

ICSID Rules Amendment *

Summary

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

The fifth day of the World Arbitration Week featured a panel discussing the recent amendments to the International Centre for Settlement of Investment Disputes (ICSID) rules, which became effective in July 2022. The event was co-founded by Dr. Jose Antonio Rivas and aimed to provide updates on international arbitration while promoting diverse voices from various regions, including Latin America, Southeast Asia, Africa, and the Middle East.

The panel highlighted significant changes to the ICSID rules, emphasizing efficiency, transparency, and accessibility in arbitration processes. Key speakers included Mallory Silverman, who shared practical tips on navigating the new rules, and officials from ICSID who elaborated on the amendments. The new rules focus on improving case management, including mandatory time frames for decisions, enhanced transparency in proceedings, and the introduction of mediation and fact-finding procedures.

A notable aspect of the amendments is the approach to third-party funding, which now requires parties to disclose the identity of their funders to prevent conflicts of interest, although the specific terms of funding agreements do not have to be disclosed. The panel also discussed the new provisions for security for costs, which allow tribunals to order security based on the parties' ability to comply with adverse decisions.

The session concluded with a robust discussion on the implications of these changes for future arbitration cases, emphasizing the importance of adapting to the new rules to enhance the efficiency and legitimacy of the arbitration process. Participants expressed optimism about the potential of the new rules to streamline proceedings and improve the overall arbitration experience.

Authors

Gonzalo Flores, Martina Polasek, Mallory Silberman, Bart Legum, Antonio Parra, Ian Laird

Topics

ICSID, ICSID RULES

Category

WAU

Full Transcript

00:00:01

Welcome to our world arbitration

00:00:05

week day 5, we had

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an exciting week of panels

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on many different subjects on

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topics, so it's really actually

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great to do a hybrid

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event and actually see a

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room full of people and

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we have a great, great

00:00:21

crowd online. Fantastic. And so

00:00:24

I welcome the world. Arbitration

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wait panel today is on

00:00:31

a very important topic which

00:00:35

really fits well, into the

00:00:37

objectives of world. Arbitration update,

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we founded, the Jose, Antonio

00:00:42

and I dr. Jose, Antonio

00:00:45

Rivas to be clear and

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I co-founded a while to

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meet a couple of objectives.

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The first objective, of course,

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is in the title. It's

00:00:54

to providing updates and international

00:00:56

arbitration, investment arbitration and Commercial

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arbitration to provide a forum.

00:01:01

For providing new developments and

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a discussion of everything happening.

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You know, in the past

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year and in the international

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arbitration world and to, secondly,

00:01:17

welcome a diverse range of

00:01:19

voices to help inform the

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rest of us on developments,

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not only in the major

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arbitration centers in of the

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major rules, but from every

00:01:29

corner of the world and

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hence, the other part of

00:01:32

the title, World arbitration update,

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we've had panels address in

00:01:37

topics related, Latin America, southeast

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Asia Africa, Middle East, and

00:01:45

of course, the general topics,

00:01:47

as well as Pinterest, the

00:01:50

folks. So we're very pleased

00:01:52

today to do this topic

00:01:55

which the title of our

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panel. Today is exid rules

00:02:00

amendments and You know, there's

00:02:03

been a great deal of

00:02:04

discussion in the International Investment

00:02:07

arbitration Community about amendments and

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reforms to various rules. We

00:02:12

had a fantastic panel this

00:02:14

morning on the on social

00:02:16

reform efforts and the thanks

00:02:18

to our panelists who gave

00:02:21

us a great exposition of

00:02:23

those developments. And now we're

00:02:27

kind of going to the

00:02:28

other shoe, a dropping which

00:02:31

is the exit rule amendments

00:02:33

which as we know became

00:02:35

effective this past July and

00:02:39

we have a fantastic panel

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here today and I'll let

00:02:43

my colleague Jose Antonio, introduce

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our moderator. But first, a

00:02:48

little bit of administration we

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want to thank our sponsors.

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We've had a a really

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enthusiastic and supportive group of

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sponsors this year and certainly

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would not have been able

00:02:59

to organize this conference Without

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their support. We have a

00:03:03

large group of supporters who

00:03:05

helped promote and Market the

00:03:09

conference and provided speakers and

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input on topics. And of

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course, our Advisory Board of

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which, we absolutely couldn't have

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done this without them as

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well. We've had a really

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active and supportive group there,

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so thanks to all those

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folks and I think finally

00:03:32

wanted to thank our organizers

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San Antonio and his team

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attack strategy LLP and put

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in a mini mini, arduous

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hours putting together these panels

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making the ships for the

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trains run on time. Hurting

00:03:49

the shots, whatever metaphor you

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want to use and the

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full commodation and congratulations to

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them for all their hard

00:03:56

work. And in organizing this,

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this five-day Diverse and wide-ranging

00:04:04

a conference and it's been

00:04:07

a huge success and congratulations

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to particular Anna and Maria

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Luchia. So with those few

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notes, I think I've covered

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off kind of some of

00:04:15

the administration. I'll pass it

00:04:17

on to doctor Revis has

00:04:19

to my right and we'll

00:04:21

move into the panel discussion.

00:04:24

Jose Antonio Nigerian how was

00:04:28

I was just thinking, why

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do better place that then

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I'll run in Porter to

00:04:34

to start wrapping up the

00:04:37

world arbitration update week. I

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had the pleasure of serving

00:04:42

as counsel in many cases

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while I was a senior

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associate at Arnold Porter and

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I'm immensely grateful for with

00:04:53

with Mallory Silverman, one of

00:04:57

our Advisory board members for

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hosting this Hybrid here at

00:05:02

the Arnold Porter and what

00:05:04

a better panel to to

00:05:06

start closing the world application

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update than than than a

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panel on the exit rules

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thinking. When we will we're

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choosing panelist, I could not

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be more enthusiastic about the

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panels that are here. I

00:05:25

have happened to to see

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the caliber of of, of

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professionals and human beings. I've

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had the pleasure of working

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with all of them at

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some stage in my career

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and and collaborate with all

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of them at some stage.

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So, this is, this is

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a panel like, like no

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other. And I say that

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without any exaggeration, I would

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like to start out by,

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by thanking all so excited,

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and it has been tremendously

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supportive, not not 11. Secretary-general.

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But two Deputy secretary-general. So

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there's there's no other conference

00:06:08

that that that does that.

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So, I must say that

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I'm sorry. Sorry, I is

00:06:15

a moderator and he know

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he was, he was a

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mentor of mine when I

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was at an extremely grateful.

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He has many good things.

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Now, he's a deputy secretary-general

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and at some stage I

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expect that that Antonio para

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will be with us, but,

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but he's one of those

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individuals extremely extremely gifted with,

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with names details. He has

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a prodigious memory in addition

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to to his in-depth, knowledge

00:06:47

about the convention when things

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that happened, at how things

00:06:52

should be handled always with,

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with neutrality. And and I

00:06:57

don't care. I know that

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if I keep on going

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He might not be my

00:07:02

friend anymore, so I'll stop

00:07:04

there. Go to Silo, you

00:07:05

have the store and we're

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tremendously proud of having everyone

00:07:09

here and let's learn about

00:07:13

the amendments. Thank you, cousin

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Tonio. Thanks to everybody was

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in the room and those

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were joining us today. Online

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text Julie, organizer for inviting

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exit to participate in this

00:07:28
important conference. As you heard

00:07:32
the Focus door panel, today

00:07:34
is the 2022 exceed rules

00:07:37
and regulations. Let me start

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with one of the funniest

00:07:42
things about this mixture of

00:07:43
everything about a person on

00:07:47
Virtual conferences for 2 years,

00:07:51
I got so used to

00:07:52
be reading the script but

00:07:55
I forgot how to speak

00:07:56
freely background of, how did

00:08:04
we get here? Why, why

00:08:05

are we speaking about amendments?

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Why we embark on this

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amendment process is very, very

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briefly because I do want

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to hear the address. Score

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going to get into more

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substance. As you probably all

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know on March 21st this

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year, 18 member states approve,

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the long-awaited and comprehensive set

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of amendments to leave the

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rules and regulations for resolving

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international disputes between private investors

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and state. This is the

00:08:38
first amendment of The Bill

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since 2006, and is the

00:08:42
most expensive and inclusive modernization

00:08:44
of exit procedures in the

00:08:46
center of History. I was

00:08:48
lucky enough to be part

00:08:49
of the 2003 and 2006

00:08:52
amended processed. And while they

00:08:55
were very important and make

00:08:56
it is enormous progress in

00:09:00
in exit rules. And it

00:09:02
said, it said practices nothing

00:09:05

in the past amount to

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go to the work and

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their their coverage, the Beast

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rules, have achieved. No. These

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rules are the outcome of

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almost six years of very

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hard work and Analysis by

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David Secretariat and deliver collaboration.

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With State officials legal counsel,

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adjudicators business representatives, and Civil

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Society, including three Interstate in

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person. Consultative meetings in Washington

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DC between 2018 and 2019.

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We would have had more

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meetings but the world stopped

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working for a couple of

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years. Have to do. As

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you probably know, we had

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hundreds of presentations with different

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groups of stakeholders. Thousands of

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pages in comments and there

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are six working papers published

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available on our website. Again,

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sounds of pages of analysis

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before getting to the current

00:10:01

rules. These updated rules on

00:10:05

arbitration mediation punctuation on fact-finding.

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Corporate in very, nobody expects

00:10:12

the same to basically four

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aspects. Make the exact case

00:10:16

is more efficient time in

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cost and a guiding principle

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in this process Road and

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access to existing facilities and

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services. We always say, we

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always remind people that we

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need to remind people that

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like, she's their leader in

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investor-state, arbitration dispute, dispute settlement

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procedures with over 70. 75%

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of all cases, ever administered

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being handled by the center.

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If we are the leaders

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and we have the best

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rules. Let's make them accessible

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to everyone. That was another

00:10:53

guiding principle. And also we

00:10:57

will speak with this rules

00:10:59

to ensure and ensure greater

00:11:01

transparency in the contact that

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outcome of proceedings. Very mind

00:11:05

that if she has always

00:11:08

have a very transparent, SS

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parents, are always with you

00:11:13
respect to their parties, disputing

00:11:16
parties desires. So it's in

00:11:20
the nature of fixing to

00:11:21
have more transparency and we

00:11:23
will speak about that came

00:11:25
into effect on July 1st

00:11:27
has been publishing and will

00:11:30
continue. Publishing extensive guys, guided

00:11:32
notes producing the rules over

00:11:34
the next few months, and

00:11:36
events. Like this are in

00:11:37
the same line of explaining

00:11:39
how this new rules work.

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No, these Innovations of the

00:11:44

rules include measures designed to

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make Asus more efficient, including

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mandatory frame time, frame surrendering,

00:11:51

orders and awards, and you

00:11:53

expect there between rules rules

00:11:55

that enhance transparency of exit

00:11:58

orders decisions in the Wards

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Road access to exceed, specialized

00:12:02

scooter, solution, products, and services,

00:12:04

including a completely new set

00:12:06

of mediation rules, and more

00:12:10

disclosures, including an updated Declaration

00:12:13

of Independence availability in confidentiality

00:12:15

by arbitrators, how do you

00:12:18

spell sure of third party

00:12:18

funding? Which was a very

00:12:22

I want to say controversial,

00:12:23

but we will see extensively

00:12:25

discussed topic and a streamlined

00:12:27

process for disqualification of arbitrators

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and considers. No, for people

00:12:33

online and to facilitate a

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discussion today. So you can

00:12:37

follow More conveniently. I encourage

00:12:41

you to download the new

00:12:42

rules and regulations that are

00:12:44
available on our website. Is

00:12:45
there going to be? So

00:12:46
I'm assuming they're going to

00:12:47
be a number of reference,

00:12:48
the rules those who work

00:12:52
in this field for many

00:12:53
years. We know the rules

00:12:54
by heart and I were

00:12:55
going to have to learn

00:12:56
them again. They have all

00:12:58
the numbers they're going to

00:13:04
put in an extraordinary panel,

00:13:06
which also happened to be

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colleagues of mine and, and

00:13:12

friends for many many years.

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And let me introduce you

00:13:17

briefly. IPod just stopped working.

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But as I said this,

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a friends forever tiling to

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get them. Anyways, so first

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we have we're going to

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hear from Mallory Silverman with

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a partner at our hosts

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are Nolan Porter. She has

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I could have gone for

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more than 14 best meditation

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representing both States and investors

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and nearly 8% of all

00:13:44

of the countries in the

00:13:45

world. Mallory was also an

00:13:50

active participant in the amendment

00:13:51

process. Representing one state and

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attending our consultative meetings of

00:13:58

the international dispute. Resolution Committee

00:14:00

of the DC bar and

00:14:02

has been an adjunct professor

00:14:03

at Georgetown University Law Center,

00:14:05

since 2012, and I have

00:14:08

been lucky to be invited

00:14:09

a few times to visit

00:14:11

her class. Tomorrow is going

00:14:13

to be talking to, she's

00:14:14

going to be tackling the

00:14:15

general umbrella efficiency, and it's

00:14:18

going to be talking about

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certain of the Practical changes

00:14:21

that have been introduced in

00:14:22

the rules to address. Efficiency.

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Next, we will hear from.

00:14:27

We hope to hear from

00:14:29

Antonio para to see this

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is space missing there. He

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will. He will arrive as

00:14:36

soon as a former deputy

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secretary-general and legal advisor to

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fix it by surrender. The

00:14:44

code of conduct for board

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officials at the World Bank

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group is the author of

00:14:48

the Seminole Nation in the

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history of fix it, and

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he called it, the title

00:14:52

of personal friend and mentor

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of mine and almost everybody

00:14:56

in there is dies industry

00:14:59

these days. Antonio, Antonio, hopefully,

00:15:02

we'll be addressing the topic

00:15:04
of challenges of arbitrators and

00:15:06
has a new rules. Under

00:15:09
the Umbrella of the prevention

00:15:10
of conflicts of interest. Then

00:15:12
we'll keep it from my

00:15:13
friend and colleague, Martina plastic,

00:15:15
who is currently serving as

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Deputy secretary-general present with us

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today, as we want to

00:15:22
adjust. I see her there

00:15:24
on the screen. Then we

00:15:26
will hear from Barb. Megan

00:15:28
founding partner of the Paris

00:15:30
arbitration Boutique only a legum

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& Recreation and a member

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of the board of the

00:15:34
SEC arbitration Institute earlier in

00:15:37
his career. When I first

00:15:39
met you serving the US

00:15:42
state department, as the lead

00:15:43
lawyer for the US government,

00:15:45
in the first investment relations.

00:15:46
Other than that, I'm sure

00:15:48
you are all familiar with

00:15:49
cases, like raw win over

00:15:51
Monday. We're letting these cases

00:15:55

for two decades and Bard

00:16:02

will be addressing the very

00:16:06

important aspect of transparency in

00:16:08

the new rules. And last

00:16:09

but not least, we'll hear

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from the alert solution, group

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of Crowell & moring LLP

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in Washington 1998. He's also

00:16:26

an Adjunct professor at Georgetown

00:16:27

law school and go director

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of the international law Institute,

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investment, Law Center, and then

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we'll be addressing the expanded

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range of dispute settlement, or

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under the exit. Now, I

00:16:40

have taken a lot of

00:16:40

time, so that's introduction. Without

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further Ado, I will pass

00:16:44

the floor door speakers. So

00:16:46

let's go first to Mallory

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Who and the vein of

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more efficient, proceedings will be

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talking about some practical takeaways

00:16:54

and some pointers on how

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to make Aldi's Rose. Make

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proceedings, more efficient battery. Thank

00:17:01

you, Gonzales. And thank you

00:17:03

also to. Wow, for having

00:17:05

me here today, I am

00:17:07

very sad that I'm not

00:17:08

able to join you in

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my home office in DC

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at Arnold & Porter. But

00:17:13

because I'm not there, I

00:17:14

do just want to take

00:17:15

a second to thank all

00:17:16

of the people who made

00:17:17

this hybrid format possible, which

00:17:20

include a me to cost

00:17:21

Sarah Smith and the events

00:17:23
and Evie team at a

00:17:24
m p. So thank Call

00:17:25
so much. In the spirit

00:17:29
of efficiency and thinking about

00:17:31
practical pointers, I thought that

00:17:34
it might be most useful

00:17:35
for you. If I tried

00:17:37
to help you figure out

00:17:39
how to efficiently, get up

00:17:41
to speed on the rules

00:17:43
amendments and go through the

00:17:45
thousands and thousands of pages

00:17:47
that you can now find

00:17:48

on the exceed website. And

00:17:52

I have come up with

00:17:53

7 General tips for everyone.

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The first of which is

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don't try to run a

00:18:00

red line between the 2006

00:18:02

rules and the 2022 rules.

00:18:05

Because it's not going to

00:18:06

help you and I know

00:18:09

this because I tried it

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myself. The reason why it's

00:18:13

not going to help. Is

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because first of all, all

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of the numbers have changed.

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As Gonzalo has mentioned. There

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are rules that used to

00:18:22

be spread out through the

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administrative and financial regulations, the

00:18:26

arbitration rules that touched on

00:18:27

similar topics that have all

00:18:29

been Consolidated now. And on

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top of that, there has

00:18:33

been little tweaks, many of

00:18:35

which are non substantives to

00:18:37

all of the rules that

00:18:38

taken together make for a

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massive mess when you try

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to run a comparison document.

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So save yourself the time

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and jump straight to either

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reading the rules. Or if

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you want a bit of

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a cheap, feel free to

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go on LinkedIn earlier this

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year, I tried to replicate

00:18:57
this sort of redlining or

00:18:59
comparison through a series of

00:19:02
short videos. They are 22

00:19:04
Freeman. Flying each and they

00:19:06
can be found on LinkedIn

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that if you search for

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the hashtag, it's good rules

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amendments. The second tip when

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you are reading the new

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rules which I encourage everyone

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to do, you shouldn't skip

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ahead to the arbitration rules

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proper. Instead, you should actually

00:19:24

go through the booklet in

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order. I'm sure everyone here

00:19:27

already knows the exact convention

00:19:29

very well. That's at the

00:19:30

beginning of the book. LED

00:19:31

after that, you should go

00:19:33
to the administrative and financial

00:19:35
regulations because as exit has

00:19:38
explained fees, apply, not only

00:19:40
to proceedings that have been

00:19:42
initiated after the rules came

00:19:45
into effect on July 1st

00:19:46
of this year, but also

00:19:48
to ongoing proceedings, there an

00:19:50
important read and you can

00:19:52
see various changes there including

00:19:55
on the the subject of

00:19:57
these. The fact that arbitrators,

00:20:00
now I'll receive an hourly

00:20:02

rate for all of their

00:20:03

time and it said arbitration

00:20:05

as opposed to the old

00:20:07

mechanism by which Some of

00:20:09

the arbitrator's time was charged

00:20:11

in hourly rate, but there

00:20:12

also was a a flat

00:20:13

fee for hearing days. And

00:20:15

perhaps more importantly, you'll also

00:20:17

start to get a sense

00:20:18

of some of the restructuring

00:20:19

that I mentioned. For example,

00:20:22

you'll see that the permissions

00:20:23

on time limits seem to

00:20:25

be missing and that's because

00:20:26

they have been combined with

00:20:28

other provisions and moved over

00:20:30

to the arbitration rules. Do

00:20:33

after you finish getting your

00:20:34

bearings with the administrative and

00:20:37

financial regulations. My third tip

00:20:39

is that you should move

00:20:40

on continuing and sequins and

00:20:43

skim. Also, the revised institution

00:20:45

rules, as many of, you

00:20:47

know, and as their name

00:20:48

suggests the set of rules

00:20:50

applies to the institution of

00:20:52

proceedings. And so, therefore, it

00:20:55

only applies to request for

00:20:56

arbitrations that were or are

00:20:58

filed after July 1st, but

00:21:01

it's still worth a read

00:21:02

because there was a lot

00:21:03

of discussion of what should

00:21:05

go into the institution rules

00:21:07

over the course of the

00:21:09

amendment process. And in particular,

00:21:11

I would commend to you

00:21:12

rules 2 and 3 which

00:21:15

show you what information the

00:21:18

rules. Now, explicitly require the

00:21:21

included and an RFA and

00:21:23

what additional new information is

00:21:25

recommended for inclusion, in an

00:21:27

RFA and in particular, one

00:21:29

of the main points to

00:21:30

see here is There is

00:21:32

a focus on explaining at

00:21:34

an early stage of the

00:21:35

proceedings in the request for

00:21:37

arbitration, the details of the

00:21:39

ownership of any alleged investment.

00:21:42

That was the fourth, when

00:21:44

you finally turns the arbitration

00:21:46

rules, could come up next

00:21:47

in the booklet, don't try

00:21:49

yet to commit them to

00:21:50

Memory. Don't try to make

00:21:54

sure you can recall by

00:21:55

heart as he probably can.

00:21:57

Now, all of the new

00:21:58

numbers just read them, read

00:22:01

them through and see what

00:22:03

has changed. And if it

00:22:05

helped, I know that even

00:22:07

though things have been reorganized,

00:22:10

they generally follow a sequence

00:22:13

that that mirrors what happens

00:22:15

in an arbitration. So after

00:22:17

the first chapter, which contains

00:22:19

certain General Provisions, you see

00:22:22

rules that roughly follow the

00:22:24

structure of the establishment of

00:22:25

the tribunal than the disqualification

00:22:27

of arbitrators. The first session

00:22:31

written submissions. Hearings evidence special

00:22:35

procedures cost, the award post-award

00:22:38

remedies another topics, it makes

00:22:40

sense. In the progression, take

00:22:46

note of the Practical points

00:22:47

that will impact you in

00:22:49

future proceedings. And two of

00:22:51

these that jumped out at

00:22:53

me. Our first of all

00:22:54

that there are no longer

00:22:55

is a shifting in the

00:22:56

flyer, for holidays, at the

00:23:00

seat of the center. One

00:23:01

of the benefits of being

00:23:02

in Washington DC, and in

00:23:04

doing a lot of big

00:23:04

suitcases. Historically has been that

00:23:06

if there is a holiday

00:23:08

in b.c., get to move

00:23:10

to the next day, but

00:23:12

the holidays went away. Sadly

00:23:14

in, in the new rules

00:23:15

because it was very difficult

00:23:17

to find agreement or to

00:23:19

reach agreement on, who is

00:23:21

holidays should be observed. And

00:23:24

then the second boy that

00:23:26

jumped out at me in

00:23:27

terms of practical pieces, in

00:23:29

the early settlements of the

00:23:31

arbitration rules, is that there

00:23:32
is no longer a presumption

00:23:34
of paper or hard copy

00:23:36
filings. Do no longer need

00:23:38
to submit 6 hard copies

00:23:41
of every filing to the

00:23:42
center. Note 6 or anyone

00:23:46
who is planning to dig

00:23:47
into the thousands and thousands

00:23:49
of pages of paper that

00:23:51
are the working papers. You

00:23:54
should just bear in mind

00:23:54
that these are in travel.

00:23:58
They were brainstorming documents, they

00:24:00

were submitted for purposes of

00:24:03

discussion and to help move

00:24:05

the process along. They're very

00:24:07

thorough, but they are in

00:24:08

trouble. And you should also

00:24:10

bear in mind that the

00:24:12

process of having a hundred

00:24:14

fifty plus member states with

00:24:16

different experiences and different levels

00:24:19

of experience. All try to

00:24:21

edit the same document alongside

00:24:23

the Secretariat and many other

00:24:24

stakeholders is a bit of

00:24:27

a messy process. That was

00:24:29

captured very well, but couldn't

00:24:31

possibly be captured completely in

00:24:34

the record. I guess. That

00:24:36

is the, the working papers

00:24:39

Nope, 7th and relatedly for

00:24:41

anyone. Who is watching? Who

00:24:43

may have contributed comments or

00:24:45

ideas to this process. I

00:24:47

just encourage you to bear

00:24:48

in mind that it's possible

00:24:50

that in some future case.

00:24:51

10 years from now, even

00:24:53

20 years from now, there

00:24:56

likely will be a party

00:24:57

that site's your remarks. So

00:25:00

if you wish to say

00:25:01

anything about the status of

00:25:03

the comments that you made

00:25:05

the time to do, so

00:25:06

is probably sometimes fear. Those

00:25:10

are my seven initial tips

00:25:12

on how to read into

00:25:14

the new arbitration rules. I

00:25:16

think I'll leave it there

00:25:17

for now, but I look

00:25:18

forward to the rest of

00:25:19
the discussion and any questions.

00:25:23
Thank, thank. Thank you very

00:25:24
much memory. I was carrying

00:25:27
you. I had the following

00:25:29
sort some of you. I

00:25:31
hope many of you are

00:25:33
familiar with a brilliant is

00:25:35
simply to protect American leader

00:25:36
to call regulo by Julio

00:25:39
cortazar, brilliant. But also, it

00:25:42
has one thing that is

00:25:43
fantastic. You can read it

00:25:45
in order or you can

00:25:47

follow the map. They also

00:25:49

gives you at the beginning

00:25:49

and jam for one captor.

00:25:51

So we had her, I

00:25:53

think the feeling that we

00:25:54

had on our own rules,

00:25:55

he was that what I

00:25:56

was like, why you are

00:25:56

a brilliant and you have

00:25:58

to jam from different chapter

00:25:59

7, rules to make it

00:26:01

work and it was just

00:26:02

to follow. Follow the, the

00:26:05

order to achieve the goal

00:26:11
of making everything. Is it

00:26:13
though, for years we ask

00:26:16
everybody, why don't we do

00:26:17
everything digital? You don't need

00:26:18
to go to find part

00:26:19
paper, please you don't need

00:26:21
to send that 72 boxes

00:26:23
of. Washington like we send

00:26:25
them back to Joe's and

00:26:26
Country where you are a

00:26:27
betrayer is that and now

00:26:32
it seems that 2020. Everything

00:26:33
has been up to and

00:26:36

now this is reflected in

00:26:37

the new rules. I don't

00:26:38

know if any of our

00:26:39

panelists wants to come and

00:26:41

on the efficiency aspect of

00:26:43

the new rules. On the

00:26:44

point of that Mallory mention,

00:26:47

I see Martina raising her

00:26:48

hands at just a quick

00:26:51

comment. I thought that was

00:26:53

a really good summary of

00:26:54

how to go about it.

00:26:55

So thank you for that

00:26:57

matter. I wanted to comment

00:26:59

on the no holiday rule.

00:27:01

That was as mother. A

00:27:04

mention extensively discussed. I wouldn't

00:27:08

think that anybody would have

00:27:10

so strong feelings about which

00:27:12

holidays, if any should be

00:27:14

preserved in the rules. So,

00:27:17

we decided to go, no

00:27:18

holidays. But having said that,

00:27:20

this doesn't mean that, Wouldn't

00:27:24

be able to take into

00:27:25

account, their holiday, Stephen holidays,

00:27:27

of counsel or you know

00:27:28

anyone in the involved in

00:27:30

the process. All you need

00:27:31

to do is to discuss

00:27:33

that at the first session.

00:27:34

When when should you schedule

00:27:37

the, the steps in the

00:27:39

preceding so you can decide

00:27:41

in a parties. Can agree.

00:27:42

Okay, let's jump this in

00:27:44

that date because that's a

00:27:46

holiday. So it's very pragmatic

00:27:48

approach to it. Basically, in

00:27:50

the rolls, That was fantastic.

00:27:57

Mallory and and I do

00:27:59

really recommend folks, look at

00:28:00

the ER series. It's really

00:28:03

well, Illustrated animated and I'm

00:28:06

very helpful just cuz I

00:28:14

know everyone's at home looking

00:28:15

on their computers at the

00:28:17

new exit rules. But I

00:28:19

want to point out this

00:28:20

new rule 3, which I

00:28:22

think, really underlines much of

00:28:25

what gunzalo was saying. And

00:28:28

certainly what Mallory was underlined

00:28:30

is it is this real

00:28:31

commitment now to efficiency and

00:28:35

to making exit arbitration much

00:28:37

more efficient than what we

00:28:38

talked about. International commercial arbitration

00:28:40

is always being a theme

00:28:42

from a practical point of

00:28:43

view. But I really do

00:28:45

commend the drafters and the

00:28:47

parties are actually putting this

00:28:49

very specific rule 3. And

00:28:51

to make it very clear

00:28:52

to not only That that

00:28:55

the tribunal. But the parties

00:28:56

and counsel that this is

00:28:59

to be an expeditious and

00:29:00

cost-effective proceeding. And these words

00:29:03

didn't show up in the

00:29:04

old. This is this is

00:29:08

really one of the new

00:29:08

Innovations. And I think this

00:29:10

is something that all of

00:29:12

us as counsel and arbitrators

00:29:13

need to take very close

00:29:15

attention to because this is

00:29:17

it's not just kind of

00:29:18

hard to Tori desire to

00:29:21

be more efficient. This is

00:29:23

actually a hard loss now

00:29:24

and something that we all

00:29:26

need to be very conscious

00:29:27

up and I resist. Now

00:29:29

this is kind of a

00:29:29

lead into something when I

00:29:31

get to discuss about the

00:29:32

fact-finding and mediation ruled that

00:29:35

this is something that you

00:29:37

know, there's now an onus

00:29:38

on us counsel and arbitrators

00:29:40

2 to look up the

00:29:41

rules in a new lap

00:29:44
and not to say that

00:29:45
we weren't trying to be

00:29:45
effective in the past. We

00:29:47
weren't trying to be expeditious,

00:29:48
but now we have to

00:29:49
be very conscious of that.

00:29:51
And then give me the

00:29:54
consultation meetings. Intellectually quote, for

00:30:01
my highest from my Disney

00:30:02
Musical High School Musical and

00:30:04
I told everybody we're all

00:30:06
in this together. So it

00:30:08
is responsible for the process

00:30:11
to make this more efficient

00:30:12
would take it. Very, we

00:30:13
took it very hard to

00:30:14
look at processes to see

00:30:16
where we had the floor

00:30:17
where they were inefficient and

00:30:19
we work. Very hard to

00:30:20
make it more and more

00:30:21
expedited and efficient bad. Again,

00:30:23
we're all in this together

00:30:24
and he takes in this

00:30:27
case it takes three to

00:30:28
tango until absolutely I was

00:30:44

going to mention one other

00:30:45

resource. Which is a book

00:30:49

edited by Richard, hop, and

00:30:51

stuck on wheel scooter. That

00:30:53

is 900 pages long on

00:30:57

the new rules and will

00:30:58

be coming out as I

00:30:59

understand it in print next

00:31:01

week. So I'm among the

00:31:04

many contributing offers to it,

00:31:06

it won't be as authoritative

00:31:09

a resource as the commentary

00:31:12

being prepared is the by

00:31:14

the exit Secretariat, but it

00:31:16

is an extraordinary piece of

00:31:18

work and an amazingly timer.

00:31:21

That's it. Thanks for reminding

00:31:23

us. Absolutely. Tell if we

00:31:27

we have a little bit

00:31:28

the order and I'm going

00:31:29

to invite Martina now to

00:31:32

Speak about a very Mister

00:31:35

Paradise in the house. Please

00:31:38

Join us, Antonio Pereira. Gonzalez.

00:31:46

Do you know, we're getting

00:31:46

situated. Add one more piece

00:31:49

on an efficiency, which is

00:31:51

there still a balance reflected

00:31:56

in the new exit roll.

00:31:58

So I was going to

00:31:58

follow mentioned, there was an

00:32:01

effort, that's reflected in many

00:32:02

different Provisions to sort of

00:32:06

tighten things up, where possible

00:32:08

the procedure or the time.

00:32:12

For discontinuing, a proceeding is

00:32:13

no longer a six-month waiting

00:32:15

period at the 90-day waiting.

00:32:18

As I mentioned, there are

00:32:20

no longer the presumption in

00:32:21

favour of the 27 boxes

00:32:23

and Reams and reams of

00:32:24

paper as Gonzales. That there

00:32:27

are deadlines for arbitrator's award

00:32:30

on an asean said, there's

00:32:33

even this express provision that

00:32:35

encourages. The parties are states

00:32:37

that parties in tribunal shall

00:32:39

conduct proceedings and expeditious and

00:32:41

cost-effective manner. But notably in

00:32:44

the segment that I think

00:32:46

is the the biggest in

00:32:49

terms of efficiency, which is

00:32:50

the scandal in chapter an

00:32:52

expedited proceedings. There is the

00:32:54

option for parties to opt-in

00:32:56

at any time through consent

00:32:58

to expedited proceedings and I

00:33:01

think in light of potential

00:33:03

fears that you can have

00:33:05

something the cheap, good and

00:33:10

fast. We can't have all

00:33:12

three. There is a possibility

00:33:14

of opting back out, if

00:33:16

things ultimately, proved more complicated

00:33:19

than you thought they would

00:33:20

be. So it's a party

00:33:22

is, ultimately can't do this

00:33:23

in 60-day intervals for first-round

00:33:26

submissions or a 40-day intervals,

00:33:29

for second-round submission than 200

00:33:31

Pages for each of the

00:33:33

first round pleadings. Then you

00:33:35

can watch it back and

00:33:35

say, that's not the way

00:33:37

to do this. There's a

00:33:38

balance there. Thank you. Thank

00:33:42

you very much. My love.

00:33:42

I don't know if I

00:33:43

wanted to make a comment

00:33:44
or do you want to

00:33:45
jump into your topic right

00:33:47
away? Now, in place, Antonio

00:33:58
wants to go ahead first.

00:33:59
That's fine with me. And

00:34:05
for being so late. I'm

00:34:08
very in expert at computer

00:34:11
matters and I'm particularly an

00:34:13
expert, it knowing how to

00:34:15
put in the right address

00:34:17
in my navigator. So I

00:34:19
ended up in the wrong

00:34:20
part of Washington and I

00:34:22

thought, but what a nice

00:34:23

place to have a law

00:34:25

office here in Northeast d.c.

00:34:28

appetite. Soon, figured it out,

00:34:32

but it had to cost

00:34:35

of being so late and

00:34:36

I'm sorry. I don't know

00:34:40

if Mallory mentioned in her

00:34:42

remarks on efficiency is so

00:34:45

procedure. That was introduced in

00:34:47

2006 for the early dismissal

00:34:51

of plans. Well, obviously, this

00:34:58

contributes to the efficiency of

00:35:00

the process, the idea when

00:35:06

it was introduced was that

00:35:09

it would provide the new

00:35:13

rule, rule 41, a fee

00:35:16

of the 2006 arbitration rules

00:35:20

would provide an opportunity For

00:35:24

the dismissal at the outset

00:35:27

of a case of claims

00:35:30

in regard to the merits

00:35:32

of the contentions thinking, having

00:35:36

been that there was this

00:35:38

procedure for the jurisdictional screening

00:35:40

of a request by the

00:35:43

secretary at the outset, but

00:35:45

it didn't cover the marriage.

00:35:47

Send us that determine happiness

00:35:50

on the part of respondents.

00:35:55

Babe in the course of

00:35:57

drafting the rule different hands

00:36:00

were involved, and different people

00:36:03

came and went and this

00:36:06

idea. was I think, probably

00:36:11

in hindsight, fortunately lost and

00:36:14

the rule came to be

00:36:15

seeing its covering Planes that

00:36:19

were deficient not only as

00:36:22

to the merits but more

00:36:24

particularly in practices to jurisdiction

00:36:27

despite the initial, screening by

00:36:30

Secretariat. But however there remained

00:36:36

in in the rule a

00:36:38

Vestige of the earlier approach

00:36:41

and it's so much so

00:36:44

that the rule as it

00:36:46

was written up until its

00:36:47

amendment. In July of this

00:36:49

year was was that it's

00:36:55

expressly contrasted dismissal of a

00:36:59

claim for manifest lack of

00:37:01

legal merit with dismissal of

00:37:04

a claim on jurisdictional grounds.

00:37:06

So there was just a

00:37:08

source of confusion and embarrassment

00:37:12

to those of us who

00:37:13

were involved in the drafting

00:37:14

at the beginning and I'm

00:37:16

very pleased to report at

00:37:18

this This bad feature of

00:37:24

the rule has now been

00:37:26

expunged and it's very clear

00:37:28

Beyond any doubt at all

00:37:29

that it covers both jurisdiction

00:37:32

and merits up on hopes.

00:37:34

This will contribute in a

00:37:36

small way to see the

00:37:39

process, he won't get bogged

00:37:40

down in arguments and what

00:37:44

it does and doesn't cover

00:37:48

Thanks. Do you want to

00:37:50

go challenge portion? Picture of

00:37:57

water. So, I'd like to

00:38:07

talk about that early dismissal

00:38:11

times, as one of the,

00:38:13

one of my obsessions about

00:38:16

the arbitration. And another one

00:38:20

of the provisions on challenges

00:38:23

of arbitrate There are two

00:38:26

principal provisions of the exit

00:38:29

convention on this subject. One

00:38:32

is article 57 of the

00:38:35

convention with Shonda, with your

00:38:38

party, May propose, a disqualification

00:38:40

of an arbitrator on account

00:38:45

of the fact indicating a

00:38:46

quote on quote manifest, lack

00:38:49

of reliability, for independent judgment.

00:38:54

The second main provision of

00:38:58

the exit convention regarding challenges

00:39:01

is article 58, which provides

00:39:04

that in the typical case

00:39:06

of a challenge of one

00:39:11
of three arbitrators, the challenge

00:39:14
is decided by the two

00:39:15
other arbitrators, unless they're equally

00:39:20
divided in, which case, the

00:39:23
challenge is decided by the

00:39:25
president of the World Bank,

00:39:28
in his capacity, as chairman

00:39:31
of the administrative Council election

00:39:34
and the Manifest lag. Disqualification

00:39:41
standard of article 57 has

00:39:45
been interpreted in recent cases

00:39:48
is requiring that challenging party

00:39:52
to show that reading it

00:39:55

better quote. In this is

00:39:56

a formula used time. And

00:39:58

again, in this recent challenge,

00:40:00

decision Crow, the third party

00:40:04

would find an evident or

00:40:05

obvious appearance of a lack

00:40:08

of impartiality and partiality on

00:40:11

a reasonable evaluation of the

00:40:14

facts. and, Even or maybe

00:40:18

especially some might say including

00:40:22

myself. Is that interpreted this

00:40:28

standard is a is a

00:40:32

open to criticism because it

00:40:35

sets the bar too high

00:40:37

for the disqualification of an

00:40:40

arbitrator. The comparison that's often

00:40:43

drawn in this context is

00:40:46

with the disqualification standard of

00:40:49

many commercial arbitration instruments such

00:40:52

as the arbitration rules that

00:40:56

provide for arbitrator has to

00:40:58

be removed at if there

00:41:00

are circumstances giving rise to

00:41:02

justifiable doubt as to the

00:41:06

impartiality or Independence of the

00:41:09

arbitrator. Also, this provision has

00:41:15

been strongly criticized. And also,

00:41:18
strongly criticized has been the

00:41:20
procedure of article 58 at

00:41:23
the convention, providing for the

00:41:25
possible disqualification of an arbitrator

00:41:30
providing for, for that possible

00:41:33
disqualification to be determined normally

00:41:37
by the challenged arbitrators and

00:41:46
decided by the institution directly

00:41:51
as it's done in most

00:41:54
other institutional systems of arbitration.

00:42:00
And this procedure was reflected

00:42:03
in the previous editions of

00:42:05
the, it said arbitration rules

00:42:08

has the rules for convention

00:42:10

proceedings. For the it said,

00:42:14

additional facility rules previous. Editions

00:42:18

of the additional facility, arbitration

00:42:22

rules also Incorporated manifest, slack,

00:42:26

disqualification standard, The exit convention

00:42:32

does not, however apply to

00:42:35

additional facility proceedings and for

00:42:40

this for the recent amendments

00:42:41

of the additional facility, arbitration

00:42:44

rules, exit made use of

00:42:47

the its resulting freedom to

00:42:50

set out on a new

00:42:52

course with regard to Challengers

00:42:55

under the additional facility and

00:43:00

babe secretary at the proposed.

00:43:05

And thankfully, this was accepted

00:43:07

that, and, and disembodied now

00:43:10

and amended rule 30 and

00:43:12

31 of the additional facility,

00:43:15

arbitration rules that the disqualification

00:43:19

standard, Fort De Familia disqualification

00:43:25

standard justifiable doubts. Be applied

00:43:30

in additional facility arbitration proceedings

00:43:34

and that the disqualification proposals

00:43:40

be decided directly by the

00:43:42

secretary-general evicted with no intervention

00:43:45

in that process by be

00:43:47

unchallenged arbitrators As I just

00:43:53

mentioned, the exit arbitration rules

00:43:55

regular exit, arbitration rules are

00:43:58

meant for exit convention, proceedings,

00:44:00

and obviously are subject to

00:44:02

the convention and have to

00:44:05

remain consistent with it. The

00:44:08

convention in Turin is practically

00:44:10

unamendable, an amendment of the

00:44:14

convention requires in addition to

00:44:17

qualified majority vote of the

00:44:21

members of the administrative Council.

00:44:23

Eviction require a unanimous ratification

00:44:28

of the member countries that

00:44:31

makes it. So you need

00:44:32

158 not only 158 votes

00:44:38

in favor but 158 ratifications

00:44:42

to pass an amendment to

00:44:48

the convention and fishes. As

00:44:51

a indicated, it's practically impossible

00:44:53

to achieve that end with

00:44:57

Odyssey for a good reason.

00:44:58

It's never been tried. Exit

00:45:02

in the new amendments. Nevertheless

00:45:03

found it possible to introduce

00:45:07

a, an important Improvement in

00:45:09

the process of deciding challenges

00:45:14

of arbitrators under article 58

00:45:17

of the exit convention. And

00:45:19

if you look at the

00:45:20

newly amended exit, arbitration rules,

00:45:23

did arbitration rule 23, you'll

00:45:27

see that. It allows the

00:45:29

co arbitrator said, he challenged

00:45:31

arbitrator more readily to give

00:45:35

the role of deciding to

00:45:37

challenge to the chairman of

00:45:39

the administrative Council. Evicted. If

00:45:45

they are unable for any

00:45:48

reason, you decide the challenge,

00:45:51

they will be deemed to

00:45:52

be equally divided for the

00:45:54

purpose of article, 58 of

00:45:56

the convention, and the chairman

00:45:58

would go ahead and make

00:46:00

the Challenge decision. On the

00:46:04

other hand, the new Amendments

00:46:05

have not touch the disqualification

00:46:07

standard under applicable to Dixon

00:46:13

convention proceedings and so much

00:46:17

hope I among them, if

00:46:21

I'm not getting lost in

00:46:23

Northeast d.c. would hope that

00:46:26

that be excited. Arbitration rules

00:46:32

are again demanded at some

00:46:34

future date in order to

00:46:36

deal with whatever think is

00:46:40

a shortcoming. Think Antonio have

00:46:45

comments on. But I think

00:46:47

I'm going to keep them

00:46:47

off the regulator for you

00:46:50

before we. We move to

00:46:57

to our next time is

00:46:58

I want to I want

00:46:59

to know if I have

00:47:00

four panelists wants to make

00:47:02

any comments on on the

00:47:03

new process for or the

00:47:05

Streamlight process for deciding challenges

00:47:07

are the rules. Memory in

00:47:16

terms of streamlining, the process.

00:47:18

Just one more Point comes

00:47:20

to mind, which was that?

00:47:22

Under the 2006 rules. Once

00:47:25

a party submitted a request

00:47:26

for disqualification of an arbitrator

00:47:30

than the preceding was paused

00:47:32

automatically, which makes sense. There

00:47:37

was a sort of fear

00:47:38

though that this could be

00:47:39

abused that a party could

00:47:41

just keep challenging arbitrators over

00:47:44

and over and over and

00:47:46

over again as a means

00:47:47

to derail the proceedings. So

00:47:49

there was some discussion of

00:47:50

this as well during the

00:47:52

course of the amendment process,

00:47:53

and there are mechanisms now

00:47:55

to try to avoid that

00:47:57

happening. Thanks Mallory. I work

00:48:02

very close on that particular

00:48:05

notion and we were very

00:48:08

proud of our brilliancy. Eliminating,

00:48:11

the suspension of the suspension

00:48:13

of proceedings under a challenge,

00:48:15

but we were both of

00:48:16

them working paper. Number one,

00:48:17

and there was a resounding.

00:48:20

No, thank you very much

00:48:21

for the parties. Agree on

00:48:25

the same idea of this

00:48:28

blows return and preventing conflicts

00:48:30

that challenges that go. Please,

00:48:33

go ahead with the exciting

00:48:35

topic of third-party funding, thank

00:48:38

you, thank you. Yeah, I

00:48:39

wanted to talk about third-party

00:48:41

funding and secured if it

00:48:43

caused because these topics web

00:48:45

very much discussed during the

00:48:47

amendment consultation process and the

00:48:51

provisions of them are entirely

00:48:53

on you. So there's a

00:48:54

lot of interest in what

00:48:56

they mean and how they

00:48:57

will be applied. A friend,

00:48:59

the feedback that we have

00:49:01

received so far, including recent,

00:49:03
the working group announced traveler,

00:49:06
can grab three, the exit

00:49:09
Provisions. Have really struck the

00:49:11
right balance and what needs

00:49:13
to be regulated. And at

00:49:15
the same time, they are

00:49:17
perceived to be taken into

00:49:19
account. Both parties interest, they

00:49:22
access to Justice. And a

00:49:24
fair process of third-party funding

00:49:27
is addressed in both the

00:49:29
arbitration rules and the conciliation

00:49:31
pools in the arbitration rules

00:49:35
under the exit convention. It's

00:49:38
arbitration for 14, for those

00:49:41
who want to look it

00:49:42
up the way we approached

00:49:44
it. Is that third-party of

00:49:46
it for funding is rather

00:49:47
than for conflict of interest

00:49:49
purposes. So the rule requires

00:49:52
Disclosure by the party getting

00:49:55
funding. So that the arbitrators

00:49:58
and the other party. Can

00:49:59
check whether they have any

00:50:02
conflict of interest Visa V,

00:50:04

the person where the entity

00:50:05

that is providing funding. Now

00:50:08

their parties must disclose the

00:50:11

name and address of the

00:50:13

third-party funder. And if the

00:50:15

party is at your vehicle

00:50:17

person, it also needs needs

00:50:20

to include the persons and

00:50:22

entities who own and control

00:50:24

the Thunder. The obligation covers

00:50:29

funds that are received directly

00:50:33

but also and directly so

00:50:35

emoji. That addresses, the chain

00:50:38

of transfer of funds through

00:50:41

several companies and the funds

00:50:44

are intended for the pursuit

00:50:46

or defense of the proceeding,

00:50:48

through a donation of grantor

00:50:50

in return for remuneration dependent

00:50:54

on the outcome of the

00:50:54

proceedings. So what does this

00:50:56

mean? Well, it would cover.

00:50:59

Contingency fee. So that council

00:51:02

is getting for instance, or

00:51:04

a parent company sponsoring, sponsoring

00:51:09

its subsidiary, who is a

00:51:11

party in the preceding? And

00:51:14

if the that parent company

00:51:16

is owned and controlled by

00:51:19

another person wear another entity,

00:51:21

then the party must disclose

00:51:25

the names of those, you

00:51:28

know, the entity or the

00:51:29

part of the, the person,

00:51:30

as well. Now, it will

00:51:32

be up to the disclosing

00:51:34

party to determine when disclosure

00:51:37

is required under these Provisions.

00:51:39

So, if it's for instance,

00:51:41

not possible to identify the

00:51:44

entities that own and control

00:51:48

the Thunder, then that party

00:51:54

Could just simply indicate that

00:51:56

and just as close as

00:51:59

the Thunder. Now it is

00:52:01

important to note that this

00:52:03

has to be done at

00:52:04

the time of registration or

00:52:07

that's where as soon as

00:52:11

a third-party funding, Arrangement is

00:52:13

arranged after registration and it

00:52:19

doesn't have to have any

00:52:20

particular formats, a simple letter

00:52:23

that is sufficient. As long

00:52:25
as it has the red,

00:52:26
the relevant information and 16

00:52:30
it received this. Notice it,

00:52:31
transmits it to the other

00:52:33
party and the arbitrator's so

00:52:36
that they can check for

00:52:37
conflict and other parties are

00:52:39
not required to disclose the

00:52:42
word to provide did the

00:52:43
third-party funding agreement or the

00:52:46
terms of the agreement. If

00:52:48
the other party wants that

00:52:49
they can request that the

00:52:51

tribunal order disclosure of further

00:52:53

information, Pain under the rules

00:52:55

concerning production of documents or

00:52:58

other evidence and they say

00:53:01

it is confirmed in dual

00:53:03

14 for which provides that

00:53:05

the tribunal May I order

00:53:06

disclosure of further information, if

00:53:10

it deems, it necessary. So

00:53:12

it has that discretion to

00:53:14

to do that. Now, I

00:53:17

should say that even though

00:53:18

this rule is new disclosure

00:53:21

of third-party funding, it is

00:53:23

not uncommon in exit, cases,

00:53:25

and is more and more

00:53:27

done on a voluntary basis.

00:53:29

So, the practice is there

00:53:31

already and it should be

00:53:32

a straightforward process under the

00:53:34

new rule. Ashwell, How does

00:53:37

security forces of August related?

00:53:40

And I want to say

00:53:41

a few words about that

00:53:43

as well. And this is

00:53:44

arbitration for 53 in the

00:53:48

arbitration rules under the exit

00:53:49
convention for proceeding framework. Now,

00:53:54
like third-party funding, this is

00:53:56
the new provision. But in

00:53:58
practice request for security for

00:54:00
costs are not on, and

00:54:02
although they're rarely granted. Now

00:54:05
under the 2006 rules security

00:54:09
for costs is dealt with

00:54:11
like a provisional measures are.

00:54:12
So this is her recommendation

00:54:13
under this the past rules

00:54:16
and we wanted to move

00:54:18
away from that. So that

00:54:19

the tribunal can order security

00:54:21

for cost that is that

00:54:24

there is a consequence for

00:54:26

non-compliance with an order for

00:54:29

security for costs. So if

00:54:34

there's non-compliance then that this

00:54:36

could lead to a discontinuance

00:54:39

of the proceeding after a

00:54:42

certain. Of time, after allowing

00:54:44

reasonable compliance with, with the

00:54:48

order, So, that was the

00:54:51

main reason for why we

00:54:53

wanted this fool, in addition

00:54:55

to establishing the the, the

00:54:57

power of the tribunal to

00:54:58

actually rule on security for

00:55:00

costs. Because sometimes that had

00:55:03

been questioned as well, in

00:55:05

that case law. Now, in

00:55:08

addition, the rule provides guidance

00:55:11

of circumstances to be considered

00:55:14

by the tribunal A party's

00:55:16

ability and willingness to comply

00:55:19

with an adverse decision on

00:55:21

cost. But also the effect

00:55:24

that an order might have

00:55:26

on that party's ability to

00:55:27

pursue its claim or counterclaim

00:55:29

and the conduct of the

00:55:31

parties. Now, the effect that

00:55:34

security for costs may have

00:55:36

on the pursuit of a

00:55:37

claim is really the access

00:55:39

to Justice consideration. I didn't

00:55:41

really ask the question would

00:55:43

imposing security mean that the

00:55:46

party needs to band on

00:55:48

its claim? And it's also

00:55:50

this Factor also intended to

00:55:52

guide tribunals to order security

00:55:55

for costs in a balanced

00:55:57

way. So for example, by

00:56:00

assessing the reasonableness of the

00:56:02

costs for which Securities requested

00:56:04

and allowing some flexibility with

00:56:08

respect to the form of

00:56:09

security Now there's a reference

00:56:12

in the bowl 53 for

00:56:15

that existence of third-party funding

00:56:18

can be considered as part

00:56:20

of evidence to show that

00:56:24

a party is impecunious. And

00:56:27

will be unable to comply

00:56:28

with an adverse decision on

00:56:30

costs. No. So what if

00:56:34

a party submits evident that

00:56:36

the other party has third-party

00:56:37

funding, the tribunal must consider

00:56:40

this evidence as it would

00:56:43

other evidence for Orgain security

00:56:45

for costs. So in other

00:56:48

words, it has the discretion

00:56:49

to determine the weight to

00:56:51

be given to the evidence

00:56:52

and whether it is relevant.

00:56:55

But what is important to

00:56:56

note, is that the mere

00:56:58
existence of third-party funding is

00:57:01
not in itself. Sufficient to

00:57:03
justify an order for security

00:57:05
for costs. So there must

00:57:07
be other circumstances in favor

00:57:10
of providing such Pretty and

00:57:11
in case law, the more

00:57:13
cumulative circumstances, there are, the

00:57:16
more likely it is that

00:57:17
a cost at security for

00:57:20
costs ordered. Thank you, thanks.

00:57:25
Martina and I want to

00:57:26
leave time for our quick

00:57:30

question because some of you

00:57:31

may know the origin of

00:57:34

this roll-off security for costs,

00:57:36

there were some complaints by

00:57:38

some state, that the tribunal's

00:57:40

we're quite reluctant to order

00:57:42

security for costs. And we

00:57:43

even run a survey at

00:57:45

the center to see you

00:57:46

get out of compliance with

00:57:48

the works and cost. Do

00:57:50

you think of the fact

00:57:51

that we have any specific

00:57:52

rule will change this? And

00:57:54

we're going to have more

00:57:55

security request from security precaution

00:57:57

where they have more orders

00:57:58

or will there be an

00:58:00

impact? I think that's relevant

00:58:04

question because we don't want

00:58:07

frivolous requests for security for

00:58:09

costs to either we went

00:58:10

and good balance, but as

00:58:12

I mentioned, I mean, we've

00:58:13

had already a few requests

00:58:16

with secured for cost every

00:58:18

year and I don't see

00:58:20

any reason why there should

00:58:22

be an increase on it.

00:58:23

Not in case law tribunals

00:58:25

have often required exceptional circumstances

00:58:28

for a favorable decision and

00:58:31

request request is rarely succeeded.

00:58:33

So the bar is said,

00:58:34

hi for granting security for

00:58:37

costs. And as I said,

00:58:40

tribunals have the often require

00:58:42

cumulative circumstances for the legans

00:58:45

legal standard to me much,

00:58:46

and what's important is that

00:58:48

we did not address the

00:58:50

legal standard for granting security

00:58:53

for cost in Goodwill 53.

00:58:54

It will be up to

00:58:56

tribunals to decide that standard.

00:58:59

So wherever they find that

00:59:01

necessity urgency and exceptional circumstances

00:59:06

must be met so that

00:59:10

discretion will continue to apply.

00:59:12

So I think there would

00:59:14

not be too much of

00:59:15

a change in the number

00:59:17

of requests. And the number

00:59:19

of requests that are granted,

00:59:21

Let's hope it stays Medina.

00:59:25

From bar legum on New

00:59:30

Rose, Connor, demanded rules on

00:59:32

transparency, within takes it. Thank

00:59:37

you very much comes all.

00:59:38

Oh, so the 2022 arbitration

00:59:41

rules open a new chapter

00:59:43

on transparency. Investor-state arbitration is,

00:59:47

literally the arbitration rules contain.

00:59:51

A new chapter chapter 10,

00:59:53

composed of seven rules that

00:59:56

deal exclusively with transparency. But

00:59:59

this is not the full

01:00:00

extent of its new approach

01:00:02

to transparency. There are important

01:00:05

changes in arbitrator disclosure that

01:00:08

I will also review in

01:00:11

the limited time available. The

01:00:14

first three rules in chapter

01:00:16

10, deal WID Publications by

01:00:18

the center. It's important to

01:00:21

note that these deal only

01:00:22

with the center. In other

01:00:25

words, it's in the institution,

01:00:26

nothing in the exit convention

01:00:30

or rules limits, what a

01:00:32

party can publish and parties

01:00:35

can. And often do publish

01:00:37

many materials, Now, turning to

01:00:41

the first of the rules,

01:00:42

in the chapter, new rule,

01:00:45

62 addresses, exit, publication of

01:00:48

awards and decisions on an

01:00:51

ailment and certain other decisions

01:00:53

in considering this provision. It's

01:00:57

important to remember that the

01:00:59

exit convention itself. Requires consent

01:01:03

of the parties were fixing

01:01:04

to publish an award. This

01:01:07

provided a hard limit for

01:01:10

the reforms that exceed could

01:01:12

adopt with respect to Awards

01:01:15

or other decisions that terminate

01:01:17

an exit, receiving the new

01:01:19

rules, provide, the maximum transparency

01:01:22

possible while respecting the limit,

01:01:26

Notably what rule 62 does

01:01:29

is it Dean's party consent

01:01:31

unless a party of Jack's

01:01:33

within 60 days of the

01:01:35

dispatch of the decision. And

01:01:37

even if there is an

01:01:38

objection, exit is required to

01:01:40

publish excerpts of the awarded

01:01:43

decision within a set time

01:01:46

frame from the objection and

01:01:49

in accordance with a well-defined

01:01:52

procedure. Rule 63 by contrast

01:01:57

provides for Universal publication of

01:02:01

orders and decisions. That do

01:02:03

not terminate an exit arbitration

01:02:06

proceeding. This approach is possible

01:02:08

because the exit convention imposes,

01:02:11

no limit on this category

01:02:13

of documents. This means that

01:02:15

every decision on jurisdiction liability

01:02:18
of provisional measures and every

01:02:20
procedure of order will be

01:02:22
published subject only to redaction

01:02:25
of confidential information. Rule 64

01:02:28
provides a framework for publication

01:02:32
of written submissions. And other

01:02:35
supporting documents where both parties

01:02:38
agree to this rule essentially

01:02:41
codifies existing, exit, practice on

01:02:45
publication of this category of

01:02:48
materials, but doesn't do much

01:02:50
more than that. Will 65

01:02:53
requires hearings to be public.

01:02:55

Unless either party objects,

01:02:58

this is an improvement over

01:03:00

the prior rule, which required

01:03:03

affirmative consent by both parties

01:03:06

were public observation of hearings.

01:03:08

The rule also requires exit

01:03:11

to publish recordings, or transcripts

01:03:13

of hearings, if one party

01:03:16

so request and the other

01:03:18

party does not object. Roll.

01:03:21

66 addresses. The flip side

01:03:25

of transparency which is confidentiality

01:03:31

Whenever you have transparency there's

01:03:33

a need to protect from

01:03:36
disclosure information that is confidential

01:03:39
or otherwise protected under law

01:03:41
will 66 provides a comprehensive

01:03:45
and detailed definition of this

01:03:47
category of information and this

01:03:50
definition informs the redactions and

01:03:54
other procedures to protect this

01:03:56
information set out in the

01:03:58
earlier rules. Route 67 addresses,

01:04:03
so-called Amicus curiae submissions which

01:04:07
are referred to in the

01:04:07
rules as submissions of non

01:04:09
disputing parties. It largely spotify's

01:04:13

existing exit, practice with two

01:04:16

principal Innovations first. It requires

01:04:19

that an application to make

01:04:21

a non disputing parties submission.

01:04:23

Disclose basic information about the

01:04:26

applicant and its relationship with

01:04:29

the party second. The rule

01:04:32

requires the tribunal to provide

01:04:34

the applicant with relevant documents

01:04:37

filed in the preceding unless

01:04:39

either party of Jax Roll

01:04:42

68 is the last one

01:04:45

in the new chapter on

01:04:46

transparency. IT addresses the participation

01:04:50

of the Investor's home state

01:04:53

in the proceedings. It would

01:04:55

rather in proceedings that arise

01:04:57

under an investment treaty the

01:04:59

provision largely mirrors that first

01:05:03

included in the NAFTA. And

01:05:05

since in a number of

01:05:07

investment treaties, the other party

01:05:10

to the investment treaty has

01:05:12

a right to make a

01:05:13

submission. If it wants to

01:05:14

the submission can address, only

01:05:17

the interpretation of the treaty

01:05:20
and it must be made

01:05:22
in a way that does

01:05:22
not disrupt the proceedings. The

01:05:25
rule again requires the tribunal

01:05:27
to provide relevant documents again

01:05:30
unless either party of Jack's

01:05:32
on transparency that I wanted.

01:05:35
The Highlight is not found

01:05:37
in the rules at all,

01:05:38
but in the new form

01:05:40
of arbitrator Declaration required under

01:05:44
rule 19 if you want

01:05:46
to review this form, you

01:05:47
can find it on the

01:05:48
exit website under the page,

01:05:51
Dixon convention, regulations and rules

01:05:53
at the very bottom right

01:05:55
corner of that page. The

01:05:57
new form takes an objective

01:06:00
approach to arbitrator disclosures. This

01:06:04
is different from the prior

01:06:05
approach, which required only an

01:06:07
arbitrator's subjectively to evaluate what

01:06:10
circumstances might cause a party

01:06:13
to question her independence or

01:06:16
in partiality. The new form

01:06:19

continues to contain this objective

01:06:22

requirement, but it also requires

01:06:24

disclosure of all, professional and

01:06:27

other significant relationships with the

01:06:29

parties with their counsel, with

01:06:32

the other members of the

01:06:33

tribunal and indisposed third-party funder

01:06:37

relationships. In the past five

01:06:40

years must be disclosed, in

01:06:42

addition, the new form requires

01:06:44

disclosure of all investor-state cases

01:06:47

in which the arbitrator has

01:06:48

been involved than ever as

01:06:51

Council. Conciliator arbitrator ad hoc

01:06:55

Committee Member or expert. I'm

01:06:59

very much applaud this and

01:07:02

the other enhancements to transparency

01:07:04

in the new rules and

01:07:05

I hope that the entire

01:07:07

audience will join me in

01:07:09

congratulating exit on these accomplishments.

01:07:11

Thank you. Thank you, Bart.

01:07:18

I'm always impressed by how

01:07:20

I can read Jordan videos

01:07:21

of time. I'm sure there's

01:07:31

a lot of questions and

01:07:31

we have questions on the

01:07:32

chat on on transparency, bad

01:07:35

conscience of the time I

01:07:37

want. I can just for

01:07:38

3 p.m. to speak about

01:07:40

the new tools on the

01:07:42

tools that we have people

01:07:43

under the new rules and

01:07:46

then we will go back

01:07:46

to coming from their room

01:07:48

or the part that that

01:07:55

was a great exposition of

01:07:57

the transparency new rules. I

01:07:59

think it's it has come

01:08:00

a long way from the

01:08:01

days when we started in

01:08:02

1998. We're really the Assumption

01:08:05

was a confidential process and

01:08:07

not unlike the international commercial

01:08:10

arbitration. Incredible developments over the

01:08:13

last 20 years. A really

01:08:16

positive development to finish off

01:08:20

here with a bang. Does

01:08:21

you know, we're here lunch

01:08:22

and I got to keep

01:08:22

you awake, but I am

01:08:23

going to tell you about

01:08:24

the most exciting part of

01:08:26
the exit Amendment. And you

01:08:29
didn't know, there was an

01:08:30
exciting part, but either we

01:08:31
can saving it for last

01:08:32
and that is the introduction

01:08:34
of two very new rules.

01:08:36
Now, if I asked you

01:08:38
the question, did you know

01:08:40
there was a fact-finding procedure

01:08:42
under the additional facility for

01:08:43
the last 44 years? I

01:08:45
asked you that question. What

01:08:46
would you say you probably

01:08:48

say a what? And because

01:08:50

the reason is, is never

01:08:51

being used, so excited, I

01:08:54

think and it's wisdom decided

01:08:55

we need to update this

01:08:57

process. We need to make

01:08:58

it sexy. We need to

01:08:59

make it interesting. We needed

01:09:00

to make it something that

01:09:02

people will want to use.

01:09:03

And I have to say,

01:09:05

great job, guys, this is

01:09:08

a very streamlined procedure. This

01:09:11

is something that I think

01:09:12

will be of interest to

01:09:14

counsel, or should And I

01:09:17

think it is something that

01:09:18

will help to meet that

01:09:19

goal that we talked about

01:09:20

earlier about making. It said

01:09:22

arbitration more expeditious and cost-effective

01:09:26

and Mallory said you should

01:09:29

go you should read the

01:09:30

new fact-finding. Ruled their Standalone

01:09:33

rules are not part of

01:09:34

the additional facility anymore. They

01:09:37

can be accessed by any

01:09:40

two parties. You do not

01:09:41

have to be an exit

01:09:42

Contracting state. That does not

01:09:43

have to be an exit

01:09:44

contract. And stayed involved could

01:09:46

be any state there. Just

01:09:47

needs to be an investment

01:09:48

and two parties and they

01:09:51

have to consent to the

01:09:51

procedure and they can go.

01:09:53

And it's a it's a

01:09:55

very streamlined process and you

01:09:57

get the imprimatur of the

01:09:59
exit so it can be

01:10:00
used as something to use

01:10:02
in a pre dispute settlement

01:10:03
situation. You don't need to

01:10:06
have an established, the defined

01:10:07
investment under Rick said, you

01:10:09
don't need to have this

01:10:10
specific jurisdictional requirements, the exact

01:10:13
convention. It's it's a very

01:10:15
Process to get into and

01:10:16
it's something the council and

01:10:18
I think it said Council

01:10:19
now have to think about

01:10:21

this. Is there an ability

01:10:22

early on to get at

01:10:24

the facts to establish certain

01:10:27

conventions, facts. Schuler Shoes in

01:10:29

there. Always are in these

01:10:31

cases and get them out

01:10:32

of the way in a

01:10:33

quick Manner and help make

01:10:35

that arbitration more efficient and

01:10:38

the other incredible Innovation and

01:10:40

another congratulations. Fix it is

01:10:42

to respond to the the

01:10:44

repeated calls for a Nixon

01:10:46

mediation facility. Now it's it

01:10:49
has a conciliation since the

01:10:50
beginning of the process which

01:10:52
is very similar from a

01:10:54
jurisdictional point of view and

01:10:56
in complexity to the exit

01:10:58
arbitration rules mediation. Procedure again

01:11:01
is just like the fact-finding

01:11:03
procedure. It's incredibly open to

01:11:05
all non-parties. It's something that

01:11:07
can be accessed fairly quickly.

01:11:09
You can have a single

01:11:11
arbitrator, you can a Taurus

01:11:12
or a mediator? You can

01:11:13

have two mediators and and

01:11:15

Something again, that provides another

01:11:18

dimension to dispute resolution. As

01:11:21

we know, the reason arbitration

01:11:23

is very popular is this

01:11:25

adversarial and has a very

01:11:26

final results as being premature

01:11:28

again of excited. But now

01:11:30

with mediation will be able

01:11:32

to step back and look

01:11:34

at broader issues, not just

01:11:35

the legal issues, not just

01:11:37

whether there's an investment, but

01:11:39

some of the interest, you

01:11:41

know, I'm mediation approach. Looking

01:11:42

at the interest of the

01:11:43

party, how to resolve a

01:11:44

dispute. And I think this

01:11:46

is something the council. Again,

01:11:48

if you're going to be

01:11:49

effective and cost-effective an expeditious,

01:11:53

I think you really have

01:11:54

to go to your clients

01:11:55

and say there are these

01:11:57

mechanisms now, and we need

01:11:59

to seriously, consider so full

01:12:01

Commendation too excited and to

01:12:04
the amendment process for bringing

01:12:07
these new rules in, and

01:12:08
they're not just something that

01:12:09
except tribunals can use. This

01:12:12
is something I think all

01:12:13
International guests Minerva. Practitioners as

01:12:17
a new tool in your

01:12:18
tool kit to help bring

01:12:20
a better service in a

01:12:22
from a from a council

01:12:23
point of you to our

01:12:24
clients but also even as

01:12:25
arbitrators to be able to

01:12:26

urge Council know, there are

01:12:28

these tools available you should

01:12:30

look at them, this will

01:12:30

help improve the process will

01:12:32

help make the process more

01:12:34

legitimate. And I think I

01:12:35

was one of the ultimate

01:12:36

goals of the reform was

01:12:38

to increase the legitimacy to

01:12:40

improve the process. And I

01:12:42

think this is one of

01:12:43

the exciting parts of the

01:12:46

new. It's in amendments, and

01:12:47

thank you for putting the

01:12:51

last be able to deliver

01:12:52

this very important message to

01:12:54

our audience. Thanks and I

01:12:57

I don't think I've ever

01:12:58

seen anybody. So excited about

01:12:59

finding before better. We have

01:13:03

a few, we have 10

01:13:04

more minutes for questions from

01:13:06

the audience. I'll coming from

01:13:07

our panelists bad before getting

01:13:11

to that. I was going

01:13:12

to. I want to, I

01:13:13

want to ask her panties,

01:13:14

I want to barge if

01:13:16

I know that she has

01:13:16

been working in bypassing mediation

01:13:19

rules and if you have

01:13:20

some, some views on these

01:13:22

new tools, that we are

01:13:24

offering to do that to

01:13:27

the user's, I completely agree

01:13:30

with the end of the,

01:13:30

the mediation rules are a

01:13:33

real breakthrough, their extraordinary flexible

01:13:36

and very well thought through

01:13:38

the only thing that I

01:13:40

would add to what he

01:13:41

said is that the conciliation

01:13:44

rules. In the 2022 Edition

01:13:47

are very much like mediation.

01:13:50

So though those have been

01:13:52

very significantly we hauled and

01:13:55

as can be done to

01:13:58

the greatest extent possible consistent

01:14:00

with the exit convention, the

01:14:03

conciliation process. Now will resemble

01:14:06

closely a contemporary mediation Thanks

01:14:14

Bart. And, and for those

01:14:15

who are familiar with the

01:14:17

old rules, you will you

01:14:19

may recall that one of

01:14:22

the criticisms much like an

01:14:26

arbitration process and there's his

01:14:28

numbers. We've had approximately 924

01:14:33

out of 12 room for

01:14:40

improvement there. Now, I don't

01:14:42

know what we are. We're

01:14:44

almost running out of time.

01:14:45

I don't know if there's

01:14:46

any questions. I see somebody

01:14:50

on the back doing that

01:14:51

Microsoft. No question. Weird question.

01:16:11

Okay, I'm going to try

01:16:13
summarizing correctly, then answer the

01:16:16
question is if there's an

01:16:18
effort to make more transparent,

01:16:19
the participation of third-party Sanders,

01:16:21
why did we did not

01:16:24
include the mandatory disclosure of

01:16:26
the third-party funding agreement and

01:16:29
we stopped by on the

01:16:33
name and address of a

01:16:36
pretty fun? Yeah, I mean

01:16:40
that's that's a good question.

01:16:42
And it was goes to

01:16:45
the objective of the rule,

01:16:47

which is to identify conflicts

01:16:49

of interest, in the arbitration,

01:16:52

with the participants in the

01:16:54

arbitration. So you don't need

01:16:56

the third-party agreement, that funding

01:16:58

agreement for that. You don't

01:17:00

need the name and other

01:17:02

identifiers of the party. So

01:17:06

the third-party funding agreement might

01:17:08

be relevant for other purposes.

01:17:09

They security for costs But

01:17:12

that would be addressed by

01:17:14

the tribunal on a case-by-case

01:17:16

basis, whether it is, it

01:17:18

should should, or should not

01:17:19

be disclosed. So, there the

01:17:23

rule only goes as far

01:17:24

as requiring, the name and

01:17:27

address so that we can

01:17:29

address conflict of interest. Thanks.

01:17:34

Martina do we have we

01:17:36

have another question here? My

01:17:48

question also has to do

01:17:49

with third-party funding recently last

01:17:52

week. The European Parliament has

01:17:54

now come up with a

01:17:55

proposal to come down early,

01:17:57

heavily on third-party funding. Will

01:17:59

Reserve 60%? Captain course, mandatory

01:18:03

disclosure is there an Institutional

01:18:06

review? I mean, of course,

01:18:06

as an Institutional review attic

01:18:08

set, reminder 3 disclosure that

01:18:11

you've letter to the arbitrator's

01:18:13

is it, was this something

01:18:15

that was considered dropping calls

01:18:18

at 60% as that something,

01:18:20

is that an excuse to

01:18:21

review on it? Outlet Martinez,

01:18:25

released preliminary, reaction of nuclear

01:18:36
working paper. Number one of

01:18:38
the first document that was

01:18:39
published when she did a

01:18:42
scooping off all the different

01:18:44
views on third-party funding and

01:18:45
there's a wide range of

01:18:47
views. From this is absolutely

01:18:50
normal in Sparta for the

01:18:51
reception to. This is abominable

01:18:53
and should never be allowed.

01:18:54
So they have beautiful institution

01:18:57
singing are reflected in the

01:18:58
position that we do best

01:19:00

Martinez correctly, stated interest. I

01:19:04

don't know if you have

01:19:05

any comments that of course

01:19:11

there are many facets to

01:19:12

the questions of third-party funding

01:19:14

and what we were concerned

01:19:16

it was where those issues.

01:19:18

Some reason, impact the procedure

01:19:20

and that's what we focused

01:19:22

in on conflicts of interest.

01:19:26

Thanks, if there's a question

01:19:29

on the back, in terms

01:19:42

of the other causes of

01:19:44

amendment, what was the most

01:19:47
challenging issue for you and

01:19:49
the sons of staying within

01:19:50
the limits of the convention

01:19:51
and surpassing the like this

01:19:55
limit to amend the rules,

01:19:56
but not to modify the

01:19:59
convention. I don't think it

01:20:03
was never that that was

01:20:04
never an issue. I think

01:20:06
we were very clear on

01:20:07
our limit or there's things

01:20:09
that we would like to

01:20:10
change, but we cannot change.

01:20:12

Our lives are, there are

01:20:13

many positive outcomes out of

01:20:15

this. And one of them

01:20:16

is that for years, we've

01:20:19

been saying and an attorney

01:20:21

today for years, we've been

01:20:22

saying it is impossible to

01:20:23

mend X, come in after

01:20:26

six years of amending, the

01:20:27

rules. We went to the

01:20:28

impression that maybe there's a

01:20:29

possibility, maybe it is possible.

01:20:31

Maybe there is an interest

01:20:32

in changing things. So, The

01:20:37

collaboration that we have with

01:20:38

member states and with stakeholders

01:20:40

in general, latest who sings,

01:20:43

okay, maybe in the future,

01:20:44

I don't know when it

01:20:45

would be possible, but other

01:20:49

than gas station, we had

01:20:54

to do. And we were

01:20:58

very clear with what we're

01:20:59

leaving. We're trying to improve

01:21:01

the process who preceded changes,

01:21:02

we have 2 minutes left.

01:21:09

One more question. Unfollow. Can

01:21:12

I ask a question? Yep.

01:21:15

I guess I'll go ahead

01:21:15

Mallory Within Reach when and

01:21:23

how can we get the

01:21:24

new booklets at the new

01:21:26

booklets are being printed I

01:21:28

saw the print out yesterday

01:21:29

but in the spirit of

01:21:32

being green and not Burning

01:21:36

Forest everywhere. We're going to

01:21:38

be printing very a very

01:21:41

limited number of copies. I

01:21:44

know people like it will

01:21:45
like it, but it's not

01:21:47
going to be like before

01:21:48
that we had thousands of

01:21:50
weeks ago and drools everywhere.

01:21:58
Reminder to thank you again

01:22:04
for my question is to

01:22:09
the Bible, but maybe specifically

01:22:11
do miss burlesque that. There

01:22:13
is also an introduction of

01:22:15
the provision for interim cost.

01:22:19
Could you shed a little

01:22:20
light on when it would

01:22:22
be a place? Because it

01:22:23

appears that I need a

01:22:25

demogorgon cost without expression of

01:22:28

view on the final adjudication,

01:22:30

as far as the Medics

01:22:31

are concerned. It seems a

01:22:33

little unlikely. so you mean

01:22:38

the rule in Route 52

01:22:40

about issuing, a interim decisions

01:22:44

on costs during the preceding

01:22:49

What you're referring to, okay?

01:22:51

Good. Yeah, that was something

01:22:55

that we specifically wanted to

01:22:57

address the conduct of the

01:23:00

parties and efficiency and it's

01:23:03

what we thought would be

01:23:05

a tool for for tribunals

01:23:07

to use as a management

01:23:10

of the case. And and

01:23:11

give the parties, an indication

01:23:14

of how they are faring

01:23:16

in the preceding and we

01:23:17

hope that it will be

01:23:18

used. As, you know, when

01:23:20

that rule there is something

01:23:22

not be in cost, allocation

01:23:25

that refers to, you know,

01:23:27

the tribunal can taking into

01:23:29

account if the parties acted

01:23:31

efficiently and cost-effectively, and it's

01:23:35

possible that if there are

01:23:36

the letter e tactics. The

01:23:38

tribunal could issue such interim

01:23:41

decision to to control the

01:23:45

parties and we will encourage

01:23:47

them to do so. Thank

01:23:50

you. And yes, it will

01:23:51

remark you show Martinez said

01:23:53

decision of God, you use

01:23:55

expression Awards and cost under

01:23:57

Dixie convention system. There's only

01:23:58

one award, which is a

01:24:00

final decision to make clear

01:24:02

that there will be no

01:24:03

internet works and Thank you.

01:24:11

Google. I would like to

01:24:13

ask anybody and end Ian

01:24:17

or or, or Antonio, or

01:24:19

guard or, or Martina Mallory.

01:24:24

How do you view the

01:24:26

the fact-finding rules II? My

01:24:29

my senses is all so

01:24:31

that they can be extremely

01:24:33

useful. If, if the arbitration

01:24:36

Community really learns about them.

01:24:40

And you may take it

01:24:42

to remain at least partially

01:24:47

go away from from a,

01:24:50

a very odd. Your cereal

01:24:52

process at least, at the

01:24:54

beginning and an email. So

01:24:56

have some positive effects on

01:24:58

costs in the sense that

01:25:00

the current arbitration procedures are

01:25:04

normally a highly intensive. In,

01:25:07

in fact, finding The beginning,

01:25:09

there is document production, they

01:25:12

are, there are fights between

01:25:14

the world can fight as

01:25:17

as, as those happening arbitration

01:25:18

between the two parties, as

01:25:20

what should be disclosed, what

01:25:21

should be disclosed. But if

01:25:24

there is some willingness to

01:25:26

really use the fact-finding part

01:25:28

of the other rules, some

01:25:30

of that may be avoided

01:25:32

her until the whole the

01:25:34

whole facts are are are

01:25:35

a streamlined clarified. And then

01:25:39

then the legal part would

01:25:40

come either to have a

01:25:43

possible mediation world to have

01:25:47

possible. AAA should have Agreements

01:25:50

are at least, you could

01:25:57

go to arbitration. But I

01:25:58

see that that this may

01:25:59

be actually quite a vanguardian

01:26:02

in the sense that that

01:26:03

he could. Should have split

01:26:05

potentially that the history of

01:26:08

Visa door or am I

01:26:10

reading too much into it?

01:26:12

Homemade almond definitely got ready

01:26:16

as part of the new

01:26:18
instruments that were providing the

01:26:20
parties to try to reduce

01:26:21
the scope of this good

01:26:23
to make it easier to

01:26:25
maybe, maybe they were here,

01:26:30
you can reduce the scope

01:26:37
of this dude. And I

01:26:38
have seen cases where they

01:26:39
have encouraged parties to say,

01:26:41
okay, you have 12 g,

01:26:42
a m b, r o

01:26:48
d is good. To what's

01:26:49
really complex and it's keeping

01:26:51

you separated. So, but I

01:26:54

think it could be potentially

01:26:57

could be a great too.

01:27:01

Norton. Commons. I think we

01:27:05

will have run out of

01:27:06

time and I want to

01:27:08

thank everybody again for coming

01:27:10

and for listening to us,

01:27:11

my friends, and go panelist

01:27:14

here and online for a

01:27:15

fun, fun station in my

01:27:18

view. Thank you very much

01:27:22

again. And I believe in

01:27:28

your, you're all, welcome to

01:27:29
to mingle here. I would

01:27:33
like to thank each it.

01:27:35
I would like to thank

01:27:35
Antonio and Ian and I'm

01:27:38
going to follow and Mallory

01:27:39
as well as Bart and

01:27:42
and Medina at 4 really,

01:27:44
making this an incredibly inform

01:27:47
of these. But also an

01:27:48
electrical panel and where were

01:27:50
we all learned and and

01:27:53
one of the challenges how

01:27:55
to read the the rules

01:27:56

and, and that you clearly

01:27:58

gave us away to read.

01:28:00

And of course that there

01:28:01

are issues there are challenges

01:28:02

still Contact me on my

01:28:04

be taken down 2030 or

01:28:07

so. But but for now

01:28:10

and enjoy the rules and

01:28:13

the last panel, will it

01:28:16

be on new technologies? And

01:28:18

we have a surprise for

01:28:20

for the attendees. It will

01:28:22

be in. I believe this

01:28:26
happened to all of us.

01:28:28
In 24 minutes. So there

01:28:33
will not be a breakout

01:28:35
room because because we went

01:28:37
a little bit over time,

01:28:38
but thank you very much

01:28:40
to those that attended here

01:28:42
and align, this was a

01:28:44
terrific experience. Bye-bye, and I

01:28:47
was Wild by this panel,

01:28:48
everybody. Weekend. Welcome to our

00:00:03
world arbitration week day 5,

00:00:06
we had an exciting week

00:00:09

of panels on many different

00:00:11

subjects on topics, so it's

00:00:14

really actually great to do

00:00:16

a hybrid event and actually

00:00:18

see a room full of

00:00:19

people and we have a

00:00:20

great, great crowd online. Fantastic.

00:00:24

And so I welcome the

00:00:26

world. Arbitration wait panel today

00:00:30

is on a very important

00:00:34

topic which really fits well,

00:00:37

into the objectives of world.

00:00:39

Arbitration update, we founded, the

00:00:42

Jose, Antonio and I dr.

00:00:44

Jose, Antonio Rivas to be

00:00:46

clear and I co-founded a

00:00:48

while to meet a couple

00:00:50

of objectives. The first objective,

00:00:52

of course, is in the

00:00:53

title. It's to providing updates

00:00:55

and international arbitration, investment arbitration

00:00:58

and Commercial arbitration to provide

00:01:00

a forum. For providing new

00:01:04

developments and a discussion of

00:01:08

everything happening. You know, in

00:01:09

the past year and in

00:01:13

the international arbitration world and



00:01:15

to, secondly, welcome a diverse

00:01:19

range of voices to help

00:01:22

inform the rest of us

00:01:23

on developments, not only in

00:01:25

the major arbitration centers in

00:01:27

of the major rules, but

00:01:28

from every corner of the

00:01:30

world and hence, the other

00:01:32

part of the title, World

00:01:33

arbitration update, we've had panels

00:01:36

address in topics related, Latin

00:01:40

America, southeast Asia Africa, Middle

00:01:44

East, and of course, the

00:01:47

general topics, as well as

00:01:49

Pinterest, the folks. So we're

00:01:51

very pleased today to do

00:01:53

this topic which the title

00:01:56

of our panel. Today is

00:01:59

exid rules amendments and You

00:02:02

know, there's been a great

00:02:03

deal of discussion in the

00:02:05

International Investment arbitration Community about

00:02:08

amendments and reforms to various

00:02:11

rules. We had a fantastic

00:02:12

panel this morning on the

00:02:15

on social reform efforts and

00:02:18

the thanks to our panelists

00:02:20

who gave us a great

00:02:22

exposition of those developments. And

00:02:26

now we're kind of going

00:02:27

to the other shoe, a

00:02:29

dropping which is the exit

00:02:32

rule amendments which as we

00:02:34

know became effective this past

00:02:37

July and we have a

00:02:39

fantastic panel here today and

00:02:42

I'll let my colleague Jose

00:02:45

Antonio, introduce our moderator. But

00:02:47

first, a little bit of

00:02:48

administration we want to thank

00:02:50

our sponsors. We've had a

00:02:53

a really enthusiastic and supportive

00:02:55

group of sponsors this year

00:02:57

and certainly would not have

00:02:59

been able to organize this

00:03:00

conference Without their support. We

00:03:03

have a large group of

00:03:05

supporters who helped promote and

00:03:08

Market the conference and provided

00:03:10

speakers and input on topics.

00:03:13

And of course, our Advisory

00:03:15

Board of which, we absolutely

00:03:18

couldn't have done this without

00:03:21

them as well. We've had

00:03:22

a really active and supportive

00:03:24

group there, so thanks to

00:03:27

all those folks and I

00:03:30

think finally wanted to thank

00:03:33

our organizers San Antonio and

00:03:38

his team attack strategy LLP

00:03:40

and put in a mini

00:03:42

mini, arduous hours putting together

00:03:45

these panels making the ships

00:03:47

for the trains run on

00:03:48

time. Hurting the shots, whatever

00:03:50

metaphor you want to use

00:03:52

and the full commodation and

00:03:54

congratulations to them for all

00:03:56

their hard work. And in

00:03:57

organizing this, this five-day Diverse

00:04:03

and wide-ranging a conference and

00:04:06

it's been a huge success

00:04:07

and congratulations to particular Anna

00:04:10

and Maria Luchia. So with

00:04:13

those few notes, I think

00:04:14

I've covered off kind of

00:04:15

some of the administration. I'll

00:04:16

pass it on to doctor

00:04:18

Revis has to my right

00:04:20

and we'll move into the

00:04:23

panel discussion. Jose Antonio Nigerian

00:04:26

how was I was just

00:04:29

thinking, why do better place

00:04:31

that then I'll run in

00:04:33

Porter to to start wrapping

00:04:37

up the world arbitration update

00:04:39

week. I had the pleasure

00:04:40

of serving as counsel in

00:04:44

many cases while I was

00:04:47

a senior associate at Arnold

00:04:50

Porter and I'm immensely grateful

00:04:52

for with with Mallory Silverman,

00:04:55

one of our Advisory board

00:04:58

members for hosting this Hybrid

00:05:02

here at the Arnold Porter

00:05:04

and what a better panel

00:05:05

to to start closing the

00:05:09

world application update than than

00:05:11

than a panel on the

00:05:13

exit rules thinking. When we

00:05:16

will we're choosing panelist, I

00:05:19

could not be more enthusiastic

00:05:22

about the panels that are

00:05:23

here. I have happened to

00:05:26

to see the caliber of

00:05:28

of, of professionals and human

00:05:30

beings. I've had the pleasure

00:05:31

of working with all of

00:05:33

them at some stage in

00:05:35

my career and and collaborate

00:05:39

with all of them at

00:05:41

some stage. So, this is,

00:05:43

this is a panel like,

00:05:45

like no other. And I

00:05:46

say that without any exaggeration,

00:05:48

I would like to start

00:05:52

out by, by thanking all

00:05:55

so excited, and it has

00:05:56

been tremendously supportive, not not

00:05:59

11. Secretary-general. But two Deputy

00:06:05

secretary-general. So there's there's no

00:06:07

other conference that that that

00:06:08

does that. So, I must

00:06:11

say that I'm sorry. Sorry,

00:06:14

I is a moderator and

00:06:17

he know he was, he

00:06:19

was a mentor of mine

00:06:20

when I was at an

00:06:20

extremely grateful. He has many

00:06:25

good things. Now, he's a

00:06:26

deputy secretary-general and at some

00:06:28

stage I expect that that

00:06:30

Antonio para will be with

00:06:31

us, but, but he's one

00:06:35

of those individuals extremely extremely

00:06:36

gifted with, with names details.

00:06:39

He has a prodigious memory

00:06:42

in addition to to his

00:06:45

in-depth, knowledge about the convention

00:06:49

when things that happened, at

00:06:51

how things should be handled

00:06:53

always with, with neutrality. And

00:06:56

and I don't care. I

00:06:58

know that if I keep

00:07:00

on going He might not

00:07:02

be my friend anymore, so

00:07:03

I'll stop there. Go to

00:07:05

Silo, you have the store

00:07:06

and we're tremendously proud of

00:07:08

having everyone here and let's

00:07:12

learn about the amendments. Thank

00:07:16

you, cousin Tonio. Thanks to

00:07:18

everybody was in the room

00:07:19

and those were joining us

00:07:21

today. Online text Julie, organizer

00:07:25

for inviting exit to participate

00:07:27

in this important conference. As

00:07:32

you heard the Focus door

00:07:33

panel, today is the 2022

00:07:36

exceed rules and regulations. Let

00:07:38

me start with one of

00:07:41

the funniest things about this

00:07:42

mixture of everything about a

00:07:46

person on Virtual conferences for

00:07:50

2 years, I got so

00:07:51

used to be reading the

00:07:52

script but I forgot how

00:07:56

to speak freely background of,

00:08:03

how did we get here?

00:08:04

Why, why are we speaking

00:08:06

about amendments? Why we embark

00:08:09

on this amendment process is

00:08:11

very, very briefly because I

00:08:14

do want to hear the

00:08:14

address. Score going to get

00:08:16

into more substance. As you

00:08:22

probably all know on March

00:08:23

21st this year, 18 member

00:08:26

states approve, the long-awaited and

00:08:28

comprehensive set of amendments to

00:08:31

leave the rules and regulations

00:08:32

for resolving international disputes between

00:08:34

private investors and state. This

00:08:37

is the first amendment of

00:08:39

The Bill since 2006, and

00:08:42

is the most expensive and

00:08:43

inclusive modernization of exit procedures

00:08:46
in the center of History.

00:08:47
I was lucky enough to

00:08:49
be part of the 2003

00:08:51
and 2006 amended processed. And

00:08:54
while they were very important

00:08:55
and make it is enormous

00:08:58
progress in in exit rules.

00:09:01
And it said, it said

00:09:03
practices nothing in the past

00:09:05
amount to go to the

00:09:08
work and their their coverage,

00:09:10
the Beast rules, have achieved.

00:09:13
No. These rules are the

00:09:16

outcome of almost six years

00:09:18

of very hard work and

00:09:20

Analysis by David Secretariat and

00:09:22

deliver collaboration. With State officials

00:09:24

legal counsel, adjudicators business representatives,

00:09:27

and Civil Society, including three

00:09:31

Interstate in person. Consultative meetings

00:09:35

in Washington DC between 2018

00:09:37

and 2019. We would have

00:09:39

had more meetings but the

00:09:42

world stopped working for a

00:09:43

couple of years. Have to

00:09:44

do. As you probably know,

00:09:45

we had hundreds of presentations

00:09:48

with different groups of stakeholders.

00:09:50

Thousands of pages in comments

00:09:52

and there are six working

00:09:55

papers published available on our

00:09:56

website. Again, sounds of pages

00:09:58

of analysis before getting to

00:10:00

the current rules. These updated

00:10:04

rules on arbitration mediation punctuation

00:10:07

on fact-finding. Corporate in very,

00:10:10

nobody expects the same to

00:10:13

basically four aspects. Make the

00:10:16

exact case is more efficient

00:10:17

time in cost and a

00:10:19

guiding principle in this process

00:10:22

Road and access to existing

00:10:24

facilities and services. We always

00:10:29

say, we always remind people

00:10:31

that we need to remind

00:10:32

people that like, she's their

00:10:33

leader in investor-state, arbitration dispute,

00:10:38

dispute settlement procedures with over

00:10:41

70. 75% of all cases,

00:10:43

ever administered being handled by

00:10:45

the center. If we are

00:10:48

the leaders and we have

00:10:49

the best rules. Let's make

00:10:51

them accessible to everyone. That

00:10:53

was another guiding principle. And

00:10:56

also we will speak with

00:10:59

this rules to ensure and

00:11:00

ensure greater transparency in the

00:11:03

contact that outcome of proceedings.

00:11:04

Very mind that if she

00:11:07

has always have a very

00:11:08

transparent, SS parents, are always

00:11:13

with you respect to their

00:11:14

parties, disputing parties desires. So

00:11:19

it's in the nature of

00:11:20

fixing to have more transparency

00:11:22

and we will speak about

00:11:23

that came into effect on

00:11:26

July 1st has been publishing

00:11:29

and will continue. Publishing extensive

00:11:31

guys, guided notes producing the

00:11:34

rules over the next few

00:11:35

months, and events. Like this

00:11:37

are in the same line

00:11:38

of explaining how this new

00:11:39

rules work. No, these Innovations

00:11:44

of the rules include measures

00:11:47

designed to make Asus more

00:11:48

efficient, including mandatory frame time,

00:11:51

frame surrendering, orders and awards,

00:11:52

and you expect there between

00:11:54

rules rules that enhance transparency

00:11:56

of exit orders decisions in

00:11:59

the Wards Road access to

00:12:01

exceed, specialized scooter, solution, products,

00:12:03

and services, including a completely

00:12:06

new set of mediation rules,

00:12:08

and more disclosures, including an

00:12:12

updated Declaration of Independence availability

00:12:14

in confidentiality by arbitrators, how

00:12:17

do you spell sure of

00:12:18

third party funding? Which was

00:12:19

a very I want to

00:12:22

say controversial, but we will

00:12:24

see extensively discussed topic and

00:12:27

a streamlined process for disqualification

00:12:29

of arbitrators and considers. No,

00:12:32

for people online and to

00:12:35

facilitate a discussion today. So

00:12:37

you can follow More conveniently.

00:12:40

I encourage you to download

00:12:42

the new rules and regulations

00:12:44

that are available on our

00:12:44

website. Is there going to

00:12:46

be? So I'm assuming they're

00:12:47

going to be a number

00:12:47

of reference, the rules those

00:12:51

who work in this field

00:12:52

for many years. We know

00:12:54

the rules by heart and

00:12:55

I were going to have

00:12:56

to learn them again. They

00:12:58

have all the numbers they're

00:13:04

going to put in an

00:13:05

extraordinary panel, which also happened

00:13:10

to be colleagues of mine

00:13:11

and, and friends for many

00:13:12

many years. And let me

00:13:16

introduce you briefly. IPod just

00:13:22

stopped working. But as I

00:13:25

said this, a friends forever

00:13:27

tiling to get them. Anyways,

00:13:28

so first we have we're

00:13:31

going to hear from Mallory

00:13:32

Silverman with a partner at

00:13:34

our hosts are Nolan Porter.

00:13:35

She has I could have

00:13:37

gone for more than 14

00:13:38

best meditation representing both States

00:13:41

and investors and nearly 8%

00:13:44

of all of the countries

00:13:45

in the world. Mallory was

00:13:49

also an active participant in

00:13:51
the amendment process. Representing one

00:13:52
state and attending our consultative

00:13:54
meetings of the international dispute.

00:13:59
Resolution Committee of the DC

00:14:01
bar and has been an

00:14:02
adjunct professor at Georgetown University

00:14:05
Law Center, since 2012, and

00:14:08
I have been lucky to

00:14:09
be invited a few times

00:14:10
to visit her class. Tomorrow

00:14:13
is going to be talking

00:14:14
to, she's going to be

00:14:15
tackling the general umbrella efficiency,

00:14:18

and it's going to be

00:14:18

talking about certain of the

00:14:20

Practical changes that have been

00:14:21

introduced in the rules to

00:14:23

address. Efficiency. Next, we will

00:14:26

hear from. We hope to

00:14:28

hear from Antonio para to

00:14:30

see this is space missing

00:14:31

there. He will. He will

00:14:35

arrive as soon as a

00:14:38

former deputy secretary-general and legal

00:14:40

advisor to fix it by

00:14:44

surrender. The code of conduct

00:14:45

for board officials at the

00:14:46

World Bank group is the

00:14:48

author of the Seminole Nation

00:14:49

in the history of fix

00:14:50

it, and he called it,

00:14:52

the title of personal friend

00:14:54

and mentor of mine and

00:14:55

almost everybody in there is

00:14:57

dies industry these days. Antonio,

00:15:01

Antonio, hopefully, we'll be addressing

00:15:03

the topic of challenges of

00:15:05

arbitrators and has a new

00:15:06

rules. Under the Umbrella of

00:15:09

the prevention of conflicts of

00:15:11

interest. Then we'll keep it

00:15:12

from my friend and colleague,

00:15:14

Martina plastic, who is currently

00:15:16

serving as Deputy secretary-general present

00:15:21

with us today, as we

00:15:22

want to adjust. I see

00:15:23

her there on the screen.

00:15:26

Then we will hear from

00:15:27

Barb. Megan founding partner of

00:15:29

the Paris arbitration Boutique only

00:15:31

a legum & Recreation and

00:15:33

a member of the board

00:15:34

of the SEC arbitration Institute

00:15:36

earlier in his career. When

00:15:38

I first met you serving

00:15:42

the US state department, as

00:15:43

the lead lawyer for the

00:15:44

US government, in the first

00:15:46

investment relations. Other than that,

00:15:47

I'm sure you are all

00:15:49

familiar with cases, like raw

00:15:51

win over Monday. We're letting

00:15:55

these cases for two decades

00:16:01

and Bard will be addressing

00:16:04

the very important aspect of

00:16:07

transparency in the new rules.

00:16:08

And last but not least,

00:16:10

we'll hear from the alert

00:16:11

solution, group of Crowell &

00:16:16

moring LLP in Washington 1998.

00:16:25

He's also an Adjunct professor

00:16:27

at Georgetown law school and

00:16:28

go director of the international

00:16:30

law Institute, investment, Law Center,

00:16:32

and then we'll be addressing

00:16:34

the expanded range of dispute

00:16:37

settlement, or under the exit.

00:16:38

Now, I have taken a

00:16:40

lot of time, so that's

00:16:41

introduction. Without further Ado, I

00:16:43

will pass the floor door

00:16:44

speakers. So let's go first

00:16:47

to Mallory Who and the

00:16:49

vein of more efficient, proceedings

00:16:51

will be talking about some

00:16:53

practical takeaways and some pointers

00:16:55

on how to make Aldi's

00:16:56

Rose. Make proceedings, more efficient

00:16:58

battery. Thank you, Gonzales. And

00:17:03

thank you also to. Wow,

00:17:04

for having me here today,

00:17:06

I am very sad that

00:17:08

I'm not able to join

00:17:09

you in my home office

00:17:10
in DC at Arnold &

00:17:12
Porter. But because I'm not

00:17:14
there, I do just want

00:17:15
to take a second to

00:17:16
thank all of the people

00:17:17
who made this hybrid format

00:17:18
possible, which include a me

00:17:20
to cost Sarah Smith and

00:17:22
the events and Evie team

00:17:24
at a m p. So

00:17:25
thank Call so much. In

00:17:28
the spirit of efficiency and

00:17:30
thinking about practical pointers, I

00:17:33
thought that it might be

00:17:34
most useful for you. If

00:17:37
I tried to help you

00:17:38
figure out how to efficiently,

00:17:40
get up to speed on

00:17:42
the rules amendments and go

00:17:44
through the thousands and thousands

00:17:46
of pages that you can

00:17:48
now find on the exceed

00:17:50
website. And I have come

00:17:53
up with 7 General tips

00:17:55
for everyone. The first of

00:17:57
which is don't try to

00:17:59

run a red line between

00:18:01

the 2006 rules and the

00:18:03

2022 rules. Because it's not

00:18:06

going to help you and

00:18:08

I know this because I

00:18:10

tried it myself. The reason

00:18:12

why it's not going to

00:18:13

help. Is because first of

00:18:15

all, all of the numbers

00:18:17

have changed. As Gonzalo has

00:18:19

mentioned. There are rules that

00:18:22

used to be spread out

00:18:22

through the administrative and financial

00:18:24

regulations, the arbitration rules that

00:18:27

touched on similar topics that

00:18:29

have all been Consolidated now.

00:18:30

And on top of that,

00:18:32

there has been little tweaks,

00:18:34

many of which are non

00:18:36

substantives to all of the

00:18:37

rules that taken together make

00:18:40

for a massive mess when

00:18:42

you try to run a

00:18:43

comparison document. So save yourself

00:18:46

the time and jump straight

00:18:48

to either reading the rules.

00:18:50

Or if you want a

00:18:53

bit of a cheap, feel

00:18:54

free to go on LinkedIn

00:18:55

earlier this year, I tried

00:18:57

to replicate this sort of

00:18:58

redlining or comparison through a

00:19:01

series of short videos. They

00:19:03

are 22 Freeman. Flying each

00:19:06

and they can be found

00:19:07

on LinkedIn that if you

00:19:08

search for the hashtag, it's

00:19:10

good rules amendments. The second

00:19:13

tip when you are reading

00:19:15

the new rules which I

00:19:16

encourage everyone to do, you

00:19:18

shouldn't skip ahead to the

00:19:20

arbitration rules proper. Instead, you

00:19:24

should actually go through the

00:19:25

booklet in order. I'm sure

00:19:27

everyone here already knows the

00:19:28

exact convention very well. That's

00:19:30

at the beginning of the

00:19:31

book. LED after that, you

00:19:33

should go to the administrative

00:19:34

and financial regulations because as

00:19:37

exit has explained fees, apply,

00:19:40

not only to proceedings that

00:19:42

have been initiated after the

00:19:44

rules came into effect on

00:19:45

July 1st of this year,

00:19:46

but also to ongoing proceedings,

00:19:49

there an important read and

00:19:52

you can see various changes

00:19:54

there including on the the

00:19:57

subject of these. The fact

00:19:59

that arbitrators, now I'll receive

00:20:01

an hourly rate for all

00:20:03

of their time and it

00:20:04

said arbitration as opposed to

00:20:06

the old mechanism by which

00:20:09

Some of the arbitrator's time

00:20:10

was charged in hourly rate,

00:20:11

but there also was a

00:20:12

a flat fee for hearing

00:20:14

days. And perhaps more importantly,

00:20:16

you'll also start to get

00:20:18

a sense of some of

00:20:19

the restructuring that I mentioned.

00:20:21

For example, you'll see that

00:20:23

the permissions on time limits

00:20:24

seem to be missing and

00:20:26

that's because they have been

00:20:27

combined with other provisions and

00:20:29

moved over to the arbitration

00:20:31

rules. Do after you finish

00:20:34

getting your bearings with the

00:20:36

administrative and financial regulations. My

00:20:38

third tip is that you

00:20:40

should move on continuing and

00:20:42

sequins and skim. Also, the

00:20:44

revised institution rules, as many

00:20:47

of, you know, and as

00:20:48

their name suggests the set

00:20:50

of rules applies to the

00:20:51

institution of proceedings. And so,

00:20:54

therefore, it only applies to

00:20:56

request for arbitrations that were

00:20:58

or are filed after July

00:21:00

1st, but it's still worth

00:21:02

a read because there was

00:21:03

a lot of discussion of

00:21:05

what should go into the

00:21:06

institution rules over the course

00:21:08

of the amendment process. And

00:21:11

in particular, I would commend

00:21:12

to you rules 2 and

00:21:14

3 which show you what

00:21:17

information the rules. Now, explicitly

00:21:19

require the included and an

00:21:22

RFA and what additional new

00:21:24

information is recommended for inclusion,

00:21:26
in an RFA and in

00:21:29
particular, one of the main

00:21:30
points to see here is

00:21:31
There is a focus on

00:21:33
explaining at an early stage

00:21:34
of the proceedings in the

00:21:36
request for arbitration, the details

00:21:39
of the ownership of any

00:21:40
alleged investment. That was the

00:21:43
fourth, when you finally turns

00:21:45
the arbitration rules, could come

00:21:47
up next in the booklet,

00:21:48
don't try yet to commit

00:21:50

them to Memory. Don't try

00:21:52

to make sure you can

00:21:54

recall by heart as he

00:21:56

probably can. Now, all of

00:21:58

the new numbers just read

00:22:00

them, read them through and

00:22:02

see what has changed. And

00:22:05

if it helped, I know

00:22:06

that even though things have

00:22:08

been reorganized, they generally follow

00:22:11

a sequence that that mirrors

00:22:15

what happens in an arbitration.

00:22:16

So after the first chapter,

00:22:18

which contains certain General Provisions,

00:22:20

you see rules that roughly

00:22:23

follow the structure of the

00:22:25

establishment of the tribunal than

00:22:27

the disqualification of arbitrators. The

00:22:30

first session written submissions. Hearings

00:22:34

evidence special procedures cost, the

00:22:37

award post-award remedies another topics,

00:22:39

it makes sense. In the

00:22:41

progression, take note of the

00:22:46

Practical points that will impact

00:22:48

you in future proceedings. And

00:22:51

two of these that jumped

00:22:52

out at me. Our first

00:22:54
of all that there are

00:22:54
no longer is a shifting

00:22:56
in the flyer, for holidays,

00:22:59
at the seat of the

00:23:00
center. One of the benefits

00:23:02
of being in Washington DC,

00:23:03
and in doing a lot

00:23:04
of big suitcases. Historically has

00:23:06
been that if there is

00:23:07
a holiday in b.c., get

00:23:10
to move to the next

00:23:10
day, but the holidays went

00:23:13
away. Sadly in, in the

00:23:15

new rules because it was

00:23:16

very difficult to find agreement

00:23:19

or to reach agreement on,

00:23:20

who is holidays should be

00:23:22

observed. And then the second

00:23:25

boy that jumped out at

00:23:26

me in terms of practical

00:23:28

pieces, in the early settlements

00:23:31

of the arbitration rules, is

00:23:32

that there is no longer

00:23:33

a presumption of paper or

00:23:36

hard copy filings. Do no

00:23:38

longer need to submit 6

00:23:40

hard copies of every filing

00:23:42

to the center. Note 6

00:23:45

or anyone who is planning

00:23:46

to dig into the thousands

00:23:49

and thousands of pages of

00:23:50

paper that are the working

00:23:52

papers. You should just bear

00:23:54

in mind that these are

00:23:56

in travel. They were brainstorming

00:23:59

documents, they were submitted for

00:24:03

purposes of discussion and to

00:24:04

help move the process along.

00:24:06

They're very thorough, but they

00:24:08

are in trouble. And you

00:24:10

should also bear in mind

00:24:11

that the process of having

00:24:13

a hundred fifty plus member

00:24:15

states with different experiences and

00:24:17

different levels of experience. All

00:24:20

try to edit the same

00:24:21

document alongside the Secretariat and

00:24:24

many other stakeholders is a

00:24:26

bit of a messy process.

00:24:28

That was captured very well,

00:24:30

but couldn't possibly be captured

00:24:32

completely in the record. I

00:24:36

guess. That is the, the

00:24:37

working papers Nope, 7th and

00:24:40

relatedly for anyone. Who is

00:24:42

watching? Who may have contributed

00:24:44

comments or ideas to this

00:24:46

process. I just encourage you

00:24:48

to bear in mind that

00:24:49

it's possible that in some

00:24:51

future case. 10 years from

00:24:53

now, even 20 years from

00:24:55

now, there likely will be

00:24:57

a party that site's your

00:24:59

remarks. So if you wish

00:25:01

to say anything about the

00:25:02

status of the comments that

00:25:04

you made the time to

00:25:06

do, so is probably sometimes

00:25:08

fear. Those are my seven

00:25:11

initial tips on how to

00:25:13

read into the new arbitration

00:25:15

rules. I think I'll leave

00:25:16

it there for now, but

00:25:17

I look forward to the

00:25:19

rest of the discussion and

00:25:20

any questions. Thank, thank. Thank

00:25:24

you very much memory. I

00:25:26

was carrying you. I had

00:25:28

the following sort some of

00:25:31

you. I hope many of

00:25:32

you are familiar with a

00:25:34

brilliant is simply to protect

00:25:36

American leader to call regulo

00:25:37

by Julio cortazar, brilliant. But

00:25:41

also, it has one thing

00:25:42

that is fantastic. You can

00:25:44

read it in order or

00:25:47

you can follow the map.

00:25:48

They also gives you at

00:25:49

the beginning and jam for

00:25:50

one captor. So we had

00:25:52

her, I think the feeling

00:25:54
that we had on our

00:25:54
own rules, he was that

00:25:55
what I was like, why

00:25:56
you are a brilliant and

00:25:58
you have to jam from

00:25:58
different chapter 7, rules to

00:26:00
make it work and it

00:26:02
was just to follow. Follow

00:26:04
the, the order to achieve

00:26:10
the goal of making everything.

00:26:12
Is it though, for years

00:26:14
we ask everybody, why don't

00:26:17
we do everything digital? You

00:26:18

don't need to go to

00:26:18

find part paper, please you

00:26:21

don't need to send that

00:26:22

72 boxes of. Washington like

00:26:24

we send them back to

00:26:25

Joe's and Country where you

00:26:27

are a betrayer is that

00:26:30

and now it seems that

00:26:32

2020. Everything has been up

00:26:34

to and now this is

00:26:36

reflected in the new rules.

00:26:38

I don't know if any

00:26:39

of our panelists wants to

00:26:40

come and on the efficiency

00:26:42

aspect of the new rules.

00:26:43

On the point of that

00:26:45

Mallory mention, I see Martina

00:26:48

raising her hands at just

00:26:51

a quick comment. I thought

00:26:53

that was a really good

00:26:54

summary of how to go

00:26:55

about it. So thank you

00:26:56

for that matter. I wanted

00:26:59

to comment on the no

00:27:00

holiday rule. That was as

00:27:04

mother. A mention extensively discussed.

00:27:06

I wouldn't think that anybody

00:27:09

would have so strong feelings

00:27:11

about which holidays, if any

00:27:13

should be preserved in the

00:27:17

rules. So, we decided to

00:27:18

go, no holidays. But having

00:27:20

said that, this doesn't mean

00:27:22

that, Wouldn't be able to

00:27:24

take into account, their holiday,

00:27:26

Stephen holidays, of counsel or

00:27:28

you know anyone in the

00:27:29

involved in the process. All

00:27:31

you need to do is

00:27:32

to discuss that at the

00:27:33

first session. When when should

00:27:35

you schedule the, the steps

00:27:39

in the preceding so you

00:27:40

can decide in a parties.

00:27:42

Can agree. Okay, let's jump

00:27:44

this in that date because

00:27:45

that's a holiday. So it's

00:27:47

very pragmatic approach to it.

00:27:50

Basically, in the rolls, That

00:27:56

was fantastic. Mallory and and

00:27:58

I do really recommend folks,

00:28:00

look at the ER series.

00:28:01

It's really well, Illustrated animated

00:28:05

and I'm very helpful just

00:28:13

cuz I know everyone's at

00:28:15

home looking on their computers

00:28:17

at the new exit rules.

00:28:19

But I want to point

00:28:20

out this new rule 3,

00:28:21

which I think, really underlines

00:28:23

much of what gunzalo was

00:28:27

saying. And certainly what Mallory

00:28:29

was underlined is it is

00:28:31

this real commitment now to

00:28:34

efficiency and to making exit

00:28:36

arbitration much more efficient than

00:28:38

what we talked about. International

00:28:39

commercial arbitration is always being

00:28:41

a theme from a practical

00:28:43

point of view. But I

00:28:45

really do commend the drafters

00:28:47

and the parties are actually

00:28:48

putting this very specific rule

00:28:50

3. And to make it

00:28:52

very clear to not only

00:28:54

That that the tribunal. But

00:28:55

the parties and counsel that

00:28:58

this is to be an

00:28:59

expeditious and cost-effective proceeding. And

00:29:03

these words didn't show up

00:29:04

in the old. This is

00:29:07
this is really one of

00:29:08
the new Innovations. And I

00:29:10
think this is something that

00:29:11
all of us as counsel

00:29:13
and arbitrators need to take

00:29:14
very close attention to because

00:29:16
this is it's not just

00:29:18
kind of hard to Tori

00:29:20
desire to be more efficient.

00:29:22
This is actually a hard

00:29:24
loss now and something that

00:29:25
we all need to be

00:29:26
very conscious up and I

00:29:28

resist. Now this is kind

00:29:29

of a lead into something

00:29:30

when I get to discuss

00:29:32

about the fact-finding and mediation

00:29:34

ruled that this is something

00:29:36

that you know, there's now

00:29:37

an onus on us counsel

00:29:39

and arbitrators 2 to look

00:29:41

up the rules in a

00:29:43

new lap and not to

00:29:44

say that we weren't trying

00:29:45

to be effective in the

00:29:46

past. We weren't trying to

00:29:47

be expeditious, but now we

00:29:49

have to be very conscious

00:29:50

of that. And then give

00:29:54

me the consultation meetings. Intellectually

00:30:00

quote, for my highest from

00:30:01

my Disney Musical High School

00:30:03

Musical and I told everybody

00:30:05

we're all in this together.

00:30:06

So it is responsible for

00:30:09

the process to make this

00:30:12

more efficient would take it.

00:30:13

Very, we took it very

00:30:14

hard to look at processes

00:30:15

to see where we had

00:30:17

the floor where they were

00:30:18

inefficient and we work. Very

00:30:19

hard to make it more

00:30:21

and more expedited and efficient

00:30:23

bad. Again, we're all in

00:30:24

this together and he takes

00:30:25

in this case it takes

00:30:27

three to tango until absolutely

00:30:43

I was going to mention

00:30:44

one other resource. Which is

00:30:48

a book edited by Richard,

00:30:51

hop, and stuck on wheel

00:30:52

scooter. That is 900 pages

00:30:56

long on the new rules

00:30:58

and will be coming out

00:30:59

as I understand it in

00:31:00

print next week. So I'm

00:31:03

among the many contributing offers

00:31:06

to it, it won't be

00:31:08

as authoritative a resource as

00:31:10

the commentary being prepared is

00:31:13

the by the exit Secretariat,

00:31:15

but it is an extraordinary

00:31:17

piece of work and an

00:31:19

amazingly timer. That's it. Thanks

00:31:22

for reminding us. Absolutely. Tell

00:31:26

if we we have a

00:31:27

little bit the order and

00:31:28

I'm going to invite Martina

00:31:31

now to speak about a

00:31:33

very Mister Paradise in the

00:31:36

house. Please join us, Antonio

00:31:40

Pereira. Gonzalez. Do you know,

00:31:46

we're getting situated. Add one

00:31:48

more piece on an efficiency,

00:31:50

which is there still a

00:31:54

balance reflected in the new

00:31:57

exit roll. So I was

00:31:58

going to follow mentioned, there

00:32:00

was an effort, that's reflected

00:32:01

in many different Provisions to

00:32:03

sort of tighten things up,

00:32:07

where possible the procedure or

00:32:11

the time. For discontinuing, a

00:32:13

proceeding is no longer a

00:32:15

six-month waiting period at the

00:32:16

90-day waiting. As I mentioned,

00:32:18

there are no longer the

00:32:20

presumption in favour of the

00:32:22

27 boxes and Reams and

00:32:24

reams of paper as Gonzales.

00:32:27

That there are deadlines for

00:32:29

arbitrator's award on an asean

00:32:32

said, there's even this express

00:32:34

provision that encourages. The parties

00:32:37

are states that parties in

00:32:38

tribunal shall conduct proceedings and

00:32:40

expeditious and cost-effective manner. But

00:32:43

notably in the segment that

00:32:45

I think is the the

00:32:48

biggest in terms of efficiency,

00:32:49

which is the scandal in

00:32:51

chapter an expedited proceedings. There

00:32:53

is the option for parties

00:32:55

to opt-in at any time

00:32:57

through consent to expedited proceedings

00:33:00

and I think in light

00:33:02

of potential fears that you

00:33:04

can have something the cheap,

00:33:07

good and fast. We can't

00:33:12

have all three. There is

00:33:14

a possibility of opting back

00:33:16

out, if things ultimately, proved

00:33:18

more complicated than you thought

00:33:20

they would be. So it's

00:33:21

a party is, ultimately can't

00:33:23

do this in 60-day intervals

00:33:25

for first-round submissions or a

00:33:27

40-day intervals, for second-round submission

00:33:30

than 200 Pages for each

00:33:32

of the first round pleadings.

00:33:34

Then you can watch it

00:33:35

back and say, that's not

00:33:36

the way to do this.

00:33:38

There's a balance there. Thank

00:33:41

you. Thank you very much.

00:33:42

My love. I don't know

00:33:43

if I wanted to make

00:33:44

a comment or do you

00:33:45

want to jump into your

00:33:46

topic right away? Now, in

00:33:54

place, Antonio wants to go

00:33:58

ahead first. That's fine with

00:34:00

me. And for being so

00:34:06

late. I'm very in expert

00:34:10

at computer matters and I'm

00:34:12

particularly an expert, it knowing

00:34:15

how to put in the

00:34:16

right address in my navigator.

00:34:18

So I ended up in

00:34:19

the wrong part of Washington

00:34:21

and I thought, but what

00:34:23

a nice place to have

00:34:25

a law office here in

00:34:26

Northeast d.c. appetite. Soon, figured

00:34:32

it out, but it had

00:34:34
to cost of being so

00:34:36
late and I'm sorry. I

00:34:39
don't know if Mallory mentioned

00:34:41
in her remarks on efficiency

00:34:44
is so procedure. That was

00:34:46
introduced in 2006 for the

00:34:50
early dismissal of plans. Well,

00:34:56
obviously, this contributes to the

00:34:59
efficiency of the process, the

00:35:04
idea when it was introduced

00:35:07
was that it would provide

00:35:12
the new rule, rule 41,

00:35:15
a fee of the 2006

00:35:18

arbitration rules would provide an

00:35:21

opportunity For the dismissal at

00:35:26

the outset of a case

00:35:28

of claims in regard to

00:35:31

the merits of the contentions

00:35:33

thinking, having been that there

00:35:37

was this procedure for the

00:35:39

jurisdictional screening of a request

00:35:42

by the secretary at the

00:35:44

outset, but it didn't cover

00:35:46

the marriage. Send us that

00:35:48

determine happiness on the part

00:35:50

of respondents. Babe in the

00:35:56

course of drafting the rule

00:35:58

different hands were involved, and

00:36:02

different people came and went

00:36:04

and this idea. was I

00:36:11

think, probably in hindsight, fortunately

00:36:13

lost and the rule came

00:36:15

to be seeing its covering

00:36:18

Planes that were deficient not

00:36:21

only as to the merits

00:36:23

but more particularly in practices

00:36:26

to jurisdiction despite the initial,

00:36:29

screening by Secretariat. But however

00:36:33

there remained in in the

00:36:37

rule a Vestige of the

00:36:39

earlier approach and it's so

00:36:43

much so that the rule

00:36:45

as it was written up

00:36:47

until its amendment. In July

00:36:48

of this year was was

00:36:53

that it's expressly contrasted dismissal

00:36:59

of a claim for manifest

00:37:01

lack of legal merit with

00:37:03

dismissal of a claim on

00:37:05

jurisdictional grounds. So there was

00:37:08

just a source of confusion

00:37:10

and embarrassment to those of

00:37:12

us who were involved in

00:37:13

the drafting at the beginning

00:37:15

and I'm very pleased to

00:37:17

report at this This bad

00:37:24

feature of the rule has

00:37:25

now been expunged and it's

00:37:27

very clear Beyond any doubt

00:37:29

at all that it covers

00:37:30

both jurisdiction and merits up

00:37:33

on hopes. This will contribute

00:37:36

in a small way to

00:37:37

see the process, he won't

00:37:40

get bogged down in arguments

00:37:42

and what it does and

00:37:44

doesn't cover Thanks. Do you

00:37:49

want to go challenge portion?

00:37:56

Picture of water. So, I'd

00:38:07

like to talk about that

00:38:09

early dismissal times, as one

00:38:12

of the, one of my

00:38:14

obsessions about the arbitration. And

00:38:19

another one of the provisions

00:38:22

on challenges of arbitrate There

00:38:26

are two principal provisions of

00:38:29

the exit convention on this

00:38:31

subject. One is article 57

00:38:34

of the convention with Shonda,

00:38:38

with your party, May propose,

00:38:39

a disqualification of an arbitrator

00:38:43

on account of the fact

00:38:45

indicating a quote on quote

00:38:47

manifest, lack of reliability, for

00:38:51

independent judgment. The second main

00:38:57

provision of the exit convention

00:38:59

regarding challenges is article 58,

00:39:03

which provides that in the

00:39:05

typical case of a challenge

00:39:10

of one of three arbitrators,

00:39:12

the challenge is decided by

00:39:15

the two other arbitrators, unless

00:39:19

they're equally divided in, which

00:39:22

case, the challenge is decided

00:39:24

by the president of the

00:39:26

World Bank, in his capacity,

00:39:28

as chairman of the administrative

00:39:33

Council election and the Manifest

00:39:36

lag. Disqualification standard of article

00:39:43

57 has been interpreted in

00:39:47

recent cases is requiring that

00:39:50

challenging party to show that

00:39:53

reading it better quote. In

00:39:56

this is a formula used

00:39:58

time. And again, in this

00:39:59

recent challenge, decision Crow, the

00:40:03

third party would find an

00:40:05
evident or obvious appearance of

00:40:07
a lack of impartiality and

00:40:09
partiality on a reasonable evaluation

00:40:13
of the facts. and, Even

00:40:18
or maybe especially some might

00:40:21
say including myself. Is that

00:40:25
interpreted this standard is a

00:40:30
is a open to criticism

00:40:33
because it sets the bar

00:40:36
too high for the disqualification

00:40:38
of an arbitrator. The comparison

00:40:42
that's often drawn in this

00:40:43
context is with the disqualification

00:40:47

standard of many commercial arbitration

00:40:50

instruments such as the arbitration

00:40:53

rules that provide for arbitrator

00:40:58

has to be removed at

00:41:00

if there are circumstances giving

00:41:02

rise to justifiable doubt as

00:41:05

to the impartiality or Independence

00:41:09

of the arbitrator. Also, this

00:41:14

provision has been strongly criticized.

00:41:17

And also, strongly criticized has

00:41:20

been the procedure of article

00:41:22

58 at the convention, providing

00:41:25

for the possible disqualification of

00:41:28

an arbitrator providing for, for

00:41:31

that possible disqualification to be

00:41:35

determined normally by the challenged

00:41:40

arbitrators and decided by the

00:41:49

institution directly as it's done

00:41:52

in most other institutional systems

00:41:56

of arbitration. And this procedure

00:42:01

was reflected in the previous

00:42:04

editions of the, it said

00:42:06

arbitration rules has the rules

00:42:09

for convention proceedings. For the

00:42:13

it said, additional facility rules

00:42:16

previous. Editions of the additional

00:42:20

facility, arbitration rules also Incorporated

00:42:25

manifest, slack, disqualification standard, The

00:42:30

exit convention does not, however

00:42:34

apply to additional facility proceedings

00:42:38

and for this for the

00:42:41

recent amendments of the additional

00:42:43

facility, arbitration rules, exit made

00:42:46

use of the its resulting

00:42:48

freedom to set out on

00:42:52

a new course with regard

00:42:53

to Challengers under the additional

00:42:56

facility and babe secretary at

00:43:03

the proposed. And thankfully, this

00:43:06

was accepted that, and, and

00:43:09

disembodied now and amended rule

00:43:12

30 and 31 of the

00:43:14

additional facility, arbitration rules that

00:43:18

the disqualification standard, Fort De

00:43:23

Familia disqualification standard justifiable doubts.

00:43:29

Be applied in additional facility

00:43:33

arbitration proceedings and that the

00:43:36

disqualification proposals be decided directly

00:43:42

by the secretary-general evicted with

00:43:44

no intervention in that process

00:43:47

by be unchallenged arbitrators As

00:43:53

I just mentioned, the exit

00:43:54

arbitration rules regular exit, arbitration

00:43:57

rules are meant for exit

00:43:59

convention, proceedings, and obviously are

00:44:01

subject to the convention and

00:44:04

have to remain consistent with

00:44:06

it. The convention in Turin

00:44:09

is practically unamendable, an amendment

00:44:14

of the convention requires in

00:44:17

addition to qualified majority vote

00:44:20

of the members of the

00:44:22

administrative Council. Eviction require a

00:44:25

unanimous ratification of the member

00:44:30

countries that makes it. So

00:44:31

you need 158 not only

00:44:37

158 votes in favor but

00:44:39

158 ratifications to pass an

00:44:47

amendment to the convention and

00:44:49

fishes. As a indicated, it's

00:44:52

practically impossible to achieve that

00:44:55

end with Odyssey for a

00:44:58

good reason. It's never been

00:44:59

tried. Exit in the new

00:45:02

amendments. Nevertheless found it possible

00:45:05

to introduce a, an important

00:45:08

Improvement in the process of

00:45:10

deciding challenges of arbitrators under

00:45:16

article 58 of the exit

00:45:18

convention. And if you look

00:45:20

at the newly amended exit,

00:45:22

arbitration rules, did arbitration rule

00:45:26

23, you'll see that. It

00:45:28

allows the co arbitrator said,

00:45:30

he challenged arbitrator more readily

00:45:33

to give the role of

00:45:36

deciding to challenge to the

00:45:38

chairman of the administrative Council.

00:45:42

Evicted. If they are unable

00:45:47

for any reason, you decide

00:45:50

the challenge, they will be

00:45:52

deemed to be equally divided

00:45:53

for the purpose of article,

00:45:55

58 of the convention, and

00:45:57

the chairman would go ahead

00:45:59

and make the Challenge decision.

00:46:02

On the other hand, the

00:46:04

new Amendments have not touch

00:46:07

the disqualification standard under applicable

00:46:12

to Dixon convention proceedings and

00:46:15

so much hope I among

00:46:20

them, if I'm not getting

00:46:22

lost in Northeast d.c. would

00:46:25

hope that that be excited.

00:46:30

Arbitration rules are again demanded

00:46:33

at some future date in

00:46:35

order to deal with whatever

00:46:39

think is a shortcoming. Think

00:46:44

Antonio have comments on. But

00:46:46

I think I'm going to

00:46:47

keep them off the regulator

00:46:49

for you before we. We

00:46:57

move to to our next

00:46:58

time is I want to

00:46:59

I want to know if

00:46:59

I have four panelists wants

00:47:01

to make any comments on

00:47:03

on the new process for

00:47:04

or the Streamlight process for

00:47:06

deciding challenges are the rules.

00:47:11

Memory in terms of streamlining,

00:47:18

the process. Just one more

00:47:19

Point comes to mind, which

00:47:21

was that? Under the 2006

00:47:24

rules. Once a party submitted

00:47:26

a request for disqualification of

00:47:29

an arbitrator than the preceding

00:47:32

was paused automatically, which makes

00:47:35

sense. There was a sort

00:47:37

of fear though that this

00:47:39

could be abused that a

00:47:41

party could just keep challenging

00:47:43

arbitrators over and over and

00:47:45

over and over again as

00:47:47

a means to derail the

00:47:48

proceedings. So there was some

00:47:50

discussion of this as well

00:47:51

during the course of the

00:47:52

amendment process, and there are

00:47:54

mechanisms now to try to

00:47:55

avoid that happening. Thanks Mallory.

00:48:01

I work very close on

00:48:02

that particular notion and we

00:48:08

were very proud of our

00:48:09

brilliancy. Eliminating, the suspension of

00:48:12

the suspension of proceedings under

00:48:15

a challenge, but we were

00:48:16

both of them working paper.

00:48:17

Number one, and there was

00:48:19

a resounding. No, thank you

00:48:21

very much for the parties.

00:48:24

Agree on the same idea

00:48:28

of this blows return and

00:48:29

preventing conflicts that challenges that

00:48:32

go. Please, go ahead with

00:48:34

the exciting topic of third-party

00:48:36

funding, thank you, thank you.

00:48:39

Yeah, I wanted to talk

00:48:40

about third-party funding and secured

00:48:43

if it caused because these

00:48:44

topics web very much discussed

00:48:46

during the amendment consultation process

00:48:49

and the provisions of them

00:48:52

are entirely on you. So

00:48:54

there's a lot of interest

00:48:55

in what they mean and

00:48:57

how they will be applied.

00:48:59

A friend, the feedback that

00:49:00

we have received so far,

00:49:02

including recent, the working group

00:49:05

announced traveler, can grab three,

00:49:07

the exit Provisions. Have really

00:49:10

struck the right balance and

00:49:12

what needs to be regulated.

00:49:14

And at the same time,

00:49:16

they are perceived to be

00:49:18

taken into account. Both parties

00:49:21

interest, they access to Justice.

00:49:23

And a fair process of

00:49:26

third-party funding is addressed in

00:49:28

both the arbitration rules and

00:49:30

the conciliation pools in the

00:49:34

arbitration rules under the exit

00:49:36

convention. It's arbitration for 14,

00:49:40

for those who want to

00:49:41

look it up the way

00:49:43

we approached it. Is that

00:49:45

third-party of it for funding

00:49:47

is rather than for conflict

00:49:49

of interest purposes. So the

00:49:51

rule requires Disclosure by the

00:49:54

party getting funding. So that

00:49:56

the arbitrators and the other

00:49:58

party. Can check whether they

00:50:01

have any conflict of interest

00:50:03

Visa V, the person where

00:50:05

the entity that is providing

00:50:07

funding. Now their parties must

00:50:10

disclose the name and address

00:50:12

of the third-party funder. And

00:50:15
if the party is at

00:50:16
your vehicle person, it also

00:50:19
needs needs to include the

00:50:21
persons and entities who own

00:50:23
and control the Thunder. The

00:50:27
obligation covers funds that are

00:50:31
received directly but also and

00:50:34
directly so emoji. That addresses,

00:50:37
the chain of transfer of

00:50:39
funds through several companies and

00:50:43
the funds are intended for

00:50:45
the pursuit or defense of

00:50:47
the proceeding, through a donation

00:50:49

of grantor in return for

00:50:52

remuneration dependent on the outcome

00:50:54

of the proceedings. So what

00:50:55

does this mean? Well, it

00:50:57

would cover. Contingency fee. So

00:51:01

that council is getting for

00:51:03

instance, or a parent company

00:51:06

sponsoring, sponsoring its subsidiary, who

00:51:10

is a party in the

00:51:12

preceding? And if the that

00:51:15

parent company is owned and

00:51:17

controlled by another person wear

00:51:20

another entity, then the party

00:51:24

must disclose the names of

00:51:25

those, you know, the entity

00:51:29

or the part of the,

00:51:30

the person, as well. Now,

00:51:32

it will be up to

00:51:32

the disclosing party to determine

00:51:35

when disclosure is required under

00:51:38

these Provisions. So, if it's

00:51:41

for instance, not possible to

00:51:43

identify the entities that own

00:51:48

and control the Thunder, then

00:51:53

that party Could just simply

00:51:55

indicate that and just as

00:51:58

close as the Thunder. Now

00:52:00

it is important to note

00:52:02

that this has to be

00:52:03

done at the time of

00:52:05

registration or that's where as

00:52:10

soon as a third-party funding,

00:52:12

Arrangement is arranged after registration

00:52:17

and it doesn't have to

00:52:19

have any particular formats, a

00:52:22

simple letter that is sufficient.

00:52:25

As long as it has

00:52:26

the red, the relevant information

00:52:28

and 16 it received this.

00:52:30

Notice it, transmits it to

00:52:32

the other party and the

00:52:34

arbitrator's so that they can

00:52:37

check for conflict and other

00:52:39

parties are not required to

00:52:41

disclose the word to provide

00:52:43

did the third-party funding agreement

00:52:45

or the terms of the

00:52:46

agreement. If the other party

00:52:48

wants that they can request

00:52:50

that the tribunal order disclosure

00:52:52

of further information, Pain under

00:52:55

the rules concerning production of

00:52:57

documents or other evidence and

00:53:00

they say it is confirmed

00:53:01

in dual 14 for which

00:53:05

provides that the tribunal May

00:53:06

I order disclosure of further

00:53:09

information, if it deems, it

00:53:11

necessary. So it has that

00:53:13

discretion to to do that.

00:53:16

Now, I should say that

00:53:17

even though this rule is

00:53:19

new disclosure of third-party funding,

00:53:22

it is not uncommon in

00:53:24

exit, cases, and is more

00:53:27

and more done on a

00:53:28

voluntary basis. So, the practice

00:53:30

is there already and it

00:53:32

should be a straightforward process

00:53:33

under the new rule. Ashwell,

00:53:36

How does security forces of

00:53:39

August related? And I want

00:53:41

to say a few words

00:53:42

about that as well. And

00:53:44

this is arbitration for 53

00:53:47

in the arbitration rules under

00:53:49

the exit convention for proceeding

00:53:53

framework. Now, like third-party funding,

00:53:55

this is the new provision.

00:53:57

But in practice request for

00:54:00

security for costs are not

00:54:01

on, and although they're rarely

00:54:03

granted. Now under the 2006

00:54:07

rules security for costs is

00:54:10

dealt with like a provisional

00:54:12

measures are. So this is

00:54:12

her recommendation under this the

00:54:15

past rules and we wanted

00:54:18

to move away from that.

00:54:19

So that the tribunal can

00:54:20

order security for cost that

00:54:23

is that there is a

00:54:25

consequence for non-compliance with an

00:54:28

order for security for costs.

00:54:31

So if there's non-compliance then

00:54:36

that this could lead to

00:54:37

a discontinuance of the proceeding

00:54:40

after a certain. Of time,

00:54:43

after allowing reasonable compliance with,

00:54:47

with the order, So, that

00:54:50

was the main reason for

00:54:52

why we wanted this fool,

00:54:54

in addition to establishing the

00:54:57

the, the power of the

00:54:58

tribunal to actually rule on

00:55:00

security for costs. Because sometimes

00:55:02

that had been questioned as

00:55:04

well, in that case law.

00:55:06

Now, in addition, the rule

00:55:10

provides guidance of circumstances to

00:55:13

be considered by the tribunal

00:55:15

A party's ability and willingness

00:55:17

to comply with an adverse

00:55:20

decision on cost. But also

00:55:22

the effect that an order

00:55:25

might have on that party's

00:55:27

ability to pursue its claim

00:55:28

or counterclaim and the conduct

00:55:31

of the parties. Now, the

00:55:33

effect that security for costs

00:55:35

may have on the pursuit

00:55:37
of a claim is really

00:55:38
the access to Justice consideration.

00:55:41
I didn't really ask the

00:55:42
question would imposing security mean

00:55:46
that the party needs to

00:55:48
band on its claim? And

00:55:50
it's also this Factor also

00:55:52
intended to guide tribunals to

00:55:54
order security for costs in

00:55:56
a balanced way. So for

00:55:59
example, by assessing the reasonableness

00:56:01
of the costs for which

00:56:03
Securities requested and allowing some

00:56:06

flexibility with respect to the

00:56:09

form of security Now there's

00:56:12

a reference in the bowl

00:56:14

53 for that existence of

00:56:17

third-party funding can be considered

00:56:20

as part of evidence to

00:56:23

show that a party is

00:56:25

impecunious. And will be unable

00:56:27

to comply with an adverse

00:56:30

decision on costs. No. So

00:56:34

what if a party submits

00:56:35

evident that the other party

00:56:36

has third-party funding, the tribunal

00:56:39

must consider this evidence as

00:56:42

it would other evidence for

00:56:44

Orgain security for costs. So

00:56:47

in other words, it has

00:56:48

the discretion to determine the

00:56:50

weight to be given to

00:56:52

the evidence and whether it

00:56:54

is relevant. But what is

00:56:55

important to note, is that

00:56:58

the mere existence of third-party

00:57:00

funding is not in itself.

00:57:02

Sufficient to justify an order

00:57:05

for security for costs. So

00:57:07

there must be other circumstances

00:57:09

in favor of providing such

00:57:10

Pretty and in case law,

00:57:12

the more cumulative circumstances, there

00:57:15

are, the more likely it

00:57:16

is that a cost at

00:57:19

security for costs ordered. Thank

00:57:24

you, thanks. Martina and I

00:57:26

want to leave time for

00:57:28

our quick question because some

00:57:31

of you may know the

00:57:33

origin of this roll-off security

00:57:36

for costs, there were some

00:57:37

complaints by some state, that

00:57:39
the tribunal's we're quite reluctant

00:57:41
to order security for costs.

00:57:43
And we even run a

00:57:44
survey at the center to

00:57:45
see you get out of

00:57:48
compliance with the works and

00:57:49
cost. Do you think of

00:57:51
the fact that we have

00:57:51
any specific rule will change

00:57:54
this? And we're going to

00:57:55
have more security request from

00:57:56
security precaution where they have

00:57:58
more orders or will there

00:58:00

be an impact? I think

00:58:03

that's relevant question because we

00:58:06

don't want frivolous requests for

00:58:08

security for costs to either

00:58:10

we went and good balance,

00:58:11

but as I mentioned, I

00:58:12

mean, we've had already a

00:58:16

few requests with secured for

00:58:17

cost every year and I

00:58:20

don't see any reason why

00:58:21

there should be an increase

00:58:22

on it. Not in case

00:58:25

law tribunals have often required

00:58:26

exceptional circumstances for a favorable

00:58:29

decision and request request is

00:58:32

rarely succeeded. So the bar

00:58:34

is said, hi for granting

00:58:36

security for costs. And as

00:58:39

I said, tribunals have the

00:58:41

often require cumulative circumstances for

00:58:44

the legans legal standard to

00:58:46

me much, and what's important

00:58:47

is that we did not

00:58:49

address the legal standard for

00:58:52

granting security for cost in

00:58:54

Goodwill 53. It will be

00:58:56

up to tribunals to decide

00:58:57

that standard. So wherever they

00:59:00

find that necessity urgency and

00:59:05

exceptional circumstances must be met

00:59:08

so that discretion will continue

00:59:12

to apply. So I think

00:59:14

there would not be too

00:59:15

much of a change in

00:59:16

the number of requests. And

00:59:18

the number of requests that

00:59:20

are granted, Let's hope it

00:59:24

stays Medina. From bar legum

00:59:29

on New Rose, Connor, demanded

00:59:32

rules on transparency, within takes

00:59:35

it. Thank you very much

00:59:37

comes all. Oh, so the

00:59:39

2022 arbitration rules open a

00:59:42

new chapter on transparency. Investor-state

00:59:46

arbitration is, literally the arbitration

00:59:50

rules contain. A new chapter

00:59:52

chapter 10, composed of seven

00:59:55

rules that deal exclusively with

00:59:57

transparency. But this is not

01:00:00

the full extent of its

01:00:02

new approach to transparency. There

01:00:04

are important changes in arbitrator

01:00:07

disclosure that I will also

01:00:09

review in the limited time

01:00:12

available. The first three rules

01:00:15

in chapter 10, deal WID

01:00:17

Publications by the center. It's

01:00:20

important to note that these

01:00:21

deal only with the center.

01:00:24

In other words, it's in

01:00:25

the institution, nothing in the

01:00:28

exit convention or rules limits,

01:00:31

what a party can publish

01:00:33

and parties can. And often

01:00:36

do publish many materials, Now,

01:00:41

turning to the first of

01:00:42

the rules, in the chapter,

01:00:43

new rule, 62 addresses, exit,

01:00:47

publication of awards and decisions

01:00:50

on an ailment and certain

01:00:52

other decisions in considering this

01:00:55

provision. It's important to remember

01:00:57

that the exit convention itself.

01:01:01

Requires consent of the parties

01:01:03

were fixing to publish an

01:01:05

award. This provided a hard

01:01:09

limit for the reforms that

01:01:11

exceed could adopt with respect

01:01:14

to Awards or other decisions

01:01:16

that terminate an exit, receiving

01:01:18

the new rules, provide, the

01:01:21

maximum transparency possible while respecting

01:01:24

the limit, Notably what rule

01:01:28

62 does is it Dean's

01:01:29

party consent unless a party

01:01:32

of Jack's within 60 days

01:01:34

of the dispatch of the

01:01:36

decision. And even if there

01:01:38

is an objection, exit is

01:01:39

required to publish excerpts of

01:01:42

the awarded decision within a

01:01:45

set time frame from the

01:01:48

objection and in accordance with

01:01:50

a well-defined procedure. Rule 63

01:01:55

by contrast provides for Universal

01:02:00

publication of orders and decisions.

01:02:03

That do not terminate an

01:02:05

exit arbitration proceeding. This approach

01:02:08

is possible because the exit

01:02:10

convention imposes, no limit on

01:02:13

this category of documents. This

01:02:15

means that every decision on

01:02:16

jurisdiction liability of provisional measures

01:02:19

and every procedure of order

01:02:21

will be published subject only

01:02:23

to redaction of confidential information.

01:02:27

Rule 64 provides a framework

01:02:30
for publication of written submissions.

01:02:33
And other supporting documents where

01:02:37
both parties agree to this

01:02:40
rule essentially codifies existing, exit,

01:02:44
practice on publication of this

01:02:47
category of materials, but doesn't

01:02:50
do much more than that.

01:02:52
Will 65 requires hearings to

01:02:54
be public. Unless either party

01:02:57
of jets, this is an

01:02:59
improvement over the prior rule,

01:03:01
which required affirmative consent by

01:03:05
both parties were public observation

01:03:07
of hearings. The rule also

01:03:09
requires exit to publish recordings,

01:03:12
or transcripts of hearings, if

01:03:15
one party so request and

01:03:18
the other party does not

01:03:19
object. Roll. 66 addresses. The

01:03:24
flip side of transparency which

01:03:28
is confidentiality Whenever you have

01:03:32
transparency there's a need to

01:03:34
protect from disclosure information that

01:03:38
is confidential or otherwise protected

01:03:41
under law will 66 provides

01:03:44
a comprehensive and detailed definition

01:03:47

of this category of information

01:03:49

and this definition informs the

01:03:53

redactions and other procedures to

01:03:55

protect this information set out

01:03:57

in the earlier rules. Route

01:04:01

67 addresses, so-called Amicus curiae

01:04:05

submissions which are referred to

01:04:07

in the rules as submissions

01:04:09

of non disputing parties. It

01:04:11

largely spotify's existing exit, practice

01:04:15

with two principal Innovations first.

01:04:18

It requires that an application

01:04:21

to make a non disputing

01:04:22

parties submission. Disclose basic information

01:04:25

about the applicant and its

01:04:28

relationship with the party second.

01:04:31

The rule requires the tribunal

01:04:33

to provide the applicant with

01:04:35

relevant documents filed in the

01:04:38

preceding unless either party of

01:04:40

Jax Roll 68 is the

01:04:43

last one in the new

01:04:46

chapter on transparency. IT addresses

01:04:49

the participation of the Investor's

01:04:51

home state in the proceedings.

01:04:54

It would rather in proceedings

01:04:56

that arise under an investment

01:04:58

treaty the provision largely mirrors

01:05:01

that first included in the

01:05:04

NAFTA. And since in a

01:05:06

number of investment treaties, the

01:05:09

other party to the investment

01:05:12

treaty has a right to

01:05:13

make a submission. If it

01:05:14

wants to the submission can

01:05:16

address, only the interpretation of

01:05:19

the treaty and it must

01:05:21

be made in a way

01:05:22

that does not disrupt the

01:05:23

proceedings. The rule again requires

01:05:26

the tribunal to provide relevant

01:05:28

documents again unless either party

01:05:31

of Jack's on transparency that

01:05:35

I wanted. The Highlight is

01:05:36

not found in the rules

01:05:38

at all, but in the

01:05:39

new form of arbitrator Declaration

01:05:43

required under rule 19 if

01:05:45

you want to review this

01:05:47

form, you can find it

01:05:48

on the exit website under

01:05:50

the page, Dixon convention, regulations

01:05:52

and rules at the very

01:05:54

bottom right corner of that

01:05:56

page. The new form takes

01:05:59

an objective approach to arbitrator

01:06:02

disclosures. This is different from

01:06:04

the prior approach, which required

01:06:07

only an arbitrator's subjectively to

01:06:09

evaluate what circumstances might cause

01:06:12

a party to question her

01:06:14

independence or in partiality. The

01:06:18

new form continues to contain

01:06:21

this objective requirement, but it

01:06:23

also requires disclosure of all,

01:06:25

professional and other significant relationships

01:06:29

with the parties with their

01:06:31

counsel, with the other members

01:06:33

of the tribunal and indisposed

01:06:35

third-party funder relationships. In the

01:06:39

past five years must be

01:06:41

disclosed, in addition, the new

01:06:43

form requires disclosure of all

01:06:45

investor-state cases in which the

01:06:48

arbitrator has been involved than

01:06:50

ever as Council. Conciliator arbitrator

01:06:54

ad hoc Committee Member or

01:06:57

expert. I'm very much applaud

01:07:01

this and the other enhancements

01:07:03

to transparency in the new

01:07:05

rules and I hope that

01:07:06

the entire audience will join

01:07:08

me in congratulating exit on

01:07:11

these accomplishments. Thank you. Thank

01:07:16

you, Bart. I'm always impressed

01:07:19

by how I can read

01:07:20

Jordan videos of time. I'm

01:07:30

sure there's a lot of

01:07:31

questions and we have questions

01:07:32

on the chat on on

01:07:33

transparency, bad conscience of the

01:07:37

time I want. I can

01:07:37

just for 3 p.m. to

01:07:39

speak about the new tools

01:07:42
on the tools that we

01:07:43
have people under the new

01:07:45
rules and then we will

01:07:46
go back to coming from

01:07:48
their room or the part

01:07:55
that that was a great

01:07:56
exposition of the transparency new

01:07:59
rules. I think it's it

01:08:00
has come a long way

01:08:01
from the days when we

01:08:02
started in 1998. We're really

01:08:04
the Assumption was a confidential

01:08:06
process and not unlike the

01:08:09

international commercial arbitration. Incredible developments

01:08:13

over the last 20 years.

01:08:15

A really positive development to

01:08:17

finish off here with a

01:08:20

bang. Does you know, we're

01:08:21

here lunch and I got

01:08:22

to keep you awake, but

01:08:23

I am going to tell

01:08:24

you about the most exciting

01:08:25

part of the exit Amendment.

01:08:27

And you didn't know, there

01:08:29

was an exciting part, but

01:08:30

either we can saving it

01:08:32

for last and that is

01:08:33

the introduction of two very

01:08:35

new rules. Now, if I

01:08:38

asked you the question, did

01:08:40

you know there was a

01:08:40

fact-finding procedure under the additional

01:08:43

facility for the last 44

01:08:44

years? I asked you that

01:08:46

question. What would you say

01:08:47

you probably say a what?

01:08:49

And because the reason is,

01:08:51

is never being used, so

01:08:53

excited, I think and it's

01:08:54

wisdom decided we need to

01:08:56
update this process. We need

01:08:57
to make it sexy. We

01:08:59
need to make it interesting.

01:08:59
We needed to make it

01:09:01
something that people will want

01:09:03
to use. And I have

01:09:05
to say, great job, guys,

01:09:06
this is a very streamlined

01:09:09
procedure. This is something that

01:09:12
I think will be of

01:09:14
interest to counsel, or should

01:09:15
And I think it is

01:09:18
something that will help to

01:09:19

meet that goal that we

01:09:20

talked about earlier about making.

01:09:22

It said arbitration more expeditious

01:09:24

and cost-effective and Mallory said

01:09:29

you should go you should

01:09:30

read the new fact-finding. Ruled

01:09:32

their Standalone rules are not

01:09:34

part of the additional facility

01:09:36

anymore. They can be accessed

01:09:38

by any two parties. You

01:09:41

do not have to be

01:09:42

an exit Contracting state. That

01:09:43

does not have to be

01:09:44

an exit contract. And stayed

01:09:45

involved could be any state

01:09:47

there. Just needs to be

01:09:48

an investment and two parties

01:09:50

and they have to consent

01:09:51

to the procedure and they

01:09:53

can go. And it's a

01:09:55

it's a very streamlined process

01:09:57

and you get the imprimatur

01:09:58

of the exit so it

01:09:59

can be used as something

01:10:01

to use in a pre

01:10:02

dispute settlement situation. You don't

01:10:05

need to have an established,

01:10:06

the defined investment under Rick

01:10:08

said, you don't need to

01:10:09

have this specific jurisdictional requirements,

01:10:13

the exact convention. It's it's

01:10:14

a very Process to get

01:10:16

into and it's something the

01:10:17

council and I think it

01:10:18

said Council now have to

01:10:20

think about this. Is there

01:10:21

an ability early on to

01:10:24

get at the facts to

01:10:26

establish certain conventions, facts. Schuler

01:10:29

Shoes in there. Always are

01:10:30
in these cases and get

01:10:32
them out of the way

01:10:33
in a quick Manner and

01:10:35
help make that arbitration more

01:10:36
efficient and the other incredible

01:10:39
Innovation and another congratulations. Fix

01:10:42
it is to respond to

01:10:44
the the repeated calls for

01:10:45
a Nixon mediation facility. Now

01:10:48
it's it has a conciliation

01:10:49
since the beginning of the

01:10:51
process which is very similar

01:10:53
from a jurisdictional point of

01:10:55

view and in complexity to

01:10:58

the exit arbitration rules mediation.

01:11:00

Procedure again is just like

01:11:02

the fact-finding procedure. It's incredibly

01:11:04

open to all non-parties. It's

01:11:07

something that can be accessed

01:11:08

fairly quickly. You can have

01:11:11

a single arbitrator, you can

01:11:12

a Taurus or a mediator?

01:11:13

You can have two mediators

01:11:14

and and Something again, that

01:11:17

provides another dimension to dispute

01:11:20

resolution. As we know, the

01:11:22

reason arbitration is very popular

01:11:24

is this adversarial and has

01:11:26

a very final results as

01:11:28

being premature again of excited.

01:11:30

But now with mediation will

01:11:32

be able to step back

01:11:34

and look at broader issues,

01:11:35

not just the legal issues,

01:11:37

not just whether there's an

01:11:38

investment, but some of the

01:11:40

interest, you know, I'm mediation

01:11:42

approach. Looking at the interest

01:11:43

of the party, how to

01:11:44

resolve a dispute. And I

01:11:46

think this is something the

01:11:47

council. Again, if you're going

01:11:49

to be effective and cost-effective

01:11:51

an expeditious, I think you

01:11:54

really have to go to

01:11:55

your clients and say there

01:11:56

are these mechanisms now, and

01:11:59

we need to seriously, consider

01:12:00

so full Commendation too excited

01:12:03

and to the amendment process

01:12:06

for bringing these new rules

01:12:08

in, and they're not just

01:12:09

something that except tribunals can

01:12:11

use. This is something I

01:12:13

think all International guests Minerva.

01:12:15

Practitioners as a new tool

01:12:18

in your tool kit to

01:12:19

help bring a better service

01:12:21

in a from a from

01:12:22

a council point of you

01:12:23

to our clients but also

01:12:25

even as arbitrators to be

01:12:26

able to urge Council know,

01:12:28

there are these tools available

01:12:29

you should look at them,

01:12:30

this will help improve the

01:12:31

process will help make the

01:12:33
process more legitimate. And I

01:12:35
think I was one of

01:12:36
the ultimate goals of the

01:12:37
reform was to increase the

01:12:39
legitimacy to improve the process.

01:12:41
And I think this is

01:12:43
one of the exciting parts

01:12:45
of the new. It's in

01:12:46
amendments, and thank you for

01:12:50
putting the last be able

01:12:52
to deliver this very important

01:12:53
message to our audience. Thanks

01:12:57
and I I don't think

01:12:58

I've ever seen anybody. So

01:12:59

excited about finding before better.

01:13:02

We have a few, we

01:13:04

have 10 more minutes for

01:13:05

questions from the audience. I'll

01:13:07

coming from our panelists bad

01:13:09

before getting to that. I

01:13:11

was going to. I want

01:13:12

to, I want to ask

01:13:13

her panties, I want to

01:13:14

barge if I know that

01:13:16

she has been working in

01:13:18

bypassing mediation rules and if

01:13:20

you have some, some views

01:13:22

on these new tools, that

01:13:23

we are offering to do

01:13:26

that to the user's, I

01:13:29

completely agree with the end

01:13:30

of the, the mediation rules

01:13:32

are a real breakthrough, their

01:13:34

extraordinary flexible and very well

01:13:37

thought through the only thing

01:13:39

that I would add to

01:13:40

what he said is that

01:13:41

the conciliation rules. In the

01:13:46

2022 Edition are very much

01:13:49

like mediation. So though those

01:13:51
have been very significantly we

01:13:54
hailed and as can be

01:13:57
done to the greatest extent

01:13:59
possible consistent with the exit

01:14:01
convention, the conciliation process. Now

01:14:04
will resemble closely a contemporary

01:14:08
mediation Thanks Bart. And, and

01:14:15
for those who are familiar

01:14:17
with the old rules, you

01:14:18
will you may recall that

01:14:20
one of the criticisms much

01:14:26
like an arbitration process and

01:14:28
there's his numbers. We've had

01:14:30

approximately 924 out of 12

01:14:36

room for improvement there. Now,

01:14:42

I don't know what we

01:14:44

are. We're almost running out

01:14:45

of time. I don't know

01:14:45

if there's any questions. I

01:14:49

see somebody on the back

01:14:51

doing that Microsoft. No question.

01:16:09

Weird question. Okay, I'm going

01:16:13

to try summarizing correctly, then

01:16:15

answer the question is if

01:16:17

there's an effort to make

01:16:18

more transparent, the participation of

01:16:20

third-party Sanders, why did we

01:16:23

did not include the mandatory

01:16:26

disclosure of the third-party funding

01:16:28

agreement and we stopped by

01:16:31

on the name and address

01:16:34

of a pretty fun? Yeah,

01:16:40

I mean that's that's a

01:16:41

good question. And it was

01:16:43

goes to the objective of

01:16:46

the rule, which is to

01:16:48

identify conflicts of interest, in

01:16:51

the arbitration, with the participants

01:16:53

in the arbitration. So you

01:16:56

don't need the third-party agreement,

01:16:57
that funding agreement for that.

01:16:59
You don't need the name

01:17:01
and other identifiers of the

01:17:04
departy. So the third-party funding

01:17:07
agreement might be relevant for

01:17:09
other purposes. They security for

01:17:11
costs But that would be

01:17:13
addressed by the tribunal on

01:17:15
a case-by-case basis, whether it

01:17:18
is, it should should, or

01:17:19
should not be disclosed. So,

01:17:22
there the rule only goes

01:17:23
as far as requiring, the

01:17:26

name and address so that

01:17:28

we can address conflict of

01:17:30

interest. Thanks. Martina do we

01:17:35

have we have another question

01:17:36

here? My question also has

01:17:49

to do with third-party funding

01:17:51

recently last week. The European

01:17:53

Parliament has now come up

01:17:55

with a proposal to come

01:17:56

down early, heavily on third-party

01:17:57

funding. Will Reserve 60%? Captain

01:18:02

course, mandatory disclosure is there

01:18:05

an Institutional review? I mean,

01:18:06

of course, as an Institutional

01:18:07

review attic set, reminder 3

01:18:10

disclosure that you've letter to

01:18:12

the arbitrator's is it, was

01:18:14

this something that was considered

01:18:15

dropping calls at 60% as

01:18:20

that something, is that an

01:18:21

excuse to review on it?

01:18:22

Outlet Martinez, released preliminary, reaction

01:18:27

of nuclear working paper. Number

01:18:37

one of the first document

01:18:39

that was published when she

01:18:41

did a scooping off all

01:18:43

the different views on third-party

01:18:44
funding and there's a wide

01:18:46
range of views. From this

01:18:49
is absolutely normal in Sparta

01:18:50
for the reception to. This

01:18:53
is abominable and should never

01:18:54
be allowed. So they have

01:18:56
beautiful institution singing are reflected

01:18:58
in the position that we

01:18:59
do best Martinez correctly, stated

01:19:01
interest. I don't know if

01:19:05
you have any comments that

01:19:10
of course there are many

01:19:11
facets to the questions of

01:19:13

third-party funding and what we

01:19:15

were concerned it was where

01:19:17

those issues. Some reason, impact

01:19:20

the procedure and that's what

01:19:22

we focused in on conflicts

01:19:23

of interest. Thanks, if there's

01:19:28

a question on the back,

01:19:42

in terms of the other

01:19:43

causes of amendment, what was

01:19:46

the most challenging issue for

01:19:48

you and the sons of

01:19:49

staying within the limits of

01:19:51

the convention and surpassing the

01:19:54

like this limit to amend

01:19:56

the rules, but not to

01:19:58

modify the convention. I don't

01:20:03

think it was never that

01:20:04

that was never an issue.

01:20:06

I think we were very

01:20:07

clear on our limit or

01:20:09

there's things that we would

01:20:10

like to change, but we

01:20:11

cannot change. Our lives are,

01:20:13

there are many positive outcomes

01:20:15

out of this. And one

01:20:16

of them is that for

01:20:18

years, we've been saying and

01:20:20

an attorney today for years,

01:20:22

we've been saying it is

01:20:23

impossible to mend X, come

01:20:24

in after six years of

01:20:26

amending, the rules. We went

01:20:28

to the impression that maybe

01:20:28

there's a possibility, maybe it

01:20:30

is possible. Maybe there is

01:20:31

an interest in changing things.

01:20:33

So, The collaboration that we

01:20:38

have with member states and

01:20:39

with stakeholders in general, latest

01:20:43

who sings, okay, maybe in

01:20:44

the future, I don't know

01:20:45

when it would be possible,

01:20:46

but other than gas station,

01:20:51

we had to do. And

01:20:57

we were very clear with

01:20:58

what we're leaving. We're trying

01:21:00

to improve the process who

01:21:01

preceded changes, we have 2

01:21:05

minutes left. One more question.

01:21:11

Unfollow. Can I ask a

01:21:12

question? Yep. I guess I'll

01:21:15

go ahead Mallory Within Reach

01:21:21

when and how can we

01:21:23

get the new booklets at

01:21:25

the new booklets are being

01:21:27

printed I saw the print

01:21:29

out yesterday but in the

01:21:31

spirit of being green and

01:21:33

not Burning Forest everywhere. We're

01:21:37

going to be printing very

01:21:40

a very limited number of

01:21:43

copies. I know people like

01:21:45

it will like it, but

01:21:47

it's not going to be

01:21:48

like before that we had

01:21:49

thousands of weeks ago and

01:21:51

drools everywhere. Reminder to thank

01:22:04
you again for my question

01:22:09
is to the Bible, but

01:22:10
maybe specifically do miss burlesque

01:22:12
that. There is also an

01:22:14
introduction of the provision for

01:22:18
interim cost. Could you shed

01:22:20
a little light on when

01:22:21
it would be a place?

01:22:22
Because it appears that I

01:22:24
need a demogorgon cost without

01:22:26
expression of view on the

01:22:29
final adjudication, as far as

01:22:30
the Medics are concerned. It

01:22:32

seems a little unlikely. so

01:22:37

you mean the rule in

01:22:39

Route 52 about issuing, a

01:22:42

interim decisions on costs during

01:22:47

the preceding What you're referring

01:22:51

to, okay? Good. Yeah, that

01:22:55

was something that we specifically

01:22:56

wanted to address the conduct

01:23:00

of the parties and efficiency

01:23:03

and it's what we thought

01:23:04

would be a tool for

01:23:06

for tribunals to use as

01:23:08

a management of the case.

01:23:11

And and give the parties,

01:23:13

an indication of how they

01:23:15

are faring in the preceding

01:23:17

and we hope that it

01:23:18

will be used. As, you

01:23:20

know, when that rule there

01:23:21

is something not be in

01:23:24

cost, allocation that refers to,

01:23:26

you know, the tribunal can

01:23:28

taking into account if the

01:23:30

parties acted efficiently and cost-effectively,

01:23:32

and it's possible that if

01:23:36

there are the letter e

01:23:37

tactics. The tribunal could issue

01:23:39

such interim decision to to

01:23:44

control the parties and we

01:23:46

will encourage them to do

01:23:47

so. Thank you. And yes,

01:23:51

it will remark you show

01:23:52

Martinez said decision of God,

01:23:54

you use expression Awards and

01:23:56

cost under Dixie convention system.

01:23:58

There's only one award, which

01:23:59

is a final decision to

01:24:01

make clear that there will

01:24:02

be no internet works and

01:24:09

Thank you. Google. I would

01:24:12

like to ask anybody and

01:24:15

end Ian or or, or

01:24:17

Antonio, or guard or, or

01:24:20

Martina Mallory. How do you

01:24:25

view the the fact-finding rules

01:24:29

II? My my senses is

01:24:31

all so that they can

01:24:32

be extremely useful. If, if

01:24:35

the arbitration Community really learns

01:24:39

about them. And you may

01:24:42

take it to remain at

01:24:46

least partially go away from

01:24:48

from a, a very odd.

01:24:51

Your cereal process at least,

01:24:53

at the beginning and an

01:24:55

email. So have some positive

01:24:58

effects on costs in the

01:25:00

sense that the current arbitration

01:25:03

procedures are normally a highly

01:25:06

intensive. In, in fact, finding

01:25:09

The beginning, there is document

01:25:11

production, they are, there are

01:25:13

fight between the world can

01:25:16

fight as as, as those

01:25:17

happening arbitration between the two

01:25:19

parties, as what should be

01:25:21

disclosed, what should be disclosed.

01:25:23

But if there is some

01:25:25

willingness to really use the

01:25:27

fact-finding part of the other

01:25:29

rules, some of that may

01:25:30

be avoided her until the

01:25:34

whole the whole facts are

01:25:35

are are a streamlined clarified.

01:25:38

And then then the legal

01:25:40

part would come either to

01:25:41

have a possible mediation world

01:25:47

to have possible. AAA should

01:25:49

have Agreements are at least,

01:25:56

you could go to arbitration.

01:25:58

But I see that that

01:25:59

this may be actually quite

01:26:01

a vanguardian in the sense

01:26:03

that that he could. Should

01:26:05

have split potentially that the

01:26:08

history of Visa door or

01:26:10

am I reading too much

01:26:11

into it? Homemade almond definitely

01:26:15

got ready as part of

01:26:16

the new instruments that were

01:26:19

providing the parties to try

01:26:21

to reduce the scope of

01:26:23

this good to make it

01:26:24

easier to maybe, maybe they

01:26:30

were here, you can reduce

01:26:36

the scope of this dude.

01:26:37

And I have seen cases

01:26:39

where they have encouraged parties

01:26:41

to say, okay, you have

01:26:42

12 g, a m b,

01:26:48

r o d is good.

01:26:49

To what's really complex and

01:26:51

it's keeping you separated. So,

01:26:52

but I think it could

01:26:56

be potentially could be a

01:26:58

great too. Norton. Commons. I

01:27:04

think we will have run

01:27:06
out of time and I

01:27:07
want to thank everybody again

01:27:09
for coming and for listening

01:27:11
to us, my friends, and

01:27:13
go panelist here and online

01:27:15
for a fun, fun station

01:27:18
in my view. Thank you

01:27:21
very much again. And I

01:27:23
believe in your, you're all,

01:27:29
welcome to to mingle here.

01:27:31
I would like to thank

01:27:33
each it. I would like

01:27:35
to thank Antonio and Ian

01:27:38

and I'm going to follow

01:27:39

and Mallory as well as

01:27:41

Bart and and Medina at

01:27:43

4 really, making this an

01:27:45

incredibly inform of these. But

01:27:48

also an electrical panel and

01:27:50

where were we all learned

01:27:51

and and one of the

01:27:54

challenges how to read the

01:27:56

the rules and, and that

01:27:57

you clearly gave us away

01:27:59

to read. And of course

01:28:00

that there are issues there

01:28:01

are challenges still Contact me

01:28:04

on my be taken down

01:28:06

2030 or so. But but

01:28:09

for now and enjoy the

01:28:11

rules and the last panel,

01:28:15

will it be on new

01:28:17

technologies? And we have a

01:28:18

surprise for for the attendees.

01:28:21

It will be in. I

01:28:23

believe this happened to all

01:28:26

of us. In 24 minutes.

01:28:30

So there will not be

01:28:34

a breakout room because because

01:28:36

we went a little bit

01:28:38

over time, but thank you

01:28:39

very much to those that

01:28:41

attended here and align, this

01:28:44

was a terrific experience. Bye-bye,

01:28:46

and I was Wild by

01:28:47

this panel, everybody. Weekend.