

# AD HOC MEDIATION IN MEXICO: A FLEXIBLE TOOL FOR DISPUTE RESOLUTION AND THE PRESERVATION OF BUSINESS RELATIONSHIPS

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## Resumen Ejecutivo:

- Ad hoc mediation allows the parties to freely design the process—including the mediator, rules, and timeline—and align it with their commercial and contractual needs. Compared to traditional litigation, it offers a faster and more efficient path, with lower costs and enhanced protection of sensitive information and reputation.
- By prioritizing party-driven agreements, it helps preserve long-term business relationships.

In a dynamic legal and business environment, *ad hoc* mediation has emerged as an alternative to traditional contentious proceedings in Mexico. The development of this alternative dispute resolution (ADR) method has been driven primarily by the need for companies to resolve disputes more quickly, efficiently, and with greater control, particularly in a sociopolitical context in which perceptions regarding the speed and certainty of the judicial system have played a leading role in strategic business decision-making.

Unlike traditional adversarial methods based on binding decisions rendered by a third party (usually a judge or an arbitrator), mediation is a conflict resolution process in which a neutral third party acts as an intermediary in negotiations between the parties, fostering a constructive dialogue from which creative and mutually acceptable solutions can emerge.

*Ad hoc* mediation, in particular, is characterized by a model in which the parties directly agree on all aspects of the process, from the selection of the mediator to the schedule, procedural rules, and the mediator's fees, jointly creating a mechanism tailored to their contractual and commercial needs.

This approach differs from institutional mediation, in which a mediation center provides a predefined structure and administrative oversight. In Mexican business practice, *ad hoc* mediation has become a competitive advantage for those seeking complete control over how and when their disputes are resolved.

A key virtue of this type of mediation is its operational flexibility. The parties may enter into a mediation agreement at the time they establish their contractual relationship—by incorporating an *ad hoc* mediation clause into the relevant contract—or agree to submit to this method once a specific dispute has arisen. This freedom of choice allows companies to adapt the process to the nature of the conflict and their business priorities, without having to wait for litigation to advance in court or to have agreed to this ADR mechanism in advance.

In practice, *ad hoc* mediation offers specific benefits for the resolution of civil and commercial disputes. First, it promotes speed and efficiency when compared to court proceedings, which may extend over several years. This not only reduces direct legal advisory costs and procedural expenses but also

minimizes the indirect impact on ordinary business operations.

Furthermore, as a fully confidential process designed and driven by the parties themselves, *ad hoc* mediation protects sensitive information and corporate reputation—an especially valuable feature in commercial disputes where public exposure could affect strategic relationships or market perception.

Another significant benefit is that agreements reached through this method reflect solutions crafted by the parties themselves, aligned with their actual interests rather than imposed by an external authority. This often translates into more durable business relationships and outcomes that facilitate future cooperation, which is particularly relevant for parties that engage in ongoing business or maintain long-standing commercial relationships they wish to preserve.

As with any dispute resolution tool, the limitations inherent in *ad hoc* mediation must be carefully assessed on a case-by-case basis. Because it is not governed by pre-established institutional rules, the success of the process largely depends on the willingness and cooperation of the parties. If one party is unwilling to negotiate in good faith or to make reciprocal concessions, mediation may ultimately prove unsuccessful.

In addition, because mediation does not result in a decision imposed by a judicial authority, any agreement reached between the parties generally requires additional formalization to be enforceable against third parties, for example, through a mediation agreement, a public deed, or judicial recognition.

All of these characteristics encapsulate, to a certain extent, the very essence of mediation: a mechanism that enhances each party's control over the outcome, while simultaneously requiring a proactive commitment to transform that control into an effective resolution. For this reason, *ad hoc* mediation is often regarded as particularly suitable when long-standing commercial ties are at stake and when a more comprehensive intervention than the mere conclusion of a trial is required, avoiding the wear and tear typically associated with litigation.

The current context of the Mexican judicial system—marked by reforms that have sparked legitimate debates regarding impartiality, specialization, and court workload—has prompted the private sector to reevaluate ADR mechanisms as complementary tools. In this regard, *ad hoc* mediation enables companies to mitigate the uncertainties and costs associated with traditional litigation, while aligning with modern legal risk management practices that prioritize consensual and expedited solutions.

Accordingly, *ad hoc* mediation in Mexico represents a strategic and flexible alternative for the resolution of civil and commercial disputes. Its ability to be incorporated at the contractual stage or adopted once a conflict arises allows companies to manage disputes in a more efficient, predictable, and controlled manner.