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Jurisdiction *Ratione Temporis* in Successive International Investment Agreements: What Can Chinese Investors Learn from the *Ping An* Case?

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China's foreign investment has been growing rapidly since 1990s. In this course, the first investor-state arbitration case raised by a mainland Chinese investor, Ping An v. Belgium, drew attention to an important issue – jurisdiction ratione temporis in successive international investment agreements. It is controversial in theory and practice as to whether the basic principle of non-retroactivity should apply to the dispute settlement clause in a successive agreement. This is especially true when tribunals are interpreting different kinds of jurisdictional clauses. This paper will take the Ping An Case as an opportunity to thoroughly analyze the issue of temporal jurisdiction in successive international investment agreements. Based on such analysis, this paper will also do reflection on relevant articles in China's existing investment agreements, providing suggestions to China regarding the issue of jurisdiction ratione temporis, in an effort to make arbitration more certain and avoid possible dismissal, as occurred in the Ping An Case.

Keywords: Dispute Settlement Clause, International Investment Agreements, Investor-State Arbitration, Jurisdiction *Ratione Temporis,* Non-Retroactivity

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I. Introduction

China's foreign investment has been growing rapidly since 1990s. Within a short period of time, its status changed from a recipient of foreign direct investment ("FDI") to that of a significant player in both the inflow and outflow of FDI.[1] China's achievement in attracting foreign investment is largely due to the Chinese government's reformation of its legal framework.[2] An indispensable part of this legal framework is international investment agreements ("IIAs"). Since the first IIA with Sweden in 1982, China has signed more than 150 Agreements, including bilateral investment treaties ("BITs") and BIT-type chapters in free trade agreements.[3]

In spite of progress in IIAs, China did not correspond with active participation in investor-state arbitration, which is a special dispute settlement mechanism. The caseload of investor-state arbitration worldwide has exploded since 2000.[4] However, so far, there have only been nine such cases involving Chinese investors (including mainland, Hong Kong, Macao and Taiwan) for which information is available to the public.[5] Among these nine cases, as of October 22, 2016, two cases have been settled; five cases are pending (as of August 16, 2016); and, only in two cases, the tribunals have reached arbitral awards.[6] One case was raised by a Hong Kong investor in 2007,[7] while the other, "*Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium*" (hereinafter *Ping An*), was brought by an investor from mainland China in 2012. As the first investor-state arbitration case filed by an investor from mainland China, *Ping An* draws great attention from both academics and practitioners.

In April 2015, *Ping An* concluded with the tribunal's dismissal on jurisdictional grounds. In particular, this case highlighted the significant issue of jurisdiction *ratione temporis* in successive IIAs. The investor thought *Ping An* was subject to investor-state arbitration, but just found that (upon the tribunal's dismissal) it could only be filed under Belgian jurisdiction. This question is highly topical to China given its active attitude to conclude more IIAs in coming years and designing the different dispute settlement mechanisms in different generations of China's IIAs.

The primary purpose of this research is to analyze the issue of temporal jurisdiction in successive international investment agreements, and to provide