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The Investment Dispute Resolutions in Energy Charter Treaty

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ABSTRACT: Energy differences due to the strategic nature, and the enormous costs associated with it, is of great sensitivity, since the Energy Charter Treaty, the first legal document regulating trade, transit and investment in the energy sector, with rules accurate and consistent, in the context of dispute settlement, try to minimize business risks that, in order to reassure the parties to the contract, their rights and legal guarantees for investment is safe. Charter Investment Disputes divided into two groups, the differences between the investor and the host government, and disputes between Contracting States, for any dispute regarding the nature of the dispute, has established a separate regulation. Provide different methods, such as negotiation and compromise before admission to international arbitration bodies, and lack of funding required to refer the dispute to the civil authorities of the host country, and granting the charter initiative of bringing a case directly, without the need for diplomatic support to investors foreign to guarantee non-discriminatory manner, thereby increasing the confidence of investors, resulting in increased investment and trade flows between our members. In this study, it has been tried, in addition to the Charter outlines the rules of dispute settlement, in the area of investment, the scrutiny of the Bill, the existing uncertainties, such as the lack of merit of the government invested in litigation against private investment, and investment restrictions in to resolve the litigation, and the dispute settlement mechanism of the Energy Charter, as appropriate role models not only for the security of the investment, and the resulting differences in the energy sector, but the rest of the field.

***Keywords*:** Energy Charter Treaty, resolve disputes, international arbitration.

INTRODUCTION

Due to the growing need for countries to have trade relations - economic, especially in the field of energy with each other, and since the high volume of cooperation between exporting and importing countries, the energy, the investment is made, and many other activities. energy, such as trade and transit, involving the extraction of energy, through investment, that is, the case in developing countries, and invested in the energy sector, especially in countries where the majority of its foreign exchange earnings from the sale of energy supply, very is critical. Settlement of foreign investment in the energy sector, on the one hand due to the interference of external factors, the foreign investor, the alienation and distrust, the legal system and country Judicial host, and the host government for not wanting to waste their property, as a result of particularly through the handle out of court proceedings, and the alternatives; and on the other hand, due to the strategic importance of energy, and the enormous costs associated with the dispute, is very important. Energy Charter Treaty as the only legal document in the field of regulation of trade, transit and investment in the energy sector, which aims to meet the growing need for industrialized countries to provide adequate energy and ensuring the security of their investment, and the need for providers energy, the growth facility better access, competition and continuously formed, precise rules not only in terms of energy security, has decided not to increase the attractiveness of the host country for FDI, the unique context of dispute resolution, the forecast so that, with the international regulations in this step to increase the absorption of foreign investment, and reduce the risk to take. Energy Charter investment disputes, has been divided into two categories, the differences between private investors and host governments, and Disputes the

Contracting State, in this research, the basic features of the rules of the solution, and the Energy Charter disputes will be dealt with, then the division of the Energy Charter, the rules of arbitration Energy Charter, will be discussed.

A) The basic features of the rules of the solution, and the Energy Charter Treaty Disputes

1. Direct action litigation by investors

Energy Charter, paragraph C, paragraph 2, Article 2 Resolution Number3281 General Assembly regulated by the charter of rights and obligations of countries that, according to the rule and the principle of freedom in the choice of means of dispute settlement, the right of recourse to the courts for dispute resolution emphasizes the recognized rules and resolve their differences, based on the principle of the right to go to court to resolve the dispute, the freedom to choose the method of dispute resolution, equality among the citizens of the host country, and foreign investors, foreign investors have the highest salaries and privileges granted to local nationals and nationals of other countries is established (paragraph 2 of Article 26). Based on the principle of equality (among nationals of the host country and the foreign investor), and the benefit of foreign investors, the highest civil rights and privileges granted to nationals and nationals of other countries, foreign investors can of their own choosing, and to consider their own interests, go to the courts of the host country, or reference agreed to adopt a bilateral agreement, or the mechanisms for resolving disputes that, in other bilateral or multilateral agreements of the host country, with other legal entities anticipated use. Treaty, the private investor has the right to resort to some legal ways, directly and without the support of their country Diplomatic, host governments resolve their differences. Granting the right philosophy is that, firstly, one of the main goals of the Treaty, having strong investor rights, obligations or to require the government to compensate the losses. The second advantage is the possibility of legal action against the investor, on the initiative of producers treaty, the government in the form of a Private person appearance, so the investor can directly without the need to resort to government action, action against the host state's capital. This is despite the fact that, in many important international treaties, covenants, such as the World Trade Organization, the private investor is able, indirectly, as a pretext to put the diplomatic protection of his government, refer the dispute to the WTO dispute settlement panel (Sadeghi, Mohsen Ghaffari Farsani, Behnam, 2001, 175). People to settle disputes through international arbitration, can only resort to diplomatic protection of his government, international authorities take action. This means that an investor's home country, supports the claims of its own investors, political support is implemented in a timely manner, and will appeal to international bodies. Diplomatic support, includes all the diplomacy of a country to another country for the rights of their citizens, and protect them in the territory of a foreign country, abuse, and Johnny are both financial, material and moral harm to their Enter the (Ziaee Bigdeli, Mohammad Reza, 2006, 487). Implementation of diplomatic protection, with problems such as the existence and continuity of the relationship of subordination between the investor and his government, and legal entities is the criterion for determining nationality. Resort to traditional methods of diplomatic protection, to resolve disputes through arbitration, private dispute between an investor and the host government invested a dispute between the government and the government will become an investor who may have great political implications. On the basis of what was said, how diplomatic support from the investor's perspective, poor and Unreliable approach to compensation, because in addition to the need for national investment, no conclusion in the courts of the host state (the precursor, 491), the provision of diplomatic protection is It is, on the other hand because of the relations between the countries, rarely country to pursue its national law, and litigation against the state provides, and political relations, investor relations, and the host government prefers. Since the Bill seeks to establish a basis for the investment is secure, and the acceptance of the investor, based on direct action fight, protect and ensure the rights, the property provides investor.

2. The resolution of disputes between investors and host governments and the governments of the Contracting

Energy Charter Treaty, with the aim of originality and independence up to the investor to direct action litigation and on the other hand, due to differences in the nature of the differences between the investor and the host government and the governments contracting with each other, the differences in investment, the difference between the two groups investor and the host government and dividing the difference between the Contracting Governments, and for any disputes regarding the nature of the dispute, has established a separate regulation. Section 5 of the Charter, is dedicated to the dispute settlement rules, the rules into two categories resolve disputes between investors and host governments (Article 26), and the settlement of disputes between the contracting states (Article 27), divided have. Paragraph 1 of Article 26 states: "Disputes between a Contracting Party and an investor of the other Contracting Party, in connection with an investment in the territory of that Contracting Party, which alleged breach of an obligation, under Section 3 of the ...» . The investor affected by the breach of the obligations set forth in Section 3 of the Charter, devoted to encouraging investment rules and code of conduct and legal guarantees for the protection of property and assets of the investment can be directly against the host state, the litigation. These obligations include a commitment to encourage and support the investment (Article 10), the differences on key personnel (Article 11), compensation (Article 12), the confiscation of capital (Article 13), and transfers related to investments (Article 14), and substitution (Article 15). Paragraph 1 of Article 27, as the expression of the settlement of disputes between Contracting States provides that: "The States Parties to resolve disputes related to the implementation and interpretation of this Agreement." Disputes arising under this provision, the scope and extent of the obligations of the Contracting States, the capacity of governments to be resolved. The differences between

an investor who, directly with the host government is formed, according to the mechanism provided for in Article 26 shall be settled, and disputes between Contracting States which, due to the implementation and interpretation of the treaty is based on the otherwise provided for in Article 27 will be solved. So be careful charter disputes, according to the distributed nature of the parties, and to any special provisions have been drafted.

3. Lack of commitment to the host country's internal dispute resolution techniques

It is possible to invest in any administrative or judicial authorities of the host state visit (part A, paragraph 2 of Article 26). It should be noted at this point is that, according to the last sentence of paragraph 2, Article 26, which states: "... the investors involved in the dispute, the dispute may be resolved, refer to the following references ... ", referring to internal administrative and judicial authorities of the member states, as well as other judicial dispute settlement procedures, optionally has decreed, and investors, unlike some bilateral investment treaties (Monirozzaman, A.f. M, The translations of Mohammad Javad Mirfakhrayi, 1999, 193-240), not only the investment initially required to refer the dispute, the local authorities did not, but over all internal procedures for resolving disputes, is not necessary. According to the provisions of this article, go to the local authorities, unlike many investment protection treaties (Kung Yan-kai, translated by Hojat Salimi Torkamani, 2009, 263-291), is not only a prerequisite to refer the dispute, not to other institutions, It originally referred to as the difference, other methods of dispute resolution are available. Charter agreement and the contract shall, in accordance with the provisions of part B is not neglected, paragraph 2, Article 26, if a particular way of resolving disputes between the parties, the contract investment, and so it is expected to be able to act in that manner.

B) disputes between investors and host governments

Article 26 of the Treaty, the only way to resolve disputes between investors and host governments, the various methods, in particular, has been appointed. There thinking about this matter, the provisions of this article, with two limitations has run only to the mechanisms provided for in this Article shall be used as the source of these discrepancies, violations of the obligations enumerated in section III of the Treaty , these commitments include commitments to encourage and support the investment (Article 10), the differences on key personnel (Article 11), compensation (Article 12), the confiscation of capital (Article 13), and transfers related to investments (Article 14), and substitution (Article 15). Rather, this article about the differences, does not apply (Sadeghi, Mohsen Ghaffari Farsani, Behnam, 2007, 175- 176). For example, if a short one country to promote the conditions for access by foreign investors, the capital markets, the investor stands to fail, according to the treaty's dispute settlement procedure, because the regulation of this assumption (Article 9), in section 3 of the Treaty has been .and litigation is known. Basically, it seems logical that, when the Energy Charter expressed as rules of arbitration of investment is just a matter of dispute, this section provides, and limits its scope does not extend to other provisions, since it to direct investment, the references made to resolve the dispute, so that the rights provided for by private investors, the investment is entitled to institute legal proceedings, and other contentious issues which are the responsibility of the Contracting States parties and signatories of the Charter are . Thus, according to Article 26, the investor can law, part of the Energy Charter protection, and ensure their investment is not filed. And anticipated litigation within the law, it is not meant to restrictions.A second limitation is that the Article 26, this article only refers to the possibility of legal action by private investors, against the host State, and the possibility of government action against the investor, using the above methods, it is quiet, but in practice, The Government may also, in the proceedings of the case, its claims of breach of an obligation to invest in a counterclaim raised and reference is required, the obligation to make a decision about it. But in answer to the question whether the government can initiate legal action against private investment or not, there are still doubts, however, seems to accept the possibility for the government, seem more logical, because firstly specification There's counterclaim, the counterclaim and as permitted by the government, initiated a lawsuit by the state, should not be faced with an obstacle, and secondly, the lack of such facilities may have a negative impact, for example, government to solve their difference by investing directly in domestic courts resort, it is clearly not favorable to foreign investors. But precisely at the beginning of paragraph 1 of Article 26, which provides that "disputes between a Contracting Party and an investor", the absolute differences, and the differences with the other conditions prescribed in this Article is, in a sense are What is the investor, the host government. It may be objected that, in paragraph 2, Article 26 of the Treaty states that, '"the Investor" involved in the dispute (the unresolved conflict), the following references refer To solve season ... " and this implies the right investor, as a monopoly, to refer the dispute to the host government, the Charter does not grant such rights. But it should be noted that, as mentioned above, the absolute differences of reference, the reference is specified, the investor and the host government, on top of paragraph 2, Article 26 states that: "If such a difference" to friendly, no settlement, the investor has the right to refer the dispute, the reference is specified, so the dispute, it may be attempted, investor or host government, the possibility of references is specified, so in this section, seems to be no limit to the host government, not the judiciary to take action, and if the article states that "the investor involved in the dispute" includes a basic point, it is possible that the host government For reasons of sovereignty, the continuation of the settlement to be deterred, and the dispute is not resolved out in this Charter, the investor has the right to have an unresolved dispute to arbitration or judicial authorities, even If action is not the primary investor dispute settlement, and the host government action, because at the beginning of paragraph 2 of Article 26 states

that: "If such a dispute" means any dispute, the case remains unsolved is. So both sides of the divide, the investor and the host state, the right of action to resolve their differences, and emphasize that the Charter of the investor, the reference is for two reasons: One is that the Charter for the first time, direct investment, and without to resort to diplomatic protection of his government, litigation rights and, therefore, need to be emphasized, and if not the government, the first to attempt to resolve their differences, and also stated that the investor may be referred to an unresolved dispute, To avoid conflicts which remain unresolved.

•dispute resolution procedures set forth in Article 26

As the topic of direct action litigation by investors as the Energy Charter principle of sovereign equality, and the principle of freedom in the choice of means of dispute settlement, developed by the charter of rights and obligations of countries that, in Resolution 3281 of the General Assembly, in the right of states to enforce confiscation, and their commitment to the issue of compensation is recognized, and the freedom of individuals to choose the method of resolving disputes has emphasized. Paragraph 2, Article 26 of the Treaty, according to the investor's right to freedom of choice, the dispute settlement procedures. Methods prescribed in this section, we will discuss the Energy Charter.

1-1 negotiation and other peaceful methods

Before, the arbitration initiated in many international commercial contracts, anticipated that the parties submit their dispute to try to negotiate directly or through intermediaries, and the conciliatory resolve. In such a situation, the parties are required, these measures before the general judgment, and until these measures do not, and failure is not detected, the judgment can not be started. Some of these measures, such as obtaining expert's theory may be necessary for the Court of Arbitration and help (Nikbakht, Hamid Reza, 2001, 41-42). In addition, these methods of dispute resolution, are contractual, and the parties are obliged to observe it, act on them before referring the dispute to arbitration sign of goodwill, contractual obligations and resolving contractual disputes, shall be considered (Rene, David, 1948, 280). Accordingly, the Energy Charter in the first paragraph of Article 26, which stipulates that "investment dispute should, if possible, be resolved in a peaceful and friendly. Investors can, a dispute for settlement, according to Article 26 refer, as long as three months from the date on which each of the parties requests resolved through friendly has, in the past, "and so resort to methods peaceful, a prerequisite for admission to other methods. Where the conditions of contract, the dispute has not been well designed and set, for example, different stages of dispute resolution, and before the dispute to arbitration, taking into account the specific timeline, is not given, a lot of problems and delays, The dispute arises (Nikbakht, Hamid Reza, ibid., 42). Therefore, the obligation of the parties to the Energy Charter, to resolve disputes through peaceful means, has decreed that, if you can not dispute peacefully, within three months of the settlement, the dispute shall, through the Courts investor generation, as provided in Article 26 have been resolved. Therefore, the set time, to resolve disputes by peaceful means, a waste of time and avoid delays in the case is. It should be noted that these methods should be used in order is. the investor, without during negotiations and friendly consultations, can go to other methods. But after Were spent three months, and thus the absence of amicable solution, the choice of an investor, the following procedures shall be open, and the government does not dispute, to prevent his election (Hobér, kaj, 2010, 153-190).This makes it possible for borrowers who, at any time in judicial, administrative or host state visit (part A, paragraph 2 of Article 26), but this requires the trust of foreign investors to neutrality, independence, accessibility and competent professional bodies shall be . As the basic characteristics as settlement rules, the Treaty of foreign investment, initially bound to refer the dispute to the civil authorities of the host state is not, but over all internal methods of dispute resolution, it is not necessary. Therefore refer the dispute to the local authorities as well as other procedures provided for in the Charter, is optionally provided.In accordance with the provisions of part B, Section 2, Article 26, as between the parties, a particular way of resolving the dispute, the contract investment, and so it is anticipated, will act in that manner. This kind of agreement may be referred to arbitration. This method is usually the investment contract with the government or government agency contracts, bilateral investment treaty between the government and the investor, the host government is expected (Bernardo, M.Cremades, 2005, 1-2,).

1-2 Reference to international arbitration or conciliation

Foreign investors can, in any case, even before any mechanism, including judicial proceedings, the host country, and as it is used, then its claim to international arbitration bodies are anticipated, referred to in the Charter. The component A, paragraph 3, Article 26 If the parties agree, unconditionally to the dispute to arbitration, or at the time of the signing of the Treaty states, the investor can, the international jury, or adapted according to the provisions referred. This is the difference between arbitration and conciliation, ratings issued by the same judge, a judicial decision is binding, while complying with the parties, the decision Compatible entirely optional, and only if prior agreement of the parties, the obligation is being enforced (Sadeghi and Ghaffari Farsani, 2009, 385). The provisions of Chapter XI NAFTA has been adopted. On the basis of Articles 16 and 17 of NAFTA, only investors who, in violation of the obligations under this Treaty loss or damage, they will be able to judge the unconditional announced by the government invested visit, while in Article 26 of the Charter, the mere breach of obligations relating to Part III of the Treaty, the possibility of a lawsuit by investors is enough, no need to prove the damage at this stage is not. In accordance

with (a) (3) of Article 26, states parties "agree unconditionally to the dispute to conciliation or arbitration, international, in accordance with the provisions of this Article," declares. This agrees unconditionally that is, a state incapable of consent , and their agreement or charter, upon request of the investor to start nullify the judgment. consent and waiver of certain states necessary and it has no legal effect. At the turn of the Charter, the Contracting State for a period of 20 years from the date of renunciation, remains committed to supporting the investment guarantee obligations (Hober, Kaj, 2010, 153-190).
If a foreign investor wants to go to arbitration, the choice between three different reference to international arbitration, in accordance with paragraph 4 of Article 26, is as follows:

1. The International Centre for Settlement of Investment Disputes in Washington, adopted in 1962 by the Convention oxide. It is only if, the host government and the state investor, are both members of the oxide. If you are not a member oxide, foreign investors could handle the additional facilities of administrative rules that are applied by the Secretariat dioxide, see (part 1 and part 2 (a) of paragraph 4 of Article 26)
2. The agreement referred to an arbitrator or an arbitration institution, based on the UNCITRAL Arbitration Rules (part B of Section 4).
   Referred to the Arbitration Institute of the Stockholm Chamber of Commerce (3) (part C, paragraph 4)

2-1 Specific provisions of the Arbitration
Agreed unconditionally to compulsory arbitration

Through litigation settlement mechanism, based on mutual agreement, the contract included. It is satisfying, as provided in the contract and the arbitration agreement, is otherwise agreed upon later, members of the differences caused by the judgment To deal with. Foreign investment may be, the legal framework for investment, investors from relying on such arbitration agreement, or prohibiting the government invested, to refer the dispute to arbitration, not satisfied. In addition to the contractual agreements that refer to future disputes or disputes to arbitration occurred, meaning that over the past few decades, funded by bilateral or multilateral treaties made, arbitration is mandatory. According to compulsory arbitration mechanism, the government invested a membership treaty in which compulsory arbitration, is brought to its incorporation as a matter of satisfaction to refer future disputes to arbitration, and the subject of one of the States Parties to the Treaty, the investor is able the disputes, arbitration and state funds invested in it, in the judgment appealed.Settlement mechanism under Article 26, between the investor and the host government, based on the concept of direct judgment is formed. Funded under this Article, without diplomatic support, and involvement of his government, or government invested recourse to courts, can directly host government, the courts, the judge sides is. Matching part A of paragraph 3, Article 26 of the Treaty "Each State Party agrees unconditionally, to refer their dispute to international arbitration states". Necessary due to the unconditional satisfaction of the treaty under this paragraph, on the one hand comply with the requirements of the oxide, and UNCITRAL rules are also provided written informed consent, according to the New York Convention. The purpose of this provision is that a prior agreement between the Contracting States, and existing investors and allow the re-investment of the government to refer the dispute to arbitration or conciliation is not required.If the state at the time of accession to the Treaty Mostly two conditions without your consent, the provisions of the treaty (the dispute) is declared, or within a reasonable period of his denial that does not mean the acceptance of all the rules of arbitration. Due to international laws, consent to arbitration may need to insert an arbitration clause in the contract does not invest (Bernardo, M.Cremades.2005,4). As the government unconditionally, to join an international treaty, means consent to compulsory arbitration is contained in it, and on the basis of the consent of detrimental reliance (required), will be irreversible. Because foreign investors, based on the confidence in appearance, and accepting the rules of the Treaty by the host government, the country has invested in it. The fact that the dispute your written request, observing the formalities required to submit a reference from his judgment, sufficient, and requires the consent of the government. In fact, this kind of unconditional approval of the government, meaning a "demand" that, from an investor's "acceptable" is (Sussman, Enda, 2006,3). Other works unconditional consent, the judge can vote compensation, including compensation paid to any form requires. From this we can infer that other forms of reparation, including restitution, and has been recognized in international law, the Charter also there. Arbitral award in this area, and definite exist. The parties to the arbitration award shall be immediately put into practice, and if its implementation requires regulatory approval, to take their approval. It should be noted that, for all the detailed procedural rules of the arbitration proceedings, including the establishment of the court, jury selection, hearing statements and costs, etc. Each of these methods is predicted that in the next section, we refer to them .

Exceptions to compulsory arbitration, the foreign investment

Compulsory arbitration rules (unconditional consent to arbitration), only two notable exceptions:

1. component (b) of paragraph 3, Article 26 states listed in Appendix ID (Appendices Treaty Energy Charter, ibid., 72) (24) allows that, if the investor, before the domestic courts or a dispute resolution alternative, is presented, agreeing unconditionally refuse. The meaning of this condition is that, if there is no agreement between the parties before investor without obligation, to refer to the domestic courts may refer to any of the references to international arbitration. But the main meaning is that, if you are admitted to the investor, or any reference to local authorities agreed, until the first

proceeding, the reference or civil court continues, investors can at the same time, the differences are discussed with reference to the other. Second, even if the end of the investigation, he can not come back, the difference in reference to international arbitration, the proposed (the closing credits).

2. part (c) of paragraph 3, Article 26 of the members listed in Appendix IA (annexes of the Energy Charter Treaty, ibid., 73) (4 countries), allowing, in the case of obligations to observe and monitor the state of contractual obligations by foreign investor, the last sentence of paragraph 1 of Article 10 of the Treaty, agreeing unconditionally abstain. According to the last sentence of paragraph 1 of Article 10 of the Treaty: "Each Contracting Party shall take all obligations that, in the case of an investor or an investment by an investor of the other Contracting Party, has accepted, will comply." These contractual obligations, firstly, to directly or indirectly, in connection with an investment, as defined in paragraph 6, Article 1.. Secondly, according to national law, the investment in the creation of these obligations are valid. This means that, even if the investment agreement with the host country, except for some differences of judgment, or is it just an internal contact the Court made the investment, according to the last sentence of paragraph 1, Article 10 may be referred to arbitration. Because the behavior of investors, however, should not be less than the standards of international law, including obligations, in accordance with the Treaty (Richard, Happ, 2004, 2). The limited exceptions indicate that, in principle, other solutions compulsory arbitration, and any conditions in the field are not allowed (Bernardo, M Cremades, 2005, 2).

1-4, and nature rules, governing the arbitration proceedings

Procedural rules governing the arbitration proceedings

The first step is to begin to address investor's written request, the provisions and procedures of each of these authorities shall submit to the authority. After the reference proceedings, the first formal investigation procedure, it must meet its jurisdiction, and after qualification, each of these authorities, in accordance with its own procedure to dispute arising, will deal with it. The question that arises at this point is that, if the investor before domestic courts of the host country is referred to, the provisions of the local authorities, to judge the credibility of the source, will be closed? As previously mentioned, in accordance with paragraph 3 (a), component (b), Article 26 states that, at the time of accession can attach ID, refer to the investor, the reference to arbitration are prohibited. If the country is not on this list, obviously, does not preclude an investor referred to international arbitration in accordance with the Treaty. The reference to arbitration proceedings, at this stage from appeal, and in the nature of the case, but only to clarify the question is whether the court's handling of the interior in accordance with accepted international standards, or not done ? (Walde, W, Thomas, 1996, 45) the same issue in the case, the difference between the investor, the government invested in an international body, such as a court judgment that, under the UNCITRAL arbitration rules formed the plan, and the failure in other international reference, such as oxides or the Stockholm Arbitration Chamber referred, also posed. The same holds (the closing credits), the English company Petropart fight against KGM public company by the government of Kyrgyzstan, was invoked. In this case Petropart, demanding payment of the remaining fee, for supplying compressed gas to the country, the company was the creditor. After Petropart actions by local authorities in Kyrgyzstan was not successful, the company by virtue of the contract, the Court of Arbitration, the UNCITRAL rules referred. Arbitration Court, arguing that the relationship between the parties to a trade, exports, and investment within the meaning of that required to produce a long relationship and is not considered a conflict Petropart rejected. Petropart again, according to Article 26 of the Arbitration Institute of the Stockholm Convention, the case plan. In response, the Government of Kyrgyzstan, the objection would dismiss the appeal. The jury Stockholm, arguing that: First, the credit requirement is closed, the parties are the same in practical terms, and conditions are. Second, the reference to the proceedings, nothing in the treaty does not stipulate that, after a selection procedure, the investor fails, another ritual use. Thirdly contractual obligation to supply the compressed gas, an economic activity in the energy sector, and within the meaning of the investment. It rejected the objections, and the entry into the conflict, the Kyrgyz government to pay 75 percent demands Petropart condemned.

Substantive law governing the arbitration proceedings

The second paragraph of the Charter of Rights and Economic Assignments countries, adopted on 12 December 1974, the rules for resolving disputes arising from compensation provides that: "In case of dispute, the question of intervention by local courts, and by virtue of its internal rules, resolve the season will be "as far as the opinion of some researchers refer to the rules of international law as it is, is reflected in the Declaration of 1962, another rule, and a dispute with the local authorities, and resort to other means, of there are exceptions (Madani, Seyed Jalaloddin, 1998, 143). Compared with this Regulation, the provisions of the Charter, we realize this, the Charter limits the internal regulations of the host country, is removed. One of the best achievements of the treaty, for foreign investors, addressed the jury on the basis of the Treaty rules, and the rules of international law. Paragraph 6, Article 26 of the Charter: "The Court of Arbitration established under paragraph 4, of the contentious issues, in accordance with the Treaty and the principles and applicable rules of international law will decide." It is only if the foreign investor in one of the authorities referred to arbitration. Obviously, if his visit, the domestic courts or other types of agreement, authorities said on national laws and rules governing conflict resolution, the rule governing fights Nature,

Diagnosed and will apply. Also pursuant to paragraph 1, Article 42 of the Convention in Washington: "If you do not specify the parties, the nature of the case, will be the national law of the host state capital, and the applicable rules of international law." Similar to Article 6, Article 26 of the Protocol. While, in accordance with the UNCITRAL Arbitration Rules Article 33: "The law governing the nature of the dispute, the parties agreed. If not selected, the governing law is the law applicable according to the rules of conflict resolution, based on a contract or business practices of the ruling, it is appropriate. That is, according to this method, the choice of the national law of the host country investment as well as the governing law of nature is debatable. However, in this case, and in all cases, the government investment law as the governing law chosen, National law where capacity has resulted in the flight of fulfilling the obligations of the State, not by virtue of the treaty. For example, where national law, contract with foreign investors, considered discredited, and this effect extends to the past. However, the rules and principles of international law, based on the covenant promises, and not allow the jury, the acquired rights and legitimate expectations of the foreign investor, ignored, and that those rules, which are inconsistent with the principles of the Treaty, the effect (Thomas.W.Walde, 1998, 46). Furthermore, according to the last part of paragraph 1, Article 10: "In no case against the investment behavior is not taken, the worse the behavior required of international law ... "This sentence is in fact referring to this Article 6, Article 26, that is, the principles and rules of international law, of the nature of the case is known. Thus, although, at first, to be a violation of treaty obligations with the third part of the host government as the case plan, proposed by the investor, but in consideration of the nature of the dispute, the foreign investor may, also in the context of other obligations Treaties and international agreements also invoke (Ibid, 44). This is especially the case cited commitments, the level of investment that is defined in the Treaty of Guarantee, for they are not mentioned, and the general obligations relating to the After the investment, the investor would be useful.

1-5 run and cancellation of arbitration decisions

Enforcement of arbitration decisions

The component (b) of Section 5, Article 26 of the Treaty: "Any judgment on the matter, at the request of any party to the dispute, be held in a country that is a member of the New York Convention. Dispute referred to arbitration under the terms of the claims arising from a Business relationship, or exchange of Article 1Ayn Convention will be recognized. " Thereby opening the treaty How to run by reference to the Convention, the occurrence of possible differences of opinion on the implementation of the judgment, is prevented. According to paragraph 3 of Article 1 of the Convention: "Members at the time of signature, ratification or accession to the Convention can bet that only those of the votes judgment recognized, and will perform, in a State Party to the Convention of New York, is issued. " This is another guarantee for investors to enforce the arbitration award. Also refer to claims arising from the business relationship is the fact that the Convention's applicability in commercial disputes (Energy Charter Treaty secretariat, 2003 & 2006, 55). In the final stage, if the offender does not run the vote verdict, this refusal is also a violation of the Treaty, the Charter Conference may decide, in accordance with paragraph 3, Article 34 of the Followed (Walde.WT, 2006, 459).

Annulment of arbitration decisions

The annulment of the award, there is no clear reference in the treaty. Section 8, Article 26 of the Treaty provides: "arbitral award may involve interest, shall be final and binding for the parties to the dispute. The award of a government action, or the collection agency (local or regional) Contracting Parties involved in the dispute, shall be required, the Contracting Party may replace any other compensation, compensation is paid. Each Contracting Party shall, without delay, to the enforcement of the award will take action, and arrangements for the effective exercise of its jurisdiction will provide. " As you can see, is not mentioned in this article and not in the rest of the Treaty, the possibility of revocation or invalidity of the arbitration votes yet. In Chapter VIII of the Convention, Washington, possible annulment of the judgment of the votes is required. So it seems that, if the host state and government investors, both members of the Washington Convention, the arbitration court may request the annulment of the vote, despite the vagueness of the Treaty in accordance with Chapter VIII of the Convention, the parties to exist. Some lawyers believe that the final judgment in accordance with paragraph 8 of the vote means that the Charter Conference can not re-examine, not to appeal against the judgment of the provisions of any of the authorities, not the (Walde.WT, 2006, 458). At the end of this section, it should be noted that the provision (international arbitration, etc.), even in countries (such as Russia) which, if exercised by the Agreement, as applicable (the paragraphs 1 and 3 of Article 45), unless at the time of the signing of the Treaty, pursuant to a declaration of non-acceptance, in particular the obligation to inform the charter, and Russia has not issued such a declaration (Ulrieh Klaus.2005. 5). Therefore, in the absence the declaration, the Treaty not only to the main domain, but also to all lands within this state, will be applied (Fred, W.and J. Sidklev.2005, 5).

• *investment disputes between states*

Although the purpose of the Charter, the prediction mechanism for resolving disputes, support and ensure investors, which appears to regulate dispute settlement in Article 26 (resolving disputes between investors and host governments), this support is provided, but signatories of the Charter, States are, therefore, may, in the implementation of the Convention, like other

international treaties, differences occur, hence the need for a regulation, it is necessary to resolve such disputes. Unlike disputes between investors and host states in Article 26, disputes between states is very wide, and not just an investment treaty, but other issues are also involved. Article 27 of the Treaty, relating to disputes between governments, general and in addition to investment disputes, disputes concerning the interpretation and application of the treaty states, in other sectors are also included. Paragraph 1 of Article 27 states: "The Contracting Parties to settle disputes concerning the application or interpretation of this Agreement, through diplomatic channels will try." The appearance of this Regulation applies to all disputes. But in paragraph 2 of this Article and Article 28 of the Treaty, the allocation has been applied:First, the material on disputes arising from the application and interpretation of Articles 6 and 19, respectively, relating to competition and environmental issues, it does not apply (paragraph 2); (b) in the case referred to in Appendix IA to the obligations of the observe and monitor the state of contractual obligations by foreign investors (the last paragraph 1, Article 10 of the Treaty), agreeing unconditionally, have refused to compulsory arbitration, will not apply. Third, the matter in dispute shall be established between the Contracting Parties concerning the implementation or interpretation of Article 5 or 29 of the Treaty does not apply unless the parties expressly, agree on its application. Article 5 of the investment measures related to trade, and Article 29 of the provisional rules governing the trade of energy.

1. The rules of procedural and substantive, governing the settlement of disputes between governments invest As noted above, pursuant to paragraph 1, of the Charter Article 27, the differences between the two states, both of whom are members of the treaty, if a dispute as to the interpretation or implementation of the treaty, the difference primarily through diplomatic channels, and political channels resolved. If the dispute is not resolved between the two governments, at this stage of the dispute contrary, the investor (if miscarry friendly efforts within three months, he was in possession of different types), are reasonable, if, within (not three months), the solution of diplomatic negotiations failed, however, for any reason, the remaining difference is, the difference between the state, and is important, immediately referred to international arbitration. In this way, each of the parties to determine the arbitrator, the third arbitrator and the arbitrators selected, choose a neutral country, the third arbitrator shall be chaired by the jury. (Paragraph 3 of Article 27). If the other party refuses to appoint arbitrator or arbitrators chosen because they are unable to agree on a third arbitrator determines, by referring (requesting the judge) could request the Secretary-General of the Permanent Court of International Arbitration install the referee. The Secretary-General shall, within 30 days of the request, appoint a third arbitrator. If he refuses, First Secretary (Deputy) Permanent Court of Arbitration do that, and if he refuses, the oldest being the person (Court), will be done. Third arbitrator of any country, elected President of the Court of Arbitration, will be. In addition, the person shall, on matters of controversy due to the Treaty of experience, expertise and knowledge is enough. (Component (c) of paragraph 3 of Article 27).

Procedural rules governing the arbitration, if the parties have not agreed otherwise, the arbitration rules of UNCITRAL Arbitration Metro's vote, is adopted by majority vote. Governing substantive law, such as disputes with government funding. The decision by the jury or judge of the Court may, on the basis of the provisions of this Treaty, and the principles and rules of international law. Decisions are final and unobjectionable, and is binding for the parties (except G and H of Section 3). It is noted that, in this part of the treaty parties may agree on the choice of law governing the nature of the case, or to apply the rules of conflict of laws, to determine the nature of the case law does not allow it. The criticism that, in Article 27 is taken, the difference between the two governments, allow third country is affected by unforeseen. This not only causes irreparable damage to the party states, but in a separate action plan by the government, causing a lot of problems, in terms of multiple conflicting decisions, will be the same thing. For example, a fourfold increase in the gas price dispute between Russia and Ukraine in 2006, Europe suffered major union members, and direct the difference (Haghighi, S, Sanam, 2007, 230). Failure to predict the right, as the lack of it, because the Charter, as the expression of all the unsatisfied dispute settlement rules, listed as one of the rules, as it is not possible, but rules are resolved by reference to the authorities international arbitration should be noted that the courts have predicted what the rules in this regard, on the other hand, the Charter in principle, to create favorable conditions and is, therefore, seeks to create problems for states, however, has a problem in the Charter not considered to be significant, will decide whether the case law.

CONCULSION

Giving consistent and accurate settlement mechanism may be provided to attract and investment rules, which affect the security, because one of the main topics of interest of foreign investors in the venture, the problem of resolving conflicts that is, the investment may be found in the host country, and whatever the rules in order to guarantee investment security and sovereignty of the host country, the parties to invest with confidence. Settlement of foreign investment, especially in the energy sector, on the one hand due to the interference of external factors, and on the other hand, due to the strategic importance, and the enormous costs resulting from the difference, the greater is important. Energy Charter Treaty, which aims to facilitate the energy-producing countries, to capitalize on the free market, and mutual benefit, a highly efficient legal instruments, internationally. For accurate and consistent with the rules, in Dispute Resolution, try to minimize business risks that, in order to reassure the parties to the contract, their rights and legal guarantees for investment is safe. The arbitration rules of the Energy Charter itself, based on the

right of recourse to the courts to resolve disputes, the freedom to choose the method of dispute resolution, equality among the citizens of the host country, and foreign investors, foreign investors receive the highest salary privileges granted to local nationals and nationals of other countries is established, it is these principles with the aim of securing funding. Charter Investment Disputes divided into two groups, the differences between the investor and the host state and the difference between a Contracting State, for each of the divisions, depending on the nature of the dispute, has established a separate regulation. Provide different methods, such as negotiation and compromise before references to international arbitration, and lack of funding required to refer the dispute to the civil authorities of the host country, and granting the charter initiative of bringing a case directly, without the need for diplomatic support to foreign investors, with the aim of ensuring non-discriminatory manner, thereby increasing the confidence of investors, resulting in increased investment and trade flows between members is. All of these factors in order to secure investment, as the most important factor in the development and deployment of energy law. Finally, a unique mechanism to settle disputes Charter could be introduced as a model for implementation in other parts of the law.

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