

國際投資仲裁下先行裁決程序之規範與實踐

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摘要

控訴主張之先行裁決程序(以下簡稱「先決程序」),是國際投資仲裁程序中,過濾浮濫提出之控訴主張的重要機制之一。例如《美國雙邊投資協定範本》(U.S. Model Bilateral Investment Treaty, U.S. Model BIT)、《跨太平洋夥伴全面進步協定》(Comprehensive and Progressive Agreement for Trans-Pacific Partnership, CPTPP)投保專章、《解決投資爭端國際中心仲裁規則》(International Centre for Settlement of Investment Disputes Rules of Procedure for Arbitration Proceedings, 以下簡稱 ICSID 仲裁規則)等均採納在程序前階段將特定控訴主張加以過濾的先決程序,以避免該等主張造成地主國不必要的負擔,並降低投資人利用程序之進行壓縮地主國施政空間的效果。不同的機制間,就其採取的先決程序規範有所不同,而其適用之效果,亦值得加以檢視。本文除就重要協定下之先決程序規範加以分析與比較外,並檢視採取 U.S. Model BIT 以及《ICSID 仲裁規則》設計所生之國際投資仲裁案件,以具體了解國際投資仲裁實務上對於先決程序之法律見解與其實踐。藉由針對案例之研究與分析,本文指出實務上所採之具體標準,並針對此一程序之優缺點加以分析。

Abstract

Frivolous claims in Investor-State Dispute Settlement mechanism are problems that need to be resolved. Mechanisms of expedited review and dismissal of frivolous claims under preliminary objection procedure have been developed to reduce the Host States' resources spending on frivolous claims to the extent possible. This paper analyzes two major designs of preliminary objection: claims unfounded as a matter of law under 2012 U.S. Model Bilateral Investment Treaty (U.S. Model BIT) and claims manifestly without legal merit under International Centre for Settlement of Investment Disputes Rules of Procedure for Arbitration Proceedings (ICSID Arbitration Rules). This paper discusses and compares their respective rules, relevant arbitral practices, and analyzes the adaptation in recent international agreements.

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