

Justice for Sale: Explaining the Rise in Investor-State Dispute Settlement

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Abstract:

We build a novel database linking the universe of investor-state dispute settlement (ISDS) cases with detailed financial, ownership, and operating data for the foreign investors initiating these disputes, from 2000-2020. We document a sharp and sustained increase in the number of ISDS cases that is not explained by changes in the scope of international investment treaties or the expansion of multinational firms' global operations. This increase in case initiation corresponds instead to a fundamental change in the composition of ISDS-suing firms, with significantly more small and credit constrained firms pursuing litigation against sovereign states after the mid 2000s. Guided by theory, and augmenting our database with hand-collected information on case(-investor) specific choice of litigation technology, we find evidence that the advent and expansion of third-party funding (TPF) can explain a significant share of the observed increase in ISDS cases over the past two decades. Further analysis suggests that third party funding may also increase firms' odds of winning, which could induce additional disputes in the years to come.