

Mediation Q&A: Mexico

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Mexico - specific information concerning the key legal issues that need to be considered when mediating a dispute.

This Q&A provides jurisdiction-specific commentary on [Practice note, Mediation: Cross-border](#) and forms part of [Cross-border dispute resolution](#).

Judicial attitude towards mediations

1. Is mediation a commonly used alternative dispute mechanism in your jurisdiction, especially in relation to cross border disputes? What proportion of commercial disputes are settled through mediation? What is the judicial attitude towards mediation in relation to commercial disputes?

Since a Constitutional Amendment to Article 17 was passed in 2008 to encourage the resolution of disputes by alternative means, there has been an aim to reduce the number of disputes before courts by referring them to mediation or arbitration. Despite this, the use of mediation is still marginal in comparison to arbitration, which is by far the most relied upon alternative dispute resolution mechanism. Only in certain family and criminal matters has mediation gained considerable ground, and recently, it has become common practice in mortgage securitisation agreements.

As for commercial and cross border disputes, it is significantly more common to include in contracts a model arbitration clause instead of establishing a mediation procedure for the solution of disputes. At most, cooling-off or waiting periods requiring the parties to negotiate before advancing any claim, are included in contracts. Multi-tiered clauses, which effectively establish a mediation time frame before the submission of a request for arbitration or judicial claim, are still uncommon. In the last ten years, official statistics from the Alternate Dispute Resolution Centre in Mexico City report that only about 5,000 commercial cases that were referred to mediation were resolved by common agreement, 13% of the total over that period of time.

Courts in Mexico are obliged to recommend that the parties to a dispute attempt to resolve it by means of alternate dispute resolution mechanisms, granting stays of the proceedings to allow mediation to take place at any stage before the judgment is issued. Any agreement that is reached by means of a mediation process has the same legal effect as a judicial ruling and may be summarily executed.

Commercial attitude towards mediation

2. How do commercial parties commonly view mediation? Do parties typically opt for institutional mediations or do they prefer the flexibility of independent/ad-hoc mediations?

Many parties are still sceptical of the benefits of mediation over direct negotiation or arbitration. Where they do refer disputes to mediation, institutional mediations under the auspices of public or private institutions, such as the International Chamber of Commerce (ICC), the *Cámara Nacional de Comercio* (CANACO), or the Alternative Dispute Resolution Centre are preferred. This is because such institutions provide the parties to a dispute with more legal certainty, because they operate a regulated procedure.

Laws on mediation

3. Are there any national laws or regulations that govern the conduct of mediations in your jurisdiction?

At the federal level, the Criminal Alternative Dispute Resolution Law regulates mediation exclusively related to criminal matters.

At the local level, each state has issued laws governing both alternative dispute resolution mechanisms and the constitution of alternative dispute resolution centers for family, civil, commercial and criminal matters. Probably the leading law in terms of disputes subject to its jurisdiction is the Alternative Dispute Resolution Law for Mexico City.

International treaties on mediation

4. Is your jurisdiction a signatory to any international treaties or directives on mediation?

Chapter XX of the North American Free Trade Agreement (NAFTA) between the United States of America, Canada and Mexico regulates mediation in respect of investment and international trade disputes. Additionally, all the bilateral investment treaties entered into by Mexico enable mediation proceedings to be invoked in disputes with foreign investors.

Certain international treaties on specific areas related to family law include mediation proceedings.

So far as international law is concerned, Mexico is a signatory of The Hague Convention 1907.

Mediation as a pre-condition to litigation

5. In the absence of a dispute resolution clause, which calls for mediation, are parties required to engage in mediation as a pre-condition to accessing the local courts?

One of the fundamental principles in Mexican law regarding the mediation process is that it is essentially voluntary (*Article 8, Alternative Dispute Resolution Law for Mexico City*). Consequently, a mediation process cannot be a condition precedent to accessing local courts (access to the courts is a fundamental right expressly granted in Article 17 of the Constitution).

The closest Mexican law comes to making mediation a pre-condition consists on the legal standing, conciliation and defenses hearing in certain civil and labour procedures (*Civil Procedures Code* and the *Federal Labour Law*). Such a hearing, which is held at the beginning of the procedure, in theory has three objectives:

- The analysis of the validity of the power of attorney granted to a party's representative.
- The possibility of reaching an agreement before a judicial clerk.

- The study of certain defenses that would prevent the dispute from going to trial.

However, the conciliation phase is merely a formality as the parties rarely even engage in any negotiation.

Costs consequences of refusing to mediate

6. Can local courts force parties to mediate, especially in commercial or employment disputes? Do local courts impose costs for:

- **Delay in consenting to mediation?**
- **Failure to mediate?**
- **Refusal to participate in mediation, particularly if that party is also a losing party in subsequent court proceedings?**

Mediation under Mexican Law is entirely voluntary. The court may not impose any costs for a failure to cooperate in the mediation procedure. In any case, the absence or unwillingness of a party constitutes cause for the termination of the mediation procedure and paves the way for court or arbitral proceedings.

Limitation period

7. What is the limitation period for filing a civil and commercial claim? Is the limitation period for initiating judicial or arbitral proceedings extended/suspended in cases where parties attempt to settle their disputes through mediation? What are the formalities required to trigger such extension/suspension?

The limitation period for commercial and civil claims generally varies from a range of one, two, five or ten years, depending on the type of action. The start of a mediation procedure suspends, but does not interrupt, the limitation period for up to two months, without the need for a judicial declaration (*Article 7, Alternative Dispute Resolution Law for Mexico City*). The interested parties may not agree to suspend or interrupt a limitation period, as this would be against the public interest.

Disputes suitable for mediation

8. Are there any class or type of disputes that are not considered suitable, either by law or otherwise, for mediation in your jurisdiction?

Certain matters which concern the public interest may not be mediated. These include (*Civil Code*):

- The right to receive alimony.
- The commission of a crime.
- Rights concerning future inheritance.
- The validity of a marriage and parentage.

In addition, human rights violations and the obligation to pay taxes are not susceptible to mediation, as stated in the Constitution.

The availability of mediation should be assessed on a case by case basis.

Mediation agreement

9. Is it customary in your jurisdiction to execute a written mediation agreement before the start of the mediation proceedings to record the rights and obligations of the parties and the mediator?

While parties may participate in a non-institutional mediation without a written consent agreement, they must consent to institutional mediation by means of a written agreement (*Article 30, Alternative Dispute Resolution Law for Mexico City*, as well as equivalent laws applicable in other Mexican states). While the rights and obligations may be included in the agreement, they are also set out in the relevant laws.

Standard clauses for mediation agreement

10. Are there any clauses that would be usual to see in a mediation agreement and/or that are standard practice in your jurisdiction?

Generally, a confidentiality clause is included in the mediation agreements, to prevent the improper use of information exchanged during the process. This is a requirement for mediation provided by the Alternative Dispute Resolution Law for Mexico City. It is also common that clauses regulating the proceedings and the rights and obligations of the parties are included on the mediation agreement.

Timing of mediation

11. When do parties usually mediate?

It is still not common for parties to a dispute to mediate. Instead, they opt for either arbitration or direct negotiation (see [Question 1](#)). If mediation does take place, it is usually before court proceedings start or at the first hearing once court proceedings have commenced. The judge allocated to the dispute should grant a stay of proceedings for a period of up to two months (*Article 7, Alternative Dispute Resolution Law for Mexico City*).

Choosing a mediator

12. How do parties usually choose a mediator? What happens if the parties cannot reach an agreement?

Parties are free to choose any mediator that they deem to be suitable for the dispute to be resolved. They may choose a mediator from two separate lists of public and private mediators certified by the Alternative Dispute Resolution Centre in Mexico City. Alternatively, they may resort to private institutions, like the ICC or CANACO, to nominate the mediator of a dispute if they cannot agree on the identity of the mediator.

Conduct of mediation

13. How are mediation proceedings conducted in your jurisdiction?

The parties may either decide the mediation procedure themselves, or they may adopt public or private rules of mediation.

Under the Alternative Dispute Resolution Law for Mexico City, there are four stages for the mediation procedure. First, the parties meet with the mediator, describe their dispute, sign a confidentiality agreement and agree on the mediation rules. Second, the specific issues in dispute are identified and an agenda is set. Third, the parties negotiate through the mediator. Finally, if the parties achieve a settlement, a written agreement is drafted and signed, setting out the terms of settlement. This process involves a series of meetings, which may be joint or with each party in turn. Any information provided by the parties is confidential.

The ICC's mediation procedure starts with a request for mediation from one of the parties. Mediation may or may not have been previously agreed. The parties can either jointly agree on who is going to be mediator, or the ICC can designate the mediator if there is no agreement. The parties then meet with the mediator and discuss the dispute. Afterwards, the mediator will send the parties a note stating the way the mediation will be carried out. The procedure ends either with a written settlement agreement or when the parties fail to reach an agreement. The process is governed by the ICC's mediation rules, but the parties may modify certain aspects of the mediation proceedings, or establish certain rules for matters which are not regulated by the ICC's mediation rules.

Facilitative or evaluative mediation

14. What approach does the mediator usually take to the mediation, is this facilitative or evaluative?

Article 8 of the Alternative Dispute Resolution Law of Mexico City provides that the mediator must act in a neutral and impartial manner during the course of a mediation. However, the mediator must also conduct the procedure in a flexible way that maximises the chances of a settlement. As a consequence, while at first glance the mediator may be restrained from expressing any opinion (thereby making their work more facilitative than evaluative), if the mediator's opinion facilitates an agreement while not favouring either of the parties, their role can become evaluative. It is worth noting that if a mediator displays an openly evaluative role, they would be considered more a conciliator.

If that is the case, the mediator may be subject to administrative sanctions and there may be grounds for the agreement to be deemed void by a court.

Time frame for mediations

15. What is the general time frame for mediations in your jurisdiction? Is there any statutory period within which mediations must be completed?

The parties may agree to mediate for the period they consider appropriate for the nature of the dispute and the principles that regulate a mediation procedure (*Article 8, Alternate Dispute Resolution Law*). However, the statutory limitation period for the action is only suspended for up to two months (*Article 7, Alternative Dispute Resolution Law for Mexico City*).

Professional advisors in mediations

16. Are parties required to be represented by professional advisors, such as lawyers in mediation proceedings? If there is no requirement, are professional advisers usually present?

The parties should personally attend mediation hearings, but the agreement may be entered into with the assistance of a representative or agent (*Articles 27 and 28, Alternative Dispute Resolution Law for Mexico City*). It is common practice for parties to be represented by a lawyer, but it is not required.

Judges as mediators

17. Do judges ever act as mediators? If so, do they commonly give a view as to the merits of a dispute? Are they then removed from involvement in the case if the mediation is not successful?

Due to the nature of their function, Mexican judges generally do not act as mediators. If they did so, they could be subject to recusal or to a complaint for lack of impartiality, which may lead to them being suspended or even dismissed. At most, judges are obliged by law to recommend the parties to the dispute to opt for the institutional

public mediation provided by the Alternative Dispute Resolution Centre, instead of carrying on with the trial (*Article 6, Alternative Dispute Resolution Law for Mexico City*). However, it is worth noting that in certain proceedings (such as civil proceedings), a judicial clerk must try to reach a settlement between the parties. However, this rarely takes place, being instead a mere procedural formality.

Mediator's role post an unsuccessful mediation attempt

18. Are there any provisions under national law or institutional rules that prohibit a mediator to subsequently act as a judge, arbitrator or conciliator in relation to the same dispute?

The confidentiality principle prescribed in Article 26 of the Alternative Dispute Resolution Law for Mexico City prohibits a mediator from being a judge, arbitrator or witness in subsequent related proceedings. If the mediator does take any of those roles, they may be challenged under the procedural rules that apply to the court proceedings or arbitration.

Court-annexed, judicial and online mediations

19. Are court-annexed or judicial mediations (conducted under the 'shadow' of the court) and online mediations popular in your jurisdiction? If so, what types of disputes are considered suitable for such mediations? Give details of any pilot schemes that currently exist in your jurisdiction. Are any of these schemes compulsory?

They are certainly not common, regulated or popular. The only reference to them is in Article 2, XII Quarter of the Alternative Dispute Resolution Law for Mexico City, in which online mediations are permitted for private mediators under the auspices of the Alternative Dispute Resolution Centre.

Costs

20. Who bears the cost in mediations involving civil and commercial disputes?

The service provided by the public mediators of the Alternative Dispute Resolution Centre is free of charge. As a consequence, none of the parties has to bear the costs of the mediation, except for their own. If a private mediator is hired, the parties should agree the costs and the way they should be allocated, between themselves and the mediator. Finally, in regard to mediation provided by the ICC, the party that files the request for arbitration must pay a registration fee of \$2,000. The rest of the costs are shared between the parties according to limits set out in the appendix to the ICC Mediation Rules. Parties cannot agree to treat the costs as legal costs in subsequent litigation if the mediation is unsuccessful, because only those costs specified in The Civil Procedures Code may be awarded by a court in a dispute.

Confidentiality in relation to mediation proceedings

21. Are mediation proceedings considered confidential? In the absence of an express clause in the mediation agreement, can confidentiality be implied in negotiations conducted through mediation?

Mediation is indeed confidential, even when no confidentiality agreement is executed, if the proceedings are carried out before the Alternative Dispute Resolution Centre in Mexico City. (*Articles 8, 21, 29 and 36, Alternative Dispute Resolution Law for Mexico City*) The ICC Mediation Rules also provide that mediation is confidential unless otherwise agreed. However, that presumption does not exist in relation to an ad hoc mediation. If parties to an ad hoc mediation do not execute a confidentiality agreement, then the proceedings cannot be confidential.

Confidentiality obligations of the mediator

22. Does the confidentiality obligation extend to the mediator as well?

The confidentiality obligation extends to all the parties to a mediation, including the mediator (*Article 21, Alternative Dispute Resolution Law for Mexico City*). Therefore, a mediator may not become a witness, judge, or arbitrator in subsequent related proceedings. This is also the case under the ICC Mediation Rules (*Article 9, ICC Mediation Rules*). The parties may include an indemnity clause in the mediation agreement in case the mediator is called upon to testify in subsequent proceedings.

Exceptions to confidentiality

23. Can the local courts override confidentiality provisions and permit confidential information arising out of, or relating to, a mediation to be disclosed under any circumstances?

Courts can override the confidentiality provisions (*Article 102, General Transparency Law*). They must only issue a formal request for the information justifying the need for it to be accessed. However, courts must take steps to prevent confidential information from mediation from being used for purposes other than that underlying the court's request to access the information.

Documenting a settlement

24. How do parties usually formalise any settlement? Is the mediator involved in drafting the settlement agreement?

The agreement is usually formalised in writing in triplicate and signed by the parties (*Article 35, Alternative Dispute Resolution Law for Mexico City*). The mediator actively participates in drafting the agreement.

Disposal of court proceedings

25. How are court proceedings disposed of if settlement is reached at mediation?

A mediated settlement agreement is deemed to be a fully enforceable and executive title, as stated by both the Civil Code and the Civil Procedure Code. Therefore, if a party fails to comply with a mediated agreement, the other party may file for an expedited summary judgment.

Enforcing settlements

26. Are there any special procedures for enforcing a settlement agreement reached at mediation? Does this differ from a settlement

agreement reached outside mediation? Is it easier to enforce a settlement agreement reached at mediation?

The agreement may be enforced by means of a summary enforcement procedure, which grants the interested party the right to seize or take the assets of the other party in case the mediation agreement is breached from the very beginning of the procedure, as the mediation agreement is an executive and enforceable title. There is no difference in this regard from a settlement agreement that was negotiated without the need for mediation, as both are granted the same executive effects by the Civil and Civil Procedure Codes.

Mediation institutions and centres**27. What are the main institutions or centres that provide mediations services, including appointment of mediator in your jurisdiction?**

There are three main institutions in Mexico that provide mediation services:

The Alternative Dispute Resolution Centre for Mexico City, which is a public institution.

- The ICC.
- The CANACO.

It is worth noting that in general terms each state has a public institution that may provide free mediation services.

Accreditation schemes for mediators**28. Is there an accreditation scheme or regulatory body for mediators in your jurisdiction? Describe the qualifications, continued professional education schemes and training courses that such institutions have in place for mediators**

The Alternative Dispute Resolution Centre for Mexico City (and for each state) certifies the mediators who comply with certain qualifications, as set out in Articles 9 and 18 of the Alternative Dispute Resolution Law. As part of the certification process, candidates must complete a specific number of practice hours, pass the certification exam, and be qualified lawyers, among other requirements.

However, it is worth noting that mediation is not a regulated activity so anyone may carry it out. However, certification by the Alternative Dispute Resolution Centre provides the parties to a dispute with more certainty. Each year, the Alternative Dispute Resolution Centre provides training programmes for certified mediators.

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