

ARBITRATION INCREASING DESPITE THREAT OF INTIMIDATION

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Number of Latin American parties in international arbitration doubled in the last ten years with Mexico and Chile among the favoured seats.

Arbitration proceedings are on the increase in Latin America, though in some countries in the region, arbitrators still face intimidation and even imprisonment, attendees at a recent event organised by The Latin American Lawyer in Mexico City were told.

International Chamber of Commerce (ICC) statistics show that the number of Latin American parties in ICC Arbitration grew from 170 in 2005 to 393 in 2015, while the number of arbitrations with seats in Latin America increased from 20 to 66 during the same period.

Arbitration experts speaking at the event – held in partnership with Kluwer Law International – said factors to consider when selecting an arbitral seat in Latin America included: the prevailing regulatory framework of the seat; the laws of the applicable country; which countries (or regions) the parties are from; and whether the judicial system of the potential seat is perceived as “friendly” to arbitration. Another important factor to consider is whether the arbitral seat is in a country that is a

signatory of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Claus von Wobeser, founding partner of Von Wobeser y Sierra and the event moderator, said international arbitrations involving a Mexican party and a foreign party with Mexico as the seat of arbitration are now a common scenario. "We have also seen parties use certain venues in Latin America such as Mexico or Chile for disputes which are international in nature and that do not involve any parties from the country in question," he added. Some event attendees expressed concern regarding the limited adoption of arbitration beyond Mexico City federal courts. Participants warned that judges need to be educated about the benefits of arbitration.

Meanwhile, Luis Enrique Graham, partner at Hogan Lovells, said: "There has been a significant increase in the amount and quality of arbitration practitioners in Latin America." However, despite achievements in certain countries – particularly Brazil, Colombia, Mexico and Peru – attendees warned of unhelpful attitudes in some nations where arbitrators have been subject to harassment and even imprisonment.