

Original Research Article

## Study on the principle of transparency in international investment arbitration

Zehua Gong

Peking University, Beijing, 100871, China

**Abstract:** Under the background of globalisation, the issue of transparency in international investment arbitration, as an important mechanism for resolving transnational investment disputes, has gradually attracted the attention of the international community. The introduction of the principle of transparency in international investment arbitration aims at balancing public and private interests, safeguarding the public's right to know and participation, and at the same time enhancing the fairness and credibility of the arbitration process. This research proposal aims to explore the theoretical framework of the principle of transparency in international investment arbitration, its practical progress and its impact on the future international investment legal system. The study of the principle of transparency in international investment arbitration is of great practical and theoretical significance. With the increase of international investment activities, the number and complexity of investment disputes have risen.

**Keywords:** Principle; Transparency; International Investment; Arbitration

### 1. Innovative points of transparency in international investment arbitration

The principle of transparency in international investment arbitration is an important part of the international rule of law in the context of globalisation. With the increase in international investment activities, the number and complexity of investment disputes have also risen, which requires arbitration procedures to be more fair, reasonable and transparent. The introduction and implementation of the principle of transparency aims at balancing public and private interests, safeguarding the public's right to know and participation, and at the same time enhancing the fairness and credibility of the arbitration process.

(1) Enhancing the fairness and credibility of arbitration. The principle of transparency helps to ensure the fairness and legality of the arbitration process. By making the arbitration documents and hearings public and allowing third parties to participate, the possibility of secret deals and bias can be reduced, thus enhancing the credibility and consistency of the arbitral awards.

(2) Safeguarding the public interest. International investment arbitration often involves public policy issues such as environmental protection and public health. The implementation of the principle of transparency enables the public to understand the process and outcome of dispute resolution, which helps to protect and promote the public interest.

(1) Construction of the theoretical framework. This study will construct the theoretical framework of the principle of transparency in international investment arbitration, clarify the status and role of the principle of transparency in international investment arbitration, and explore its relationship with other value objectives such as fairness and efficiency.

(2) The depth of empirical research. Through case analysis and empirical research, this study will assess the implementation effect of the Rules on Transparency, explore its specific impact on international investment

arbitration practice, and provide empirical support for the reform of transparency in international investment arbitration.

(3) Integration of international and domestic legal systems. This study will explore the degree of acceptance of the principle of transparency in different countries and regions and its impact on the international investment legal system, and put forward China's countermeasures and proposals under the principle of transparency in international investment arbitration, so as to provide decision-making references for the Chinese government and enterprises.

(4) Comprehensive Assessment of Transparency in Arbitration Procedures. This study will conduct a systematic assessment of the necessity of transparency in international investment arbitration procedures, its implementation and its challenges, propose strategies and measures to enhance transparency, and provide a theoretical basis and practical guidance for the reform of transparency in international investment arbitration. Through the above research, this research proposal will provide in-depth theoretical analysis and practical guidance on the principle of transparency in international investment arbitration, and contribute to the improvement and development of the international investment legal system.

## **2. Main methods of the proposed research**

This study will adopt the following three research methods to comprehensively analyse the theoretical basis, practical progress and its impact of the principle of transparency in international investment arbitration:

1. Comparative method. The comparative method is an important research method in social sciences, which analyses the application of the principle of transparency in international investment arbitration by comparing the arbitration rules and practices of different countries and regions. This study will systematically compare the rules of different international investment arbitration institutions, such as the International Centre for Settlement of Investment Disputes (ICSID), the London Court of International Arbitration (LCIA), and the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), as well as the transparency clauses in different national and regional trade agreements, such as the North American Free Trade Agreement (NAFTA) and the Trans-Pacific Partnership (TPP). Through comparative analyses, this study will reveal the commonalities and differences of the principle of transparency in international investment arbitration, as well as the specific impact of these differences on arbitration practice.

2. Case analysis method. The case analysis method provides insights into the application and effects of the principle of transparency in actual arbitration proceedings through an in-depth study of specific cases. This study will select a series of representative international investment arbitration cases, such as *Methanex v. U.S.A.*, a case in which NAFTA pioneered the use of written submissions from non-disputing third parties, which became an important case for transparency reform. Through in-depth analyses of these cases, this study will assess the practical effects of the principle of transparency, explore its impact on the fairness and efficiency of the arbitration process, and identify the problems and challenges in practice.

3. Empirical research method. The empirical research method assesses the impact of the Rules on Transparency on the practice of international investment arbitration by quantitatively analysing the effects of their implementation. This study will collect and analyse relevant data, such as the degree of openness of arbitration proceedings, third-party participation, and the publication of arbitral awards, in order to assess the effectiveness of the implementation of the principle of transparency. In addition, this study will collect the views and satisfaction of arbitration participants, observers and the public on the principle of transparency

through questionnaires and interviews in order to obtain a more comprehensive assessment.

### **3. Summing up**

Traditional international commercial arbitration rules tend to emphasise confidentiality, but this principle of confidentiality is challenged when it comes to disputes between states and foreign investors. Because such disputes often involve public interests, such as environmental protection and public health, the public has a right to know the process and outcome of dispute resolution. The Rules on Transparency in Treaty-based Investor-State Arbitration (hereinafter referred to as the ‘Rules on Transparency’), adopted by the United Nations Commission on International Trade Law (UNCITRAL), represent an important milestone in the reform of transparency in international investment arbitration. The Rules on Transparency require more information to be made public in the arbitral process, including the Notice of Arbitration, Statement of Defence, written statements, etc., in order to enhance transparency and public participation.

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