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国际民商事管辖权领域中
的禁诉令制度研究

A study on Anti-suit Injunction under International Civil
Jurisdiction area

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内容摘要

禁诉令制度是英美法国家解决国际管辖权冲突的一种特殊制度,主要是针对本国法院具有属人管辖权的当事人,禁止其在外国法院诉讼。但同时由于它的冒犯性,各国均遵循尊重国际礼让、保守并谨慎适用的原则。相比而言,由于大陆法系国家大多并没有将禁诉令纳入成文法中,也没有衡平法的救济方式。因此,大陆法系国家对于禁诉令比较陌生,对禁诉令制度的研究也比较落后。近年来,随着在国际仲裁和民事诉讼程序中禁诉令屡屡出现,该问题也逐渐引起理论界与实务界的关注。

全文共分为四章,运用比较分析和实证分析的方法来阐述禁诉令的产生背景、适用范围,并结合英国、美国两大主要英美法系国家的司法实践以及相关国际规则来说明禁诉令所产生的法律效力及其影响。文章最后重点分析了中国禁诉令的案例和相关问题,同时结合中国适用禁诉令制度的理论依据,对禁诉令制度在中国的司法应对和未来制度建立的具体条文设计进行了论述。

第一章是概述部分。主要介绍禁诉令的概念、历史起源、发展轨迹和特点等问题,为以后各章的论述打下基础。

第二章主要介绍了英、美两大主要英美法系国家禁诉令制度的发展轨迹,以及其签发禁诉令的评判标准。本章同时以德国为例,介绍了大陆法系对于禁诉令制度的一些不同看法。

第三章介绍了当前主要国际规则对待禁诉令的态度。探讨分析了《关于民商事案件的管辖权及判决执行公约》(简称《布鲁塞尔公约》)、《国际商事仲裁示范法》(2006年修订版)两个主要国际文件对待禁诉令制度的不同态度。

第四章探讨了禁诉令在中国的有关问题。主要分析中国的禁诉令案件,对于其中的主要问题进行了研究,并就我国如何应对和适用禁诉令提出了相关建议,进而提出构建我国禁诉令制度的法律条文。

关键词: 禁诉令; 管辖权; 实证分析

ABSTRACT

Anti-suit injunction is a special remedy which is now widely used in common law countries to solve jurisdiction conflict. Courts frequently issue anti-suit injunctions to parties, who belong to personal jurisdiction to restrain forum shopping and parallel proceedings in foreign countries. However, due to the offensive nature of anti-suit injunction, each issuing country follows the principle of comity, acting conservatively and cautiously. Comparatively, civil law countries have not established anti-suit injunction regime and even have no equitable remedies. Therefore, most civil law countries are unfamiliar with anti-suit injunction and as such, the research of anti-suit injunction is insufficient. Nowadays, anti-suit injunction is more frequently used in international commercial arbitration and international civil procedures and has got great public concern.

This dissertation, by conducting comparative analysis and positive analysis, discusses the following problems: the concept, character and history origins of anti-suit injunction; relevant judicial practices in England, U.S., Germany and international instruments to analyze the legal effect of anti-suit injunction; and relevant Chinese case as well as to the feasibility of establishing the anti-suit injunction regime in China. The dissertation includes four chapters:

Chapter 1 introduces the general concept, character and history origins of anti-suit injunction. This chapter is a background for the subsequent chapters.

Chapter 2 introduces the development of anti-suit injunctions in England and US, two major common law countries, and analyzes the standard of issuing anti-suit injunctions in these countries. This chapter also takes Germany for example to analyze different views about the utilization of anti-suit injunction in civil law country.

Chapter 3 discusses two different international attitudes towards anti-suit injunction. On one hand, according to “Brussels convention on jurisdiction and the enforcement of judgments in civil and commercial matters”, anti-suit injunction should be used cautiously in parallel proceeding. On the other hand, “UNCITRAL Model Law on International Commercial Arbitration with Amendment in 2006”

admits the positive role of anti-suit injunction.

Chapter 4 discusses relevant issues about anti-suit injunction in China and analyzes a typical Chinese case involving in anti-suit injunction. In conclusion, suggestions are provided for China to learn from the foreign anti-suit injunction systems and establish its own anti-suit injunction system.

Key Words: Anti-suit injunction; Jurisdiction; Positive analysis

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Abbreviations 缩略语表

ASA	Swiss Arbitration Association
Co.	Company
Inc.	Incorporated
Ltd.	Limited.
UNCITRAL	United Nations Commission on International Trade Law

Table of Cases 案例表

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引 言

随着全球经济越来越一体化，国际民商事交往日趋频繁，由此所引发的国际民商事法律纠纷也呈现越来越复杂和多样的趋势。每个国家在解决涉外法律纠纷的同时，也在不断完善各自国家的国际民商事诉讼制度。禁诉令制度就是英美法国家解决国际管辖权冲突的一种特殊制度，主要用以指示受到法院属人管辖的一方当事人不得在外国法院起诉或参加预期的或未决的外国诉讼。该制度最初是在普通法国家发展起来的，并已在司法实践中已存在了相当长的时间。目前主要为英国、美国、加拿大、澳大利亚等国家所采用。就其效力而言，禁诉令是一种强有力的救济措施，有益于保护当事人的利益，防御其他国家的过度管辖权。同时对本国司法主权和管辖权起到保护的作用。但同时由于它的冒犯性，各国均遵循尊重国际礼让、保守并谨慎适用的原则。

我国是大陆法系国家。虽然在我国立法和司法实践中吸收了英美法系的一些做法，但是禁诉令制度在我国仅在个别的案例中适用。即便在这些案件中，禁诉令的适用也仅限于解决法院之间管辖权冲突的问题。可以说，我国法律界对于禁诉令的相关研究仍处于初期阶段。对禁诉令问题进行及时、系统研究，对于我国法制以及参与国际仲裁以及司法合作均具有重要的理论和实践意义。

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