

ALTERNATIVE DISPUTE RESOLUTION IN ADMINISTRATIVE MATTERS



INTERNATIONAL ASSOCIATION OF SUPREME ADMINISTRATIVE JURISDICTIONS

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Introductory Questions

- 1. How do you define alternative procedures? How do you distinguish them from jurisdiction procedures and arbitration procedures?**

Alternative Dispute Resolution (“ADR”) can be defined as the set of procedures that are implemented to solve disputes as an alternative to litigation before jurisdictional authorities. Most of the ADR in Mexico are voluntary; however, some are mandatory and may involve the participation of a neutral third party.

Typically, the most relevant ADR procedures are negotiation, conciliation, mediation, arbitration and for certain legal practices, restorative justice (criminal law) and collaborative law (family law).

The main difference between jurisdiction procedures and arbitration is that the resolutions issued by the third party (judge or arbitrator) as consequence of such procedures, is legally binding for the parties, while the resolutions issued under negotiation, mediation or conciliation are mere recommendations, which are only binding if the parties involved execute an agreement.

- 2. Do alternative procedures such as those defined above exist in your country? If no alternative procedures exist in your country, do you plan to create such procedures? Can you articulate your current thinking in this domain?**

Since 2000, Mexico has followed and applied the global trend towards MASC in different areas of Mexican law. Article 17 of the Mexican Constitution¹ establishes that “Every person has the right to be administered justice by Courts...” and “The law will foresee means of Alternative Dispute Resolution...”.

At a Federal Level, there are several administrative laws that establish ADR means as a prior instance to the administrative trial conducted before the Mexican Tax and Administrative Federal Court.

For Public Contracts and Public Procurement, there are several laws that establish a conciliation procedure before the Mexican Ministry of Public Administration (Secretaría de la Función Pública, SFP), that can be requested by any of the parties for disputes arising from the public contracts executed by the suppliers with the governmental agencies or authorities. These laws are, the Public Works Law, the Public Sector Procurement and Services Law², the Public/Private Partnerships Law and the Mexican Hydrocarbons Law.

This conciliation process is optional for the Parties; however, they must execute an agreement if a settlement is reached. This agreement is mandatory and can be enforced before judicial authorities. If an agreement is not reached, or if the parties are not interested in conciliating, they can elect to solve the dispute through the mechanism established under the corresponding public contract.

According with the aforementioned Laws, Arbitration or other ADRs can be agreed between the Parties in a public contract (as dispute resolution mechanisms). On any case, the dispute resolution clause shall be published within the tender rules before the awarding of said public contract. If no ADR is agreed within the public contract, then, all controversies arising therefrom should be solved by ordinary means of Judicial Courts at a Federal level.

Additionally, the Mexican Electric Industry Law foresees a negotiation and mediation procedure for land occupation related with electric services and works.

¹ 2008 Reform

² Ley de Obras Públicas y Servicios Relacionados con las Mismas y Ley de Adquisiciones Arrendamientos y Servicios del Sector Público.

For Public Service³, the proceeding of administrative sanction of public officials does not foresee any ADR. Such process starts with the notice given to the public official with the date and place in which a hearing shall take place.

Deviations or breaches to the constitutional obligations for public service⁴ are considered as a public sensitive matter, as punitive administrative law is as an expression of the *ius puniendi* of the Mexican State, and constitutes a repressive policy that the State must develop, subject to substantive limitations consequence of the strict application of law. This strict application of the law is not a discretionary power of the state and therefore, no ADRs have been established and no future plans to adopt these type of means are foreseen in this respect.

For Taxation and Economic Regulation, we have some ADR foreseen under certain administrative laws⁵. One of the most relevant is the procedure foreseen under the Mexican Federal Tax Code which establishes the Settlement Agreements as an ADR similar to conciliation/mediation and which has been defined as the conciliation instance in tax matters, prior to the administrative trial.

This process is conducted by the Mexican Office of the Taxpayers Advocate (*Procuraduría de la Defensa del Contribuyente*, PRODECON, Taxpayer Ombudsman) in Mexico, and its purpose is to procure the fairness and equity in the legal relationship between the taxpayers and the tax authorities.

The Settlement Agreements are applicable only during tax audits or revisions, when the taxpayer disagrees with the facts or omissions set forth under any of the documents issued by the tax authority as a result of such audit or verification process. The request of Settlement Agreements can be filed before the final resolution of such audit is issued.

³ Understood as public function.

⁴ Legality, honesty, loyalty, impartiality and efficiency.

⁵ Conciliation before the Attorney General for Consumer Protection (PROFECO), for disputes between individuals and commercial establishments or traders and conciliation before the National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF), for disputes between individuals and banking or financial institutions.

Once the taxpayer files the request, it has to be notified to the tax authority, then the Mexican Taxpayer Ombudsman will set a date for working tables to begin with the conciliation. Once the parties have settled, an agreement is drafted and signed. If, no settlement is reached, a closing resolution will be issued and the conciliation will be definitively finished.

The filing of this proceeding will suspend the audit or verification process until an agreement or a closing resolution is issued. Additionally, if the parties are conducting this proceeding for the first time, 100% of the fines of the applicable tax credit will be cancelled.

I. The goals and the scope of alternative procedures

1. With what objectives are these procedures deployed? What advantages and benefits are expected to result from them?

ADR mechanisms are characterized for the flexibility, promptness and confidentiality of their resolutions. One of the main benefits of using this type of proceedings is avoiding litigious confrontation, reducing the costs of litigation and leveling the amount of overload of jurisdictional authorities.

Due to the current overview and general background of the justice system in Mexico, the government has made a commitment to develop and support ADRs in areas in which the implementation of ADR is socially and legally convenient. It is important to note, that based on our Constitutional principles and system, not all administrative matters are arbitrable, and therefore, the implementation of ADRs is not appropriate.

ADRs tend to solve disputes in a pacific way, achieving a quick and economic agreement, in terms of time, money and efficiency. Additionally, ADR mechanisms are developed in an environment that helps the parties solving the conflict with the

possibility of managing their own settlement, making such agreements effective, as they derive from their will and determination.

International Law is also a clear example of the application of ADRs. México has adopted ADR clauses in its Commercial Treaties and Trade Agreements. Usually, the dispute resolution chapter in such International Treaties consists in conciliation, and arbitration. Likewise, antidumping and other unfair trade practices are subject to ADR depending on the specific Trade Agreement that rules Mexico's relationship with a given country.

After the Constitutional Amendment to Article 17 in 2008, many administrative federal authorities have proposed to the Congress the inclusion of ADR in their respective proceedings, such as criminal law and environmental law (just for specific matters in the areas of administrative law that are considered to be arbitrable under Mexico's Constitutional principles).

Additionally, local congresses and local administrative and jurisdictional authorities have adopted these mechanisms too, for example, most of the local courts of justice in Mexico have incorporated Mediation Centers or ADR Centers as a prior state for the parties before a lawsuit is filed in family, civil and commercial law.

The government expects that with the implementation of these measures, more people would have reliance and trust on the effectiveness of ADR mechanisms, and in a short term, it will be a common practice to include ADR in contracts and agreements⁶ and to use them as prior stages within jurisdictional processes.

2. Are alternative procedures used in your country in administrative matters? Since when? What factors contributed to their development and what is the proportion of administrative disputes that are resolved each year by such procedures?

⁶ Public or Private.

As mentioned above, there are many administrative areas in which ADR are implemented and foreseen under the law.

Taxation.- We have explained in number 2 above, the process of Settlement Agreements foreseen under Mexican Tax Code. This figure was introduced with the 2014 Tax Reform as an ADR in tax matters. This procedure was developed as a prior instance to clarify and settle certain aspects of an audit or verification process that is not being considered by the Tax authority before the issuance of the corresponding resolution.

The main factor that contributes to the developing and strengthening of Settlement Agreements is the simplicity of the procedure and the easy access through the Mexican Taxpayer Ombudsman. According with the 2014 report published by the Mexican Taxpayer Ombudsman, during such year, 873 filings for Settlement Agreements were received. 332 are already closed, and from this number, 220 of them closed with the execution of a Settlement Agreement⁷.

It is important to mention that apart this prior conciliation procedure, currently Mexico does not foresee tax arbitration in its domestic law.

Economic Regulation.- In economic regulation matters, there are two laws that regulate a conciliation proceeding, these proceedings are: the conciliation foreseen under the Federal Consumer Protection Law (since December 1994) and the conciliation before the National Commission for the Protection and Defense of Users of Financial Services (since January 1999). It is important to note that these two conciliation and arbitration proceedings are not followed between an authority and an individual but by two individuals before an administrative authority (acting as a mediator) with respect to administrative matters.

The purpose of the conciliation before the PROFECO⁸ is to adjust and balance the interests of both, the consumer and the supplier within a given dispute or

⁷ <http://www.prodecon.gob.mx/index.php/home/cc/publicaciones/informe-2014>, website reviewed on February 9, 2016.

⁸ Mexican Attorney General for Consumer Protection

disagreement with respect to a private service. This process starts with the filing of a complaint by the consumer and the corresponding arguments and responses from the supplier. The law foresees various types of conciliation, among which we can find the immediate conciliation (through conference calls or in the domicile of the interested party) and the personal conciliation (the parties are discussing and negotiating in the offices of the authority, which is a neutral third party). Additionally, PROFECO has implemented an internet tool called “*Concilianet*”, a conciliation service through electronic means that is available for suppliers and consumers that are registered in such database.

If the parties do not reach an agreement as a result of the conciliation, the law foresees an arbitration proceeding, in which case they may elect between the PROFECO or an independent arbitrator. If the arbitration is not elected, the right of the parties to file a suit according to the applicable law before judicial instances, will be respected.

The conciliation before the CONDUSEF⁹ is foreseen under the Law of Protection and Defense of the Financial Service Users. In this respect, the commission has the faculty to act as conciliator in the disputes arising between the financial institutions and the users, with the main purpose of protecting the interests of the users and avoid malpractices or violations to banking and financial regulations. If no agreement is reached during the conciliation, the parties may elect an arbitration proceeding with the CONDUSEF as arbitrator. The rights of the parties to file a suit according to the applicable law before judicial instances, will be respected in the case the arbitration is not elected.

In 2014, CONDUSEF developed an Online Arbitration System¹⁰, through which the financial institutions register some of the financial products or services they offer and they will be obliged to follow all the controversies regarding such products or services through arbitration, at the election of the user.

⁹ National Commission for the Protection and Defense of Users of Financial Services

¹⁰ <http://oficinaenlinea.condusef.gob.mx/SRA/portalArbitral.php>

Public Contracts and Public Procurement.- We have mentioned that, from this perspective, the Mexican law establishes a prior stage of conciliation before the Mexican Ministry of Public Services for disputes arising between individuals and contracting authorities during the execution of a public contract.

Additionally, the contracting authority may introduce ADR clauses in the contracts, however this situation is not an obligation and it mostly depends on the type of contract, complexity, time of execution, and amounts to be paid.

Conciliation proceedings are foreseen under the Public Works Law and the Public Sector Procurement and Services Law since 2000. The faculty of the authority to choose arbitration clauses in public contracts was established until 2009 (only for long-term contracts) and later in 2012 (removing all restrictions).

3. Do rules restricting recourse to alternative procedures in administrative matters exist in your country? In your opinion, what are the types of litigation for which these procedures would not be appropriate?

With respect to Public Contracts and Public Procurement, there are certain cases in which arbitration is not applicable, such as the disputes related with the administrative termination of a contract due to breaches of the contractors. The partial arbitrability of public contracts with an arbitration clause rests in the fact that such contracts involve both, acts of the authority that have a public nature and are not arbitrable (strict application of law), and private acts with commercial nature.

Specifically, in tax matters, arbitration has not been established under any Mexican law. The idea of a tax arbitration is still not of common acceptance among authorities and individuals, and most of the arguments in this respect are based on the idea that tax credits are not negotiable and shall remain under the total control of the State, who is the only empowered to impose, collect them and solve any dispute related.

In March 2012, a member of the Mexican Chamber of Deputies, submitted a motion proposing amendments to the Mexican Constitution and the Federal Tax Code¹¹ to include a chapter with respect to tax arbitration. This bill exposed that having procedural Agreements in tax matters (conciliation and arbitration), is the appropriate way to modernize, ease, streamline and strengthen the processes and the results of tax disputes. Tax authorities would be able to exercise their public authority not in a unilateral way, but by mutual agreement with the taxpayers. In this way, the participation of taxpayers would constitute a guarantee for public interest as it would allow the arbitrators to consider all the arguments of the parties, required to have a satisfactory resolution.

Additionally, the bill mentioned that the figure of tax arbitration is based on the rule of law principle, the principle of administrative effectiveness and the principle of citizen participation. Principles that are connected with the clauses of constitutional state, social state and democratic state that are adopted by our legal system.

However, this bill was dismissed by the commissions of the Chamber of Deputies in August 2012, and no further efforts have been made in this respect.

In my opinion, and based on Mexican law, the application of ADR is very limited within the Administrative Law, as conciliation or arbitration, for example, are dispute resolution mechanisms that are appropriate when the contested rights are available or negotiable for the parties. Most of the acts or resolutions of governmental authorities have a public nature, as they are issued with administrative power and based on the rule of law, consequently, such acts are unavailable and non-negotiable for the authority.

We can say that the availability of public acts is based on the level of discretion that the authority has for the issuance of such administrative acts or resolutions. Therefore, discretionary acts, such as cancellation of interests and surcharges of a

¹¹ “Iniciativa del Decreto que reforma y adiciona diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, del Código Fiscal de la Federación y de la Ley Orgánica de la Procuraduría de la Defensa del Contribuyente, a cargo del diputado Silvio Lagos Galindo, del Grupo Parlamentario del PRI”.

tax credit or price adjustments in public contracts, may be arbitrable under specific circumstances:

- a) That the arbitration follows the rule of law (classical arbitration vs. amicable arbitration)
- b) Independent arbitrators
- c) Arbitration before jurisdictional authorities
- d) The arbitration as ADR mechanism must be established by law and the arbitrable matters shall be expressly stated

4. Do instruments organizing the use of administrative procedures in administrative matters exist in your country? If so, are these instruments legally binding (hard law/soft law)?

Mexico regulates the administrative procedures, through their different stages, in the Mexican Federal Law of Administrative Procedures and the Federal Law of Contentious-Administrative Procedure. Both instruments are legally binding.

The Federal Law of Administrative Procedures, issued in 1994, modifies the Mexican system of administrative law by regulating, in a general way, the administrative procedure. This law regulates the acts through which the public function is developed by the authorities. Additionally, it unifies all the existing administrative remedies that, until 1994, were dispersed in other procedural laws and created a universal administrative remedy, called "*recurso de revision*" (appeal for review). This remedy is optional for the citizens as a prior stage to jurisdictional activity before the Tax Court¹². The appeal for review is conducted with the superior of the same administrative authority that issued the contested act.

Due to the generality of its dispositions, this law is of supplementary application for authorities that are ruled under their special laws (e.g. antitrust law, public officials liabilities, tax related matters).

In Mexico, the Federal Tax and Administrative Court¹³ is the jurisdictional authority that solves any and all tax and administrative disputes involving individuals and

¹² The highest jurisdiction body for tax and administrative disputes in Mexico.

¹³ Tribunal Federal de Justicia Fiscal y Administrativa.

authorities. The procedure before this Court is governed by the Federal Law of Contentious-Administrative Procedure and its applicable when:

- a) The resolution to the administrative remedy foreseen under the Federal Law of Administrative Procedures or any other special law, does not satisfy the claim of the individual.
- b) The individual elected not to file said optional remedy.

The Contentious-Administrative Procedure shall be filed against final administrative resolutions, administrative acts, decrees and generalized agreements, different from regulations.

II. The stakeholders in alternative procedures

1. What categories of natural or legal persons have recourse to alternative procedures? Can all legal persons governed by public law use them?

In accordance with the paragraphs set above, within the administrative areas that accept alternative procedures in Mexico, there is no requirement to have a special category in order to access to such ADRs.

For Public Contracts and Public Procurement, only the parties that executed the public contract can access to conciliation before the Mexican Ministry of Public Service, or arbitration in accordance with the terms accepted in the corresponding clause.

For Public Service, there is no form of ADR foreseen under Mexican law, as it is consider a matter of public order.

For Taxation, only taxpayers that are subject to an active audit proceeding are able to access to the conciliation process for Settlement Agreements before

PRODECON; in this same sense only tax authorities can be able to conciliate with taxpayers under this ADR mechanism.

For Economic regulations, the conciliation proceedings we have mentioned do not involve any authority as part of the ADR, but as a mediator of the interest of the parties. For the conciliation with the National Commission for the Protection and Defense of Users of Financial Services, one party has to be a user of financial services, and the other has to be a financial or banking institution according to Mexican law and regulations.

In the conciliation with the Mexican Attorney General for Consumer Protection, one of the parties has to be a trader or merchant subject to the corresponding law, and the other party has to be a user of such products or services.

2. Can the parties to an administrative dispute entrust the conducting of a mutual agreement procedure to a third party? What role is this third party called upon to fulfil?

Except for the cases in which the law expressly foresees the possibility of the parties (government and citizens) of solving their administrative dispute through arbitration (public contracts, when an arbitration clause is inserted and Settlement Agreements for tax matters), administrative disputes have to follow the procedures established under the laws mentioned in number 4 of Chapter I, the Mexican Federal Law of Administrative Procedures and the Federal Law of Contentious-Administrative Procedure and there is no possibility to entrust the conducting of a mutual agreement procedure to a third party.

3. Do standards regulating the activity of these third parties exist in your country (required qualifications, continuing vocational training, remuneration, deontology, etc.)? Do authorities with responsibility for the supervision of compliance with these standards exist (public bodies, professional organizations, non-profit organizations- possibly operating under license, etc...)?

In the conciliation proceedings (public contracts, tax, financial services, and consumer disputes) mentioned above, the authority is the one that will perform the negotiation approach as a third party. Therefore, public officials working for such authorities in the areas related to ADR receive continuous training and updating in connection with these areas, being obliged to comply a certain standard of updating and training.

For arbitration, specifically in public contracts, the parties have to establish the arbitral institution that will hold the arbitration as well as the applicable law and the rules that such arbitration will follow. Several administrative authorities have established through internal regulations, that the arbitration clause of the International Chamber of Commerce (ICC) shall be the one inserted in the public contracts in which this resolution mechanism is elected.

However, in other areas such as commercial or civil law, where the local states have expressly created mediation centers or ADR centers, there are specific regulations that are applicable to the third parties that perform conciliation and mediation, and local judicial authorities supervise the compliance of such regulations.

4. Can the administrative courts invite or oblige parties to litigation brought before them to pursue an alternative procedure? Can the administrative court entrust a mediation mission to a third party?

No. The Mexican Federal Tax and Administrative Court cannot invite or oblige parties to pursue an alternative procedure before the litigation starts.

5. Can the administrative court itself conduct mediation proceedings? In your opinion, what are the advantages and drawbacks of a mutual agreement procedure conducted by a judge? In what types of litigation does the direct intervention of a judge appear most appropriate?

No. Apart from the proceedings that were listed above, there is no possibility in Mexico to pursue any ADR as a way to solve a controversy in administrative law. Administrative law involves governmental acts, through the actions of public

officials. The effects and extent of such acts are considered to be non-negotiable and shall remain under the total control of the State, who is the only empowered to solve any dispute related.

Considering the baseline of Mexican legal system, it would be possible to set the resolution of certain administrative disputes to ADR, given that, as mentioned before, such disputes represent an arbitrable matter within administrative law. However, this interpretation cannot be implemented in the common practice until a reform allows this type of procedures within contentious justice.

In such case, I would conclude that the types of arbitrable administrative matters may be carried out through arbitration, but always applying the strict rule of law and never through an amicable proceeding or equity arbitration.

III. The procedures of alternative procedures

- 1. Can you detail the different alternative procedures applicable in administrative matters in your country? How do the parties choose between the various alternative procedures available?**

For Taxation and Economic Regulation, the Mexican Federal Tax Code foresees a type of conciliation proceeding called Settlement Agreements or *Acuerdos Conclusivos*. This is a conciliation instance in tax matters, prior to the administrative trial between taxpayers (subject to an audit or revision) and the Mexican tax authority, Servicio de Administración Tributaria (SAT).

As mentioned before, the process is conducted by the Mexican Office of the Taxpayers Advocate (*Procuraduría de la Defensa del Contribuyente*, PRODECON, Taxpayer Ombudsman) in Mexico. And the process begins with the request of Settlement Agreement filed by the taxpayer and the execution of one or more working tables with the supervision and intervention of the Mexican Taxpayer Ombudsman. If the parties settle, and agreement is signed, and such document will be of mandatory compliance for both parties and its execution can be required before the judicial authorities.

For Public Contracts and Public Procurement, Mexican laws establish a conciliation procedure that is followed before the Mexican Ministry of Public Administration for disputes arising from the public contracts executed by the suppliers with the governmental agencies or authorities. The conciliation is optional, however, the agreement executed as consequence of such conciliation is mandatory.

If the dispute continues after the conciliation procedure is over, or if the parties did not file any request of conciliation, the dispute must be solved in accordance with the dispute resolution clause of the public contract. Since 2010, Mexican law allows the parties to establish Arbitration or other ADRs as dispute resolution mechanisms under the public contract. However, if no ADR is established under the public contract, then, all controversies arising therefrom should be solved by ordinary means of Judicial Courts.

In this case, the type of ADR to be used to solve disputes will be elected by the authority acting as contracting party and should be published within the rules of the tender. Due to a reform in 2010, now, the contracting authorities are free to elect the type of ADR they want to publish in the tender rules.

It is important to note that ADR mechanism are allowed in this case, as it is considered that the acts performed by the authorities during the execution of a public contract are not governmental acts or resolutions. However, as mentioned above, there are certain acts, such as the early termination of the contract, in which the contracting party involves its public authority, and therefore such acts should follow the processes foreseen under the Mexican Federal Law of Administrative Procedures and the Federal Law of Contentious-Administrative Procedure. This is an exception, in which ADR clauses under the contract are not applicable.

- 2. Do administrative appeals, mandatory prior to referral to the administrative court, exist in your country? Do optional such appeals exist? How are they organized? Does the lodging of an administrative appeal modify the conditions governing the filing and review of subsequent recourse to the court? For example, can the parties**

present arguments, not produced during a prior administrative appeal, before the administrative court?

As mentioned above, the Mexican Federal Law of Administrative Procedures foresees a universal appeal for administrative acts and resolutions. However, this administrative appeal, called appeal to review (*recurso de revisión*), is optional, and the affected party may elect between filing this appeal or filing a suit before the Mexican Tax and Administrative Federal Court. In addition to the aforementioned, especial administrative appeals are foreseen in other administrative laws that regulate activities that are not under the scope of the Mexican Federal Law of Administrative Procedures, such as tax matters.

The Remedy of repeal (*recurso de revocación*) is established in the Mexican Federal Tax Code, and it is a mean through which taxpayers can dispute an act or resolution issued by the Mexican tax authorities. This remedy, such as the appeal to review, is optional, and the taxpayers can elect between filing it before the tax authority or filing a suit before the Mexican Tax and Administrative Federal Court.

The filing of an administrative appeal (*revisión, reconsideración* or others) does not change or affect, in any way, the formulation of the subsequent suit before the Tax Court. In accordance with the Federal Law of Contentious-Administrative Procedure, the suit that starts the administrative trial before the Court, must detail the contested resolution or act. For the case that an appeal is filed previously, the contested act will be the resolution of the administrative authority, confirming the first administrative act. However, if the optional appeal was not filed, the contested act will be the first administrative act issued by the authority.

Consequently, it can be concluded that a party may include new arguments before the Court that were not raised through the appeal.

With respect to Settlement Agreements, this ADR has not the nature of an appeal or remedy, as the request to access such procedure has to be done before the tax authority issues any resolution in connection with the audit process that is conducted. Therefore, it is irrelevant for the filing of an appeal or an administrative trial if the parties used or not this conciliation mechanism.

However, if during the procedure before PRODECON, the parties execute a Settlement Agreement, its implementation and enforcement can be brought before the judicial authorities. It is necessary to emphasize that the content of Settlement Agreements is final and irrevocable, and therefore it can be contested through any means.

3. What are the general principles regulating alternative procedures (adversarial principles, impartiality, rules of confidentiality, time limits, etc...)? How much autonomy do parties have with regard to the organization of the deployment of an alternative procedure?

Due to the fact that one of the parties in this type of disputes is an administrative authority, that is part of the Mexican Public Administration, there is no possibility for the parties to solve their dispute through an ADR, except for the acts and procedures mentioned above in connection with public contracts.

For Settlement Agreements, the Mexican Federal Tax Code and the Regulations issued by the Mexican Taxpayers Ombudsman state that this procedure should be ruled under the principles of flexibility, immediacy, promptness, and confidentiality. The parties have autonomy during the process of this alternate procedure, however, the Mexican Taxpayers Ombudsman cannot undertake a passive role as its responsibility is to make sure that the agreements taken are executed under the rule of law and do not harm the interests of the taxpayers nor the interest of the tax authorities.

4. Does the initiation of an alternative procedure allows the suspension or interruption of periods of limitation? And of time limits for judicial appeals?

No, as they are not foreseen as a dispute resolution mechanism. Administrative appeals may be filed within the next 15 days after the contested act or resolution was duly notified. On the other hand, the period to file a suit before the Tax Court is of 45 days after the act or resolution is in full effects.

However, it is important to mention that the filing of the Settlement Agreements procedure will suspend the audit or verification process that is being executed by the tax authority until an agreement or a closing resolution is issued.

5. Can the court intervene, even partially, during the course of an alternative procedure? If so, in what way?

No, as they are not foreseen as a dispute resolution mechanism. Even in public contracting, the Court has no jurisdiction if the parties are in dispute as this area is considered to be commercial law, and not administrative law.

IV. The efficacy of alternative procedures

1. Do you consider the alternative procedures are faster and/or less costly than court procedures? Can you provide a quantity comparison?

That is correct. In general terms, the benefits and advantages of ADR have been a continuous concern in Mexico, for the areas of law in which these mechanisms are fully implemented, such as commercial law, civil law, etc.

In civil law, some states have created ADR Centers in which the parties of a certain dispute can bring their arguments and solution proposals for discussion and negotiation. The relevance of this mechanisms is that both, the courts and the ADR centers share the same technology, systems and facilities but each one using different methodologies. This structure allows them to effectively reduce costs and guarantee the access to justice.

However, we cannot give any quantity comparison, given that in administrative law such ADR mechanisms are not applicable. Compared to other countries, we can state that Federal administrative trials before the Mexican Federal Tax Court are solved in a very short period of time as most of the proceedings end in approximately 180 labor days. The labor of this Court has been expanding and strengthening through the last years.

- 2. What is the proportion of administrative disputes that are definitively resolved by alternative procedures? What are the factors in success, or failure?**

N/A.

- 3. What is the legal standing of an agreement reached by means of an alternative procedure? Can such an agreement be referred to the administrative court for approval?**

Currently, the only agreement that can be reached as result of an ADR in administrative matters, is the Conclusive Agreement. Once such agreement is signed by the tax authority, the taxpayer and the Mexican Taxpayers Ombudsman, it can be considered as an act or resolution which enforcement can be validly required before the judicial authorities. However, it is not subject to any administrative appeal.

- 4. What instruments and procedures are available to the parties in the case of a violation of the agreement reached by means of an alternative procedure, potentially approved by the administrative court?**

As mentioned above, in the case of the Settlement Agreements, there is no need to have an approval of the Mexican Federal Tax and Administrative Court. Such agreements are valid from the moment they are signed. If, for any reason, the agreements taken are not complied by any of the parties, they can go before the judiciary to take actions.

- 5. Do you consider it necessary to further develop alternative procedures in your country? Why? In what form?**

I consider that the alternative procedures in Mexico have been developing and strengthening for the past years. I am aware that there are still areas of the law in which ADRs are not foreseen, but this is just a consequence of the baseline and principles of Mexican legal system. For example, administrative and tax law are restricted areas that, despite the foregoing, have implemented some types of ADR such as conciliation or mediation.

Additionally, I can say that administrative litigation in México is easy, prompt and efficient, which led to conclude that arbitration has a little advantage (in terms of promptness and efficiency) with respect to administrative trials before the Mexico's Federal Tax and Administrative Court.

The main mission of México's Federal Tax and Administrative Court is to provide tax and administrative justice at the federal level with full constitutional autonomy, honesty, quality and efficiency, and to ensure the complete full access to justice, adhered to the principles of legality, legal certainty, competitiveness and impartiality to help strengthen the rule of law, country's development and social peace.

As an independent federal institution, its autonomy is of vital importance as it is through the administrative courts that citizens can have real control over government actions, therefore it is essential for the Court to remain autonomous with no hierarchical subordination to any other federal State Power. As a consequence of the above, the Federal Tax and Administrative Court has judicial and budgetary autonomy and full jurisdiction and rule, supported by technological advances for solving disputes.

For the last few years, the Court has been expanding quickly. Currently, the Court has an important presence throughout Mexican territory with local representation offices in 29 out of the 32 states in Mexico. It has 56 Regional Chambers and one Superior Chamber, jointly integrated by approximately 182 judges.

The quality and effectiveness of the resolutions of the Court has placed it as a reliant authority among citizens. According with the last report of such authority, the average of time to solve an ordinary trial is of approximately 180 labor days and of 96 labor days for summary trials. The strengthening of this Court has led

into an efficient, non-expensive, and prompt administrative justice for citizens, similar to the one aimed by the ADR procedures.

As a relevant recent fact and due to a recent Constitutional amendment, this year, the Federal Tax and Administrative Court will change its organization and be renamed as the Federal Court of Administrative Justice. As a consequence thereof, the Court will be responsible for settling disputes that arise between the federal government and individuals and will also be the competent body to impose sanctions on public servants for administrative responsibilities established by law which are deemed as felonies and sanction the individuals involved in acts connected with such acts, thereby establishing proper compensation arising from the damages affecting the Federal Government or public entities estate.

As an empowered and growing Court, much is yet to be done but the Federal Tax and Administrative Court of Justice is now one of the most recognized institutions in Mexico, as an impartial and honest tribunal working in strict observance of law and the general principles of legality, equality and legal certainty in order to provide justice to the individuals and corporations that seek for it.