



Next Generation Disputes: The Convergence of ESG, Labor, and Human Rights in International Arbitration and Beyond *

Summary

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

The Washington Arbitration Week session, moderated by Shireen 40 of Covington, focused on the intersection of Environmental, Social, and Governance (ESG) issues with international arbitration. The panel featured prominent experts, including Symetra Ferdinand, Clovis Trevino, Maria Lucia Kostas, Shonda Galloway, and Elizabeth Donnelly, who discussed the evolving landscape of dispute resolution in relation to ESG and human rights.

Jose Antonio Rivas, a co-founder of Washington Arbitration Week, opened the session by emphasizing the importance of sponsorships in facilitating a no-cost event for participants. He introduced the topic of the panel, which explored how ESG considerations are increasingly relevant in international arbitration, particularly in commercial contracts that now often include ESG obligations.

The panelists highlighted that companies are under growing pressure from various stakeholders, including regulators and consumers, to adhere to ESG standards. This has led to an increase in disputes related to ESG issues, which are now being incorporated into arbitration clauses in commercial contracts. The discussion included examples of how financial institutions assess ESG risks in their investment decisions, particularly in Europe, where there is a strong regulatory framework.

Symetra Ferdinand shared insights from her experience in the financial sector, noting the shift from "brown" to "green" financing in alignment with the Paris Agreement. Clovis Trevino discussed her involvement in the Bangladesh Accord on Fire and Building Safety, illustrating how arbitration can address human rights issues in supply chains. Maria Lucia Kostas focused on investment treaty arbitration in Latin America, emphasizing the need for treaties that hold investors accountable for human rights and environmental standards.

Shonda Galloway highlighted the role of mediation as an effective tool for resolving labor and employment disputes, especially in the context of ESG issues. Elizabeth Donnelly



explained the OECD guidelines for multinational enterprises and the specific instance process, which allows for non-judicial grievance mechanisms to address allegations against businesses.

The panel concluded with a discussion on the increasing relevance of arbitration as a mechanism for resolving disputes related to ESG and human rights, as well as the challenges and opportunities presented by evolving regulatory frameworks. The consensus was that as ESG considerations become more embedded in business practices, the demand for effective dispute resolution mechanisms, including arbitration, will continue to grow.

Authors

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Topics

Disputes, Next Generations Disputes, ESG, Labor, Human Rights, International Arbitration

Category

WAW

Full Transcript

00:00:01

The welcome everyone to Washington

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arbitration week. And for those

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of you that have heard

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it perhaps now 10 times

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apologies. There are people out

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there I possibly in In



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China or in Europe or

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in Australia at cetera that

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that that might be without

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online just for the first

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time. So again, my my

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name is Jose Antonio Rivas

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and I am one of

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the co-founders of Washington arbitration

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week. I am Professor Adam

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professor of industrial arbitration and

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public international law at Georgetown

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and also a partner of

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extra glop with Offices here



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in DC and in Bogota

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and co-founder is Ian Laird

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from crawling Mooring who heads

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of their group of international

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dispute resolution that we're very

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thankful to Covington because they're

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our host today and I

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am extremely thankful also to

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A bar that sponsors I

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want to do again the

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propaganda but but you can

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see them on our website

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and every so often being



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between panels will will give

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give give a shout. Thank

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you them because the only

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way as I have explained

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before that this Venture, which

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now has a we are

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at our fourth edition is

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It is is is with

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sponsors and Adventure includes making

00:01:55
the Washington arbitration week unlike

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other for a completely no-cost

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event for the participants and

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for the attendees and that



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would be possible if we

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did not have sponsors. So

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thank you very much too

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old or sponsors to Covington

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and on others. I would

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like to introduce our moderator

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of this panel, which is

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of course on an e

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s. He's in corporate social

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responsibilities and and the connection

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between dispute resolution and and

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and those standards she and

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Serene 40 is a senior



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associate of Covington, and she

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is part of the international

00:02:42
arbitration group you her practice

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focuses on International commercial and

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investor-state arbitration under arrange of

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arbitral rules and applicable laws.

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She has she's duly qualified

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in common law and civil

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law with experience in various

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sectors including energy. She has

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represented clients in gas pricing

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arbitrations in cases involving Renewables

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and in matters relating to



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ESG Corporate social responsibility and

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business and human rights. She

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rarely handles complex International dispute

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across different sectors, including the

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energy pharmaceutical life science Mining

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and construction luxury goods and

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a range of other sectors,

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very importantly sharing is also

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part of of the board

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of arbitral woman who is

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Costco sponsoring this panel. I

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really tried to squeeze into

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the panel, but but I



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I did I wasn't allowed

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to so you might wonder

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why in any of it

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We are also committed to

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gender diversity and too many

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other types of diversity as

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you saw it's a few

00:04:01

a day ago on a

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panel on an arbitration on

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diversity and we take this

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very seriously so much that

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you see this this this

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Amazing Thailand and the when



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we started planning this this

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panel with with Shireen, we

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made a point that that

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that yes, there is commitment.

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But at the same time

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he would be a panel

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were sector at and and

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expertise that would be the

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main thing and I can

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assure you that that that's

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what has been driving the

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people who are in front

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of you. It's not not



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a gender selection, but I

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should actually have full This

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solid knowledge and experience in

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the mattress that they were

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going to be referring to

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and last but not least.

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Thank you. Also to the

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application on human business and

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human rights who's also a

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sponsor of this panel and

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a witch this firm in

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our firm. Our members are

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so with that Shireen taken



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away and the rest of

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the team for your wonderful

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organization of this panel and

00:05:27
all the rest of the

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panels of of Washington arbitration

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week. It is a pleasure

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to welcome all of you

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here today to Covington where

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they're delighted to put on

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this panel. This is actually

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our third and arbitration. We

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are virtual women panel. So

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each year, we have this



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collaborative portion of the week

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where we have an all-female

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panel of speakers are with

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one exception of our first

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of ended have some milk

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smell speakers as well, but

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we've tried to preserve Female

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speakers where experts subject matter

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experts on various topics and

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this year that topic is

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ESG labor rights and human

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rights and how they intersect

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with International arbitration and other



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types of disputes arbitral women.

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For those of you who

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are unaware is an international

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non-governmental organization with the primary

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of just objective of advancing

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the interests of women and

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promoting female practitioners and diversity

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in the field of international

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dispute resolution. We have members

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of over 40 countries and

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I am fortunate enough to

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be on the board Covington

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is actually a member of



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arbitral women and and twenty

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of our lawyers female lawyers

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are also members of the

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of the organization. So as

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host Antonia mentioned, we are

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also practical sponsor this event

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with the business and human

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rights law Stussy isshin given

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the subject matter intersect with

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our current. Panel, so thank

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you very much to them

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for their support since it

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is panel is looking at



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Next Generation disputes the convergence

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of PSG Labour and human

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rights and international arbitration &

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Beyond now, you've probably heard

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about ESG. It's very hot

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topic and people have approached

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it in in varying ways

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with positivity as well as

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negativity with the reality of

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the fact is for businesses.

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Yes. She is becoming increasingly

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relevant companies have been forced

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to engage with matters touching



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upon these legal issues in

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that commercial Affairs. They have

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had to evaluate their ESP

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policies and the legal and

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reputational risks and opportunities, which

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such policies presents and with

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increasing scrutiny coming from all

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directions from regulators and Busters

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and she owes labor unions

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consumers even shareholders those entities

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are Holding companies accountable for

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their representations for their statements

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and most importantly for their



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actions and processes involving ESG

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issues some examples, you may

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have heard of our internet

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zero commitments statements regarding emissions

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reductions commitments to withholding funding

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for certain types of activities

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may have heard of the

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fossil fuel industry restrictions not

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send those questions present particular

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challenges. You've also probably heard

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about representations on the origins

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and sustainability of goods on

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the labor conditions that are



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used to produce those good

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and on the human rights

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issues implicated in the attention

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of certain raw products or

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raw materials, and those have

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been at the center of

00:08:49

an increasing amount of Regulation.

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No regulatory bodies have begun

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to impose new requirements with

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respect to disclosure report. In

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compliance and operations. We've seen

00:09:02

quite a few already some

00:09:04

of them already adopted or



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coming into force in the

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EU. And since we're here

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in the United States, California

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at most recently introduced some

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further legislation, which will soon

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be coming into effect. You

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may have also heard of

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the deforestation regulation, which is

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having brought impacts upon Industries

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like the Cosmetics industry or

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the food industry where the

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raw products and materials being

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sourced are under increasing requirements



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for how they are procured

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and obtains. So it seems

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she becomes more prevalent. So

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does the intersection with arbitration

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and an increasing number of

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commercial contracts are incorporating ESG

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causes and obligations Clauses May

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impose obligations such as that

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are geared to protect human

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rights labor rights or than

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Iron Man on issues of

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biodiversity friends then they may

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incorporate in corporate governance requirements



00:10:05
around anti-bribery and Corruption money

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laundering. They may specify the

00:10:12
use of certain types of

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packaging or the way that

00:10:16
products are sent or shipped

00:10:18
and they may Target these

00:10:21
key issues of friends since

00:10:23
preventing child labor preventing Source

00:10:25
labor and preventing human rights

00:10:28
violations. Those companies are faced

00:10:30
with the obligation to conduct

00:10:32
human rights labor and environmental

00:10:34
due diligence in their supply



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chains. They are also obligated

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to think about the reporting

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of wrist and the processes

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which they assess those questions.

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They are now increasingly mandating

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that their suppliers their subcontractors

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the third parties with which

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they engage respect those standards

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as well it within their

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supply chain and with ESG.

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Asians and clauses come an

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increasing amount of ESG dispute.

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So we seen an increasing



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prevalence of disputes through litigation

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other alternative dispute resolution mechanisms

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and more and more arbitration.

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So we've traditionally seen some

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intersection with International arbitration and

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issues of the environment issues

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of Human Rights or labor

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ride, but the the turn

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of the tide is now

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turning to in a present

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a greater wave of these

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types of cases in the

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future. So that will be



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today on the subject of

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our panel as we explore

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the increasing intersection of international

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arbitration with these other mechanisms.

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And we explore whether International

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arbitration is the best place

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type of dispute resolution mechanism

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for the resolution of these

00:11:48

types of disputes, so I

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won't talk any longer. Let

00:11:53

me introduce you to our

00:11:54

amazing panel of speakers. Each

00:11:56

of these women has you



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know inexpensive CD. I will

00:12:01

only know their current positions

00:12:02

at the time and give

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you an idea of how

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they're relevant legal Spears intersects

00:12:07

with these issues on that

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are the subject of our

00:12:10

panel. So to my right

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Symetra Ferdinand is the former

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Chief compliance officers of Wells

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Fargo Securities Europe and most

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recently the global head of

00:12:21

compliance on CIB at nut



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nut 60th, corporate Investment Banking

00:12:26

and in Paris as counsel

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in the financial services industry

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semesta is regularly confronted with

00:12:34

issues of ESG and environmental

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risks in her daily practice

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and she will share a

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bit more about how the

00:12:40

financial industry is dealing with

00:12:42

ESG issues and how her

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work is intersecting with International

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arbitration and other types of

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a d r At the



00:12:52

end of the table Clovis

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Trevino is a partner in

00:12:55

international arbitration here at Covington

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her practice focuses on public

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international law in international commercial

00:13:02

and investment treaty arbitration across

00:13:04

a broad range of Industries.

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And in particular. She has

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been involved in arbitrations related

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to the environment human rights

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and labor rights in various

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capacities next to her Maria

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Lucia Kostas is a senior



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associate at strategy LLP. She's

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based in Bogota. Colombia and

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specializes in domestic Colombian and

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international arbitration as well as

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in public international law as

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a practitioner based in Columbia.

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She regularly represents sovereign states

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as well as private clients

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based in Latin America various

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Latin American jurisdictions on issues

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intersecting with the environment human

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rights and labor rights to

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my left is Sean Galloway.



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Bots is the senior vice

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president of ethics and compliance

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employment law. And litigation of

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AARP in Washington d.c. Shonda

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regularly deals labor and employment

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issues arising in the context

00:13:59

of ethics and compliance Shonda

00:14:02

periodically uses mediation and other

00:14:04

non-judicial dispute resolution mechanisms to

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resolve disputes intersecting primarily with

00:14:10

labor rights and last but

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not not in the not

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in the least lives Donnelly



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Elizabeth. Donnelly is an eternity

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attorney adviser for the US

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state Department's Office of the

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legal adviser. She has been

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at the state department for

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over 11 years and among

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her duties Elizabeth advises the

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national contact point for the

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oecd guidelines, which handles the

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specific instance mediation process under

00:14:39

those guidelines are a bit

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more about what that process

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entails shortly so Let's move



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first two to Symetra as

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much as you have held

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top Chief compliance officer positions

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in major financial institutions within

00:14:55

the United States primarily in

00:14:56

Europe and since the adoption

00:14:58

of the Paris agreement with

00:15:00

increasing regulation on ESG issues.

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You have had to deal

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with significant. Yes. She is

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well as human rights issues

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in the context of risk

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management what has been your



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experience with the environmental and

00:15:14
human-rights risk management in the

00:15:15
financial sector specifically and how

00:15:18
does how has International arbitration

00:15:20
intersected with with those experiences?

00:15:24
Okay. So first of all,

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I'm very happy to be

00:15:27
here in to be the

00:15:29
Paris representative on this panel

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because the Declaration of Human

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Rights was actually signed in

00:15:35
Paris almost 75 years ago

00:15:38
was December 10th. So very



00:15:40
happy to be here and

00:15:41
very happy to be on

00:15:42
this panel with all of

00:15:43
you. I think Financial Services

00:15:45
is very heavily regulated in

00:15:47
the first instance. So because

00:15:49
it's very heavily regulated that

00:15:52
means for whatever activity we

00:15:54
do. We have to be

00:15:55
very clear about how we

00:15:57
identify the risk assess the

00:15:59
risk and manage and report

00:16:01
on those wrists. So it's



00:16:02
specifically for banks in Europe

00:16:05
or specifically some of the

00:16:07
banks that I've worked for.

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There's a specific requirement that

00:16:13
an alignment with the Paris

00:16:15
agreement. We will move from

00:16:16
Brown financing to Green financing

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and we made specific commitments

00:16:21
in terms of the percentage

00:16:22
of green financing that we

00:16:25
will do. So what that

00:16:26
means is that for banks

00:16:29
in Europe. We're very clear



00:16:31
about doing less and less

00:16:32
a financing for example in

00:16:34
the world and gas or

00:16:35
or in petrol or tobacco

00:16:39
those kinds of industry. And

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so what we need to

00:16:43
very specifically Do is pay

00:16:45
attention to the particular investor

00:16:48
or the particular activity of

00:16:51
the investor and whether there

00:16:53
is specific evidence or proof

00:16:55
that this particular investor has

00:16:57
engaged in some kind of



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brown financing which impact human

00:17:03

rights. And so that is

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something that we follow either

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before we enter into a

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financing transaction. We will look

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at whether they are involved

00:17:11

in an international arbitration or

00:17:13

whether they have been determination

00:17:15

within an international arbitration setting

00:17:19

where they have found that

00:17:20

particular activity for example with

00:17:23

a particular pipeline leads to

00:17:25

an impact on indigenous people



00:17:28

for example, and then we

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will no longer either finance

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that particular activity to the

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extent we can within the

00:17:34

contractual framework of the agreement

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or the next time that

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investor comes to us. We

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will decide either to not

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Finance or be very clear

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up. To what extent we

00:17:46

will engage in further financing

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with them. So I would

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say that's how from a



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European Financial Services heavily regulated

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environment. It intersects with International

00:17:58

arbitration. It can be either

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directly but more specifically indirectly

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where we will see the

00:18:03

determination made and say okay

00:18:05

we made specific commitment in

00:18:07

terms of financing. We're not

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finding any kinds of deals

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anymore. I think from a

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u.s. Bank perspective because I've

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worked in one of the

00:18:16

top five largest US Banks



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the US I think it's

00:18:21
fair to say is more

00:18:22
politicized when it comes to

00:18:25
sustainability regulation. And so they're

00:18:28
from a US perspective with

00:18:30
ESG. What we focus more

00:18:31
on is looking at sustainability

00:18:36
risk, so to the extent

00:18:37
with ever act ivity, we

00:18:39
are investing in if there

00:18:41
is some Environmental social of

00:18:45
governance trigger with this event

00:18:47
that will have a material



00:18:49
impact on the investment activity.

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Then it is something that

00:18:53
we will figure out how

00:18:54
to assess that material impact

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and disclosing. So those are

00:18:59
the ways that I would

00:19:01
say ESG is very specifically

00:19:03
handled from a financial financial

00:19:07
services framework perspective. Thank you

00:19:10
so much. Let's go next

00:19:12
to muddy Andalusia regularly represent

00:19:17
States and also private clients

00:19:20
in Latin America. And in



00:19:22

that capacity. Sorry my microphone

00:19:25

investment treaty disputes with both

00:19:30

human rights and environmental components.

00:19:32

Could you explain based on

00:19:34

your experience in jurisdictions outside

00:19:36

of the US and Europe?

00:19:37

How is she in human

00:19:39

rights have Arisen in the

00:19:40

investment treaty arbitration contest. Will

00:19:43

the Nexus in particular its

00:19:45

Latin America perfect. Thanks to

00:19:56

the participants because we have

00:19:58

been thanking the sponsors this



00:20:00

pictures, but I think that

00:20:02

the event wouldn't be what

00:20:03

it is without I mean

00:20:05

the participation and all the

00:20:06

people are traveling from abroad

00:20:09

to do thank you. I

00:20:11

mean for joining out, of

00:20:12

course for our old line

00:20:14

participants. Also, I'm very glad

00:20:17

that they should we have

00:20:19

been very busy with the

00:20:21

organization. So I'm I'm thrilled

00:20:23

to be able to to



00:20:25

to join the session. So

00:20:27

yes, I would like to

00:20:30

fuck with my presentation or

00:20:33

or my remarks on the

00:20:35

experience of berries Latin American

00:20:37

states or developing countries at

00:20:40

the end of several issues.

00:20:43

Now they're dealing with human

00:20:45

rights on Ambassador between so

00:20:48

what I would like to

00:20:49

explain is some of the

00:20:51

examples of regional and international

00:20:53

mechanisms. Now these are taking



00:20:56

place in order to promote

00:20:57

Investments. Of course, he is

00:20:59

in an easy approach and

00:21:01

taking taking into account human

00:21:03

rights and indulge in those

00:21:06

situations. We are of course

00:21:09

speaking about this because although

00:21:12

I think that all the

00:21:14

people that is he recognized

00:21:15

the relevance of embarrassment for

00:21:17

the economy of the idea

00:21:20

and I think that we

00:21:21

should agree that this should



00:21:23

not come at the expense

00:21:24

of the inability of countries

00:21:26

to protect the environment and

00:21:28

human rights and this is

00:21:30

key and I think this

00:21:31

will be necessary in order

00:21:33

to balance the system onto

00:21:35

a four-course avoid the criticism

00:21:37

that is Diaz is now

00:21:39

it stopped raining in some

00:21:41

ways. So as you As

00:21:43

some of you may know

00:21:44

the way International Investment agreements



00:21:48

nowadays work is that they

00:21:50

are typically a symmetrical this

00:21:53

means that they only through

00:21:54

with allegations on State and

00:21:58

Buster's done really have any

00:22:01

obligations under the treaties. So

00:22:04

these have change during the

00:22:06

year. So I will like

00:22:08

you give some examples of

00:22:10

Latin American states and other

00:22:13

initiatives to help a change

00:22:16

in the view of investment

00:22:18

arbitration on on the way,



00:22:20

but it shouldn't be a

00:22:21

symmetrical body investors should also

00:22:24

be obliged to entertain the

00:22:27

standards under the investment treaty.

00:22:29

So I think that's a

00:22:31

good way to Dubai this

00:22:34

Tramp is to say that

00:22:37

we have been seen three

00:22:39

different friends in a month

00:22:40

arbitration that we can identify

00:22:42

indeed. Levels on a man

00:22:45

treat his mouth days. So

00:22:46

of course, the first one



00:22:48

will be those treaties that

00:22:50

actually are reflecting the need

00:22:52

to promote and protect sustainable

00:22:54

Investments and what I mean

00:22:56

by this is those treaties

00:22:58

that actually include human rights

00:23:02

and corporate social responsibility of

00:23:04

standards as a references in

00:23:07

their Prime bowls or as

00:23:09

an as non binding obligation,

00:23:11

but of course some of

00:23:13

you or or the experts

00:23:15

on public international law, of



00:23:16

course should know that these

00:23:18

kind of treaties older or

00:23:21

an advance on of course,

00:23:23

is it something at the

00:23:25

end they're not really that

00:23:26

useful because preambles are not

00:23:29

binding under international law. I

00:23:31

mean that of course I

00:23:32

go to to interpret the

00:23:35

treaty, but at the end

00:23:36

they are not binding upon

00:23:39

the bodies, so As an

00:23:42

example of December strength, we



00:23:44

have treaties such as the

00:23:45

Canada Columbia PA which provide

00:23:48

classes on these type of

00:23:51

classes that I just mentioned

00:23:52

before. We also have the

00:23:53

Argentina Chile FDA the Colombia

00:23:56

and Costa Rica and we

00:23:58

have the u a e

00:24:00

u UK Microsoft 3D. So

00:24:02

those are some examples of

00:24:04

these poor Beasts for strep

00:24:06

throat as soon as friends.

00:24:08

We have those type of



00:24:10

classes or need of states

00:24:13

to preserve. Of course, I'm

00:24:15

guaranteed the right to regulate

00:24:16

and this kind of glasses

00:24:18

can be exemplify with exception

00:24:22

clause. One example of this

00:24:25

one is also the Canada

00:24:27

Columbia PA that provides a

00:24:29

general exemption clause on human

00:24:31

rights and environment on clothes

00:24:33

2203. However, although it might

00:24:37

be clear that this is

00:24:38

an exemption Clause. We we



00:24:39

can also deal with cases

00:24:42

as the one of echo

00:24:43

versus Colombia that even That

00:24:48

we were dealing with this

00:24:50

kind of treaties with really

00:24:52

clear and classes exception classes.

00:24:55

Even in that case the

00:24:57

tribunal rejected that argument of

00:25:00

nutcase Columbia argue of this

00:25:03

exception Clause could actually be

00:25:05

used to this liability to

00:25:07

pay compensation. But at the

00:25:09

end of the tribunal rejected



00:25:10
interpretation of Columbia, so I

00:25:15
think. Of course the system

00:25:17
need to change on the

00:25:19
way tree to start trying

00:25:20
to drop this, but of

00:25:21
course we also need Better

00:25:24
prepare arbitrators because of the

00:25:26
end even if we have

00:25:27
very clear plus does that

00:25:29
one if they're arbitrator is

00:25:31
not an expert in public

00:25:34
international law on how exception

00:25:36
process work at the end



00:25:37

the result it's not going

00:25:38

to be the one that

00:25:40

said we are looking for

00:25:41

so as a third friend,

00:25:44

I will say that we

00:25:46

have those treaties that old

00:25:49

doll. There are only a

00:25:51

few they're very good examples

00:25:54

on how to include investor

00:25:56

application on the treaties. But

00:25:59

of course, he wouldn't work

00:26:02

by itself. We also need

00:26:03

Provisions that provide the possibility



00:26:06

for states to Pal contractors

00:26:07

class example of beaster trend

00:26:10

we have the 2016 Nigeria

00:26:12

Morocco be a TV. We

00:26:15

also have the ecowas to

00:26:16

Promontory asked him about payments

00:26:18

and we have the dress

00:26:20

Pan African investment gold and

00:26:23

the protocol on him. End

00:26:24

of the African continent has

00:26:26

betrayed area which although it's

00:26:28

not doing Forest because some

00:26:30

of the state's I think



00:26:32

it is they need like

00:26:33

a approximately 22 to 28

00:26:36

states to ratify the treaty

00:26:37

but at least it's it's

00:26:41

a really good initiative or

00:26:42

not. And I think although

00:26:43

it's not important yet. It's

00:26:46

a way States should actually

00:26:48

see how to implement the

00:26:53

this kind of obligation on

00:26:55

investment treaty. So which are

00:26:57

exactly plural problems that we

00:26:59

really need to fix. So



00:27:01

the first is that investment

00:27:03

treaties most of them know

00:27:05

not all of them, but

00:27:06

most of them it really

00:27:08

like in Bastrop legation and

00:27:10

they need that of course,

00:27:11

they respect human rights standards

00:27:13

and environmental standards, but the

00:27:17

second problem is of course

00:27:19

the problem on jurisdiction. I

00:27:21

mean, it's not enough to

00:27:23

have Obligations on investors by

00:27:26

the we have ulcer problem



00:27:28

in Jersey diction and its

00:27:29

related, of course to the

00:27:31

existence of consent by investors

00:27:33

to be bound by these

00:27:34

kind of application do something

00:27:37

that we have been working

00:27:37

out attic strategy in in

00:27:40

different levels with different Colombian

00:27:42

and Latin American stakeholders. He's

00:27:46

on a 3D architecture. I

00:27:49

mean, we will of course

00:27:50

we are proposing and we

00:27:54

think that's the way the



00:27:56
system at the end there.

00:27:57
It's going to have like

00:27:59
a better Bond on and

00:28:01
of course, he will avoid

00:28:02
some Christians and I need

00:28:05
some 3D architecture that should

00:28:06
include three different kind of

00:28:10
off probation. So I mean,

00:28:13
I can be of course

00:28:14
one provision barring student these

00:28:17
three aspects o the first

00:28:19
of course investors behavior on

00:28:22
this by this I mean



00:28:24

ambassadors allegations on a human

00:28:27

rights, of course and environmental

00:28:30

law s of course is

00:28:33

to incentivize that investor Behavior

00:28:36

concerning human rights and investment

00:28:39

treaties, of course shooting through

00:28:41

the classes that actually oblige

00:28:43

investors to comply with International

00:28:46

standards in order to be

00:28:48

able or as a condition

00:28:50

for investors to submit a

00:28:51

claim to International Patrician. I

00:28:54

mean, of course that will



00:28:56
be hard but at the

00:28:57
end I think that's the

00:28:59
way it should be do

00:29:01
about it because it also

00:29:02
States should really start guessing

00:29:05
those cells are asking themselves,

00:29:07
which is the kind of

00:29:08
Investments that they really want

00:29:09
to receive. As a lot

00:29:12
going on. I'll say that

00:29:14
of course is necessary to

00:29:16
include an Annex in the

00:29:18
investment treaty wording Buster confirms



00:29:21

its consent to be bound

00:29:23

to his kind of obligations

00:29:24

because you know how the

00:29:26

system works the states are

00:29:28

the ones entering into investment

00:29:30

treaties. So that's the reason

00:29:32

why it's not obvious or

00:29:34

the consent of his mistress

00:29:36

is not in the treaty

00:29:38

itself. So I think I'll

00:29:40

live with her. Thank you

00:29:42

and maybe we can come

00:29:43

back at the discussion portion



00:29:45
to the to the issue

00:29:47
of State defenses and and

00:29:49
counter-claim specifically 11 interesting point.

00:29:53
I'd like to understand better

00:29:54
for the audience understand better

00:29:56
is how can these non

00:29:58
binding obligations which incorporated into

00:30:00
the framework of treaties? How

00:30:01
do they then, you know

00:30:03
as the regulatory framework becomes

00:30:04
more enhanced and more developed.

00:30:06
How do they make their

00:30:07
way into international law and



00:30:10

then you know by virtue

00:30:11

of Standards States and as

00:30:15

well as investors to be

00:30:16

subject to certain certain you

00:30:18

are standards are more developed

00:30:19

a robust down there, but

00:30:21

we'll come back to that

00:30:22

point. So let's move on

00:30:23

to the Clovis Clovis. You

00:30:27

helped secure a historic settlements

00:30:30

in arbitration under the Accord

00:30:33

on Fire and Building Safety

00:30:34

in Bangladesh where 150 supplier



00:30:38
factories would be remediated and

00:30:41
special funds provided to bring

00:30:43
those factories up to code

00:30:44
So based on that experience,

00:30:47
but all of your other

00:30:48
robust on International commercial and

00:30:51
investment Street Experience. Can you

00:30:53
explain from a procedural perspective

00:30:55
whether you see arbitration as

00:30:57
being the appropriate mechanisms to

00:30:59
resolve business and human rights

00:31:02
disputes Thank you, Serena. And

00:31:05
and thank you everyone for



00:31:06

it for joining us today.

00:31:07

If perhaps he'll address had

00:31:09

less ambitious question and consider

00:31:13

whether it's a suitable mechanism

00:31:16

to to address specific human

00:31:18

rights-related disputes and I'll begin

00:31:21

with just a brief introduction

00:31:22

about the Bangladesh Accord arbitrations.

00:31:26

For those of you who

00:31:27

have heard about the disputes

00:31:29

this way to groundbreaking arbitrations

00:31:32

filed in 2016 under the

00:31:36

Bangladesh Accord on Fire and



00:31:38

Building Safety agreement between labor

00:31:41

unions and over 200 international

00:31:44

fashion brands with the stated

00:31:47

objective is to bring factories

00:31:49

in Bangladesh of the code.

00:31:53

So I see highlighted to

00:31:55

read the labor unions ultimately

00:31:58

settled the the arbitration and

00:32:02

we did not get to

00:32:03

see a resolution on the

00:32:04

marriage. We were very satisfied

00:32:07

with the outcome. I was

00:32:09

slightly disappointed that we didn't



00:32:11
get to see there the

00:32:13
food life of the arbitration,

00:32:14
but of course, but we

00:32:16
did get significant funds to

00:32:19
the fund Remediation in Bangladesh.

00:32:22
So to be able to

00:32:23
address my last ambitious question

00:32:26
of whether it's suitable. I

00:32:28
think it's important to to

00:32:30
look at the context in

00:32:31
which the the Bangladesh Accord

00:32:34
on Fire and Building. Safety

00:32:35
was signed. We're looking at



00:32:38

2013. When as you might

00:32:42

recall the Rana plaza building

00:32:44

collapsed in Dhaka. This is

00:32:47

one of the most prosperous

00:32:49

industrial accidents in history. What

00:32:53

happened next we had Pressure

00:32:57

we had a significant impact

00:33:00

us to bring change to

00:33:02

a ready-made garment industry that

00:33:05

was not living up to

00:33:06

the safety standards provided either

00:33:09

by Bangladeshi or by General

00:33:14

International general practice and and



00:33:18
safety standards. So the Accord

00:33:25
covers approximately 1,600 factories in

00:33:30
Bangladesh and it applied to

00:33:32
two million garment workers. This

00:33:35
is an entire industry. And

00:33:41
what I would call a

00:33:42
watershed moment in business and

00:33:44
human rights the labor unions

00:33:46
and over 200 fashion brands

00:33:49
agreed to arbitrate disputes. This

00:33:53
is groundbreaking for the Shadow

00:33:56
the possibility of arbitration as

00:33:58
a mechanism to enforce business



00:34:01
and human rights dispute. But

00:34:03
at the same time providing

00:34:05
the Brand's a tool to

00:34:07
manage the supply chain risk

00:34:09
that Sharon has highlighted. It

00:34:12
has to work for me

00:34:13
or for both sides and

00:34:15
and that was key. So

00:34:19
in July and October 2016,

00:34:21
we brought two claims on

00:34:25
behalf of international Labor Union

00:34:26
against two fashion brands. We

00:34:29
brought the claims to the



00:34:30
permanent Court of arbitration and

00:34:34
we were able to do

00:34:36
this pro bono. I got

00:34:38
really build \$2,000 a year.

00:34:43
Not only that highlights the

00:34:46
greatest challenges in bringing this

00:34:48
type of dispute to arbitration.

00:34:49
It's expensive who pays for

00:34:52
frost. We also had the

00:34:55
PCA agree to provide a

00:34:58
very low you noticed but

00:35:01
I don't remember exactly but

00:35:02
it was a very favorable



00:35:03

terms to the brands. And

00:35:06

so the arbitrator's agreed to

00:35:09

to do the same and

00:35:11

it is one key. Should

00:35:12

I you have to bury

00:35:14

mind as as you think

00:35:15

about business and human rights

00:35:17

arbitration who pays for it.

00:35:19

So what were Darth Vader's

00:35:22

first we argued that the

00:35:24

fashion brands had failed three

00:35:27

years of the Rana Plaza.

00:35:29

They have failed to secure.



00:35:31

Safety in the workplace has

00:35:33

and they have failed to

00:35:35

provide the funds necessary to

00:35:37

bring the factories into compliance.

00:35:40

What does it mean high

00:35:42

risk safety items fire exits

00:35:45

sprinklers alarms one sample that

00:35:49

I'll never forget was one

00:35:51

fire exit that would take

00:35:54

people back into the same

00:35:55

building. I mean that was

00:35:59

just outrageous. So in September

00:36:02

2017, the unions have their



00:36:05

first win the arbitral tribunal

00:36:08

admitted the claims and found

00:36:11

the Restriction to decide on

00:36:13

the Union's claims. At the

00:36:16

same time the tribunal found

00:36:18

it appropriate to balance the

00:36:20

interests of the labor unions

00:36:23

in asserting their claims, but

00:36:25

also the business side and

00:36:27

the interest of the fashion

00:36:29

brands of protecting their business

00:36:32

confidential information their reputation as

00:36:35

Tareen highlighted. So the proceedings



00:36:39

are confidential and the identity

00:36:41

of the respondent fashion brands

00:36:44

remain confidential to the state.

00:36:47

Eloise first win the first

00:36:51

case settled but the second

00:36:53

respondent decided to move forward

00:36:55

and went down there very

00:36:57

important challenges first how to

00:37:01

build the architecture of a

00:37:03

massive claims involving over 200

00:37:07

factories and the massive just

00:37:10

a massive number of documents.

00:37:12

We received in document production.



00:37:14

It was quite challenging from

00:37:16

a design perspective and it

00:37:19

was very challenging from from

00:37:21

the Manpower women flower perspective.

00:37:25

We were able to deploy

00:37:27

up Ramona team to get

00:37:29

the job done as I

00:37:30

flat but it was it

00:37:33

was a substantial meaningful effort.

00:37:35

I know their talents and

00:37:38

procedural challenge was to design

00:37:40

a process whereby the workers

00:37:43

the factory workers who were



00:37:44
the third-party beneficiary Sofia Would

00:37:48
receive compensation we have labor

00:37:50
unions acting on behalf of

00:37:52
thousands of workers and we

00:37:54
had to put together a

00:37:55
mechanism so that the phones

00:37:57
could make it to the

00:37:59
beneficiaries. That was quite fascinating

00:38:05
and I would say was

00:38:06
and remains a key challenge

00:38:09
in deciding and resolving this

00:38:12
type of dispute expecting a

00:38:14
large number of potential victims



00:38:16
in a way that is

00:38:18
sufficient that can be accomplished

00:38:20
and that will actually benefit

00:38:22
those intended beneficiaries of Sofia

00:38:27
Court. So this was in

00:38:32
2016 that was a few

00:38:35
years ago, and we keep

00:38:37
hearing about the Bangladesh Accord

00:38:39
arbitrations. So the big question

00:38:41
is whether the model that

00:38:44
the Bangladesh Accord arbitration provide

00:38:47
can be replicated in other

00:38:49
Industries as sharing highlighted their



00:38:53

significant pressure in multiple Industries

00:38:56

estate of financial industry to

00:38:59

incorporate EST into the supply

00:39:03

change management Security Management, but

00:39:07

how does that happened? We

00:39:08

also heard from my dad

00:39:09

Lucia that can send it's

00:39:12

really a key component of

00:39:14

the the agreement to arbitrate

00:39:17

delete content unique parties to

00:39:19

agree to submit a dispute

00:39:21

in their supply chains to

00:39:24

arbitration. We look like at



00:39:26
the Bangladesh Accord and we

00:39:28
still had context and there

00:39:31
was really huge International pressure

00:39:34
to enter into this agreement,

00:39:35
but have not been the

00:39:39
case in other Industries, but

00:39:41
the pressure is mounting. We

00:39:45
do see a significant number

00:39:47
of international Regional instruments that

00:39:51
are setting the bar high

00:39:52
at the international level. We

00:39:55
have the UN guiding principles

00:39:56
of justice and human rights.



00:39:57

They always CD guidelines at

00:40:00

the domestic Labour. We have

00:40:02

a UK Steven react we

00:40:04

have friends beating and slow

00:40:07

and we have similar legislation

00:40:09

in Germany and Regional level

00:40:11

in this is very important.

00:40:13

We have the European Union's

00:40:15

draft corporate sustainability. Do you

00:40:18

delete this directive with Ethan

00:40:21

at the door went and

00:40:23

asked that? I think the

00:40:24

expectation is that will happen



00:40:26
in 2024. It will apply

00:40:28
to nearly every significant company

00:40:31
either because he will be

00:40:33
directly subject to Debbie breakfast

00:40:35
or because it will engage

00:40:37
in dealings with companies that

00:40:39
need to engage in the

00:40:40
type of diligence that the

00:40:42
directive requires. So this is

00:40:46
very prevalent in very important

00:40:50
and I do expect to

00:40:51
see further intersection between these

00:40:55
types of commitments and human



00:40:57

rights obligations as they stay

00:41:00

out in the infield. So

00:41:08

recognized in the significant challenges

00:41:10

that going to National Court

00:41:12

represent. We're talkin about accessibility

00:41:16

to the cords for an

00:41:18

inconvenience. Green's legal Norms shielding

00:41:22

parent companies from a level

00:41:24

of the subsidiaries. Ask the

00:41:30

People working group on International

00:41:32

arbitration of business and human

00:41:35

rights assemble to draft the

00:41:37

Hague business and human rights



00:41:39
rules. This is a very

00:41:42
significant development but it provides

00:41:45
a framework a process framework.

00:41:47
It does not provide stuffed

00:41:49
a law that stuff and

00:41:51
if your needs to come

00:41:52
from South Laurel from bridging

00:41:55
all instruments from some of

00:41:56
the instruments that we've already

00:41:58
mentioned. They're not intended to

00:42:01
substitute Domestic Court remedies, but

00:42:05
they they are meant to

00:42:06
provide an alternative a mechanism



00:42:09

to accomplish two main objective

00:42:11

once protected potential victims of

00:42:14

Human Rights abuses but to

00:42:16

also provide companies with a

00:42:19

tool that will allow them

00:42:20

to manage supply chain risk

00:42:24

in a way that protects

00:42:26

their business interests in confidentiality

00:42:28

reputation and someone has I

00:42:31

said to get concerned that

00:42:34

the deal has to work

00:42:36

both ways. So how does

00:42:41

it offend happened he can



00:42:42

have their happened in an

00:42:44

agreement. You can happened by

00:42:47

means of a very broad

00:42:48

arbitration Clause it could happen

00:42:51

in a bilateral investment treaty.

00:42:52

Like my didn't see a

00:42:53

highlighted we could see also

00:42:56

agreements such as the Bangladesh

00:42:58

Accord that incorporate arbitration as

00:43:01

a mechanism to solve dispute.

00:43:09

So now ten years after

00:43:11

the first Bangladesh Accord the

00:43:15

notion of Human Rights dispute



00:43:17
resolution by arbitration remains quite

00:43:20
attractive. I think the Bangladesh

00:43:23
Accord arbitrations in the settlement

00:43:25
is reached show the potential

00:43:27
and the effectiveness of arbitration

00:43:30
as a suitable mechanism to

00:43:32
salt is the human rights

00:43:34
excuse but we need players

00:43:36
to to agree there has

00:43:38
to be further agreements like

00:43:41
the Bangladesh accord or additional

00:43:43
degree lens and mechanisms of

00:43:46
consent. We we expect or



00:43:48

at least I expect that

00:43:50

you will see them more

00:43:51

and more frequently but only

00:43:53

time will tell and with

00:43:55

that I can play with

00:43:56

my remarks. Thank you, sir.

00:43:58

Thank you very much. Chloe's

00:44:00

first and setting the stage

00:44:02

for for our assessment and

00:44:04

hopefully the audience is assessment

00:44:06

of whether arbitration is in

00:44:08

fact an appropriate procedural mechanism

00:44:11

for a for the resolution



00:44:13
of these types of the

00:44:14
students. I'm so let's explore

00:44:16
some other types of mechanisms

00:44:18
that could be alternatives to

00:44:20
International arbitration. Or perhaps used

00:44:24
in conjunction with International arbitration.

00:44:26
So it. Let's turn to

00:44:27
Shonda Shonda you regularly deal

00:44:30
with compliance and disputes relating

00:44:32
to labor and employment issues

00:44:34
including litigation and Fair Employment

00:44:37
process used how have Labor

00:44:41
and ESG issues come up



00:44:42

in the context of your

00:44:43

industry and is are mechanisms

00:44:45

of this mediation or other

00:44:47

non-judicial dispute resolution Frame Works

00:44:52

better suited in your opinion

00:44:53

to deal with labor and

00:44:55

employment issues than arbitration. I

00:44:58

think it's going to rain

00:44:59

and I Echo what my

00:45:01

fellow panelists said earlier than

00:45:04

really seems to be here

00:45:05

and I think all of

00:45:06

the attendees for being with



00:45:09

us today, I think the

00:45:11

short answer to whether or

00:45:13

not these issues come out

00:45:16

in the context of what

00:45:17

industry is. Yes. Because EST

00:45:20

and labor and employment issues.

00:45:22

Universal I happen to work

00:45:24

for a nonprofit organization. That's

00:45:26

us space. We have locations

00:45:30

in all 50 states US

00:45:31

Virgin Islands and Puerto Rico.

00:45:33

So outside of that don't

00:45:35

have international presence, but see



00:45:37

some of the same issues

00:45:38

that you as attendees another

00:45:41

colleague C in global organizations,

00:45:45

and that's because whether or

00:45:48

not you're organized as the

00:45:49

entity for-profit or not-for-profit your

00:45:53

work depends on the employees

00:45:55

hired to complete it in

00:45:59

the labor relationship between employer

00:46:02

and employee often comes into

00:46:05

play and sometimes there are

00:46:07

disputes. You can avoid them

00:46:08

where I see the primary



00:46:12
convergence with ESG and Labor

00:46:14
unemployment is in the middle

00:46:16
part the ass social and

00:46:19
we see issues and claims

00:46:21
Around the Fur. Equity equity

00:46:23
and inclusion efforts also workplace

00:46:27
discrimination and harassment issues which

00:46:30
as you started to mention

00:46:32
train or sometimes very well

00:46:35
suited to being resolved through

00:46:37
80 or whether that be

00:46:38
mediation or arbitration as well

00:46:42
as the other types of



00:46:43

occasions that semester for example

00:46:48

mentioned in financial services as

00:46:50

well as Clovis discussing the

00:46:54

retelling garment industry. What what

00:46:58

they do have in common

00:46:59

across-the-board often times is also

00:47:02

those workplace safety and health

00:47:05

issues that may arise through

00:47:08

a labor agreement with workers

00:47:12

or just buy individual employers

00:47:14

are employees and workers. We've

00:47:17

seen it frequently as of

00:47:19

late workplace safety. Call the



00:47:23
protection measures that organizations have

00:47:26
in place. Once the height

00:47:28
of the pandemic that down

00:47:30
a bit and more workers

00:47:32
were asked to come back

00:47:33
to work or word never

00:47:34
working remotely because they had

00:47:38
integral job that could not

00:47:40
be performed remotely. We've seen

00:47:43
claims through those type of

00:47:46
workers related to how their

00:47:48
organisation was protecting them and

00:47:51
their health and safety, but



00:47:53

also could go hand-in-hand with

00:47:55

forced labor child labor and

00:47:59

issues again, related to discrimination

00:48:02

and harassment in the US

00:48:04

at least our framework through

00:48:06

the equal employment opportunity commission

00:48:07

does provide mediation resources. They

00:48:12

have an internal meaning of

00:48:14

mediators who are available and

00:48:17

some jurisdictions in the US

00:48:19

in fact, like the District

00:48:20

of Columbia. Through their Employment

00:48:23

Practices agency require you to



00:48:26

go to mediation in order

00:48:28

to attempt to resolve any

00:48:30

concerns raised so, you know,

00:48:33

I think in a nutshell,

00:48:34

yes, I do think it's

00:48:35

a very viable option that

00:48:38

can be beneficial to mitigating

00:48:43

be very lengthy time for

00:48:46

litigation often takes and the

00:48:48

costly nature of it. Either

00:48:52

can also be employed to

00:48:53

resolve conflicts early when there's

00:48:56

some urgency like a a



00:48:59
climate or Greenhouse emissions issue

00:49:04
that must be resolved before

00:49:07
see more significant damage has

00:49:09
done or Acumen rights violation,

00:49:11
you know, an injunction for

00:49:14
example could be requested to

00:49:15
Halt whatever processes in place

00:49:17
that's being challenged. Finally, I

00:49:22
think I will mention that

00:49:23
I do think arbitration is

00:49:26
particularly suited to the types

00:49:27
of claims that arrives in

00:49:29
my practice area because you



00:49:32

do have the expertise of

00:49:33

the arbitral tribunal then whether

00:49:37

that be dealing with issues

00:49:38

of discrimination forced labor Human

00:49:41

Rights Commission standards your often

00:49:43

able to get very experienced

00:49:46

and trained meteors in the

00:49:49

subject matter and expertise. You

00:49:51

need to to help resolve

00:49:53

the claims. Without the need

00:49:56

for expensive litigation which which

00:49:59

is always good for my

00:50:00

perspective even as a litigator



00:50:02

and thank you very much

00:50:05

so last but once again

00:50:09

that lease Liz you are

00:50:12

the attorney adviser at the

00:50:13

NCP National contact Point seated

00:50:16

within the US state department.

00:50:18

Could you please explain a

00:50:20

bit more about the always.

00:50:22

Always CD guidelines for Multinational

00:50:24

Enterprises, which is now has

00:50:27

the extended title of for

00:50:28

responsible business conduct, which I'm

00:50:32

sure you will touch on



00:50:33

and ends and what precisely

00:50:37

is the non-judicial grievance mechanism

00:50:40

called the specific instance process.

00:50:43

We understand that prefer an

00:50:46

audience. This process can involves

00:50:48

human rights or environmental disputes

00:50:50

related to a company's activities

00:50:52

and in particular. The specific

00:50:57

instance process can provide for

00:50:59

mediation as an alternative dispute

00:51:01

resolution mechanism between companies and

00:51:03

various other stakeholders. Can you

00:51:05

please the offer your perspective



00:51:09

on whether this is this

00:51:10

greater? Flexibility can be useful

00:51:13

either alternative or complementary school

00:51:16

for international arbitration? Sure. Thanks

00:51:19

and thanks to all of

00:51:21

Michael panelist and for the

00:51:22

audience for being here today.

00:51:23

So I'm going to give

00:51:24

a brief overview of what

00:51:25

the guidelines are because not

00:51:26

everyone might be familiar as

00:51:28

well as he has a

00:51:29

contact point and then finally



00:51:31
will get in Pacific instant

00:51:33
process. So I have some

00:51:35
slides prepared just in case

00:51:37
if Sherman can bring those

00:51:39
up. We'll go straight to

00:51:41
the first slide. We're looking

00:51:45
for one second think that

00:51:46
should have done it. All

00:51:47
right, so we can move

00:51:49
to the first side but

00:51:50
actually has writing on it

00:51:51
lines were first issued in

00:51:55
1976 and they contain a



00:51:58

set of recommendations and guidance

00:52:00

to Multinational Enterprises on responsible

00:52:03

business contact from a hearing

00:52:05

government and they are not

00:52:07

legally binding on on companies

00:52:10

and of themselves. So currently

00:52:12

there are fifty-one adherent states

00:52:14

that includes all 38 oecd

00:52:16

member states as well as

00:52:18

13 non-oecd members that have

00:52:21

it here to the investment

00:52:23

declaration which includes the guidelines

00:52:25

and that includes for example,



00:52:27

Morocco Argentina Brazil, Ukraine and

00:52:32

several other countries, the guidelines

00:52:36

contain eleven chapters of recommendations,

00:52:39

and these address issues such

00:52:40

as human rights labor. Environment

00:52:44

protection Science and Technology bribery

00:52:48

and Corruption and are additional

00:52:49

chapters covering issues such as

00:52:51

Taxation and competition. So he

00:52:55

always CD periodically revises the

00:52:57

guidelines. The most recent revision

00:52:58

was in 2023 this past

00:53:01

June prior to that the



00:53:02

most recent update was in

00:53:04

2011. So this process I

00:53:07

talk to you the guidelines

00:53:08

was a multi-stakeholder process involved

00:53:11

complications with labor business and

00:53:14

civil society. And that was

00:53:15

important to us policy makers

00:53:16

were involved in the process

00:53:17

and hopefully it will have

00:53:19

some time to talk about

00:53:20

what some of those pages

00:53:21

were later in our discussion.

00:53:25

So there is a national



00:53:28

contact point for the oecd

00:53:30

guidelines and hearing States. This

00:53:32

is actually the requirements. There's

00:53:34

a decision that obligates here

00:53:36

in government set up a

00:53:37

national contact weights. And this

00:53:39

is a binding obligation on

00:53:40

oecd members. So the NCP

00:53:43

has a couple of key

00:53:44

functions one is basically just

00:53:47

promote awareness and encourage limitation

00:53:49

of the guidelines. That's why

00:53:50

I'm here today. And the



00:53:54
second is to offer a

00:53:55
specific instance mediation process to

00:53:58
be used when a party

00:53:59
raised allegations regarding the contacts

00:54:01
of an Enterprise under the

00:54:02
guidelines and the focus there

00:54:05
is to find a resolution

00:54:07
for mediated dialogue. So that

00:54:09
gives countries a lot of

00:54:11
flexibility on how they constitute

00:54:12
the use of screen mentioned

00:54:14
ours is actually a single

00:54:16
person with a small staff



00:54:18

and in the state department

00:54:19

and specifically are Bureau of

00:54:21

economic Affairs that being said

00:54:24

the US. Work closely with

00:54:26

other offices both of the

00:54:27

state department and within the

00:54:29

interagency. So talk now a

00:54:34

little bit about what the

00:54:35

specific instance process is so

00:54:38

this is a non-judicial voluntary

00:54:41

optional and consensual. He needs

00:54:42

to address disputes. It'll involve

00:54:45

a situation which a complaint



00:54:48

is raised about the conduct

00:54:49

of a business alleged to

00:54:51

be inconsistent with the guidelines.

00:54:52

Any interested parties can submit

00:54:54

to submit specific instance and

00:54:57

it is processed. INTP is

00:54:58

neutral in the US and

00:55:00

see if he takes very

00:55:00

seriously being unbiased a to

00:55:03

all stakeholders involved in that

00:55:04

process. So each country has

00:55:06

their own procedures for how

00:55:08

to specific instances operates. I'm



00:55:10
going to talk a little

00:55:11
bit about how the process

00:55:13
works, but then obviously focusing

00:55:14
on what it looks like

00:55:15
in the US process so

00:55:17
we can go tonight. But

00:55:18
let's connect then you said

00:55:22
that if it's not on

00:55:23
bindings non-judicial, what would be

00:55:25
the interest on for companies

00:55:27
participated? All right, so talking

00:55:35
a little bit about how

00:55:35
the process works. So as



00:55:38

you might suspect it starts

00:55:39

with when I submit her

00:55:41

which could be an NGO

00:55:42

or labor unit or sometimes

00:55:44

even an individual and it's

00:55:46

a complaint to the NCP

00:55:48

alleging conduct by us business

00:55:51

or business operating enter from

00:55:53

the United States points dntp

00:55:58

roll a x coordinate with

00:55:59

other ncp's in this could

00:56:01

be for a variety of

00:56:02

reasons. So in some instances,



00:56:03

there could be a contact

00:56:06

at siletz River occurred in

00:56:08

multiple. If you're in space

00:56:09

or the corporation a tissue

00:56:12

has multiple offices in it

00:56:13

here and states or because

00:56:16

there have been similar or

00:56:17

related specific instances submit it

00:56:19

to other ncp's. So the

00:56:22

MC people then share the

00:56:23

complaint with the company and

00:56:25

give them a chance to

00:56:25

respond. And the party is



00:56:27
on May submit additional responses

00:56:29
to one another about about

00:56:30
the process in the allegations.

00:56:33
I'm at the end of

00:56:35
that process was all the

00:56:36
information is gathered. The NCP

00:56:39
will conduct was called an

00:56:40
initial assessment as to whether

00:56:41
or not to offer mediation.

00:56:43
And so this will look

00:56:44
at several criteria in laid

00:56:47
out in oecd guidance and

00:56:49
some of those criteria include



00:56:50

does a complaint include a

00:56:52

material issue covered by the

00:56:54

guidelines is the Enterprise actually

00:56:57

covered by the guidelines itself

00:56:59

isn't multi-national whether there's applicable

00:57:02

law or other fellow proceedings,

00:57:04

which will also talk about

00:57:05

hopefully that would limit the

00:57:07

ability of ntp to offer,

00:57:09

you know, really contribute to

00:57:11

a resolution of the issue

00:57:12

and then additionally they may

00:57:15

look to whether there's by



00:57:18
providing mediation they would contribute

00:57:20
to the effectiveness and purpose.

00:57:21
So there's two possible outcomes

00:57:24
of an initial assessment one

00:57:27
is complete and see if

00:57:29
he just declined saw for

00:57:30
mediation the case stands there,

00:57:31
too. The NCP decides to

00:57:35
offer mediation with the parties

00:57:37
to do that the parties

00:57:39
that have the option whether

00:57:40
or not participate if one

00:57:42
or both declined again caissons,



00:57:45

everybody goes home if they

00:57:48

do a lot to proceed

00:57:50

with by mediation at that

00:57:52

point, you will offer a

00:57:54

venue for the mediation and

00:57:56

a party as well sit

00:57:57

down with the mediator and

00:57:59

the NCP to try to

00:58:00

come to a consensus roll

00:58:01

resolution over the issues. So

00:58:04

again, if there's no if

00:58:07

there is great, hopefully everybody's

00:58:10

happy with that outcome and



00:58:12

at the end of that

00:58:13

process whether it ended earlier

00:58:16

in the process after I

00:58:18

An initial assessment or even

00:58:21

an offer of mediation or

00:58:22

ends after with an agreement

00:58:23

will publish what's called a

00:58:27

final statement and a final

00:58:29

statement will talk among other

00:58:31

things about what the allegations

00:58:34

were and how they ended

00:58:35

and nothing discussed during mediation

00:58:38

is that are actually occurred



00:58:40
would become public unless both

00:58:42
parties agreed to it. So

00:58:43
in our practice with a

00:58:46
final statement of the entity

00:58:47
allows the parties to review

00:58:49
the final same sort of

00:58:53
thing and I see people

00:58:55
Endeavor to protect information being

00:58:58
sensitive to the party parties

00:58:59
throughout the process and then

00:59:01
finally in the future that

00:59:03
I'm seeing he may decide

00:59:04
to conduct follow-up. So if



00:59:07
that could involve for example

00:59:08
if there is a breach

00:59:10
than CP May monitor implementation

00:59:11
of that agreement or at

00:59:14
times and see if he

00:59:15
will actually Provide recommendations to

00:59:19
the party is about things

00:59:20
that they should take into

00:59:21
account and we follow up

00:59:22
with those recommendations. So now

00:59:25
I'll talk a little bit

00:59:26
about the benefits of the

00:59:28
specific process. So you might



00:59:31

ask is the strength head.

00:59:32

What is the benefit since

00:59:34

this is completely voluntary and

00:59:35

consensual why would people participate

00:59:38

in this so I can

00:59:39

offer a few rough generalizations

00:59:41

for everyone. There's a chance

00:59:43

to diffuse problems try to

00:59:46

build trust in relationships. Explain

00:59:48

your Viewpoint. Look for Creative

00:59:50

Solutions and win-win outcomes. It

00:59:53

is more flexible and more

00:59:55

informal than litigation. So that's



00:59:57

11 Benefit. There's also the

01:00:00

benefit that National legal systems

01:00:02

can be constrained in the

01:00:03

types of remedies that are

01:00:04

available for this is this

01:00:06

offers the possibility that people

01:00:08

can sit down and actually

01:00:09

come to the solution that

01:00:10

works for them under the

01:00:11

circumstances. We brought her than

01:00:13

what you might see and

01:00:14

say litigation. I'm for business

01:00:18

is a chance to participate



01:00:20
in a venue where you

01:00:21
have a say in the

01:00:22
outcome and how they issue

01:00:23
was resolved. Obviously, it's consensual

01:00:25
mention that if you decide

01:00:26
it's a lower risk forum,

01:00:29
and the mediation of salt

01:00:30
is non-public. So for unions,

01:00:33
it's another it provides another

01:00:35
alternative potentially more Cooperative way

01:00:38
to resolve disputes with SSI,

01:00:41
which is also benefit for

01:00:42
civil society to submit these



01:00:44
types of clients and put

01:00:46
them I'd also know that

01:00:48
it's really a chance to

01:00:50
sit down at the table

01:00:50
with business people which can

01:00:53
be important for disenfranchised groups

01:00:55
and people it's also form

01:00:57
to build a ton of

01:00:58
bility, even when there isn't

01:01:00
a resolution elsewhere such as

01:01:02
Imports or if you're in

01:01:03
a situation, where are the

01:01:05
legal framework for the other



01:01:06
issues you're dealing with such

01:01:07
as an environmental issue where

01:01:09
that legal framework developed where

01:01:11
the time? And I think

01:01:14
for everybody is also a

01:01:15
way to address issues down

01:01:17
the supply chain because the

01:01:18
guidelines should you incorporate due

01:01:20
diligence guidance up there? Thank

01:01:23
you so much. So and

01:01:25
in addition to that the

01:01:27
two types of additional disputes

01:01:29
that we've heard about in



01:01:30

a mediation the the specific

01:01:34

instance process, which then eventually

01:01:35

can lead to mediation. Of

01:01:38

course also a number of

01:01:39

other types of alternative dispute

01:01:41

resolution mechanisms. That intersects with

01:01:44

ESG is so some of

01:01:45

those include the United Nations

01:01:49

Human Rights Council has the

01:01:50

complaints procedure the International Labour

01:01:52

organisation has the complaints procedure

01:01:54

various Regional bodies such as

01:01:56

the inter-american commission inter-american court



01:02:00
that European and African Regional

01:02:02
systems as well have various

01:02:04
complaints procedures, which allow you

01:02:05
to which allow different stakeholders.

01:02:10
Sometimes even simple Society to

01:02:12
bring to Brinkley. Stop before

01:02:14
these various body is so

01:02:16
when we when we assess

01:02:17
this question of whether arbitration

01:02:20
and mediation or other mechanisms

01:02:21
are important. We should also

01:02:22
keep keep those in mind

01:02:24
as well given time. Let's



01:02:27

move quickly to a few

01:02:29

further questions. You have about

01:02:31

15 minutes left on the

01:02:32

panel. I'm so we'll do

01:02:33

a lightning grounds of additional

01:02:35

follow-ups on various points. Everyone

01:02:38

keep their remarks to one

01:02:39

to two minutes. That would

01:02:40

be ideal. So let's quickly

01:02:44

go to Les. Plus I

01:02:47

supposed to Maria Lucia and

01:02:48

then maybe you can take

01:02:50

us a different aspects of



01:02:51

this what what what are

01:02:53

the policy implications you you

01:02:55

touched upon expanding into expanding

01:03:00

isds applicability to investors and

01:03:03

in particular what impact does

01:03:04

an increasingly expensive view of

01:03:07

investor responsibilities have on issues

01:03:10

of dsgb HR and in

01:03:12

labor rights? Thank you for

01:03:14

being so well, I'll think

01:03:16

that it could be very

01:03:17

positive, you know, the and

01:03:20

the system is suffering a



01:03:22

lot of criticisms by state.

01:03:24

So I think that Rd

01:03:25

and if we include this

01:03:27

type of classes investment treaties,

01:03:29

of course not only investors

01:03:32

allegations, but also the boss

01:03:33

to be with you too.

01:03:34

If I contract claims the

01:03:35

possibility that it states have

01:03:37

regulatory Powers if we include

01:03:40

this type of courses of

01:03:42

the end in one it

01:03:44

won't fix the system completely,



01:03:47
but I think it will

01:03:48
be very positive and some

01:03:50
of the criticism the criticisms,

01:03:52
of course, I could stop

01:03:54
at I think of course

01:03:56
you into trouble working group

01:03:57
3, it's doing an amazing

01:03:59
job in the reform of

01:04:00
the system, but I don't

01:04:02
think that procedural reform is

01:04:04
he needs cells are not

01:04:06
so at the end. I

01:04:07
also don't really think that



01:04:09

the solution needs to be

01:04:11

announced or terminate treaties. So

01:04:14

I think in fact that

01:04:16

the efforts that African countries

01:04:20

are currently doing it's a

01:04:22

huge example and it sells

01:04:24

because at the end they

01:04:26

are not kicking or running

01:04:30

a far from the system,

01:04:32

but they are kind of

01:04:33

including the substantive Provisions that

01:04:36

at the end. It will

01:04:37

be very useful at 4



01:04:38

States. Thank you closest VIP.

01:04:43

It is still turned very

01:04:44

narrow Universe. I'm unworthy Mystic

01:04:47

about arbitration making its way

01:04:49

into normal business practice test

01:04:52

and and in the stool

01:04:56

of arbitration being used more

01:04:58

effectively to just enhance accountability

01:05:01

down all the way down

01:05:04

to production Supply chains and

01:05:07

Company at the top. You

01:05:13

know aren't investors already subject

01:05:16

now to heighten standards of



01:05:18
responsibility by virtue of this

01:05:21
increased regulations such as the

01:05:23
Paris of the Paris agreement

01:05:25
that she has tripled ecsrd

01:05:28
and other other reporting requirements

01:05:30
as you're coming into effect

01:05:31
in in Europe, you already

01:05:37
have those specific obligations, which

01:05:40
helped on the front end

01:05:42
before entering into a transaction.

01:05:44
But where there are gaps

01:05:46
are where there is Need

01:05:47
for further risk management because



01:05:51
of unforeseen events, which caused

01:05:54
harm to for example indigenous

01:05:56
people or particular people in

01:05:58
the phone number to Community.

01:06:01
Then International arbitration may still

01:06:04
be the solution. Thank you,

01:06:07
and let's go quickly to

01:06:10
to a question that we

01:06:12
touched upon in bed. Reputational

01:06:14
risk so companies are increasingly

01:06:16
concerned with not only civil

01:06:18
civil liability out. Right but

01:06:20
with the reputational risks associated



01:06:22
with involving ESP labor rights

01:06:24
and human rights given, you

01:06:28
know, what what have you

01:06:28
experienced in your in your

01:06:30
practice? How would you describe

01:06:31
the interplay between reputational risk

01:06:34
on the one hand and

01:06:35
civil liability at and this

01:06:37
goes I guess too all

01:06:38
of the the corporate actors

01:06:40
in and Liz's well and

01:06:41
I'm you know it have

01:06:42
you encountered company is thinking



01:06:46
about reputational risk as a

01:06:48
driver for coming to the

01:06:50
table and gave you and

01:06:51
Remediation thinking about these things

01:06:52
on the front end as

01:06:54
opposed to waiting for a

01:06:55
civil liability pancholi. Kick in

01:06:58
in these various regulations. I

01:07:02
would start by just saying

01:07:03
yes, I absolutely think that

01:07:06
DSG as a discipline is

01:07:09
at its heart at a

01:07:11
risk analysis. We're adding The



01:07:16

calculus that businesses are already

01:07:17

making about how they present

01:07:20

what their brand is as

01:07:23

with respect to how their

01:07:25

operating with respect to environmental

01:07:27

regulatory requirements or even if

01:07:31

they're not required. How do

01:07:32

we as a business want

01:07:33

to operate because of how

01:07:36

it affects the world affect

01:07:38

the business clients that we

01:07:41

serve and that goes for

01:07:42

the social issues I think



01:07:45
as well as the government's

01:07:47
falls into place because the

01:07:49
words are required to ensure

01:07:52
that they need their fiduciary

01:07:53
obligations of oversight to you

01:07:56
know, make sure they're operating

01:07:58
appropriately, but absolutely all of

01:08:00
this as it is at

01:08:02
its heart a risk analysis

01:08:04
how much risk an the

01:08:05
business is zoom and how

01:08:06
should we operate to mitigate

01:08:08
that risk and maybe some



01:08:10
more quickly before? Dams in

01:08:14
the reputational point in assessing

01:08:17
whether and I'm Different financial

01:08:19
institutions should invest in particular

01:08:22
Investments or withdraw investment from

01:08:25
the projects. I think it's

01:08:27
a very interesting question because

01:08:29
you can see a different

01:08:30
response depending on the particular

01:08:32
culture or nation that is

01:08:33
involved. So for example, as

01:08:35
found that in Europe where

01:08:37
they have a very strong



01:08:39
regulatory framework where it's not

01:08:42
specifically a black-and-white question of

01:08:45
does it meet the regulation

01:08:46
or not where it is

01:08:47
reputational risk, they become very

01:08:50
nervous and it will be

01:08:52
pretty much more. Let's not

01:08:54
do that. Let's not finance

01:08:55
that transaction. Let's not continue

01:08:57
to invest in this particular

01:08:58
deal. Where is I would

01:09:00
find u.s. Banks a little

01:09:02
more bullish actually in terms



01:09:04
of reputational risk, and they

01:09:06
won't necessarily see a reputational

01:09:09
risk issue as the strong

01:09:11
deterrent in the sea. Same

01:09:13
way as they would in

01:09:15
Europe. So it's it's very

01:09:17
interesting to see how it

01:09:18
is in the US where

01:09:19
it's not quite the same

01:09:21
appreciation of sustainability requirement. When

01:09:25
is not the same as

01:09:26
maybe we can if you

01:09:30
can adjust stop playing but



01:09:31
also incorporate that the point

01:09:33
that we wanted wanted you

01:09:35
to dress in this portion,

01:09:36
which is a bit more

01:09:37
color on you know, how

01:09:39
the guidelines have been revised

01:09:40
what are particularly the environmental

01:09:42
chapter. What substance is now

01:09:45
our company is being held

01:09:47
to as the due diligence

01:09:48
standards within the oecd guidelines

01:09:50
of Corporation would think that

01:10:01
might be going on. So



01:10:03
for a parallel proceeding that

01:10:05
could be anything involving but

01:10:06
occasionally or other specific instances,

01:10:08
either before the same ncpr

01:10:10
another entity or really any

01:10:11
other proceeding either domestically or

01:10:13
Internationally and what those he

01:10:15
got installed us is that

01:10:17
there is flexibility there and

01:10:19
we are supposed to basically

01:10:21
take into account. You know,

01:10:23
we're not precluded from offering

01:10:25
good offices if there are



01:10:26
parallel proceedings. I'm going or

01:10:28
if there have been in

01:10:28
the past or could be

01:10:29
in the future, but we're

01:10:30
really supposed to looks you

01:10:32
whether or not and we

01:10:33
can contribute to a resolution

01:10:34
of issues with promotion of

01:10:35
the guidelines of what we're

01:10:36
looking at their key factor

01:10:38
is whether or not there's

01:10:40
one serious Prejudice to any

01:10:42
party by proceeding with of



01:10:43
the specific and since the

01:10:44
mediation and we're getting some

01:10:47
additional guidance about how to

01:10:48
do you know taking care

01:10:51
of others practices and you

01:10:53
don't consider other options and

01:10:55
then turning quickly to your

01:10:56
other question about some of

01:10:57
the number of updates. I

01:10:59
think a few to highlight

01:11:00
here are given the time

01:11:02
or the environmental updates that

01:11:04
saw a larger number of



01:11:05

updates and some of the

01:11:06

other chapters. So I think

01:11:08

the big headline there or

01:11:09

what my clients would say

01:11:10

is the big headline is

01:11:11

that there is now incorporated

01:11:13

in The guidelines recommendations regarding

01:11:15

a climate change adaptation and

01:11:18

mitigation. And so they're the

01:11:21

way the guidelines deal with

01:11:22

this is their nature which

01:11:24

is a non-binding recommendations rather

01:11:27

than prescriptions for what countries



01:11:29

are companies should do but

01:11:32

they clarify a number of

01:11:33

things including risk-based due diligence

01:11:35

related to adverse environmental impacts

01:11:38

and there's now a list

01:11:39

that includes some of those

01:11:40

impacts such as biodiversity loss

01:11:42

and climate change. So I'll

01:11:44

leave it there and if

01:11:47

I can just add maybe

01:11:48

one point which is that

01:11:49

I think the environmental chapter

01:11:50

now also presents a close



01:11:52

Nexus where the issue of

01:11:54

Human Rights and another interchangeability

01:11:56

of our interrogation of those

01:11:58

too much between adverse environmental

01:12:02

impacts and other types of

01:12:04

impacts that you might see

01:12:05

covered by other chapters in

01:12:07

the guidelines. Wonderful. I think

01:12:10

we are close to time.

01:12:13

Do we have time for

01:12:14

one audience or two audience

01:12:16

questions may be okay any

01:12:19

questions from from the attendees



01:12:21

here or are online? No

01:12:25

questions Missy online for any

01:12:29

okay. Well, I guess then

01:12:34

we'll just leave it at

01:12:35

that and thank you so

01:12:37

much to all of our

01:12:37

panelists. Hopefully the attendees have

01:12:39

learned a bit more about

01:12:40

you see how it intersects

01:12:42

with with arbitration particularly, but

01:12:45

also with other and non-judicial

01:12:47

dispute resolution mechanisms, and we

01:12:50

certainly I would completely agree



01:12:52

with clove uses expectation that

01:12:54

we will see more and

01:12:55

more of these types of

01:12:56

disputes more intersection with these

01:12:58

fields as regulation increases and

01:13:01

as companies are taking these

01:13:03

issues more and more into

01:13:05

account in their internal operations

01:13:06

to thank you so much

01:13:07

for being here. Thank you

01:13:08

for panelist to the organizers

01:13:10

and the have a great

01:13:12

afternoon everyone. The welcome everyone



00:00:04
to Washington arbitration week. And

00:00:06
for those of you that

00:00:07
have heard it perhaps now

00:00:10
10 times apologies. There are

00:00:13
people out there I possibly

00:00:15
in In China or in

00:00:22
Europe or in Australia at

00:00:24
cetera that that that might

00:00:26
be without online just for

00:00:29
the first time. So again,

00:00:31
my my name is Jose

00:00:33
Antonio Rivas and I am

00:00:35
one of the co-founders of



00:00:37

Washington arbitration week. I am

00:00:40

Professor Adam professor of industrial

00:00:45

arbitration and public international law

00:00:48

at Georgetown and also a

00:00:51

partner of extra glob with

00:00:54

Offices here in DC and

00:00:56

in Bogota and co-founder is

00:01:00

Ian Laird from crawling Mooring

00:01:03

who heads of their group

00:01:06

of international dispute resolution that

00:01:10

we're very thankful to Covington

00:01:12

because they're our host today

00:01:14

and I am extremely thankful



00:01:17
also to A bar that

00:01:19
sponsors I want to do

00:01:22
again the propaganda but but

00:01:24
you can see them on

00:01:25
our website and every so

00:01:28
often being between panels will

00:01:30
will give give give a

00:01:32
shout. Thank you them because

00:01:35
the only way as I

00:01:37
have explained before that this

00:01:40
Venture, which now has a

00:01:43
we are at our fourth

00:01:47
edition is It is is



00:01:52
is with sponsors and Adventure

00:01:54
includes making the Washington arbitration

00:01:57
week unlike other for a

00:02:00
completely no-cost event for the

00:02:04
participants and for the attendees

00:02:07
and that would be possible

00:02:08
if we did not have

00:02:09
sponsors. So thank you very

00:02:11
much too old or sponsors

00:02:12
to Covington and on others.

00:02:13
I would like to introduce

00:02:15
our moderator of this panel,

00:02:17
which is of course on



00:02:19
an e s. He's in

00:02:20
corporate social responsibilities and and

00:02:22
the connection between dispute resolution

00:02:26
and and and those standards

00:02:29
she and Serene 40 is

00:02:33
a senior associate of Covington.

00:02:39
and she is part of

00:02:41
the international arbitration group you

00:02:44
her practice focuses on International

00:02:47
commercial and investor-state arbitration under

00:02:51
arrange of arbitral rules and

00:02:53
applicable laws. She has she's

00:02:55
duly qualified in common law



00:02:57

and civil law with experience

00:03:00

in various sectors including energy.

00:03:01

She has represented clients in

00:03:04

gas pricing arbitrations in cases

00:03:06

involving Renewables and in matters

00:03:08

relating to ESG Corporate social

00:03:11

responsibility and business and human

00:03:14

rights. She rarely handles complex

00:03:16

International dispute across different sectors,

00:03:18

including the energy pharmaceutical life

00:03:22

science Mining and construction luxury

00:03:25

goods and a range of

00:03:27

other sectors, very importantly sharing



00:03:32
is also part of of

00:03:33
the board of arbitral woman

00:03:35
who is Costco sponsoring this

00:03:38
panel. I really tried to

00:03:42
squeeze into the panel, but

00:03:43
but I I did I

00:03:45
wasn't allowed to so you

00:03:46
might wonder why in any

00:03:50
of it We are also

00:03:53
committed to gender diversity and

00:03:56
too many other types of

00:03:59
diversity as you saw it's

00:04:00
a few a day ago



00:04:03
on a panel on an

00:04:05
arbitration on diversity and we

00:04:08
take this very seriously so

00:04:10
much that you see this

00:04:12
this this Amazing Thailand and

00:04:14
the when we started planning

00:04:17
this this panel with with

00:04:18
Shireen, we made a point

00:04:21
that that that yes, there

00:04:23
is commitment. But at the

00:04:24
same time he would be

00:04:25
a panel were sector at

00:04:30
and and expertise that would



00:04:34
be the main thing and

00:04:36
I can assure you that

00:04:37
that that's what has been

00:04:38
driving the people who are

00:04:41
in front of you. It's

00:04:43
not not a gender selection,

00:04:45
but I should actually have

00:04:47
full This solid knowledge and

00:04:52
experience in the mattress that

00:04:54
they were going to be

00:04:54
referring to and last but

00:04:56
not least. Thank you. Also

00:05:00
to the application on human



00:05:03

business and human rights who's

00:05:05

also a sponsor of this

00:05:08

panel and a witch this

00:05:11

firm in our firm. Our

00:05:13

members are so with that

00:05:14

Shireen taken away and the

00:05:23

rest of the team for

00:05:24

your wonderful organization of this

00:05:26

panel and all the rest

00:05:27

of the panels of of

00:05:28

Washington arbitration week. It is

00:05:31

a pleasure to welcome all

00:05:32

of you here today to



00:05:34

Covington where they're delighted to

00:05:35

put on this panel. This

00:05:37

is actually our third and

00:05:42

arbitration. We are virtual women

00:05:44

panel. So each year, we

00:05:45

have this collaborative portion of

00:05:47

the week where we have

00:05:49

an all-female panel of speakers

00:05:51

are with one exception of

00:05:54

our first of ended have

00:05:55

some milk smell speakers as

00:05:57

well, but we've tried to

00:05:58

preserve Female speakers where experts



00:06:01
subject matter experts on various

00:06:03
topics and this year that

00:06:06
topic is ESG labor rights

00:06:08
and human rights and how

00:06:09
they intersect with International arbitration

00:06:11
and other types of disputes

00:06:13
arbitral women. For those of

00:06:16
you who are unaware is

00:06:17
an international non-governmental organization with

00:06:21
the primary of just objective

00:06:22
of advancing the interests of

00:06:24
women and promoting female practitioners

00:06:27
and diversity in the field



00:06:29
of international dispute resolution. We

00:06:33
have members of over 40

00:06:35
countries and I am fortunate

00:06:36
enough to be on the

00:06:37
board Covington is actually a

00:06:40
member of arbitral women and

00:06:42
and twenty of our lawyers

00:06:44
female lawyers are also members

00:06:45
of the of the organization.

00:06:47
So as host Antonia mentioned,

00:06:50
we are also practical sponsor

00:06:52
this event with the business

00:06:54
and human rights law Stussy



00:06:55

isshin given the subject matter

00:06:57

intersect with our current. Panel,

00:06:59

so thank you very much

00:07:00

to them for their support

00:07:01

since it is panel is

00:07:04

looking at Next Generation disputes

00:07:06

the convergence of PSG Labour

00:07:09

and human rights and international

00:07:10

arbitration & Beyond now, you've

00:07:13

probably heard about ESG. It's

00:07:15

very hot topic and people

00:07:17

have approached it in in

00:07:18

varying ways with positivity as



00:07:21

well as negativity with the

00:07:24

reality of the fact is

00:07:26

for businesses. Yes. She is

00:07:28

becoming increasingly relevant companies have

00:07:32

been forced to engage with

00:07:33

matters touching upon these legal

00:07:35

issues in that commercial Affairs.

00:07:37

They have had to evaluate

00:07:39

their ESP policies and the

00:07:41

legal and reputational risks and

00:07:43

opportunities, which such policies presents

00:07:46

and with increasing scrutiny coming

00:07:49

from all directions from regulators



00:07:51

and Busters and she owes

00:07:54

labor unions consumers even shareholders

00:07:57

those entities are Holding companies

00:08:00

accountable for their representations for

00:08:03

their statements and most importantly

00:08:05

for their actions and processes

00:08:07

involving ESG issues some examples,

00:08:12

you may have heard of

00:08:12

our internet zero commitments statements

00:08:15

regarding emissions reductions commitments to

00:08:18

withholding funding for certain types

00:08:20

of activities may have heard

00:08:22

of the fossil fuel industry



00:08:23

restrictions not send those questions

00:08:28

present particular challenges. You've also

00:08:31

probably heard about representations on

00:08:34

the origins and sustainability of

00:08:36

goods on the labor conditions

00:08:38

that are used to produce

00:08:39

those good and on the

00:08:40

human rights issues implicated in

00:08:43

the attention of certain raw

00:08:44

products or raw materials, and

00:08:47

those have been at the

00:08:48

center of an increasing amount

00:08:49

of Regulation. No regulatory bodies



00:08:53

have begun to impose new

00:08:55

requirements with respect to disclosure

00:08:57

report. In compliance and operations.

00:09:01

We've seen quite a few

00:09:02

already some of them already

00:09:04

adopted or coming into force

00:09:06

in the EU. And since

00:09:08

we're here in the United

00:09:09

States, California at most recently

00:09:11

introduced some further legislation, which

00:09:14

will soon be coming into

00:09:16

effect. You may have also

00:09:18

heard of the deforestation regulation,



00:09:21

which is having brought impacts

00:09:23

upon Industries like the Cosmetics

00:09:24

industry or the food industry

00:09:27

where the raw products and

00:09:29

materials being sourced are under

00:09:33

increasing requirements for how they

00:09:36

are procured and obtains. So

00:09:38

it seems she becomes more

00:09:39

prevalent. So does the intersection

00:09:42

with arbitration and an increasing

00:09:44

number of commercial contracts are

00:09:46

incorporating ESG causes and obligations

00:09:50

Clauses May impose obligations such



00:09:54

as that are geared to

00:09:56

protect human rights labor rights

00:09:58

or than Iron Man on

00:09:59

issues of biodiversity friends then

00:10:01

they may incorporate in corporate

00:10:04

governance requirements around anti-bribery and

00:10:07

Corruption money laundering. They may

00:10:10

specify the use of certain

00:10:12

types of packaging or the

00:10:16

way that products are sent

00:10:17

or shipped and they may

00:10:19

Target these key issues of

00:10:22

friends since preventing child labor



00:10:24

preventing Source labor and preventing

00:10:27

human rights violations. Those companies

00:10:30

are faced with the obligation

00:10:31

to conduct human rights labor

00:10:33

and environmental due diligence in

00:10:35

their supply chains. They are

00:10:37

also obligated to think about

00:10:40

the reporting of wrist and

00:10:42

the processes which they assess

00:10:44

those questions. They are now

00:10:46

increasingly mandating that their suppliers

00:10:49

their subcontractors the third parties

00:10:52

with which they engage respect



00:10:54

those standards as well it

00:10:56

within their supply chain and

00:10:57

with ESG. Asians and clauses

00:11:00

come an increasing amount of

00:11:02

ESG dispute. So we seen

00:11:04

an increasing prevalence of disputes

00:11:06

through litigation other alternative dispute

00:11:09

resolution mechanisms and more and

00:11:12

more arbitration. So we've traditionally

00:11:15

seen some intersection with International

00:11:18

arbitration and issues of the

00:11:19

environment issues of Human Rights

00:11:21

or labor ride, but the



00:11:24
the turn of the tide

00:11:25
is now turning to in

00:11:27
a present a greater wave

00:11:28
of these types of cases

00:11:29
in the future. So that

00:11:30
will be today on the

00:11:32
subject of our panel as

00:11:34
we explore the increasing intersection

00:11:36
of international arbitration with these

00:11:38
other mechanisms. And we explore

00:11:40
whether International arbitration is the

00:11:43
best place type of dispute

00:11:44
resolution mechanism for the resolution



00:11:48
of these types of disputes,

00:11:49
so I won't talk any

00:11:52
longer. Let me introduce you

00:11:53
to our amazing panel of

00:11:55
speakers. Each of these women

00:11:57
has you know inexpensive CD.

00:12:00
I will only know their

00:12:02
current positions at the time

00:12:03
and give you an idea

00:12:04
of how they're relevant legal

00:12:06
Spears intersects with these issues

00:12:08
on that are the subject

00:12:10
of our panel. So to



00:12:11

my right Symetra Ferdinand is

00:12:15

the former Chief compliance officers

00:12:17

of Wells Fargo Securities Europe

00:12:19

and most recently the global

00:12:21

head of compliance on CIB

00:12:23

at nut nut 60th, corporate

00:12:25

Investment Banking and in Paris

00:12:27

as counsel in the financial

00:12:31

services industry semesta is regularly

00:12:33

confronted with issues of ESG

00:12:35

and environmental risks in her

00:12:37

daily practice and she will

00:12:38

share a bit more about



00:12:39

how the financial industry is

00:12:42

dealing with ESG issues and

00:12:44

how her work is intersecting

00:12:46

with International arbitration and other

00:12:48

types of a d r

00:12:51

At the end of the

00:12:52

table Clovis Trevino is a

00:12:54

partner in international arbitration here

00:12:57

at Covington her practice focuses

00:12:59

on public international law in

00:13:01

international commercial and investment treaty

00:13:03

arbitration across a broad range

00:13:05

of Industries. And in particular.



00:13:07

She has been involved in

00:13:09

arbitrations related to the environment

00:13:11

human rights and labor rights

00:13:13

in various capacities next to

00:13:15

her Maria Lucia Kostas is

00:13:17

a senior associate at strategy

00:13:19

LLP. She's based in Bogota.

00:13:22

Colombia and specializes in domestic

00:13:24

Colombian and international arbitration as

00:13:27

well as in public international

00:13:29

law as a practitioner based

00:13:31

in Columbia. She regularly represents

00:13:33

sovereign states as well as



00:13:35

private clients based in Latin

00:13:36

America various Latin American jurisdictions

00:13:40

on issues intersecting with the

00:13:41

environment human rights and labor

00:13:43

rights to my left is

00:13:45

Sean Galloway. Bots is the

00:13:47

senior vice president of ethics

00:13:49

and compliance employment law. And

00:13:51

litigation of AARP in Washington

00:13:54

d.c. Shonda regularly deals labor

00:13:56

and employment issues arising in

00:13:58

the context of ethics and

00:14:00

compliance Shonda periodically uses mediation



00:14:03
and other non-judicial dispute resolution

00:14:06
mechanisms to resolve disputes intersecting

00:14:09
primarily with labor rights and

00:14:12
last but not not in

00:14:14
the not in the least

00:14:16
lives Donnelly Elizabeth. Donnelly is

00:14:19
an eternity attorney adviser for

00:14:21
the US state Department's Office

00:14:23
of the legal adviser. She

00:14:25
has been at the state

00:14:26
department for over 11 years

00:14:28
and among her duties Elizabeth

00:14:30
advises the national contact point



00:14:33

for the oecd guidelines, which

00:14:35

handles the specific instance mediation

00:14:38

process under those guidelines are

00:14:40

a bit more about what

00:14:41

that process entails shortly so

00:14:45

Let's move first two to

00:14:46

Symetra as much as you

00:14:48

have held top Chief compliance

00:14:51

officer positions in major financial

00:14:53

institutions within the United States

00:14:55

primarily in Europe and since

00:14:58

the adoption of the Paris

00:14:59

agreement with increasing regulation on



00:15:02

ESG issues. You have had

00:15:04

to deal with significant. Yes.

00:15:07

She is well as human

00:15:08

rights issues in the context

00:15:09

of risk management what has

00:15:11

been your experience with the

00:15:13

environmental and human-rights risk management

00:15:15

in the financial sector specifically

00:15:18

and how does how has

00:15:19

International arbitration intersected with with

00:15:23

those experiences? Okay. So first

00:15:26

of all, I'm very happy

00:15:27

to be here in to



00:15:28

be the Paris representative on

00:15:30

this panel because the Declaration

00:15:33

of Human Rights was actually

00:15:35

signed in Paris almost 75

00:15:37

years ago was December 10th.

00:15:39

So very happy to be

00:15:41

here and very happy to

00:15:42

be on this panel with

00:15:43

all of you. I think

00:15:44

Financial Services is very heavily

00:15:46

regulated in the first instance.

00:15:48

So because it's very heavily

00:15:50

regulated that means for whatever



00:15:53

activity we do. We have

00:15:55

to be very clear about

00:15:56

how we identify the risk

00:15:58

assess the risk and manage

00:16:00

and report on those wrists.

00:16:01

So it's specifically for banks

00:16:05

in Europe or specifically some

00:16:07

of the banks that I've

00:16:08

worked for. There's a specific

00:16:09

requirement that an alignment with

00:16:14

the Paris agreement. We will

00:16:16

move from Brown financing to

00:16:18

Green financing and we made



00:16:20
specific commitments in terms of

00:16:22
the percentage of green financing

00:16:25
that we will do. So

00:16:26
what that means is that

00:16:27
for banks in Europe. We're

00:16:30
very clear about doing less

00:16:32
and less a financing for

00:16:34
example in the world and

00:16:35
gas or or in petrol

00:16:37
or tobacco those kinds of

00:16:40
industry. And so what we

00:16:43
need to very specifically Do

00:16:45
is pay attention to the



00:16:47
particular investor or the particular

00:16:50
activity of the investor and

00:16:52
whether there is specific evidence

00:16:55
or proof that this particular

00:16:56
investor has engaged in some

00:16:58
kind of brown financing which

00:17:02
impact human rights. And so

00:17:04
that is something that we

00:17:05
follow either before we enter

00:17:07
into a financing transaction. We

00:17:09
will look at whether they

00:17:10
are involved in an international

00:17:12
arbitration or whether they have



00:17:14
been determination within an international

00:17:17
arbitration setting where they have

00:17:19
found that particular activity for

00:17:22
example with a particular pipeline

00:17:25
leads to an impact on

00:17:27
indigenous people for example, and

00:17:29
then we will no longer

00:17:30
either finance that particular activity

00:17:33
to the extent we can

00:17:34
within the contractual framework of

00:17:36
the agreement or the next

00:17:38
time that investor comes to

00:17:40
us. We will decide either



00:17:42

to not Finance or be

00:17:43

very clear up. To what

00:17:45

extent we will engage in

00:17:46

further financing with them. So

00:17:48

I would say that's how

00:17:49

from a European Financial Services

00:17:54

heavily regulated environment. It intersects

00:17:57

with International arbitration. It can

00:17:59

be either directly but more

00:18:01

specifically indirectly where we will

00:18:03

see the determination made and

00:18:05

say okay we made specific

00:18:07

commitment in terms of financing.



00:18:08

We're not finding any kinds

00:18:10

of deals anymore. I think

00:18:12

from a u.s. Bank perspective

00:18:14

because I've worked in one

00:18:16

of the top five largest

00:18:18

US Banks the US I

00:18:21

think it's fair to say

00:18:22

is more politicized when it

00:18:24

comes to sustainability regulation. And

00:18:27

so they're from a US

00:18:28

perspective with ESG. What we

00:18:31

focus more on is looking

00:18:33

at sustainability risk, so to



00:18:37

the extent with ever act

00:18:39

ivity, we are investing in

00:18:40

if there is some Environmental

00:18:43

social of governance trigger with

00:18:47

this event that will have

00:18:48

a material impact on the

00:18:50

investment activity. Then it is

00:18:52

something that we will figure

00:18:54

out how to assess that

00:18:55

material impact and disclosing. So

00:18:59

those are the ways that

00:19:00

I would say ESG is

00:19:02

very specifically handled from a



00:19:04
financial financial services framework perspective.

00:19:09
Thank you so much. Let's

00:19:12
go next to muddy Andalusia

00:19:13
regularly represent States and also

00:19:19
private clients in Latin America.

00:19:21
And in that capacity. Sorry

00:19:24
my microphone investment treaty disputes

00:19:29
with both human rights and

00:19:30
environmental components. Could you explain

00:19:33
based on your experience in

00:19:35
jurisdictions outside of the US

00:19:37
and Europe? How is she

00:19:38
in human rights have Arisen



00:19:40
in the investment treaty arbitration

00:19:42
contest. Will the Nexus in

00:19:44
particular its Latin America perfect.

00:19:48
Thanks to the participants because

00:19:57
we have been thanking the

00:19:58
sponsors this pictures, but I

00:20:02
think that the event wouldn't

00:20:03
be what it is without

00:20:04
I mean the participation and

00:20:06
all the people are traveling

00:20:08
from abroad to do thank

00:20:11
you. I mean for joining

00:20:12
out, of course for our



00:20:13
old line participants. Also, I'm

00:20:16
very glad that they should

00:20:19
we have been very busy

00:20:20
with the organization. So I'm

00:20:23
I'm thrilled to be able

00:20:24
to to to join the

00:20:26
session. So yes, I would

00:20:30
like to fuck with my

00:20:31
presentation or or my remarks

00:20:34
on the experience of berries

00:20:36
Latin American states or developing

00:20:39
countries at the end of

00:20:40
several issues. Now they're dealing



00:20:44
with human rights on Ambassador

00:20:47
between so what I would

00:20:49
like to explain is some

00:20:50
of the examples of regional

00:20:52
and international mechanisms. Now these

00:20:55
are taking place in order

00:20:57
to promote Investments. Of course,

00:20:59
he is in an easy

00:21:00
approach and taking taking into

00:21:02
account human rights and indulge

00:21:05
in those situations. We are

00:21:09
of course speaking about this

00:21:11
because although I think that



00:21:13

all the people that is

00:21:14

he recognized the relevance of

00:21:16

embarrassment for the economy of

00:21:19

the idea and I think

00:21:21

that we should agree that

00:21:22

this should not come at

00:21:24

the expense of the inability

00:21:25

of countries to protect the

00:21:27

environment and human rights and

00:21:29

this is key and I

00:21:31

think this will be necessary

00:21:32

in order to balance the

00:21:34

system onto a four-course avoid



00:21:36

the criticism that is Diaz

00:21:39

is now it stopped raining

00:21:40

in some ways. So as

00:21:42

you As some of you

00:21:44

may know the way International

00:21:46

Investment agreements nowadays work is

00:21:49

that they are typically a

00:21:51

symmetrical this means that they

00:21:53

only through with allegations on

00:21:57

State and Buster's done really

00:22:00

have any obligations under the

00:22:02

treaties. So these have change

00:22:05

during the year. So I



00:22:07

will like you give some

00:22:09

examples of Latin American states

00:22:11

and other initiatives to help

00:22:14

a change in the view

00:22:17

of investment arbitration on on

00:22:19

the way, but it shouldn't

00:22:21

be a symmetrical body investors

00:22:23

should also be obliged to

00:22:26

entertain the standards under the

00:22:28

investment treaty. So I think

00:22:30

that's a good way to

00:22:33

Dubai this Tramp is to

00:22:36

say that we have been



00:22:38
seen three different friends in

00:22:40
a month arbitration that we

00:22:41
can identify indeed. Levels on

00:22:44
a man treat his mouth

00:22:45
days. So of course, the

00:22:47
first one will be those

00:22:49
treaties that actually are reflecting

00:22:52
the need to promote and

00:22:53
protect sustainable Investments and what

00:22:56
I mean by this is

00:22:57
those treaties that actually include

00:23:01
human rights and corporate social

00:23:03
responsibility of standards as a



00:23:06

references in their Prime bowls

00:23:08

or as an as non

00:23:10

binding obligation, but of course

00:23:12

some of you or or

00:23:14

the experts on public international

00:23:15

law, of course should know

00:23:17

that these kind of treaties

00:23:19

older or an advance on

00:23:22

of course, is it something

00:23:24

at the end they're not

00:23:26

really that useful because preambles

00:23:28

are not binding under international

00:23:31

law. I mean that of



00:23:32
course I go to to

00:23:33
interpret the treaty, but at

00:23:36
the end they are not

00:23:37
binding upon the bodies, so

00:23:41
As an example of December

00:23:43
strength, we have treaties such

00:23:45
as the Canada Columbia PA

00:23:47
which provide classes on these

00:23:50
type of classes that I

00:23:51
just mentioned before. We also

00:23:53
have the Argentina Chile FDA

00:23:55
the Colombia and Costa Rica

00:23:57
and we have the u



00:23:58

a e u UK Microsoft

00:24:01

3D. So those are some

00:24:03

examples of these poor Beasts

00:24:06

for strep throat as soon

00:24:07

as friends. We have those

00:24:10

type of classes or need

00:24:12

of states to preserve. Of

00:24:14

course, I'm guaranteed the right

00:24:16

to regulate and this kind

00:24:18

of glasses can be exemplify

00:24:20

with exception clause. One example

00:24:24

of this one is also

00:24:26

the Canada Columbia PA that



00:24:28
provides a general exemption clause

00:24:30
on human rights and environment

00:24:32
on clothes 2203. However, although

00:24:36
it might be clear that

00:24:37
this is an exemption Clause.

00:24:39
We we can also deal

00:24:41
with cases as the one

00:24:43
of echo versus Colombia that

00:24:46
even That we were dealing

00:24:49
with this kind of treaties

00:24:51
with really clear and classes

00:24:54
exception classes. Even in that

00:24:56
case the tribunal rejected that



00:24:59

argument of nutcase Columbia argue

00:25:02

of this exception Clause could

00:25:05

actually be used to this

00:25:06

liability to pay compensation. But

00:25:08

at the end of the

00:25:09

tribunal rejected interpretation of Columbia,

00:25:12

so I think. Of course

00:25:17

the system need to change

00:25:18

on the way tree to

00:25:19

start trying to drop this,

00:25:21

but of course we also

00:25:22

need Better prepare arbitrators because

00:25:26

of the end even if



00:25:27

we have very clear plus

00:25:29

does that one if they're

00:25:30

arbitrator is not an expert

00:25:33

in public international law on

00:25:35

how exception process work at

00:25:37

the end the result it's

00:25:38

not going to be the

00:25:39

one that said we are

00:25:40

looking for so as a

00:25:43

third friend, I will say

00:25:44

that we have those treaties

00:25:47

that old doll. There are

00:25:50

only a few they're very



00:25:53

good examples on how to

00:25:54

include investor application on the

00:25:57

treaties. But of course, he

00:25:59

wouldn't work by itself. We

00:26:03

also need Provisions that provide

00:26:05

the possibility for states to

00:26:07

Pal contractors class example of

00:26:09

beaster trend we have the

00:26:11

2016 Nigeria Morocco be a

00:26:13

TV. We also have the

00:26:15

ecowas to Promontory asked him

00:26:18

about payments and we have

00:26:19

the dress Pan African investment



00:26:21

gold and the protocol on

00:26:23

him. End of the African

00:26:25

continent has betrayed area which

00:26:27

although it's not doing Forest

00:26:29

because some of the state's

00:26:31

I think it is they

00:26:33

need like a approximately 22

00:26:35

to 28 states to ratify

00:26:37

the treaty but at least

00:26:40

it's it's a really good

00:26:41

initiative or not. And I

00:26:43

think although it's not important

00:26:44

yet. It's a way States



00:26:47

should actually see how to

00:26:50

implement the this kind of

00:26:54

obligation on investment treaty. So

00:26:56

which are exactly plural problems

00:26:59

that we really need to

00:27:00

fix. So the first is

00:27:02

that investment treaties most of

00:27:04

them know not all of

00:27:06

them, but most of them

00:27:07

it really like in Bastrop

00:27:09

legation and they need that

00:27:10

of course, they respect human

00:27:12

rights standards and environmental standards,



00:27:15

but the second problem is

00:27:18

of course the problem on

00:27:20

jurisdiction. I mean, it's not

00:27:23

enough to have Obligations on

00:27:25

investors by the we have

00:27:27

ulcer problem in Jersey diction

00:27:29

and its related, of course

00:27:30

to the existence of consent

00:27:32

by investors to be bound

00:27:34

by these kind of application

00:27:35

do something that we have

00:27:37

been working out attic strategy

00:27:40

in in different levels with



00:27:41
different Colombian and Latin American

00:27:44
stakeholders. He's on a 3D

00:27:47
architecture. I mean, we will

00:27:50
of course we are proposing

00:27:51
and we think that's the

00:27:54
way the system at the

00:27:57
end there. It's going to

00:27:58
have like a better Bond

00:28:00
on and of course, he

00:28:01
will avoid some Christians and

00:28:04
I need some 3D architecture

00:28:06
that should include three different

00:28:08
kind of off probation. So



00:28:12

I mean, I can be

00:28:13

of course one provision barring

00:28:16

student these three aspects o

00:28:19

the first of course investors

00:28:21

behavior on this by this

00:28:24

I mean ambassadors allegations on

00:28:26

a human rights, of course

00:28:28

and environmental law s of

00:28:32

course is to incentivize that

00:28:35

investor Behavior concerning human rights

00:28:38

and investment treaties, of course

00:28:40

shooting through the classes that

00:28:42

actually oblige investors to comply



00:28:45
with International standards in order

00:28:48
to be able or as

00:28:49
a condition for investors to

00:28:51
submit a claim to International

00:28:53
Patrician. I mean, of course

00:28:54
that will be hard but

00:28:57
at the end I think

00:28:58
that's the way it should

00:29:01
be do about it because

00:29:02
it also States should really

00:29:04
start guessing those cells are

00:29:06
asking themselves, which is the

00:29:08
kind of Investments that they



00:29:09

really want to receive. As

00:29:12

a lot going on. I'll

00:29:13

say that of course is

00:29:14

necessary to include an Annex

00:29:18

in the investment treaty wording

00:29:20

Buster confirms its consent to

00:29:23

be bound to his kind

00:29:24

of obligations because you know

00:29:25

how the system works the

00:29:27

states are the ones entering

00:29:29

into investment treaties. So that's

00:29:31

the reason why it's not

00:29:33

obvious or the consent of



00:29:35

his mistress is not in

00:29:37

the treaty itself. So I

00:29:40

think I'll live with her.

00:29:41

Thank you and maybe we

00:29:43

can come back at the

00:29:44

discussion portion to the to

00:29:47

the issue of State defenses

00:29:49

and and counter-claim specifically 11

00:29:52

interesting point. I'd like to

00:29:53

understand better for the audience

00:29:55

understand better is how can

00:29:57

these non binding obligations which

00:29:59

incorporated into the framework of



00:30:01

treaties? How do they then,

00:30:02

you know as the regulatory

00:30:03

framework becomes more enhanced and

00:30:05

more developed. How do they

00:30:06

make their way into international

00:30:09

law and then you know

00:30:10

by virtue of Standards States

00:30:14

and as well as investors

00:30:15

to be subject to certain

00:30:17

certain you are standards are

00:30:19

more developed a robust down

00:30:21

there, but we'll come back

00:30:22

to that point. So let's



00:30:23

move on to the Clovis

00:30:25

Clovis. You helped secure a

00:30:29

historic settlements in arbitration under

00:30:32

the Accord on Fire and

00:30:34

Building Safety in Bangladesh where

00:30:37

150 supplier factories would be

00:30:40

remediated and special funds provided

00:30:42

to bring those factories up

00:30:44

to code So based on

00:30:45

that experience, but all of

00:30:47

your other robust on International

00:30:50

commercial and investment Street Experience.

00:30:52

Can you explain from a



00:30:54
procedural perspective whether you see

00:30:56
arbitration as being the appropriate

00:30:58
mechanisms to resolve business and

00:31:01
human rights disputes Thank you,

00:31:04
Serena. And and thank you

00:31:05
everyone for it for joining

00:31:06
us today. If perhaps he'll

00:31:09
address had less ambitious question

00:31:11
and consider whether it's a

00:31:14
suitable mechanism to to address

00:31:17
specific human rights-related disputes and

00:31:20
I'll begin with just a

00:31:22
brief introduction about the Bangladesh



00:31:24

Accord arbitrations. For those of

00:31:27

you who have heard about

00:31:28

the disputes this way to

00:31:31

groundbreaking arbitrations filed in 2016

00:31:35

under the Bangladesh Accord on

00:31:37

Fire and Building Safety agreement

00:31:40

between labor unions and over

00:31:43

200 international fashion brands with

00:31:47

the stated objective is to

00:31:48

bring factories in Bangladesh of

00:31:51

the code. So I see

00:31:55

highlighted to read the labor

00:31:57

unions ultimately settled the the



00:31:59

arbitration and we did not

00:32:02

get to see a resolution

00:32:03

on the marriage. We were

00:32:06

very satisfied with the outcome.

00:32:07

I was slightly disappointed that

00:32:11

we didn't get to see

00:32:12

there the food life of

00:32:14

the arbitration, but of course,

00:32:16

but we did get significant

00:32:18

funds to the fund Remediation

00:32:20

in Bangladesh. So to be

00:32:23

able to address my last

00:32:25

ambitious question of whether it's



00:32:27

suitable. I think it's important

00:32:29

to to look at the

00:32:30

context in which the the

00:32:32

Bangladesh Accord on Fire and

00:32:35

Building. Safety was signed. We're

00:32:38

looking at 2013. When as

00:32:41

you might recall the Rana

00:32:43

plaza building collapsed in Dhaka.

00:32:46

This is one of the

00:32:47

most prosperous industrial accidents in

00:32:51

history. What happened next we

00:32:55

had Pressure we had a

00:32:58

significant impact us to bring



00:33:01

change to a ready-made garment

00:33:04

industry that was not living

00:33:06

up to the safety standards

00:33:08

provided either by Bangladeshi or

00:33:12

by General International general practice

00:33:18

and and safety standards. So

00:33:24

the Accord covers approximately 1,600

00:33:29

factories in Bangladesh and it

00:33:32

applied to two million garment

00:33:34

workers. This is an entire

00:33:36

industry. And what I would

00:33:41

call a watershed moment in

00:33:43

business and human rights the



00:33:45

labor unions and over 200

00:33:48

fashion brands agreed to arbitrate

00:33:51

disputes. This is groundbreaking for

00:33:55

the Shadow the possibility of

00:33:57

arbitration as a mechanism to

00:33:59

enforce business and human rights

00:34:01

dispute. But at the same

00:34:04

time providing the Brand's a

00:34:05

tool to manage the supply

00:34:08

chain risk that Sharon has

00:34:10

highlighted. It has to work

00:34:12

for me or for both

00:34:14

sides and and that was



00:34:15

key. So in July and

00:34:19

October 2016, we brought two

00:34:23

claims on behalf of international

00:34:26

Labor Union against two fashion

00:34:28

brands. We brought the claims

00:34:30

to the permanent Court of

00:34:31

arbitration and we were able

00:34:36

to do this pro bono.

00:34:37

I got really build \$2,000

00:34:40

a year. Not only that

00:34:45

highlights the greatest challenges in

00:34:47

bringing this type of dispute

00:34:49

to arbitration. It's expensive who



00:34:52

pays for frost. We also

00:34:54

had the PCA agree to

00:34:57

provide a very low you

00:35:00

noticed but I don't remember

00:35:01

exactly but it was a

00:35:02

very favorable terms to the

00:35:05

brands. And so the arbitrator's

00:35:08

agreed to to do the

00:35:10

same and it is one

00:35:12

key. Should I you have

00:35:13

to bury mind as as

00:35:14

you think about business and

00:35:16

human rights arbitration who pays



00:35:18
for it. So what were

00:35:21
Darth Vader's first we argued

00:35:24
that the fashion brands had

00:35:26
failed three years of the

00:35:28
Rana Plaza. They have failed

00:35:30
to secure. Safety in the

00:35:32
workplace has and they have

00:35:34
failed to provide the funds

00:35:36
necessary to bring the factories

00:35:38
into compliance. What does it

00:35:41
mean high risk safety items

00:35:44
fire exits sprinklers alarms one

00:35:49
sample that I'll never forget



00:35:50
was one fire exit that

00:35:53
would take people back into

00:35:55
the same building. I mean

00:35:57
that was just outrageous. So

00:36:01
in September 2017, the unions

00:36:05
have their first win the

00:36:07
arbitral tribunal admitted the claims

00:36:10
and found the Restriction to

00:36:12
decide on the Union's claims.

00:36:15
At the same time the

00:36:17
tribunal found it appropriate to

00:36:19
balance the interests of the

00:36:22
labor unions in asserting their



00:36:24

claims, but also the business

00:36:26

side and the interest of

00:36:28

the fashion brands of protecting

00:36:30

their business confidential information their

00:36:34

reputation as Tareen highlighted. So

00:36:38

the proceedings are confidential and

00:36:41

the identity of the respondent

00:36:43

fashion brands remain confidential to

00:36:46

the state. Eloise first win

00:36:50

the first case settled but

00:36:52

the second respondent decided to

00:36:54

move forward and went down

00:36:57

there very important challenges first



00:37:00

how to build the architecture

00:37:02

of a massive claims involving

00:37:05

over 200 factories and the

00:37:08

massive just a massive number

00:37:11

of documents. We received in

00:37:13

document production. It was quite

00:37:15

challenging from a design perspective

00:37:18

and it was very challenging

00:37:20

from from the Manpower women

00:37:24

flower perspective. We were able

00:37:27

to deploy up Ramona team

00:37:28

to get the job done

00:37:29

as I flat but it



00:37:32

was it was a substantial

00:37:33

meaningful effort. I know their

00:37:37

talents and procedural challenge was

00:37:39

to design a process whereby

00:37:41

the workers the factory workers

00:37:44

who were the third-party beneficiary

00:37:46

Sofia Would receive compensation we

00:37:50

have labor unions acting on

00:37:52

behalf of thousands of workers

00:37:53

and we had to put

00:37:55

together a mechanism so that

00:37:56

the phones could make it

00:37:58

to the beneficiaries. That was



00:38:03

quite fascinating and I would

00:38:06

say was and remains a

00:38:08

key challenge in deciding and

00:38:10

resolving this type of dispute

00:38:13

expecting a large number of

00:38:15

potential victims in a way

00:38:18

that is sufficient that can

00:38:20

be accomplished and that will

00:38:21

actually benefit those intended beneficiaries

00:38:25

of Sofia Court. So this

00:38:32

was in 2016 that was

00:38:35

a few years ago, and

00:38:37

we keep hearing about the



00:38:38

Bangladesh Accord arbitrations. So the

00:38:41

big question is whether the

00:38:43

model that the Bangladesh Accord

00:38:46

arbitration provide can be replicated

00:38:48

in other Industries as sharing

00:38:51

highlighted their significant pressure in

00:38:54

multiple Industries estate of financial

00:38:57

industry to incorporate EST into

00:39:01

the supply change management Security

00:39:05

Management, but how does that

00:39:07

happened? We also heard from

00:39:09

my dad Lucia that can

00:39:11

send it's really a key



00:39:13

component of the the agreement

00:39:17

to arbitrate delete content unique

00:39:19

parties to agree to submit

00:39:21

a dispute in their supply

00:39:23

chains to arbitration. We look

00:39:26

like at the Bangladesh Accord

00:39:27

and we still had context

00:39:29

and there was really huge

00:39:32

International pressure to enter into

00:39:35

this agreement, but have not

00:39:38

been the case in other

00:39:39

Industries, but the pressure is

00:39:42

mounting. We do see a



00:39:46
significant number of international Regional

00:39:49
instruments that are setting the

00:39:51
bar high at the international

00:39:53
level. We have the UN

00:39:55
guiding principles of justice and

00:39:57
human rights. They always CD

00:39:59
guidelines at the domestic Labour.

00:40:01
We have a UK Steven

00:40:03
react we have friends beating

00:40:06
and slow and we have

00:40:08
similar legislation in Germany and

00:40:10
Regional level in this is

00:40:12
very important. We have the



00:40:14

European Union's draft corporate sustainability.

00:40:17

Do you delete this directive

00:40:19

with Ethan at the door

00:40:22

went and asked that? I

00:40:24

think the expectation is that

00:40:25

will happen in 2024. It

00:40:28

will apply to nearly every

00:40:30

significant company either because he

00:40:33

will be directly subject to

00:40:34

Debbie breakfast or because it

00:40:36

will engage in dealings with

00:40:38

companies that need to engage

00:40:40

in the type of diligence



00:40:42
that the directive requires. So

00:40:46
this is very prevalent in

00:40:49
very important and I do

00:40:51
expect to see further intersection

00:40:53
between these types of commitments

00:40:56
and human rights obligations as

00:40:59
they stay out in the

00:41:00
infield. So recognized in the

00:41:09
significant challenges that going to

00:41:11
National Court represent. We're talkin

00:41:14
about accessibility to the cords

00:41:17
for an inconvenience. Green's legal

00:41:21
Norms shielding parent companies from



00:41:24

a level of the subsidiaries.

00:41:27

Ask the People working group

00:41:31

on International arbitration of business

00:41:35

and human rights assemble to

00:41:36

draft the Hague business and

00:41:38

human rights rules. This is

00:41:42

a very significant development but

00:41:45

it provides a framework a

00:41:46

process framework. It does not

00:41:48

provide stuffed a law that

00:41:51

stuff and if your needs

00:41:52

to come from South Laurel

00:41:54

from bridging all instruments from



00:41:56

some of the instruments that

00:41:57

we've already mentioned. They're not

00:42:00

intended to substitute Domestic Court

00:42:03

remedies, but they they are

00:42:05

meant to provide an alternative

00:42:07

a mechanism to accomplish two

00:42:11

main objective once protected potential

00:42:14

victims of Human Rights abuses

00:42:15

but to also provide companies

00:42:18

with a tool that will

00:42:20

allow them to manage supply

00:42:23

chain risk in a way

00:42:25

that protects their business interests



00:42:27
in confidentiality reputation and someone

00:42:31
has I said to get

00:42:33
concerned that the deal has

00:42:35
to work both ways. So

00:42:40
how does it offend happened

00:42:42
he can have their happened

00:42:43
in an agreement. You can

00:42:45
happened by means of a

00:42:47
very broad arbitration Clause it

00:42:50
could happen in a bilateral

00:42:51
investment treaty. Like my didn't

00:42:53
see a highlighted we could

00:42:55
see also agreements such as



00:42:57
the Bangladesh Accord that incorporate

00:43:00
arbitration as a mechanism to

00:43:02
solve dispute. So now ten

00:43:11
years after the first Bangladesh

00:43:13
Accord the notion of Human

00:43:15
Rights dispute resolution by arbitration

00:43:18
remains quite attractive. I think

00:43:23
the Bangladesh Accord arbitrations in

00:43:25
the settlement is reached show

00:43:27
the potential and the effectiveness

00:43:29
of arbitration as a suitable

00:43:31
mechanism to salt is the

00:43:33
human rights excuse but we



00:43:36

need players to to agree

00:43:38

there has to be further

00:43:39

agreements like the Bangladesh accord

00:43:42

or additional degree lens and

00:43:45

mechanisms of consent. We we

00:43:48

expect or at least I

00:43:49

expect that you will see

00:43:50

them more and more frequently

00:43:52

but only time will tell

00:43:54

and with that I can

00:43:56

play with my remarks. Thank

00:43:57

you, sir. Thank you very

00:43:59

much. Chloe's first and setting



00:44:02
the stage for for our

00:44:03
assessment and hopefully the audience

00:44:05
is assessment of whether arbitration

00:44:08
is in fact an appropriate

00:44:10
procedural mechanism for a for

00:44:12
the resolution of these types

00:44:13
of the students. I'm so

00:44:15
let's explore some other types

00:44:17
of mechanisms that could be

00:44:19
alternatives to International arbitration. Or

00:44:22
perhaps used in conjunction with

00:44:25
International arbitration. So it. Let's

00:44:27
turn to Shonda Shonda you



00:44:28

regularly deal with compliance and

00:44:31

disputes relating to labor and

00:44:33

employment issues including litigation and

00:44:36

Fair Employment process used how

00:44:39

have Labor and ESG issues

00:44:42

come up in the context

00:44:43

of your industry and is

00:44:44

are mechanisms of this mediation

00:44:47

or other non-judicial dispute resolution

00:44:50

Frame Works better suited in

00:44:53

your opinion to deal with

00:44:54

labor and employment issues than

00:44:57

arbitration. I think it's going



00:44:59
to rain and I Echo

00:45:00
what my fellow panelists said

00:45:03
earlier than really seems to

00:45:05
be here and I think

00:45:06
all of the attendees for

00:45:07
being with us today, I

00:45:10
think the short answer to

00:45:13
whether or not these issues

00:45:15
come out in the context

00:45:16
of what industry is. Yes.

00:45:19
Because EST and labor and

00:45:21
employment issues. Universal I happen

00:45:24
to work for a nonprofit



00:45:24
organization. That's us space. We

00:45:28
have locations in all 50

00:45:31
states US Virgin Islands and

00:45:32
Puerto Rico. So outside of

00:45:34
that don't have international presence,

00:45:36
but see some of the

00:45:38
same issues that you as

00:45:41
attendees another colleague C in

00:45:43
global organizations, and that's because

00:45:47
whether or not you're organized

00:45:49
as the entity for-profit or

00:45:51
not-for-profit your work depends on

00:45:54
the employees hired to complete



00:45:58

it in the labor relationship

00:46:01

between employer and employee often

00:46:05

comes into play and sometimes

00:46:06

there are disputes. You can

00:46:08

avoid them where I see

00:46:11

the primary convergence with ESG

00:46:13

and Labor unemployment is in

00:46:15

the middle part the ass

00:46:17

social and we see issues

00:46:20

and claims Around the Fur.

00:46:22

Equity equity and inclusion efforts

00:46:25

also workplace discrimination and harassment

00:46:29

issues which as you started



00:46:32

to mention train or sometimes

00:46:34

very well suited to being

00:46:36

resolved through 80 or whether

00:46:38

that be mediation or arbitration

00:46:40

as well as the other

00:46:43

types of occasions that semester

00:46:47

for example mentioned in financial

00:46:49

services as well as Clovis

00:46:52

discussing the retelling garment industry.

00:46:56

What what they do have

00:46:59

in common across-the-board often times

00:47:01

is also those workplace safety

00:47:04

and health issues that may



00:47:07

arise through a labor agreement

00:47:11

with workers or just buy

00:47:13

individual employers are employees and

00:47:16

workers. We've seen it frequently

00:47:18

as of late workplace safety.

00:47:22

Call the protection measures that

00:47:24

organizations have in place. Once

00:47:27

the height of the pandemic

00:47:29

that down a bit and

00:47:30

more workers were asked to

00:47:33

come back to work or

00:47:34

word never working remotely because

00:47:37

they had integral job that



00:47:40
could not be performed remotely.

00:47:41
We've seen claims through those

00:47:46
type of workers related to

00:47:47
how their organisation was protecting

00:47:50
them and their health and

00:47:52
safety, but also could go

00:47:54
hand-in-hand with forced labor child

00:47:56
labor and issues again, related

00:48:01
to discrimination and harassment in

00:48:03
the US at least our

00:48:04
framework through the equal employment

00:48:06
opportunity commission does provide mediation

00:48:11
resources. They have an internal



00:48:13

meaning of mediators who are

00:48:16

available and some jurisdictions in

00:48:18

the US in fact, like

00:48:20

the District of Columbia. Through

00:48:22

their Employment Practices agency require

00:48:25

you to go to mediation

00:48:26

in order to attempt to

00:48:28

resolve any concerns raised so,

00:48:32

you know, I think in

00:48:33

a nutshell, yes, I do

00:48:35

think it's a very viable

00:48:36

option that can be beneficial

00:48:39

to mitigating be very lengthy



00:48:44
time for litigation often takes

00:48:48
and the costly nature of

00:48:50
it. Either can also be

00:48:52
employed to resolve conflicts early

00:48:56
when there's some urgency like

00:48:58
a a climate or Greenhouse

00:49:03
emissions issue that must be

00:49:06
resolved before see more significant

00:49:09
damage has done or Acumen

00:49:10
rights violation, you know, an

00:49:13
injunction for example could be

00:49:15
requested to Halt whatever processes

00:49:17
in place that's being challenged.



00:49:21

Finally, I think I will

00:49:23

mention that I do think

00:49:25

arbitration is particularly suited to

00:49:27

the types of claims that

00:49:28

arrives in my practice area

00:49:30

because you do have the

00:49:32

expertise of the arbitral tribunal

00:49:35

then whether that be dealing

00:49:38

with issues of discrimination forced

00:49:40

labor Human Rights Commission standards

00:49:42

your often able to get

00:49:45

very experienced and trained meteors

00:49:49

in the subject matter and



00:49:50

expertise. You need to to

00:49:52

help resolve the claims. Without

00:49:56

the need for expensive litigation

00:49:57

which which is always good

00:50:00

for my perspective even as

00:50:02

a litigator and thank you

00:50:05

very much so last but

00:50:09

once again that lease Liz

00:50:11

you are the attorney adviser

00:50:13

at the NCP National contact

00:50:15

Point seated within the US

00:50:17

state department. Could you please

00:50:20

explain a bit more about



00:50:21

the always. Always CD guidelines

00:50:24

for Multinational Enterprises, which is

00:50:26

now has the extended title

00:50:28

of for responsible business conduct,

00:50:30

which I'm sure you will

00:50:32

touch on and ends and

00:50:36

what precisely is the non-judicial

00:50:39

grievance mechanism called the specific

00:50:41

instance process. We understand that

00:50:45

prefer an audience. This process

00:50:47

can involves human rights or

00:50:49

environmental disputes related to a

00:50:51

company's activities and in particular.



00:50:55

The specific instance process can

00:50:58

provide for mediation as an

00:51:00

alternative dispute resolution mechanism between

00:51:03

companies and various other stakeholders.

00:51:05

Can you please the offer

00:51:08

your perspective on whether this

00:51:09

is this greater? Flexibility can

00:51:12

be useful either alternative or

00:51:15

complementary school for international arbitration?

00:51:17

Sure. Thanks and thanks to

00:51:21

all of Michael panelist and

00:51:22

for the audience for being

00:51:23

here today. So I'm going



00:51:24

to give a brief overview

00:51:25

of what the guidelines are

00:51:26

because not everyone might be

00:51:27

familiar as well as he

00:51:29

has a contact point and

00:51:30

then finally will get in

00:51:31

Pacific instant process. So I

00:51:34

have some slides prepared just

00:51:36

in case if Sherman can

00:51:39

bring those up. We'll go

00:51:41

straight to the first slide.

00:51:43

We're looking for one second

00:51:46

think that should have done



00:51:47

it. All right, so we

00:51:48

can move to the first

00:51:49

side but actually has writing

00:51:51

on it lines were first

00:51:55

issued in 1976 and they

00:51:57

contain a set of recommendations

00:51:59

and guidance to Multinational Enterprises

00:52:02

on responsible business contact from

00:52:05

a hearing government and they

00:52:07

are not legally binding on

00:52:09

on companies and of themselves.

00:52:11

So currently there are fifty-one

00:52:13

adherent states that includes all



00:52:15

38 oecd member states as

00:52:17

well as 13 non-oecd members

00:52:21

that have it here to

00:52:22

the investment declaration which includes

00:52:24

the guidelines and that includes

00:52:26

for example, Morocco Argentina Brazil,

00:52:30

Ukraine and several other countries,

00:52:34

the guidelines contain eleven chapters

00:52:37

of recommendations, and these address

00:52:40

issues such as human rights

00:52:42

labor. Environment protection Science and

00:52:46

Technology bribery and Corruption and

00:52:48

are additional chapters covering issues



00:52:50
such as Taxation and competition.

00:52:53
So he always CD periodically

00:52:56
revises the guidelines. The most

00:52:58
recent revision was in 2023

00:53:00
this past June prior to

00:53:02
that the most recent update

00:53:03
was in 2011. So this

00:53:06
process I talk to you

00:53:07
the guidelines was a multi-stakeholder

00:53:09
process involved complications with labor

00:53:13
business and civil society. And

00:53:15
that was important to us

00:53:16
policy makers were involved in



00:53:17
the process and hopefully it

00:53:19
will have some time to

00:53:20
talk about what some of

00:53:20
those pages were later in

00:53:22
our discussion. So there is

00:53:27
a national contact point for

00:53:29
the oecd guidelines and hearing

00:53:31
States. This is actually the

00:53:33
requirements. There's a decision that

00:53:35
obligates here in government set

00:53:37
up a national contact weights.

00:53:39
And this is a binding

00:53:40
obligation on oecd members. So



00:53:42

the NCP has a couple

00:53:44

of key functions one is

00:53:46

basically just promote awareness and

00:53:48

encourage limitation of the guidelines.

00:53:50

That's why I'm here today.

00:53:51

And the second is to

00:53:55

offer a specific instance mediation

00:53:57

process to be used when

00:53:59

a party raised allegations regarding

00:54:00

the contacts of an Enterprise

00:54:02

under the guidelines and the

00:54:04

focus there is to find

00:54:05

a resolution for mediated dialogue.



00:54:08

So that gives countries a

00:54:10

lot of flexibility on how

00:54:11

they constitute the use of

00:54:13

screen mentioned ours is actually

00:54:15

a single person with a

00:54:17

small staff and in the

00:54:19

state department and specifically are

00:54:21

Bureau of economic Affairs that

00:54:23

being said the US. Work

00:54:25

closely with other offices both

00:54:27

of the state department and

00:54:28

within the interagency. So talk

00:54:34

now a little bit about



00:54:35

what the specific instance process

00:54:36

is so this is a

00:54:38

non-judicial voluntary optional and consensual.

00:54:42

He needs to address disputes.

00:54:44

It'll involve a situation which

00:54:47

a complaint is raised about

00:54:49

the conduct of a business

00:54:50

alleged to be inconsistent with

00:54:51

the guidelines. Any interested parties

00:54:54

can submit to submit specific

00:54:56

instance and it is processed.

00:54:57

INTP is neutral in the

00:54:59

US and see if he



00:55:00

takes very seriously being unbiased

00:55:02

a to all stakeholders involved

00:55:03

in that process. So each

00:55:05

country has their own procedures

00:55:07

for how to specific instances

00:55:09

operates. I'm going to talk

00:55:10

a little bit about how

00:55:12

the process works, but then

00:55:13

obviously focusing on what it

00:55:15

looks like in the US

00:55:16

process so we can go

00:55:17

tonight. But let's connect then

00:55:21

you said that if it's



00:55:23

not on bindings non-judicial, what

00:55:25

would be the interest on

00:55:26

for companies participated? All right,

00:55:33

so talking a little bit

00:55:35

about how the process works.

00:55:37

So as you might suspect

00:55:38

it starts with when I

00:55:40

submit her which could be

00:55:42

an NGO or labor unit

00:55:43

or sometimes even an individual

00:55:45

and it's a complaint to

00:55:47

the NCP alleging conduct by

00:55:50

us business or business operating



00:55:52

enter from the United States

00:55:53

points dntp roll a x

00:55:59

coordinate with other ncp's in

00:56:00

this could be for a

00:56:01

variety of reasons. So in

00:56:03

some instances, there could be

00:56:04

a contact at siletz River

00:56:07

occurred in multiple. If you're

00:56:08

in space or the corporation

00:56:11

a tissue has multiple offices

00:56:13

in it here and states

00:56:14

or because there have been

00:56:16

similar or related specific instances



00:56:18

submit it to other ncp's.

00:56:21

So the MC people then

00:56:23

share the complaint with the

00:56:24

company and give them a

00:56:25

chance to respond. And the

00:56:27

party is on May submit

00:56:28

additional responses to one another

00:56:30

about about the process in

00:56:31

the allegations. I'm at the

00:56:34

end of that process was

00:56:36

all the information is gathered.

00:56:37

The NCP will conduct was

00:56:39

called an initial assessment as



00:56:41

to whether or not to

00:56:42

offer mediation. And so this

00:56:44

will look at several criteria

00:56:45

in laid out in oecd

00:56:48

guidance and some of those

00:56:49

criteria include does a complaint

00:56:52

include a material issue covered

00:56:54

by the guidelines is the

00:56:56

Enterprise actually covered by the

00:56:58

guidelines itself isn't multi-national whether

00:57:01

there's applicable law or other

00:57:03

fellow proceedings, which will also

00:57:05

talk about hopefully that would



00:57:06

limit the ability of ntp

00:57:08

to offer, you know, really

00:57:10

contribute to a resolution of

00:57:11

the issue and then additionally

00:57:15

they may look to whether

00:57:16

there's by providing mediation they

00:57:19

would contribute to the effectiveness

00:57:21

and purpose. So there's two

00:57:23

possible outcomes of an initial

00:57:26

assessment one is complete and

00:57:28

see if he just declined

00:57:29

saw for mediation the case

00:57:31

stands there, too. The NCP



00:57:34

decides to offer mediation with

00:57:36

the parties to do that

00:57:38

the parties that have the

00:57:39

option whether or not participate

00:57:42

if one or both declined

00:57:43

again caissons, everybody goes home

00:57:46

if they do a lot

00:57:49

to proceed with by mediation

00:57:51

at that point, you will

00:57:53

offer a venue for the

00:57:55

mediation and a party as

00:57:56

well sit down with the

00:57:57

mediator and the NCP to



00:57:59

try to come to a

00:58:00

consensus roll resolution over the

00:58:03

issues. So again, if there's

00:58:06

no if there is great,

00:58:09

hopefully everybody's happy with that

00:58:11

outcome and at the end

00:58:13

of that process whether it

00:58:15

ended earlier in the process

00:58:16

after I An initial assessment

00:58:19

or even an offer of

00:58:21

mediation or ends after with

00:58:23

an agreement will publish what's

00:58:27

called a final statement and



00:58:29

a final statement will talk

00:58:30

among other things about what

00:58:33

the allegations were and how

00:58:34

they ended and nothing discussed

00:58:38

during mediation is that are

00:58:39

actually occurred would become public

00:58:41

unless both parties agreed to

00:58:43

it. So in our practice

00:58:44

with a final statement of

00:58:47

the entity allows the parties

00:58:48

to review the final same

00:58:49

sort of thing and I

00:58:55

see people Endeavor to protect



00:58:57
information being sensitive to the

00:58:58
party parties throughout the process

00:59:00
and then finally in the

00:59:02
future that I'm seeing he

00:59:04
may decide to conduct follow-up.

00:59:05
So if that could involve

00:59:07
for example if there is

00:59:09
a breach than CP May

00:59:11
monitor implementation of that agreement

00:59:12
or at times and see

00:59:14
if he will actually Provide

00:59:18
recommendations to the party is

00:59:19
about things that they should



00:59:21

take into account and we

00:59:22

follow up with those recommendations.

00:59:24

So now I'll talk a

00:59:26

little bit about the benefits

00:59:28

of the specific process. So

00:59:31

you might ask is the

00:59:32

strength head. What is the

00:59:33

benefit since this is completely

00:59:34

voluntary and consensual why would

00:59:37

people participate in this so

00:59:39

I can offer a few

00:59:40

rough generalizations for everyone. There's

00:59:43

a chance to diffuse problems



00:59:45
try to build trust in

00:59:46
relationships. Explain your Viewpoint. Look

00:59:50
for Creative Solutions and win-win

00:59:51
outcomes. It is more flexible

00:59:54
and more informal than litigation.

00:59:56
So that's 11 Benefit. There's

01:00:00
also the benefit that National

01:00:01
legal systems can be constrained

01:00:03
in the types of remedies

01:00:04
that are available for this

01:00:06
is this offers the possibility

01:00:07
that people can sit down

01:00:08
and actually come to the



01:00:09

solution that works for them

01:00:11

under the circumstances. We brought

01:00:13

her than what you might

01:00:14

see and say litigation. I'm

01:00:16

for business is a chance

01:00:18

to participate in a venue

01:00:21

where you have a say

01:00:22

in the outcome and how

01:00:22

they issue was resolved. Obviously,

01:00:25

it's consensual mention that if

01:00:26

you decide it's a lower

01:00:28

risk forum, and the mediation

01:00:30

of salt is non-public. So



01:00:32

for unions, it's another it

01:00:34

provides another alternative potentially more

01:00:37

Cooperative way to resolve disputes

01:00:40

with SSI, which is also

01:00:42

benefit for civil society to

01:00:43

submit these types of clients

01:00:45

and put them I'd also

01:00:47

know that it's really a

01:00:49

chance to sit down at

01:00:50

the table with business people

01:00:51

which can be important for

01:00:53

disenfranchised groups and people it's

01:00:56

also form to build a



01:00:58

ton of bility, even when

01:00:59

there isn't a resolution elsewhere

01:01:01

such as Imports or if

01:01:03

you're in a situation, where

01:01:04

are the legal framework for

01:01:06

the other issues you're dealing

01:01:07

with such as an environmental

01:01:08

issue where that legal framework

01:01:10

developed where the time? And

01:01:13

I think for everybody is

01:01:14

also a way to address

01:01:16

issues down the supply chain

01:01:18

because the guidelines should you



01:01:19
incorporate due diligence guidance up

01:01:22
there? Thank you so much.

01:01:24
So and in addition to

01:01:26
that the two types of

01:01:28
additional disputes that we've heard

01:01:30
about in a mediation the

01:01:32
the specific instance process, which

01:01:35
then eventually can lead to

01:01:36
mediation. Of course also a

01:01:38
number of other types of

01:01:40
alternative dispute resolution mechanisms. That

01:01:43
intersects with ESG is so

01:01:45
some of those include the



01:01:47

United Nations Human Rights Council

01:01:49

has the complaints procedure the

01:01:51

International Labour organisation has the

01:01:53

complaints procedure various Regional bodies

01:01:56

such as the inter-american commission

01:01:58

inter-american court that European and

01:02:01

African Regional systems as well

01:02:03

have various complaints procedures, which

01:02:05

allow you to which allow

01:02:07

different stakeholders. Sometimes even simple

01:02:11

Society to bring to Brinkley.

01:02:13

Stop before these various body

01:02:15

is so when we when



01:02:17

we assess this question of

01:02:18

whether arbitration and mediation or

01:02:21

other mechanisms are important. We

01:02:22

should also keep keep those

01:02:23

in mind as well given

01:02:25

time. Let's move quickly to

01:02:28

a few further questions. You

01:02:30

have about 15 minutes left

01:02:32

on the panel. I'm so

01:02:33

we'll do a lightning grounds

01:02:34

of additional follow-ups on various

01:02:36

points. Everyone keep their remarks

01:02:38

to one to two minutes.



01:02:40

That would be ideal. So

01:02:43

let's quickly go to Les.

01:02:46

Plus I supposed to Maria

01:02:48

Lucia and then maybe you

01:02:49

can take us a different

01:02:51

aspects of this what what

01:02:52

what are the policy implications

01:02:54

you you touched upon expanding

01:02:57

into expanding isds applicability to

01:03:01

investors and in particular what

01:03:04

impact does an increasingly expensive

01:03:06

view of investor responsibilities have

01:03:09

on issues of dsqb HR



01:03:11
and in labor rights? Thank

01:03:14
you for being so well,

01:03:15
I'll think that it could

01:03:17
be very positive, you know,

01:03:19
the and the system is

01:03:21
suffering a lot of criticisms

01:03:23
by state. So I think

01:03:25
that Rd and if we

01:03:26
include this type of classes

01:03:28
investment treaties, of course not

01:03:30
only investors allegations, but also

01:03:33
the boss to be with

01:03:34
you too. If I contract



01:03:35
claims the possibility that it

01:03:36
states have regulatory Powers if

01:03:39
we include this type of

01:03:41
courses of the end in

01:03:43
one it won't fix the

01:03:45
system completely, but I think

01:03:48
it will be very positive

01:03:49
and some of the criticism

01:03:51
the criticisms, of course, I

01:03:53
could stop at I think

01:03:55
of course you into trouble

01:03:56
working group 3, it's doing

01:03:58
an amazing job in the



01:04:00

reform of the system, but

01:04:01

I don't think that procedural

01:04:03

reform is he needs cells

01:04:05

are not so at the

01:04:07

end. I also don't really

01:04:09

think that the solution needs

01:04:11

to be announced or terminate

01:04:12

treaties. So I think in

01:04:16

fact that the efforts that

01:04:18

African countries are currently doing

01:04:21

it's a huge example and

01:04:23

it sells because at the

01:04:25

end they are not kicking



01:04:28

or running a far from

01:04:31

the system, but they are

01:04:33

kind of including the substantive

01:04:35

Provisions that at the end.

01:04:37

It will be very useful

01:04:37

at 4 States. Thank you

01:04:40

closest VIP. It is still

01:04:44

turned very narrow Universe. I'm

01:04:46

unworthy Mystic about arbitration making

01:04:49

its way into normal business

01:04:51

practice test and and in

01:04:53

the stool of arbitration being

01:04:57

used more effectively to just



01:05:00

enhance accountability down all the

01:05:03

way down to production Supply

01:05:06

chains and Company at the

01:05:08

top. You know aren't investors

01:05:15

already subject now to heighten

01:05:17

standards of responsibility by virtue

01:05:21

of this increased regulations such

01:05:23

as the Paris of the

01:05:24

Paris agreement that she has

01:05:26

tripled ecsrd and other other

01:05:29

reporting requirements as you're coming

01:05:30

into effect in in Europe,

01:05:32

you already have those specific



01:05:39
obligations, which helped on the

01:05:41
front end before entering into

01:05:43
a transaction. But where there

01:05:45
are gaps are where there

01:05:47
is Need for further risk

01:05:49
management because of unforeseen events,

01:05:53
which caused harm to for

01:05:55
example indigenous people or particular

01:05:58
people in the phone number

01:06:00
to Community. Then International arbitration

01:06:03
may still be the solution.

01:06:05
Thank you, and let's go

01:06:09
quickly to to a question



01:06:11
that we touched upon in

01:06:13
bed. Reputational risk so companies

01:06:15
are increasingly concerned with not

01:06:17
only civil civil liability out.

01:06:19
Right but with the reputational

01:06:21
risks associated with involving ESP

01:06:24
labor rights and human rights

01:06:25
given, you know, what what

01:06:28
have you experienced in your

01:06:30
in your practice? How would

01:06:31
you describe the interplay between

01:06:32
reputational risk on the one

01:06:35
hand and civil liability at



01:06:36

and this goes I guess

01:06:38

too all of the the

01:06:39

corporate actors in and Liz's

01:06:40

well and I'm you know

01:06:41

it have you encountered company

01:06:45

is thinking about reputational risk

01:06:47

as a driver for coming

01:06:49

to the table and gave

01:06:50

you and Remediation thinking about

01:06:52

these things on the front

01:06:53

end as opposed to waiting

01:06:55

for a civil liability pancholi.

01:06:57

Kick in in these various



01:06:59
regulations. I would start by

01:07:03
just saying yes, I absolutely

01:07:05
think that DSG as a

01:07:09
discipline is at its heart

01:07:11
at a risk analysis. We're

01:07:12
adding The calculus that businesses

01:07:17
are already making about how

01:07:19
they present what their brand

01:07:21
is as with respect to

01:07:24
how their operating with respect

01:07:26
to environmental regulatory requirements or

01:07:30
even if they're not required.

01:07:32
How do we as a



01:07:33

business want to operate because

01:07:34

of how it affects the

01:07:37

world affect the business clients

01:07:40

that we serve and that

01:07:42

goes for the social issues

01:07:44

I think as well as

01:07:45

the government's falls into place

01:07:48

because the words are required

01:07:51

to ensure that they need

01:07:53

their fiduciary obligations of oversight

01:07:55

to you know, make sure

01:07:57

they're operating appropriately, but absolutely

01:08:00

all of this as it



01:08:01
is at its heart a

01:08:03
risk analysis how much risk

01:08:05
an the business is zoom

01:08:06
and how should we operate

01:08:07
to mitigate that risk and

01:08:10
maybe some more quickly before?

01:08:13
Dams in the reputational point

01:08:16
in assessing whether and I'm

01:08:19
Different financial institutions should invest

01:08:22
in particular Investments or withdraw

01:08:24
investment from the projects. I

01:08:27
think it's a very interesting

01:08:27
question because you can see



01:08:30
a different response depending on

01:08:31
the particular culture or nation

01:08:33
that is involved. So for

01:08:35
example, as found that in

01:08:36
Europe where they have a

01:08:38
very strong regulatory framework where

01:08:42
it's not specifically a black-and-white

01:08:44
question of does it meet

01:08:45
the regulation or not where

01:08:47
it is reputational risk, they

01:08:49
become very nervous and it

01:08:51
will be pretty much more.

01:08:53
Let's not do that. Let's



01:08:54
not finance that transaction. Let's

01:08:56
not continue to invest in

01:08:58
this particular deal. Where is

01:09:00
I would find u.s. Banks

01:09:02
a little more bullish actually

01:09:03
in terms of reputational risk,

01:09:05
and they won't necessarily see

01:09:08
a reputational risk issue as

01:09:11
the strong deterrent in the

01:09:13
sea. Same way as they

01:09:14
would in Europe. So it's

01:09:16
it's very interesting to see

01:09:17
how it is in the



01:09:18

US where it's not quite

01:09:21

the same appreciation of sustainability

01:09:23

requirement. When is not the

01:09:26

same as maybe we can

01:09:29

if you can adjust stop

01:09:31

playing but also incorporate that

01:09:32

the point that we wanted

01:09:34

wanted you to dress in

01:09:35

this portion, which is a

01:09:37

bit more color on you

01:09:39

know, how the guidelines have

01:09:40

been revised what are particularly

01:09:42

the environmental chapter. What substance



01:09:44
is now our company is

01:09:46
being held to as the

01:09:47
due diligence standards within the

01:09:49
oecd guidelines of Corporation would

01:09:54
think that might be going

01:10:02
on. So for a parallel

01:10:04
proceeding that could be anything

01:10:05
involving but occasionally or other

01:10:07
specific instances, either before the

01:10:09
same nopr another entity or

01:10:10
really any other proceeding either

01:10:12
domestically or Internationally and what

01:10:15
those he got installed us



01:10:17

is that there is flexibility

01:10:18

there and we are supposed

01:10:20

to basically take into account.

01:10:22

You know, we're not precluded

01:10:24

from offering good offices if

01:10:26

there are parallel proceedings. I'm

01:10:27

going or if there have

01:10:28

been in the past or

01:10:29

could be in the future,

01:10:29

but we're really supposed to

01:10:31

looks you whether or not

01:10:32

and we can contribute to

01:10:34

a resolution of issues with



01:10:35
promotion of the guidelines of

01:10:36
what we're looking at their

01:10:37
key factor is whether or

01:10:39
not there's one serious Prejudice

01:10:42
to any party by proceeding

01:10:43
with of the specific and

01:10:44
since the mediation and we're

01:10:46
getting some additional guidance about

01:10:47
how to do you know

01:10:50
taking care of others practices

01:10:52
and you don't consider other

01:10:54
options and then turning quickly

01:10:56
to your other question about



01:10:57

some of the number of

01:10:59

updates. I think a few

01:11:00

to highlight here are given

01:11:02

the time or the environmental

01:11:03

updates that saw a larger

01:11:05

number of updates and some

01:11:06

of the other chapters. So

01:11:08

I think the big headline

01:11:08

there or what my clients

01:11:10

would say is the big

01:11:11

headline is that there is

01:11:12

now incorporated in The guidelines

01:11:14

recommendations regarding a climate change



01:11:16
adaptation and mitigation. And so

01:11:20
they're the way the guidelines

01:11:22
deal with this is their

01:11:24
nature which is a non-binding

01:11:25
recommendations rather than prescriptions for

01:11:29
what countries are companies should

01:11:30
do but they clarify a

01:11:32
number of things including risk-based

01:11:35
due diligence related to adverse

01:11:36
environmental impacts and there's now

01:11:39
a list that includes some

01:11:40
of those impacts such as

01:11:42
biodiversity loss and climate change.



01:11:43
So I'll leave it there

01:11:45
and if I can just

01:11:47
add maybe one point which

01:11:48
is that I think the

01:11:50
environmental chapter now also presents

01:11:51
a close Nexus where the

01:11:53
issue of Human Rights and

01:11:54
another interchangeability of our interrogation

01:11:57
of those too much between

01:12:01
adverse environmental impacts and other

01:12:04
types of impacts that you

01:12:05
might see covered by other

01:12:06
chapters in the guidelines. Wonderful.



01:12:09

I think we are close

01:12:12

to time. Do we have

01:12:14

time for one audience or

01:12:15

two audience questions may be

01:12:17

okay any questions from from

01:12:21

the attendees here or are

01:12:22

online? No questions Missy online

01:12:28

for any okay. Well, I

01:12:33

guess then we'll just leave

01:12:35

it at that and thank

01:12:36

you so much to all

01:12:37

of our panelists. Hopefully the

01:12:38

attendees have learned a bit



01:12:40

more about you see how

01:12:41

it intersects with with arbitration

01:12:44

particularly, but also with other

01:12:45

and non-judicial dispute resolution mechanisms,

01:12:49

and we certainly I would

01:12:51

completely agree with clove uses

01:12:53

expectation that we will see

01:12:55

more and more of these

01:12:56

types of disputes more intersection

01:12:57

with these fields as regulation

01:12:59

increases and as companies are

01:13:02

taking these issues more and

01:13:04

more into account in their



01:13:05
internal operations to thank you

01:13:07
so much for being here.

01:13:08
Thank you for panelist to

01:13:10
the organizers and the have

01:13:11
a great afternoon everyone.