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Mexico Reaches an Important Milestone in Mediation

**Commentary by
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In early 2015, the Mexican presidency assigned the Centro de Investigacion y Docencia Economicas, a public research and education institution, to lead the Dialogues for Everyday Justice. Its purpose is to study, engage the participation of different stakeholders and ultimately generate a diagnosis to improve access to justice and the resolution of common and everyday conflicts.

This effort resulted in a package of reforms presented by President Enrique Peña Nieto in April, which will be known as a seminal event in Mexico's legislative history. These reforms attempt to reorient the justice system toward an approach that promotes the resolution of the conflicts in a more practical and satisfactory way. These reforms attempt to address a wide range of disputes

including civil, commercial, labor, family and other minor conflicts like neighborhood or school disputes. The package also seeks to homogenize the quality and characteristics of justice administration services all across Mexico.

The Everyday Justice package includes 12 initiatives to alter alia improve the public registries, trigger an improvement in the regulatory framework, standardize and restructure the labor justice, civil and family procedures as well as increase access to alternative dispute resolution. Two of the initiatives appear to be crucial for the development of mediation in Mexico.

CONSTITUTIONAL ADR

As part of the initiatives, the president presented one that opens the door for the creation of a general alternative dispute resolution law, or LGMASC for its acronym in Spanish.

For decades, Mexico's different states have utilized varying forms of ADR. There have been differences in the form, scope and rules that regulate the practice and usage of ADR depending on the particular circumstances and driving forces behind each of those state laws, resulting in a heterogeneous and unequal map.

Beyond the black letter of the law, mediation has played a growing but not yet significant role in the Mexican legal scene. In spite of certain focused efforts, mediation remains to be a scarcely utilized resource by individuals, companies and lawyers as a dispute resolution tool.

The formal purpose of the constitutional reform, as per the president's own statements, is to grant Congress the authority to issue the LGMASC. From the text of the initiative, the final purposes of such reform are to promote use and access

to ADR in a uniform way across the country, to implement procedures in public institutions allowing the growth of the use of mediation without the need for jurisdictional procedures and to create a standardized training for those public servants in charge of the use and practice of ADR.

Judging by the text of the initiative, in addition to what is possible to pick up from the different testimonials and news media reports on the matter, topics to be covered by the LG-MASC in relation with mediation are the criteria to train and requirements for certifying mediators, requirements for referring cases to mediation and the effects of the agreement resulting from a mediation.

WHAT'S NEXT?

Congress will vote and approve the reform to Article 73 of the Federal Constitution to include the possibility of issuing the LG-MASC and afterward it shall issue the LGMASC within 180 days following the initiative.

In addition to the LGMASC, the president's package includes a decree that seeks to trigger the use of conciliation, or mediation, for disputes between the public administration or public companies and the private sector through the publication of certain guidelines that aim to facilitate the conciliation process while

protecting the state's goods and the public servants' liability. Since the purpose of this decree is to guide the executive branch's own institutions and activities, its effects are already in play without further legislative work needed.

The referred guidelines open the door to an increasing number of mediations or conciliations both under the public or private umbrella, always respecting the procedure approved by such decree and as long as the agreement resulting from the mediation process does not breach certain fundamental or confidential principles listed therein.

This is a very important milestone for dispute resolution in Mexico.

A large majority of the commercial legal disputes in Mexico involve at least one public or governmental component: either a dispute involving one of the two largest companies, state-owned like Pemex petroleum company or the CFE electric power utility, or one of the federal ministries in charge of public works, project financing, government procurement and so on.

Even when some laws and statutes provide for some sort of ADR, in practice there are few occasions when it actually happens. It's typically due to the lack of security for the officials and lack of familiarity with the procedures on both sides of the table.

With these guidelines, the government and state-owned company officials will hopefully prioritize the use of mediation to avoid a larger cost and create policies that allow them to settle when convenient or aim to mitigate a financial or commercial risk without risking their own liability. It will also hopefully allow for the development and promotion of training programs for users to gain more confidence when using conciliation or mediation.

From every standpoint, the coming months signify a massive transformation in the Mexican legal environment and notably a serious and solid step forward for the use of mediation both in the public and private sectors. It is crucial that all the stakeholders be aware and attentive of the evolution of the implementation of the initiatives and that the legislators do a good job on its development.

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