Suggestions on Establishing Dispute Settlement Mechanism In BRICS Countries

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Introduction

• Dispute Resolution Mechanism (DRM)
  – Dispute: Common phenomenon
  – DRM: Resolve disputes and ensure growth

• DRMs:
  – Negotiation, consultation and mediation
  – **Arbitration** and litigation
Introduction

• The BRICS commercial arbitration mechanism
  – the BRICS Dispute Resolution Center

• This paper:
  – One agreement: BRICS DRM
  – Four unified rules:
    • institution construction rule
    • procedural rule
    • legal application rule
    • the recognition and implementation rule
BRICS DRM Agreement

• BRICS legal forums
  – BRICS Dispute Resolution Council
    • Moscow Declaration
  – BRICS Dispute Resolution Centers
    • Shanghai (2015) and New Delhi (2016)
    • Brazil and South Africa

• Need further support at the state level
BRICS DRM Agreement

- Agreement on the Establishment of Dispute Resolution Mechanism for the BRICS Countries
  - Application of the BRICS cooperation
  - Requirement of the public laws
  - Acquisition of the state authority
  - Governance of BRICS in international community
  - Norms and unified rules for the BRICS DRM
Institution Construction Rule

• Institutional arbitration v.s. *ad hoc* arbitration
• Unify the rules of institution construction
  – International dispute resolution agency
  – Different location but same service
• Example: CITIC and ICAC
• The needs of present and future
  – Globalization, information, digitalization and intelligence
Procedural Rule

• UN rules of arbitration
• Challenges:
  – Commercial activity - integrated into economic, administrative, and political relations systems
  – UNCTAD’s Model Law
• Principle:
  – designed, coordinated, unified and adhered
  – maximum common number
  – unified and differentiated
Legal Application Rule

• Certain degree of unifying legal application
• Internationalization of commercial law
  – commercial transactions
  – globalization of production factors
• Direction
  – unifying the legal application
  – fixing the expectations of the parties
Recognition and Enforcement Rule

• Convention on the Recognition and Enforcement of Foreign Arbitral Awards
  – realization and protection of the rights
  – effectiveness of the arbitral award

• Challenge:
  – different understanding of the judicial system
  – loss of confidence and recognition
Conclusion

• The BRICS Dispute Resolution Center
  – Consensus
  – Innovation

• One agreement and four unified rules

• Legislative level and judicial level
  – Legal rules and domestic legislation
  – Support the development of multiple DRM