

A MORE COMPLEX DISPUTE ENVIRONMENT - SQUIRE SANDERS

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The changing nature of Latin American investments and of the parties involved in them is having a significant effect on the types of disputes arising and in their resolution, say George M von Mehren and Pedro Martínez-Fraga of Squire Sanders & Dempsey.

"The increase in regional international investments and the growing sophistication of companies across Latin America means that disputes are becoming more frequent and complex," says von Mehren, head of the firm's dispute resolution practice. A rise in commercial relations inevitably means an increase in the number of disputes, and while much of the region's judiciary is growing in stature and independence, international parties continue to prefer their own domestic courts.

Arbitration therefore provides an accepted middle way for all the parties and for which Miami is typically considered a regional hub, where both the AAA and ICC are very active but where there is also now an increase in UNCITRAL cases, he says.



As a result of regime changes in some countries, rising oil and gas prices, and governments' increased emphasis on energy issues, a rise in ICSID cases between companies and states is also evident – notably involving Venezuela, Bolivia and Ecuador – says von Mehren

"Politics can be a great factor as governments will often look to study and review contracts and concession agreements involving foreign businesses and this has been particularly prevalent within hydrocarbons and natural resources," he says.

But a rise in arbitration is evident across the continent, says Pedro Martinez-Fraga, Miami-based coordinator of the Latin American dispute practice.

"In cross-border deals the need for legal consistency across jurisdictions is seen as paramount. The region's boom in real estate, energy and infrastructure projects, and the flourishing economic exchange with countries in Asia, the US and the EU, means that there is now a clear preference among parties for any disputes to be settled in the international arbitration courts – which provide a legitimate alternative to court proceedings," he explains.