

The Return of the Home State to Investor-State Disputes

Abstract

This article examines the return of the home state to investor-state disputes, a phenomenon that has been gaining traction in recent years. The article provides a comprehensive analysis of the legal and practical implications of this development, and explores its potential impact on the future of international investment law.



The Return of the Home State to Investor-State Disputes: Bringing Back Diplomatic Protection? (Cambridge International Trade and Economic Law)

★★★★★ 5 out of 5

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Investor-state disputes are a type of international arbitration that allows foreign investors to sue host states for breaches of international investment treaties. Traditionally, these disputes have been resolved between the investor and the host state, with the home state of the investor playing a limited role. However, in recent years, there has been a growing trend for home states to become more involved in investor-state disputes.

This development has been driven by a number of factors, including the increasing number of investment treaties that include provisions for home state involvement, the growing sophistication of investors and their counsel, and the increasing willingness of home states to protect their nationals' investments abroad.

The Legal Framework

There is no single international treaty that governs the involvement of home states in investor-state disputes. However, a number of investment treaties and other international agreements contain provisions that address this issue. For example, the ICSID Convention provides that the home state of an investor may intervene in an arbitration proceeding if the investor has consented to such intervention. The UNCITRAL Arbitration Rules also allow for the intervention of third parties, including home states, in arbitration proceedings.

In addition to these international agreements, a number of domestic laws also provide for the involvement of home states in investor-state disputes. For example, the United States Foreign Sovereign Immunities Act (FSIA) allows the United States to intervene in an arbitration proceeding if the proceeding is brought against a foreign state that is immune from suit in the United States.

The Practical Implications

The involvement of home states in investor-state disputes has a number of practical implications. First, it can lead to a more complex and protracted arbitration process. Second, it can increase the cost of arbitration for both the investor and the host state. Third, it can create the potential for conflicts of interest between the home state and the investor.

Despite these challenges, the involvement of home states in investor-state disputes can also have some positive benefits. First, it can help to ensure that the interests of the investor's home state are taken into account in the arbitration process. Second, it can help to promote the development of a more consistent and coherent body of international investment law. Third, it can help to strengthen the relationship between the home state and the host state.

The Future of Home State Involvement

The trend towards increased home state involvement in investor-state disputes is likely to continue in the years to come. This is due to a number of factors, including the increasing number of investment treaties that include provisions for home state involvement, the growing sophistication of investors and their counsel, and the increasing willingness of home states to protect their nationals' investments abroad.

As home state involvement becomes more common, it will be important to develop mechanisms to address the challenges that it poses. These mechanisms should include provisions for ensuring that the arbitration process is fair and efficient, for managing conflicts of interest, and for promoting the development of a more consistent and coherent body of international investment law.

The return of the home state to investor-state disputes is a significant development that has the potential to reshape the future of international investment law. While there are a number of challenges associated with this development, it also presents a number of opportunities for improving the fairness and efficiency of the investor-state dispute settlement process. By carefully managing the challenges and seizing the opportunities, it is

possible to ensure that home state involvement benefits all stakeholders in the international investment community.



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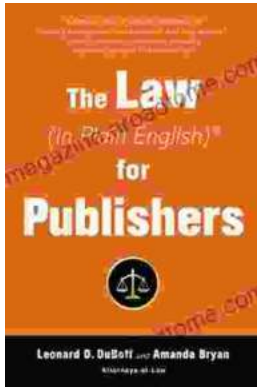
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