

Enforcement of International Arbitration Awards and Collection of Damages in Multiple Civil and Common Law Jurisdictions: Japan, Panama, Singapore, New York and Ukraine *

Summary

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

The Washington Arbitration Update (WAU) session focused on the complexities of public policy exceptions in international arbitration, featuring insights from a diverse panel of experts from Japan, Panama, Ukraine, and Singapore. The session commenced with expressions of gratitude to the organizing committee and sponsors, emphasizing the event's aim to reflect the diverse landscape of international arbitration.

Charlene, a partner at DLA Piper, introduced the public policy exception under the New York Convention, which allows national courts to refuse recognition of foreign arbitral awards if they contravene public policy. The discussion highlighted the ambiguity surrounding the definition of public policy, which varies by jurisdiction. In the U.S., public policy is associated with fundamental notions of morality and justice, but courts typically reserve this exception for rare cases. Notably, the 2018 Hardy exploration case illustrated how public policy can intersect with international relations, raising concerns about sovereignty.

Panelists shared jurisdiction-specific insights. Yoko from Japan discussed the lack of precedent in enforcing interim awards and the strict procedural requirements in Japanese courts. David from Panama explained that while interim measures are recognized under recent arbitration laws, the enforcement process remains bureaucratic and cumbersome. Tatiana from Ukraine addressed how national security concerns, particularly in the context of the ongoing conflict with Russia, have influenced the enforcement of foreign awards, leading to complex legal challenges. Lipsan from Singapore noted that the jurisdiction is generally pro-arbitration, with courts upholding awards unless they are exceptionally contrary to public policy.

The session concluded with a Q&A, where participants discussed the implications of domestic and international public policy on the enforcement of awards that may have been vacated at the seat of arbitration. The panelists emphasized the need for careful

consideration of public policy when navigating these complex legal landscapes, underscoring the importance of jurisdictional nuances in international arbitration.

Authors

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Topics

Enforcement

Category

WAU

Full Transcript

00:00:04

Update to also give our

00:00:06

thanks to all of our

00:00:08

fantastic supporters in particular. We

00:00:13

wanted to mention our advisory

00:00:16

committee. We great fantastic group

00:00:18

of people have come together

00:00:19

to support this first time

00:00:22

event. We we've have a

00:00:25

wonderful group of sponsors and

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law firms and other organizations

00:00:29

that have really stepped up

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to support. What is is

00:00:34

really quite the diverse and

00:00:38

Multinational event. It it really

00:00:42

we think and part of

00:00:44

the intent of putting this

00:00:45

event together is to truly

00:00:46

reflect the highly diverse nature

00:00:50

of international arbitration and how

00:00:53

it has grown fantastically over

00:00:56

the last 15 to 20

00:00:58

years to reflect the kind

00:01:00

of diverse topics and and

00:01:02

the different types of Legal

00:01:04

cultures and practices that that

00:01:07

we see in the practice

00:01:10

of international arbitration and I'll

00:01:13

just pass over to those

00:01:15

Antonio now, but I wanted

00:01:17

to in particular mention those

00:01:18

Antonio Maria Lucia Casa and

00:01:22

the whole extrategy team for

00:01:24

their incredible efforts in putting

00:01:27

this event together, the the

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logistics involved and hurting all

00:01:32

the cats as being amazing

00:01:35

and I just wanted to

00:01:36

mention the Jose Antonio and

00:01:39

his team they've done a

00:01:40

fantastic job. So Jose Antonio

00:01:43

And thank you Ian for

00:01:46

those kind words. I don't

00:01:48

want to steal too much

00:01:50

of your time. I would

00:01:51

simply ask one question given

00:01:55

that there is of course

00:01:58

a proliferation of events and

00:02:01

and zoom events including International

00:02:04

arbitration that being said however

00:02:07

together with Ian we felt

00:02:10

that there was and there

00:02:11

is a need for for

00:02:13

a world arbitration update for

00:02:16

two reasons, which are the

00:02:17

focus of the world arbitration

00:02:20

update one is a trying

00:02:24

to decentralize International arbitration. And

00:02:27

and that means that it

00:02:30

is obvious by seeing the

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caliber of panelist in this

00:02:34

session that International arbitration goes

00:02:38

beyond London and Paris and

00:02:40

and your even though we

00:02:42

love New York. Charlene is

00:02:43

here. And we love London

00:02:46

and Paris as well. But

00:02:47

but we have we have

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attorneys and Council who are

00:02:51

riggers and and incredible in

00:02:53

Ukraine in Japan in Panama

00:02:56

in Singapore Etc in many

00:02:58

places of Africa, and we

00:03:00

wanted to make sure that

00:03:01

that the world knows this

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and that there is international

00:03:05

arbitration being practiced in non-traditional

00:03:08

venues. That is the first

00:03:09

objective of wow or World

00:03:14

arbitration update. And the second

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objective objective which was mentioned

00:03:19

by Ian. It is updating

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International arbitration say 20 years

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ago. And when well not

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that much but but almost

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like about you know, 12

00:03:31

or 13 or 15 years

00:03:32

ago. When I when I

00:03:33

worked at Exit you could

00:03:34

still read most of the

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awards in a year with

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with a little bit of

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discipline. Now it simply impossible

00:03:42

to read 140 awards that

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coming a year and the

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same thing for international commercial

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arbitration. So the other objective

00:03:49

of of world arbitration update

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is to provide a number

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of topics to the public

00:03:55

the public meeting from students

00:03:57

to to very sophisticated partitioners

00:03:59

an update in a media

00:04:01

that that is useful because

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you can watch it you

00:04:04

can you can scroll through

00:04:06

it Etc. And that would

00:04:08

be there for the public.

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So those are the objectives.

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I want to underscore the

00:04:13

the support of Of our

00:04:17

sponsors including exit reel Washington

00:04:20

arbitration week and many many

00:04:22

others or of our circle

00:04:23

of firms many many of

00:04:26

whom are here and and

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of other damages firms as

00:04:33

well as other organizations, and

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with that we would like

00:04:36

to welcome everyone to wow,

00:04:39

and now please Gene take

00:04:42

it away. Thank you very

00:04:45

much. Thank you Ian. Thank

00:04:47

you has Antonio I once

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again appreciate your organizing this

00:04:51

event and thanks to the

00:04:53

sponsors who made this event

00:04:54

possible. Uh going back to

00:04:57

our panel we the structure

00:05:02

because we have two questions

00:05:03

the two issues to discuss

00:05:04

the structure will be a

00:05:06

little different from a conventional

00:05:09

panel. First of all, the

00:05:11

difference that we have a

00:05:12

presenter Charlene and I'll make

00:05:16

it more detailed introduction which

00:05:18

are Lin is we'll have

00:05:21

a presenter who will discuss

00:05:23

the general issues that applicable

00:05:26

to all jurisdictions that involved

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they're presented in this panel.

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After which we will give

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word to the panelists who

00:05:35

will address issues that are

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specific to the to their

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specific to their to their

00:05:41

specific jurisdictions after which we'll

00:05:43

go back to Charlene who

00:05:45

will again introduce this second

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Point second issue for the

00:05:49

discussion and then we'll go

00:05:51

back again to the panelists

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after the The after these

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two rounds of discussions. We

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will do a very brief

00:06:01

10-15 minutes. Hopefully a Q&A

00:06:05
session. During which the questions

00:06:08
that you the participants will

00:06:11
send us by way of

00:06:12
Zoom. We will be asked

00:06:15
I'll moderate the Q&A. I'll

00:06:18
ask this questions of the

00:06:20
participants over the speakers and

00:06:23
the speakers of the panelists.

00:06:25
And after that there will

00:06:27
be a 15 minute breakout

00:06:31
session and networking session. The

00:06:33
participants all the participants will

00:06:35
be distributed among breakout rooms

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and you will have opportunity

00:06:39

to have a free flowing

00:06:41

discussion with the members of

00:06:42

the panel. So without further

00:06:45

Ado, I'd like to introduce

00:06:46

our speakers and a presenter.

00:06:48

Of course Charlene's son. Charlene

00:06:51

is a partner with dla

00:06:52

pi person International arbitration practice,

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and it presents clients and

00:06:56

international arbitration and multi jurisdictional

00:06:58

cross-border litigation disputes her practice

00:07:01

focuses on enforcing foreign arbitral

00:07:04

Awards and judgments against Sovereign

00:07:06
and non Sovereign adapters and

00:07:08
assets are Cavalry. She's wound

00:07:10
and matters involving foreign sovereign

00:07:12
immunity and other complex jurisdictional

00:07:14
issues that arise when litigating

00:07:17
for Industries in US courts

00:07:19
Charlene also represents clients in

00:07:22
contracts, and pretty based arbitrations

00:07:24
involved in complex commercial disputes

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arising out of Latin America,

00:07:29
Europe and Asia. Thank you

00:07:31
Charlene for joining us and

00:07:33
our panelists. We have four

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panelists today from from Japan

00:07:38

from Ukraine from Panama from

00:07:40

Singapore and our panel. Japan

00:07:44

as yokamayed. Hi good evening.

00:07:47

Yoga you okay the partner

00:07:49

in the dispute litigation and

00:07:50

arbitration practice and CTU are

00:07:53

Partners in Tokyo, Japan. She

00:07:55

focuses her practice on complex

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and cross-border disputes across a

00:07:59

wide spectrum of matters, including

00:08:01

commercial construction life science Pharmaceuticals

00:08:04

technology and investment and domestic

00:08:06

courts and international arbitrations on

00:08:09

the major institutional rules Yoko

00:08:11

regularly sits as an arbitrator

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as well as the council.

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She is qualified in both,

00:08:17

Japan and New York. She's

00:08:19

a court member of the

00:08:20

ICC record over. Equation since

00:08:24

2018 and our next panel

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is David Mizrahi. He did

00:08:31

part of David is a

00:08:34

partner in MDU legal in

00:08:36

Panama David focuses on Multi

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jurisdictional issues, including transactional and

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distributed resolution work here presents

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major conglomerates and large multinationals

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doing business in Panama on

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a wide range of legal

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issues. David has substantial experience

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in both common law and

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civil lawyers addictions. He served

00:08:56

as an arbitrator and console

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and commercial on Sovereign arbitrations

00:09:00

and major International institutions. He

00:09:03

also served as expert on

00:09:05

Panamanian law in court cases

00:09:07

in the United States and

00:09:08

Israel, Canada, Georgia, England BDI

00:09:13

and Panama. Our panelists from

00:09:19

Ukraine is the Tiana sleepachuk.

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Welcome to Tiana. Tatiana is

00:09:25

a special advisor to the

00:09:27

law firm sayanka harrenka in

00:09:29

the key of Ukraine. Tatiana

00:09:31

has recently returned to Private

00:09:33

Practice of the serving two

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years of the chair of

00:09:36

the central Election Commission of

00:09:38

Ukraine prior to the government

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service, the Tiana had an

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activation practice practice where she

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practice for decades both as

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console and arbitrator as console

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share presented clients in narrowly

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eight year betrayations, including both

00:09:56

commercial and investment cases as

00:09:59

an arbitrator. She's serving early

00:10:01

400 cases of 400 cases.

00:10:08

Here you have. Yes. Wow

00:10:12

in major arbitration centers Tatiana

00:10:16

also serves as an expert

00:10:17

on the Ukrainian law in

00:10:19

arbitrations and Court proceedings, including

00:10:22

the high court of justice

00:10:23

in London and the BDI

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high court Tatiana authored over

00:10:28

150 articles in chapters and

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books on International legal issues.

00:10:32

It's very impressive incredible achievements.

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Thank you to Canada for

00:10:36

joining us. And last but

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certainly not least is our

00:10:41

panelists from Singapore. Lipsan Hall

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who is the head of

00:10:46

a construction and project practice

00:10:48

and partner in the international

00:10:49

arbitration practice in one of

00:10:51

the largest Singaporean Forum Raja

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Raja and tan lawyer for

00:10:59

construction by Chambers Asia pacifics

00:11:01

in 2015. He was also

00:11:04

recognized by the legal 500

00:11:06

Asia Pacific and best lawyers

00:11:08

and in the international who's

00:11:09

who of construction lawyers, he

00:11:12

focuses his practice on construction

00:11:15

disputes and Engineering disputes as

00:11:17

well as advising clients in

00:11:21

various and various project related

00:11:23

issues with over 25 years

00:11:26

of experience. He practiced he

00:11:30

had he was representing at

00:11:33

clients in both Singapore and

00:11:35

various arbitration tribunals across the

00:11:38

South East. Asia region. Lipsan

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is the fellow the Singapore

00:11:43

Institute of the arbitrators, and

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then I created agers without

00:11:48

further Ado. I'd like to

00:11:50

give word to Charlene who

00:11:52

will introduce the first topic.

00:11:54

Thank you Charlene. Thank you,

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Jean for those very nice

00:11:57

introductions. And thank you everyone

00:11:59

for joining us today. We

00:12:01

start our discussion with one

00:12:03

of the most commonly invoked

00:12:05

grounds for non-recognition under the

00:12:07

New York convention the public

00:12:09

policy exception. It is found

00:12:12

in article 52b of the

00:12:14

convention and permits National courts

00:12:17

to refuse to recognize a

00:12:18

foreign arbitral award if recognition

00:12:21

would be contrary to the

00:12:22

public policy of the country

00:12:24

in which recognition is sought

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The convention does not itself

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Define public policy which has

00:12:31

left it largely up to

00:12:32

National courts to define the

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Contours of the exception under

00:12:36

their own domestic laws. There

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has been a lot of

00:12:39

discussion of the public policy

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Exception by commentators and courts

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and most of it really

00:12:46

focuses on its potential for

00:12:48

over application. Although public policy

00:12:52

can be in a morphous

00:12:54
concept the travel preparatoire of

00:12:57
the convention demonstrates that the

00:12:59
exception was not intended to

00:13:01
be a catch-all for any

00:13:03
violation of domestic law, but

00:13:05
rather should function as a

00:13:06
safety valve to allow National

00:13:08
courts to deny recognition to

00:13:10
arbitral awards that would truly

00:13:12
offend the fundamental values of

00:13:14
the foreign State Contracting States

00:13:17
generally agreed that while the

00:13:20
safety valve was necessary to

00:13:21

include in the convention. It

00:13:23

should really only be pulled

00:13:24

in rare and extraordinary circumstances

00:13:27

less. The exception be allowed

00:13:29

to swallow the rule of

00:13:30

enforcing our Patrol Awards and

00:13:33

the underlying purpose of the

00:13:35

convention to create a uniform.

00:13:38

enforcement framework to prevent foreign

00:13:40

awards from being unduly discriminated

00:13:42

against and surveys of case

00:13:45

law have demonstrated that most

00:13:46

national courts in convention states

00:13:48

have heated the drafters intentions

00:13:51

to treat this exception as

00:13:52

exceptional. But the question remains

00:13:55

what kinds of values excuse

00:13:58

me in principles rise to

00:13:59

the level of being considered

00:14:01

part of the form States

00:14:03

public policy. In the United

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States, for example, the federal

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courts of appeals have defined

00:14:09

public policy as the form

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States most basic Notions of

00:14:14

morality and Justice and have

00:14:16

required that such policy be

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explicit well-defined and dominant. Now

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examples of successful article 52b

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challenges are really few and

00:14:27

far between in the US

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but one area where the

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US courts still appear to

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be puzzling through what role

00:14:34

the public policy exception should

00:14:35

play is in cases where

00:14:37

international relations are implicated by

00:14:39

the enforcement of a foreign

00:14:41

arbitral award. For example in

00:14:43

a 2018 decision from The

00:14:45

District Court of the District

00:14:46
of Columbia called Hardy exploration

00:14:49
versus India the court applied

00:14:51
the public policy exception to

00:14:53
decline recognition of an arbitral

00:14:56
award which required the government

00:14:58
of India to permit a

00:15:00
foreign oil and gas investor

00:15:01
to continue its exploration of

00:15:03
an offshore concession in India.

00:15:07
The US court did so

00:15:08
on the basis that confirming

00:15:10
an award requiring such specific

00:15:12
performance of the Indian government

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would encroach upon India's control

00:15:16

over its own territorial integrity

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and thereby violate International comedy,

00:15:23

which the court considered to

00:15:24

be part of US public

00:15:26

policy. Now the Hardy decision

00:15:29

has been criticized by commentators

00:15:31

as precedent that may have

00:15:33

opened the door to expanding

00:15:34

the public policy exception with

00:15:36

respect to investment awards every

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one of which could probably

00:15:39

be characterized by the foreign

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states that are as in

00:15:42

front to its sovereignty. And

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for what it's worth. I

00:15:46

think this is a case

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where the court had valid

00:15:49

concerns about its ability to

00:15:50

actually enforce the relief that

00:15:52

was granted in the award

00:15:53

and perhaps use the public

00:15:55

policy exception as a way

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to express those concerns but

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in doing so may have

00:16:01

unduly elevated the concept of

00:16:04

international comedy, which is a

00:16:06

concept almost as a morphous

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and difficult to Define as

00:16:10

the concept of public policy

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to the status of and

00:16:14

explicit and well-defined under painting

00:16:17

of the US legal order.

00:16:19

In any event the Hardy

00:16:21

decision illustrates how complicated questions

00:16:25

arise when National courts consider

00:16:27

what role domestic public policy

00:16:30

should play in matters affecting

00:16:32

International parties and international relations.

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Should National courts take a

00:16:37
more International perspective in applying

00:16:39
the public policy exception. For

00:16:42
example, should the offended domestic

00:16:44
policy also be enshrined within

00:16:46
International public policy to justify

00:16:49
refusal of recognition under Article

00:16:51
5 to be And what

00:16:53
if enforcing enforce what if

00:16:55
refusing enforcement rather on the

00:16:57
basis of a domestic public

00:16:58
policy would actually violate an

00:17:01
international public policy? Today our

00:17:04
distinguished panelists will tackle some

00:17:06

of these issues and discuss

00:17:08

the Contours of how the

00:17:09

public policy exception is applied

00:17:11

in their respective jurisdictions and

00:17:13

how considerations of sovereignty our

00:17:16

balanced against each Contracting State's

00:17:18

treaty obligations under the convention.

00:17:31

Jean I think there we

00:17:32

go. Yeah. Yeah. Thank you

00:17:33

Charlene. Thank you very much.

00:17:34

And first we will start

00:17:38

out jurisdictional discussion with yukkah,

00:17:41

please go ahead. Don't forget

00:17:44

to mute this so, there

00:17:46

we go. It's not thanks

00:17:48

very much. See oh, hi

00:17:50

everyone because I know speaker.

00:17:52

I'm not families from Japan.

00:17:54

I strikes to talk about

00:17:56

cereal called cases created to

00:17:59

enforcement that actually so far.

00:18:01

There has been no quote

00:18:04

Christian in Japan that is

00:18:06

created to Improvement or if

00:18:09

you sell enforcement of Avatar

00:18:11

award based on now we

00:18:12

see so but I try

00:18:14
to discuss or what I

00:18:16
direct introduced this evening is

00:18:18
it's our the quote, please.

00:18:24
Or reviews all enforcement on

00:18:27
all four in judgment based

00:18:30
on a public policy grounds.

00:18:32
Although there are difference between

00:18:34
a judgment and public church

00:18:37
in a world. I think

00:18:38
those court cases could be

00:18:40
a good kind of could

00:18:42
give a good and could

00:18:44
give some thought what did

00:18:46

happen in case of enforcement

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arature old. and the first

00:18:52

court case that I try

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explain to this is a

00:18:55

Supreme Court case which diffuse

00:18:58

enforcement of the arbitra award

00:19:01

based on the public policy

00:19:04

and the court said it

00:19:06

is against public policy of

00:19:08

Japan in to enforce and

00:19:10

the current quotation which around

00:19:13

the activity damages. because the

00:19:17

Japanese civil procedure role not

00:19:20

know anything damages allowed and

00:19:23

only compensatory damages are allowed

00:19:26

so the court only allowed

00:19:31

the enforcement of the punitive

00:19:33

damage part. Sorry. Yeah compensatory

00:19:36

images first, but the court

00:19:38

refused the enforcement of painted

00:19:41

damages, but So I think

00:19:44

this could be a kind

00:19:45

common Topic in various jurisdiction

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because I understand in many

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countries in Damages are not

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available. So if you know

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thinking damages, oh awarded in

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the arbiture by Avatar, you

00:20:02

know, and when the, you

00:20:04

know, we need party trying

00:20:05

to enforce that award. This

00:20:07

could be a can come

00:20:08

issue in various jurisdiction. And

00:20:11

one thing that maybe interesting

00:20:14

is and created is better.

00:20:18

Sorry, let me start over

00:20:21

and in addition to not

00:20:23

allowing things to damages in

00:20:26

Japan. There are there is

00:20:28

a limitation of possible interest,

00:20:30

you know, that can be

00:20:33

a demanded. So for example

00:20:35

for for the for the

00:20:42

amount more more than one

00:20:44

million Japanese Yen, which I

00:20:47

believe is the 10,000 US

00:20:49

dollar I did the maximum

00:20:51

allowed interest is doing sorry

00:20:55

15% So there could be

00:20:58

an another issue whether any

00:21:01

award which allows interest. More

00:21:06

than 15% could be enclosed

00:21:09

for example in Japan. And

00:21:11

are related to be is

00:21:13

better, you know if the

00:21:16

court client. You know the

00:21:18

award which allows are the

00:21:21

interest for them 50% is

00:21:24

entirely to you know, refuse

00:21:26

should be entirely refused to

00:21:28

enforce or should be just

00:21:30

partially is used force and

00:21:33

based on the Supreme Court

00:21:36

case that I just introduced.

00:21:37

I think you know the

00:21:40

likely outcome is that only

00:21:43

their person that is about

00:21:44

the maximum interest be if

00:21:48

you stand for us, so

00:21:49

it's my observation there has

00:21:52

been no qualifications so far

00:21:54

and I I think my

00:21:56

time to the next topic

00:21:59

and this is court case

00:22:02

created to customization. And to

00:22:06

be simplified this is a

00:22:08

case where? The winning party

00:22:12

are one. Okay the case

00:22:14

in Hong Kong court and

00:22:17

the court. Ordered. No, we

00:22:22

need sorry. the the losing

00:22:26

party to pay the the

00:22:29

cost of lawyers of the

00:22:32

party as Phil and because

00:22:34

in Japan The you know,

00:22:38

the cost of civilization is

00:22:40

the cost of the council.

00:22:42

It be paid by you

00:22:44

know each party. So it

00:22:45

became an issue whether such

00:22:47

you know judgment which orders,

00:22:50

you know, they're always in

00:22:51

protein to pay the lawyers

00:22:53

post of their winning protein

00:22:56

can be enforced and the

00:22:57

result was that could allowed

00:22:59

I enforcement of such, you

00:23:01

know, when judgment so, you

00:23:03

know, this is also kind

00:23:05

of related topic because in

00:23:07

arbitration as you know, as

00:23:11

many of you should know

00:23:12

that it is quite porn

00:23:13

that the tree now orders

00:23:17

everything pretty to pay the

00:23:20

arbitration post. Of the winning

00:23:23

protein including the cost of

00:23:25
council. Thank you. Yoga. Thank

00:23:28
you very much. It was

00:23:29
a it was a very

00:23:30
interesting and I'm sure there

00:23:32
will be questions about your

00:23:34
view from Japan now we

00:23:37
will we will travel through

00:23:41
our hyper space vehicle across

00:23:44
the world to Panama and

00:23:46
ask and ask David Mizrahi

00:23:50
to give us Panamanian perspective

00:23:53
on a public policy exception

00:23:56
how it works in the

00:23:58

courts of Panama. And thank

00:24:01

you Jean for allowing me

00:24:02

to open this Pandora's Box

00:24:05

and indeed. It's a very

00:24:09

interesting topic. I also want

00:24:11

to thank Jose Antonio and

00:24:13

Ian for organizing this world

00:24:15

arbitration update and for inviting

00:24:17

us to speak. It Panama

00:24:21

has had. the benefit of

00:24:24

a relatively new and modern

00:24:27

arbitration law which Incorporated the

00:24:32

principle of Rejecting enforcement based

00:24:38

on the pretty much the

00:24:40

same Concepts or the same

00:24:43

exceptions that are outlined by

00:24:46

the New York convention. So

00:24:47

in that sense our domestic

00:24:50

arbitration law mimics or copies

00:24:54

this concept of public policy.

00:24:56

However, as as Charlene, so

00:25:00

ably said it earlier, it

00:25:01

doesn't really Define it. So

00:25:04

it's left a very open-ended

00:25:07

and the way that Circle

00:25:10

has been closed is by

00:25:11

the enactment in a few

00:25:14

years later two years later

00:25:15

of lost 61, which is

00:25:18

Panama's code of private international

00:25:22

law. So lost 61 actually

00:25:25

has a definition. of public

00:25:29

policy rather public order which

00:25:32

is the concept many civil

00:25:34

law jurisdictions use a roughly

00:25:37

translate this concept of public

00:25:39

policy and I would like

00:25:41

to adlib the definition which

00:25:46

is set out by the

00:25:48

and and curiously is not

00:25:51

set out in the arbitration

00:25:53

law but in the code

00:25:54

of International Private law and

00:25:56

I'd like to read it

00:25:57

out loud because it says

00:26:00

International public order is the

00:26:02

reserve or power of the

00:26:04

judge. To be able to

00:26:07

reject by virtue of this

00:26:09

exception. the applicability of a

00:26:13

law of a foreign law

00:26:15

or foreign treaty which application

00:26:17

within the tournament cause shall

00:26:22

have the judge violate principles

00:26:27

or Norms which are fundamental

00:26:29

to its positive order or

00:26:32

do its Positive or to

00:26:35

its substantive policy. That's that's

00:26:36

how I translate then it

00:26:39

goes on. to Define what

00:26:41

Panamanian public order is and

00:26:46

it's a much broader. definition

00:26:48

and it says Is it

00:26:52

is the collection of imperative

00:26:56

Norms of Panamanian legislation that

00:26:59

the parties? Cannot ignore because

00:27:04

so that that is basically

00:27:05
what it is giving us

00:27:06
by way of defining what

00:27:10
international public policy is so

00:27:12
I can note for example

00:27:14
the words fundamental. As it

00:27:18
relates directly to the international

00:27:20
public policy, but when it

00:27:23
talks about Panama Panamanian public

00:27:26
order, it's much broader. It

00:27:27
says normal, which means obligatory.

00:27:33
Law now, what's obligatory note

00:27:35
a norms? That's another open

00:27:38
question because each court is

00:27:40

gonna say well, this is

00:27:41

a norm that must be

00:27:43

applied another poor may say

00:27:44

no it's a norm that

00:27:45

the parties have the option

00:27:47

of attending or ignoring. now

00:27:49

it also has and this

00:27:52

is even more Curious on

00:27:54

articles 7. of the code

00:27:58

of International Private law it

00:28:00

says the legal effects of

00:28:03

an action or foreign law

00:28:06

shall not be recognized. Neither

00:28:08

totally. No partially when it's

00:28:10
application. violates the international public

00:28:15
order then it says Foreign

00:28:19
law shall not be applied

00:28:20
shall be I'm sorry for

00:28:22
in law. Shall be in

00:28:24
those cases I had. supplemented

00:28:30
or or should be should

00:28:37
be trumped by the internal

00:28:41
law. So that's that's what

00:28:43
the codes or the laws

00:28:46
are giving us. The the

00:28:47
black letter law per se.

00:28:50
when we look specifically at

00:28:53

how the enforcement exception based

00:28:57

on public policy is outlined

00:29:00

in the arbitration law it

00:29:02

says That the recognition or

00:29:05

the enforcement of the award

00:29:07

shall be contrary to the

00:29:09

public International order of Panama.

00:29:13

So there is the interplay

00:29:15

between the two definitions that

00:29:16

I read earlier. looking at

00:29:19

how a the courts applied

00:29:23

in Panama. There's a court

00:29:24

that has basically exclusive jurisdiction

00:29:27

on the determining this it's

00:29:29

not according. It's a chamber

00:29:30

of the Supreme Court the

00:29:32

fourth chamber of the Supreme

00:29:33

Court, which is the one

00:29:34

that looks at and or

00:29:36

decides enforcement matters of foreign

00:29:40

or retro Awards and also

00:29:41

the exit water that court

00:29:43

has issued basically two rulings.

00:29:47

it seems 2015 one of

00:29:51

them tried to expand on

00:29:54

the definition based on foreign

00:29:57

Doctrine and it says by

00:29:59

this definition we can conclude

00:30:01

that. The public order is

00:30:03

bridge when an action is

00:30:05

executed which is contrary contrary

00:30:07

to the fundamental principles of

00:30:09

the states general interest principles,

00:30:12

which are found in the

00:30:13

Constitution the laws and the

00:30:16

regulations of our internal. a

00:30:20

loss and basically in that

00:30:23

case it said that there

00:30:24

was no violation of public

00:30:26

policy or public order. There's

00:30:28

a that case is dated.

00:30:31

2016 March of 2016 there's

00:30:34

another case in which they

00:30:38

wouldn't even further and they

00:30:39

Define public order as fundamental

00:30:42

principles tending to Justice and

00:30:45

morality that a state wants

00:30:47

to protect. Rules that are

00:30:49

oriented to sustain the essential

00:30:51

interests of the states and

00:30:52

political social or economic matters.

00:30:55

Known as Vlad the police

00:30:57

or rules of public order.

00:31:00

And the general respect of

00:31:02

and this goes to the

00:31:04

issue of Comedy which was

00:31:05

alluded to by Charlene as

00:31:07

well to respect allegations contracted

00:31:10

between states and international organizations.

00:31:13

finally this concept is also

00:31:16

latent. in the set aside

00:31:21

provisions of domestic arbitrations. So

00:31:24

in that sense in that

00:31:26

context, it has been examined

00:31:27

quite a bit by the

00:31:29

Supreme Court of Panama by

00:31:31

the fourth chamber. Thank you

00:31:32

very much. I think I'm

00:31:33

out of time. Thank you.

00:31:34

Thank you David. Appreciate your

00:31:37

view from Panama. Our next

00:31:40

presenter speaker is the Kiana

00:31:44

from Ukraine. So we'll be

00:31:46

travel to Europe. I will

00:31:48

be traveling to Europe right

00:31:49

now to Canada. So your

00:31:52

turn. Yeah, thank you. First

00:31:55

of all, I would like

00:31:55

to join the words of

00:31:57

the Gratitude to the organizers

00:32:00

and say that we are

00:32:01

honored to be at the

00:32:02

beginning of such great event

00:32:04

and among so distinguished analysts

00:32:07

if to speak about Ukraine,

00:32:09

maybe I will just concentrate

00:32:11

on the issue which appeared

00:32:13

in our life suddenly with

00:32:16

great PT. It's the events

00:32:20

of 2014 the aggression of

00:32:22

Russian Federation and definitely the

00:32:24

situation would not bought influence

00:32:26

the notion of National Security

00:32:28

which became of a mountain

00:32:31

importance for the Ukraine and

00:32:32

that period of time and

00:32:34

in this regard the notion

00:32:36

of National Security in a

00:32:38

certain extent to influence the

00:32:40

understanding of the public policy

00:32:41

in Ukraine including with regard

00:32:45

to the enforcement of foreign

00:32:47

words in 2014 this specific

00:32:49

law on sanctions. Was adopted

00:32:52

in Ukraine and these laws

00:32:54

and many other countries connecting

00:32:55

with this ancient regime has

00:32:57

introduced some sorts of prohibiting

00:33:02

actions like such the prohibition

00:33:05

of transfer of assets fulfillment

00:33:09

of the economic activities Financial

00:33:10

Obligations Etc. And on the

00:33:14

other hand it tied these

00:33:16

to the notion of the

00:33:18

National Security and the adherence

00:33:22

of the company to the

00:33:25

country aggressor. And in 2015

00:33:28

the Ukrainian Parliament adopted the

00:33:31

specific degree with the Russian

00:33:33

Federation was announced the country

00:33:35

aggressor. Also, it was the

00:33:38

period of the prohibition of

00:33:40

expert activities Etc and definitely

00:33:44

in private sector. It caused

00:33:46

the violation of the contracts

00:33:47

and Ukraine faced first the

00:33:50

ex. Solution of two Awards

00:33:54

issued by the Russian Federation

00:33:56

ICC. I I see a

00:33:59

the international commercial nutrition quartet

00:34:01

H to the Russian Federation

00:34:02

chamber and this specification was

00:34:08

that there were the there

00:34:11

were two Awards and the

00:34:12

first one of the two

00:34:14

Circles of the Court proceedings

00:34:16

actually finished by the decision

00:34:18

of the Supreme Court, which

00:34:21

said that the sanctions on

00:34:24

the part of the Ukrainian

00:34:25

public policy that actually the

00:34:27

Ascension regime is something which

00:34:30

lays in another field. It

00:34:32

could be referred to only

00:34:36

in respect of the further

00:34:38

execution of the award and

00:34:40

if the country or if

00:34:42

the entity is in essentially,

00:34:45

so the execution would be

00:34:47

stayed but they also release

00:34:49

which are obliged to provide

00:34:51

for these execution. But in

00:34:53

almost a couple of weeks

00:34:56

these position has been detrimental

00:34:58

change and the second word

00:35:00

between the same body but

00:35:02

parties issued by the I

00:35:07

International commercial graduation Portage to

00:35:10

the Russian Federation chamber Commerce

00:35:12

and the industry again after

00:35:14

the circles of going from

00:35:16

first instance to the third

00:35:18

finished by quite opposite decision

00:35:21

of the Supreme Court, which

00:35:24

said that sanction represents one

00:35:27

of the new aspects of

00:35:29

public policy and Ukraine and

00:35:32

even the relations between these

00:35:34

two cases. Where are referred

00:35:35

as that in the first

00:35:37

one before did not examine

00:35:39

all the obstacles and all

00:35:41

the circumstances of the case.

00:35:43

And finally they did not

00:35:44

pay attention that the claimant

00:35:48

is an essentially it. Is

00:35:53

connected to with the military

00:35:56

industry of Russian Federation and

00:35:59

it means that if the

00:36:01

awards would be executed in

00:36:03

its favor, but then surely

00:36:05

it can be advantages for

00:36:08

the Russian military industry and

00:36:10

disadvantages for the Ukrainian National

00:36:13

Security because of this reasoning

00:36:15

the court said that not

00:36:18

the execution Authority but the

00:36:20

court itself is responsible for

00:36:22

final decision. And that means

00:36:24

that this work could not

00:36:26

be enforced and could not

00:36:27

be executed. But at the

00:36:30

same time the equipment that

00:36:32

even a certain extent or

00:36:34

for any events, these company

00:36:36

would be dropped from this

00:36:38

sanction list. It will give

00:36:40

the claimant to the possibility

00:36:42

to restart the execution needless

00:36:45

to say that at the

00:36:47

same time. The code did

00:36:48

not manage to refer. What

00:36:50

would be the procedural grounds

00:36:52

for that. Take into contrast

00:36:54

your Ducati issues the terms

00:36:56

for the applying for execution

00:36:58

Etc. And finally the third

00:37:00

word which was issued very

00:37:02

recently made very serious conclusion

00:37:05

from the point of the

00:37:07

enforcement. It was said in

00:37:09

this world, which was issued

00:37:11

by the Supreme Court against

00:37:13

the enforcement of the Stockholm

00:37:17

Chamber of Commerce. What issued

00:37:19

in favor of Oz can

00:37:20

against the Ukrainian State entity

00:37:23

with reference that on the

00:37:25

one hand the ukrainians then

00:37:27

entity is one of the

00:37:29

objects for the big privatization

00:37:30

and the execution of such

00:37:32

a word would be detrimental

00:37:34

to the Ukrainian economic stability

00:37:36

and the budgeting and on

00:37:39

the other hand the Ukrainian

00:37:41

quote paid the attention that

00:37:43

among the creditors of the

00:37:46

claimant is the Russian Bank

00:37:49

us from bank, which is

00:37:50

also included in the least.

00:37:52

And that this can mean

00:37:56

that the money received by

00:37:58

the claimant can be used

00:38:00

by the Russian Bank as

00:38:03

well. Probably for the needs

00:38:06

of the Russian military industry.

00:38:10

The letter also was connected

00:38:13

with the issue of the

00:38:14

National Security that such type

00:38:18
of the payments are in

00:38:20
very little violation of the

00:38:24
National Security notion. This is

00:38:27
very important decisions because any

00:38:30
party now should consider if

00:38:32
there is any relations in

00:38:33
further execution with Russian Federation

00:38:36
Russian entities. They can't face

00:38:38
as a problem. Hope I'm

00:38:41
and I'm thank you. Thank

00:38:44
you the channel. I appreciate

00:38:44
was a very interesting you

00:38:46
from Ukraine and the last

00:38:49

use from Singapore. Just going

00:38:53

back going back to the

00:38:55

east. Now alipson, please. Thank

00:39:01

you. Thank you to everyone

00:39:04

the organizers and the attendees

00:39:06

for listening in this evening

00:39:10

morning. Wherever you are. I

00:39:11

saw a very friendly hello

00:39:13

from someone from Haiti a

00:39:15

moment ago in this new

00:39:17

normal where everyone is struggling

00:39:19

to maintain Commerce and active

00:39:22

practice resolution of disputes and

00:39:25

efficient manner. I think from

00:39:28

Forum like wow is very

00:39:29

very key and I would

00:39:31

just like to bring us

00:39:33

back to the topic at

00:39:34

hand, which is a comparison

00:39:36

between the civil and common

00:39:38

law jurisdiction. So for Singapore,

00:39:41

we we are a common

00:39:42

law jurisdiction. Therefore whatever influences

00:39:46

International arbitration practice on our

00:39:49

tiny little Island state comes

00:39:52

from the laws that are

00:39:54

made by Parliament as well

00:39:56

as judgment law in terms

00:39:59

of judgments of our courts

00:40:01

and judicial system now. Shalin

00:40:05

has done a great job

00:40:06

introducing this topic and everyone

00:40:08

should take note that article

00:40:11

5 of the New York

00:40:12

convention essentially has the two

00:40:14

most common limbs where a

00:40:17

discounted party attempts to challenge

00:40:20

an arbitration Awards the first

00:40:22

being that the matter or

00:40:25

the dispute was not capable

00:40:26

or settlement by arbitration and

00:40:29

the second which concerns this

00:40:31

panel today is that the

00:40:33

recognition and enforcement will be

00:40:36

contrary to the public policy

00:40:37

of that country. Now as

00:40:40

users of arbitration as councils

00:40:43

as arbitrators, I would Hazard

00:40:46

a guess that for many

00:40:49

Forum Shopping might be a

00:40:52

issue that would influence the

00:40:56

approach to the underlying arbitration

00:40:58

Clause right at the very

00:40:59

beginning but as dispute resolution

00:41:02

lawyers, we are served whatever

00:41:04

comes to us at the

00:41:05

end of that process. Now,

00:41:08

if you have an arbitration

00:41:09

Clause that points towards Singapore

00:41:12

or enforcement that involves Singapore.

00:41:15

You should take heart in

00:41:17

the fact that Singapore jurisdiction.

00:41:20

Is generally viewed to be

00:41:23

one of the most Pro

00:41:24

arbitration regimes in Asia. Whether

00:41:28

it's the ICC where Yoko

00:41:29

Hills from or the siec

00:41:31

or other jurisdiction institutions that

00:41:33

there are plenty of good

00:41:36

established iae International arbitration practices

00:41:39

in Singapore. Now, the courts

00:41:42

have therefore had opportunity to

00:41:44

consider the public policy objections

00:41:47

and it's gone up as

00:41:49

high as our court of

00:41:51

appeal the Judgment involves this

00:41:54

Indonesian entity called the serial

00:41:57

against a bang called dexia

00:42:00

Bank. And very importantly the

00:42:03

court. Observes that enforcement challenges

00:42:08

would only take place when

00:42:11

it is an exceptional case.

00:42:14

And when upholding of the

00:42:16

award would shock the conscience

00:42:18

and clearly injurious to the

00:42:20

public good very very strong

00:42:22

language. They go on to

00:42:24

say that it has to

00:42:25

be holy offensive to the

00:42:28

ordinary and reasonable person and

00:42:30

as David pointer under Panama

00:42:33

law you have Notions of

00:42:35

morality and Justice introduce as

00:42:38

well. So my observation would

00:42:41

be whether you listen to

00:42:43

the Panamanian Voice or the

00:42:45

Japanese voice. I think you're

00:42:47

starting to see very common

00:42:49

threats that would deal with

00:42:52

public policy. And in the

00:42:55

for several case the application

00:42:58

was dismissed because the costs

00:43:01

felt that the second award

00:43:03

which was published without even

00:43:06

an oral hearing was merely

00:43:08

a rehash of ventilation of

00:43:11

the same substantive issues in

00:43:13
the first arbitration and that

00:43:15
was not something that they

00:43:18
would stand for. And there

00:43:20
is another case I would

00:43:22
just quickly deal with before.

00:43:24
I handle my back to

00:43:26
G. This is a 2015

00:43:29
musician which involves an entity

00:43:32
known as coal and oil

00:43:34
versus G HCL and this

00:43:38
is a common issue. I

00:43:39
think that arises when users

00:43:43
of international arbitration criticize the

00:43:45

process where decisions of the

00:43:48

tribunal take longer than expected.

00:43:51

So in this case the

00:43:53

decision Took 19 months between

00:43:56

the post hearing submissions and

00:43:59

the date of release of

00:44:00

the award and the court

00:44:03

was invited to consider that

00:44:05

this was somehow in conflict

00:44:07

with the public policy of

00:44:09

Singapore and the court felt

00:44:11

that public policy arguments tended

00:44:15

to be the last Refuge

00:44:17

of the desperate this again,

00:44:20

very very strong words used

00:44:22

by our courts and the

00:44:24

court also observes that in

00:44:27

Prior instances where challenges were

00:44:30

made to an award regressively

00:44:32

issue 10 years after the

00:44:34

hearing but no doubt up

00:44:36

Health by the cause so

00:44:39

the court said too bad.

00:44:41

Ultimately Gene in Singapore the

00:44:44

evidential threshold improving any violations

00:44:47

of natural Justice and public

00:44:49

policies going to be very

00:44:50

very high. So there are

00:44:52

very very few. Very limited

00:44:55

cases where the Singaporean caught

00:44:56

have set aside or refuse

00:44:59

them Force. Thank you g

00:45:01

Live Sun thank you very

00:45:03

much. As you need very

00:45:05

very interesting. It just fascinating

00:45:06

to see difference in approach

00:45:10

different jurisdiction and different courts.

00:45:12

I have some questions. I'm

00:45:13

sure the participants on the

00:45:16

panel have questions. But before

00:45:19

we turn in the Q&A,

00:45:21

we'll give a word back

00:45:23

to Charlene who will introduce

00:45:25

the next topic the enforcement

00:45:27

of entering Awards. Of course,

00:45:31

we will understand the there's

00:45:35

this spread. There's a the

00:45:37

interim Awards the becoming more

00:45:40

popular right now, the emergency

00:45:43

arbitration becoming more popular. So

00:45:46

the issue arises the time

00:45:48

there is a potential for

00:45:50

more and more. This issues

00:45:52

are rising out of the

00:45:53

enforcement of such Awards. So

00:45:55

Charlene without for the year

00:45:59

term, please Absolutely. Thanks Jean.

00:46:01

So as Jean mentioned our

00:46:06

next topic has really taken

00:46:07

on increasing importance with the

00:46:09

widespread use of international arbitration

00:46:12

for all types of complex

00:46:14

commercial disputes, which often do

00:46:17

require interim arbitral relief as

00:46:20

a means of preserving the

00:46:21

arbitral process at the outset.

00:46:26

Interim measures as we will

00:46:27

discuss them today generally Encompass

00:46:30

an arbitrator's granting of temporary

00:46:32

relief that is aimed at

00:46:34

preserving the status quo pending

00:46:36

resolution of the party's dispute

00:46:38

on the merits. These measures

00:46:41

are usually designed to prevent

00:46:42

one party from taking action

00:46:44

that might affect the enforceability

00:46:47

of a final award. Or

00:46:49

might otherwise render the arbitration

00:46:51

meaningless. This usually concerns the

00:46:55

destruction or disposition of assets

00:46:58

or taking some other kind

00:46:59

of action that could cause

00:47:01

irreversible harm to one of

00:47:03

the parties before their dispute

00:47:05

can be resolved. Interim relief

00:47:08

can be granted by the

00:47:10

parties chosen tribunal or as

00:47:12

as Gene mentioned an emergency

00:47:15

arbitrator who may be convened

00:47:18

shortly after the commencement of

00:47:19

an arbitration. But before the

00:47:21

parties have had a chance

00:47:22

to agree upon a tribunal

00:47:24

that will decide the merits

00:47:25

of their dispute an emergency

00:47:28

arbitrator would typically derive his

00:47:30

or her Authority from a

00:47:32

set of our virtual rules

00:47:33

that permit or offer emergency

00:47:35

arbitration procedures and we find

00:47:38

these kinds of rules in

00:47:40

the ICC rules or the

00:47:42

CIA rules. For example And

00:47:45

I think at this point

00:47:46

most arbitral rules including the

00:47:48

2010 UNCITRAL rules now recognize

00:47:51

an arbitrator's authority to Grant

00:47:53

interim measures and provide that

00:47:56

seeking judicial enforcement of such

00:47:58

measures shall not constitute a

00:48:00

waiver of the right to

00:48:01

arbitrate. Nonetheless enforcement is still

00:48:04

up to National courts and

00:48:06

the approach taken will depend

00:48:08

largely upon the legal regimes

00:48:10

that are applicable in that

00:48:11

country. Now when it comes

00:48:13

to enforcement of arbitral interim

00:48:16

relief, there are generally two

00:48:17

bodies of law that are

00:48:19

going to govern first then

00:48:21

you are convention. And second

00:48:24

domestic law which may be

00:48:26

shaped by the UN model

00:48:28

law on Commercial arbitration if

00:48:30

it has been adopted in

00:48:32

that particular jurisdiction. Now to

00:48:35

start the New York convention

00:48:36

does not expressly address the

00:48:39

enforcement of arbitral interim measures

00:48:41

and on its face. It

00:48:44

appears to apply only to

00:48:45

Awards which begs the question

00:48:48

and has for some time

00:48:50

as to whether interim relief

00:48:52

granted in the form of

00:48:53

an order for example would

00:48:54

fall under the conventions framework.

00:48:56

The other issue that can

00:48:59

sometimes arise under the convention.

00:49:01

Although the convention does not

00:49:04

expressly contain any requirement that

00:49:06

and awards subject to enforcement

00:49:08

must be final. It does

00:49:10

an article 51 e permit

00:49:14

non-recognition of an arbitral award

00:49:16

that is not yet binding

00:49:17
and interim relief May arguably

00:49:21
fall into that category by

00:49:24
its nature because it's subject

00:49:26
to revision or setting aside

00:49:28
later by the merits tribunal

00:49:30
which will be based on

00:49:32
later circumstances. So those are

00:49:35
two issues that that have

00:49:38
been deemed to arise under

00:49:39
the New York convention the

00:49:40
model law as revised in

00:49:43
2006 tries to fix those

00:49:44
two issues first. It provides

00:49:47

that interim measures granted by

00:49:48

an arbitrator are enforceable regardless

00:49:51

of what form the relief

00:49:52

comes in whether it's an

00:49:54

award or in order and

00:49:56

second. It provides that interim

00:49:58

measures should be deemed as

00:50:00

binding as any other kind

00:50:02

of award. But although the

00:50:07

model law has been adopted

00:50:08

in 85 States including three

00:50:11

of the for jurisdictions that

00:50:12

are covered by our panelists

00:50:14

today. It has not been

00:50:15

as widely accepted as the

00:50:17

New York convention and has

00:50:19

not for example been adopted

00:50:21

in Panama where David practices

00:50:23

and and David may be

00:50:25

able to speak more today

00:50:26

about how these issues are

00:50:28

handled by the Panamanian courts.

00:50:31

And even the model law

00:50:32

is silent on other issues

00:50:33

that may go to the

00:50:34

enforceability of interim relief such

00:50:37

as whether relief granted by

00:50:38
an emergency arbitrator through one

00:50:41
of those procedures. For example

00:50:42
in the ICC or CF

00:50:44
rules. Who was appointed by

00:50:46
the arbitral institution. Whether that

00:50:50
kind of relief would be

00:50:51
enforceable in the same manner

00:50:52
as if it had been

00:50:53
granted by the party's chosen

00:50:55
arbitrator or Tribunal. Finally, the

00:51:00
last practical issue that I

00:51:02
wanted to mention was that

00:51:04
the procedural mechanisms available for

00:51:06

enforcement in the jurisdiction. We're

00:51:08

enforcement is sought may also

00:51:09

be important as they can

00:51:11

affect the timing of enforcement

00:51:13

which can be Paramount when

00:51:15

you're dealing with urgent preliminary

00:51:16

relief. As I alluded to

00:51:19

earlier an application to enforce

00:51:22

an interim measures award under

00:51:23

the New York convention may

00:51:25

be subject to litigation over

00:51:26

the other party's Article 5

00:51:28

defenses, which at least in

00:51:30

the United States can take

00:51:32

months to run its course.

00:51:34

so when you have circumstances

00:51:36

a real urgency the effectiveness

00:51:38

of the interim measure may

00:51:40

actually hinge upon the availability

00:51:42

of immediate temporary injunctive relief

00:51:45

that mirrors the arbitral interim

00:51:48

measure or something like a

00:51:51

Judicial executor procedure by which

00:51:53

the interim measure can immediately

00:51:55

come into force with litigation

00:51:57

over challenges to enforcement to

00:51:59

follow So without drawing out

00:52:03

the wind up any further,

00:52:04

I will open it up

00:52:05

to our panelists to discuss

00:52:06

how some of these issues

00:52:08

are treated in their respective

00:52:09

jurisdictions and for their thoughts

00:52:12

on other strategic considerations surrounding

00:52:15

the enforcement of interim measures.

00:52:17

Thank you Charlene. It's great

00:52:20

introduction for the topic. It's

00:52:22

a fascinated topic indeed and

00:52:24

we'll start with yoga again.

00:52:27

They need practical cases any

00:52:30

court cases in Japan that

00:52:32

would give us a little

00:52:33

view of you on how

00:52:36

Japanese chords you or treat

00:52:39

entering Rewards. Sure. Thank you

00:52:43

Jane. And again not again

00:52:46

that actually and the current

00:52:48

release situation in Japan. I'm

00:52:50

eating your word cannot be

00:52:51

important. So there is no

00:52:54

there has been no court

00:52:55

cases this regard to the

00:52:57

enforcement of the internal Outlook.

00:52:59

But Amendment of the arbitration

00:53:03

Act is currently being discussed

00:53:06

by task. Of course. Under

00:53:09

which enforcement of eating a

00:53:11

world becomes possible. So and

00:53:15

this amendment is basically property

00:53:18

to implement 2016 are model.

00:53:23

So After this, you know

00:53:27

mutation Act is amended. We

00:53:30

hope that the intern award

00:53:33

can be encouraged in a

00:53:35

similar manner with us under

00:53:39

the acetone model. But of

00:53:41

course are some parts of

00:53:43

the answer to rule model

00:53:44

needs to be modified to

00:53:47

hit into Japanese video systems

00:53:50

and practices. So, um for

00:53:53

the purpose of today's how

00:53:54

discussion I actually assume that

00:53:57

the current discussion which in

00:54:01

the task force, which is

00:54:02

summarized in a kind of

00:54:04

tentative draft is an actually

00:54:06

enacted and introduce our severity

00:54:10

leading topics in this regards.

00:54:13

And the first week is

00:54:16

what kind of inter major

00:54:18

can be imposed in Japan.

00:54:21

and so and the different

00:54:25

draft provides that as one

00:54:29

of the grounds to diffuse

00:54:30

the enforcement of entering award.

00:54:34

That any intern Award of

00:54:37

the nature that can be

00:54:38

encourse and the Japanese rule

00:54:40

kind of thing first. So

00:54:42

it is kind of tutorial

00:54:43

but this is understood to

00:54:46

be to me that this

00:54:50

is basically on the Internationals

00:54:53

that are not available and

00:54:55

the Japanese school. So for

00:54:57

example in Japan now like

00:55:00

brought up into nature such

00:55:03

as preaching orders or receiver

00:55:05

supporters, or are you a

00:55:08

Junctions are not available? So

00:55:10

I'm not sure whether Avatar

00:55:13

Chino open issues such interventures,

00:55:17

but if we have such

00:55:18

Road intermitters or issues by

00:55:22

the truly know it is

00:55:24

kind of unlikely to be

00:55:26
able to be a person

00:55:27
Japan. and the second point

00:55:30
is your second question is

00:55:34
a native to our formalistic

00:55:37
requirements, which is very strict

00:55:39
in Japanese called procedure. So

00:55:41
for example, there is a

00:55:44
kind of very specific way

00:55:45
to draft other dispositive part

00:55:49
of the judgment. By the

00:55:50
quote. So therefore if the

00:55:54
Avatar award, I mean the

00:55:56
eating already not true feeling

00:56:01

such formalistic requirements. They're such

00:56:05

internal can be devised and

00:56:08

of course and the tentative

00:56:11

draft that I call that's

00:56:12

not Theory first to whether

00:56:15

the court could do or

00:56:17

could not do But that's

00:56:19

you might be aware. Um

00:56:21

a part of the model

00:56:23

which is done article 17

00:56:25

allows the quote to kind

00:56:28

of device the internet world

00:56:31

to to heat into the

00:56:34

products or the cold power

00:56:36

to enforce it. But this

00:56:38

part of model role is

00:56:40

actually not included in a

00:56:43

Japanese draft. So it is

00:56:45

likely that or Irish in

00:56:49

my opinion. It is likely

00:56:51

that the Japanese Court refused

00:56:54

to modify the intern hour,

00:56:58

which is strictly not fulfilling

00:57:01

the Humanistically, we're going and

00:57:05

not be enforced but it

00:57:08

isn't, you know kinds of

00:57:09

lift to the practice of

00:57:12
the Japanese court. So it

00:57:14
is not very long and

00:57:16
the study in the last

00:57:17
point is briefly very Griffith

00:57:19
is how to enforce the

00:57:22
intern award and as again

00:57:24
see many of you might

00:57:26
know that should know that

00:57:28
you know how to enforce

00:57:31
it in already lived to

00:57:33
the discretion of the each

00:57:35
domestic or And that is

00:57:39
the same on the different

00:57:41

school and the issue is

00:57:43

how to import. Some eating

00:57:47

hours which are proceeded some

00:57:49

action or or order some

00:57:52

action from the respondent. And

00:57:55

I interestingly our insurance the

00:58:01

draft of thinkers in draft

00:58:03

included our calls to allow

00:58:05

the quote to cause a

00:58:07

penalty. for no compliance of

00:58:10

the internet award against the

00:58:13

bleaching party, but that course

00:58:15

was later excluded. So it

00:58:18

is again very gift with

00:58:20

the domestic poor Japanese Court

00:58:22

to how to enforce such

00:58:24

in our event. I'm pretty

00:58:25

curious how such kind of

00:58:27

meeting naturally is actually enforcing

00:58:30

other jurisdictions. Thank you very

00:58:33

much. Thank you. Thank you

00:58:37

yoga. It's very interesting. Yeah

00:58:40

Special The View that the

00:58:42

Japanese course of every formalistic

00:58:44

and they will just follow

00:58:45

the procedural aspects of strictly.

00:58:47

So it's quite interesting I

00:58:49

think. console when they deal

00:58:51

with enforcement or when they

00:58:54

deal with parties that relate

00:58:56

to Japan, they should definitely

00:58:58

take that in the account

00:59:00

and definitely seek advice from

00:59:03

a yoga of a college

00:59:05

on a specific issues relating

00:59:08

to enforcement of Japan in

00:59:10

Japan before the issues arises.

00:59:13

Thank you. Okay again, sir,

00:59:14

okay. Thank you. David the

00:59:20

view from Panama. Thank you

00:59:22

very much. Jean and Yoko.

00:59:24

I really like your presentation.

00:59:27

Once again, Panama has a

00:59:30

very good and reliable roadmap

00:59:33

and I say that not

00:59:35

necessarily because the roadmap is

00:59:37

always followed but prior to

00:59:39

the enactment of the arbitration

00:59:41

law interim measures were not

00:59:44

enforceable by way of exit

00:59:47

water. So the exit water

00:59:49

in Panama whether it be

00:59:50

for arbitral awards or Court

00:59:55

courts of law judgments was

00:59:58

reserved and limited to final

01:00:01

judgments or final Awards in

01:00:03

the marriage that however changed

01:00:05

in 2013 when the arbitration

01:00:08

law was passed. so article

01:00:10

43 of the arbitration law

01:00:13

specifically allows for the enforcement

01:00:16

of an interim measure. within

01:00:20

an arbitration a foreign arbitration

01:00:23

specifically Unfortunately the way it

01:00:27

is set up. It is

01:00:28

rather cumbersome because you have

01:00:30

to go through the whole

01:00:31

Loop of the Supreme Court

01:00:32

or Panama as I mentioned

01:00:34

earlier. And the exceptions are

01:00:36

the objections to enforcement that

01:00:39

are available. As objections, for

01:00:42

example, the public policy objection

01:00:43

the non-existence of an arbitration

01:00:46

objection plus other objections are

01:00:48

available and it's it's rather

01:00:51

bureaucratic. You have to with

01:00:53

a supreme court. You cannot

01:00:54

go directly to our trial

01:00:56

court. The Supreme Court has

01:00:57
to look at it and

01:00:58
the Supreme Court has if

01:01:00
the Supreme Court grants it

01:01:01
there's a presumption. For enforceability,

01:01:04
but if a supreme court

01:01:06
granted then has to delegate

01:01:07
upon our court. And by

01:01:08
the time this is done.

01:01:09
It is very unlikely that

01:01:12
the measure the interim measure

01:01:14
will serve its purpose. So

01:01:16
it's really as with everything

01:01:18
in arbitration. It really depends

01:01:20

upon the party's good faith.

01:01:23

in if a party sitting

01:01:25

in Panama is ordered by

01:01:27

a foreign arbitral Tribunal. To

01:01:31

perform something based upon an

01:01:33

interim core an interim arbitral

01:01:36

award. Then that party has

01:01:39

the obligation to comply with

01:01:42

it. Otherwise it it could

01:01:45

face Court action in Panama

01:01:47

by way of this enforcement

01:01:49

proceeding that is contemplated in

01:01:51

the law now curiously and

01:01:54

and this is really a

01:01:55
practice tip. There are alternative

01:01:58
ways to get this done

01:02:00
because under the arbitration law

01:02:02
of Panama. The ordinary courts

01:02:05
of Justice in Panama the

01:02:07
trial courts retain jurisdiction to

01:02:10
issue. Cautionary measures or provisional

01:02:13
orders during the course of

01:02:15
an arbitration or before the

01:02:16
filing. So for example in

01:02:19
a case, which was pending

01:02:20
in London. We were able

01:02:23
to obtain a freeze order

01:02:24

issued by a Panamanian Court

01:02:26

directly, even though the case

01:02:28

was spending in London. And

01:02:30

then the freeze order was

01:02:32

was ordered in Panama by

01:02:33

by a court of law

01:02:34

and file the cautionary or

01:02:38

the interim relief. Was remanded

01:02:41

to the arbitral court in

01:02:43

London. Which in turn when

01:02:46

we wanted to undo the

01:02:48

interim measure the arbitrator alone

01:02:50

I said hi. I don't

01:02:51

have jurisdiction to undo and

01:02:54

cautionary measure issued by a

01:02:57

court abroad so it had

01:02:59

to really Remain the case

01:03:01

to Panama. To get the

01:03:03

order undone or to get

01:03:05

the order the interim relief

01:03:07

lifted. A curiously and this

01:03:10

is another thing and I'm

01:03:11

not going to reveal but

01:03:12

it's it's out there in

01:03:13

the exit database in another

01:03:15

case that I work with.

01:03:16

There was an interim an

01:03:19
emergency interim relief order issued

01:03:21
by an exit panel. in

01:03:24
a matter and the way

01:03:27
it worked is that the

01:03:28
parties involved basically respected the

01:03:31
order and we didn't have

01:03:32
to go. Through enforcement because

01:03:35
and you know, it's an

01:03:37
exit case so so it

01:03:38
will be very easy and

01:03:39
I strongly recommend that you

01:03:41
take a look at it.

01:03:42
We worked it actually was

01:03:44

worked by colleagues of ours

01:03:45

out of Miami and Washington

01:03:47

and we were assisting them

01:03:48

in Panama. So that president

01:03:51

is there. I'm not going

01:03:52

to rebuild the name, but

01:03:53

you will be able to

01:03:53

find it if you just

01:03:55

go into the exit. Database

01:03:58

of cases and it was

01:04:00

respected and it was an

01:04:01

interim relief order. So I

01:04:03

think that's a great president

01:04:04

to show that Panama will

01:04:07

respect and enforce unfortunately, there's

01:04:10

no specific cases because in

01:04:12

that case there was no

01:04:13

need to go to court

01:04:14

in Panama. But again, it's

01:04:17

it's not a lost cause

01:04:19

because of the bureaucracy. There's

01:04:20

other ways of getting your

01:04:22

interim relief granted as we

01:04:25

did. We also by by

01:04:27

way of example the Panamanian

01:04:31

arbitration law defines Norms or

01:04:35

actions or preservation of evidence

01:04:39
as part of interim relief

01:04:40
we were able to get

01:04:41
a Panamanian Court to preserve

01:04:44
evidence prior to filing abroad

01:04:47
a an arbitration abroad so

01:04:51
so that we directly by

01:04:53
resorting to a Panamanian trial

01:04:55
court. Again, this is Cutting

01:04:57
Edge. This is something that

01:04:59
will take time because of

01:05:01
the existing president or the

01:05:04
existing culture that interim relief

01:05:07
was not enforceable by way

01:05:09

of executor and that has

01:05:11

changed with the enactment of

01:05:13

the arbitration law. Thank you

01:05:15

very much. I yield the

01:05:16

rest of my time Jean.

01:05:18

Days are really appreciate the

01:05:20

focus of your presentation and

01:05:23

and my generosity for yielding

01:05:25

time Gene. Come on it

01:05:26

absolutely that's that was my

01:05:28

second and that was second

01:05:30

after end. I've really appreciate

01:05:32

that going back to Ukraine

01:05:34

now to Canada any chance

01:05:37

that interim words can be

01:05:39

enforced in Ukraine. Thanks. It

01:05:43

looks yes. First of all,

01:05:45

we have the quite understandable

01:05:48

formal, but very clear Provisions

01:05:51

in the Ukrainian civil procedure

01:05:54

go to which provide for

01:05:55

the late and we have

01:05:56

also the situations we have

01:05:59

three cases being brought into

01:06:01

the course for enforcement of

01:06:03

emergency support interesting that all

01:06:07

these words were issued on

01:06:09
the Stockholm arbitration emergency arbitration

01:06:14
rules. And the none of

01:06:18
these decisions. There was no

01:06:21
ocean that it's not enforceable.

01:06:24
It is important. So it

01:06:25
means that in principles the

01:06:27
courts agreed that these sort

01:06:29
of a visual Awards in

01:06:31
Germany emergency. I'll be Traders

01:06:34
Awards could be enforceable and

01:06:36
Ukraine, but what we have

01:06:37
we have an interesting situation

01:06:40
specific one. I just mentioned

01:06:43
about this if any questions

01:06:45
we can return back to

01:06:46
other two it was the

01:06:49
interim word issued in favor

01:06:51
of the Russian web Bank

01:06:54
connecting with execution in the

01:06:57
Ukraine of the prohibition to

01:07:00
deal with the Stokes of

01:07:04
the company Ukrainian company being

01:07:08
the daughter company of the

01:07:10
Russian bank and what actually

01:07:12
happened at the time of

01:07:14
the execution of this world

01:07:17

enforcement and execution when the

01:07:19

bond it light in Ukraine

01:07:22

already existed the award which

01:07:24

was issued by the Ukrainian

01:07:26

court on the basis of

01:07:28

the application to enforce to

01:07:30

enforce the decision of the

01:07:32

PCA in the claim of

01:07:36

Everest the State against and

01:07:38

others against the Russian Federation

01:07:40

among the Which were in

01:07:43

within the set arbitral award

01:07:45

issued by PCA. It's an

01:07:47

investment District as well where

01:07:49

they said Ukrainian promise Bond

01:07:52

whose action actually actions. Well

01:07:56

now under the specific decision

01:07:58

of the Ukrainian court with

01:08:00

the prohibition of fulfilling a

01:08:02

lot of different actions, and

01:08:04

at the same time it

01:08:06

was stated that this bank

01:08:10

is one of the assets

01:08:11

against which is execution could

01:08:13

be sold. It means that

01:08:15

that period of time in

01:08:17

Ukraine already existed the judicial

01:08:20

decision which entered into legal

01:08:22

Force which provides for the

01:08:24

certain actions and the laws

01:08:26

the Ukrainian so it is

01:08:29

to sell the assets of

01:08:31

these Bank in order to

01:08:33

cover the demands. You should

01:08:35

buy the important confusion, but

01:08:38

the decision of PC using

01:08:40

these circumstances Iranian good said

01:08:43

that it is a part

01:08:44

of public policy that if

01:08:46

there is the existing and

01:08:48

entered into the into the

01:08:50

legal Force the decision of

01:08:51

the Court it should be

01:08:52

enforced and executed as a

01:08:56

final decision and that in

01:08:57

this case the allowing of

01:09:00

the execution of the emergency

01:09:03

arbitrators were just mean the

01:09:06

violation of this finality and

01:09:08

the judicial force of the

01:09:09

already existing Ukrainian award. That

01:09:12

was the reason why the

01:09:14

actual is the state what

01:09:16

refused the execution thing that

01:09:19

it's not possible according to

01:09:21

Ukrainian public order to execute

01:09:23

against They already existed Ukrainian

01:09:27

decision, which is already in

01:09:30

this process of execution as

01:09:32

a final one. So I'm

01:09:36

not confident whether I need

01:09:37

to stop because we in

01:09:40

time I can limit it

01:09:41

now and return back to

01:09:44

the other two issues later

01:09:46

in order to my colleague

01:09:48

to provide for the presentation

01:09:50

if it's acceptable Gene we

01:09:52

can do any such way.

01:09:53

Yes. Absolutely. Yes. Appreciate that.

01:09:55

You Anna thanks for your

01:09:57

comment and lip sound please.

01:10:00

Thank you Gene. I'll try

01:10:03

my best to keep this

01:10:04

moving quickly. So in terms

01:10:06

of interim relief, I think

01:10:08

speaking for myself. They approach

01:10:11

that I took was the

01:10:13

trend towards having emergency arbitrators

01:10:17

appointed. So just a quick

01:10:19

recap for some of you

01:10:22

essentially arbitro institution have promoted

01:10:27

emergency arbitration in their bit

01:10:29

to provide users of arbitration

01:10:32

with more efficient recourse, especially

01:10:36

when the tribunal has not

01:10:38

yet being constituted. This has

01:10:41

proven to be useful in

01:10:43

certain cases where in Junctions

01:10:45

are required where some intellectual

01:10:48

property has to be obtained

01:10:49

but not everyone would like

01:10:52

to sit as an emergency

01:10:53

arbitrator because there's a lot

01:10:55
of pressure if you look

01:10:57
at the sic's panel you

01:10:59
will see The arbitrators name

01:11:02
there only those of an

01:11:04
asterisk have volunteered to take

01:11:06
on the burden of being

01:11:07
an emergency arbitrator because that's

01:11:10
a lot to turn around

01:11:12
in a very short space

01:11:13
of time. now in Singapore

01:11:17
this mechanism started way back

01:11:21
in July of 20 10,

01:11:23
but what is interesting is

01:11:25
that only in 2012 did

01:11:28
the government change our International

01:11:31
arbitration act to make it

01:11:33
clear that an emergency arbitrator

01:11:37
would be similar to any

01:11:40
other tribunal and therefore the

01:11:43
emergency arbitrators decision becomes enforceable

01:11:47
like any other arbitral decision

01:11:50
now, this is a very

01:11:51
very important development back in

01:11:54
2012. And and those of

01:11:56
you who need the citation

01:11:58
the only go and look

01:11:59

at section 2 of the

01:12:01

ACT. Now back to the

01:12:05

Singapore context and the rules

01:12:07

and emergency arbitrator under the

01:12:10

Singapore rules were enjoy the

01:12:11

same Powers as a normal

01:12:13

arbitral tribunal including the ability

01:12:16

to determine his jurisdiction to

01:12:19

award interim relief, and of

01:12:20

course a portion costs. now

01:12:23

the emergency arbitrator is very

01:12:26

unlikely to form part of

01:12:28

the main tribute, you know,

01:12:29

there are prohibitions and the

01:12:31

award of the emergency arbitrator

01:12:34

would have Would cease to

01:12:39

have effect within a certain

01:12:41

number of days now. All

01:12:42

those are in the rules

01:12:44

of the siec which are

01:12:45

very well ventilated. Now. The

01:12:47

last point I'm going to

01:12:48

do with in in a

01:12:50

minute is just to highlight

01:12:51

that although we have amended

01:12:53

our laws to make it

01:12:55

clear that an emergency arbitrator

01:12:57

has the same status as

01:12:59

a normal tribunal it remains

01:13:02

to be seen whether a

01:13:04

foreign emergency arbitrators decision or

01:13:07

interest decision would be impossible

01:13:09

in Singapore. So we just

01:13:11

contrast the express Provisions that

01:13:14

the Hong Kong areleans has

01:13:17

made to its laws to

01:13:19

make it clear foreign seated

01:13:21

emergency arbitrations will be enforced

01:13:24

back to Eugene. Thank you

01:13:28

lips and appreciate that. It

01:13:30

was a very brief and

01:13:32

very to The Point presentation.

01:13:33

Now, we have a very

01:13:36

brief Q&A session about five

01:13:40

and seven minutes before we

01:13:42

all get switched to the

01:13:43

breakout rooms where we can

01:13:44

continue our discussion separately the

01:13:47

question that was that arises

01:13:50

is whether domestic and international

01:13:53

public policy may also be

01:13:55

a basis for the Court's

01:13:57

consideration to enforce an award

01:13:59

that may have been vacated

01:14:00
at the court of the

01:14:02
seat of arbitration. So what

01:14:03
happens is the award is

01:14:05
vacated, of course, there's a

01:14:06
article the under the New

01:14:09
York convention the court May.

01:14:11
A May refuse to enforcement

01:14:14
but would the public policy

01:14:17
be a basis for a

01:14:20
court to refuse the enforcement

01:14:22
of such a word and

01:14:23
Charlene. Would you be able

01:14:25
to give us a maybe

01:14:28

just your view from from

01:14:31

New York on that issue?

01:14:34

Yes, absolutely. I mean, I

01:14:35

think it's a it's a

01:14:37

very interesting question a lot

01:14:39

of these ground turn on

01:14:40

recognition under the New York

01:14:41

convention have significant overlap and

01:14:44

and objection that falls under

01:14:46

one rubric can very easily

01:14:47

be reframed as injection under

01:14:50

under a different route break.

01:14:52

I think when it comes

01:14:53

to an old Awards Um,

01:14:57

there are probably various objections

01:15:00

under Article 5 that would

01:15:01

be implicated by the enforcement

01:15:03

of such an award there

01:15:06

is, you know, specifically one

01:15:08

ground that deals with I

01:15:10

think it's article 51e that

01:15:12

deals with awards that have

01:15:13

been set aside and gives

01:15:14

discretion to the recognizing Court

01:15:16

to decline enforcement where the

01:15:20

award has been set aside

01:15:21

by the courts of the

01:15:22

arbitral sea, but I do

01:15:23

think that public policy may

01:15:25

be implicated as well and

01:15:27

not always in the most

01:15:28

expected ways, you know, the

01:15:31

one sort of interesting case

01:15:32

that I'll mention from New

01:15:34

York is the commissy case

01:15:37

against pemex. This was one

01:15:40

of the very very few

01:15:42

cases that exist and US

01:15:44

jurisprudence where a US court

01:15:47

did actually enforce recognize and

01:15:51
enforce and arbitrol award that

01:15:52
had been set aside by

01:15:54
the courts of the seat

01:15:55
in this case. Was the

01:15:57
the courts of Mexico? In

01:16:00
an ICC arbitration between a

01:16:03
Mexican subsidiary of a US

01:16:05
company and pemex the oil

01:16:08
and gas arm of the

01:16:09
Mexican state. And in this

01:16:12
case, the the facts were

01:16:15
very very specific and rather

01:16:18
egregious. I think in this

01:16:21

case there was an arbitration

01:16:22

clause in a contract between

01:16:24

komisa and the and penx

01:16:28

which was entered into willingly

01:16:30

by pemex. And only later

01:16:33

was a law passed by

01:16:36

the Mexican legislature, which essentially

01:16:38

invalidated that arbitration agreement but

01:16:42

only after commissa had relied

01:16:44

upon the arbitration agreement initiated

01:16:46

arbitration and gone through an

01:16:48

entire arbitration received an award.

01:16:51

So on the basis of

01:16:52

this new law, which was

01:16:53
applied retroactively by the Mexican

01:16:55
courts. The award was annulled

01:16:58
in Mexico. And this all

01:17:01
came to the attention of

01:17:02
the US court before whom

01:17:04
an enforcement petition was pending.

01:17:08
and the US court looked

01:17:12
at us public policy for

01:17:15
purposes of determining whether it

01:17:17
should defer to the foreign

01:17:19
annulment decision. so this is

01:17:22
it's sort of a reversal

01:17:25
of the normal role that

01:17:26

public policy would play in

01:17:27

these cases and the US

01:17:29

court said that to the

01:17:31

foreign annulment decision in this

01:17:33

case was the decision that

01:17:35

violated under us public policy

01:17:39

the most basic Notions of

01:17:40

morality and Justice and fairness

01:17:42

and decided to actually confirm

01:17:45

the award on that basis.

01:17:49

Yeah, thanks. Thanks Charlene. That's

01:17:52

that that's very interesting indeed.

01:17:54

Yes. It's a it was

01:17:56

an interesting case lipsan. Could

01:17:59

you perhaps those are coming

01:18:00

from a Singapore site on

01:18:03

that issue? Yes, I can

01:18:05

the Singapore position has also

01:18:09

examined article 51e. Yes Charlene

01:18:12

rightly points out in terms

01:18:15

of the difficulties. If there

01:18:19

is in another pending setting

01:18:22

aside in another jurisdiction before

01:18:24

now another National Court, we

01:18:27

have some jurisprudence in Singapore,

01:18:29

which has expressed sentiment that

01:18:34

the courts would have serious

01:18:36

doubt in those words serious

01:18:39

doubt, whether it could retain

01:18:41

any discretion whether or not

01:18:44

to enforce an award if

01:18:46

that award had already been

01:18:48

set aside at the seat

01:18:50

of the obliteration. Um now

01:18:53

in another case what was

01:18:54

interesting was that was the

01:18:57

setting aside was pending in

01:18:59

the Danish called the courts

01:19:02

took the view that it

01:19:03

nonetheless could refuse the adjournment

01:19:07

because the merits of the

01:19:09

setting aside had not yet

01:19:11

been fully ventilated before the

01:19:14

Danish courts. So I would

01:19:15

suggest that distinction being whether

01:19:17

another National Court had fully

01:19:21

and finally set aside and

01:19:23

arbitration before he was attempted

01:19:25

to be enforced in Singapore

01:19:27

G. That I quote that

01:19:29

can contribute to the discussion.

01:19:31

Thank you. Appreciate the contribution.

01:19:33

Certainly at this point. We

01:19:37

can continue the Q&A separately.

01:19:40

I know there are some

01:19:41

more questions that were a

01:19:44

raised and please hold on

01:19:47

to this questions. All the

01:19:49

participants now will be switched

01:19:51

to the breakout rooms with

01:19:52

one of the speakers or

01:19:54

panelists, and you will have

01:19:56

a opportunity to discuss this

01:19:58

questions for them directly. Thank

01:20:00

you very much and thank

01:20:01

you very much to the

01:20:03

moderate to moderator to Charlene

01:20:07

to the speaker to the

01:20:08

panelists, and it was a

01:20:10

great discussion. Appreciate it. Thank

01:20:13

you. Thank you so much,

01:20:15

Jean and thank you. I'm

01:20:18

telling you referring to your

01:20:21

names as they appear in

01:20:22

my screen, you know, David

01:20:24

and Lipson and and Charlene

01:20:26

and Tatiana and and Yoko,

01:20:29

thank you so much for

01:20:29

educating us on enforcement and

01:20:34

and sometimes how to deal

01:20:36

with with cases an awards

01:20:41

that need to be complied

01:20:43

with sometimes through the usual

01:20:46

route and sometimes through more

01:20:49

knowledgeable actions as as David

01:20:53

shared it when dealing with

01:20:56

cases that involve Panama. This

01:20:59

was a great discussion and

01:21:00

a lot of food for

01:21:02

thought and a concerning investment

01:21:03

arbitration commercial arbitration and and

01:21:06

enforcement of arbitral award and

01:21:09

with that we will send

01:21:12

everyone to break Rooms enjoy

01:21:15

this time it is there's

01:21:17

no agenda the the record

01:21:20

rooms are provided for people

01:21:21

to meet each other if

01:21:23

you want to and and

01:21:26

for attendees to meet our

01:21:28

stars, and of course our

01:21:29

stars, are you guys so

01:21:31

give us a second and

01:21:33

we'll be right with you

01:21:34

in the breakout rooms. Update

00:00:04

to also give our thanks

00:00:07

to all of our fantastic

00:00:09

supporters in particular. We wanted

00:00:13

to mention our advisory committee.

00:00:16

We great fantastic group of

00:00:18

people have come together to

00:00:20

support this first time event.

00:00:22

We we've have a wonderful

00:00:25

group of sponsors and law

00:00:27

firms and other organizations that

00:00:29

have really stepped up to

00:00:31

support. What is is really

00:00:34

quite the diverse and Multinational

00:00:39

event. It it really we

00:00:42

think and part of the

00:00:44

intent of putting this event

00:00:45

together is to truly reflect

00:00:47

the highly diverse nature of

00:00:51

international arbitration and how it

00:00:54

has grown fantastically over the

00:00:57

last 15 to 20 years

00:00:58

to reflect the kind of

00:01:00

diverse topics and and the

00:01:02

different types of Legal cultures

00:01:05

and practices that that we

00:01:07

see in the practice of

00:01:10

international arbitration and I'll just

00:01:13

pass over to those Antonio

00:01:16

now, but I wanted to

00:01:17

in particular mention those Antonio

00:01:19

Maria Lucia Casa and the

00:01:23

whole extrategy team for their

00:01:24

incredible efforts in putting this

00:01:27

event together, the the logistics

00:01:30

involved and hurting all the

00:01:32

cats as being amazing and

00:01:35

I just wanted to mention

00:01:37

the Jose Antonio and his

00:01:39

team they've done a fantastic

00:01:40

job. So Jose Antonio And

00:01:43

thank you Ian for those

00:01:46

kind words. I don't want

00:01:48
to steal too much of

00:01:50
your time. I would simply

00:01:52
ask one question given that

00:01:56
there is of course a

00:01:58
proliferation of events and and

00:02:02
zoom events including International arbitration

00:02:05
that being said however together

00:02:08
with Ian we felt that

00:02:10
there was and there is

00:02:11
a need for for a

00:02:13
world arbitration update for two

00:02:16
reasons, which are the focus

00:02:18
of the world arbitration update

00:02:21

one is a trying to

00:02:24

decentralize International arbitration. And and

00:02:27

that means that it is

00:02:30

obvious by seeing the caliber

00:02:33

of panelist in this session

00:02:35

that International arbitration goes beyond

00:02:38

London and Paris and and

00:02:40

your even though we love

00:02:42

New York. Charlene is here.

00:02:45

And we love London and

00:02:46

Paris as well. But but

00:02:47

we have we have attorneys

00:02:50

and Council who are riggers

00:02:51

and and incredible in Ukraine

00:02:54

in Japan in Panama in

00:02:56

Singapore Etc in many places

00:02:58

of Africa, and we wanted

00:03:00

to make sure that that

00:03:01

the world knows this and

00:03:03

that there is international arbitration

00:03:06

being practiced in non-traditional venues.

00:03:08

That is the first objective

00:03:10

of wow or World arbitration

00:03:14

update. And the second objective

00:03:17

objective which was mentioned by

00:03:19

Ian. It is updating International

00:03:21

arbitration say 20 years ago.

00:03:24

And when well not that

00:03:27

much but but almost like

00:03:28

about you know, 12 or

00:03:31

13 or 15 years ago.

00:03:32

When I when I worked

00:03:33

at Exit you could still

00:03:35

read most of the awards

00:03:37

in a year with with

00:03:39

a little bit of discipline.

00:03:40

Now it simply impossible to

00:03:42

read 140 awards that coming

00:03:45

a year and the same

00:03:45

thing for international commercial arbitration.

00:03:48

So the other objective of

00:03:49

of world arbitration update is

00:03:53

to provide a number of

00:03:54

topics to the public the

00:03:55

public meeting from students to

00:03:57

to very sophisticated partitioners an

00:04:00

update in a media that

00:04:02

that is useful because you

00:04:04

can watch it you can

00:04:05

you can scroll through it

00:04:07

Etc. And that would be

00:04:08

there for the public. So

00:04:09

those are the objectives. I

00:04:11

want to underscore the the

00:04:14

support of Of our sponsors

00:04:17

including exit reel Washington arbitration

00:04:21

week and many many others

00:04:22

or of our circle of

00:04:24

firms many many of whom

00:04:26

are here and and of

00:04:29

other damages firms as well

00:04:33

as other organizations, and with

00:04:35

that we would like to

00:04:37

welcome everyone to wow, and

00:04:40

now please Gene take it

00:04:42

away. Thank you very much.

00:04:45

Thank you Ian. Thank you

00:04:47

has Antonio I once again

00:04:48

appreciate your organizing this event

00:04:51

and thanks to the sponsors

00:04:53

who made this event possible.

00:04:56

Uh going back to our

00:04:58

panel we the structure because

00:05:02

we have two questions the

00:05:03

two issues to discuss the

00:05:05

structure will be a little

00:05:07

different from a conventional panel.

00:05:09

First of all, the difference

00:05:12

that we have a presenter

00:05:13

Charlene and I'll make it

00:05:16

more detailed introduction which are

00:05:19

Lin is we'll have a

00:05:21

presenter who will discuss the

00:05:23

general issues that applicable to

00:05:26

all jurisdictions that involved they're

00:05:30

presented in this panel. After

00:05:31

which we will give word

00:05:34

to the panelists who will

00:05:36

address issues that are specific

00:05:37

to the to their specific

00:05:39

to their to their specific

00:05:41

jurisdictions after which we'll go

00:05:43

back to Charlene who will

00:05:46

again introduce this second Point

00:05:48

second issue for the discussion

00:05:50

and then we'll go back

00:05:51

again to the panelists after

00:05:55

the The after these two

00:05:57

rounds of discussions. We will

00:06:00

do a very brief 10-15

00:06:02

minutes. Hopefully a Q&A session.

00:06:06

During which the questions that

00:06:09

you the participants will send

00:06:11

us by way of Zoom.

00:06:13

We will be asked I'll

00:06:16

moderate the Q&A. I'll ask

00:06:18

this questions of the participants

00:06:20

over the speakers and the

00:06:23

speakers of the panelists. And

00:06:26

after that there will be

00:06:27

a 15 minute breakout session

00:06:31

and networking session. The participants

00:06:34

all the participants will be

00:06:35

distributed among breakout rooms and

00:06:38

you will have opportunity to

00:06:40

have a free flowing discussion

00:06:41

with the members of the

00:06:42

panel. So without further ado,

00:06:45

I'd like to introduce our

00:06:46

speakers and a presenter. Of

00:06:48

course Charlene's son. Charlene is

00:06:51

a partner with dla pi

00:06:52

person International arbitration practice, and

00:06:55

it presents clients and international

00:06:56

arbitration and multi jurisdictional cross-border

00:06:59

litigation disputes her practice focuses

00:07:02

on enforcing foreign arbitral Awards

00:07:04

and judgments against Sovereign and

00:07:06

non Sovereign adapters and assets

00:07:09

are Cavalry. She's wound and

00:07:11

matters involving foreign sovereign immunity

00:07:13

and other complex jurisdictional issues

00:07:15

that arise when litigating for

00:07:18

Industries in US courts Charlene

00:07:20

also represents clients in contracts,

00:07:22

and pretty based arbitrations involved

00:07:25

in complex commercial disputes arising

00:07:28

out of Latin America, Europe

00:07:30

and Asia. Thank you Charlene

00:07:32

for joining us and our

00:07:34

panelists. We have four panelists

00:07:35

today from from Japan from

00:07:38

Ukraine from Panama from Singapore

00:07:42

and our panel. Japan as

00:07:44

yokamayeda. Hi good evening. Yoga

00:07:47

you okay the partner in

00:07:49

the dispute litigation and arbitration

00:07:51

practice and CTU are Partners

00:07:53

in Tokyo, Japan. She focuses

00:07:55

her practice on complex and

00:07:57

cross-border disputes across a wide

00:07:59

spectrum of matters, including commercial

00:08:01

construction life science Pharmaceuticals technology

00:08:05

and investment and domestic courts

00:08:07

and international arbitrations on the

00:08:09

major institutional rules Yoko regularly

00:08:11

sits as an arbitrator as

00:08:14

well as the council. She

00:08:16

is qualified in both, Japan

00:08:18

and New York. She's a

00:08:19

court member of the ICC

00:08:21

record over. Equation since 2018

00:08:26

and our next panel is

00:08:29

David Mizrahi. He did part

00:08:33

of David is a partner

00:08:34

in MDU legal in Panama

00:08:36

David focuses on Multi jurisdictional

00:08:39

issues, including transactional and distributed

00:08:42

resolution work here presents major

00:08:44

conglomerates and large multinationals doing

00:08:47

business in Panama on a

00:08:49

wide range of legal issues.

00:08:50

David has substantial experience in

00:08:53

both common law and civil

00:08:54

lawyers addictions. He served as

00:08:56

an arbitrator and console and

00:08:58

commercial on Sovereign arbitrations and

00:09:00

major International institutions. He also

00:09:04

served as expert on Panamanian

00:09:06

law in court cases in

00:09:07

the United States and Israel,

00:09:09

Canada, Georgia, England BDI and

00:09:14

Panama. Our panelists from Ukraine

00:09:19

is the Tiana sleepachuk. Welcome

00:09:22

to Tiana. Tatiana is a

00:09:25

special advisor to the law

00:09:27

firm sayanka harrenka in the

00:09:29

key of Ukraine. Tatiana has

00:09:32

recently returned to Private Practice

00:09:34

of the serving two years

00:09:35

of the chair of the

00:09:36

central Election Commission of Ukraine

00:09:39

prior to the government service,

00:09:42

the Tiana had an activation

00:09:45

practice practice where she practice

00:09:47

for decades both as console

00:09:50

and arbitrator as console share

00:09:53

presented clients in narrowly eight

00:09:55

year betrayations, including both commercial

00:09:57

and investment cases as an

00:09:59

arbitrator. She's serving early 400

00:10:02

cases of 400 cases. Here

00:10:09

you have. Yes. Wow in

00:10:13

major arbitration centers Tatiana also

00:10:16

serves as an expert on

00:10:18

the Ukrainian law in arbitrations

00:10:20

and Court proceedings, including the

00:10:22

high court of justice in

00:10:24

London and the BDI high

00:10:26

court Tatiana authored over 150

00:10:29

articles in chapters and books

00:10:31

on International legal issues. It's

00:10:33

very impressive incredible achievements. Thank

00:10:35

you to Canada for joining

00:10:37

us. And last but certainly

00:10:39

not least is our panelists

00:10:42

from Singapore. Lipsan Hall who

00:10:45

is the head of a

00:10:46

construction and project practice and

00:10:48

partner in the international arbitration

00:10:50

practice in one of the

00:10:51

largest Singaporean Forum Raja Raja

00:10:55

and tan lawyer for construction

00:10:59

by Chambers Asia pacifics in

00:11:02

2015. He was also recognized

00:11:04

by the legal 500 Asia

00:11:06

Pacific and best lawyers and

00:11:08

in the international who's who

00:11:10

of construction lawyers, he focuses

00:11:12

his practice on construction disputes

00:11:15

and Engineering disputes as well

00:11:17

as advising clients in various

00:11:22

and various project related issues

00:11:23

with over 25 years of

00:11:26

experience. He practiced he had

00:11:30

he was representing at clients

00:11:33

in both Singapore and various

00:11:36

arbitration tribunals across the South

00:11:38

East. Asia region. Lipsan is

00:11:42

the fellow the Singapore Institute

00:11:43
of the arbitrators, and then

00:11:45
I created agers without further

00:11:49
Ado. I'd like to give

00:11:50
word to Charlene who will

00:11:52
introduce the first topic. Thank

00:11:54
you Charlene. Thank you, Jean

00:11:57
for those very nice introductions.

00:11:58
And thank you everyone for

00:11:59
joining us today. We start

00:12:01
our discussion with one of

00:12:03
the most commonly invoked grounds

00:12:05
for non-recognition under the New

00:12:07
York convention the public policy

00:12:10

exception. It is found in

00:12:12

article 52b of the convention

00:12:15

and permits National courts to

00:12:17

refuse to recognize a foreign

00:12:19

arbitral award if recognition would

00:12:21

be contrary to the public

00:12:23

policy of the country in

00:12:24

which recognition is sought The

00:12:27

convention does not itself Define

00:12:29

public policy which has left

00:12:31

it largely up to National

00:12:32

courts to define the Contours

00:12:34

of the exception under their

00:12:36

own domestic laws. There has

00:12:39

been a lot of discussion

00:12:40

of the public policy Exception

00:12:41

by commentators and courts and

00:12:44

most of it really focuses

00:12:46

on its potential for over

00:12:49

application. Although public policy can

00:12:52

be in a morphous concept

00:12:54

the travel preparatoire of the

00:12:57

convention demonstrates that the exception

00:12:59

was not intended to be

00:13:01

a catch-all for any violation

00:13:03

of domestic law, but rather

00:13:05

should function as a safety

00:13:06

valve to allow National courts

00:13:08

to deny recognition to arbitral

00:13:10

awards that would truly offend

00:13:13

the fundamental values of the

00:13:14

foreign State Contracting States generally

00:13:18

agreed that while the safety

00:13:20

valve was necessary to include

00:13:21

in the convention. It should

00:13:23

really only be pulled in

00:13:24

rare and extraordinary circumstances less.

00:13:28

The exception be allowed to

00:13:29

swallow the rule of enforcing

00:13:31

our Patrol Awards and the

00:13:34

underlying purpose of the convention

00:13:36

to create a uniform. enforcement

00:13:38

framework to prevent foreign awards

00:13:40

from being unduly discriminated against

00:13:44

and surveys of case law

00:13:45

have demonstrated that most national

00:13:47

courts in convention states have

00:13:48

heated the drafters intentions to

00:13:51

treat this exception as exceptional.

00:13:53

But the question remains what

00:13:55

kinds of values excuse me

00:13:58

in principles rise to the

00:13:59

level of being considered part

00:14:01

of the form States public

00:14:04

policy. In the United States,

00:14:06

for example, the federal courts

00:14:08

of appeals have defined public

00:14:09

policy as the form States

00:14:12

most basic Notions of morality

00:14:14

and Justice and have required

00:14:16

that such policy be explicit

00:14:18

well-defined and dominant. Now examples

00:14:23

of successful article 52b challenges

00:14:25

are really few and far

00:14:27

between in the US but

00:14:29

one area where the US

00:14:30

courts still appear to be

00:14:32

puzzling through what role the

00:14:34

public policy exception should play

00:14:35

is in cases where international

00:14:37

relations are implicated by the

00:14:40

enforcement of a foreign arbitral

00:14:41

award. For example in a

00:14:44

2018 decision from The District

00:14:45

Court of the District of

00:14:47

Columbia called Hardy exploration versus

00:14:50

India the court applied the

00:14:52

public policy exception to decline

00:14:54

recognition of an arbitral award

00:14:56

which required the government of

00:14:58

India to permit a foreign

00:15:00

oil and gas investor to

00:15:02

continue its exploration of an

00:15:04

offshore concession in India. The

00:15:07

US court did so on

00:15:08

the basis that confirming an

00:15:10

award requiring such specific performance

00:15:13

of the Indian government would

00:15:15

encroach upon India's control over

00:15:17

its own territorial integrity and

00:15:20

thereby violate International comedy, which

00:15:23

the court considered to be

00:15:25

part of US public policy.

00:15:28

Now the Hardy decision has

00:15:29
been criticized by commentators as

00:15:31
precedent that may have opened

00:15:33
the door to expanding the

00:15:34
public policy exception with respect

00:15:36
to investment awards every one

00:15:39
of which could probably be

00:15:40
characterized by the foreign states

00:15:41
that are as in front

00:15:43
to its sovereignty. And for

00:15:45
what it's worth. I think

00:15:46
this is a case where

00:15:47
the court had valid concerns

00:15:49
about its ability to actually

00:15:51

enforce the relief that was

00:15:52

granted in the award and

00:15:54

perhaps use the public policy

00:15:56

exception as a way to

00:15:57

express those concerns but in

00:16:00

doing so may have unduly

00:16:02

elevated the concept of international

00:16:04

comedy, which is a concept

00:16:07

almost as a morphous and

00:16:09

difficult to Define as the

00:16:10

concept of public policy to

00:16:13

the status of and explicit

00:16:15

and well-defined under painting of

00:16:17

the US legal order. In

00:16:20

any event the Hardy decision

00:16:21

illustrates how complicated questions arise

00:16:26

when National courts consider what

00:16:27

role domestic public policy should

00:16:30

play in matters affecting International

00:16:32

parties and international relations. Should

00:16:36

National courts take a more

00:16:37

International perspective in applying the

00:16:40

public policy exception. For example,

00:16:42

should the offended domestic policy

00:16:45

also be enshrined within International

00:16:47

public policy to justify refusal

00:16:49

of recognition under Article 5

00:16:51
to be And what if

00:16:53
enforcing enforce what if refusing

00:16:55
enforcement rather on the basis

00:16:57
of a domestic public policy

00:16:59
would actually violate an international

00:17:01
public policy? Today our distinguished

00:17:04
panelists will tackle some of

00:17:06
these issues and discuss the

00:17:08
Contours of how the public

00:17:10
policy exception is applied in

00:17:12
their respective jurisdictions and how

00:17:14
considerations of sovereignty our balanced

00:17:17
against each Contracting State's treaty

00:17:19
obligations under the convention. Jean

00:17:32
I think there we go.

00:17:32
Yeah. Yeah. Thank you Charlene.

00:17:34
Thank you very much. And

00:17:36
first we will start out

00:17:38
jurisdictional discussion with yukkah, please

00:17:43
go ahead. Don't forget to

00:17:45
mute this so, there we

00:17:46
go. It's not thanks very

00:17:48
much. See oh, hi everyone

00:17:50
because I know speaker. I'm

00:17:53
not families from Japan. I

00:17:55
strikes to talk about cereal

00:17:57

called cases created to enforcement

00:18:00

that actually so far. There

00:18:02

has been no quote Christian

00:18:04

in Japan that is created

00:18:07

to Improvement or if you

00:18:09

sell enforcement of Avatar award

00:18:11

based on now we see

00:18:13

so but I try to

00:18:14

discuss or what I direct

00:18:16

introduced this evening is it's

00:18:19

our the quote, please. Or

00:18:25

reviews all enforcement on all

00:18:28

four in judgment based on

00:18:30

a public policy grounds. Although

00:18:33
there are difference between a

00:18:35
judgment and public church in

00:18:37
a world. I think those

00:18:39
court cases could be a

00:18:41
good kind of could give

00:18:43
a good and could give

00:18:44
some thought what did happen

00:18:46
in case of enforcement arature

00:18:49
old. and the first court

00:18:53
case that I try explain

00:18:54
to this is a Supreme

00:18:56
Court case which diffuse enforcement

00:18:59
of the arbitra award based

00:19:02
on the public policy and

00:19:05
the court said it is

00:19:06
against public policy of Japan

00:19:08
in to enforce and the

00:19:11
current quotation which around the

00:19:14
activity damages. because the Japanese

00:19:18
civil procedure role not know

00:19:22
anything damages allowed and only

00:19:24
compensatory damages are allowed so

00:19:28
the court only allowed the

00:19:31
enforcement of the punitive damage

00:19:33
part. Sorry. Yeah compensatory images

00:19:36
first, but the court refused

00:19:39

the enforcement of awarded damages,

00:19:41

but So I think this

00:19:44

could be a kind common

00:19:46

Topic in various jurisdiction because

00:19:50

I understand in many countries

00:19:52

in Damages are not available.

00:19:54

So if you know thinking

00:19:57

damages, oh awarded in the

00:20:00

arbitration by Avatar, you know,

00:20:02

and when the, you know,

00:20:04

we need party trying to

00:20:05

enforce that award. This could

00:20:07

be a can come issue

00:20:09

in various jurisdiction. And one

00:20:13

thing that maybe interesting is

00:20:14

and created is better. Sorry,

00:20:19

let me start over and

00:20:21

in addition to not allowing

00:20:24

things to damages in Japan.

00:20:26

There are there is a

00:20:28

limitation of possible interest, you

00:20:32

know, that can be a

00:20:33

demanded. So for example for

00:20:40

for the for the amount

00:20:43

more more than one million

00:20:45

Japanese Yen, which I believe

00:20:47

is the 10,000 US dollar

00:20:49

I did the maximum allowed

00:20:52

interest is doing sorry 15%

00:20:57

So there could be an

00:20:58

another issue whether any award

00:21:02

which allows interest. More than

00:21:06

15% could be enclosed for

00:21:09

example in Japan. And are

00:21:12

related to be is better,

00:21:13

you know if the court

00:21:16

client. You know the award

00:21:19

which allows are the interest

00:21:22

for them 50% is entirely

00:21:25

to you know, refuse should

00:21:27

be entirely refused to enforce

00:21:29

or should be just partially

00:21:31

is used force and based

00:21:35

on the Supreme Court case

00:21:36

that I just introduced. I

00:21:38

think you know the likely

00:21:41

outcome is that only their

00:21:43

person that is about the

00:21:45

maximum interest be if you

00:21:49

stand for us, so it's

00:21:50

my observation there has been

00:21:52

no qualifications so far and

00:21:55

I I think my time

00:21:56

to the next topic and

00:22:00

this is court case created

00:22:03

to customization. And to be

00:22:06

simplified this is a case

00:22:08

where? The winning party are

00:22:12

one. Okay the case in

00:22:15

Hong Kong court and the

00:22:18

court. Ordered. No, we need

00:22:22

sorry. the the losing party

00:22:27

to pay the the cost

00:22:30

of lawyers of the party

00:22:33

as Phil and because in

00:22:35

Japan The you know, the

00:22:38

cost of civilization is the

00:22:40

cost of the council. It

00:22:42

be paid by you know

00:22:44

each party. So it became

00:22:46

an issue whether such you

00:22:48

know judgment which orders, you

00:22:50

know, they're always in protein

00:22:52

to pay the lawyers post

00:22:54

of their winning protein can

00:22:56

be enforced and the result

00:22:57

was that could allowed I

00:22:59

enforcement of such, you know,

00:23:01

when judgment so, you know,

00:23:03

this is also kind of

00:23:05

related topic because in arbitration

00:23:08

as you know, as many

00:23:11

of you should know that

00:23:12

it is quite porn that

00:23:14

the tree now orders everything

00:23:18

pretty to pay the architation

00:23:21

post. Of the winning protein

00:23:23

including the cost of council.

00:23:27

Thank you. Yoga. Thank you

00:23:28

very much. It was a

00:23:29

it was a very interesting

00:23:31

and I'm sure there will

00:23:33

be questions about your view

00:23:35

from Japan now we will

00:23:38

we will travel through our

00:23:41

hyper space vehicle across the

00:23:44

world to Panama and ask

00:23:47

and ask David Mizrahi to

00:23:51

give us Panamanian perspective on

00:23:54

a public policy exception how

00:23:56

it works in the courts

00:23:58

of Panama. And thank you

00:24:01

Jean for allowing me to

00:24:03

open this Pandora's Box and

00:24:06

indeed. It's a very interesting

00:24:09

topic. I also want to

00:24:11

thank Jose Antonio and Ian

00:24:13
for organizing this world arbitration

00:24:16
update and for inviting us

00:24:18
to speak. It Panama has

00:24:21
had. the benefit of a

00:24:24
relatively new and modern arbitration

00:24:28
law which Incorporated the principle

00:24:33
of Rejecting enforcement based on

00:24:38
the pretty much the same

00:24:40
Concepts or the same exceptions

00:24:44
that are outlined by the

00:24:46
New York convention. So in

00:24:47
that sense our domestic arbitration

00:24:51
law mimics or copies this

00:24:55

concept of public policy. However,

00:24:57

as as Charlene, so ably

00:25:00

said it earlier, it doesn't

00:25:01

really Define it. So it's

00:25:04

left a very open-ended and

00:25:08

the way that Circle has

00:25:10

been closed is by the

00:25:12

enactment in a few years

00:25:14

later two years later of

00:25:16

lost 61, which is Panama's

00:25:19

code of private international law.

00:25:23

So lost 61 actually has

00:25:25

a definition. of public policy

00:25:30

rather public order which is

00:25:32

the concept many civil law

00:25:34

jurisdictions use a roughly translate

00:25:37

this concept of public policy

00:25:39

and I would like to

00:25:42

adlib the definition which is

00:25:46

set out by the and

00:25:49

and curiously is not set

00:25:51

out in the arbitration law

00:25:53

but in the code of

00:25:54

International Private law and I'd

00:25:57

like to read it out

00:25:57

loud because it says International

00:26:00

public order is the reserve

00:26:03

or power of the judge.

00:26:06

To be able to reject

00:26:07

by virtue of this exception.

00:26:10

the applicability of a law

00:26:14

of a foreign law or

00:26:15

foreign treaty which application within

00:26:17

the tournament cause shall have

00:26:23

the judge violate principles or

00:26:27

Norms which are fundamental to

00:26:30

its positive order or do

00:26:33

its Positive or to its

00:26:35

substantive policy. That's that's how

00:26:37

I translate then it goes

00:26:39

on. to Define what Panamanian

00:26:43

public order is and it's

00:26:46

a much broader. definition and

00:26:49

it says Is it is

00:26:52

the collection of imperative Norms

00:26:57

of Panamanian legislation that the

00:27:00

parties? Cannot ignore because so

00:27:04

that that is basically what

00:27:05

it is giving us by

00:27:07

way of defining what international

00:27:10

public policy is so I

00:27:12

can note for example the

00:27:14

words fundamental. As it relates

00:27:18

directly to the international public

00:27:21

policy, but when it talks

00:27:23

about Panama Panamanian public order,

00:27:26

it's much broader. It says

00:27:28

normal, which means obligatory. Law

00:27:33

now, what's obligatory note a

00:27:36

norms? That's another open question

00:27:39

because each court is gonna

00:27:40

say well, this is a

00:27:41

norm that must be applied

00:27:43

another poor may say no

00:27:44

it's a norm that the

00:27:46

parties have the option of

00:27:47

attending or ignoring. now it

00:27:49

also has and this is

00:27:52

even more Curious on articles

00:27:54

7. of the code of

00:27:58

International Private law it says

00:28:02

the legal effects of an

00:28:03

action or foreign law shall

00:28:06

not be recognized. Neither totally.

00:28:08

No partially when it's application.

00:28:11

violates the international public order

00:28:15

then it says Foreign law

00:28:19

shall not be applied shall

00:28:21

be I'm sorry for in

00:28:22

law. Shall be in those

00:28:24

cases I had. supplemented or

00:28:30

or should be should be

00:28:37

trumped by the internal law.

00:28:41

So that's that's what the

00:28:43

codes or the laws are

00:28:46

giving us. The the black

00:28:47

letter law per se. when

00:28:50

we look specifically at how

00:28:55

the enforcement exception based on

00:28:58

public policy is outlined in

00:29:00

the arbitration law it says

00:29:03

That the recognition or the

00:29:05

enforcement of the award shall

00:29:07

be contrary to the public

00:29:09

International order of Panama. So

00:29:13

there is the interplay between

00:29:15

the two definitions that I

00:29:16

read earlier. looking at how

00:29:21

a the courts applied in

00:29:23

Panama. There's a court that

00:29:25

has basically exclusive jurisdiction on

00:29:28

the determining this it's not

00:29:29

according. It's a chamber of

00:29:30

the Supreme Court the fourth

00:29:32

chamber of the Supreme Court,

00:29:33

which is the one that

00:29:34

looks at and or decides

00:29:36
enforcement matters of foreign or

00:29:40
retro Awards and also the

00:29:41
exit water that court has

00:29:44
issued basically two rulings. it

00:29:48
seems 2015 one of them

00:29:52
tried to expand on the

00:29:54
definition based on foreign Doctrine

00:29:58
and it says by this

00:30:00
definition we can conclude that.

00:30:01
The public order is bridge

00:30:03
when an action is executed

00:30:06
which is contrary contrary to

00:30:08
the fundamental principles of the

00:30:09

states general interest principles, which

00:30:12

are found in the Constitution

00:30:14

the laws and the regulations

00:30:16

of our internal. a loss

00:30:22

and basically in that case

00:30:23

it said that there was

00:30:24

no violation of public policy

00:30:27

or public order. There's a

00:30:29

that case is dated. 2016

00:30:33

March of 2016 there's another

00:30:35

case in which they wouldn't

00:30:38

even further and they Define

00:30:40

public order as fundamental principles

00:30:43

tending to Justice and morality

00:30:46

that a state wants to

00:30:47

protect. Rules that are oriented

00:30:50

to sustain the essential interests

00:30:52

of the states and political

00:30:53

social or economic matters. Known

00:30:56

as Vlad the police or

00:30:57

rules of public order. And

00:31:00

the general respect of and

00:31:03

this goes to the issue

00:31:04

of Comedy which was alluded

00:31:06

to by Charlene as well

00:31:07

to respect allegations contracted between

00:31:10

states and international organizations. finally

00:31:15

this concept is also latent.

00:31:18

in the set aside provisions

00:31:21

of domestic arbitrations. So in

00:31:25

that sense in that context,

00:31:26

it has been examined quite

00:31:28

a bit by the Supreme

00:31:30

Court of Panama by the

00:31:31

fourth chamber. Thank you very

00:31:32

much. I think I'm out

00:31:33

of time. Thank you. Thank

00:31:35

you David. Appreciate your view

00:31:37

from Panama. Our next presenter

00:31:42

speaker is the Kiana from

00:31:45

Ukraine. So we'll be travel

00:31:46
to Europe. I will be

00:31:48
traveling to Europe right now

00:31:49
to Canada. So your turn.

00:31:52
Yeah, thank you. First of

00:31:55
all, I would like to

00:31:56
join the words of the

00:31:58
Gratitude to the organizers and

00:32:00
say that we are honored

00:32:02
to be at the beginning

00:32:03
of such great event and

00:32:04
among so distinguished analysts if

00:32:07
to speak about Ukraine, maybe

00:32:10
I will just concentrate on

00:32:12

the issue which appeared in

00:32:14

our life suddenly with great

00:32:17

PT. It's the events of

00:32:20

2014 the aggression of Russian

00:32:22

Federation and definitely the situation

00:32:24

would not bought influence the

00:32:27

notion of National Security which

00:32:29

became of a mountain importance

00:32:31

for the Ukraine and that

00:32:32

period of time and in

00:32:34

this regard the notion of

00:32:36

National Security in a certain

00:32:38

extent to influence the understanding

00:32:40
of the public policy in

00:32:42
Ukraine including with regard to

00:32:45
the enforcement of foreign words

00:32:47
in 2014 this specific law

00:32:50
on sanctions. Was adopted in

00:32:52
Ukraine and these laws and

00:32:54
many other countries connecting with

00:32:55
this ancient regime has introduced

00:32:58
some sorts of prohibiting actions

00:33:03
like such the prohibition of

00:33:06
transfer of assets fulfillment of

00:33:09
the economic activities Financial Obligations

00:33:12
Etc. And on the other

00:33:14

hand it tied these to

00:33:16

the notion of the National

00:33:19

Security and the adherence of

00:33:22

the company to the country

00:33:25

aggressor. And in 2015 the

00:33:28

Ukrainian Parliament adopted the specific

00:33:31

degree with the Russian Federation

00:33:33

was announced the country aggressor.

00:33:36

Also, it was the period

00:33:39

of the prohibition of expert

00:33:41

activities Etc and definitely in

00:33:44

private sector. It caused the

00:33:46

violation of the contracts and

00:33:48

Ukraine faced first the ex.

00:33:51

Solution of two Awards issued

00:33:54

by the Russian Federation ICC.

00:33:57

I I see a the

00:33:59

international commercial nutrition quartet H

00:34:01

to the Russian Federation chamber

00:34:03

and this specification was that

00:34:08

there were the there were

00:34:11

two Awards and the first

00:34:12

one of the two Circles

00:34:14

of the Court proceedings actually

00:34:16

finished by the decision of

00:34:19

the Supreme Court, which said

00:34:21

that the sanctions on the

00:34:24

part of the Ukrainian public

00:34:25

policy that actually the Ascension

00:34:28

regime is something which lays

00:34:30

in another field. It could

00:34:33

be referred to only in

00:34:36

respect of the further execution

00:34:39

of the award and if

00:34:41

the country or if the

00:34:42

entity is in essentially, so

00:34:45

the execution would be stayed

00:34:48

but they also release which

00:34:50

are obliged to provide for

00:34:51

these execution. But in almost

00:34:54

a couple of weeks these

00:34:56

position has been detrimental change

00:34:58

and the second word between

00:35:01

the same body but parties

00:35:03

issued by the I International

00:35:08

commercial graduation Portage to the

00:35:10

Russian Federation chamber Commerce and

00:35:12

the industry again after the

00:35:15

circles of going from first

00:35:16

instance to the third finished

00:35:19

by quite opposite decision of

00:35:21

the Supreme Court, which said

00:35:24

that sanction represents one of

00:35:27

the new aspects of public

00:35:29

policy and Ukraine and even

00:35:32

the relations between these two

00:35:34

cases. Where are referred as

00:35:36

that in the first one

00:35:37

before did not examine all

00:35:39

the obstacles and all the

00:35:42

circumstances of the case. And

00:35:43

finally they did not pay

00:35:45

attention that the claimant is

00:35:48

an essentially it. Is connected

00:35:54

to with the military industry

00:35:57

of Russian Federation and it

00:35:59

means that if the awards

00:36:02

would be executed in its

00:36:04

favor, but then surely it

00:36:06

can be advantages for the

00:36:08

Russian military industry and disadvantages

00:36:11

for the Ukrainian National Security

00:36:13

because of this reasoning the

00:36:16

court said that not the

00:36:18

execution Authority but the court

00:36:20

itself is responsible for final

00:36:22

decision. And that means that

00:36:24

this work could not be

00:36:26

enforced and could not be

00:36:27

executed. But at the same

00:36:30

time the equipment that even

00:36:32

a certain extent or for

00:36:34

any events, these company would

00:36:36

be dropped from this sanction

00:36:38

list. It will give the

00:36:40

claimant to the possibility to

00:36:42

restart the execution needless to

00:36:45

say that at the same

00:36:47

time. The code did not

00:36:48

manage to refer. What would

00:36:50

be the procedural grounds for

00:36:52

that. Take into contrast your

00:36:54

Ducati issues the terms for

00:36:56

the applying for execution Etc.

00:36:58

And finally the third word

00:37:00

which was issued very recently

00:37:02

made very serious conclusion from

00:37:05

the point of the enforcement.

00:37:07

It was said in this

00:37:09

world, which was issued by

00:37:11

the Supreme Court against the

00:37:13

enforcement of the Stockholm Chamber

00:37:17

of Commerce. What issued in

00:37:19

favor of Oz can against

00:37:21

the Ukrainian State entity with

00:37:23

reference that on the one

00:37:25

hand the ukrainians then entity

00:37:28

is one of the objects

00:37:29

for the big privatization and

00:37:31

the execution of such a

00:37:33

word would be detrimental to

00:37:34

the Ukrainian economic stability and

00:37:37

the budgeting and on the

00:37:39

other hand the Ukrainian quote

00:37:42

paid the attention that among

00:37:45

the creditors of the claimant

00:37:47

is the Russian Bank us

00:37:49

from bank, which is also

00:37:51

included in the least. And

00:37:53

that this can mean that

00:37:56

the money received by the

00:37:59

claimant can be used by

00:38:01

the Russian Bank as well.

00:38:04

Probably for the needs of

00:38:07

the Russian military industry. The

00:38:10

letter also was connected with

00:38:14

the issue of the National

00:38:15

Security that such type of

00:38:18

the payments are in very

00:38:22

little violation of the National

00:38:24

Security notion. This is very

00:38:27

important decisions because any party

00:38:30

now should consider if there

00:38:32

is any relations in further

00:38:34

execution with Russian Federation Russian

00:38:37

entities. They can't face as

00:38:39

a problem. Hope I'm and

00:38:41

I'm thank you. Thank you

00:38:44

the channel. I appreciate was

00:38:45

a very interesting you from

00:38:47

Ukraine and the last use

00:38:50

from Singapore. Just going back

00:38:53

going back to the east.

00:38:56

Now alipson, please. Thank you.

00:39:01

Thank you to everyone the

00:39:05

organizers and the attendees for

00:39:06

listening in this evening morning.

00:39:10

Wherever you are. I saw

00:39:12

a very friendly hello from

00:39:13

someone from Haiti a moment

00:39:15

ago in this new normal

00:39:17

where everyone is struggling to

00:39:19

maintain Commerce and active practice

00:39:23

resolution of disputes and efficient

00:39:25

manner. I think from Forum

00:39:28

like wow is very very

00:39:29

key and I would just

00:39:32

like to bring us back

00:39:33

to the topic at hand,

00:39:35

which is a comparison between

00:39:37

the civil and common law

00:39:39

jurisdiction. So for Singapore, we

00:39:41

we are a common law

00:39:42

jurisdiction. Therefore whatever influences International

00:39:47

arbitration practice on our tiny

00:39:50

little Island state comes from

00:39:52

the laws that are made

00:39:54

by Parliament as well as

00:39:56

judgment law in terms of

00:39:59

judgments of our courts and

00:40:01

judicial system now. Shalin has

00:40:05

done a great job introducing

00:40:07

this topic and everyone should

00:40:09

take note that article 5

00:40:11
of the New York convention

00:40:13
essentially has the two most

00:40:15
common limbs where a discounted

00:40:18
party attempts to challenge an

00:40:21
arbitration Awards the first being

00:40:23
that the matter or the

00:40:25
dispute was not capable or

00:40:27
settlement by arbitration and the

00:40:30
second which concerns this panel

00:40:31
today is that the recognition

00:40:33
and enforcement will be contrary

00:40:36
to the public policy of

00:40:38
that country. Now as users

00:40:41
of arbitration as councils as

00:40:44
arbitrators, I would Hazard a

00:40:47
guess that for many Forum

00:40:51
Shopping might be a issue

00:40:53
that would influence the approach

00:40:57
to the underlying arbitration Clause

00:40:59
right at the very beginning

00:41:00
but as dispute resolution lawyers,

00:41:02
we are served whatever comes

00:41:05
to us at the end

00:41:06
of that process. Now, if

00:41:08
you have an arbitration Clause

00:41:10
that points towards Singapore or

00:41:12

enforcement that involves Singapore. You

00:41:15

should take heart in the

00:41:17

fact that Singapore jurisdiction. Is

00:41:21

generally viewed to be one

00:41:23

of the most Pro arbitration

00:41:24

regimes in Asia. Whether it's

00:41:28

the ICC where Yoko Hills

00:41:30

from or the sic or

00:41:31

other jurisdiction institutions that there

00:41:34

are plenty of good established

00:41:37

iae International arbitration practices in

00:41:39

Singapore. Now, the courts have

00:41:42

therefore had opportunity to consider

00:41:44

the public policy objections and

00:41:48
it's gone up as high

00:41:49
as our court of appeal

00:41:51
the Judgment involves this Indonesian

00:41:55
entity called the serial against

00:41:58
a bang called dexia Bank.

00:42:01
And very importantly the court.

00:42:04
Observes that enforcement challenges would

00:42:08
only take place when it

00:42:11
is an exceptional case. And

00:42:14
when upholding of the award

00:42:16
would shock the conscience and

00:42:18
clearly injurious to the public

00:42:20
good very very strong language.

00:42:22

They go on to say

00:42:24

that it has to be

00:42:25

highly offensive to the ordinary

00:42:28

and reasonable person and as

00:42:31

David pointer under Panama law

00:42:33

you have Notions of morality

00:42:36

and Justice introduce as well.

00:42:39

So my observation would be

00:42:41

whether you listen to the

00:42:43

Panamanian Voice or the Japanese

00:42:45

voice. I think you're starting

00:42:47

to see very common threats

00:42:50

that would deal with public

00:42:52

policy. And in the for

00:42:55

several case the application was

00:42:58

dismissed because the costs felt

00:43:02

that the second award which

00:43:04

was published without even an

00:43:06

oral hearing was merely a

00:43:08

rehash of ventilation of the

00:43:11

same substantive issues in the

00:43:13

first arbitration and that was

00:43:15

not something that they would

00:43:18

stand for. And there is

00:43:20

another case I would just

00:43:23

quickly deal with before. I

00:43:25

handle my back to G.

00:43:27

This is a 2015 musician

00:43:29

which involves an entity known

00:43:32

as coal and oil versus

00:43:35

G HCL and this is

00:43:38

a common issue. I think

00:43:39

that arises when users of

00:43:43

international arbitration criticize the process

00:43:46

where decisions of the tribunal

00:43:49

take longer than expected. So

00:43:51

in this case the decision

00:43:54

Took 19 months between the

00:43:57

post hearing submissions and the

00:43:59

date of release of the

00:44:01

award and the court was

00:44:03

invited to consider that this

00:44:05

was somehow in conflict with

00:44:08

the public policy of Singapore

00:44:09

and the court felt that

00:44:11

public policy arguments tended to

00:44:15

be the last Refuge of

00:44:17

the desperate this again, very

00:44:20

very strong words used by

00:44:22

our courts and the court

00:44:24

also observes that in Prior

00:44:27

instances where challenges were made

00:44:30

to an award regressively issue

00:44:33

10 years after the hearing

00:44:35

but no doubt up Health

00:44:37

by the cause so the

00:44:39

court said too bad. Ultimately

00:44:42

Gene in Singapore the evidential

00:44:45

threshold improving any violations of

00:44:47

natural Justice and public policies

00:44:49

going to be very very

00:44:50

high. So there are very

00:44:53

very few. Very limited cases

00:44:55

where the Singaporean caught have

00:44:57

set aside or refuse them

00:44:59

Force. Thank you g Live

00:45:02

Sun thank you very much.

00:45:03

As you need very very

00:45:05

interesting. It just fascinating to

00:45:07

see difference in approach different

00:45:10

jurisdiction and different courts. I

00:45:12

have some questions. I'm sure

00:45:14

the participants on the panel

00:45:17

have questions. But before we

00:45:20

turn in the Q&A, we'll

00:45:21

give a word back to

00:45:23

Charlene who will introduce the

00:45:26

next topic the enforcement of

00:45:28

entering Awards. Of course, we

00:45:31

will understand the there's this

00:45:35

spread. There's a the interim

00:45:38

Awards the becoming more popular

00:45:41

right now, the emergency arbitration

00:45:43

becoming more popular. So the

00:45:46

issue arises the time there

00:45:50

is a potential for more

00:45:51

and more. This issues are

00:45:52

rising out of the enforcement

00:45:54

of such Awards. So Charlene

00:45:56

without for the year term,

00:45:59

please Absolutely. Thanks Jean. So

00:46:02

as Jean mentioned our next

00:46:06

topic has really taken on

00:46:08

increasing importance with the widespread

00:46:10

use of international arbitration for

00:46:12

all types of complex commercial

00:46:15

disputes, which often do require

00:46:17

interim arbitral relief as a

00:46:20

means of preserving the arbitral

00:46:22

process at the outset. Interim

00:46:26

measures as we will discuss

00:46:28

them today generally Encompass an

00:46:30

arbitrator's granting of temporary relief

00:46:33

that is aimed at preserving

00:46:35

the status quo pending resolution

00:46:37

of the party's dispute on

00:46:38

the merits. These measures are

00:46:41

usually designed to prevent one

00:46:43

party from taking action that

00:46:44

might affect the enforceability of

00:46:47

a final award. Or might

00:46:49

otherwise render the arbitration meaningless.

00:46:52

This usually concerns the destruction

00:46:56

or disposition of assets or

00:46:58

taking some other kind of

00:46:59

action that could cause irreversible

00:47:02

harm to one of the

00:47:03

parties before their dispute can

00:47:05

be resolved. Interim relief can

00:47:09

be granted by the parties

00:47:11

chosen tribunal or as as

00:47:13

Gene mentioned an emergency arbitrator

00:47:15

who may be convened shortly

00:47:18

after the commencement of an

00:47:20

arbitration. But before the parties

00:47:21

have had a chance to

00:47:22

agree upon a tribunal that

00:47:24

will decide the merits of

00:47:25

their dispute an emergency arbitrator

00:47:29

would typically derive his or

00:47:30

her Authority from a set

00:47:32

of our virtual rules that

00:47:33

permit or offer emergency arbitration

00:47:35

procedures and we find these

00:47:38

kinds of rules in the

00:47:40

ICC rules or the CIA

00:47:42

rules. For example And I

00:47:45

think at this point most

00:47:46

arbitral rules including the 2010

00:47:49

uncitrol rules now recognize an

00:47:52

arbitrator's authority to Grant interim

00:47:54

measures and provide that seeking

00:47:56

judicial enforcement of such measures

00:47:59

shall not constitute a waiver

00:48:01

of the right to arbitrate.

00:48:03

Nonetheless enforcement is still up

00:48:05

to National courts and the

00:48:06

approach taken will depend largely

00:48:08

upon the legal regimes that

00:48:10

are applicable in that country.

00:48:12

Now when it comes to

00:48:13

enforcement of arbitral interim relief,

00:48:16

there are generally two bodies

00:48:18

of law that are going

00:48:19

to govern first then you

00:48:21

are convention. And second domestic

00:48:25

law which may be shaped

00:48:26

by the UN model law

00:48:28

on Commercial arbitration if it

00:48:31

has been adopted in that

00:48:32

particular jurisdiction. Now to start

00:48:35

the New York convention does

00:48:37

not expressly address the enforcement

00:48:39

of arbitral interim measures and

00:48:42

on its face. It appears

00:48:44

to apply only to Awards

00:48:46

which begs the question and

00:48:48

has for some time as

00:48:50

to whether interim relief granted

00:48:52

in the form of an

00:48:53

order for example would fall

00:48:55

under the conventions framework. The

00:48:58

other issue that can sometimes

00:48:59

arise under the convention. Although

00:49:02

the convention does not expressly

00:49:04

contain any requirement that and

00:49:06

awards subject to enforcement must

00:49:08

be final. It does an

00:49:11

article 51 e permit non-recognition

00:49:14

of an arbitral award that

00:49:16

is not yet binding and

00:49:19

interim relief May arguably fall

00:49:22

into that category by its

00:49:24

nature because it's subject to

00:49:26

revision or setting aside later

00:49:28

by the merits tribunal which

00:49:31

will be based on later

00:49:32
circumstances. So those are two

00:49:35
issues that that have been

00:49:38
deemed to arise under the

00:49:39
New York convention the model

00:49:41
law as revised in 2006

00:49:43
tries to fix those two

00:49:45
issues first. It provides that

00:49:47
interim measures granted by an

00:49:49
arbitrator are enforceable regardless of

00:49:51
what form the relief comes

00:49:53
in whether it's an award

00:49:54
or in order and second.

00:49:57
It provides that interim measures

00:49:58

should be deemed as binding

00:50:01

as any other kind of

00:50:02

award. But although the model

00:50:07

law has been adopted in

00:50:08

85 States including three of

00:50:11

the for jurisdictions that are

00:50:12

covered by our panelists today.

00:50:14

It has not been as

00:50:16

widely accepted as the New

00:50:17

York convention and has not

00:50:19

for example been adopted in

00:50:21

Panama where David practices and

00:50:24

and David may be able

00:50:25

to speak more today about

00:50:26

how these issues are handled

00:50:28

by the Panamanian courts. And

00:50:31

even the model law is

00:50:32

silent on other issues that

00:50:34

may go to the enforceability

00:50:35

of interim relief such as

00:50:37

whether relief granted by an

00:50:39

emergency arbitrator through one of

00:50:41

those procedures. For example in

00:50:43

the ICC or CF rules.

00:50:44

Who was appointed by the

00:50:46

arbitral institution. Whether that kind

00:50:50

of relief would be enforceable

00:50:52

in the same manner as

00:50:53

if it had been granted

00:50:54

by the party's chosen arbitrator

00:50:56

or Tribunal. Finally, the last

00:51:00

practical issue that I wanted

00:51:02

to mention was that the

00:51:04

procedural mechanisms available for enforcement

00:51:06

in the jurisdiction. We're enforcement

00:51:08

is sought may also be

00:51:09

important as they can affect

00:51:12

the timing of enforcement which

00:51:13

can be Paramount when you're

00:51:15

dealing with urgent preliminary relief.

00:51:17

As I alluded to earlier

00:51:19

an application to enforce an

00:51:22

interim measures award under the

00:51:23

New York convention may be

00:51:25

subject to litigation over the

00:51:26

other party's Article 5 defenses,

00:51:28

which at least in the

00:51:30

United States can take months

00:51:32

to run its course. so

00:51:34

when you have circumstances a

00:51:37

real urgency the effectiveness of

00:51:39

the interim measure may actually

00:51:41

hinge upon the availability of

00:51:42

immediate temporary injunctive relief that

00:51:45

mirrors the arbitral interim measure

00:51:48

or something like a Judicial

00:51:51

executor procedure by which the

00:51:53

interim measure can immediately come

00:51:55

into force with litigation over

00:51:57

challenges to enforcement to follow

00:52:01

So without drawing out the

00:52:03

wind up any further, I

00:52:04

will open it up to

00:52:05

our panelists to discuss how

00:52:07

some of these issues are

00:52:08

treated in their respective jurisdictions

00:52:10

and for their thoughts on

00:52:12
other strategic considerations surrounding the

00:52:15
enforcement of interim measures. Thank

00:52:18
you Charlene. It's great introduction

00:52:20
for the topic. It's a

00:52:22
fascinated topic indeed and we'll

00:52:25
start with yoga again. They

00:52:28
need practical cases any court

00:52:31
cases in Japan that would

00:52:32
give us a little view

00:52:35
of you on how Japanese

00:52:37
chords you or treat entering

00:52:40
Rewards. Sure. Thank you Jane.

00:52:43
And again not again that

00:52:46

actually and the current release

00:52:48

situation in Japan. I'm eating

00:52:50

your word cannot be important.

00:52:53

So there is no there

00:52:54

has been no court cases

00:52:55

this regard to the enforcement

00:52:57

of the internal Outlook. But

00:53:00

Amendment of the arbitration Act

00:53:03

is currently being discussed by

00:53:06

task. Of course. Under which

00:53:09

enforcement of eating a world

00:53:12

becomes possible. So and this

00:53:15

amendment is basically property to

00:53:19

implement 2016 are model. So

00:53:25

After this, you know mutation

00:53:28

Act is amended. We hope

00:53:31

that the intern award can

00:53:33

be encouraged in a similar

00:53:35

manner with us under the

00:53:39

acetone model. But of course

00:53:41

are some parts of the

00:53:43

answer to rule model needs

00:53:46

to be modified to hit

00:53:48

into Japanese video systems and

00:53:50

practices. So, um for the

00:53:54

purpose of today's how discussion

00:53:55

I actually assume that the

00:53:58

current discussion which in the

00:54:01

task force, which is summarized

00:54:02

in a kind of tentative

00:54:04

draft is an actually enacted

00:54:07

and introduce our severity leading

00:54:11

topics in this regards. And

00:54:14

the first week is what

00:54:17

kind of inter major can

00:54:19

be imposed in Japan. and

00:54:23

so and the different draft

00:54:27

provides that as one of

00:54:29

the grounds to diffuse the

00:54:31

enforcement of entering award. That

00:54:34

any intern Award of the

00:54:37

nature that can be encourage

00:54:39

and the Japanese rule kind

00:54:41

of thing first. So it

00:54:42

is kind of tutorial but

00:54:44

this is understood to be

00:54:46

to me that this is

00:54:50

basically on the Internationals that

00:54:53

are not available and the

00:54:55

Japanese school. So for example

00:54:57

in Japan now like brought

00:55:01

up into nature such as

00:55:03

preaching orders or receiver supporters,

00:55:06

or are you a Junctions

00:55:08

are not available? So I'm

00:55:11

not sure whether Avatar Chino

00:55:14

open issues such interventures, but

00:55:17

if we have such Road

00:55:19

intermitters or issues by the

00:55:22

truly know it is kind

00:55:24

of unlikely to be able

00:55:26

to be a person Japan.

00:55:29

and the second point is

00:55:31

your second question is a

00:55:35

native to our formalistic requirements,

00:55:37

which is very strict in

00:55:39

Japanese called procedure. So for

00:55:42

example, there is a kind

00:55:44

of very specific way to

00:55:46

draft other dispositive part of

00:55:49

the judgment. By the quote.

00:55:51

So therefore if the Avatar

00:55:55

award, I mean the eating

00:55:56

already not true feeling such

00:56:02

formalistic requirements. They're such internal

00:56:06

can be devised and of

00:56:09

course and the tentative draft

00:56:11

that I call that's not

00:56:12

Theory first to whether the

00:56:15

court could do or could

00:56:17

not do But that's you

00:56:20

might be aware. Um a

00:56:22

part of the model which

00:56:24

is done article 17 allows

00:56:27

the quote to kind of

00:56:28

device the internet world to

00:56:32

to heat into the products

00:56:35

or the cold power to

00:56:37

enforce it. But this part

00:56:39

of model role is actually

00:56:41

not included in a Japanese

00:56:43

draft. So it is likely

00:56:46

that or Irish in my

00:56:49

opinion. It is likely that

00:56:52

the Japanese Court refused to

00:56:54

modify the intern hour, which

00:56:58

is strictly not fulfilling the

00:57:03

Humanistically, we're going and not

00:57:06

be enforced but it isn't,

00:57:09

you know kinds of lift

00:57:10

to the practice of the

00:57:12

Japanese court. So it is

00:57:14

not very long and the

00:57:16

study in the last point

00:57:17

is briefly very Griffith is

00:57:20

how to enforce the intern

00:57:22

award and as again see

00:57:25

many of you might know

00:57:26

that should know that you

00:57:29

know how to enforce it

00:57:31

in already lived to the

00:57:33

discretion of the each domestic

00:57:36

or And that is the

00:57:39

same on the different school

00:57:41

and the issue is how

00:57:43

to import. Some eating hours

00:57:47

which are proceeded some action

00:57:50

or or order some action

00:57:53

from the respondent. And I

00:57:56

interestingly our insurance the draft

00:58:02

of thinkers in draft included

00:58:04

our calls to allow the

00:58:05

quote to cause a penalty.

00:58:08

for no compliance of the

00:58:10

internet award against the bleaching

00:58:13

party, but that course was

00:58:15

later excluded. So it is

00:58:18

again very gift with the

00:58:20

domestic poor Japanese Court to

00:58:22

how to enforce such in

00:58:24

our event. I'm pretty curious

00:58:26

how such kind of meeting

00:58:27

naturally is actually enforcing other

00:58:30

jurisdictions. Thank you very much.

00:58:35

Thank you. Thank you yoga.

00:58:37

It's very interesting. Yeah Special

00:58:40

The View that the Japanese

00:58:43

course of every formalistic and

00:58:44

they will just follow the

00:58:45

procedural aspects of strictly. So

00:58:48

it's quite interesting I think.

00:58:50

console when they deal with

00:58:52

enforcement or when they deal

00:58:54

with parties that relate to

00:58:56

Japan, they should definitely take

00:58:58

that in the account and

00:59:00

definitely seek advice from a

00:59:04

yoga of a college on

00:59:06

a specific issues relating to

00:59:08

enforcement of Japan in Japan

00:59:10

before the issues arises. Thank

00:59:13

you. Okay again, sir, okay.

00:59:16

Thank you. David the view

00:59:20

from Panama. Thank you very

00:59:22

much. Jean and Yoko. I

00:59:24

really like your presentation. Once

00:59:28

again, Panama has a very

00:59:31

good and reliable roadmap and

00:59:33

I say that not necessarily

00:59:35

because the roadmap is always

00:59:37

followed but prior to the

00:59:40

enactment of the arbitration law

00:59:41

interim measures were not enforceable

00:59:45

by way of exit water.

00:59:47

So the exit water in

00:59:49

Panama whether it be for

00:59:50

arbitral awards or Court courts

00:59:56

of law judgments was reserved

00:59:59

and limited to final judgments

01:00:02

or final Awards in the

01:00:03

marriage that however changed in

01:00:06

2013 when the arbitration law

01:00:08

was passed. so article 43

01:00:12

of the arbitration law specifically

01:00:14

allows for the enforcement of

01:00:17

an interim measure. within an

01:00:21

arbitration a foreign arbitration specifically

01:00:25

Unfortunately the way it is

01:00:27

set up. It is rather

01:00:29

cumbersome because you have to

01:00:30

go through the whole Loop

01:00:31

of the Supreme Court or

01:00:33

Panama as I mentioned earlier.

01:00:35

And the exceptions are the

01:00:37

objections to enforcement that are

01:00:39

available. As objections, for example,

01:00:42

the public policy objection the

01:00:44
non-existence of an arbitration objection

01:00:46
plus other objections are available

01:00:49
and it's it's rather bureaucratic.

01:00:52
You have to with a

01:00:53
supreme court. You cannot go

01:00:54
directly to our trial court.

01:00:56
The Supreme Court has to

01:00:57
look at it and the

01:00:58
Supreme Court has if the

01:01:00
Supreme Court grants it there's

01:01:01
a presumption. For enforceability, but

01:01:05
if a supreme court granted

01:01:06
then has to delegate upon

01:01:08

our court. And by the

01:01:09

time this is done. It

01:01:10

is very unlikely that the

01:01:12

measure the interim measure will

01:01:14

serve its purpose. So it's

01:01:17

really as with everything in

01:01:19

arbitration. It really depends upon

01:01:21

the party's good faith. in

01:01:24

if a party sitting in

01:01:25

Panama is ordered by a

01:01:27

foreign arbitral Tribunal. To perform

01:01:31

something based upon an interim

01:01:34

core an interim arbitral award.

01:01:36

Then that party has the

01:01:39

obligation to comply with it.

01:01:42

Otherwise it it could face

01:01:45

Court action in Panama by

01:01:47

way of this enforcement proceeding

01:01:50

that is contemplated in the

01:01:52

law now curiously and and

01:01:54

this is really a practice

01:01:56

tip. There are alternative ways

01:01:59

to get this done because

01:02:01

under the arbitration law of

01:02:02

Panama. The ordinary courts of

01:02:05

Justice in Panama the trial

01:02:07

courts retain jurisdiction to issue.

01:02:11

Cautionary measures or provisional orders

01:02:14

during the course of an

01:02:15

arbitration or before the filing.

01:02:17

So for example in a

01:02:19

case, which was pending in

01:02:20

London. We were able to

01:02:23

obtain a freeze order issued

01:02:25

by a Panamanian Court directly,

01:02:27

even though the case was

01:02:29

pending in London. And then

01:02:30

the freeze order was was

01:02:32

ordered in Panama by by

01:02:34

a court of law and

01:02:35

file the cautionary or the

01:02:38

interim relief. Was remanded to

01:02:41

the arbitral court in London.

01:02:44

Which in turn when we

01:02:46

wanted to undo the interim

01:02:48

measure the arbitrator alone I

01:02:51

said hi. I don't have

01:02:51

jurisdiction to undo and cautionary

01:02:55

measure issued by a court

01:02:57

abroad so it had to

01:02:59

really Remain the case to

01:03:01

Panama. To get the order

01:03:03

undone or to get the

01:03:05

order the interim relief lifted.

01:03:09

A curious and this is

01:03:10

another thing and I'm not

01:03:11

going to reveal but it's

01:03:13

it's out there in the

01:03:13

exit database in another case

01:03:15

that I work with. There

01:03:17

was an interim an emergency

01:03:19

interim relief order issued by

01:03:21

an exit panel. in a

01:03:24

matter and the way it

01:03:28

worked is that the parties

01:03:29

involved basically respected the order

01:03:31

and we didn't have to

01:03:32

go. Through enforcement because and

01:03:36

you know, it's an exit

01:03:37

case so so it will

01:03:38

be very easy and I

01:03:40

strongly recommend that you take

01:03:41

a look at it. We

01:03:42

worked it actually was worked

01:03:44

by colleagues of ours out

01:03:46

of Miami and Washington and

01:03:47

we were assisting them in

01:03:48

Panama. So that president is

01:03:51

there. I'm not going to

01:03:52

rebuild the name, but you

01:03:53
will be able to find

01:03:54
it if you just go

01:03:56
into the exit. Database of

01:03:58
cases and it was respected

01:04:00
and it was an interim

01:04:01
relief order. So I think

01:04:03
that's a great president to

01:04:05
show that Panama will respect

01:04:08
and enforce unfortunately, there's no

01:04:10
specific cases because in that

01:04:12
case there was no need

01:04:14
to go to court in

01:04:15
Panama. But again, it's it's

01:04:17

not a lost cause because

01:04:19

of the bureaucracy. There's other

01:04:21

ways of getting your interim

01:04:23

relief granted as we did.

01:04:25

We also by by way

01:04:28

of example the Panamanian arbitration

01:04:32

law defines Norms or actions

01:04:37

or preservation of evidence as

01:04:39

part of interim relief we

01:04:41

were able to get a

01:04:42

Panamanian Court to preserve evidence

01:04:45

prior to filing abroad a

01:04:49

an arbitration abroad so so

01:04:51

that we directly by resorting

01:04:54

to a Panamanian trial court.

01:04:56

Again, this is Cutting Edge.

01:04:57

This is something that will

01:04:59

take time because of the

01:05:01

existing president or the existing

01:05:04

culture that interim relief was

01:05:07

not enforceable by way of

01:05:09

executor and that has changed

01:05:11

with the enactment of the

01:05:13

arbitration law. Thank you very

01:05:15

much. I yield the rest

01:05:16

of my time Jean. Days

01:05:19

are really appreciate the focus

01:05:21
of your presentation and and

01:05:23
my generosity for yielding time

01:05:25
Gene. Come on it absolutely

01:05:27
that's that was my second

01:05:28
and that was second after

01:05:30
end. I've really appreciate that

01:05:32
going back to Ukraine now

01:05:34
to Canada any chance that

01:05:38
interim words can be enforced

01:05:40
in Ukraine. Thanks. It looks

01:05:43
yes. First of all, we

01:05:45
have the quite understandable formal,

01:05:49
but very clear Provisions in

01:05:52

the Ukrainian civil procedure go

01:05:54

to which provide for the

01:05:55

late and we have also

01:05:57

the situations we have three

01:06:00

cases being brought into the

01:06:01

course for enforcement of emergency

01:06:04

support interesting that all these

01:06:07

words were issued on the

01:06:09

Stockholm arbitration emergency arbitration rules.

01:06:14

And the none of these

01:06:19

decisions. There was no ocean

01:06:21

that it's not enforceable. It

01:06:24

is important. So it means

01:06:25

that in principles the courts

01:06:27

agreed that these sort of

01:06:29

a visual Awards in Germany

01:06:32

emergency. I'll be Traders Awards

01:06:34

could be enforceable and Ukraine,

01:06:36

but what we have we

01:06:38

have an interesting situation specific

01:06:41

one. I just mentioned about

01:06:43

this if any questions we

01:06:45

can return back to other

01:06:46

two it was the interim

01:06:50

word issued in favor of

01:06:52

the Russian web Bank connecting

01:06:55

with execution in the Ukraine

01:06:58

of the prohibition to deal

01:07:01

with the Stokes of the

01:07:05

company Ukrainian company being the

01:07:08

daughter company of the Russian

01:07:11

bank and what actually happened

01:07:13

at the time of the

01:07:14

execution of this world enforcement

01:07:17

and execution when the bond

01:07:19

it light in Ukraine already

01:07:22

existed the award which was

01:07:25

issued by the Ukrainian court

01:07:27

on the basis of the

01:07:28

application to enforce to enforce

01:07:31

the decision of the PCA

01:07:34

in the claim of Everest

01:07:37

the State against and others

01:07:39

against the Russian Federation among

01:07:41

the Which were in within

01:07:43

the set arbitral award issued

01:07:46

by PCA. It's an investment

01:07:47

District as well where they

01:07:49

said Ukrainian promise Bond whose

01:07:53

action actually actions. Well now

01:07:56

under the specific decision of

01:07:58

the Ukrainian court with the

01:08:00

prohibition of fulfilling a lot

01:08:02

of different actions, and at

01:08:05

the same time it was

01:08:06

stated that this bank is

01:08:10

one of the assets against

01:08:12

which is execution could be

01:08:14

sold. It means that that

01:08:15

period of time in Ukraine

01:08:17

already existed the judicial decision

01:08:20

which entered into legal Force

01:08:22

which provides for the certain

01:08:24

actions and the laws the

01:08:26

Ukrainian so it is to

01:08:29

sell the assets of these

01:08:31

Bank in order to cover

01:08:33

the demands. You should buy

01:08:36

the important confusion, but the

01:08:38

decision of PC using these

01:08:40

circumstances Iranian good said that

01:08:43

it is a part of

01:08:44

public policy that if there

01:08:46

is the existing and entered

01:08:49

into the into the legal

01:08:50

Force the decision of the

01:08:51

Court it should be enforced

01:08:53

and executed as a final

01:08:56

decision and that in this

01:08:58

case the allowing of the

01:09:01

execution of the emergency arbitrators

01:09:04

were just mean the violation

01:09:06

of this finality and the

01:09:08

judicial force of the already

01:09:10

existing Ukrainian award. That was

01:09:13

the reason why the actual

01:09:15

is the state what refused

01:09:17

the execution thing that it's

01:09:19

not possible according to Ukrainian

01:09:21

public order to execute against

01:09:25

They already existed Ukrainian decision,

01:09:28

which is already in this

01:09:30

process of execution as a

01:09:32

final one. So I'm not

01:09:36
confident whether I need to

01:09:37
stop because we in time

01:09:40
I can limit it now

01:09:42
and return back to the

01:09:44
other two issues later in

01:09:46
order to my colleague to

01:09:48
provide for the presentation if

01:09:50
it's acceptable Gene we can

01:09:52
do any such way. Yes.

01:09:53
Absolutely. Yes. Appreciate that. You

01:09:55
Anna thanks for your comment

01:09:57
and lip sound please. Thank

01:10:01
you Gene. I'll try my

01:10:03

best to keep this moving

01:10:04

quickly. So in terms of

01:10:06

interim relief, I think speaking

01:10:10

for myself. They approach that

01:10:11

I took was the trend

01:10:14

towards having emergency arbitrators appointed.

01:10:18

So just a quick recap

01:10:21

for some of you essentially

01:10:23

arbitro institution have promoted emergency

01:10:27

arbitration in their bit to

01:10:30

provide users of arbitration with

01:10:32

more efficient recourse, especially when

01:10:37

the tribunal has not yet

01:10:39

being constituted. This has proven

01:10:42

to be useful in certain

01:10:44

cases where in Junctions are

01:10:45

required where some intellectual property

01:10:48

has to be obtained but

01:10:50

not everyone would like to

01:10:52

sit as an emergency arbitrator

01:10:54

because there's a lot of

01:10:55

pressure if you look at

01:10:57

the sic's panel you will

01:11:00

see The arbitrators name there

01:11:02

only those of an asterisk

01:11:05

have volunteered to take on

01:11:06

the burden of being an

01:11:08
emergency arbitrator because that's a

01:11:11
lot to turn around in

01:11:12
a very short space of

01:11:14
time. now in Singapore this

01:11:18
mechanism started way back in

01:11:21
July of 20 10, but

01:11:23
what is interesting is that

01:11:25
only in 2012 did the

01:11:28
government change our International arbitration

01:11:32
act to make it clear

01:11:34
that an emergency arbitrator would

01:11:37
be similar to any other

01:11:40
tribunal and therefore the emergency

01:11:43

arbitrators decision becomes enforceable like

01:11:48

any other arbitral decision now,

01:11:50

this is a very very

01:11:52

important development back in 2012.

01:11:54

And and those of you

01:11:56

who need the citation the

01:11:59

only go and look at

01:11:59

section 2 of the ACT.

01:12:03

Now back to the Singapore

01:12:05

context and the rules and

01:12:08

emergency arbitrator under the Singapore

01:12:10

rules were enjoy the same

01:12:11

Powers as a normal arbitral

01:12:14

tribunal including the ability to

01:12:16

determine his jurisdiction to award

01:12:19

interim relief, and of course

01:12:20

a portion costs. now the

01:12:24

emergency arbitrator is very unlikely

01:12:27

to form part of the

01:12:28

main tribute, you know, there

01:12:29

are prohibitions and the award

01:12:32

of the emergency arbitrator would

01:12:35

have Would cease to have

01:12:40

effect within a certain number

01:12:41

of days now. All those

01:12:42

are in the rules of

01:12:44

the sic which are very

01:12:46
well ventilated. Now. The last

01:12:47
point I'm going to do

01:12:48
with in in a minute

01:12:50
is just to highlight that

01:12:52
although we have amended our

01:12:53
laws to make it clear

01:12:55
that an emergency arbitrator has

01:12:58
the same status as a

01:13:00
normal tribunal it remains to

01:13:02
be seen whether a foreign

01:13:04
emergency arbitrators decision or interest

01:13:08
decision would be impossible in

01:13:10
Singapore. So we just contrast

01:13:12
the express Provisions that the

01:13:14
Hong Kong areleans has made

01:13:18
to its laws to make

01:13:19
it clear foreign seated emergency

01:13:22
arbitrations will be enforced back

01:13:25
to Eugene. Thank you lips

01:13:29
and appreciate that. It was

01:13:30
a very brief and very

01:13:32
to The Point presentation. Now,

01:13:35
we have a very brief

01:13:37
Q&A session about five and

01:13:40
seven minutes before we all

01:13:42
get switched to the breakout

01:13:43

rooms where we can continue

01:13:45

our discussion separately the question

01:13:48

that was that arises is

01:13:51

whether domestic and international public

01:13:54

policy may also be a

01:13:55

basis for the Court's consideration

01:13:57

to enforce an award that

01:13:59

may have been vacated at

01:14:01

the court of the seat

01:14:02

of arbitration. So what happens

01:14:04

is the award is vacated,

01:14:05

of course, there's a article

01:14:07

the under the New York

01:14:09

convention the court May. A

01:14:12

May refuse to enforcement but

01:14:15

would the public policy be

01:14:17

a basis for a court

01:14:21

to refuse the enforcement of

01:14:22

such a word and Charlene.

01:14:24

Would you be able to

01:14:25

give us a maybe just

01:14:29

your view from from New

01:14:31

York on that issue? Yes,

01:14:34

absolutely. I mean, I think

01:14:36

it's a it's a very

01:14:37

interesting question a lot of

01:14:39

these ground turn on recognition

01:14:41
under the New York convention

01:14:42
have significant overlap and and

01:14:45
objection that falls under one

01:14:46
rubric can very easily be

01:14:48
reframed as injection under under

01:14:51
a different route break. I

01:14:53
think when it comes to

01:14:53
an old Awards Um, there

01:14:57
are probably various objections under

01:15:00
Article 5 that would be

01:15:01
implicated by the enforcement of

01:15:04
such an award there is,

01:15:06
you know, specifically one ground

01:15:09

that deals with I think

01:15:10

it's article 51e that deals

01:15:12

with awards that have been

01:15:13

set aside and gives discretion

01:15:15

to the recognizing Court to

01:15:17

decline enforcement where the award

01:15:20

has been set aside by

01:15:21

the courts of the arbitral

01:15:22

sea, but I do think

01:15:24

that public policy may be

01:15:25

implicated as well and not

01:15:28

always in the most expected

01:15:29

ways, you know, the one

01:15:31

sort of interesting case that

01:15:33

I'll mention from New York

01:15:34

is the commissy case against

01:15:37

pemex. This was one of

01:15:41

the very very few cases

01:15:43

that exist and US jurisprudence

01:15:45

where a US court did

01:15:47

actually enforce recognize and enforce

01:15:51

and arbitrol award that had

01:15:52

been set aside by the

01:15:54

courts of the seat in

01:15:55

this case. Was the the

01:15:58

courts of Mexico? In an

01:16:00

ICC arbitration between a Mexican

01:16:04

subsidiary of a US company

01:16:06

and pemex the oil and

01:16:08

gas arm of the Mexican

01:16:10

state. And in this case,

01:16:12

the the facts were very

01:16:16

very specific and rather egregious.

01:16:19

I think in this case

01:16:21

there was an arbitration clause

01:16:22

in a contract between komisa

01:16:25

and the and penx which

01:16:28

was entered into willingly by

01:16:30

pemex. And only later was

01:16:34

a law passed by the

01:16:36

Mexican legislature, which essentially invalidated

01:16:39

that arbitration agreement but only

01:16:42

after commissa had relied upon

01:16:44

the arbitration agreement initiated arbitration

01:16:46

and gone through an entire

01:16:48

arbitration received an award. So

01:16:51

on the basis of this

01:16:53

new law, which was applied

01:16:54

retroactively by the Mexican courts.

01:16:56

The award was annulled in

01:16:58

Mexico. And this all came

01:17:01

to the attention of the

01:17:02

US court before whom an

01:17:05

enforcement petition was pending, and

01:17:08
the US court looked at

01:17:12
us public policy for purposes

01:17:15
of determining whether it should

01:17:18
defer to the foreign annulment

01:17:20
decision. so this is it's

01:17:23
sort of a reversal of

01:17:25
the normal role that public

01:17:26
policy would play in these

01:17:28
cases and the US court

01:17:30
said that to the foreign

01:17:32
annulment decision in this case

01:17:33
was the decision that violated

01:17:37
under us public policy the

01:17:39

most basic Notions of morality

01:17:41

and Justice and fairness and

01:17:43

decided to actually confirm the

01:17:45

award on that basis. Yeah,

01:17:50

thanks. Thanks Charlene. That's that

01:17:52

that's very interesting indeed. Yes.

01:17:54

It's a it was an

01:17:56

interesting case lipsan. Could you

01:17:59

perhaps those are coming from

01:18:00

a Singapore site on that

01:18:03

issue? Yes, I can the

01:18:06

Singapore position has also examined

01:18:09

article 51e. Yes Charlene rightly

01:18:13

points out in terms of

01:18:15
the difficulties. If there is

01:18:19
in another pending setting aside

01:18:22
in another jurisdiction before now

01:18:24
another National Court, we have

01:18:27
some jurisprudence in Singapore, which

01:18:30
has expressed sentiment that the

01:18:34
courts would have serious doubt

01:18:36
in those words serious doubt,

01:18:39
whether it could retain any

01:18:42
discretion whether or not to

01:18:44
enforce an award if that

01:18:47
award had already been set

01:18:49
aside at the seat of

01:18:50
the obliteration. Um now in

01:18:53
another case what was interesting

01:18:55
was that was the setting

01:18:57
aside was pending in the

01:18:59
Danish called the courts took

01:19:02
the view that it nonetheless

01:19:04
could refuse the adjournment because

01:19:08
the merits of the setting

01:19:10
aside had not yet been

01:19:12
fully ventilated before the Danish

01:19:14
courts. So I would suggest

01:19:15
that distinction being whether another

01:19:19
National Court had fully and

01:19:21
finally set aside and arbitration

01:19:23
before he was attempted to

01:19:25
be enforced in Singapore G.

01:19:28
That I quote that can

01:19:30
contribute to the discussion. Thank

01:19:32
you. Appreciate the contribution. Certainly

01:19:34
at this point. We can

01:19:37
continue the Q&A separately. I

01:19:41
know there are some more

01:19:42
questions that were a raised

01:19:45
and please hold on to

01:19:47
this questions. All the participants

01:19:49
now will be switched to

01:19:51

the breakout rooms with one

01:19:53

of the speakers or panelists,

01:19:55

and you will have a

01:19:57

opportunity to discuss this questions

01:19:58

for them directly. Thank you

01:20:00

very much and thank you

01:20:01

very much to the moderate

01:20:03

to moderator to Charlene to

01:20:07

the speaker to the panelists,

01:20:09

and it was a great

01:20:11

discussion. Appreciate it. Thank you.

01:20:14

Thank you so much, Jean

01:20:16

and thank you. I'm telling

01:20:19

you referring to your names

01:20:22

as they appear in my

01:20:23

screen, you know, David and

01:20:24

Lipson and and Charlene and

01:20:27

Tatiana and and Yoko, thank

01:20:29

you so much for educating

01:20:32

us on enforcement and and

01:20:34

sometimes how to deal with

01:20:36

with cases an awards that

01:20:41

need to be complied with

01:20:43

sometimes through the usual route

01:20:47

and sometimes through more knowledgeable

01:20:51

actions as as David shared

01:20:54

it when dealing with cases

01:20:57

that involve Panama. This was

01:21:00

a great discussion and a

01:21:01

lot of food for thought

01:21:02

and a concerning investment arbitration

01:21:04

commercial arbitration and and enforcement

01:21:06

of arbitral award and with

01:21:09

that we will send everyone

01:21:12

to break Rooms enjoy this

01:21:15

time it is there's no

01:21:17

agenda the the record rooms

01:21:20

are provided for people to

01:21:22

meet each other if you

01:21:23

want to and and for

01:21:27

attendees to meet our stars,

01:21:29

and of course our stars,

01:21:30

are you guys so give

01:21:32

us a second and we'll

01:21:33

be right with you in

01:21:35

the breakout rooms.