

REFORMS TO THE MEXICAN CONSTITUTION
PROPOSED ISSUANCE OF A NEW LAW ON ALTERNATIVE DISPUTE
RESOLUTION AND AMENDMENTS TO COMMERCIAL CODE ON
COMMERCIAL CONCILIATION



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I. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN MEXICO

Current legal framework

- Article 17 of the Constitution grants the right to solve disputes using ADR Mechanisms.
- There is no specific legal framework for mediation on a federal level.
- As other important States in Mexico, Mexico City does have specific regulation for mediation. The Law on Alternative Justice of the Superior Tribunal of Justice of Mexico City.
- Settlement Agreements (*Contratos de Transacción*) regulated in the Federal Civil Code have a *res judicata* nature and are immediately enforceable.

Amendment to Constitutional provisions on ADR Mechanisms

- On February 5, 2017 a Decree was published in the Mexican Official Gazette reforming the Mexican Constitution in order to include ADR Mechanisms provisions.
- By virtue of this Decree, the Mexican Congress has faculty to issue:
 - The unitary legislation on alternative dispute resolution mechanisms in criminal matters.
 - To issue the General Law that establishes the principles and bases in alternative dispute resolution mechanism matters, except for criminal matters.
- The General Law on ADR shall be issued by early August of this year, upon its issuance federal and local laws on ADR shall be in accordance to such law.

II. PROJECT OF DECREE THROUGH WHICH THE LEGISLATION ON ADR MECHANISMS WILL BE ISSUED

Relevant Aspects of the Project of Decree

- The Ministry of Economy is drafting the Project of Decree, which is divided in:
 - The issuance of a General Law on Alternative Dispute Resolution, for civil and family matters, and those other matters that do not have a specific regulation; and
 - The amendment to the Mexican Commercial Code by adding a new Title of “Commercial Conciliation” to its Fifth Book of “Commercial Trials”, adopting most of the provisions of the UNCITRAL Model Law on International Commercial Conciliation.
- The guild of Mexican Lawyers has been actively supporting the amendment to the Mexican Commercial Code.

General Law on ADR

- This law regulates civil and family matters, and those other matters that do not have a specific regulation.
- Contrary to the international practice, it foresees the certification and registration of Conciliators, and the registration of Conciliation Agreements.
- Conciliation Agreements will have immediate enforceability and will be considered as *res judicata* provided they are (i) in writing or by electronic means and duly signed by the parties; and (ii) registered in the registry of the corresponding place of enforcement.
- The registration of private conciliators is optional.

Amendments to the Commercial Code on Commercial Conciliation

- Adding a Fifth Title “Commercial Conciliation” to Book V of the Commercial Code.
- They are based on the Model Law on International Commercial Conciliation (UNCITRAL).
- The international guiding principles of conciliation are recognized.
- The provisions are applicable to national and international commercial conciliations, provided that the proceedings take place in Mexico.
- Does not contemplate neither certification nor registration of Conciliators and Conciliation Agreements.
- The parties have the right to request the assistance of specialized private institutions, such as the ICC or the Mexican Institute for Mediation. This alternative is not contemplated in the General Law on ADR.

Amendments to the Commercial Code on Commercial Conciliation

- Conciliation agreements shall have immediate enforceability and will be considered as *res judicata*, provided they are in writing and duly signed by the parties.
- Refusal of a judicial organism to enforce a valid conciliation agreement gives rise to administrative responsibility.
- Information produced and used by the parties during the conduction of a conciliation is protected, and cannot be used in arbitral, administrative, judicial or similar procedures.
- Commercial conciliation through electronic means.
- The guild of Mexican Lawyers presented a letter to the Mexican Ministry of Economy with two proposals (i) on data protection and confidentiality, and (ii) on the suspension of the statute of limitations upon the commencement of conciliation proceedings. Both based on the UNCITRAL Model Law on International Commercial Conciliation.

III. POTENTIAL CONTROVERSIAL ISSUES

Potential Controversial Issues

- Supplementary nature of the General Law on ADR with respect to federal and local laws on ADR.
 - Registration and certification of Conciliators and registration of Conciliation Agreements.
- How to prove the commencement of conciliation proceedings before a judicial or administrative authority, in order to interrupt the statute of limitations of the corresponding claim, without breaching data protection and confidentiality provisions?

Thank you very much for your attention.



Antonio M. Prida is a partner in the Corporate group at Curtis. He has experience in a wide range of Mexican and international matters, including corporate, commercial, labor and antitrust law. Mr. Prida has served as advisor to Mexican and foreign investors, lenders and creditors in connection with debt and equity transactions, mergers and acquisitions, leasing transactions, real estate transactions, joint ventures, transfer of technology and distribution agreements, private equity and venture capital, and sale/acquisition of existing Mexican companies. His practice includes work in the following industries: banking and financial institutions, food and beverage, hotel and lodging, manufacturing, industrial machinery, construction, life sciences, shipping, transportation and entertainment matters.

He was appointed as the Minister in Europe, by ProMexico, the government-run institution responsible for strengthening Mexico's participation in the international economy, in March 2008. As Regional Director for Europe 1 (primarily Western Europe), Mr. Prida was responsible for opening and supervising its offices in Brussels, The Hague, London, Madrid, Milan and Paris.

MEMBERSHIPS

- Mexican Bar Association, former Member of the Board (1989-1992)
- Ilustre y Nacional Colegio de Abogados (Mexico), former Vice President (2000-2008)
- International Association of Lawyers (UIA), Director of Collective Members of the Executive Committee (2010-2011); President of the National Committee for Mexico (2004-2010)
- International Association of Young Lawyers, Honorary Vice President (2005-Present)
- Mexican Commission for Human Rights, former President (1993-1996) and Honorary President (1993-Present)
- Mexican Chapter of the International Chamber of Commerce (ICC), former Member of the Board of Directors (2002-2008); President of the Mediation Committee (2017-2018)
- British Chamber of Commerce in Mexico, President of the Legislative Tendencies Group (2017-Present)

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