

Creating Legitimate Expectations in International Energy Investments: Role of the Stability Provisions

Authors : Rahmi Kopar

Abstract : Legitimate expectations principle is considered one of the most dominant elements of the Fair and Equitable Treatment Standard which is today's most relied upon treaty standard. Since its utilization by arbitral tribunals is relatively new, the contours of the legitimate expectations concept under investment treaty law have not been precisely defined yet. There are various fragmented views arising both from arbitral tribunals and scholarly writings with respect to its limits and use even though the principle is 'firmly rooted in arbitral practice.' International energy investments, due to their characteristics, are more prone to certain types of risks, especially the political risks. Thus, there are several mechanisms to protect an energy investment against those risks. Stabilisation is one of these investment protection methods. Stability provisions can be found under domestic legislations, as a contractual clause, or as a separate legal stability agreement. This paper will start by examining the roots of the contentious concept of legitimate expectations with reference to its application in domestic legal systems from where the doctrine under investment treaty law context was transplanted. Then the paper will turn to the investment treaty law and analyse the main contours of the doctrine as understood and applied by arbitral tribunals. 'What gives rise to the investor's legitimate expectations?' question is answered mainly by three categories of sources: the general legal framework prevalent in a host state, the representations made by the officials or organs of a host state, and the contractual commitments. However, there is no unanimity among the arbitral tribunals and the scholars with respect to the form these sources should take. At this point, the study will discuss the sources of a stability provision and the effect of these stability provisions found in various legal sources in creating a legitimate expectation for the investor. The main questions to be discussed in this paper are as follows: a) Do the stability provisions found under different legal sources create a legitimate expectation on the investor side? b) If yes, what levels of legitimate expectations do they create? These questions will be answered mainly by reference to investment treaty jurisprudence.

Keywords : fair and equitable treatment standard, international energy investments, investment protection, legitimate expectations, stabilization

Conference Title : ICELSD 2018 : International Conference on Energy Law and Sustainable Development

Conference Location : London, United Kingdom

Conference Dates : February 15-16, 2018