

Parallel Procedures in Investment Disputes (summary)

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Foreign investment is the investment of private investors in foreign territories (host country) to carry out business activities. Dispute may arise between investors and host countries regarding foreign investment. This kind of dispute is called the “investment dispute”. The investment dispute is related to public international law and private international law in terms of the protection of nationals abroad / treatment of foreign nationals in the territory, the legal nature of the agreement between the investor and the host country (investment contracts as State contracts), and dispute resolution procedures between the investor and the host country. This paper examines, from the perspective of dispute resolution procedures for investment disputes, the issues involved when multiple dispute resolution procedures are initiated simultaneously.

In regard to foreign investment, rules based on a treaty called “investment treaty” as typified by the Bilateral Investment Treaty (BIT), which has been concluded since the end of the 1950s, are widely applied. Since the 1990s, the settlement of investment disputes based on the investor-host country dispute settlement (Investor-State Dispute Settlement, ISDS) clause inserted in investment treaties (mainly arbitration) has been widely used.

As a result, due to the coexistence of dispute resolution procedures under investment treaties and dispute resolution procedures under investment contracts, and the complex forms of investment aimed at protection under advantageous investment treaties, such as investment treaty shopping, multiple dispute resolution procedures may be introduced simultaneously for substantially the same dispute. About such parallel procedures, it has been pointed out that there are problems such as excessive burdens on host countries, the cost of overlapping trials, the incongruence of judgments and arbitration awards, and a decrease in confidence in investment treaty arbitration due to incongruence in the interpretation of investment treaties.

This paper provides an overview of investment dispute resolution procedures and summarizes the factors behind parallel procedures. Then, the parallel procedures in the case of a conflict of contractual procedures and treaty procedures under the umbrella clause of the investment treaty and the parallel procedures in the case of a dispute concerning an investment in a complex form of investment were analyzed through case studies. Finally, the ne-

cessity and possibility of coordinating parallel procedures are discussed.