

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