

DETECTING FRIVOLOUS CHALLENGES IN INVESTOR-STATE DISPUTE SETTLEMENT

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ABSTRACT

Frivolous claims in Investor-State Dispute Settlement mechanism are problems that need to be resolved. Since frivolous claims lack legal merit, any ISDS procedure should be designed to reduce the host states' resources spent on them to the extent possible. In response to the public outcry against ISDS, some ways of preventing or deterring frivolous challenges have been implemented or proposed. These mechanisms include expedited review and dismissal of frivolous claims, shifting attorneys' fees, management of duplicative cases, and enhancement of transparency. This paper reviews the functions and limitations of these suggestions. It further argues that the current proposals are not effective in deterring frivolous claims. This paper further suggests innovations regarding deterrent mechanisms with fee shifting to be included in the overall scheme of dealing with frivolous claims.

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