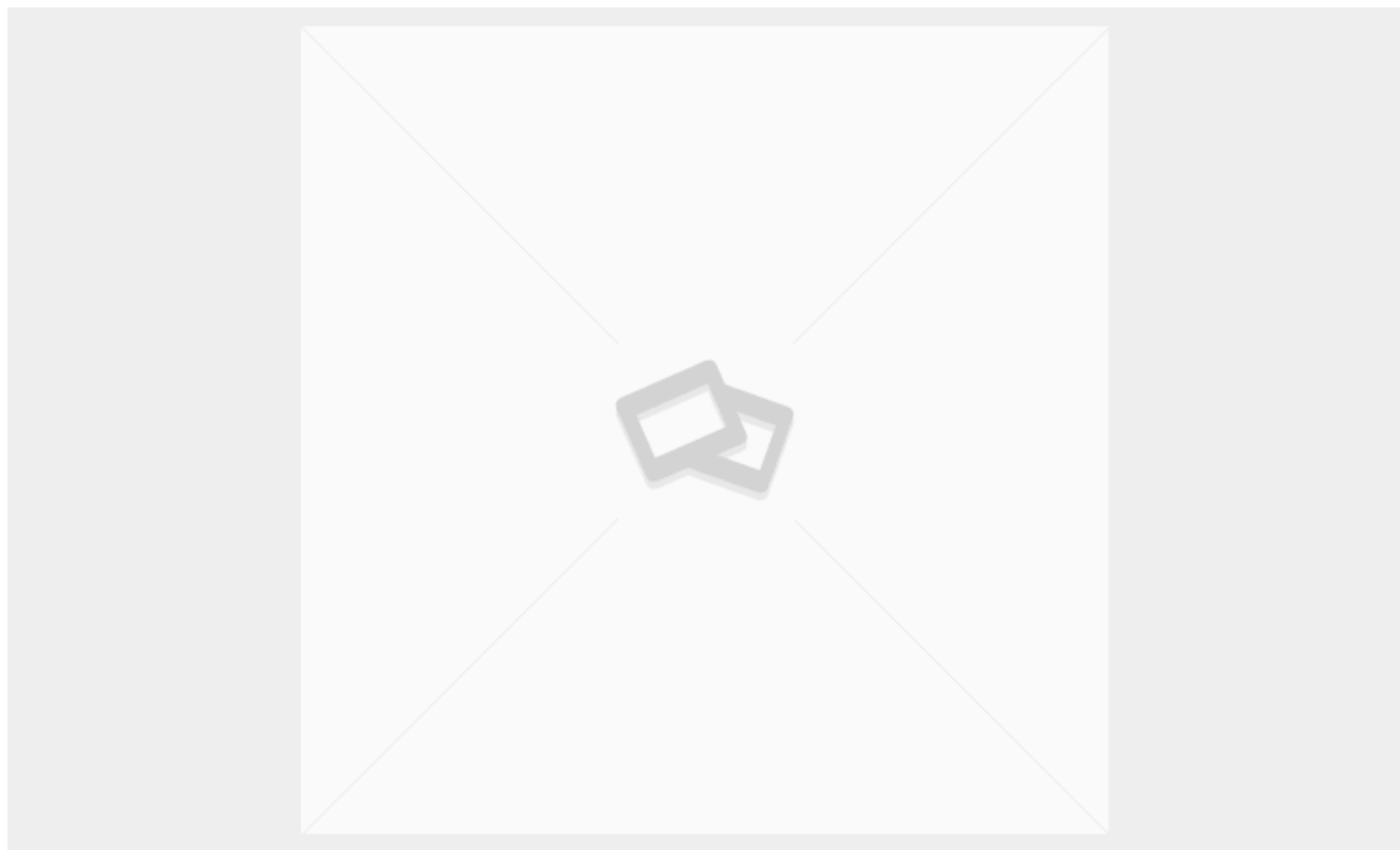


# THE NEW RULES OF INTERNATIONAL INVESTMENT ARBITRATION

*Posted on 25/02/2010*



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Recent headlines may have highlighted dissatisfaction by some Latin American countries with certain investment arbitration processes, but this does not mean the end of arbitration in the region, insists Pedro J. Martinez-Fraga, Miami-based coordinator of Squire Sanders & Dempsey's International Dispute Resolution practice.

A pesar de los recientes titulares en varios puntos de Lationamérica, cuestionando las normas arbitrales sobre inversión

impuestas, el arbitraje como principio de resolución de disputas, sigue siendo un instrumento muy valorado, afirma, Pedro J. Martinez-Fraga, de Squire Sanders & Dempsey's

'Certain Latin American countries may have chosen, for example, to exit ICSID, but they nonetheless remain keen to resolve issues that derive from international and bilateral investment treaties (BITs). The focus now is on using the same general arbitration framework but finding new ways of doing so.'

Governments recognise the importance of establishing effective and neutral dispute resolution mechanisms if they are to continue to attract foreign investment, he says.

The continuing rise in importance of the telecom and energy sectors, including areas such as bioethanol and other renewable schemes, is prompting new levels of international investor interest. But this can only be realised in the light of the proper safeguards.

'There is a belief at some levels that the ICSID process may have, for example, become too one-sided and countries now want to have more input on the way disputes are resolved. There is no doubt that the appetite for arbitration remains healthy, the rules may be different but the goals remain the same.'

In any event, such developments are not hindering the growth of arbitration elsewhere in the region, notes Martinez-Fraga. 'The establishment of CAFTA – the Central American Free Trade Area – includes within its rules a strong commitment to arbitration to resolve investor and inter-state disputes. Its members again recognise the need for an independent adjudication mechanism, which arbitration suits perfectly.'

Despite the headlines therefore, the real

story is the ability of arbitration to evolve and to react to changing circumstances, he believes. 'We see a continuing ebb and flow of investment across Latin America, the emergence of new economic giants and industries, and the major players in which all recognise the importance of the process. The challenge is to be able to see the bigger picture.'