

ASSESSING THE EXPOSURE OF ASIAN STATES TO INVESTMENT CLAIMS

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ABSTRACT

The developments which are now taking place show that Asian states are increasingly negotiating international investment agreements (hereinafter IIAs) — in the form of BITs or PTAs — which form a dense network of obligations. Although few cases had been brought against Asian states by 2009, the pattern has changed since 2010, with a sharp increase in the initiation of investor-state arbitration proceedings over the last three years bringing the total of investment claims against Asian States to a significant total of 87 international disputes. Although some IIAs have generated a few disputes for technical reasons (for example, those concluded by China before 2005 or by Thailand, Indonesia, and Malaysia, which require the pre-approval of investments), it is rather predictable that Asian states are currently entering an era in which foreign investors are likely to multiply claims. Such a trend requires host states to be prepared to litigate while reassessing the economic and political benefits of current investment treaty commitments.

KEYWORDS: *investment, treaty, arbitration, claim*

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