

NEWS

Varied judicial support for arbitration creates uncertainty

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Although courts in many Latin American jurisdictions are broadly positive to arbitration, it is the occasional poor judicial decisions which erode investor confidence, said a panel at the IBA conference today.

Session co-chair Henri Alvarez QC of Fasken, Martineau DuMoulin LLP in Canada asked his fellow panellists whether there should be such a focus on the unfavourable decisions when even in jurisdictions such as Argentina, where the courts have taken widely varying decisions related to arbitration, there are many examples of a supportive approach.

Julio César Rivera of Rivera Abogados in Argentina replied it was precisely the mix of good and bad decisions that created uncertainty. Oliver Armas of Chadbourne & Parke LLP agreed, saying, "It erodes investor confidence when there are concerns over the application of the rule of law - and that has a real practical impact."

The session also considered Santiago's role as a possible seat for international arbitration, given that it has a new UNCITRAL model law in place, and that Ecuador has nominated it as the seat for arbitration in the new contracts it is signing with oil companies.

"Chilean courts give a great deal of deference to international arbitration, but they are seldom confronted with these issues," said Andrés Jana Alvarez of Hinzpeter Jana Alvarez in Chile, adding that in the few cases seen, courts avoided reviewing cases and only intervened when expressly allowed to by law, among other positive signs.

Eduardo Silva Romero of Dechert LLP in Paris and Oliver Armas agreed that the evidence was sufficient to feel comfortable with Chile as a possible venue for international arbitration, although Jana noted there remained challenges ahead.

Silva Romero also commented on Colombia's new bill on arbitration, saying it was a welcome development, but still the question of state entities in arbitration was being considered separately.