

Validity of Mediation Agreements in Mexico City

ABEL QUEZADA

Mediation is one of the alternative dispute resolution methods available in Mexico. In mediation, the parties go to a mediator to avoid or put an end to a dispute after negotiation, with reciprocal concessions. This results in an agreement, which, when executed before an authorized mediator, has the status of *res judicata*, the same as a judicial resolution.

The Alternative Justice Law of the Superior Court of Justice for the Federal District (now Mexico City) establishes as guiding principles of mediation: 1) voluntariness; 2) confidentiality; 3) flexibility; 4) neutrality; 5) impartiality; 6) fairness; 7) legality; and 8) economy.

On September 22, 2023, two judicial decisions issued by the Third Collegiate Court in Civil Matters of the First District were published. The decisions contained judicial criteria regarding observance of the guiding principles of the mediation procedure to determine the validity of mediation agreements entered into in Mexico City.

The Collegiate Court held that in Mexico, while the principle of contractual freedom exists enabling the parties to freely agree on the terms they deem convenient, it is also true that such agreements, including mediation agreements, must respect the human rights of the parties, and avoid an asymmetry between the mediated parties due to the non-observance of the guiding principles of mediation. The above reasoning seeks to avoid agreements that could be unfair or usurious, the latter aspect being expressly mentioned in one of the above-mentioned cases.

For all these reasons, the Collegiate Court recognized that compliance with the guiding principles of mediation is a necessary requirement for the validity of the respective mediation agreement.

Therefore, the validity of a mediation agreement may be affected if the mediator does not abide by the aforementioned guiding principles, and if an evident asymmetry exists between the parties. This implies that the mediator should not limit its labor to attest the agreement and grant the *res judicata* status, but that it should comply with a thorough mediation work.