

## **Chinese Participation in the Investor-State Dispute Settlement (ISDS) System: Chinese Investors in the World Relying on ISDS to Protect their Investments, and China as Respondent Host State \***

### **Summary**

**\* Please note that this summary of the panel was AI-generated and therefore has not been fully vetted for accuracy.**

The session at the Washington Arbitration Update conference focused on the participation of Chinese parties in the investor-state dispute settlement (ISDS) mechanism. The discussion highlighted the increasing involvement of Chinese investors in ISDS cases globally, with a total of 29 cases identified where either Chinese investors were claimants or China was a respondent. Notably, over half of these cases arose after 2020, indicating a significant uptick in activity.

The moderator, Wen Die, introduced the panelists, including seasoned experts in international arbitration and investment law. Key speakers included Jose Antonio Rivas, who provided insights into the current landscape of ISDS cases involving Chinese investors, noting that while there were 19 cases initiated by Chinese investors, the overall use of the system remained moderate. He also discussed China's position as a respondent, revealing that out of nine cases against China, two were favorable to the state, suggesting a balanced use of the ISDS mechanism.

The panelists examined the geographical distribution of cases, emphasizing that most disputes arose in Asia and Europe, with fewer cases against African and Latin American states. They also touched on the evolution of China's bilateral investment treaties (BITs), noting a shift from a defensive to a more offensive approach in protecting Chinese investments abroad.

Mariana Jones discussed the importance of evidence in arbitration, stressing that investors must maintain meticulous records to support their claims. She highlighted challenges faced by investors in documenting evidence and the need for clear communication with local authorities.

The session concluded with discussions on the effectiveness of local remedies in resolving disputes and the implications of China's foreign investment law, which aims to improve the investment environment by ensuring national treatment and protecting intellectual

property rights. Overall, the panel underscored the complexity of ISDS for Chinese investors and the necessity of strategic legal planning to navigate potential disputes effectively.

### **Authors**

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### **Topics**

ISDS, China in ISDS, China, Investor-State Disputes, Investor-State Dispute Settlement System, Chinese Investors, China as Respondent, China as Host State, Investment Arbitration

### **Category**

WAU

### **Full Transcript**

00:00:00

That's great. See you back.

00:00:01

Welcome. We're here on day

00:00:05

2 of world arbitration update

00:00:09

our China inside conference here

00:00:14

in Beijing at the Beijing

00:00:16

arbitration commission Beijing International arbitration

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Centre. We're progressing now to

00:00:24

our 7th session, which is

00:00:27

titled the participation of Chinese

00:00:31

parties in the in investor-state

00:00:35

dispute settlement is DS mechanism

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Chinese investors applying isds to

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protect their Investments worldwide and

00:00:42

China as a respondent. Ho

00:00:44

ho States owe lots to

00:00:46

go on their wheat, we've

00:00:48

already had some discussions of

00:00:51

is DSS related issues in

00:00:54

our discussions on state Enterprises

00:00:55

and on renewable energy. I'm

00:00:59

very much looking for To

00:01:00

a further discussion of these

00:01:02

very interesting and timely issues

00:01:04

in the international arbitration world.

00:01:07

It's my pleasure to introduce

00:01:09

our moderator of this panel

00:01:13

when die is our moderator

00:01:17

and she is currently representing

00:01:19

an advising clients in arbitrations

00:01:22

here in mainland China Hong

00:01:25

Kong Singapore the United Kingdom

00:01:27

Sweden and many other jurisdictions

00:01:28

as well as lawsuits here

00:01:30

in the courts of China.

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When is proficient of dealing

00:01:33

in cases of both Chinese

00:01:35

and English and is handled

00:01:36

hundreds of arbitration as Council

00:01:39

and as arbitrator case administrator

00:01:41

Ward scrutinizer, I understand at

00:01:44

Sea-Tac as well as a

00:01:46

dressing topics including International sale

00:01:49

of goods joint ventures Equity

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transfers fund investment energy construction

00:01:56

and real estate. She has

00:01:58

represented clients in all of

00:02:00

the Major jurisdictions, including under

00:02:01

the Sea-Tac rules on Central

00:02:03

rules the hki IAC administered

00:02:07

rules. I see ICC rules

00:02:08

and the SCC rules. So

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very experienced arbitration practitioner and

00:02:15

when have the distinction interesting

00:02:17

way of serving as an

00:02:19

emergency arbitrator and see tax

00:02:22

first case under the emergency

00:02:23

arbitrator procedures. So very interesting

00:02:27

experience, which look forward to

00:02:28

hearing more about so thank

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you very much for a

00:02:32

moderating and thank you panelist

00:02:34

very much. This is going

00:02:36

to be a great panel

00:02:37

and great topic of discussion

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and I'll pass the microphone

00:02:40

over to when and looking

00:02:43

forward to sitting down and

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listening to the great discussion.

00:02:46

Thank you so much for

00:02:48

the very kind introduction to

00:02:50

about me before we got

00:02:53

into today's Alternatives panel discussion.

00:02:56

I would like to First

00:02:58

give us A general overview

00:03:01

of the topic before this

00:03:04  
session. I do a little

00:03:06  
research and it turns out

00:03:07  
to me that's now up-to-date.

00:03:09  
There are already 29 IMS

00:03:13  
entreaty cases where Chinese investors

00:03:16  
as the claimant or where

00:03:18  
the China as the respondents

00:03:20  
house estate and among these

00:03:23  
cases more than half of

00:03:26  
them happened after 2020 so

00:03:29  
we can see that in

00:03:30  
recent years. It's really are

00:03:33  
high development and indy is

00:03:36

DS region where China has

00:03:39

been actively involved and also

00:03:41

Chinese investors has been actively

00:03:43

involved. So that's why we

00:03:45

have this afternoon's panel discussion

00:03:49

on the Chinese participation in

00:03:51

the is DS system. So

00:03:53

as a privilege of moderator,

00:03:56

please allow me to spend

00:03:59

some time to introduce our

00:04:02

distinguished panelists this afternoon. Our

00:04:06

first speaker is Jose Antonio

00:04:09

Rivas. He is a founding

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partner of strategy and chair

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of the arbitration and international

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law practice at exit strategy.

00:04:21

He works as International Council

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in investment disputes serves as

00:04:26

arbitrators and provide advice in

00:04:28

public international law and investment

00:04:31

law to solve a ring

00:04:33

client state-owned companies and investors.

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He has 20 years of

00:04:38

experience in International Investment arbitration

00:04:42

and public international law is

00:04:44

former foreign investment director of

00:04:48

the ministry of trade of

00:04:50

Columbia where he comes acted

00:04:52

a program to strengthen the

00:04:54

state's Readiness in case of

00:04:56

investor-state arbitration and how did

00:04:59

the Drafting and updating of

00:05:01

the Columbia International Investment agreement

00:05:04

model and based on his

00:05:05

mother. Success, when did he

00:05:07

successfully concluded peace negotiations with

00:05:12

the States from Latin America

00:05:13

North America Europe and Asia.

00:05:16

So welcome Jose Antonio Rivas.

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And next time we have

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a professor from school of

00:05:27

law of Ohio University Professor.

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Two tone is a member

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of Ohio University Institute of

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international law his research areas.

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I made International Trade law

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International Investment law and international

00:05:42

finance law. He also serves

00:05:46

as an arbitrator SBI AC

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well, our stores are speaker

00:05:53

is Genting Dollar Tree is

00:05:56

a pawner of global Law

00:05:57

Office. His practice is concentrated

00:06:00

on International Trade dispute resolution

00:06:04

and antitrust law in the

00:06:06

area of is TS. He

00:06:09

has represented clients in several

00:06:11

investment treaty arbitration cases, including

00:06:14

winning a high-profile. You must

00:06:16

mean arbitration case with a

00:06:17

Hostess days and assisting to

00:06:20

Chinese Enterprises pursuing an investment

00:06:23

arbitration with for Wednesday's he

00:06:26

had also worked at the

00:06:27

department of treaty and law

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at mofcom. Our next speaker

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is Carly Cara is a

00:06:35

litigation partner in the Beijing

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and new your offices of

00:06:39

Pillsbury Winthrop Shaw Pittman her

00:06:42

primary practice focuses on representing

00:06:45

International clients in cross-border disputes

00:06:48

and international arbitration. She has

00:06:52

represented many International clients in

00:06:55

confirming foreign arbitration award in

00:06:58

the US. Next we have

00:07:01

Mariana Jones. Mariana is a

00:07:04

partner at Law Firm specializes

00:07:06

in dispute resolution matter including

00:07:08

arbitration and litigation mitigation with

00:07:12

a particular focus on foreign

00:07:15

related cross Potter and the

00:07:17

international arbitration seated in China

00:07:19

and overseas previously Mistral resent

00:07:24

it to Chinese investors initiating

00:07:27

at Exit arbitration against a

00:07:29

South East Asia State and

00:07:31

currently she is advising an

00:07:34

arbitrator at hoptree arbitration against

00:07:37

the state in Asia Mariana.

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Also constantly provides treaty arbitration

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related assessment to Chinese and

00:07:45

foreign investor. And our last

00:07:48

speaker is Samuel 1 Samuel

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is an experience that if

00:07:52

you resolve her he practices

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as a barrister and regularly

00:07:56

at Judy case disputes as

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an arbitrator. It's practice covers

00:08:01

a wide range of commercial

00:08:03

dispute in which the governing

00:08:05

law of the contract stands

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from Hong Kong law, New

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York law, and you also

00:08:13

practice as an effective media

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later. So thank you very

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much for tolerating need been

00:08:19  
such a long time to

00:08:20  
introduce. Our very distinguished to

00:08:23  
panelist now will come our

00:08:25  
first the speaker Jose to

00:08:27  
give us a presentation. Thank

00:08:28  
you. Thank you. Okay, so

00:09:06  
You're welcome. Again, I see

00:09:09  
the presentation that I that

00:09:10  
I have prepared for for

00:09:12  
this panel is is called

00:09:15  
a 2024 investor-state arbitration Panorama

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in China and it deals

00:09:22  
with the Chinese investors of

00:09:27

run using the investor-state arbitration

00:09:29

system on the one hand

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and on the other hand

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China as a whole state

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within the investor-state arbitration system.

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Mainly I will go through

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this two aspects to specially.

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I'm not going to go

00:09:48

deep into the cases because

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at that is a is

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something reserved for for the

00:09:54

panelists. I want to reach

00:09:57

some conclusions based on the

00:09:59

information that we have in

00:10:00  
front of us. So the

00:10:01  
first thing and let's let's

00:10:03  
look into the outcomes. cases

00:10:08  
involving Chinese investors in in

00:10:14  
using the investor arbitration system

00:10:18  
over will we have a

00:10:21  
total of 19 cases has

00:10:25  
so far of Annie's investors

00:10:28  
using the investigator arbitration system

00:10:30  
and most of them are

00:10:33  
pending. However, we can get

00:10:35  
some conclusions from the other

00:10:38  
pieces of information one has

00:10:41  
been discontinued which is telling

00:10:44  
that perhaps there was either

00:10:47  
no marriage or or there

00:10:49  
was a no no funding

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for the case. But but

00:10:52  
it it tells the story

00:10:54  
in terms of it was

00:10:56  
simply not followed up one

00:10:58  
has been settled which tells

00:11:00  
the story that perhaps there

00:11:02  
was some type of negotiation

00:11:03  
between the two parties and

00:11:06  
two have been decided in

00:11:09

favor of the investor and

00:11:11

We haven't decided in favor

00:11:14

of the foreign state. So

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overall what we can say

00:11:18

at least from this figures

00:11:21

is that Chinese investors abroad

00:11:24

are using the system? In

00:11:28

19 cases, it's not it's

00:11:31

not an overwhelming use of

00:11:33

the system. It is a

00:11:35

use of the system that

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I would say, it is

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fairly moderate. But I so

00:11:41

China Chinese investors are broad

00:11:44  
as as we saw it

00:11:45  
this morning are relying on

00:11:48  
the system to protect their

00:11:49  
Investments abroad both the SOS

00:11:52  
and I will see you

00:11:53  
later from some of our

00:11:55  
speakers including Sam also private

00:11:58  
companies Chinese companies private companies

00:12:01  
investing abroad. That's the first

00:12:03  
confusion and that seemed to

00:12:05  
in terms of of the

00:12:06  
geographical trans. Where are Chinese

00:12:09  
investors bringing investor State wear

00:12:13

against whom are they bringing

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vegetable trays? And then and

00:12:16

here's some of the pieces

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that I find the most

00:12:19

interesting because we know that

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that there's there's there's a

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big Sonic project by the

00:12:29

Chinese economy the belt and

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Road initiative at cetera and

00:12:33

that includes Africa and that

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includes also Latin America and

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in some countries in Asia,

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for instance that being said,

00:12:43

there's only two cases against

00:12:45

the African States and that

00:12:47

being said, there's only three

00:12:48

cases against the Latin American

00:12:51

and Caribbean States. Most of

00:12:53

the cases are in the

00:12:54

region. Number one in Asia

00:12:56

and what I find most

00:12:59

interesting is that number two

00:13:00

is Europe. And at this

00:13:04

this is quite astonishing because

00:13:07

at least in in my

00:13:09

in my thinking this is

00:13:12

one perhaps of the reasons

00:13:14

that the investor arbitration system

00:13:16

is somehow Under Pressure because

00:13:18

there are new players in

00:13:20

in in the in the

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block play clearly China Chinese

00:13:26

investors should countries that are

00:13:29

in Europe including Finland Belgium

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Sweden and and and there's

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there's some pressure because the

00:13:39

whole set of economies in

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the world are changing. So

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use a of moderate users

00:13:48

of the investor arbitration system.

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Now, let's move into the

00:13:53

new China as a respondent

00:13:56

state here. We have nine

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arbitrations and 45 of which

00:14:03

are pending one or which

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station was settled in this

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somehow means that there might

00:14:10

have been some married or

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at least to some extent

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by the by the investor.

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Then there is a two

00:14:20

were favorable to China. Basically

00:14:23

China did not lose those

00:14:24  
arbitrations and one was discontinued

00:14:27  
the discontinuance. Maybe for many

00:14:30  
reasons No Lack of funding

00:14:32  
simply. The investors concluded their

00:14:35  
claims might have not had

00:14:36  
married ultimately in those arbitrations

00:14:40  
that gets against China. Oh,

00:14:43  
you know we can say

00:14:44  
that they have been slightly

00:14:46  
more favorable to China than

00:14:48  
to the foreign investors, but

00:14:51  
it's the conclusion of both

00:14:53  
is the conclusion of both

00:14:56

is so far. When we

00:14:59

look into Chinese investors using

00:15:02

the system against sovereign states

00:15:05

and foreign investors using the

00:15:08

system against Ina the conclusion

00:15:11

is theirs use and it's

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fairly balanced. There's no striking

00:15:16

on in in balance in

00:15:18

the use of the investor-state

00:15:21

arbitration system. These are the

00:15:24

that the set of cases

00:15:27

we're Chinese investors have submitted

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investor-state arbitration claims. And what

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is what is perhaps most

00:15:34

notable is that there is

00:15:38

a balance between the the

00:15:42

make manufacturing part of the

00:15:48

economy and the service is

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part of the economy at

00:15:52

which is very telling in

00:15:53

terms of the the level

00:15:56

of sophistication that we now

00:15:57

see in the Chinese economy.

00:16:00

In terms of again geographical

00:16:04

patent in the trends the

00:16:06

cases against China have a

00:16:09

mainly investors that come from

00:16:13

Asian countries and less reminder

00:16:18

investors that come from Europe.

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And here is the going

00:16:25

back into the into the

00:16:27

industries that again are related

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to not only primary parts

00:16:33

of the economy. But also

00:16:34

Services we even have a

00:16:37

case that involves arts and

00:16:39

entertainment. So one basic inclusion

00:16:44

is is China has 107

00:16:47

107 investment treaties that are

00:16:50

currently in force of this

00:16:52

14 treaties were signed between

00:16:54

2006 and 2023 while the

00:16:59

remaining approximately 86% date back

00:17:04

from before 2006, which is

00:17:07

why am I referring to

00:17:09

those two dates part of

00:17:11

it is because the as

00:17:14

as we will see from

00:17:15

Professor T in in in

00:17:18

Greater depth Part of this

00:17:21

is is to show that

00:17:23

there has been an evolution

00:17:25

in the bilateral investment treaty

00:17:27

or the investment treaty that

00:17:29

China has had I had

00:17:30

the honor and privilege of

00:17:32

negotiating the investment treaty between

00:17:34

Columbia which is the state

00:17:37

where I was born and

00:17:40

China the bilateral investment treaty

00:17:42

and and the and even

00:17:44

at that time that was

00:17:45

about proximately 12 years ago

00:17:48

or so, we could see

00:17:50

that the Chinese buy lunch

00:17:53

investment treaty was evolving coming

00:17:55

from a defensive perspective receiving

00:17:58

investment to going into a

00:18:01

more offensive perspective basically protecting

00:18:05

their investments in the world,

00:18:06

and it's a fascinating evolution.

00:18:10

I won't bore you with

00:18:13

with the with the specifics

00:18:15

of the substantive obligations, but

00:18:18

we can say is that

00:18:20

except for the older older

00:18:24

treaties which had a limitation

00:18:26

of basically including expiration or

00:18:31

a school including are some

00:18:33

household decoration into more modern

00:18:37

dreams, which have a broader

00:18:38

set of obligations. These are

00:18:42

some of the examples that

00:18:43

we have of typical Chinese

00:18:45

substantive provision. So you see

00:18:48

them their provisional Justice and

00:18:51

empowerment standard for protection and

00:18:53

security typical mfn National treatment

00:18:56

and protection against unlawful expropriation

00:18:58

direct and indirect. There are

00:19:02

some key parts of investor

00:19:05

arbitration whether you use exit

00:19:08

or non exit. Enforcement as

00:19:11

in the New York convention

00:19:12  
and finally a set of

00:19:15  
of basic conclusions out of

00:19:17  
which I have already referred

00:19:18  
to a few. The first

00:19:21  
one there is a real

00:19:24  
balancing the used by China

00:19:25  
and Chinese investors of the

00:19:27  
investor arbitration system. And that

00:19:30  
balance is somehow reflected in

00:19:33  
positions that China has adopted

00:19:35  
in multilateral forums during this

00:19:39  
conference. I have learned or

00:19:42  
or learned in Greater depth

00:19:44  
the position of China with

00:19:46  
respect to uncitral as you

00:19:49  
know, the European commission is

00:19:51  
pushing against investor-state arbitration trying

00:19:55  
to create a multilateral court.

00:19:56  
And one of the questions

00:19:58  
that I came to this

00:20:00  
conference with was what is

00:20:03  
China's position. Does China want

00:20:05  
to have a multilateral investment

00:20:07  
cord? Does China wants to

00:20:09  
have nothing? Where does China

00:20:11  
wants to have something else

00:20:13

and end at what I

00:20:14

found explained by another professor

00:20:16

here is that time that

00:20:18

I understand wants to have

00:20:20

a an appellate mechanism and

00:20:25

what I said, why why

00:20:26

is that so explain to

00:20:29

me? Well because we're using

00:20:31

the system we want to

00:20:32

build upon this is and

00:20:35

there's really no incentive to

00:20:37

have a multilateral investment Court.

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There is an incentive perhaps

00:20:41

to be more consistent within

00:20:44

the system and and thereby

00:20:45

there is a push to

00:20:48

adopt the notion of an

00:20:49

appellate mechanism which would leave

00:20:52

the current panels of investor

00:20:56

arbitration as our tribunal as

00:20:59

they are but there will

00:21:00

be a second level of

00:21:02

review under perhaps I need

00:21:05

said I put a mechanism

00:21:07

and and the last the

00:21:09

last perspective that that I

00:21:13

wanted to share is emphasized

00:21:16  
that the the the use

00:21:19  
of practical use of investor

00:21:21  
arbitration is it seems not

00:21:24  
to be too aggressive and

00:21:27  
and this will learn this

00:21:28  
morning in the discussion of

00:21:31  
SOS. That there is a

00:21:35  
Paws and there is a

00:21:37  
lot of reflection before a

00:21:39  
state-owned company Chinese takes the

00:21:42  
step to sue a sovereign

00:21:44  
state which I think somehow

00:21:46  
is is quite wise it

00:21:49

because a an investment of

00:21:51

attrition name is is is

00:21:55

a hard step sometimes when

00:21:58

they make it picking up

00:21:59

with relations are are severed.

00:22:02

And I'm there for that

00:22:04

wise moderation is is also

00:22:06

a reflection of what I

00:22:08

understand being the position of

00:22:10

China are worried that I'll

00:22:11

stop and give it 4

00:22:13

to when thank you. Thank

00:22:15

you very much for the

00:22:16

very informative presentation. And the

00:22:22

calculation last night I did

00:22:24

is correct that there are

00:22:25

28 cases where China or

00:22:29

Chinese investor involved aware 19

00:22:32

cases where the and these

00:22:34

two Chinese companies and nine

00:22:36

cases where Chinese government has

00:22:39

responded house the state so

00:22:43

I know that's my Mariano

00:22:45

like to make one small

00:22:46

comments to Jose's presentation. Yes.

00:22:51

Thank you and just very

00:22:53

briefly. I have some comments

00:22:55

on the enforcement of treaty

00:22:57

words in China. I see

00:23:00

that horse is quite optimistic

00:23:01

that well this situation. Perhaps

00:23:04

is a bit different in

00:23:05

China. We know that I'm

00:23:07

actually the new law relating

00:23:10

to foreign sovereign immunity which

00:23:12

entered into effect this January

00:23:14

it appears now that the

00:23:16

radical it is possible to

00:23:17

enforce a treaty awarding China

00:23:19

in my view it it

00:23:22

would still be quite problematic

00:23:23

and in reality because if

00:23:25

it is a null exit

00:23:26

award the applicant would not

00:23:29

be able to rely on

00:23:30

the New York convention because

00:23:32

China has made a reservation

00:23:34

of commerciality under the New

00:23:36

York convention. And if they're

00:23:38

Ward is actually an exit

00:23:40

award the applicants would still

00:23:42

encounter. I'm starting to use

00:23:44

because China has not nominated

00:23:47

any competent Court you handle

00:23:49  
such application for enforcement of

00:23:51  
exit award went to article

00:23:54  
54 off the exit convention.

00:23:57  
And I didn't to this

00:23:58  
uncertainty is even if all

00:24:00  
these obstacles have already been

00:24:02  
removed or specific exaggeration is

00:24:05  
still almost impossible unless the

00:24:09  
foreign state has waived Immunity

00:24:11  
on Executive in separately. So

00:24:14  
that is my comment. Thank

00:24:16  
you. Thank you Marana. But

00:24:19  
even though there are a

00:24:20

lot of problems but we

00:24:23

still need to have hope

00:24:24

to the Future that there

00:24:25

will be a lot of

00:24:26

very exciting revolutions developments in

00:24:30

the future that we believe

00:24:31

the Chinese government would take

00:24:33

some actions, especially considering nowadays.

00:24:36

There are so many cases

00:24:37

kind of coming up. So

00:24:39

next time we will have

00:24:41

the professor two-tone to talk

00:24:43

about the modernization of bitso

00:24:46

china-related is DS cases. setting

00:25:01

for action I would like

00:25:10

to start by congratulations that

00:25:13

you and the p a

00:25:15

c for the outstanding organization

00:25:18

even for me to join

00:25:23

this distinguish of discussion. So

00:25:28

long as we all know

00:25:36

you are one of the

00:25:40

most patient and I would

00:25:48

like to wish I are

00:25:49

some very preliminary observation on

00:25:53

the station based on China's

00:26:00

is pskc. China's investment practice

00:26:14

NBA traced back to 1980s

00:26:18

not there at the very

00:26:22

beginning of the process of

00:26:25

China's reform and opening-up 145

00:26:35

borracho in Westminster trade his

00:26:37

and line in three his

00:26:41

ways in Westminster Provisions in

00:26:44

the regime of China. So

00:26:47

among the 145 name. So

00:27:03

when we talked about a

00:27:05

China's participation in the ICS

00:27:07

system that we can you

00:27:09

close that based on China's

00:27:17

according to my status. We

00:27:26

have 25 ACS case against

00:27:37

the China is different from

00:27:40

u.s. 35 cases. There are

00:27:44

almost 16% of the fourth

00:27:51

generation of Chinese investment agreement

00:27:55

to figure out what Can

00:28:03

you ask Grandma can be

00:28:04

divided into several Generations are

00:28:08

in terms of the difference

00:28:09

in the substantive and procedural

00:28:12

do the first generation from

00:28:20

1982 to 1997 calling for

00:28:25

more than 51% of the

00:28:29  
effective Chinese investment agreement in

00:28:39  
a treatment and that includes

00:28:40  
a very narrow are constructed

00:28:43  
ists closest and most likely

00:28:48  
give me the scalp application

00:28:50  
that you are a dispute

00:28:52  
involving the amount of compensation

00:28:54  
resulting from its preparation for

00:28:57  
the 2nd generation 1990. 725

00:29:06  
which provides us with the

00:29:09  
post that you stopped instrument

00:29:10  
National treatment, and the border

00:29:12  
is DS. The third generation

00:29:16  
from 2006 to 2019. And

00:29:27  
the 3rd to the 4th

00:29:29  
generation come from which many

00:29:40  
moves that you would a

00:29:41  
regional and immortalize the legal

00:29:43  
framework for 4 in Westmont

00:29:46  
promotion protection earlier. You asked

00:29:52  
me that woman's hair reference

00:29:55  
to the 4th generation. So

00:30:00  
the earlier according to my

00:30:03  
States state has equipment account

00:30:07  
for over half of the

00:30:09  
effect of Chinese. I am

00:30:10

not be mobilized a so

00:30:13

far. So it was a

00:30:14

lot of equipment and the

00:30:18

it's frequently used in China

00:30:21

is efficiency and application serious

00:30:31

deficiency is the score of

00:30:36

isps are so as mentioned

00:30:38

above most of the first

00:30:40

generation for a Chinese involved

00:30:48

with the amount of conversation.

00:30:49

We started from expropriation a

00:30:55

lot. Alderwood FBI and duration

00:31:11

Chinese treaty, which is a

00:31:15

lot of room for the

00:31:17

screeching of individual. Actually. Do

00:31:22

you stance when interpreting the

00:31:25

term is pure Hazel? Where

00:31:36

are those in the parade

00:31:37

head 8 a.m. So earlier

00:31:45

Chinese Ransom in the women's

00:31:47

and they also have a

00:31:48

pair of effects to close

00:31:53

and the China case is

00:31:56

also show us the inconsistency

00:31:58

and the uncertainty and the

00:32:01

application of Chinese the agreements

00:32:05

to Hong Kong and Marco

00:32:07

a special administrative region. So

00:32:11

we may also find that

00:32:12

overlaps of Chinese women sat

00:32:20

between order one and the

00:32:22

blue one between a tree

00:32:24

and the regional never in

00:32:27

the coordination between Chinese. Are

00:32:30

you maximum the equipment and

00:32:33

it's at amassed a lot,

00:32:35

especially the new flooring wax

00:32:38

from cloth with you. Ending

00:32:43

214-2720 number for economies such

00:32:54

as the European Union Broadway

00:32:57

Australia in Malaysia, India and

00:33:01

Pakistan are they have been

00:33:05

reviewed in West Bend equipment

00:33:07

stuff is what I thought

00:33:17

from 2,000 to 1 now

00:33:20

such as replacing Trinity spine

00:33:31

and new one. Original equipment

00:33:44

that he splashed it is

00:33:45

the china-asean framework and the

00:33:48

China you network. The first

00:33:53

one is developing and the

00:33:56

motor and the five who

00:33:59

is a jointer interpretation of

00:34:03

a u.s. Men do quipment,

00:34:08

like in and out of

00:34:10

the train Haze. So the

00:34:13

model has a shin process

00:34:15

of China's investment agreement regime

00:34:18

can be divided into two

00:34:20

faces on the first face.

00:34:22

It lasted from 2001 to

00:34:25

2010 and some earlier. You

00:34:28

must be the most romantic

00:34:37

place to buy new agreements

00:34:41

investment agreement making moves from

00:34:53

the original investment agreement to

00:35:03

do I make it. Are

00:35:13

you watching the game until

00:35:14

mother today? Shannon has given

00:35:19

the large number of the

00:35:20

existing equipment. So I'm in

00:35:25

the process of you must

00:35:28

admit that women the motivation

00:35:29

China should remain prudent when

00:35:33

updating the area of women's

00:35:35

so my suggestion here is

00:35:39

what's the relationship between area

00:35:42

one and the blue one

00:35:44

between bilateral treaty and trust

00:35:49

that you will avoid potential

00:35:51

problems in Westmont trade him

00:35:54

in the end the Abbey

00:35:55

actually a practice see approach

00:36:00

is the jacket and the

00:36:02

issue of the application of

00:36:04

Chinese. Marco's in the relation

00:36:17

between should be enhanced supposed

00:36:26

to stop stand here and

00:36:27

a procedural ever. So yes

00:36:30

our for my speech and

00:36:32

thank you for your listening.

00:36:39

That's all I recall you

00:36:41

your slides. You mentioned that

00:36:43

the Chinese b i t

00:36:45

s involve involvement evolution of

00:36:50

the Chinese b i t

00:36:51

from a defensive approach to

00:36:54

offensive Pro. So maybe you

00:36:56

would like to make some

00:36:57

comments to Professor sees presentation.

00:37:04

Thank you winnin. And thank

00:37:05

you Professor or the presentation

00:37:07

were the various levels of

00:37:15

generations of Chinese investment treaties

00:37:19

approaches is more it was

00:37:23

was way more practical because

00:37:25

I was negotiating the treaties

00:37:27  
and I and what I

00:37:28  
could see in a research

00:37:29  
when we negotiated the the

00:37:31  
investment treaty with China was

00:37:33  
that there were there had

00:37:35  
been this transition that the

00:37:36  
professor she was describing the

00:37:39  
one aspect that I that

00:37:42  
I remember at the time

00:37:42  
was that a Chinese tree

00:37:45  
is used to only refer

00:37:48  
to exploration and then that

00:37:50  
evolved into embracing other visions

00:37:54  
of standard Provisions, including National

00:37:56  
treatment that may offend a

00:37:58  
fair and Equitable treatment Etc.

00:37:59  
Which which was a big

00:38:00  
change I am standing on

00:38:03  
end. I think that this

00:38:05  
this might be something that

00:38:06  
but that's our analysts may

00:38:10  
want to come in later

00:38:11  
on. Is that because Because

00:38:14  
view investor-state arbitration system is

00:38:18  
a system that lies are

00:38:21  
not on a 8 or

00:38:24

10 tile actual investment treaty

00:38:26

like like apple WTO treaties,

00:38:30

but it relies on a

00:38:32

multiplicity of investment treaties. You

00:38:37

have multiple Generations. There's as

00:38:39

you know, there's more than

00:38:40

3,300 treaties in the world

00:38:43

of investment investment treaties. So

00:38:46

with various Generations one of

00:38:49

the What one of the

00:38:51

fortunes that investment treaty arbitration

00:38:54

has is that it has

00:38:55

so many trees that I

00:38:56

strongly believe that it would

00:38:57

be very difficult to finish

00:38:58

the system. Finishing the image.

00:39:02

It's like having so many

00:39:05

fish in the pond that

00:39:07

usually it's not going to

00:39:07

be finished. But at the

00:39:09

same time the disadvantage is

00:39:12

that if an investor relies

00:39:15

on an older generation 3D

00:39:18

which has not that many

00:39:20

protective. Provisions then he may

00:39:27

not be as advantageous for

00:39:29

the investor for the Chinese

00:39:30

investor. So if that's if

00:39:32

you have a real generation

00:39:34

three, if you have a

00:39:36

more modern 3D like an

00:39:38

S T A like force

00:39:40

generation and perhaps fifteen Eurasian

00:39:42

or perhaps 6th generation, when

00:39:44

when when you have the

00:39:46

modernisation between bilateral investment treaties

00:39:49

and and free trade agreements

00:39:51

which professor she is proposing

00:39:53

then the foreign investor of

00:39:57

China will have a greater

00:40:00

benefit. But that's one of

00:40:01

the challenges the type of

00:40:03

agreement that you can apply.

00:40:05

I need something that cannot

00:40:07

necessarily be decided on the

00:40:08

on the short-term because if

00:40:10

you're an investor in a

00:40:11

state with which you have

00:40:12

an old generation 3D that's

00:40:15

what you have. There's very

00:40:17

little they can do but

00:40:18

renegotiate by train to go

00:40:19

station takes a long time.

00:40:20

That's my comment. Thank you

00:40:24  
very much. I will not

00:40:25  
spend more time, but you

00:40:27  
might our next to speaker.

00:40:28  
I really wish you to

00:40:30  
talk about his experience. And

00:40:32  
so it's about China as

00:40:33  
respondent Hostess days in is

00:40:35  
SDS. Welcome. Renting a ranch

00:40:40  
by one page of a

00:40:47  
slight cases in which a

00:40:51  
us-china is the respondent. I

00:40:55  
know just now. A similar

00:40:59  
page there are nine places

00:41:03

fear. It's also nine cases,

00:41:06

but it's a little different

00:41:10

because I asked lose one

00:41:12

case in which of the

00:41:14

Taiwan province is the respondent

00:41:17

central government of China as

00:41:22

a respondent and veal in

00:41:26

Kotor line cases because I

00:41:29

can't one case price you

00:41:33

can quit is one case

00:41:34

or you can quit to

00:41:36

Casey's. Is there a difference

00:41:45

between a slight of a

00:41:48

professor make eight operations about

00:41:57

these cases these nine cases?

00:42:00

The first is that the

00:42:04

first is that the first

00:42:05

the case against the China

00:42:07

was brought in nine in

00:42:10

2011. 2011 means that after

00:42:16

thirty years of China's opening-up

00:42:19

no single case. I've been

00:42:24

had been brought by farming

00:42:26

investors against the China until

00:42:30

I mean after 30 years

00:42:32

after China's opening-up the first

00:42:35

case came off. Anna has

00:42:40

a baby grow from 11

00:42:56

12 13 1 case in

00:43:00

3 years and 14 15

00:43:05

16 13 in 3 years.

00:43:09

and 1781 case two years

00:43:13

one case in two years

00:43:16

and in 2020 Two pieces

00:43:20

or three pieces, you can

00:43:24

see the trend of the

00:43:26

increase of the cases against

00:43:28

the China in 2021 or

00:43:36

two cases is that the

00:43:45

case will increase and the

00:43:46

increase in 2020 to 2003.

00:43:50

And is this year? No

00:43:52

new cases was publicly know

00:43:58

it as far as they

00:44:01

knew I was there are

00:44:02

some cases maybe both are

00:44:08

they request for consultation at

00:44:11

was sent by the investor

00:44:13

to the comment but He

00:44:15

either had not being registered

00:44:17

or has not been made

00:44:20

public 9 cases means that

00:44:28

it's only less than 1%

00:44:33

of the total is DSX

00:44:35

Casey's in the world ends

00:44:39

of a 2026 RZR 1000s.

00:44:42

332 is DS cases worldwide

00:44:47

and a China only accounted

00:44:50

for 0.27% I think of

00:44:55

this is at least I

00:44:57

sent this to some extent

00:44:59

of success of Chinese garments.

00:45:03

You know, what is a

00:45:05

tutu tutu. I'll cultivate a

00:45:08

friendly business environment or the

00:45:13

Chinese government has successfully resolved

00:45:17

some investors in the early

00:45:20  
stage. So no formal arbitration

00:45:23  
taking account of that every

00:45:30  
year. There are more than

00:45:31  
100 more than 100 beating

00:45:35  
the New FBI are coming

00:45:37  
to China and totally I

00:45:42  
find a figure from Morecambe

00:45:45  
2800 US dollars of FDI

00:45:51  
into China. Do the Casey's

00:45:55  
I think the number of

00:45:57  
the Casey's by to smoke

00:45:58  
the 2nd or the other

00:46:07  
host the home state of

00:46:09

the of the kemit. I

00:46:12

do not know whether it

00:46:13

is by a cleaner incidence

00:46:16

or not. All these cases

00:46:20

were brought by investors whose

00:46:26

host whose home state is

00:46:28

the top 10 is among

00:46:30

the top 10 a source

00:46:32

of FBI. I mean, Singapore

00:46:35

UK even Malaysia Germany all

00:46:44

these cases among the top

00:46:46

10 country of the FDI

00:46:52

into China. And no loose

00:46:57

American South American investors brought

00:47:04

a patent against the China.

00:47:06

Of course, no African you

00:47:08

mister and I know Australian

00:47:10

you miss her. And eight

00:47:13

eight cases that were brought

00:47:16

by investors from developed countries.

00:47:18

Only one by Melissa. The

00:47:22

first case is from Malaysia

00:47:24

a developing country. No big

00:47:31

multinational companies and initiate arbitration

00:47:36

against the China all these

00:47:38

places were brought by small

00:47:40

or medium-sized Enterprises or natural

00:47:44

persons at is in case

00:47:48

they are brought by natural

00:47:50

persons. They served a reservation

00:47:54

I would like to make

00:47:55

is that all these cases

00:47:57

were brought on the beat

00:48:00

up and then the new

00:48:04

Casey's we were brought under

00:48:05

the FTA Regional investment original

00:48:09

trade agreements. It's interesting because

00:48:12

in recent years as China

00:48:14

has concluded about 20 ft

00:48:17

Ace waste investment chapters. And

00:48:21

is this the chapters they

00:48:22

have you no more comprehensive

00:48:26

substantive protection preventions and as

00:48:30

they also have brought a

00:48:32

patrician, I mean broad scope

00:48:36

of constant of arbitration. I

00:48:40

know you missed her ID

00:48:41

used F case to switch

00:48:43

Ina in one case between

00:48:47

China and has a home

00:48:49

state. There are at least

00:48:50

two 1/8 ft concluded in

00:48:54

1980s and another FTA I

00:49:03

think 2009 or 2008 end

00:49:17

and among the beach. Most

00:49:21

of the cases were under

00:49:25

the first generation and ask

00:49:29

Professor. If she just mentioned

00:49:31

that this person generation important

00:49:39

risks, is that the limit

00:49:42

the accounts and to scope

00:49:45

limited it to you involving

00:49:50

the Amount of preparation compensation

00:49:57

hot the heart of the

00:50:01

dispute in the all these

00:50:03

kisses. Reservation is about to

00:50:06

the sensors involved in cases

00:50:11

at least the fix involve

00:50:13

real property development real property

00:50:17

development and housing. You can

00:50:21

understand in China Daily the

00:50:23

rapid urbanization. So there are

00:50:26

a lot of potential in

00:50:30

China. So that is understandable

00:50:35

these cases involve several. I

00:50:42

mean number of provinces of

00:50:45

China Highland Province to Casey's

00:50:47

in Provence two or three

00:50:50

cases. Providence wine and we

00:50:53

promised one and a Citron

00:50:54

Province one at the issue.

00:51:00

In this case. It's interesting

00:51:05

that you know, some of

00:51:06

the cases involve biodiversity and

00:51:10

environment protection. I mean Chinese

00:51:13

government for reason of Environmental

00:51:15

Protection take some measures lead

00:51:22

to some peaceful to be

00:51:23

the foreign investors for example

00:51:25

of force against the natural

00:51:28

reserve and they a new

00:51:31

establish the panda Park Simmons

00:51:40

is that to no. No,

00:51:42

I mean Chinese government has

00:51:45

not lose any single case

00:51:47

pending or the case is

00:51:51

Are the case is continued

00:51:53

or the case is decided

00:51:55

in favor of China fighting

00:52:02

Isis in first apiece for

00:52:05

China. Also, maybe you sent

00:52:07

out the most I need

00:52:16

the first case entered into

00:52:19

the arbitration stage China review

00:52:21

and they discontinued because that's

00:52:28

complained at Klamath is a

00:52:30

very small company. They do

00:52:32

not have sufficient funding for

00:52:35

their pursuing their case. Any

00:52:39

I mean any any engine

00:52:41

any Merrick's about her case,

00:52:43

but anyway, they end the

00:52:48

6th. Discontinued exit cuz I

00:52:55

think my personal opinion is

00:52:58

that is a mistake. It's

00:53:01

not the case by the

00:53:02

world is a case before

00:53:04

exceed. So they have to

00:53:06

give up that case and

00:53:08

a fire on Neil same

00:53:10

case at PCH. And the

00:53:15

extra fee for for case

00:53:16

or China a preview. That

00:53:18

is it that today. They

00:53:26

have the lack of jurisdiction

00:53:31

is a 5000 China achieved

00:53:40

the outcome so far. Yeah,

00:53:47

I think Chinese government has

00:53:49

established a relatively successful effective

00:53:55

a working mechanism to defend

00:53:58

the China in industrial states

00:54:00

are between cases and in

00:54:02

China at his most calm

00:54:04

and specifically its Department of

00:54:07

treaty on Blow of Morecambe

00:54:08

who defend the China in

00:54:10

these cases and apparently before

00:54:13

China. The defendant is DS

00:54:16

cases. They have nerd a

00:54:18

lot in WTO dispute settlement.

00:54:21

There are some similar experiences

00:54:26

when they defend Us in

00:54:27

is DS cases the coordinate

00:54:36

our wisdom departments within the

00:54:42

central government and is in

00:54:43

the coordinate with the local

00:54:44

governments the provincial the immunity.

00:54:46

They can't eat almonds group

00:54:53

to defend the China and

00:54:55

USA. Some of the cases

00:55:00

are offended by I mean

00:55:04

a pair of loafers long

00:55:06

as International firm and the

00:55:08

other is the Chinese refer,

00:55:11

kisses and I were represented

00:55:15

by a Chinese Law Firm

00:55:19

plus a barrister and then

00:55:22

in some other cases Chinese

00:55:26

law firms are different or

00:55:28

I mean represent the Chinese

00:55:29

government independently only or Chinese

00:55:32

Law Firm. So it's a

00:55:35

little you know, it's a

00:55:37

I think it's based on

00:55:40

the facts of the case

00:55:41

that particular circumstances of the

00:55:44

case. And is it common

00:55:45

to choose a best way

00:55:48

to organize their government lawyers

00:55:53

and as their external council's

00:55:54

so what I would like

00:55:59

to share with you. Thank

00:56:00

you. Thank you very much

00:56:02

jelly shoes. Carl would you

00:56:06

like to make a comment

00:56:07

on what gender has just

00:56:09

said? So brilliant observations Byron

00:56:16

seeing especially the trending of

00:56:18

the is DS cases against

00:56:20

China as the respondent something

00:56:23

that might be relevant and

00:56:25

perhaps other experts on the

00:56:28

panel and in the audience

00:56:30

can comment further comments later,

00:56:32

which is the implementation of

00:56:34

the China's foreign investment law.

00:56:37

The law was implemented in

00:56:40

2020 and it replaces the

00:56:43

previous regime of laws governing

00:56:45

foreign investment the key provisions

00:56:50

of the law include National

00:56:54

treatment, meaning foreign-invested Enterprises are

00:56:57

treated the same as domestic

00:56:59

companies wants to stop and

00:57:03

another provision is the negative

00:57:07

list which specifies sectors where

00:57:10

foreign investment is restricted or

00:57:12

prohibited. I'm at a third

00:57:15

is strengthening intellectual property protections

00:57:18

against Forest technology transfers. I

00:57:24

think this implementation of this

00:57:25

long might you know have

00:57:27

some relevance as to the

00:57:31

I guess that the decrease

00:57:33

in in cases or investment

00:57:38

be no cases against China.

00:57:40

So that's my comments. Thank

00:57:44

you very much Carl. I

00:57:47

get a reminder that's in

00:57:48

the session. We only have

00:57:49

30 minutes remaining but I

00:57:51

I I know that's we

00:57:52

started a little bit later.

00:57:54

So maybe we'll kind of

00:57:56

a slightly delay a bit

00:57:57

before we moving to the

00:58:00

discussion from the Investor's perspective.

00:58:03

I'm trying to post a

00:58:05

kind of tough question on

00:58:09

the certain thing since you

00:58:10

just a mention that the

00:58:13

money to reimburse What's of

00:58:14

FDI here in China is

00:58:17

quite huge quite a large

00:58:18

High numbers. However, China as

00:58:22

the respondent. How's the state

00:58:24

is DS cases only nine

00:58:27

cases. So very small and

00:58:30

also you had a one

00:58:31

observation saying that multinational companies

00:58:35

sell them kind of Sue

00:58:37

China's respondent. So my

00:58:40

question is that based on

00:58:42

your working experience your mouth,

00:58:45

and now have so many

00:58:46

first two has experience in

00:58:48

this area. What about their

00:58:51

concerns? Do they consider do

00:58:53

they kind of afraid to

00:58:55

sue China when they think

00:58:57

about how is my future

00:58:59

of Business Development? Is that

00:59:02

the counselor or anything others?

00:59:05

That's kind of in reality

00:59:07

prevent them to actually take

00:59:09

Serious action against the government.

00:59:13

In case where they suffer

00:59:15

something here. I think the

00:59:26

audience is there a lot

00:59:34

of reasons I guess I

00:59:35

bet one reason is that

00:59:37

the reason the first environment

00:59:45

in China is improving that

00:59:48

is the first and the

00:59:49

second reason I sent you

00:59:50

is that they have a

00:59:54

lot of means to resolve

00:59:57

their concerns or problems or

01:00:01

even disco's as local governments

01:00:04

z z can you know,

01:00:07

they have a very most

01:00:09

of them they have large

01:00:11

governmental Affairs team. They can

01:00:14

communicate different various agencies of

01:00:17

government are to try to

01:00:19

find a mutually except. We

01:00:21

are and Z there in

01:00:23

China's area is also some

01:00:25

other means because I'm position

01:00:26

of Command Center to specifically

01:00:34

establishes to resolve complaints of

01:00:38

our investors, which they can

01:00:40

use the minister of Education

01:00:45

in China they can also

01:00:47

use so I think if

01:00:49

I most of us will

01:00:52

be the last resort, so

01:00:54

they have many of Oz

01:00:56

means record so they do

01:00:59

not have to use STS.

01:01:03

Thank you. Professor just just

01:01:07

11.1 follow-up question given even

01:01:10

that and yes we answered

01:01:12

here. Do you think that

01:01:20

that some big companies are

01:01:23

also taking advantage of the

01:01:28

other means of resolving disputes

01:01:30

in China and I'm talking

01:01:33

to me in particular about

01:01:34

back but the other arbitration

01:01:40

centers you think that that

01:01:41

that is somehow having an

01:01:43

effect that mean we know

01:01:44

that that many companies foreign

01:01:46

companies have subsidiaries in China

01:01:49

and and of course other

01:01:51

means of solving disputes may

01:01:52

be available to them. Do

01:01:54

you think that has happened?

01:01:55

I have no data about

01:01:57

that, but I'm interesting to

01:01:58

to to learn. Thank you.

01:02:04

Yeah, yeah indeed first that

01:02:08

you know, some of the

01:02:09

ways comment may arise first

01:02:14

as a commercial disputes between

01:02:16

the foreign investors. And is

01:02:18

there a China and his

01:02:20

partner solely for the commercial

01:02:22

these pills cannot be handled

01:02:24

properly. They may be involved

01:02:26

with support to resolve a

01:02:33

need then let me have

01:02:38

concerns with tennis court and

01:02:40

is in Chinese sovereign state.

01:02:41

So I think the other

01:02:44

judicial system. I mean the

01:02:47

overall system help to reduce.

01:03:00

Chinese government institutions like be

01:03:05

a safe. I understand that

01:03:07

a public public private partnership

01:03:17

project projects can be resolved.

01:03:23

Some of them any of

01:03:25

them are some of the

01:03:26

PPP projects they can be

01:03:30

resolved through arbitration. So the

01:03:32

AC and the other Chinese

01:03:34

arbitration institutions, they help to

01:03:37

resolve this kind of this

01:03:39

feels analyzed and avoid the

01:03:41

lady is supposed to to

01:03:44

to evolve as a gift

01:03:45

feels against China as a

01:03:47

compliment. Thank you. Thank you

01:03:50

very much. Delicious. Very great

01:03:53

that they saw or my

01:03:56

person. I think a Chinese

01:04:03

people that we in Clyde

01:04:04

to to have a piece

01:04:06

and settlement that we trekked

01:04:07

I reach the dispute can

01:04:09

be resolved amicably. So either

01:04:11

that administrative level Orion in

01:04:16

this commercial arbitration level. There

01:04:18

are a lot of approaches

01:04:20

that for Ian Masters and

01:04:22

also entities they may find

01:04:24  
record. So yes that is

01:04:27  
it is as it is

01:04:28  
that's only nine cases so

01:04:30  
far. We're China governments as

01:04:33  
the responding house to say.

01:04:35  
So our remaining three speakers

01:04:38  
will discuss the topic from

01:04:41  
the Investor's perspective. And our

01:04:44  
first the speaker is that

01:04:46  
mean what that mean? Please

01:04:47  
me to speech my involvement

01:04:54  
with investor-state dispute arises out

01:04:58  
from representing a Chinese party

01:05:01

in taking an action against

01:05:03

Finland in an investment treaty

01:05:06

dispute. And since this is

01:05:09

already disclosed any of the

01:05:11

public domain because of England's

01:05:14

rule in terms of a

01:05:16

transparency so I can mention

01:05:19

this without reservation. To start

01:05:24

actually many speakers are emation

01:05:29

today about soent Spirit Solution

01:05:32

by way of a investment

01:05:35

State arbitration. So today I

01:05:38

will focus on private investment

01:05:42

instead of a SOS. Now

01:05:45

are we all know the

01:05:46

purpose of b i t

01:05:49

s off in the first

01:05:50

place to promote investment in

01:05:53

order to promote Investments and

01:05:56

the host country must protect

01:05:58

investors interest and so you

01:06:02

relation to the to sequoia

01:06:03

trees. to a bilateral investment

01:06:06

treaty each of the country

01:06:09

would be interested to use

01:06:10

to attract foreign investment. And

01:06:13

then each of the countries

01:06:14

would be there to protect

01:06:16

you have Provisions to protect

01:06:18

the investment investor against certain

01:06:22

practices that are not acceptable.

01:06:26

So with the sending economic

01:06:30

strengths of China China has

01:06:32

changed from being a recipient

01:06:34

of investment to a exporter

01:06:38

of investment in host States,

01:06:41

and this is particularly. So

01:06:43

in view of the belt

01:06:44

and Road initiative, As more

01:06:50

and more Chinese Enterprises go

01:06:53

going out to invest in

01:06:55

outside country so long to

01:06:56

Pelham Road more and more

01:06:58

are the chances of resolve

01:07:00

disputes arising from the performance

01:07:03

of the contracts and rising

01:07:05

out from country risk and

01:07:07

actions taken by government regulatory

01:07:10

bodies to in relation to

01:07:14

normal transactional risk. These are

01:07:16

usually handled well by lawyers

01:07:19

advising investors and how they

01:07:23

structure the terms and conditions

01:07:25

of such as a joint

01:07:27

venture agreement with the transactional

01:07:29

contracts. However, we we all

01:07:36

know that in relation to

01:07:39

transactions. Nobody would like to

01:07:41

rely on the courts of

01:07:44

another country to dispense justice.

01:07:46

So usually as said earlier

01:07:50

this morning, most of the

01:07:52

transactional of contractual disputes would

01:07:55

be handled by arbitration as

01:07:58

a neutral venue such as

01:08:00

Hong Kong, Singapore and And

01:08:05

upon you in a different

01:08:07  
set of rules such as

01:08:08  
minister of Education rules or

01:08:12  
siac rules on route. But

01:08:18  
one thing that is often

01:08:20  
overlooked in the process is

01:08:22  
a face the second level

01:08:24  
of protection against the Chinese

01:08:26  
investor going out in this

01:08:29  
by way of the investment

01:08:31  
treaties entered into by China

01:08:33  
that will enable Chinese investor

01:08:38  
to be entitled to social

01:08:39  
Southern protection, So the protection

01:08:45  
against for instance of research

01:08:47  
change of government leading to

01:08:49  
change your policy or arbitrary

01:08:51  
application of certain administrative measures,

01:08:55  
they may amount to an

01:08:57  
expropriation of the project or

01:09:01  
withdrawal of a license given

01:09:03  
for mining for instance. So

01:09:06  
we'd we heard today that

01:09:08  
lots of cases of investment

01:09:13  
disputes such as in relation

01:09:14  
to construction projects in relation

01:09:18  
to Mining rights you relation

01:09:20

to forced appreciation of assets.

01:09:25

NN with cancellation of licenses

01:09:29

that has been lawfully granted

01:09:34

So we we saw the

01:09:37

earlier on when Jose told

01:09:39

us many of these disputes

01:09:41

actually has been resolved. Some

01:09:44

are still pending some are

01:09:47

settled. So what I would

01:09:50

like to take you to

01:09:52

is one of the year.

01:09:55

Succour templates of such Bruce

01:09:58

and my dad I would

01:10:00

refer to defend line China

01:10:02  
b i t and the

01:10:05  
first point I like to

01:10:06  
highlight is the definition of

01:10:09  
investment actually is very Wily

01:10:12  
drafted and it didn't involve

01:10:14  
every kind of ss that

01:10:16  
you can think of including

01:10:18  
movable and immovable property shares

01:10:21  
and debentures claims of bunny

01:10:23  
or other performance having an

01:10:25  
economic value intellectual property rights

01:10:28  
know how in Goodwill and

01:10:30  
business concessions confer Bi-Lo in

01:10:33  
permitted by law are classified

01:10:37  
as Investments that can be

01:10:39  
protected and who are the

01:10:42  
investors in the context of

01:10:44  
a Chinese going out you

01:10:46  
can be a natural person.

01:10:48  
A Chinese National or you

01:10:50  
can be any Chinese legal

01:10:51  
entity including soe. so in

01:10:58  
typical Appalachia investment treaties, it

01:11:03  
would guarantee the investor by

01:11:06  
term constant protection and security.

01:11:08  
He means a proactive a

01:11:13

mandate by the government of

01:11:15

the recipients state to the

01:11:16

investment to make sure that

01:11:19

the investors properties and personal

01:11:22

safety are protected. So it's

01:11:25

not as if something happened

01:11:27

and they come in in

01:11:28

the police can protect you

01:11:30

you miss that they should

01:11:31

do that proactively and then

01:11:34

also normally in a measures

01:11:38

that that they will be

01:11:40

no unreasonable discriminatory measures that

01:11:44

is targeted against the investor.

01:11:47

Are you better from a

01:11:49

particular country? The against there.

01:11:52

So the investors can manage

01:11:54

use expand so disposed of

01:11:58

the investment at will and

01:12:00

so you you cannot unreasonably

01:12:02

discriminatory prohibit the investor from

01:12:06

selling his investment or otherwise

01:12:09

dealing or managing it. The

01:12:13

surfing that is being protected

01:12:15

this pain Equitable treatment that

01:12:17

the avesta should be treated

01:12:19

fairly. And the first time

01:12:21  
that is that you see

01:12:23  
all the time is national

01:12:25  
treatment. So you would be

01:12:26  
treated no worse than the

01:12:29  
national of that particular recipient

01:12:32  
States, but you may be

01:12:35  
treated better in the most

01:12:37  
favored nation clothes that is

01:12:39  
normally in place in such

01:12:42  
a tease. And of course

01:12:47  
one of the most important

01:12:49  
things that is the time

01:12:52  
should be no expropriation without

01:12:54

compensation proper compensation, even though

01:12:58

it may be in the

01:12:59

public interest and without discrimination.

01:13:01

So when you wish to

01:13:03

to take a measure the

01:13:05

host country to do certain

01:13:07

things that investors rights must

01:13:09

be respected and be compensated

01:13:12

for one further important provision

01:13:18

that you will normally see

01:13:20

you said to transfer funds

01:13:22

related to the investment in

01:13:25

and out of the country

01:13:26

would be permitted so you

01:13:29

can remote in and out

01:13:30

that the amount you invested

01:13:32

the dividends the interest royalties

01:13:35

of service fees Etc important

01:13:38

Provisions because if you go

01:13:40

into a certain country and

01:13:42

investment a permit your investment,

01:13:45

but doesn't permit you to

01:13:46

take The money so you

01:13:48

were three serious difficulties at

01:13:50

the end of the day.

01:13:51

So these are the measures

01:13:53

and so many times in

01:13:56

relation to Chinese investment into

01:13:59

Berlin will countries you are

01:14:01

going into an unknown territory

01:14:03

with a set of Lord

01:14:04

that you are not familiar

01:14:05

with the language that you

01:14:07

do not understand. So how

01:14:09

can your interest be protecting

01:14:11

one of the ways in

01:14:13

relation to contractual dispute is

01:14:15

as I mentioned earlier by

01:14:17

commercial arbitration International commercial arbitration

01:14:21

second-tier 37 higher tier is

01:14:25

by way of investment treaty

01:14:28

obligation to protect your interests

01:14:30

further and and Audi a

01:14:36

lot of the country a

01:14:37

letter investment treaties that I've

01:14:39

read they all have a

01:14:40

dispute settlement provision and it

01:14:44

provides 488 Albert rationed the

01:14:47

means and the reason she

01:14:49

mentioned that his ex escalation

01:14:51

Clause that means you first

01:14:53

you try to negotiate on

01:14:54

mediate after written notice for

01:14:58

36 months and when that

01:15:00  
process step is taken and

01:15:03  
completed in resulting in no

01:15:05  
settlement can you can come

01:15:07  
and see me then I'll

01:15:09  
be stationed to have you

01:15:11  
all day before the Tribunal.

01:15:13  
No. You relation to bilateral

01:15:18  
investment treaty? How you commenced

01:15:22  
the arbitration is at the

01:15:24  
discretion to choice of the

01:15:27  
investor. So for Chinese going

01:15:30  
out to invest in Cambodia

01:15:32  
for instance is the Chinese

01:15:33

that would be in the

01:15:35

driving seat as to how

01:15:37

this arbitration is to be

01:15:39

conducted. He has he can

01:15:41

there's a provision the provision

01:15:44

say you can't go to

01:15:45

the competent Court of a

01:15:47

contract Contracting party or to

01:15:50

exit arbitration or to an

01:15:52

echo averaging Tribunal. No and

01:15:56

two to a tribunal or

01:15:57

three arbitrators to resolve the

01:16:00

dispute of course would be

01:16:05

preferable to the domestic court

01:16:08

of the Contracting state to

01:16:11

host country because they may

01:16:13

be political other reasons that

01:16:17

request for adjudication and investor

01:16:24

would not be favorably be

01:16:26

looked upon by the courts

01:16:27

of the whole state. So

01:16:33

this particular Clause actually post

01:16:37

some difficulties and the difficulties

01:16:40

is called the fork in

01:16:41

the road consideration. So you

01:16:43

can have a choice either

01:16:45

going to the local court

01:16:46

and then alternatively go to

01:16:49

seek relief in an International

01:16:51

Auto Show tribunal and I

01:16:53

would suggest that going to

01:16:55

an international tribunal would be

01:16:57

far preferable many times Freeman

01:17:04

me me through the closing

01:17:07

that for certain methods you're

01:17:09

going to refer first to

01:17:12

a local administrative tribunal to

01:17:15

decide first before you do

01:17:16

anything else. So in those

01:17:18

circumstances the investor may have

01:17:21

to go before for instance

01:17:23

of Taxation body to to

01:17:26

have that. Dispute that with

01:17:29

and failing having feeling to

01:17:33

try the administrative body dealing

01:17:36

with a fairly and equitably

01:17:37

than you you move on

01:17:39

to the next stage by

01:17:41

way of investment disputes arbitration.

01:17:45

However, when you do that

01:17:48

then The defending state with

01:17:52

have an argument you are

01:17:54

already made an election and

01:17:56

you went to my shop,

01:17:57

you know, and you can

01:17:58

no longer go for investment

01:18:00

dispute arbitration. This is precisely

01:18:02

what happened you my case

01:18:05

in Finland. This is an

01:18:10

interesting case because my client

01:18:15

went to Finland to eat

01:18:17

to invest because that investment

01:18:21

was promoted together with ccpit

01:18:23

in China and he look

01:18:26

at investment and sought to

01:18:28

set up a distribution center

01:18:29

in the city of Covina

01:18:31  
in Finland reaches the end

01:18:34  
of the Railway line leading

01:18:35  
to Europe to a logistic

01:18:37  
Center for distribution of Chinese

01:18:40  
Goods. No, he he he

01:18:43  
went to one of the

01:18:45  
conditions. That was given in

01:18:49  
the approval. Do to him

01:18:52  
to have that the investment

01:18:53  
he said he should invite

01:18:55  
at least 50 shities investors

01:18:57  
to go to Finland to

01:18:58  
invest and because of the

01:19:00

provision he invited hundreds of

01:19:03

Chinese investing of possible investors

01:19:07

to go to Finland to

01:19:08

have a look at the

01:19:09

location. The immigration department has

01:19:13

a complain arising from that

01:19:15

how many how come so

01:19:17

many visas issued to Chinese?

01:19:20

You must be dealing with

01:19:21

illegal immigration into Europe. You

01:19:25

are here The Conjuring of

01:19:27

a legal scheme and then

01:19:29

he was arrested. The arresting

01:19:32

was traumatic. They were 200

01:19:35

police. We've got dogs and

01:19:37

helicopter descending on the center

01:19:39

arrested more than 100 Chinese.

01:19:43

Give me himself. He stopped

01:19:44

and his customers and they

01:19:47

were bundled out for questioning.

01:19:48

He was held six months

01:19:51

incommunicado and I'll communicate with

01:19:54

anybody and then he's relieved

01:19:58

he asked for pay you

01:19:59

for being there without was

01:20:02

denied repeatedly by the court

01:20:04

and after he was released

01:20:07

having no charge against him

01:20:09

after months and then the

01:20:12

possessions will not return for

01:20:14

a year. He sued the

01:20:17

government in court for evidence

01:20:19

in court. And then when

01:20:23

this investment is through arbitration

01:20:24

came about the government's Defence

01:20:29

is that you're already taken

01:20:32

a choice. This is a

01:20:34

fork in the road. You

01:20:35

went to the code of

01:20:38

Finland on on Tasha's G

01:20:42  
against the government body. You

01:20:44  
can no longer rely upon

01:20:46  
the course of action is

01:20:48  
bilateral investment treaty G and

01:20:51  
for that we we have

01:20:54  
to spend a lot of

01:20:54  
time and money in arguing

01:20:56  
about that. So actually when

01:21:00  
I think the first place

01:21:03  
I would advise a sexually

01:21:04  
Chinese investors are very shy

01:21:07  
about suing the states. it's

01:21:12  
like David versus Goliath and

01:21:15

so David doesn't want to

01:21:18

move Chinese doesn't want to

01:21:20

fight unless being forced to

01:21:22

the wall. And so they

01:21:25

have scantily use pits. What

01:21:30

is a what is a

01:21:31

quarter to them to protect

01:21:34

the interests under the p

01:21:35

i t o e l

01:21:38

would suggest that Chinese investors

01:21:40

should look more into it

01:21:41

as an option to protect

01:21:44

the interest but it does

01:21:46

not mean that commencing a

01:21:48

p i t necessarily means

01:21:50

going the full way because

01:21:53

once your commands it you

01:21:55

can still continue to mediate

01:21:57

on a crochet and explore

01:21:59

ways of settling without going

01:22:02

through the whole process leading

01:22:04

to an arbitration award. in

01:22:07

this case, we race and

01:22:09

arbitration based on that whole

01:22:11

conversation commencing out from Hong

01:22:14

Kong and and and and

01:22:18

we we have a panel

01:22:20  
of three arbitrators when the

01:22:22  
pointed from Hong Kong a

01:22:25  
quarterfinal few judge one from

01:22:28  
sec in Sweden, and then

01:22:32  
the presiding arbitrator was locked

01:22:34  
men's from the United Kingdom.

01:22:37  
And we were hoping that

01:22:38  
this would set up some

01:22:39  
precedent in relation to fucking

01:22:42  
road tonight how you sure

01:22:45  
in the future. This would

01:22:47  
be looked at in terms

01:22:48  
of with the guidance of

01:22:50

the court, but unfortunately my

01:22:56

time and contracted cancer and

01:22:59

died before. Do you know

01:23:03

what was rendered and so

01:23:05

we actually settled our court

01:23:08

review of his death? What

01:23:15

I say is that nowadays?

01:23:16

There's so many Chinese investors

01:23:19

going outside to invest in

01:23:21

Pelham Road countries. It is

01:23:23

useful to have legal advisers

01:23:26

advise them as to how

01:23:28

to rely upon the bits

01:23:32

to assist the investor including

01:23:35  
shopping for the place of

01:23:38  
a special purpose vehicle to

01:23:41  
commence and investment so as

01:23:42  
to protect Chinese investors interest,

01:23:46  
so thank you very much

01:23:47  
for a short presentation. Thank

01:23:49  
you. Thank you. Sonny TimeWise.

01:23:56  
We are a bit late

01:23:57  
late, but I understand that

01:23:59  
you don't still want to

01:24:00  
make some comments. So please

01:24:02  
make sure you strut. Thank

01:24:03  
you very much for the

01:24:09

case against precisely I am

01:24:17

straighter that Chinese restaurant including

01:24:22

surface. I meant developing countries

01:24:31

develop the country and the

01:24:34

procedure of Westmont protection along

01:24:46

with the increase of I

01:24:52

try so hard to find

01:24:55

a Chinese lawyer this system

01:25:04

like ours English last year

01:25:16

did not achieve the zero

01:25:21

power through a managing SDS

01:25:26

disputing. So I hope them

01:25:29

holiday come earlier and the

01:25:31

Pacific where I make the

01:25:42

car all it's your turn.

01:25:59

Sorry. Millcreek overview of bitf

01:26:11

by Samuel just a couple

01:26:14

of additional key points for

01:26:18

Chinese investors and some takeaways

01:26:22

for for them, which is

01:26:25

that well is dies in

01:26:28

knots when she point is

01:26:30

I cannot overturn local laws

01:26:32

that violate trade agreement, but

01:26:34

it can give monetary damages

01:26:36

the investors ever sit adversely

01:26:39

affected by such laws. And

01:26:43

notably, you know is DS

01:26:46

can only be brought by

01:26:49

Foreign investors to sue States

01:26:51

under the treaties because seats

01:26:53

are the parties to the

01:26:55

treaty and only States can

01:26:58

be held liable to pay

01:26:59

damages for breach of the

01:27:01

treaty. However, this is a

01:27:04

one-way Street and it doesn't

01:27:05

work the other way around

01:27:06

that is states have no

01:27:08

corresponding rights to bring an

01:27:10

original claim against it for

01:27:12

an investor under the treaties

01:27:14

because investors are not parties

01:27:16

to the treaty and therefore

01:27:17

cannot be in breach of

01:27:19

it. So when we see

01:27:20

the station in favor of

01:27:22

the state what it really

01:27:23

means is that the state

01:27:25

has not been ordered to

01:27:27

pay damages and then Master

01:27:29

if the state wants to

01:27:30

sue an investor it will

01:27:33

have to do so through

01:27:33

its own Domestic Court. and

01:27:43

and it is essential and

01:27:45

critical for Chinese investors to

01:27:47

understand and comply with the

01:27:50

host country's law. These may

01:27:52

include requirements for joint ventures

01:27:54

restrictions on foreign ownership and

01:27:57

sector-specific regulation. And just overall

01:28:04

recommendations first due diligence investors

01:28:09

should conduct thorough due diligence

01:28:11

on the legal and Regulatory

01:28:13

environment of the host country

01:28:15

understanding local laws tax regimes

01:28:19

and political risks is critical.

01:28:24

Again study, the treaty landscape

01:28:26

investors should conduct a thorough

01:28:28

investigation and review of treaties

01:28:31

that may apply to the

01:28:33

investment if necessary structures investment

01:28:36

to benefit from favorable treaty

01:28:38

regulations. obtaining legal advice investors

01:28:44

should engage with legal experts

01:28:47

familiar with International Investment law

01:28:49

and the specific treaties between

01:28:51

the relevant countries such as

01:28:55

You know a law firms

01:28:57

Global law firms who are

01:29:00

experts in in, you know

01:29:02

this type of Legal Services.

01:29:08

fourth investment insurance investors should

01:29:13

consider the investment Insurance option

01:29:15

to protect against political risks

01:29:17

such as his probation war

01:29:20

and civil disturbance. Local Partnerships

01:29:25

investors should consider forming Partnerships

01:29:29

with local firm that can

01:29:31

facilitate their operations and compliance

01:29:35

with local regulations. and 6

01:29:38

dispute resolution mechanisms investors should

01:29:43

be aware of the available

01:29:45

dispute resolution mechanisms under applicable

01:29:47

treaties and agreements to ensure

01:29:49

access to Fair arbitration if

01:29:52

needed. And I'm by leveraging

01:29:55

these treaties and agreements investors

01:29:58

can better protect their Investments

01:30:00

and navigate the complexity of

01:30:02

international market. Thank you. Thank

01:30:07

you very much Carl my

01:30:09

office that you might be

01:30:10

our last the speaker Mariana

01:30:12

to finish the talk and

01:30:14

then we do the comments

01:30:16

parts. Okay, I'll thank you

01:30:18

when I still got speaker.

01:30:20

I do not want to

01:30:21

delay your coffee break for

01:30:22

there. So I will try

01:30:23

to be very fast. My

01:30:25

topic today is evidence and

01:30:27

evidence is arbitration lawyers. We

01:30:30

all understand the importance of

01:30:31

evidence in proving our case

01:30:33

however in practice we have

01:30:35

seen investors who suffered a

01:30:37

severe disadvantage during the arbitration

01:30:39

because they can not find

01:30:41

evidence to support their allegations

01:30:43

and this happened either because

01:30:46

they did not maintain a

01:30:47

good record of evidence including

01:30:50

company files transactional documents cutting

01:30:53

records or because they did

01:30:56

not pay attention to document

01:30:57

when important meetings take place.

01:31:00

So I would like to

01:31:02

share three practical experiences based

01:31:04

on which I will provide

01:31:05

takeaways for investors and their

01:31:08

consoles my first experience related

01:31:11

to the investors burden of

01:31:12

proof to show he's making

01:31:14

of the investment the flow

01:31:16

of his phone. And also

01:31:18

that he made the Investments

01:31:20

legally as a first step

01:31:22

investors need to show that

01:31:24

they made the investments in

01:31:26

the host state to approve

01:31:27

this fact, he needs to

01:31:29

show that the flow of

01:31:31

the sound from the investor

01:31:33

to the local entity or

01:31:34

to the local investment and

01:31:36

they need to present evidence

01:31:37

such as commercial contract wire

01:31:40

transfer statements importation custom clearance

01:31:43

Etc to show that the

01:31:46

make the investment using your

01:31:47

own found out through their

01:31:49

own entities into the territory

01:31:51

of the house to State.

01:31:53

This could be quite problematic

01:31:55

if the investor purchase the

01:31:57

materials equipments and wired money

01:32:00

into the host's 8 using

01:32:02

lots of angry lighted search

01:32:04

parties using bank accounts that

01:32:07

cannot be linked to the

01:32:09

investor or his own companies

01:32:10

still have our challenges will

01:32:12

be made by the state

01:32:13

to argue that the investor

01:32:15

did not make things. Or

01:32:18

did not make the investment

01:32:20

using his own money or

01:32:21

did not make them investment.

01:32:23

Illegally or that investor has

01:32:25

committed money laundering or fraud.

01:32:27

So this happened in one

01:32:29  
of our cases that we

01:32:31  
handled spend lots of time

01:32:34  
and cost trying to sort

01:32:36  
out all those payments made

01:32:38  
into the whole state to

01:32:39  
show that they originated from

01:32:41  
the faster. They were clean

01:32:42  
money and there was no

01:32:44  
fraud the investor of course

01:32:46  
does not need to show

01:32:47  
that all the Investments were

01:32:48  
made using his own money.

01:32:50  
It is okay to China

01:32:51

other sources of found as

01:32:53

long as the Investments were

01:32:54

made legally and in accordance

01:32:56

with the law of the

01:32:57

host state, so my second

01:32:59

experience relates to the investors

01:33:01

documenting of important meetings and

01:33:03

Communications with the house state.

01:33:06

An investment arbitration violation of

01:33:08

due process is perhaps one

01:33:10

of the most polluted grounds

01:33:12

by the investors in many

01:33:14

cases. It is not for

01:33:16

example, it is not why

01:33:18

the licenses were taken it

01:33:20

is how it was taken

01:33:21

that was always in the

01:33:23

Centre of the dispute. So

01:33:25

it is important for the

01:33:26

investors to document important meetings

01:33:29

and conversations with the house

01:33:31

to state with the government

01:33:32

officials. The investors could do

01:33:34

so by creating contemporaneous documents

01:33:37

including Mitten minutes and notes

01:33:39

or through sent an opera

01:33:41

email or after I had

01:33:42

to confirm the occurrence of

01:33:43

the meeting. I must emphasize

01:33:45

that once a contemporaneous document

01:33:48

has been created the investors

01:33:50

should not alter the contents

01:33:52

of the document because the

01:33:54

host state will apply to

01:33:56

examine that document to see

01:33:58

whether that document was authentic

01:34:00

and whether that document was

01:34:02

prepared for the mere purpose

01:34:03

of the arbitration. So my

01:34:06

sword and lost experience relates

01:34:08

to the investors use of

01:34:09

factual witness. This is a

01:34:12

quite sensitive issue because the

01:34:14

investor and it's legal team

01:34:16

are fighting a war against

01:34:18

a giant sovereign state. The

01:34:20

powers are just a colionne

01:34:22

equal the whole state could

01:34:24

adopt or types of measures

01:34:25

to intimidate the witness or

01:34:27

harassed at the lawyers were

01:34:29

the experts of the investor.

01:34:31

For example, the host State

01:34:33

could help a special team

01:34:35

located at a sword country

01:34:36

or a place of nowhere

01:34:38

to hack into the investor

01:34:40

lawyers email system in order

01:34:42

to plant virus or to

01:34:43

steal sensitive information and the

01:34:46

hosts a could secretly harassing

01:34:48

the witness or relatives of

01:34:50

the investor or relatives of

01:34:52

the witness. It could put

01:34:54

the lawyers on Blacklist and

01:34:56

it could arrest the local

01:34:57

lawyers of the investor which

01:34:58

provides legal opinions on the

01:35:00

local law. So these are

01:35:02

not new to invest Investments

01:35:04

arbitration and in God It

01:35:06

should be warned and prepared

01:35:07

for these potential threats because

01:35:10

of this very unique feature

01:35:12

and Potential Threat. It is

01:35:13

often challenging for investors to

01:35:15

find witnesses who are willing

01:35:17

to testify against Ohio State.

01:35:19

We have seen in some

01:35:22

cases where the factual witness

01:35:24

initially agreed to testify then

01:35:26

withdrew his agreement. So based

01:35:29

on experiences my takeaways for

01:35:32

the investors and their councils

01:35:33

are the following for civil

01:35:35

investors should simplify the flow

01:35:37

of their phones into the

01:35:39

house to say they should

01:35:40

document and preserve all the

01:35:43

transactional and communication documents with

01:35:45

the local partner and Webster

01:35:47

house to stay. In order

01:35:49

to show that the maid

01:35:50

investment and the made it

01:35:51

is equally as investors who

01:35:54

transferred their evidence outside the

01:35:57

host State before the dispute

01:35:59

escalated into arbitration and certainly

01:36:02

investors should take evidence of

01:36:04

their investment by taking photos

01:36:06

or by recording videos while

01:36:08

they still can and while

01:36:09

they are still in the

01:36:10

house to say it because

01:36:12

it more often than not

01:36:13

was the dispute escalates. The

01:36:16

investor may not be able

01:36:17

to access their properties in

01:36:19

the house just ate and

01:36:21

more often than not that

01:36:22

your master will have to

01:36:23

leave the house State Police

01:36:25

it for their own safety

01:36:26

peppers and last but not

01:36:28

least investors should identify potential

01:36:31

Witnesses who are important for

01:36:34

their cases and make sure

01:36:36

that these Witnesses are returned

01:36:38

to their safe place and

01:36:40

not losing the threat of

01:36:42  
the house to state that

01:36:44  
concludes my presentation. Thank you.

01:36:47  
Thank you very much, Mariana.

01:36:50  
There is valuable observation and

01:36:54  
down-to-earth advice very good. I

01:36:59  
receive a message that online

01:37:01  
there are tens of thousands

01:37:03  
Alden hearing this panel and

01:37:06  
we receive questions from online.

01:37:09  
So I discussed it with

01:37:11  
Jose and the we decide

01:37:15  
to post this questions and

01:37:17  
then spent a little bit

01:37:18

longer time here. We had

01:37:20

a good question on Lie

01:37:22

by Linea talking and that

01:37:25

the question is about the

01:37:26

come play me can ISM

01:37:28

in China how it is

01:37:30

used in China's local remedies

01:37:33

in resolving is DS cases.

01:37:36

I wonder these disputes are

01:37:39

resolved as commercial disputes before

01:37:42

court or resolved as administrative

01:37:45

dispute and their administrative litigations.

01:37:49

Travel agency would be the

01:37:50

best speaker to answer this.

01:37:59

Yes, we did some research

01:38:04

about complaining mechanism has a

01:38:09

very Now history. I think

01:38:12

he may be in 1990s

01:38:15

in some provinces. This kind

01:38:18

of mechanism has already been

01:38:20

established and I understand you

01:38:22

storing. This is the law

01:38:24

and the law there is

01:38:25

a prevention require the comments

01:38:28

at various levels to establish

01:38:31

that kind of mechanism. So

01:38:32

nowadays USA in every Province,

01:38:35  
maybe even a neighboring municipalities.

01:38:39  
Sometimes there's a sore under

01:38:49  
some other government agencies as

01:38:52  
he's kind of the Not

01:38:56  
many of them published their

01:38:58  
you know, they're working humans

01:39:01  
or they provide statistics. They

01:39:12  
have received how many kisses

01:39:14  
and a z i mean

01:39:16  
resolve Anthony not not all

01:39:22  
these complaints. How about a

01:39:24  
real tea spilled sometimes a

01:39:27  
lot of kinds of problems

01:39:30

or not related to our

01:39:33

activities field going to soothe

01:39:38

a local issue about the

01:39:43

business environment in general or

01:39:46

is it about today interpretation

01:39:48

or application of Chinese symbol

01:39:50

in that region in general

01:39:52

or or so, so I

01:39:56

think is there a lots

01:39:57

of kinds of problems you

01:40:02

can you erase data center

01:40:05

and then normally ones that

01:40:06

you receive they sent her

01:40:07

the ones that sent or

01:40:09

received these complaints or problems

01:40:11

or issues do not have

01:40:14

the power to resolve that

01:40:16

by themselves. You will find

01:40:20

which agency is the right

01:40:23

agency to I mean or

01:40:25

who which caused this problem

01:40:27

or reach is responsible for

01:40:31

resolving these issues is the

01:40:34

word refer this to that

01:40:35

and you say or ask

01:40:37

them to stay together. And

01:40:42

if or if that doesn't

01:40:44  
work they made in a

01:40:45  
Escalade late that issue to

01:40:49  
a higher level or a

01:40:51  
fight with a the mayor

01:40:52  
or the governor and is

01:40:53  
in Maybe I'll find a

01:40:57  
solution. I do not know

01:40:59  
whether any complain. I'm finally

01:41:02  
resolved. I do not know,

01:41:05  
so I'm not sure what

01:41:10  
I have. Thank you. Thank

01:41:13  
you very much. If there's

01:41:15  
no further comments that I

01:41:17

usually to make now, or

01:41:19

we will conclude this session

01:41:21

and thank you very much

01:41:23

for the patients and listening.

01:41:25

Thank you. Thank you very

01:41:13

much. If there's no further

01:41:16

comments that I usually to

01:41:18

make now, or we will

01:41:19

conclude this session and thank

01:41:22

you very much for the

01:41:24

patients and listening. Thank you.

00:00:00

That's great. See you back.

00:00:01

Welcome. We're here on day

00:00:05

2 of world arbitration update

00:00:09

our China inside conference here

00:00:14

in Beijing at the Beijing

00:00:16

arbitration commission Beijing International arbitration

00:00:19

Centre. We're progressing now to

00:00:24

our 7th session, which is

00:00:27

titled the participation of Chinese

00:00:31

parties in the in investor-state

00:00:35

dispute settlement is DS mechanism

00:00:37

Chinese investors applying isds to

00:00:40

protect their Investments worldwide and

00:00:42

China as a respondent. Ho

00:00:44

ho States owe lots to

00:00:46

go on their wheat, we've

00:00:48

already had some discussions of

00:00:51

is DSS related issues in

00:00:54

our discussions on state Enterprises

00:00:55

and on renewable energy. I'm

00:00:59

very much looking for To

00:01:00

a further discussion of these

00:01:02

very interesting and timely issues

00:01:04

in the international arbitration world.

00:01:07

It's my pleasure to introduce

00:01:09

our moderator of this panel

00:01:13

when die is our moderator

00:01:17

and she is currently representing

00:01:19

an advising clients in arbitrations

00:01:22

here in mainland China Hong

00:01:25

Kong Singapore the United Kingdom

00:01:27

Sweden and many other jurisdictions

00:01:28

as well as lawsuits here

00:01:30

in the courts of China.

00:01:31

When is proficient of dealing

00:01:33

in cases of both Chinese

00:01:35

and English and is handled

00:01:36

hundreds of arbitration as Council

00:01:39

and as arbitrator case administrator

00:01:41

Ward scrutinizer, I understand at

00:01:44

Sea-Tac as well as a

00:01:46

dressing topics including International sale

00:01:49

of goods joint ventures Equity

00:01:52

transfers fund investment energy construction

00:01:56

and real estate. She has

00:01:58

represented clients in all of

00:02:00

the Major jurisdictions, including under

00:02:01

the Sea-Tac rules on Central

00:02:03

rules the hki IAC administered

00:02:07

rules. I see ICC rules

00:02:08

and the SCC rules. So

00:02:11

very experienced arbitration practitioner and

00:02:15

when have the distinction interesting

00:02:17

way of serving as an

00:02:19

emergency arbitrator and see tax

00:02:22

first case under the emergency

00:02:23

arbitrator procedures. So very interesting

00:02:27

experience, which look forward to

00:02:28

hearing more about so thank

00:02:30

you very much for a

00:02:32

moderating and thank you panelist

00:02:34

very much. This is going

00:02:36

to be a great panel

00:02:37

and great topic of discussion

00:02:38

and I'll pass the microphone

00:02:40

over to when and looking

00:02:43

forward to sitting down and

00:02:45

listening to the great discussion.

00:02:46

Thank you so much for

00:02:48

the very kind introduction to

00:02:50

about me before we got

00:02:53

into today's Alternatives panel discussion.

00:02:56

I would like to First

00:02:58

give us A general overview

00:03:01

of the topic before this

00:03:04

session. I do a little

00:03:06

research and it turns out

00:03:07

to me that's now up-to-date.

00:03:09

There are already 29 IMS

00:03:13

entreaty cases where Chinese investors

00:03:16

as the claimant or where

00:03:18

the China as the respondents

00:03:20

house estate and among these

00:03:23

cases more than half of

00:03:26

them happened after 2020 so

00:03:29

we can see that in

00:03:30

recent years. It's really are

00:03:33

high development and indy is

00:03:36

DS region where China has

00:03:39

been actively involved and also

00:03:41

Chinese investors has been actively

00:03:43

involved. So that's why we

00:03:45

have this afternoon's panel discussion

00:03:49

on the Chinese participation in

00:03:51

the is DS system. So

00:03:53

as a privilege of moderator,

00:03:56

please allow me to spend

00:03:59

some time to introduce our

00:04:02

distinguished panelists this afternoon. Our

00:04:06

first speaker is Jose Antonio

00:04:09

Rivas. He is a founding

00:04:12

partner of strategy and chair

00:04:15

of the arbitration and international

00:04:18

law practice at exit strategy.

00:04:21

He works as International Council

00:04:23

in investment disputes serves as

00:04:26

arbitrators and provide advice in

00:04:28

public international law and investment

00:04:31

law to solve a ring

00:04:33

client state-owned companies and investors.

00:04:36

He has 20 years of

00:04:38

experience in International Investment arbitration

00:04:42

and public international law is

00:04:44

former foreign investment director of

00:04:48

the ministry of trade of

00:04:50

Columbia where he comes acted

00:04:52

a program to strengthen the

00:04:54

state's Readiness in case of

00:04:56

investor-state arbitration and how did

00:04:59

the Drafting and updating of

00:05:01

the Columbia International Investment agreement

00:05:04

model and based on his

00:05:05

mother. Success, when did he

00:05:07

successfully concluded peace negotiations with

00:05:12

the States from Latin America

00:05:13

North America Europe and Asia.

00:05:16

So welcome Jose Antonio Rivas.

00:05:22

And next time we have

00:05:25

a professor from school of

00:05:27

law of Ohio University Professor.

00:05:30

Two tone is a member

00:05:32

of Ohio University Institute of

00:05:34

international law his research areas.

00:05:37

I made International Trade law

00:05:39

International Investment law and international

00:05:42

finance law. He also serves

00:05:46

as an arbitrator SBI AC

00:05:50

well, our stores are speaker

00:05:53

is Genting Dollar Tree is

00:05:56

a pawner of global Law

00:05:57

Office. His practice is concentrated

00:06:00

on International Trade dispute resolution

00:06:04

and antitrust law in the

00:06:06

area of is TS. He

00:06:09

has represented clients in several

00:06:11

investment treaty arbitration cases, including

00:06:14

winning a high-profile. You must

00:06:16

mean arbitration case with a

00:06:17

Hostess days and assisting to

00:06:20

Chinese Enterprises pursuing an investment

00:06:23

arbitration with for Wednesday's he

00:06:26

had also worked at the

00:06:27

department of treaty and law

00:06:29

at mofcom. Our next speaker

00:06:33

is Carly Cara is a

00:06:35

litigation partner in the Beijing

00:06:37

and new your offices of

00:06:39

Pillsbury Winthrop Shaw Pittman her

00:06:42

primary practice focuses on representing

00:06:45

International clients in cross-border disputes

00:06:48

and international arbitration. She has

00:06:52

represented many International clients in

00:06:55

confirming foreign arbitration award in

00:06:58

the US. Next we have

00:07:01

Mariana Jones. Mariana is a

00:07:04

partner at Law Firm specializes

00:07:06

in dispute resolution matter including

00:07:08

arbitration and litigation mitigation with

00:07:12

a particular focus on foreign

00:07:15

related cross Potter and the

00:07:17

international arbitration seated in China

00:07:19

and overseas previously Mistral resent

00:07:24

it to Chinese investors initiating

00:07:27

at Exit arbitration against a

00:07:29

South East Asia State and

00:07:31

currently she is advising an

00:07:34  
arbitrator at hoptree arbitration against

00:07:37  
the state in Asia Mariana.

00:07:40  
Also constantly provides treaty arbitration

00:07:42  
related assessment to Chinese and

00:07:45  
foreign investor. And our last

00:07:48  
speaker is Samuel 1 Samuel

00:07:50  
is an experience that if

00:07:52  
you resolve her he practices

00:07:54  
as a barrister and regularly

00:07:56  
at Judy case disputes as

00:07:58  
an arbitrator. It's practice covers

00:08:01  
a wide range of commercial

00:08:03  
dispute in which the governing

00:08:05

law of the contract stands

00:08:07

from Hong Kong law, New

00:08:09

York law, and you also

00:08:13

practice as an effective media

00:08:15

later. So thank you very

00:08:17

much for tolerating need been

00:08:19

such a long time to

00:08:20

introduce. Our very distinguished to

00:08:23

panelist now will come our

00:08:25

first the speaker Jose to

00:08:27

give us a presentation. Thank

00:08:28

you. Thank you. Okay, so

00:09:06

You're welcome. Again, I see

00:09:09

the presentation that I that

00:09:10

I have prepared for for

00:09:12

this panel is is called

00:09:15

a 2024 investor-state arbitration Panorama

00:09:20

in China and it deals

00:09:22

with the Chinese investors of

00:09:27

run using the investor-state arbitration

00:09:29

system on the one hand

00:09:31

and on the other hand

00:09:33

China as a whole state

00:09:34

within the investor-state arbitration system.

00:09:36

Mainly I will go through

00:09:40

this two aspects to specially.

00:09:46

I'm not going to go

00:09:48

deep into the cases because

00:09:50

at that is a is

00:09:52

something reserved for for the

00:09:54

panelists. I want to reach

00:09:57

some conclusions based on the

00:09:59

information that we have in

00:10:00

front of us. So the

00:10:01

first thing and let's let's

00:10:03

look into the outcomes. cases

00:10:08

involving Chinese investors in in

00:10:14

using the investor arbitration system

00:10:18

over will we have a

00:10:21

total of 19 cases has

00:10:25

so far of Annie's investors

00:10:28

using the investigator arbitration system

00:10:30

and most of them are

00:10:33

pending. However, we can get

00:10:35

some conclusions from the other

00:10:38

pieces of information one has

00:10:41

been discontinued which is telling

00:10:44

that perhaps there was either

00:10:47

no marriage or or there

00:10:49

was a no no funding

00:10:50

for the case. But but

00:10:52

it it tells the story

00:10:54

in terms of it was

00:10:56

simply not followed up one

00:10:58

has been settled which tells

00:11:00

the story that perhaps there

00:11:02

was some type of negotiation

00:11:03

between the two parties and

00:11:06

two have been decided in

00:11:09

favor of the investor and

00:11:11

We haven't decided in favor

00:11:14

of the foreign state. So

00:11:17

overall what we can say

00:11:18

at least from this figures

00:11:21

is that Chinese investors abroad

00:11:24

are using the system? In

00:11:28

19 cases, it's not it's

00:11:31

not an overwhelming use of

00:11:33

the system. It is a

00:11:35

use of the system that

00:11:36

I would say, it is

00:11:37

fairly moderate. But I so

00:11:41

China Chinese investors are broad

00:11:44

as as we saw it

00:11:45

this morning are relying on

00:11:48

the system to protect their

00:11:49

Investments abroad both the SOS

00:11:52

and I will see you

00:11:53

later from some of our

00:11:55

speakers including Sam also private

00:11:58

companies Chinese companies private companies

00:12:01

investing abroad. That's the first

00:12:03

confusion and that seemed to

00:12:05

in terms of of the

00:12:06

geographical trans. Where are Chinese

00:12:09

investors bringing investor State wear

00:12:13

against whom are they bringing

00:12:14

vegetable trays? And then and

00:12:16

here's some of the pieces

00:12:18

that I find the most

00:12:19

interesting because we know that

00:12:22

that there's there's there's a

00:12:25

big Sonic project by the

00:12:29

Chinese economy the belt and

00:12:31

Road initiative at cetera and

00:12:33

that includes Africa and that

00:12:35

includes also Latin America and

00:12:37

in some countries in Asia,

00:12:39

for instance that being said,

00:12:43

there's only two cases against

00:12:45

the African States and that

00:12:47

being said, there's only three

00:12:48

cases against the Latin American

00:12:51

and Caribbean States. Most of

00:12:53

the cases are in the

00:12:54

region. Number one in Asia

00:12:56

and what I find most

00:12:59

interesting is that number two

00:13:00

is Europe. And at this

00:13:04

this is quite astonishing because

00:13:07

at least in in my

00:13:09

in my thinking this is

00:13:12

one perhaps of the reasons

00:13:14

that the investor arbitration system

00:13:16

is somehow Under Pressure because

00:13:18

there are new players in

00:13:20

in in the in the

00:13:21

block play clearly China Chinese

00:13:26

investors should countries that are

00:13:29

in Europe including Finland Belgium

00:13:32

Sweden and and and there's

00:13:37

there's some pressure because the

00:13:39

whole set of economies in

00:13:41

the world are changing. So

00:13:45

use a of moderate users

00:13:48

of the investor arbitration system.

00:13:50

Now, let's move into the

00:13:53

new China as a respondent

00:13:56

state here. We have nine

00:13:59

arbitrations and 45 of which

00:14:03

are pending one or which

00:14:05

station was settled in this

00:14:08

somehow means that there might

00:14:10

have been some married or

00:14:11

at least to some extent

00:14:12

by the by the investor.

00:14:17

Then there is a two

00:14:20

were favorable to China. Basically

00:14:23

China did not lose those

00:14:24

arbitrations and one was discontinued

00:14:27

the discontinuance. Maybe for many

00:14:30

reasons No Lack of funding

00:14:32

simply. The investors concluded their

00:14:35

claims might have not had

00:14:36

married ultimately in those arbitrations

00:14:40

that gets against China. Oh,

00:14:43

you know we can say

00:14:44  
that they have been slightly

00:14:46  
more favorable to China than

00:14:48  
to the foreign investors, but

00:14:51  
it's the conclusion of both

00:14:53  
is the conclusion of both

00:14:56  
is so far. When we

00:14:59  
look into Chinese investors using

00:15:02  
the system against sovereign states

00:15:05  
and foreign investors using the

00:15:08  
system against Ina the conclusion

00:15:11  
is theirs use and it's

00:15:13  
fairly balanced. There's no striking

00:15:16  
on in in balance in

00:15:18

the use of the investor-state

00:15:21

arbitration system. These are the

00:15:24

that the set of cases

00:15:27

we're Chinese investors have submitted

00:15:30

investor-state arbitration claims. And what

00:15:33

is what is perhaps most

00:15:34

notable is that there is

00:15:38

a balance between the the

00:15:42

mack manufacturing part of the

00:15:48

economy and the service is

00:15:50

part of the economy at

00:15:52

which is very telling in

00:15:53

terms of the the level

00:15:56

of sophistication that we now

00:15:57

see in the Chinese economy.

00:16:00

In terms of again geographical

00:16:04

patent in the trends the

00:16:06

cases against China have a

00:16:09

mainly investors that come from

00:16:13

Asian countries and less reminder

00:16:18

investors that come from Europe.

00:16:24

And here is the going

00:16:25

back into the into the

00:16:27

industries that again are related

00:16:30

to not only primary parts

00:16:33

of the economy. But also

00:16:34

Services we even have a

00:16:37

case that involves arts and

00:16:39

entertainment. So one basic inclusion

00:16:44

is is China has 107

00:16:47

107 investment treaties that are

00:16:50

currently in force of this

00:16:52

14 treaties were signed between

00:16:54

2006 and 2023 while the

00:16:59

remaining approximately 86% date back

00:17:04

from before 2006, which is

00:17:07

why am I referring to

00:17:09

those two dates part of

00:17:11

it is because the as

00:17:14

as we will see from

00:17:15

Professor T in in in

00:17:18

Greater depth Part of this

00:17:21

is is to show that

00:17:23

there has been an evolution

00:17:25

in the bilateral investment treaty

00:17:27

or the investment treaty that

00:17:29

China has had I had

00:17:30

the honor and privilege of

00:17:32

negotiating the investment treaty between

00:17:34

Columbia which is the state

00:17:37

where I was born and

00:17:40

China the bilateral investment treaty

00:17:42

and and the and even

00:17:44

at that time that was

00:17:45

about proximately 12 years ago

00:17:48

or so, we could see

00:17:50

that the Chinese buy lunch

00:17:53

investment treaty was evolving coming

00:17:55

from a defensive perspective receiving

00:17:58

investment to going into a

00:18:01

more offensive perspective basically protecting

00:18:05

their investments in the world,

00:18:06

and it's a fascinating evolution.

00:18:10

I won't bore you with

00:18:13

with the with the specifics

00:18:15

of the substantive obligations, but

00:18:18

we can say is that

00:18:20

except for the older older

00:18:24

treaties which had a limitation

00:18:26

of basically including expiration or

00:18:31

a school including are some

00:18:33

household decoration into more modern

00:18:37

dreams, which have a broader

00:18:38

set of obligations. These are

00:18:42

some of the examples that

00:18:43

we have of typical Chinese

00:18:45

substantive provision. So you see

00:18:48

them their provisional Justice and

00:18:51

empowerment standard for protection and

00:18:53

security typical mfn National treatment

00:18:56  
and protection against unlawful expropriation

00:18:58  
direct and indirect. There are

00:19:02  
some key parts of investor

00:19:05  
arbitration whether you use exit

00:19:08  
or non exit. Enforcement as

00:19:11  
in the New York convention

00:19:12  
and finally a set of

00:19:15  
of basic conclusions out of

00:19:17  
which I have already referred

00:19:18  
to a few. The first

00:19:21  
one there is a real

00:19:24  
balancing the used by China

00:19:25  
and Chinese investors of the

00:19:27

investor arbitration system. And that

00:19:30

balance is somehow reflected in

00:19:33

positions that China has adopted

00:19:35

in multilateral forums during this

00:19:39

conference. I have learned or

00:19:42

or learned in Greater depth

00:19:44

the position of China with

00:19:46

respect to uncitral as you

00:19:49

know, the European commission is

00:19:51

pushing against investor-state arbitration trying

00:19:55

to create a multilateral court.

00:19:56

And one of the questions

00:19:58

that I came to this

00:20:00

conference with was what is

00:20:03

China's position. Does China want

00:20:05

to have a multilateral investment

00:20:07

cord? Does China wants to

00:20:09

have nothing? Where does China

00:20:11

wants to have something else

00:20:13

and end at what I

00:20:14

found explained by another professor

00:20:16

here is that time that

00:20:18

I understand wants to have

00:20:20

a an appellate mechanism and

00:20:25

what I said, why why

00:20:26

is that so explain to

00:20:29

me? Well because we're using

00:20:31

the system we want to

00:20:32

build upon this is and

00:20:35

there's really no incentive to

00:20:37

have a multilateral investment Court.

00:20:39

There is an incentive perhaps

00:20:41

to be more consistent within

00:20:44

the system and and thereby

00:20:45

there is a push to

00:20:48

adopt the notion of an

00:20:49

appellate mechanism which would leave

00:20:52

the current panels of investor

00:20:56

arbitration as our tribunal as

00:20:59

they are but there will

00:21:00

be a second level of

00:21:02

review under perhaps I need

00:21:05

said I put a mechanism

00:21:07

and and the last the

00:21:09

last perspective that that I

00:21:13

wanted to share is emphasized

00:21:16

that the the the use

00:21:19

of practical use of investor

00:21:21

arbitration is it seems not

00:21:24

to be too aggressive and

00:21:27

and this will learn this

00:21:28

morning in the discussion of

00:21:31

SOS. That there is a

00:21:35

Paws and there is a

00:21:37

lot of reflection before a

00:21:39

state-owned company Chinese takes the

00:21:42

step to sue a sovereign

00:21:44

state which I think somehow

00:21:46

is is quite wise it

00:21:49

because a an investment of

00:21:51

attrition name is is is

00:21:55

a hard step sometimes when

00:21:58

they make it picking up

00:21:59

with relations are are severed.

00:22:02

And I'm there for that

00:22:04

wise moderation is is also

00:22:06

a reflection of what I

00:22:08

understand being the position of

00:22:10

China are worried that I'll

00:22:11

stop and give it 4

00:22:13

to when thank you. Thank

00:22:15

you very much for the

00:22:16

very informative presentation. And the

00:22:22

calculation last night I did

00:22:24

is correct that there are

00:22:25

28 cases where China or

00:22:29

Chinese investor involved aware 19

00:22:32

cases where the and these

00:22:34

two Chinese companies and nine

00:22:36

cases where Chinese government has

00:22:39

responded house the state so

00:22:43

I know that's my Mariano

00:22:45

like to make one small

00:22:46

comments to Jose's presentation. Yes.

00:22:51

Thank you and just very

00:22:53

briefly. I have some comments

00:22:55

on the enforcement of treaty

00:22:57

words in China. I see

00:23:00

that horse is quite optimistic

00:23:01

that well this situation. Perhaps

00:23:04

is a bit different in

00:23:05

China. We know that I'm

00:23:07

actually the new law relating

00:23:10

to foreign sovereign immunity which

00:23:12

entered into effect this January

00:23:14

it appears now that the

00:23:16

radical it is possible to

00:23:17

enforce a treaty awarding China

00:23:19

in my view it it

00:23:22

would still be quite problematic

00:23:23

and in reality because if

00:23:25

it is a null exit

00:23:26

award the applicant would not

00:23:29

be able to rely on

00:23:30

the New York convention because

00:23:32

China has made a reservation

00:23:34

of commerciality under the New

00:23:36

York convention. And if they're

00:23:38

Ward is actually an exit

00:23:40

award the applicants would still

00:23:42

encounter. I'm starting to use

00:23:44

because China has not nominated

00:23:47

any competent Court you handle

00:23:49

such application for enforcement of

00:23:51

exit award went to article

00:23:54

54 off the exit convention.

00:23:57

And I didn't to this

00:23:58

uncertainty is even if all

00:24:00

these obstacles have already been

00:24:02

removed or specific exaggeration is

00:24:05

still almost impossible unless the

00:24:09

foreign state has waived Immunity

00:24:11

on Executive in separately. So

00:24:14

that is my comment. Thank

00:24:16

you. Thank you Marana. But

00:24:19

even though there are a

00:24:20

lot of problems but we

00:24:23

still need to have hope

00:24:24

to the Future that there

00:24:25

will be a lot of

00:24:26

very exciting revolutions developments in

00:24:30

the future that we believe

00:24:31

the Chinese government would take

00:24:33

some actions, especially considering nowadays.

00:24:36

There are so many cases

00:24:37

kind of coming up. So

00:24:39

next time we will have

00:24:41

the professor two-tone to talk

00:24:43

about the modernization of bitso

00:24:46

china-related is DS cases. setting

00:25:01

for action I would like

00:25:10

to start by congratulations that

00:25:13

you and the p a

00:25:15

c for the outstanding organization

00:25:18

even for me to join

00:25:23

this distinguish of discussion. So

00:25:28

long as we all know

00:25:36  
you are one of the

00:25:40  
most patient and I would

00:25:48  
like to wish I are

00:25:49  
some very preliminary observation on

00:25:53  
the station based on China's

00:26:00  
is pskc. China's investment practice

00:26:14  
NBA traced back to 1980s

00:26:18  
not there at the very

00:26:22  
beginning of the process of

00:26:25  
China's reform and opening-up 145

00:26:35  
borracho in Westminster trade his

00:26:37  
and line in three his

00:26:41  
ways in Westminster Provisions in

00:26:44

the regime of China. So

00:26:47

among the 145 name. So

00:27:03

when we talked about a

00:27:05

China's participation in the ICS

00:27:07

system that we can you

00:27:09

close that based on China's

00:27:17

according to my status. We

00:27:26

have 25 ACS case against

00:27:37

the China is different from

00:27:40

u.s. 35 cases. There are

00:27:44

almost 16% of the fourth

00:27:51

generation of Chinese investment agreement

00:27:55

to figure out what Can

00:28:03

you ask Grandma can be

00:28:04  
divided into several Generations are

00:28:08  
in terms of the difference

00:28:09  
in the substantive and procedural

00:28:12  
do the first generation from

00:28:20  
1982 to 1997 calling for

00:28:25  
more than 51% of the

00:28:29  
effective Chinese investment agreement in

00:28:39  
a treatment and that includes

00:28:40  
a very narrow are constructed

00:28:43  
ists closest and most likely

00:28:48  
give me the scalp application

00:28:50  
that you are a dispute

00:28:52  
involving the amount of compensation

00:28:54

resulting from its preparation for

00:28:57

the 2nd generation 1990. 725

00:29:06

which provides us with the

00:29:09

post that you stopped instrument

00:29:10

National treatment, and the border

00:29:12

is DS. The third generation

00:29:16

from 2006 to 2019. And

00:29:27

the 3rd to the 4th

00:29:29

generation come from which many

00:29:40

moves that you would a

00:29:41

regional and immortalize the legal

00:29:43

framework for 4 in Westmont

00:29:46

promotion protection earlier. You asked

00:29:52

me that woman's hair reference

00:29:55

to the 4th generation. So

00:30:00

the earlier according to my

00:30:03

States state has equipment account

00:30:07

for over half of the

00:30:09

effect of Chinese. I am

00:30:10

not be mobilized a so

00:30:13

far. So it was a

00:30:14

lot of equipment and the

00:30:18

it's frequently used in China

00:30:21

is efficiency and application serious

00:30:31

deficiency is the score of

00:30:36

isps are so as mentioned

00:30:38

above most of the first

00:30:40  
generation for a Chinese involved

00:30:48  
with the amount of conversation.

00:30:49  
We started from expropriation a

00:30:55  
lot. Alderwood FBI and duration

00:31:11  
Chinese treaty, which is a

00:31:15  
lot of room for the

00:31:17  
screaching of individual. Actually. Do

00:31:22  
you stance when interpreting the

00:31:25  
term is pure Hazel? Where

00:31:36  
are those in the parade

00:31:37  
head 8 a.m. So earlier

00:31:45  
Chinese Ransom in the women's

00:31:47  
and they also have a

00:31:48

pair of effects to close

00:31:53

and the China case is

00:31:56

also show us the inconsistency

00:31:58

and the uncertainty and the

00:32:01

application of Chinese the agreements

00:32:05

to Hong Kong and Marco

00:32:07

a special administrative region. So

00:32:11

we may also find that

00:32:12

overlaps of Chinese women sat

00:32:20

between order one and the

00:32:22

blue one between a tree

00:32:24

and the regional never in

00:32:27

the coordination between Chinese. Are

00:32:30

you maximum the equipment and

00:32:33

it's at amassed a lot,

00:32:35

especially the new flooring wax

00:32:38

from cloth with you. Ending

00:32:43

214-2720 number for economies such

00:32:54

as the European Union Broadway

00:32:57

Australia in Malaysia, India and

00:33:01

Pakistan are they have been

00:33:05

reviewed in West Bend equipment

00:33:07

stuff is what I thought

00:33:17

from 2,000 to 1 now

00:33:20

such as replacing Trinity spine

00:33:31

and new one. Original equipment

00:33:44

that he splashed it is

00:33:45  
the china-asean framework and the

00:33:48  
China you network. The first

00:33:53  
one is developing and the

00:33:56  
motor and the five who

00:33:59  
is a jointer interpretation of

00:34:03  
a u.s. Men do quipment,

00:34:08  
like in and out of

00:34:10  
the train Haze. So the

00:34:13  
model has a shin process

00:34:15  
of China's investment agreement regime

00:34:18  
can be divided into two

00:34:20  
faces on the first face.

00:34:22  
It lasted from 2001 to

00:34:25

2010 and some earlier. You

00:34:28

must be the most romantic

00:34:37

place to buy new agreements

00:34:41

investment agreement making moves from

00:34:53

the original investment agreement to

00:35:03

do I make it. Are

00:35:13

you watching the game until

00:35:14

mother today? Shannon has given

00:35:19

the large number of the

00:35:20

existing equipment. So I'm in

00:35:25

the process of you must

00:35:28

admit that women the motivation

00:35:29

China should remain prudent when

00:35:33

updating the area of women's

00:35:35

so my suggestion here is

00:35:39

what's the relationship between area

00:35:42

one and the blue one

00:35:44

between bilateral treaty and trust

00:35:49

that you will avoid potential

00:35:51

problems in Westmont trade him

00:35:54

in the end the Abbey

00:35:55

actually a practice see approach

00:36:00

is the jacket and the

00:36:02

issue of the application of

00:36:04

Chinese. Marco's in the relation

00:36:17

between should be enhanced supposed

00:36:26

to stop stand here and

00:36:27

a procedural ever. So yes

00:36:30

our for my speech and

00:36:32

thank you for your listening.

00:36:39

That's all I recall you

00:36:41

your slides. You mentioned that

00:36:43

the Chinese b i t

00:36:45

s involve involvement evolution of

00:36:50

the Chinese b i t

00:36:51

from a defensive approach to

00:36:54

offensive Pro. So maybe you

00:36:56

would like to make some

00:36:57

comments to Professor sees presentation.

00:37:04

Thank you winnin. And thank

00:37:05

you Professor or the presentation

00:37:07

were the various levels of

00:37:15

generations of Chinese investment treaties

00:37:19

approaches is more it was

00:37:23

was way more practical because

00:37:25

I was negotiating the treaties

00:37:27

and I and what I

00:37:28

could see in a research

00:37:29

when we negotiated the the

00:37:31

investment treaty with China was

00:37:33

that there were there had

00:37:35

been this transition that the

00:37:36

professor she was describing the

00:37:39

one aspect that I that

00:37:42

I remember at the time

00:37:42

was that a Chinese tree

00:37:45

is used to only refer

00:37:48

to exploration and then that

00:37:50

evolved into embracing other visions

00:37:54

of standard Provisions, including National

00:37:56

treatment that may offend a

00:37:58

fair and Equitable treatment Etc.

00:37:59

Which which was a big

00:38:00

change I am standing on

00:38:03

end. I think that this

00:38:05

this might be something that

00:38:06

but that's our analysts may

00:38:10

want to come in later

00:38:11

on. Is that because Because

00:38:14

view investor-state arbitration system is

00:38:18

a system that lies are

00:38:21

not on a 8 or

00:38:24

10 tile actual investment treaty

00:38:26

like like apple WTO treaties,

00:38:30

but it relies on a

00:38:32

multiplicity of investment treaties. You

00:38:37

have multiple Generations. There's as

00:38:39

you know, there's more than

00:38:40

3,300 treaties in the world

00:38:43

of investment investment treaties. So

00:38:46

with various Generations one of

00:38:49

the What one of the

00:38:51

fortunes that investment treaty arbitration

00:38:54

has is that it has

00:38:55

so many trees that I

00:38:56

strongly believe that it would

00:38:57

be very difficult to finish

00:38:58

the system. Finishing the image.

00:39:02

It's like having so many

00:39:05

fish in the pond that

00:39:07

usually it's not going to

00:39:07

be finished. But at the

00:39:09

same time the disadvantage is

00:39:12

that if an investor relies

00:39:15

on an older generation 3D

00:39:18

which has not that many

00:39:20

protective. Provisions then he may

00:39:27

not be as advantageous for

00:39:29

the investor for the Chinese

00:39:30

investor. So if that's if

00:39:32

you have a real generation

00:39:34

three, if you have a

00:39:36

more modern 3D like an

00:39:38

S T A like force

00:39:40

generation and perhaps fifteen Eurasian

00:39:42

or perhaps 6th generation, when

00:39:44

when when you have the

00:39:46

modernisation between bilateral investment treaties

00:39:49

and and free trade agreements

00:39:51

which professor she is proposing

00:39:53

then the foreign investor of

00:39:57

China will have a greater

00:40:00

benefit. But that's one of

00:40:01

the challenges the type of

00:40:03

agreement that you can apply.

00:40:05

I need something that cannot

00:40:07

necessarily be decided on the

00:40:08

on the short-term because if

00:40:10

you're an investor in a

00:40:11

state with which you have

00:40:12

an old generation 3D that's

00:40:15

what you have. There's very

00:40:17

little they can do but

00:40:18

renegotiate by train to go

00:40:19

station takes a long time.

00:40:20

That's my comment. Thank you

00:40:24

very much. I will not

00:40:25

spend more time, but you

00:40:27

might our next to speaker.

00:40:28

I really wish you to

00:40:30

talk about his experience. And

00:40:32

so it's about China as

00:40:33

respondent Hostess days in is

00:40:35

SDS. Welcome. Renting a ranch

00:40:40  
by one page of a

00:40:47  
slight cases in which a

00:40:51  
us-china is the respondent. I

00:40:55  
know just now. A similar

00:40:59  
page there are nine places

00:41:03  
fear. It's also nine cases,

00:41:06  
but it's a little different

00:41:10  
because I asked lose one

00:41:12  
case in which of the

00:41:14  
Taiwan province is the respondent

00:41:17  
central government of China as

00:41:22  
a respondent and veal in

00:41:26  
Kotor line cases because I

00:41:29

can't one case price you

00:41:33

can quit is one case

00:41:34

or you can quit to

00:41:36

Casey's. Is there a difference

00:41:45

between a slight of a

00:41:48

professor make eight operations about

00:41:57

these cases these nine cases?

00:42:00

The first is that the

00:42:04

first is that the first

00:42:05

the case against the China

00:42:07

was brought in nine in

00:42:10

2011. 2011 means that after

00:42:16

thirty years of China's opening-up

00:42:19

no single case. I've been

00:42:24

had been brought by farming

00:42:26

investors against the China until

00:42:30

I mean after 30 years

00:42:32

after China's opening-up the first

00:42:35

case came off. Anna has

00:42:40

a baby grow from 11

00:42:56

12 13 1 case in

00:43:00

3 years and 14 15

00:43:05

16 13 in 3 years.

00:43:09

and 1781 case two years

00:43:13

one case in two years

00:43:16

and in 2020 Two pieces

00:43:20

or three pieces, you can

00:43:24  
see the trend of the

00:43:26  
increase of the cases against

00:43:28  
the China in 2021 or

00:43:36  
two cases is that the

00:43:45  
case will increase and the

00:43:46  
increase in 2020 to 2003.

00:43:50  
And is this year? No

00:43:52  
new cases was publicly know

00:43:58  
it as far as they

00:44:01  
knew I was there are

00:44:02  
some cases maybe both are

00:44:08  
they request for consultation at

00:44:11  
was sent by the investor

00:44:13

to the comment but He

00:44:15

either had not being registered

00:44:17

or has not been made

00:44:20

public 9 cases means that

00:44:28

it's only less than 1%

00:44:33

of the total is DSX

00:44:35

Casey's in the world ends

00:44:39

of a 2026 RZR 1000s.

00:44:42

332 is DS cases worldwide

00:44:47

and a China only accounted

00:44:50

for 0.27% I think of

00:44:55

this is at least I

00:44:57

sent this to some extent

00:44:59

of success of Chinese garments.

00:45:03

You know, what is a

00:45:05

tutu tutu. I'll cultivate a

00:45:08

friendly business environment or the

00:45:13

Chinese government has successfully resolved

00:45:17

some investors in the early

00:45:20

stage. So no formal arbitration

00:45:23

taking account of that every

00:45:30

year. There are more than

00:45:31

100 more than 100 beating

00:45:35

the New FBI are coming

00:45:37

to China and totally I

00:45:42

find a figure from Morecambe

00:45:45

2800 US dollars of FDI

00:45:51  
into China. Do the Casey's

00:45:55  
I think the number of

00:45:57  
the Casey's by to smoke

00:45:58  
the 2nd or the other

00:46:07  
host the home state of

00:46:09  
the of the kemit. I

00:46:12  
do not know whether it

00:46:13  
is by a cleaner incidence

00:46:16  
or not. All these cases

00:46:20  
were brought by investors whose

00:46:26  
host whose home state is

00:46:28  
the top 10 is among

00:46:30  
the top 10 a source

00:46:32

of FBI. I mean, Singapore

00:46:35

UK even Malaysia Germany all

00:46:44

these cases among the top

00:46:46

10 country of the FDI

00:46:52

into China. And no loose

00:46:57

American South American investors brought

00:47:04

a patient against the China.

00:47:06

Of course, no African you

00:47:08

mister and I know Australian

00:47:10

you miss her. And eight

00:47:13

eight cases that were brought

00:47:16

by investors from developed countries.

00:47:18

Only one by Melissa. The

00:47:22

first case is from Malaysia

00:47:24

a developing country. No big

00:47:31

multinational companies and initiate arbitration

00:47:36

against the China all these

00:47:38

places were brought by small

00:47:40

or medium-sized Enterprises or natural

00:47:44

persons at is in case

00:47:48

they are brought by natural

00:47:50

persons. They served a reservation

00:47:54

I would like to make

00:47:55

is that all these cases

00:47:57

were brought on the beat

00:48:00

up and then the new

00:48:04

Casey's we were brought under

00:48:05

the FTA Regional investment original

00:48:09

trade agreements. It's interesting because

00:48:12

in recent years as China

00:48:14

has concluded about 20 ft

00:48:17

Ace waste investment chapters. And

00:48:21

is this the chapters they

00:48:22

have you no more comprehensive

00:48:26

substantive protection preventions and as

00:48:30

they also have brought a

00:48:32

patrician, I mean broad scope

00:48:36

of constant of arbitration. I

00:48:40

know you missed her ID

00:48:41

used F case to switch

00:48:43

Ina in one case between

00:48:47

China and has a home

00:48:49

state. There are at least

00:48:50

two 1/8 ft concluded in

00:48:54

1980s and another FTA I

00:49:03

think 2009 or 2008 end

00:49:17

and among the beach. Most

00:49:21

of the cases were under

00:49:25

the first generation and ask

00:49:29

Professor. If she just mentioned

00:49:31

that this person generation important

00:49:39

risks, is that the limit

00:49:42

the accounts and to scope

00:49:45

limited it to you involving

00:49:50

the Amount of preparation compensation

00:49:57

hot the heart of the

00:50:01

dispute in the all these

00:50:03

kisses. Reservation is about to

00:50:06

the sensors involved in cases

00:50:11

at least the fix involve

00:50:13

real property development real property

00:50:17

development and housing. You can

00:50:21

understand in China Daily the

00:50:23

rapid urbanization. So there are

00:50:26

a lot of potential in

00:50:30

China. So that is understandable

00:50:35

these cases involve several. I

00:50:42

mean number of provinces of

00:50:45

China Highland Province to Casey's

00:50:47

in Province two or three

00:50:50

cases. Providence wine and we

00:50:53

promised one and a Citron

00:50:54

Province one at the issue.

00:51:00

In this case. It's interesting

00:51:05

that you know, some of

00:51:06

the cases involve biodiversity and

00:51:10

environment protection. I mean Chinese

00:51:13

government for reason of Environmental

00:51:15

Protection take some measures lead

00:51:22

to some peaceful to be

00:51:23

the foreign investors for example

00:51:25

of force against the natural

00:51:28

reserve and they a new

00:51:31

establish the panda Park Simmons

00:51:40

is that to no. No,

00:51:42

I mean Chinese government has

00:51:45

not lose any single case

00:51:47

pending or the case is

00:51:51

Are the case is continued

00:51:53

or the case is decided

00:51:55

in favor of China fighting

00:52:02

Isis in first apiece for

00:52:05

China. Also, maybe you sent

00:52:07

out the most I need

00:52:16

the first case entered into

00:52:19

the arbitration stage China review

00:52:21

and they discontinued because that's

00:52:28

complained at Klamath is a

00:52:30

very small company. They do

00:52:32

not have sufficient funding for

00:52:35

their pursuing their case. Any

00:52:39

I mean any any engine

00:52:41

any Merrick's about her case,

00:52:43

but anyway, they end the

00:52:48

6th. Discontinued exit cuz I

00:52:55

think my personal opinion is

00:52:58

that is a mistake. It's

00:53:01  
not the case by the

00:53:02  
world is a case before

00:53:04  
exceed. So they have to

00:53:06  
give up that case and

00:53:08  
a fire on Neil same

00:53:10  
case at PCH. And the

00:53:15  
extra fee for for case

00:53:16  
or China a preview. That

00:53:18  
is it that today. They

00:53:26  
have the lack of jurisdiction

00:53:31  
is a 5000 China achieved

00:53:40  
the outcome so far. Yeah,

00:53:47  
I think Chinese government has

00:53:49

established a relatively successful effective

00:53:55

a working mechanism to defend

00:53:58

the China in industrial states

00:54:00

are between cases and in

00:54:02

China at his most calm

00:54:04

and specifically its Department of

00:54:07

treaty on Blow of Morecambe

00:54:08

who defend the China in

00:54:10

these cases and apparently before

00:54:13

China. The defendant is DS

00:54:16

cases. They have need a

00:54:18

lot in WTO dispute settlement.

00:54:21

There are some similar experiences

00:54:26

when they defend Us in

00:54:27

is DS cases the coordinate

00:54:36

our wisdom departments within the

00:54:42

central government and is in

00:54:43

the coordinate with the local

00:54:44

governments the provincial the immunity.

00:54:46

They can't eat almonds group

00:54:53

to defend the China and

00:54:55

USA. Some of the cases

00:55:00

are offended by I mean

00:55:04

a pair of loafers long

00:55:06

as International firm and the

00:55:08

other is the Chinese refer,

00:55:11

kisses and I were represented

00:55:15

by a Chinese Law Firm

00:55:19

plus a barrister and then

00:55:22

in some other cases Chinese

00:55:26

law firms are different or

00:55:28

I mean represent the Chinese

00:55:29

government independently only or Chinese

00:55:32

Law Firm. So it's a

00:55:35

little you know, it's a

00:55:37

I think it's based on

00:55:40

the facts of the case

00:55:41

that particular circumstances of the

00:55:44

case. And is it common

00:55:45

to choose a best way

00:55:48

to organize their government lawyers

00:55:53

and as their external council's

00:55:54

so what I would like

00:55:59

to share with you. Thank

00:56:00

you. Thank you very much

00:56:02

jelly shoes. Carl would you

00:56:06

like to make a comment

00:56:07

on what gender has just

00:56:09

said? So brilliant observations Byron

00:56:16

seeing especially the trending of

00:56:18

the is DS cases against

00:56:20

China as the respondent something

00:56:23

that might be relevant and

00:56:25

perhaps other experts on the

00:56:28

panel and in the audience

00:56:30

can comment further comments later,

00:56:32

which is the implementation of

00:56:34

the China's foreign investment law.

00:56:37

The law was implemented in

00:56:40

2020 and it replaces the

00:56:43

previous regime of laws governing

00:56:45

foreign investment the key provisions

00:56:50

of the law include National

00:56:54

treatment, meaning foreign-invested Enterprises are

00:56:57

treated the same as domestic

00:56:59

companies wants to stop and

00:57:03

another provision is the negative

00:57:07

list which specifies sectors where

00:57:10

foreign investment is restricted or

00:57:12

prohibited. I'm at a third

00:57:15

is strengthening intellectual property protections

00:57:18

against Forest technology transfers. I

00:57:24

think this implementation of this

00:57:25

long might you know have

00:57:27

some relevance as to the

00:57:31

I guess that the decrease

00:57:33

in in cases or investment

00:57:38

be no cases against China.

00:57:40

So that's my comments. Thank

00:57:44

you very much Carl. I

00:57:47

get a reminder that's in

00:57:48

the session. We only have

00:57:49

30 minutes remaining but I

00:57:51

I I know that's we

00:57:52

started a little bit later.

00:57:54

So maybe we'll kind of

00:57:56

a slightly delay a bit

00:57:57

before we moving to the

00:58:00

discussion from the Investor's perspective.

00:58:03

I'm trying to post a

00:58:05

kind of tough question on

00:58:09

the certain thing since you

00:58:10

just a mention that the

00:58:13

money to reimburse What's of

00:58:14

FDI here in China is

00:58:17

quite huge quite a large

00:58:18

High numbers. However, China as

00:58:22

the respondent. How's the state

00:58:24

is DS cases only nine

00:58:27

cases. So very small and

00:58:30

also you had a one

00:58:31

observation saying that multinational companies

00:58:35

sell them kind of Sue

00:58:37

China s respondent. So my

00:58:40

question is that based on

00:58:42

your working experience your mouth,

00:58:45

and now have so many

00:58:46

first two has experience in

00:58:48

this area. What about their

00:58:51

concerns? Do they consider do

00:58:53

they kind of afraid to

00:58:55

sue China when they think

00:58:57

about how is my future

00:58:59

of Business Development? Is that

00:59:02

the counselor or anything others?

00:59:05

That's kind of in reality

00:59:07

prevent them to actually take

00:59:09

Serious action against the government.

00:59:13

In case where they suffer

00:59:15

something here. I think the

00:59:26

audience is there a lot

00:59:34

of reasons I guess I

00:59:35

bet one reason is that

00:59:37

the reason the first environment

00:59:45

in China is improving that

00:59:48

is the first and the

00:59:49

second reason I sent you

00:59:50

is that they have a

00:59:54

lot of means to resolve

00:59:57

their concerns or problems or

01:00:01

even disco's as local governments

01:00:04

z z can you know,

01:00:07

they have a very most

01:00:09

of them they have large

01:00:11

governmental Affairs team. They can

01:00:14

communicate different various agencies of

01:00:17

government are to try to

01:00:19

find a mutually except. We

01:00:21

are and Z there in

01:00:23

China's area is also some

01:00:25

other means because I'm position

01:00:26

of Command Center to specifically

01:00:34

establishes to resolve complaints of

01:00:38

our investors, which they can

01:00:40

use the minister of Education

01:00:45

in China they can also

01:00:47

use so I think if

01:00:49

I most of us will

01:00:52

be the last resort, so

01:00:54

they have many of Oz

01:00:56

means record so they do

01:00:59

not have to use STS.

01:01:03

Thank you. Professor just just

01:01:07

11.1 follow-up question given even

01:01:10

that and yes we answered

01:01:12

here. Do you think that

01:01:20

that some big companies are

01:01:23

also taking advantage of the

01:01:28

other means of resolving disputes

01:01:30

in China and I'm talking

01:01:33

to me in particular about

01:01:34

back but the other arbitration

01:01:40

centers you think that that

01:01:41

that is somehow having an

01:01:43

effect that mean we know

01:01:44

that that many companies foreign

01:01:46

companies have subsidiaries in China

01:01:49

and and of course other

01:01:51

means of solving disputes may

01:01:52

be available to them. Do

01:01:54

you think that has happened?

01:01:55

I have no data about

01:01:57

that, but I'm interesting to

01:01:58

to to learn. Thank you.

01:02:04

Yeah, yeah indeed first that

01:02:08

you know, some of the

01:02:09

ways comment may arise first

01:02:14

as a commercial disputes between

01:02:16

the foreign investors. And is

01:02:18

there a China and his

01:02:20

partner solely for the commercial

01:02:22

these pills cannot be handled

01:02:24

properly. They may be involved

01:02:26

with support to resolve a

01:02:33

need then let me have

01:02:38

concerns with tennis court and

01:02:40

is in Chinese sovereign state.

01:02:41

So I think the other

01:02:44

judicial system. I mean the

01:02:47

overall system help to reduce.

01:03:00

Chinese government institutions like be

01:03:05

a safe. I understand that

01:03:07

a public public private partnership

01:03:17

project projects can be resolved.

01:03:23

Some of them any of

01:03:25

them are some of the

01:03:26

PPP projects they can be

01:03:30

resolved through arbitration. So the

01:03:32

AC and the other Chinese

01:03:34

arbitration institutions, they help to

01:03:37

resolve this kind of this

01:03:39

feels analyzed and avoid the

01:03:41

lady is supposed to to

01:03:44

to evolve as a gift

01:03:45

feels against China as a

01:03:47

compliment. Thank you. Thank you

01:03:50

very much. Delicious. Very great

01:03:53

that they saw or my

01:03:56

person. I think a Chinese

01:04:03

people that we in Clyde

01:04:04

to to have a piece

01:04:06

and settlement that we trekked

01:04:07

I reach the dispute can

01:04:09

be resolved amicably. So either

01:04:11

that administrative level Orion in

01:04:16

this commercial arbitration level. There

01:04:18

are a lot of approaches

01:04:20

that for Ian Masters and

01:04:22

also entities they may find

01:04:24

record. So yes that is

01:04:27

it is as it is

01:04:28

that's only nine cases so

01:04:30

far. We're China governments as

01:04:33

the responding house to say.

01:04:35

So our remaining three speakers

01:04:38

will discuss the topic from

01:04:41

the Investor's perspective. And our

01:04:44

first the speaker is that

01:04:46

mean what that mean? Please

01:04:47

me to speech my involvement

01:04:54

with investor-state dispute arises out

01:04:58

from representing a Chinese party

01:05:01

in taking an action against

01:05:03

Finland in an investment treaty

01:05:06

dispute. And since this is

01:05:09

already disclosed any of the

01:05:11

public domain because of England's

01:05:14

rule in terms of a

01:05:16

transparency so I can mention

01:05:19

this without reservation. To start

01:05:24

actually many speakers are emotion

01:05:29

today about soent Spirit Solution

01:05:32

by way of a investment

01:05:35

State arbitration. So today I

01:05:38

will focus on private investment

01:05:42

instead of a SOS. Now

01:05:45

are we all know the

01:05:46

purpose of b i t

01:05:49

s off in the first

01:05:50

place to promote investment in

01:05:53

order to promote Investments and

01:05:56

the host country must protect

01:05:58

investors interest and so you

01:06:02

relation to the to sequoia

01:06:03

trees. to a bilateral investment

01:06:06

treaty each of the country

01:06:09

would be interested to use

01:06:10

to attract foreign investment. And

01:06:13

then each of the countries

01:06:14

would be there to protect

01:06:16

you have Provisions to protect

01:06:18

the investment investor against certain

01:06:22

practices that are not acceptable.

01:06:26

So with the sending economic

01:06:30

strengths of China China has

01:06:32

changed from being a recipient

01:06:34

of investment to a exporter

01:06:38

of investment in host States,

01:06:41

and this is particularly. So

01:06:43

in view of the belt

01:06:44

and Road initiative, As more

01:06:50

and more Chinese Enterprises go

01:06:53

going out to invest in

01:06:55

outside country so long to

01:06:56

Pelham Road more and more

01:06:58

are the chances of resolve

01:07:00

disputes arising from the performance

01:07:03

of the contracts and rising

01:07:05

out from country risk and

01:07:07

actions taken by government regulatory

01:07:10

bodies to in relation to

01:07:14

normal transactional risk. These are

01:07:16

usually handled well by lawyers

01:07:19

advising investors and how they

01:07:23

structure the terms and conditions

01:07:25

of such as a joint

01:07:27

venture agreement with the transactional

01:07:29

contracts. However, we we all

01:07:36

know that in relation to

01:07:39

transactions. Nobody would like to

01:07:41

rely on the courts of

01:07:44

another country to dispense justice.

01:07:46

So usually as said earlier

01:07:50

this morning, most of the

01:07:52

transactional of contractual disputes would

01:07:55

be handled by arbitration as

01:07:58

a neutral venue such as

01:08:00

Hong Kong, Singapore and And

01:08:05

upon you in a different

01:08:07

set of rules such as

01:08:08

minister of Education rules or

01:08:12

siac rules on route. But

01:08:18

one thing that is often

01:08:20

overlooked in the process is

01:08:22

a face the second level

01:08:24

of protection against the Chinese

01:08:26

investor going out in this

01:08:29

by way of the investment

01:08:31

treaties entered into by China

01:08:33

that will enable Chinese investor

01:08:38

to be entitled to social

01:08:39

Southern protection, So the protection

01:08:45

against for instance of research

01:08:47

change of government leading to

01:08:49

change your policy or arbitrary

01:08:51

application of certain administrative measures,

01:08:55

they may amount to an

01:08:57

expropriation of the project or

01:09:01

withdrawal of a license given

01:09:03

for mining for instance. So

01:09:06

we'd we heard today that

01:09:08

lots of cases of investment

01:09:13

disputes such as in relation

01:09:14

to construction projects in relation

01:09:18

to Mining rights you relation

01:09:20

to forced appreciation of assets.

01:09:25

NN with cancellation of licenses

01:09:29

that has been lawfully granted

01:09:34

So we we saw the

01:09:37

earlier on when Jose told

01:09:39

us many of these disputes

01:09:41

actually has been resolved. Some

01:09:44

are still pending some are

01:09:47

settled. So what I would

01:09:50

like to take you to

01:09:52

is one of the year.

01:09:55

Succour templates of such Bruce

01:09:58

and my dad I would

01:10:00

refer to defend line China

01:10:02

b i t and the

01:10:05

first point I like to

01:10:06

highlight is the definition of

01:10:09

investment actually is very Wily

01:10:12

drafted and it didn't involve

01:10:14

every kind of ss that

01:10:16

you can think of including

01:10:18

movable and immovable property shares

01:10:21

and debentures claims of bunny

01:10:23

or other performance having an

01:10:25

economic value intellectual property rights

01:10:28

know how in Goodwill and

01:10:30

business concessions confer Bi-Lo in

01:10:33

permitted by law are classified

01:10:37

as Investments that can be

01:10:39

protected and who are the

01:10:42

investors in the context of

01:10:44

a Chinese going out you

01:10:46

can be a natural person.

01:10:48

A Chinese National or you

01:10:50

can be any Chinese legal

01:10:51

entity including soe. so in

01:10:58

typical Appalachia investment treaties, it

01:11:03

would guarantee the investor by

01:11:06

term constant protection and security.

01:11:08

He means a proactive a

01:11:13

mandate by the government of

01:11:15

the recipients state to the

01:11:16

investment to make sure that

01:11:19

the investors properties and personal

01:11:22

safety are protected. So it's

01:11:25

not as if something happened

01:11:27

and they come in in

01:11:28

the police can protect you

01:11:30

you miss that they should

01:11:31

do that proactively and then

01:11:34

also normally in a measures

01:11:38

that that they will be

01:11:40

no unreasonable discriminatory measures that

01:11:44

is targeted against the investor.

01:11:47

Are you better from a

01:11:49

particular country? The against there.

01:11:52

So the investors can manage

01:11:54

use expand so disposed of

01:11:58

the investment at will and

01:12:00

so you you cannot unreasonably

01:12:02

discriminatory prohibit the investor from

01:12:06

selling his investment or otherwise

01:12:09

dealing or managing it. The

01:12:13

surfing that is being protected

01:12:15

this pain Equitable treatment that

01:12:17

the avesta should be treated

01:12:19

fairly. And the first time

01:12:21

that is that you see

01:12:23

all the time is national

01:12:25

treatment. So you would be

01:12:26

treated no worse than the

01:12:29

national of that particular recipient

01:12:32

States, but you may be

01:12:35

treated better in the most

01:12:37

favored nation clothes that is

01:12:39

normally in place in such

01:12:42

a tease. And of course

01:12:47

one of the most important

01:12:49

things that is the time

01:12:52

should be no expropriation without

01:12:54

compensation proper compensation, even though

01:12:58

it may be in the

01:12:59

public interest and without discrimination.

01:13:01

So when you wish to

01:13:03

to take a measure the

01:13:05

host country to do certain

01:13:07

things that investors rights must

01:13:09

be respected and be compensated

01:13:12  
for one further important provision

01:13:18  
that you will normally see

01:13:20  
you said to transfer funds

01:13:22  
related to the investment in

01:13:25  
and out of the country

01:13:26  
would be permitted so you

01:13:29  
can remote in and out

01:13:30  
that the amount you invested

01:13:32  
the dividends the interest royalties

01:13:35  
of service fees Etc important

01:13:38  
Provisions because if you go

01:13:40  
into a certain country and

01:13:42  
investment a permit your investment,

01:13:45

but doesn't permit you to

01:13:46

take The money so you

01:13:48

were three serious difficulties at

01:13:50

the end of the day.

01:13:51

So these are the measures

01:13:53

and so many times in

01:13:56

relation to Chinese investment into

01:13:59

Berlin will countries you are

01:14:01

going into an unknown territory

01:14:03

with a set of Lord

01:14:04

that you are not familiar

01:14:05

with the language that you

01:14:07

do not understand. So how

01:14:09

can your interest be protecting

01:14:11  
one of the ways in

01:14:13  
relation to contractual dispute is

01:14:15  
as I mentioned earlier by

01:14:17  
commercial arbitration International commercial arbitration

01:14:21  
second-tier 37 higher tier is

01:14:25  
by way of investment treaty

01:14:28  
obligation to protect your interests

01:14:30  
further and and Audi a

01:14:36  
lot of the country a

01:14:37  
letter investment treaties that I've

01:14:39  
read they all have a

01:14:40  
dispute settlement provision and it

01:14:44  
provides 488 Albert rationed the

01:14:47

means and the reason she

01:14:49

mentioned that his ex escalation

01:14:51

Clause that means you first

01:14:53

you try to negotiate on

01:14:54

mediate after written notice for

01:14:58

36 months and when that

01:15:00

process step is taken and

01:15:03

completed in resulting in no

01:15:05

settlement can you can come

01:15:07

and see me then I'll

01:15:09

be stationed to have you

01:15:11

all day before the Tribunal.

01:15:13

No. You relation to bilateral

01:15:18

investment treaty? How you commenced

01:15:22

the arbitration is at the

01:15:24

discretion to choice of the

01:15:27

investor. So for Chinese going

01:15:30

out to invest in Cambodia

01:15:32

for instance is the Chinese

01:15:33

that would be in the

01:15:35

driving seat as to how

01:15:37

this arbitration is to be

01:15:39

conducted. He has he can

01:15:41

there's a provision the provision

01:15:44

say you can't go to

01:15:45

the competent Court of a

01:15:47

contract Contracting party or to

01:15:50  
exit arbitration or to an

01:15:52  
echo averaging Tribunal. No and

01:15:56  
two to a tribunal or

01:15:57  
three arbitrators to resolve the

01:16:00  
dispute of course would be

01:16:05  
preferable to the domestic court

01:16:08  
of the Contracting state to

01:16:11  
host country because they may

01:16:13  
be political other reasons that

01:16:17  
request for adjudication and investor

01:16:24  
would not be favorably be

01:16:26  
looked upon by the coats

01:16:27  
of the whole state. So

01:16:33

this particular Clause actually post

01:16:37

some difficulties and the difficulties

01:16:40

is called the fork in

01:16:41

the road consideration. So you

01:16:43

can have a choice either

01:16:45

going to the local court

01:16:46

and then alternatively go to

01:16:49

seek relief in an International

01:16:51

Auto Show tribunal and I

01:16:53

would suggest that going to

01:16:55

an international tribunal would be

01:16:57

far preferable many times Freeman

01:17:04

me me through the closing

01:17:07

that for certain methods you're

01:17:09

going to refer first to

01:17:12

a local administrative tribunal to

01:17:15

decide first before you do

01:17:16

anything else. So in those

01:17:18

circumstances the investor may have

01:17:21

to go before for instance

01:17:23

of Taxation body to to

01:17:26

have that. Dispute that with

01:17:29

and failing having feeling to

01:17:33

try the administrative body dealing

01:17:36

with a fairly and equitably

01:17:37

than you you move on

01:17:39

to the next stage by

01:17:41

way of investment disputes arbitration.

01:17:45

However, when you do that

01:17:48

then The defending state with

01:17:52

have an argument you are

01:17:54

already made an election and

01:17:56

you went to my shop,

01:17:57

you know, and you can

01:17:58

no longer go for investment

01:18:00

dispute arbitration. This is precisely

01:18:02

what happened you my case

01:18:05

in Finland. This is an

01:18:10

interesting case because my client

01:18:15

went to Finland to eat

01:18:17

to invest because that investment

01:18:21

was promoted together with ccpit

01:18:23

in China and he look

01:18:26

at investment and sought to

01:18:28

set up a distribution center

01:18:29

in the city of Covina

01:18:31

in Finland reaches the end

01:18:34

of the Railway line leading

01:18:35

to Europe to a logistic

01:18:37

Center for distribution of Chinese

01:18:40

Goods. No, he he he

01:18:43

went to one of the

01:18:45

conditions. That was given in

01:18:49

the approval. Do to him

01:18:52

to have that the investment

01:18:53

he said he should invite

01:18:55

at least 50 shities investors

01:18:57

to go to Finland to

01:18:58

invest and because of the

01:19:00

provision he invited hundreds of

01:19:03

Chinese investing of possible investors

01:19:07

to go to Finland to

01:19:08

have a look at the

01:19:09

location. The immigration department has

01:19:13

a complain arising from that

01:19:15

how many how come so

01:19:17

many visas issued to Chinese?

01:19:20

You must be dealing with

01:19:21

illegal immigration into Europe. You

01:19:25

are here The Conjuring of

01:19:27

a legal scheme and then

01:19:29

he was arrested. The arresting

01:19:32

was traumatic. They were 200

01:19:35

police. We've got dogs and

01:19:37

helicopter descending on the center

01:19:39

arrested more than 100 Chinese.

01:19:43

Give me himself. He stopped

01:19:44

and his customers and they

01:19:47

were bundled out for questioning.

01:19:48

He was held six months

01:19:51

incommunicado and I'll communicate with

01:19:54

anybody and then he's relieved

01:19:58

he asked for pay you

01:19:59

for being there without was

01:20:02

denied repeatedly by the court

01:20:04

and after he was released

01:20:07

having no charge against him

01:20:09

after months and then the

01:20:12

possessions will not return for

01:20:14

a year. He sued the

01:20:17

government in court for evidence

01:20:19

in court. And then when

01:20:23

this investment is through arbitration

01:20:24

came about the government's Defence

01:20:29

is that you're already taken

01:20:32

a choice. This is a

01:20:34

fork in the road. You

01:20:35

went to the code of

01:20:38

Finland on on Tasha's G

01:20:42

against the government body. You

01:20:44

can no longer rely upon

01:20:46

the course of action is

01:20:48

bilateral investment treaty G and

01:20:51

for that we we have

01:20:54

to spend a lot of

01:20:54

time and money in arguing

01:20:56

about that. So actually when

01:21:00

I think the first place

01:21:03

I would advise a sexually

01:21:04

Chinese investors are very shy

01:21:07

about suing the states. it's

01:21:12

like David versus Goliath and

01:21:15

so David doesn't want to

01:21:18

move Chinese doesn't want to

01:21:20

fight unless being forced to

01:21:22

the wall. And so they

01:21:25

have scantily use pits. What

01:21:30

is a what is a

01:21:31

quarter to them to protect

01:21:34

the interests under the p

01:21:35

it o e l

01:21:38

would suggest that Chinese investors

01:21:40

should look more into it

01:21:41

as an option to protect

01:21:44

the interest but it does

01:21:46

not mean that commencing a

01:21:48

p i t necessarily means

01:21:50

going the full way because

01:21:53

once your commands it you

01:21:55

can still continue to mediate

01:21:57

on a crochet and explore

01:21:59

ways of settling without going

01:22:02

through the whole process leading

01:22:04

to an arbitration award. in

01:22:07

this case, we race and

01:22:09

arbitration based on that whole

01:22:11

conversation commencing out from Hong

01:22:14

Kong and and and and

01:22:18

we we have a panel

01:22:20

of three arbitrators when the

01:22:22

pointed from Hong Kong a

01:22:25

quarterfinal few judge one from

01:22:28

sec in Sweden, and then

01:22:32

the presiding arbitrator was locked

01:22:34

men's from the United Kingdom.

01:22:37

And we were hoping that

01:22:38

this would set up some

01:22:39

precedent in relation to fucking

01:22:42

road tonight how you sure

01:22:45

in the future. This would

01:22:47

be looked at in terms

01:22:48

of with the guidance of

01:22:50

the court, but unfortunately my

01:22:56

time and contracted cancer and

01:22:59

died before. Do you know

01:23:03

what was rendered and so

01:23:05

we actually settled our court

01:23:08

review of his death? What

01:23:15

I say is that nowadays?

01:23:16

There's so many Chinese investors

01:23:19

going outside to invest in

01:23:21

Pelham Road countries. It is

01:23:23

useful to have legal advisers

01:23:26

advise them as to how

01:23:28

to rely upon the bits

01:23:32

to assist the investor including

01:23:35

shopping for the place of

01:23:38

a special purpose vehicle to

01:23:41

commence and investment so as

01:23:42

to protect Chinese investors interest,

01:23:46

so thank you very much

01:23:47

for a short presentation. Thank

01:23:49

you. Thank you. Sonny TimeWise.

01:23:56

We are a bit late

01:23:57

late, but I understand that

01:23:59

you don't still want to

01:24:00

make some comments. So please

01:24:02

make sure you strut. Thank

01:24:03

you very much for the

01:24:09

case against precisely I am

01:24:17

straighter that Chinese restaurant including

01:24:22

surface. I meant developing countries

01:24:31

develop the country and the

01:24:34

procedure of Westmont protection along

01:24:46

with the increase of I

01:24:52

try so hard to find

01:24:55

a Chinese lawyer this system

01:25:04

like ours English last year

01:25:16

did not achieve the zero

01:25:21

power through a managing SDS

01:25:26

disputing. So I hope them

01:25:29

holiday come earlier and the

01:25:31

Pacific where I make the

01:25:42

car all it's your turn.

01:25:59

Sorry. Millcreek overview of bitf

01:26:11

by Samuel just a couple

01:26:14

of additional key points for

01:26:18

Chinese investors and some takeaways

01:26:22

for for them, which is

01:26:25

that well is dies in

01:26:28

knots when she point is

01:26:30

I cannot overturn local laws

01:26:32

that violate trade agreement, but

01:26:34

it can give monetary damages

01:26:36

the investors ever sit adversely

01:26:39

affected by such laws. And

01:26:43

notably, you know is DS

01:26:46

can only be brought by

01:26:49

Foreign investors to sue States

01:26:51

under the treaties because seats

01:26:53

are the parties to the

01:26:55

treaty and only States can

01:26:58

be held liable to pay

01:26:59

damages for breach of the

01:27:01

treaty. However, this is a

01:27:04

one-way Street and it doesn't

01:27:05

work the other way around

01:27:06

that is states have no

01:27:08

corresponding rights to bring an

01:27:10

original claim against it for

01:27:12

an investor under the treaties

01:27:14

because investors are not parties

01:27:16

to the treaty and therefore

01:27:17

cannot be in breach of

01:27:19

it. So when we see

01:27:20

the station in favor of

01:27:22

the state what it really

01:27:23

means is that the state

01:27:25

has not been ordered to

01:27:27

pay damages and then Master

01:27:29

if the state wants to

01:27:30

sue an investor it will

01:27:33

have to do so through

01:27:33

its own Domestic Court. and

01:27:43

and it is essential and

01:27:45

critical for Chinese investors to

01:27:47

understand and comply with the

01:27:50

host country's law. These may

01:27:52

include requirements for joint ventures

01:27:54

restrictions on foreign ownership and

01:27:57

sector-specific regulation. And just overall

01:28:04

recommendations first due diligence investors

01:28:09

should conduct thorough due diligence

01:28:11

on the legal and Regulatory

01:28:13

environment of the host country

01:28:15

understanding local laws tax regimes

01:28:19

and political risks is critical.

01:28:24

Again study, the treaty landscape

01:28:26

investors should conduct a thorough

01:28:28

investigation and review of treaties

01:28:31

that may apply to the

01:28:33

investment if necessary structures investment

01:28:36

to benefit from favorable treaty

01:28:38

regulations. obtaining legal advice investors

01:28:44

should engage with legal experts

01:28:47

familiar with International Investment law

01:28:49

and the specific treaties between

01:28:51

the relevant countries such as

01:28:55

You know a law firms

01:28:57

Global law firms who are

01:29:00

experts in in, you know

01:29:02

this type of Legal Services.

01:29:08

fourth investment insurance investors should

01:29:13

consider the investment Insurance option

01:29:15

to protect against political risks

01:29:17

such as his probation war

01:29:20

and civil disturbance. Local Partnerships

01:29:25

investors should consider forming Partnerships

01:29:29

with local firm that can

01:29:31

facilitate their operations and compliance

01:29:35

with local regulations. and 6

01:29:38

dispute resolution mechanisms investors should

01:29:43

be aware of the available

01:29:45

dispute resolution mechanisms under applicable

01:29:47

treaties and agreements to ensure

01:29:49

access to Fair arbitration if

01:29:52

needed. And I'm by leveraging

01:29:55

these treaties and agreements investors

01:29:58

can better protect their Investments

01:30:00

and navigate the complexity of

01:30:02

international market. Thank you. Thank

01:30:07

you very much Carl my

01:30:09

office that you might be

01:30:10

our last the speaker Mariana

01:30:12

to finish the talk and

01:30:14

then we do the comments

01:30:16

parts. Okay, I'll thank you

01:30:18

when I still got speaker.

01:30:20

I do not want to

01:30:21

delay your coffee break for

01:30:22

there. So I will try

01:30:23

to be very fast. My

01:30:25

topic today is evidence and

01:30:27

evidence is arbitration lawyers. We

01:30:30

all understand the importance of

01:30:31

evidence in proving our case

01:30:33

however in practice we have

01:30:35

seen investors who suffered a

01:30:37

severe disadvantage during the arbitration

01:30:39

because they can not find

01:30:41

evidence to support their allegations

01:30:43

and this happened either because

01:30:46

they did not maintain a

01:30:47

good record of evidence including

01:30:50

company files transactional documents cutting

01:30:53

records or because they did

01:30:56

not pay attention to document

01:30:57

when important meetings take place.

01:31:00

So I would like to

01:31:02

share three practical experiences based

01:31:04

on which I will provide

01:31:05

takeaways for investors and their

01:31:08

consoles my first experience related

01:31:11

to the investors burden of

01:31:12

proof to show he's making

01:31:14

of the investment the flow

01:31:16

of his phone. And also

01:31:18

that he made the Investments

01:31:20

legally as a first step

01:31:22

investors need to show that

01:31:24

they made the investments in

01:31:26

the host state to approve

01:31:27

this fact, he needs to

01:31:29

show that the flow of

01:31:31

the sound from the investor

01:31:33

to the local entity or

01:31:34

to the local investment and

01:31:36

they need to present evidence

01:31:37

such as commercial contract wire

01:31:40

transfer statements importation custom clearance

01:31:43

Etc to show that the

01:31:46

make the investment using your

01:31:47

own found out through their

01:31:49

own entities into the territory

01:31:51

of the house to State.

01:31:53

This could be quite problematic

01:31:55

if the investor purchase the

01:31:57

materials equipments and wired money

01:32:00

into the host's 8 using

01:32:02

lots of angry lighted search

01:32:04

parties using bank accounts that

01:32:07

cannot be linked to the

01:32:09

investor or his own companies

01:32:10

still have our challenges will

01:32:12

be made by the state

01:32:13

to argue that the investor

01:32:15

did not make things. Or

01:32:18

did not make the investment

01:32:20

using his own money or

01:32:21

did not make them investment.

01:32:23

Illegally or that investor has

01:32:25

committed money laundering or fraud.

01:32:27

So this happened in one

01:32:29

of our cases that we

01:32:31

handled spend lots of time

01:32:34

and cost trying to sort

01:32:36

out all those payments made

01:32:38

into the whole state to

01:32:39

show that they originated from

01:32:41

the faster. They were clean

01:32:42

money and there was no

01:32:44

fraud the investor of course

01:32:46

does not need to show

01:32:47

that all the Investments were

01:32:48

made using his own money.

01:32:50

It is okay to China

01:32:51

other sources of found as

01:32:53

long as the Investments were

01:32:54

made legally and in accordance

01:32:56

with the law of the

01:32:57

host state, so my second

01:32:59

experience relates to the investors

01:33:01

documenting of important meetings and

01:33:03

Communications with the house state.

01:33:06

An investment arbitration violation of

01:33:08

due process is perhaps one

01:33:10

of the most polluted grounds

01:33:12

by the investors in many

01:33:14

cases. It is not for

01:33:16

example, it is not why

01:33:18

the licenses were taken it

01:33:20

is how it was taken

01:33:21

that was always in the

01:33:23

Centre of the dispute. So

01:33:25

it is important for the

01:33:26

investors to document important meetings

01:33:29

and conversations with the house

01:33:31

to state with the government

01:33:32

officials. The investors could do

01:33:34

so by creating contemporaneous documents

01:33:37

including Mitten minutes and notes

01:33:39

or through sent an opera

01:33:41

email or after I had

01:33:42

to confirm the occurrence of

01:33:43

the meeting. I must emphasize

01:33:45

that once a contemporaneous document

01:33:48

has been created the investors

01:33:50

should not alter the contents

01:33:52

of the document because the

01:33:54

host state will apply to

01:33:56

examine that document to see

01:33:58

whether that document was authentic

01:34:00

and whether that document was

01:34:02

prepared for the mere purpose

01:34:03

of the arbitration. So my

01:34:06

sword and lost experience relates

01:34:08

to the investors use of

01:34:09

factual witness. This is a

01:34:12

quite sensitive issue because the

01:34:14

investor and it's legal team

01:34:16

are fighting a war against

01:34:18

a giant sovereign state. The

01:34:20

powers are just a colionne

01:34:22

equal the whole state could

01:34:24

adopt or types of measures

01:34:25

to intimidate the witness or

01:34:27

harassed at the lawyers were

01:34:29

the experts of the investor.

01:34:31

For example, the host State

01:34:33

could help a special team

01:34:35

located at a sword country

01:34:36

or a place of nowhere

01:34:38

to hack into the investor

01:34:40

lawyers email system in order

01:34:42

to plant virus or to

01:34:43

steal sensitive information and the

01:34:46

hosts a could secretly harassing

01:34:48

the witness or relatives of

01:34:50

the investor or relatives of

01:34:52

the witness. It could put

01:34:54

the lawyers on Blacklist and

01:34:56

it could arrest the local

01:34:57

lawyers of the investor which

01:34:58

provides legal opinions on the

01:35:00

local law. So these are

01:35:02

not new to invest Investments

01:35:04

arbitration and in God It

01:35:06

should be warned and prepared

01:35:07

for these potential threats because

01:35:10

of this very unique feature

01:35:12

and Potential Threat. It is

01:35:13

often challenging for investors to

01:35:15

find witnesses who are willing

01:35:17

to testify against Ohio State.

01:35:19

We have seen in some

01:35:22

cases where the factual witness

01:35:24

initially agreed to testify then

01:35:26

withdrew his agreement. So based

01:35:29

on experiences my takeaways for

01:35:32

the investors and their councils

01:35:33

are the following for civil

01:35:35

investors should simplify the flow

01:35:37

of their phones into the

01:35:39

house to say they should

01:35:40

document and preserve all the

01:35:43

transactional and communication documents with

01:35:45

the local partner and Webster

01:35:47

house to stay. In order

01:35:49

to show that the maid

01:35:50

investment and the made it

01:35:51

is equally as investors who

01:35:54

transferred their evidence outside the

01:35:57

host State before the dispute

01:35:59

escalated into arbitration and certainly

01:36:02

investors should take evidence of

01:36:04

their investment by taking photos

01:36:06

or by recording videos while

01:36:08  
they still can and while

01:36:09  
they are still in the

01:36:10  
house to say it because

01:36:12  
it more often than not

01:36:13  
was the dispute escalates. The

01:36:16  
investor may not be able

01:36:17  
to access their properties in

01:36:19  
the house just ate and

01:36:21  
more often than not that

01:36:22  
your master will have to

01:36:23  
leave the house State Police

01:36:25  
it for their own safety

01:36:26  
peppers and last but not

01:36:28

least investors should identify potential

01:36:31

Witnesses who are important for

01:36:34

their cases and make sure

01:36:36

that these Witnesses are returned

01:36:38

to their safe place and

01:36:40

not losing the threat of

01:36:42

the house to state that

01:36:44

concludes my presentation. Thank you.

01:36:47

Thank you very much, Mariana.

01:36:50

There is valuable observation and

01:36:54

down-to-earth advice very good. I

01:36:59

receive a message that online

01:37:01

there are tens of thousands

01:37:03

Alden hearing this panel and

01:37:06

we receive questions from online.

01:37:09

So I discussed it with

01:37:11

Jose and the we decide

01:37:15

to post this questions and

01:37:17

then spent a little bit

01:37:18

longer time here. We had

01:37:20

a good question on Lie

01:37:22

by Linea talking and that

01:37:25

the question is about the

01:37:26

come play me can ISM

01:37:28

in China how it is

01:37:30

used in China's local remedies

01:37:33

in resolving is DS cases.

01:37:36

I wonder these disputes are

01:37:39

resolved as commercial disputes before

01:37:42

court or resolved as administrative

01:37:45

dispute and their administrative litigations.

01:37:49

Travel agency would be the

01:37:50

best speaker to answer this.

01:37:59

Yes, we did some research

01:38:04

about complaining mechanism has a

01:38:09

very Now history. I think

01:38:12

he may be in 1990s

01:38:15

in some provinces. This kind

01:38:18

of mechanism has already been

01:38:20

established and I understand you

01:38:22

storing. This is the law

01:38:24

and the law there is

01:38:25

a prevention require the comments

01:38:28

at various levels to establish

01:38:31

that kind of mechanism. So

01:38:32

nowadays USA in every Province,

01:38:35

maybe even a neighboring municipalities.

01:38:39

Sometimes there's a sore under

01:38:49

some other government agencies as

01:38:52

he's kind of the Not

01:38:56

many of them published their

01:38:58

you know, they're working humans

01:39:01

or they provide statistics. They

01:39:12

have received how many kisses

01:39:14  
and a z i mean

01:39:16  
resolve Anthony not not all

01:39:22  
these complaints. How about a

01:39:24  
real tea spilled sometimes a

01:39:27  
lot of kinds of problems

01:39:30  
or not related to our

01:39:33  
activities field going to soothe

01:39:38  
a local issue about the

01:39:43  
business environment in general or

01:39:46  
is it about today interpretation

01:39:48  
or application of Chinese symbol

01:39:50  
in that region in general

01:39:52  
or or so, so I

01:39:56

think is there a lots

01:39:57

of kinds of problems you

01:40:02

can you erase data center

01:40:05

and then normally ones that

01:40:06

you receive they sent her

01:40:07

the ones that sent or

01:40:09

received these complaints or problems

01:40:11

or issues do not have

01:40:14

the power to resolve that

01:40:16

by themselves. You will find

01:40:20

which agency is the right

01:40:23

agency to I mean or

01:40:25

who which caused this problem

01:40:27

or reach is responsible for

01:40:31

resolving these issues is the

01:40:34

word refer this to that

01:40:35

and you say or ask

01:40:37

them to stay together. And

01:40:42

if or if that doesn't

01:40:44

work they made in a

01:40:45

Escalade late that issue to

01:40:49

a higher level or a

01:40:51

fight with a the mayor

01:40:52

or the governor and is

01:40:53

in Maybe I'll find a

01:40:57

solution. I do not know

01:40:59

whether any complain. I'm finally

01:41:02

resolved. I do not know,

01:41:05

so I'm not sure what

01:41:10

I have. Thank you. Thank

01:41:13

you very much. If there's

01:41:15

no further comments that I

01:41:17

usually to make now, or

01:41:19

we will conclude this session

01:41:21

and thank you very much

01:41:23

for the patients and listening.

01:41:25

Thank you. Thank you very

01:41:13

much. If there's no further

01:41:16

comments that I usually to

01:41:18

make now, or we will

01:41:19

conclude this session and thank

01:41:22

you very much for the

01:41:24

patients and listening. Thank you.