

MIAMI: LATIN AMERICA'S DISPUTE RESOLUTION CENTRE - SQUIRE SANDERS & DEMPSEY

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Arbitration disputes are an inevitable byproduct of the rise in investment across Latin America, and for which Miami is playing an expanding role in both the pre-contractual and dispute resolution phases, say Pedro J Martinez-Fraga and C Ryan Reetz of Squire Sanders & Dempsey.

"There is no decrease in the attraction of arbitration across the region although there have been changes in the way disputes are administered. Certain Latin American Governments are now much less willing to utilise ICSID but remain happy to use the more commercial institutions," says Martinez-Fraga. Many investors clearly retain a preference for ICSID, even though the process can be cumbersome and perhaps more "state-friendly" than some would accept, they say, but a rise in

European and Asian investment is helping to raise the profile of institutions such as the ICC.

"There is a recurring acceptance that there is no credible alternative to arbitration particularly when it comes to concession agreements with States. Governments always prefer matters to be litigated in the national courts but investors clearly do not, a middle way needs to exist," adds Reetz.

Significant therefore is the preference for Miami as a venue and seat for regional arbitrations – Florida courts support the arbitration process and are reluctant to interfere in disputes.

"Miami is the primary contact point for businesses investing across the region. It has a growing banking sector, many Latin American companies now have operations here, and US companies increasingly use it as an administrative centre for regional issues. A large number of Fortune 500 companies have already relocated their regional General Counsel here," says Reetz.

In any event, as investors take a more sophisticated approach to Latin America there is acceptance that more thought has to be given to what happens if things 'go wrong'. "There is now much more analysis of the choice of arbitration venue, language, rules and seat," says Martinez-Fraga.

"Disputes need to be resolved properly and this means that there is no 'one-size fits all' formula that can be adopted. The inclusion of a 'midnight' arbitration clause – thrown in at the end of negotiations – is already a thing of the past."