Zarindast, BBC Journalist, on 09 Aug 2012 “an Afghan woman from Parwan province spent six months in her local family court trying to

¹ Legal Pluralism in Afghanistan – A study of alternative dispute resolution mechanisms by Mazhar Bangash.

get a divorce from her husband. Her case was handed on to the local Jirga for a decision even though she was not allowed to be present for the discussion. In the provinces and the tribal areas - especially in places where there is no judicial representation - property disputes, domestic issues and criminal cases are often dealt with by these local elders and clerical figures.”²

Apart from tribal mechanisms developed by residents of a particular region for dispute resolution, the Afghan Government has developed ulterior forms of dispute resolution mechanisms that have been adopted into hard law a prime example being - Arbitration. The commercial arbitration law of Afghanistan was published in the official gazette number (913) on 30th January 2007 (“Arbitration Law”) which nullified the Commercial Arbitration Law of 1995 that was published in the Official Gazette number 779. The Arbitration Law was enacted to facilitate and encourage the prompt, fair, and neutral resolution of commercial and economic disputes through arbitration, with respect to the agreements signed between Afghanistan and other states on commercial and economic arbitration basis and to regulate their relevant commercial affairs.

Courts in Afghanistan enjoy a great deal of power when it comes to dispute resolution. They have maintained a view that any and all kind of cases shall be resolved in the courts. This is in fact true but it is a misconception to say that the court takes precedent over the arbitration regime and limits the rights of the parties to resolve their dispute through arbitration.

Some authors are of the view that pursuant to Article 122 of the Constitution which provides that, no law shall, under any circumstances, exclude any case or area from the jurisdiction of the judicial

organ as defined in this chapter and submit it to another authority. This provision shall not prevent the formation of special courts stipulated in Articles 69 (Special Court for Proceedings against the President), 78 (Special Court for Proceedings against a Minister), and 127 (Special Court for Proceedings against the Chief Justice and Members of the Supreme Court) of this Constitution, as well as cases related to military courts.

The basis of the argument that the courts are the only authority that have the power to resolve any and all the disputes is Article 122 of the Afghanistan Constitution at first glance, this can be construed as a sound argument yet it overlooks certain fallacies. The laws which provide the arbitration option for the parties also provide that they may select between courts and arbitration to resolve their disputes. So, technically the law does not exclude any case from the courts’ jurisdiction – it provides commercial parties an option to choose.

On matters governed by the Arbitration Law, the courts shall not intervene in accordance with Article 8 of the Arbitration Law except as provided by the law. This provision does not preclude the courts from the enforcement of foreign or domestic arbitral awards. Further, Article 88 of the Law on Commercial Contracts and Sale of Property, 2014 stipulates that the courts do not have jurisdiction to resolve cases whenever it is provided in the contract that the resolution of disputes arising out of the contract shall take place through conciliation, mediation or arbitration unless the proceedings for execution or enforcement of provisions mentioned in the contract that call for conciliation or mediation. This provision establishes that the courts have the power to order the enforcement of an arbitral award.

² <https://www.bbc.com/news/av/world-asia-19195841/the-role-of-jirgas-in-afghanistan-s-legal-system>

Pursuant to Article 2(2) of the Arbitration Law, “Arbitration is a binding proceeding whereby an arbitrator or arbitrators perform neutral services pursuant to a request by the parties or court in order to resolve disputes under contracts for economic or commercial transactions”.

In addition, the Commercial Procedure Code of Afghanistan 1965 also allows arbitrations between the parties. It provides in Article 208 that the parties can resolve their disputes through arbitration even if their case has been filed in court. Furthermore, in an effort to encourage foreign and domestic investment in Afghanistan, the Private Investment Law, 2005 as amended in 2016, provides in Article 30 that:

An investor or a registered enterprise may, in any contract or other agreement, specify the following:

1. Any arbitration or other dispute resolution procedure;
2. That the place of such arbitration may be outside of Afghanistan; and
3. That the law of a jurisdiction other than Afghanistan may apply to the resolution of such dispute.

In accordance with Article 87 of the Law on Commercial Contracts and Sale of Goods, 2014, parties may resolve their dispute(s) regarding contracts in one of the commercial courts of the country unless the contract provides that a dispute shall be resolved through conciliation, mediation or arbitration.

Nonetheless, in spite of all this legal foundation, international corporations doing business in Afghanistan and domestic Afghan companies have chosen not to avail themselves of the arbitral enforcement regime in their favor in Afghanistan.

The authors believe that the tide might be turning for the positive. The first major positive development in the direction of the commercial field

is the World Bank Doing Business Report, 2019. The report singles out Afghanistan as the country with the best improvement in the category of the record number of business reforms. Further, the country *secured its place in the Top 10 list of global improvers in enhancing the legal framework for businesses.*

On 30th November 2004, Afghanistan ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“New York Convention”). The Commercial Arbitration Law of Afghanistan was published in the official gazette number (913) on 30th January 2007. As seen below, the authors will seek to evaluate whether the current procedures, if any, are sufficient to assist parties in the enforcement of foreign arbitral awards.

PART II: Current Arbitration Regime in Afghanistan

The Governing Law of the Contract

Afghan laws permit parties to a contract to choose a foreign law other than the law of Afghanistan as the governing law of a contract provided that the contracts held between them are not void or voidable as defined by the Contract Law and that the regulating laws are not repugnant to public order or standards of decency in Afghanistan.

Article 4(2) of the Law on Commercial Contracts and Sale of Goods 2014 declares that “parties to a contract are permitted to declare that the contract may be regulated by the law of any country other than Afghanistan or an international treaty. In the case of any dispute, the Afghan courts shall settle the dispute in accordance with the law that parties have agreed upon except when such contracts are illegal as per the laws of Afghanistan.”

Article 34 of the Civil Code 1977 provides that “In cases where the application of provisions of a foreign law is specified, those substantive provisions of the mentioned law that are not related to private international law shall apply. If plurality of religions

exists in the law of the state whose provisions are applicable, provisions of that religion applies that the law of the mentioned state has prevailed.”

Article 35 of the Civil Code 1977 states that “Provisions of foreign law, in the manner specified in the previous Articles of this section, are applicable to the extent that it does not contradict public order or common morality in Afghanistan.”

According to these provisions the choice of a foreign law as the governing law of an agreement is valid, binding and would be upheld by the courts of Afghanistan, in relation to both arbitration, and court proceedings provided that such law is not repugnant to public order or standards of decency in Afghanistan, which the author submits is a high evidential bar to satisfy.

The Agreement of the Parties to Use Arbitration

Prior to seeking the appointment of arbitrators, it is necessary to determine whether the contract governing the parties contains an arbitration clause. If the contract does not have an arbitration clause, unless otherwise agreed by the parties, the disputes cannot be referred to arbitration. The Arbitration Law of Afghanistan divides arbitration agreements into two categories:

1. When parties enter into a contract which contains an arbitration clause, should any dispute arise it would be resolved by arbitration³;
2. An arbitration agreement signed after a dispute has arisen, wherein the parties agree that the dispute should be resolved by arbitration⁴.

It is advisable that the contracting parties include an arbitration clause in their contract. However, if the parties have not inserted an arbitration clause in the contract and a dispute arises, and thereafter they decide to refer the dispute to an arbitration tribunal,

they may enter into an arbitration agreement and can refer the dispute to the arbitration office according to the Arbitration Law of Afghanistan.

The Selection of an Arbitral Institution and Venue of Arbitration

The contracting parties should select an arbitral institution while executing the contract. However, if the parties cannot agree on an arbitral institution in which the arbitration will be conducted, the selection of an arbitral institution shall be determined by a court, and the court’s decision is final⁵.

The parties are free to agree on the venue of arbitration. If they fail to do so, the venue of arbitration shall be determined by the arbitral tribunal. The venue selected will depend on the circumstances of the case and the relative convenience of the parties. The arbitral tribunal may, unless otherwise agreed to by the parties, meet at any place it deems appropriate for consultation among its members, for hearing witnesses and experts, and for allowing the presence of the parties, or for the inspection of goods, other property or documents. For the inspection of goods, other property or documents, the arbitral tribunal shall determine a time for such a hearing of the tribunal and shall inform the parties thereof⁶.

The Composition of the Arbitral Tribunal

Following the agreement of the parties to refer their dispute to arbitration, the parties are free to determine the number of arbitrators. If they do not decide on the number of arbitrators, the law requires at least one arbitrator to hear the matter. However, if one of the parties is a state, three arbitrators should be appointed⁷.

³ Art. 13 and 14 of the Arbitration Law 2007;

⁴ Art. 16;

⁵ Art. 32;

⁶ Art. 33;

⁷ Art. 17;

The website pf (<http://www.acdr.af/en/acdr-panel/arbitrators/>) provides a short bio of each arbitrator listed therein. A person can select an arbitrator from among those listed arbitrators who specialize in a particular field and whom a person trusts to be familiar with the problematic issue(s) of the case and, at the same time expect them to remain impartial and independent. The parties may also select a qualified arbitrator from others institutions.

The Qualifications of Arbitrators

To be an effective arbitrator, he/she must possess certain qualities and qualifications. Article 12 of the Commercial Arbitration Law lists the following criteria for Arbitrators:

1. Must hold a law or sharia law degree;
2. Must have experience in the relevant field;
3. Must be registered with the Afghanistan Central Business Registry (“ACBR”);
4. Must be an active member of an arbitral association, which can be publicly accessible under the list of arbitrators. Everybody can freely evaluate these files during the working hours.

The Arbitration Proceedings

Following the appointment of arbitrators and submission of an application for arbitration in a particular dispute⁸, the parties will submit their claims, documents and evidence to the arbitrators⁹.

The claimant(s) shall state the facts supporting his or her claim(s), the points at issue and the relief or remedy sought. Also, the respondent(s) shall state his or her defense regarding the points at issue and shall state the facts supporting any counterclaim(s) he or she may have. The parties may submit to the

arbitration tribunal together with their statements all documents that are relevant to the case¹⁰.

The parties may amend or supplement his or her claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate on the grounds of the interest of fairness to the parties or are to avoid undue delay, or it violates the terms of the arbitration agreement¹¹.

The arbitral tribunal may decide to hold oral hearings, provided that there shall be at least a 30-day prior written notice given to the parties of such a hearing. If requested by a party, the arbitral tribunal may hold oral hearings at an appropriate stage of the proceedings, unless the parties have agreed otherwise¹².

All statements, documents or other information, supplied to the arbitral tribunal by one party shall likewise be provided to the other party. Any expert report or evidentiary document on which [the arbitral tribunal] may rely in making its decision shall be communicated to both parties¹³.

The arbitral tribunal may appoint one or more experts to report to it on issues to be determined by the arbitral tribunal. The arbitral tribunal may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his or her inspection. The expert shall, after delivery of his or her written or oral report, participate in the hearing if requested by the parties or required by the tribunal¹⁴.

The Issuance of an Arbitral Award

An arbitral award refers to a decision made by an arbitration tribunal in an arbitration proceeding. The arbitral tribunal shall decide the dispute in

⁸ Art. 34;

⁹ Art. 7;

¹⁰ Art. 36;

¹¹ Art. 37;

¹² Art. 38;

¹³ Art. 39;

¹⁴ Art. 41;

accordance with the rules of law chosen by the parties¹⁵ If during arbitral proceedings, the parties settle their dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms¹⁶.

An arbitral award shall be made in writing and be signed by the arbitrators and state the reasons for their decision and shall be delivered to each party and a copy shall be maintained by the office of the Tribunal¹⁷.

Enforcement of Foreign Arbitral Awards in Afghanistan

Afghanistan is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”). About 120 countries have signed the New York Convention. The Convention facilitates the enforcement of awards in all contracting states. Article 88 of the Law on Commercial Contracts and Sale of Property stipulates that the courts do not have jurisdiction to resolve cases whenever it is provided in the contract that resolution of disputes arising out of the contract shall be performed through conciliation, mediation or arbitration unless the proceedings for execution or enforcement of provisions stated in the contract that call for conciliation, mediation or arbitration.

As far as the enforcement of arbitral award is concerned, Article 88 of the Law on Commercial Contracts and Sale of Property further provides that “Parties shall enforce the decision or arbitral award or mediation agreement which is enforceable

according to the provisions of the law. Whenever one of the parties remains unable to perform this obligation, the competent court issues an order for its enforcement based on a request of the relevant party”.

According to Article 56(1) of Arbitration Law, an arbitral award, irrespective of the country in which it was made, shall be enforceable. In addition, Article 30(3) of the Private Investment Law also provides that any award resulting from arbitration between the parties shall be final and also enforceable by the Government upon application of any party to such arbitration. However, the authors experience with the enforcement of an arbitral award regime in Afghanistan is not encouraging, as the judicial courts in Afghanistan do not have a pro-enforcement approach of such awards.

The Limitation on the Enforcement of Foreign Arbitral Award in Afghanistan

Based on the aforementioned provisions of the Law, it is well-established that the Laws of Afghanistan have incorporated the provisions on the enforceability of both domestic and foreign arbitral awards. However, there are certain limitations on enforcement of foreign arbitral award in Afghanistan, and they are:

- (1) The parties to the arbitration agreement must have the capacity to enter to a contract;
- (2) The award must be issued in accordance with the law set forth in the agreement by the parties;
- (3) The award must not be issued on the basis of an invalid law;
- (4) The party against whom the award is invoked must be given proper notice of the appointment of an arbitrator or of the arbitral proceedings;

¹⁵ Art. 43;

¹⁶ Art. 46

¹⁷ Art. 47;

- (5) The award must deal with a dispute contemplated by the arbitration agreement or falling within the scope of its applicability;
- (6) The composition of the arbitral tribunal or the arbitral procedure must be in accordance with the Agreement of the parties and be in accordance with the Law of the country where the Arbitration took place;
- (7) The award has not yet become binding on the parties and has been set aside or suspended by a Court of the country in which, or under the Law of which, that Award was made;
- (8) The subject-matter of the dispute must be such that the arbitration procedures in place under the Law of Afghanistan are sufficient to settle such a dispute;
- (9) The foreign arbitral award is not repugnant to the applicable laws of Afghanistan, public order or standards of decency in Afghanistan¹⁸;
- (10) The foreign arbitral award must be notarized by a public notary, legalized by the foreign office, and consularized by the Afghan embassy in the country where it was issued (Civil Procedure Code, Articles 307, 162, Article 32 of the Commercial Procedure Code, Article 27 of the Law on the Manner of Acquisition of Rights);
- (11) The foreign arbitral award must be translated into the local language (Civil Procedure Code, Article 170 and Article 5 (2) of the Law on Translation and Notarization of Official Documents 2018 and Article 57 of the Arbitration Law. But, one must also ask if in actual practice arbitral awards enforced in the manner are intended by the law and by the international conventions.

The Procedure for the Enforcement of Foreign Arbitral Awards in Afghanistan

Afghanistan's legal framework has a very clear mechanism for the enforcement of court orders

whether it be domestic or foreign. The Law on the Manner of Acquisition of Rights published in the Official Gazette number 1309, 2018 ("Law on the Manner of Acquisition of Rights") describes the manner in which the General Directorate of Rights ("GDoR") will enforce a court order and also mentions the documents based on which the GDoR shall pursue the acquisition of rights. However, there is no clear mechanism for the enforcement of an arbitral award in the Law on the Manner of Acquisition of Rights which is the main resource for the GDoR . Further, arbitral awards are even not mentioned as a source/document based on which the GDoR shall pursue the acquisition of rights but court orders on both domestic and foreign bases are included in the list.

Pursuant to Article 27 of the Law on the Manner of Acquisition of Rights, GDoR shall pursue the acquisition of rights based on the following documents:

1. Official documents that are prepared, registered and issued by government authorities based on provisions of the law and which are free from forgery.
2. A customary document, if the debtor (defendant) agrees to the same or has no objection regarding it.
3. Deeds prepared and issued by the competent court and that have judicial registration records and are free from deception and forgery.
4. Final and binding court orders.
5. Final and binding court orders which have been issued by a foreign court and attested by the Ministry of Foreign Affairs of Afghanistan.
6. Other documents which are considered credible according to provisions of the law.

The GDoR deems the non-inclusion of arbitral awards in Article 27 of the Law on the Manner of Acquisition of Rights as an obstacle for the enforcement of arbitral awards. However, by taking such a position the GDoR ignores the mentioned

¹⁸ Art. 56;

Article that includes court orders. Their position from the authors perspective is incorrect as they have rarely dealt with the enforcement of foreign arbitral awards. From the GDoR's view, it is necessary that the court issues written orders explicitly instructing them to enforce the concerned award.

Another point to consider for the GDoR is that the enforcement of arbitral awards also falls under the last category of Article 27 of the Law on the Manner of Acquisition of Rights i.e. other documents which are considered credible according to provisions of the law. As discussed earlier, mentioned that several laws of Afghanistan recognized arbitration as dispute resolution mechanism and have also observed the enforceability of arbitral awards.

Consequently, the wining party should first refer to a competent court and plead enforceability of the arbitral award and if the court issues an order confirming the enforceability and explicitly gives instructions to enforce the arbitral award only then will the GDoR act to enforce the award. This is the only procedure in place for the enforcement of foreign arbitral awards in Afghanistan.

However, to permanently resolve the issue of enforcement of arbitral award, Article 27 of the Law on the Manner of Acquisition of Rights should be amended and the arbitral award should be included in the same. The GDoR will then be able to enforce the arbitral award without obtaining an order from the court.

The step by step procedure for the enforcement of arbitral award is as follows:

- (1) An application has to be made to the relevant court along with the following documents for the enforcement of an arbitral award¹⁹:

- a. An original certified award;
- b. An original certified arbitration agreement; and
- c. A certified translation copy of the award into of the local languages²⁰;

- (2) The court will evaluate the award to confirm that the contents of the arbitral award are not inconsistent with the laws of Afghanistan;
- (3) The court will issue an order for the enforcement of the arbitral award;
- (4) The General Directorate of Rights ("GDoR") will enforce the court order²¹;

Part III: Case Analysis

The courts, the GDoR and other relevant authorities are unfamiliar with arbitration and often come up with procedures inconsistent with the established standards and the law. For a better understanding of the status of foreign arbitral award enforcement in Afghanistan, the following case analysis is provided as a practical example on how a private party, the GDoR, the Primary Commercial Court and Commercial Appeal Court have responded to International Commercial Arbitration and the enforcement of the arbitral award.

A Company called "R", is an internet services provider with its main office located in Afghanistan entered into a contract on 03.09.2012 with a Company called "S" which also provides worldwide internet services with its main office located in Hong Kong SAR. The parties have agreed in the contract that Company S will provide internet services within its specified time to Company R and Company R shall pay the fees for the internet services provided by Company S. The parties used Service Order Forms ("SOFs") based on which Company R would place its order to Company S for the amount of internet services it needed after which were this was then

¹⁹ Art. 8 of the Law on the Manner of Acquisition of Rights 2018;

²⁰ Art. 56 and 57 of the Arbitration Law;

²¹ Art. 9 (11) and 27 of the Law on the Manner of Acquisition of Rights 2018;

signed by both parties. The SOF included Terms and Conditions (“T&Cs”) based on which the parties structured their transactions.

The case background suggests that, Company R has paid the fees for said services from 20.09.2011 up to January 2013 but it has not paid the fees from 01.01.2013 up to the end of August 2013 which equals to a significant amount of money.

As far as the dispute resolution mechanism agreed upon by the parties is concerned, in accordance with Clause (i) (Dispute Resolution) of the T&Cs, the parties shall first endeavor to solve the dispute by amicable negotiation. If unsuccessful it shall be referred to the Hong Kong Institute of Arbitrators for determination.

Clause (i) of the T&Cs reads that, *“Any dispute or difference that should arise between the parties as to the meaning of this Contract or any matter or thing arising out of or connected with this Contract shall first be settled by amicable negotiation. If unable to be so settled within thirty (30) days from the recorded commencement of such negotiations, the said dispute shall be referred to the Hong Kong Institute of Arbitrators for determination by one arbitrator to be appointed by agreement of the parties. If the parties cannot agree on an arbitrator within 7 days of the Services upon one party of a written request to concur in such appointment, the arbitrator shall be appointed by the Hong Kong Institute of Arbitrators. The arbitration shall take place in Hong Kong under the UNCITRAL Rules and the language used in the proceedings shall be English. The arbitration award shall be final and binding on the parties. Nothing in this clause shall prevent either Party from resorting to judicial proceeding if interim relief from the court is necessary to prevent serious or irreparable injury to one of the parties”*.

The case background further suggests that Company S contacted Company R to reach a solution but could not do so due to the failure of Company R

to respond. In such a situation, Company S filed a case in the Primary Commercial Court of Afghanistan whereas the court determined that there was a lack of jurisdiction on 05.05.2015 due to the existence of an arbitration clause in the contract between the parties and the case was referred to arbitration in Hong Kong.

The case was referred to the Hong Kong Institute of arbitrator where it was decided in favor of Company S and the arbitral award was rendered on 12.07.2016. Despite the numerous efforts by the local lawyers of Company S in Afghanistan, the award has still not been enforced in Afghanistan. The case is still pending before the Judicial System of Afghanistan.

Part IV: Conclusion

Arbitration as a rapidly growing dispute resolution mechanism has various and significant advantages over the judicial dispute resolution mechanism. The role of arbitration is much more significant in countries such as Afghanistan which is undergoing vast reforms in various sections and recently have witnessed a flow of funds from international organizations to support the private sector. Private and government sectors’ contracts with foreign parties be they International organizations or government entities often provide arbitration for dispute resolution and do not tend to select Afghanistan as place of arbitration as there are significant challenges associated with the enforcement of contracts in Afghanistan. International businesses avoid the Afghan courts, as outcomes are uncertain and unpredictable. The Afghan courts still have limited experience with project finance transactions and the related documentation.

There is no prescribed time period within which such matters must be decided by the relevant authorities/courts. The timeframe and associated costs may vary depending on the nature of the

defaults, the complexity of the dispute and similar considerations.

Further, the lack of procedure and certainty in place regarding the enforcement of foreign arbitral awards can be a significant obstacle for foreign investments in Afghanistan. This results in putting burdensome obligations on the Afghan parties where they should comply with strict instructions such as the mortgage of almost all property of the Afghan parties which gives the right to the other party to sell the property in the case of default. This arrangement as well has its own obstacles such as the vagueness in the law regarding the possession of the mortgaged property.

In order to have a practical and efficient approach to arbitration, a procedure or set of guidelines is urgently needed and the courts of Afghanistan must give clear instructions on the enforcement of foreign arbitral awards to the GDoR. Further, judges and the GDoR staff concerned with the implementation of judicial orders should be trained in arbitration in order to change their perspective that arbitration is not a rival to judicial dispute resolution mechanisms but instead, especially in Afghanistan, a helpful tool for commercial dispute resolution.

Another option for a better commercial dispute resolution mechanism in Afghanistan can be that all the entities providing Alternative Dispute Resolution (“ADR”) services need to officially launch arbitration, have clear rules on how to administer the arbitration proceeding between the parties and discuss the status of awards with the Judicial Organ of Afghanistan. This will bring out the attention and role of the government in facilitating arbitration. ADR services providing entities in Afghanistan had an excellent opportunity to include arbitral awards in Article 27 of the Law on Manner of Acquisition of Rights, 2018 (as discussed above) when the Ministry of Justice was drafting the law and had put the draft

online for comments. This opportunity was not utilized then and the authors hope this papers reinvigorates the pressure on the necessary stakeholders to not repeat the mistakes again.

As discussed under the section of Enforcement Procedure, in order to permanently resolve the issue of enforcement of foreign arbitral award in Afghanistan, Article 27 of the Law on the Manner of Acquisition of Rights should be amended and arbitral award should be included in the same.

Enacting enforcement procedures, training judges and the GDoR staff, collective efforts of entities providing ADR services in Afghanistan in order to officially launch Arbitration and amendment of Article 27 of Law on Manner of Acquisition of Rights, 2018 can have the desired results for a much more efficient and useful commercial dispute resolution mechanism in Afghanistan for the future.

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