

## Decree enacting the General Law on Alternative Dispute Resolution Methods

February 9th, 2024

On December 13<sup>th</sup>, 2023, the Mexican Senate and the Mexican House of Representatives approved the Project of Decree, enacting the General Law on Alternative Dispute Resolution Methods ("ADR Law" or the "Law") and amending and adding provisions to the Organic Law of the Federal Judiciary Power and the Organic Law of the Federal Court of Administrative Justice. The decree was published in the Official Federal Journal on January 26<sup>th</sup> and became effective the following day.

This Law derives from the constitutional mandate contained in the law reform of 2017, which thereby qualified the access to justice by Alternative Dispute Resolution Methods as a human right and stated, that in a 6-month period, a law regulating ADR should be published. Said effort involved the issuance of 5 draft bills, and it was only until 2024 that the mandate was fulfilled.

During discussions between the House of Representatives and the Senate, special focus was given to the following matters:

1. The necessity of strengthening and promoting **alternative justice** in Mexico to resolve conflicts between different interests by means of out-of-court settlement.
2. The ADR aims to change the paradigm of justice and promote a more active participation from citizens, and their way of relating to each other, in which negotiation and communication are favored.

We emphasize the following aspects of the Law:

1. Its **scope of application** is unclear as to: (i) the type of disputes that may be resolved by ADR Methods regulated thereunder; (ii) the range of mechanisms regulated therein; (iii) the interaction between state laws and this Law. As this is a general law, its contents

aim to standardize rules on concurrent matters between the federation and the states; nevertheless, it is important to note it regulates matters that are not concurrent.

2. Although a definition of the term, “**Arbitration**” is included in its text, the provisions of the Law that refer to this mechanism seem to exclude it from its scope of application and acknowledges its regulation corresponds to the Commercial Code. However, the last sentence of Article 115, which prohibits arbitration “in administrative justice” is a cause for concern, since many administrative laws provide arbitration as a dispute resolution mechanism. It will be necessary to wait for the interpretation Mexican courts will give of this provision.
3. ADR is conducted before **private and public facilitators** who will have to obtain a certification by the federal or state judiciary. Facilitators must be of Mexican nationality.
4. The new National Code of Civil and Family Procedures shall be of **supplementary application**.
5. The National Council of Alternative Dispute Resolution Mechanisms is created, which will be the **highest collegiate governing body in matters of public policies** regarding ADR.
6. Centers of Alternative Dispute Resolution Mechanisms will be created as **auxiliary bodies** of the Judiciary, which may be public or private.
7. A System of Settlement Agreements will be created so that, once signed by the parties and subscribed to by the facilitator, they will be registered in said system and thus may be considered **res judicata**.
8. The use of **online** mechanisms to substantiate these procedures is regulated.
9. Substantiation of ADR in **administrative** proceedings is included. The *examining magistrate* will be responsible for determining whether or not a dispute can be resolved through mediation or whether a judgment can be complied with by applying ADR.

With respect to the amendments in the Organic Law of the Federal Judiciary Power and the Organic Law of the Federal Court of Administrative Justice (“TFJA”), these refer mainly to (i) the designation of the officials who will be responsible for the National Registry of Facilitators and the National System of Settlement Agreements; (ii) the power to establish Alternative Dispute

Resolution Mechanisms Centers; and (iii) the possibility of ADRs being conducted before the TFJA.

Although the general purpose of this Law is to promote and strengthen the use of ADR in Mexico, we identify certain aspects that, in our opinion, will hinder the use of ADR; among them: (a) the over-regulation of procedures and application of formalities that are not proper to these mechanisms; (b) the over-intervention of authorities in the determination of the applicability of these mechanisms, their regulation and their conduct; (c) the requirement of Mexican nationality that is demanded of facilitators as well as the regime of responsibilities to which facilitators are subjected; (d) the registration of settlement agreements resulting from these procedures in a national system, a requirement that will threaten their confidentiality; and (e) that facilitators might be considered as an authority for the purposes of an *amparo* trial. These aspects result in a certain loss of legitimacy in the ADR system – a system that, by its very nature, seeks to reduce judicial intervention and to privilege the participation of all parties, including the neutral third party, for the efficiency of the mechanism.

Although this Law represents a step forward in the implementation of ADR Methods in our country, in order for it to be a real boost to said methods, the necessary resources will have to be allocated to train personnel involved in its implementation as well as foresee amendments to a regulation over the time of its application, without minimizing the importance of the time it will take for the states to adapt to its provisions.

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