

Kluwer Arbitration Blog

ICCA 2014. Linklaters Kicks Off Breakfast Seminar With A Survey Of Emerging Markets

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On Monday, 7 April, Linklaters started off bright and early with a tour through the emerging markets in Australasia, Africa, the Middle East and Latin America. The overall sentiment expressed by the panelists is that each of these regions may have challenges, but there are positive trends that merit interest and investment.

In Australasia, panelist Jelita Pandjaitan (Linklaters) discussed the positive and increasing trend in Chinese recognition of arbitral awards. She also reviewed important decisions from India, including *Bharat Aluminium v. Kaiser Aluminium* that demonstrated some retrenchment from the previous “interventionist” view of Indian courts reflected in the controversial *Bhatia International v. Bulk Trading SA* decision. The *Bharat Aluminium* decision is notable in that it limits the scope of review of challenges to arbitral awards that are the product of foreign arbitrations. Despite this positive development, Ms. Pandjaitan noted the significant delay in Indian proceedings as a continuing major challenge in the region.

Panelist Andrea Martignoni of Allens continued with a review of Vietnam and Indonesia. He noted the significant delays in legal proceedings in Vietnam as well as the “parochial” attitude some courts have with respect to interpreting Vietnamese statutes narrowly sometimes resulting in non-recognition of foreign arbitral awards. In Indonesia, Mr. Martignoni emphasized the importance of counsel conducting procedural due diligence to ensure that the proper submissions are made for enforcement of foreign arbitral awards, including for example, having the arbitrator give counsel for the victor a proxy to register the award and translating the award into the Indonesian language. Mr. Martignoni concluded with an update on Australia, noting the change in judicial culture away from the 1995 decision in *Resort Condominiums International Inc v. Bolwell* and towards a stricter view of the public policy exception to enforcement of foreign arbitral awards. He also pointed to the federal court’s appointment of judges that specialize in handling arbitrations as another positive trend in Australian arbitration law.

Covering Africa, panelist Nuno Ferreira Lousa of Linklaters cited positive statistics on the African continent: between 2009 and 2011, the number of ICC arbitrations involving African parties rose from 126 to 179, representing a 42% increase, in comparison with a slight drop of 2.5% of total ICC arbitrations over the same period. Mr. Ferreira discussed recent cases in Nigeria, Tanzania, and Mauritius with pro-arbitration enforcement results. He also highlighted South Africa’s position that the right to enforce awards falls squarely within the right to access to courts, which is a constitutional right.

Turning to the Middle East, panelist Roland Ziadé of Linklaters focused on the United Arab Emirates and Qatar, which he described as two major hubs of international arbitration that are also signatories of the New York Convention. Mr. Ziadé lamented the lack of consistent enforcement of arbitral awards, but insisted that overall there were positive trends. One example in Qatar was a 2012 decision setting aside an award because the arbitrator had not issued the decision in the name of the Emir of Qatar. In Dubai, he also highlighted a 2013 case where the award was not enforced for lack of jurisdiction because the court held that the location of the debtor's assets in the UAE was insufficient grounds for jurisdiction to enforce a foreign award. Mr. Ziadé also reminded counsel of important requirements of UAE enforcement including the proper swearing of oaths, proper powers of attorney and having the arbitrators sign each page of the award.

Rounding out the panel, Matthieu de Boisséson of Linklaters covered Latin America and cited positive trends, including that the majority of the Latin American statutes on arbitral enforcement were inspired by or based on the Model Law and that the courts applied both the 1958 New York Convention and the 1975 Panama Convention.

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This entry was posted on Wednesday, April 9th, 2014 at 5:27 pm and is filed under [Arbitration, ICCA Miami 2014](#)

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