POSITIONING SOVEREIGN WEALTH FUNDS AS CLAIMANTS IN INVESTOR-STATE ARBITRATION

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ABSTRACT

For the past decade, Sovereign Wealth Funds (hereinafter SWFs*) have been expanding and increasing dramatically to trillions of dollars. SWFs play certain critical roles in global economy nowadays. Nevertheless, they are also surrounded by controversy, including the use of investment for political gains. As the foreign direct investment (hereinafter* FDI*) of SWF keeps rising and the international regulations remain voluntary, national protective regulations could get stricter to respond to policy concerns. This in turns gives rise to the possibility that SWFs may in the future file a claim through investor-State arbitration.*

This article addresses certain issues that may arise where a SWF is a claimant in investor-State arbitration. Such claims are likely to enter into investor-State arbitration because past jurisprudence suggests that SWF entities should be qualified as an "investor". Also, as there are diversified jurisprudence concerning the merit stage and the national security defense stage, it seems that the outcome of a potential SWF case would be hard to tell.

Although it is possible for an SWF to initiate an investment arbitration claim, there has not been such claim brought by a SWF yet. This article discusses the possible reasons. This article argues that it is suitable for the existing investor-State arbitration mechanism

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to accommodate SWF claims. SWF disputes should be integrated into the existing investor-State arbitration mechanism since investor-State arbitration offers an appropriate and neutral platform to settle national security concerns. Also, the advantages to include SWFs in investor-State arbitration seem to outweigh the disadvantages. All in all, SWFs should not be discouraged from settling issues with a host State through investor-State arbitration.

KEYWORDS: *sovereign wealth funds, investor-State arbitration, dispute resolution, international investment law, sovereign owned entities*