

**Law 60/2003 of 23 December on Arbitration(\*), (\*\*)**

**(in force 26 March 2004)**

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**PREAMBLE**

**I.**

Spain has always been sensitive to the need for harmonizing the legal system on arbitration, particularly international commercial arbitration, in order to encourage the dissemination of its practice and promote uniform criteria in its application, in the belief that a greater uniformity of the laws governing arbitration can only increase its effectiveness as a method of dispute resolution.

Law 36/1988, of December 5, on Arbitration, pays tribute to this commitment, already stated explicitly in Royal Decree 1094/1981, of May 22, which opened the doors to international commercial arbitration, taking into account that the rise in international commercial relationships, especially in the Latin—American realm, and the lack of adequate international commercial arbitration services in our country means that when business people and merchants use arbitration they rely on foreign institutions, with the negative effect that this has for Spain and the loss that it implies for our country to break ties with these countries in an area of such growing shared interest.

This law extends this sensitivity, this commitment and this practice, but with the aim of making a qualitative leap. Thus, its main inspiring criterion has been that of basing the Spanish arbitration legal framework on the Model Law drafted by the United Nations Commission on International Trade Law, of June 21, 1985 (UNCITRAL Model Law), recommended by the General Assembly in Resolution 40/72 of December 11, 1985, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The Spanish legislator follows the recommendation of the United Nations, takes the Model Law as its basis and also takes into account further work of UNCITRAL that endeavors to incorporate technical advances and meet the new needs of arbitration practice, particularly on

the subjects of the requirements for the arbitration agreement and the adoption of interim measures.

The Model Law responds to a subtle compromise between the continental European and the Anglo-Saxon legal traditions, product of a careful study of comparative law. Its content does not therefore fully respond to the traditional canons of our system, but it facilitates its dissemination among operators belonging to economic areas with which Spain maintains active and growing commercial relations. The commercial actors in these areas will therefore acquire greater certainty about the content of the Spanish arbitration legal framework, which will facilitate and even encourage the parties to draft arbitration agreements establishing our country as the place of arbitration. The Model Law is more accessible to international commercial economic operators, who are accustomed to greater flexibility and adaptability of legal rules to the special features of the concrete cases that arise in very different settings.

The new law has been drafted with an awareness of the undeniable advances that its predecessor, Law 36/1988, on Arbitration, meant for the regulation and modernization of arbitration in our legal system. While Law 36/1988 has been in force, a marked increase in arbitration in our country has taken place; the type and number of legal relationships, especially contractual, in which the parties have included arbitration agreements have grown greatly; institutional arbitration has established itself; uniform practices, especially in international arbitration, have been consolidated; an estimable body of doctrine has been generated; and the use of judicial proceedings to support and control arbitration has been normalized.

Nonetheless, these same considerations reveal that it has become necessary to promote another new and important advance in the legal framework of arbitration by way of the above-mentioned incorporation of our country into the growing list of States that have adopted the Model Law. Furthermore, the passage of time since Law 36/1988 entered into effect has allowed for gaps and imperfections in the law to be detected. Arbitration, especially international commercial arbitration, is an institution that must evolve at the same pace as other legal institutions, or risk becoming outdated. A country's domestic legislation on arbitration must offer advantages or incentives to individuals and to corporations so that they opt for this method of dispute resolution and so that the arbitration will take place in that country and pursuant to its laws. Accordingly, both the need for improvement and follow-up in the evolution of arbitration and for the adaptation to the Model Law necessitate the promulgation of this law.

## II.

The new law is organized in nine titles. Title 1 contains the general provisions on arbitration.

Article 1 determines the scope of the Law's application, based on the following criteria:

In the first place, and as could not be otherwise, a reservation is made for international conventions to which Spain is a party.

In the second place, where ordinary versus special arbitration is concerned, this Law intends to be a general law, fully applicable as such to all arbitration proceedings that are not subject to special regulation; but it is also intended as a supplementary law to any arbitration proceedings that are subject to special regulation, except insofar as those special regulations contradict this Law or except where a legal rule expressly provides that this Law is inapplicable.

In the third place, where domestic versus international arbitration is concerned, this Law clearly opts for a unified regulation of both. In the context of what has been denominated the alternative between dualism (where international arbitration is governed completely or in large part by different rules than domestic arbitration) and monism (where, save for a few exceptions, the same rules apply equally to domestic and international arbitration), this Law follows the monist system. The rules that require a different system for international arbitration than for domestic arbitration are few and clearly justifiable. Despite the awareness that international arbitration responds many times to different demands, this Law starts from the premise —ratified by the current tendency in the field— that a good set of rules for international arbitration must be a good set of rules for domestic arbitration as well, and viceversa. The Model Law, as a product of UNCITRAL, is conceived specifically for international commercial arbitration; but its inspiration and solutions are perfectly valid, in the large majority of cases, for domestic arbitration. In this aspect, this Law follows the example of other recent legislation from abroad that has deemed the Model Law to be appropriate not only for international commercial arbitration but also for arbitration in general.

In the fourth place, the scope of application is territorial. Nevertheless, there are some, rules, related to certain cases of judicial intervention, which shall likewise apply to arbitration proceedings that take place or have taken place abroad. The criterion, in any case, is also territorial, given that these rules are procedural rules that must be applied by our courts.

Article 2 governs the matters capable of settlement by arbitration, based on the same criterion as Law 36/1988, i.e., any dispute that the parties may freely dispose of at law. Nevertheless, it has been deemed unnecessary for this Law to include a list, not even for illustrative purposes, of matters that may not be freely disposed of at law. It suffices to say that the arbitrability of dispute coincides with the parties' ability to freely dispose of the subject matter of the controversy. As a general rule, arbitrable issues are issues freely capable of settlement. It is conceivable that there could be disputes that, while capable of settlement by arbitration, for policy reasons, must be of limited or entirely precluded arbitrability. But such a case is beyond the scope of a general law on arbitration and may, where called for, be the subject of specific provisions of other legal texts.

With regard to matters capable of settlement by arbitration, the Law introduces the rule that, for international arbitration, States or state-dependent entities are not entitled to avail themselves of privileges of their domestic legislation. The intent is that, for the purposes of arbitrability, a State shall be treated exactly the same as a private party.

Article 3 governs how to determine whether the arbitration is international, which is relevant for the application of those articles that contain special rules for international arbitration that take place in Spain. Thus, for the first time in our legal system, the law defines «international» arbitration; this should facilitate the interpretation and application of this Law in the context of international legal relationships. Moreover, it should be taken into account that international conventions exist whose application requires, a priori, a definition of international arbitration. The characterization of arbitration as international follows substantially the same criteria as the Model Law. To these criteria, it is advisable to add another: that the legal relationship that gives rise to the dispute affects the interests of international trade. This is a criterion widely developed in other legal systems, where the intent is to include cases in which, although the other elements established by law may not be present, the arbitration, in light of the circumstances, is undoubtedly international. Finally, the Law avoids the confusion that the multiple domiciles of a party, permitted in other legal systems, could cause when determining whether a particular arbitration is international or not.

Article 4 contains a set of rules of interpretation; especially relevant among them are those that give content to the non-mandatory rules of this Law by way of reference, via the parties' intent, to an arbitral institution or the contents of specific rules of arbitration. Thus, the starting point for most of the rules of this Law is that party autonomy should control. However, the parties' intent is understood to be integrated into the decisions that the administering arbitral institution, where appropriate, may adopt by virtue of its rules, or those that the arbitrators, if applicable, may adopt by virtue of the rules of arbitration to which the parties have submitted. The result is a kind of integration of these rules into the contents of the arbitration agreement that, on account of this provision, becomes in such cases a full-blown contract. In this way, private autonomy in arbitration can be manifested both directly, by way of the parties' stated intent, as well as indirectly, by way of the parties' statement of intent that the arbitration be administered by an arbitral institution or governed by certain rules of arbitration. In this sense, the phrase arbitral institution refers to any entity, center or organization as authorized by the Law that have rules of arbitration and, in accordance with such rules, undertake to administer arbitration. But it is also specified that the parties may submit to a specific set of rules without entrusting the administration of the arbitration to an institution, in which case those rules of arbitration likewise integrate the will of the parties.

Article 5 establishes the rules about notifications, communications and the calculation of time limits, applicable both to the commencement of the arbitration as well as to the ongoing proceedings themselves, governing form, place and time of notifications. The Law provides that periods of time shall be counted in calendar days. This provision is not applicable to judicial proceedings for the support or control of arbitration, where civil procedure law shall govern, but it is applicable to the time periods established for initiating such proceedings, as in, for example, bringing an action to set aside an award.

Article 6 contains a provision on waiver of rights to object, directly inspired —like so many others— by the Model Law, requiring the parties to the arbitration to timely and immediately object to any violation of the non-mandatory rules, i.e., the rules applicable in the absence of those established by the parties.

Article 7, on judicial intervention, is a corollary to the so-called negative effect of the arbitration agreement, which deprives courts of jurisdiction over disputes that have been submitted to arbitration. Thus, judicial intervention in disputes submitted to arbitration must be limited to proceedings for the support or control of arbitration, expressly provided for by this Law.

Article 8 contains, directly or by reference, the jurisdictional rules regarding all the judicial proceedings available for the support or control of arbitration, including those that are not governed by this law but rather by the Law of Civil Procedure. For exequatur of foreign awards the Courts of Appeal shall have jurisdiction instead of—as until now— the Supreme Court of Spain, in order to reduce the docket of the latter and to hasten the proceeding.

### III.

Title II governs the requirements and effects of the arbitration agreement, without prejudice to the applicability of the general legal rules on contracts, in the absence of a specific provision in this Law. In general terms, the Law endeavors to perfect the previous law, adding precision to certain points that had turned out to be problematic.

Certain novelties with respect to the formal requirements of the arbitration agreement must be emphasized. The law reinforces non-formalistic criteria. Therefore, although the requirement that the agreement be recorded in writing is maintained and the various forms of written records are taken into account, compliance with this requirement is extended to arbitration agreements that are made in formats that leave a record, not necessarily in writing, of their contents, and that may be consulted at a later date. This allows for and recognizes the validity of new means of communication and new technologies. The validity of the so-called arbitration agreement by reference is also established — that is, an agreement that is not recorded in the principal contractual document but rather in a separate document, but that, is understood to be incorporated into the former by reference that is made therein to the latter document. Also, the intent of the parties regarding the existence of an agreement to arbitrate prevails over formal requirements. Where the law applicable to the arbitration agreement is concerned, the Law opts for a solution inspired by conserving the agreement where possible, one which is the most favorable to the validity of the arbitration agreement. Thus it is sufficient that the arbitration agreement be valid pursuant to any of the three legal systems mentioned in article 9.6: the rules of law chosen by the parties, the rules of law applicable to the merits of the dispute or Spanish law.

The Law maintains the so-called positive and negative effects of the arbitration agreement. With regard to the negative effect, the law maintains the rule whereby it is up to the parties to avail themselves of it — and specifically up to the defendant, by challenging the jurisdiction of the court. Also, the Law stipulates that where a jurisdictional challenge is pending in court, this does not impede an arbitral proceeding from being commenced or continued, so that the initiation of a judicial proceeding cannot be used, without more, for the purpose of blocking or hindering the arbitration. The Law also clarifies that a request to a court for interim measures does not in any way signify a waiver of the agreement to arbitrate, although neither does such a request without more trigger the negative effect of the arbitration agreement. Therefore, any doubts that might exist about the possibility of court-ordered interim measures with respect to a dispute that has been submitted to arbitration —even before the arbitral proceedings have been commenced— are cleared up. This possibility is incontrovertible, in light of the Law on Civil Procedure 235, but it is important that it be included in the law on arbitration as well. Also, it covers a possible request for interim measures before a foreign court with regard to an arbitration governed by Spanish law.

#### IV.

Title III is devoted to the regulation of the figure of the arbitrator or arbitrators. The Law prefers the expressions «arbitrator» or «arbitrators» to «arbitral tribunal», which could be confused with judicial tribunals. In addition, in the majority of the rules the reference to «arbitrators» may mean either a panel of arbitrators or a sole arbitrator, as the case may be.

The Law opts for establishing that, in the absence of an agreement between the parties, a sole arbitrator shall be appointed. This option is guided by reasons of economy. Regarding the ability to act as arbitrator, the Law chooses the criterion of the greatest party autonomy, as is the general rule today in the countries that are most advanced in arbitration; the Law imposes no requirements, except that the arbitrators be physical persons with unmitigated capacity. It shall be either the parties directly or the arbitral institutions, with total freedom and without restrictions —not adapted to the reality of the arbitration— that appoint the arbitrators. The law provides rules for the appointment of arbitrators only in the absence of any stipulation to that effect by the parties, to avoid bringing the arbitration to a standstill. In these cases judicial intervention is called for, although the aim is, on the one hand, that the judicial proceeding be swift, and, on the other, that the trial judge be given the criteria to make the appointment. Examples of the first aim are the use of the verbal lawsuit and the fact that no appeal shall be taken against the interlocutory rulings that the court may make in this proceeding or against the appointment. An example of the second aim is the provision on the advisability in international arbitration of the sole arbitrator or third arbitrator being of a different nationality from that of the parties. It should also be emphasized that the judge is not called upon in this proceeding —either *sua sponte* or at the petition of any of the parties— to examine the validity of the arbitration agreement or to verify the arbitrability of the dispute. This, if allowed, would unduly slow down the appointment and would render meaningless the rule that it is the arbitrators that are called upon, in the first place, to decide upon their own jurisdiction. Therefore, the court should only dismiss the petition for appointment of arbitrators in the exceptional case of a non-existent arbitration agreement, i. e., where *prima facie* the court can establish that no agreement to arbitrate actually exists. However, the judge is not called upon in the appointment process to examine the validity of the arbitration agreement.

The Law establishes the duty of all arbitrators, regardless of who may have appointed them, to maintain due impartiality toward and independence from the parties to the arbitration. Acting as a safeguard is their duty to disclose to the parties any fact or circumstance that is likely to give rise to doubts as to their impartiality or independence. The cross-reference to the grounds for abstention and challenge of judges and magistrates has been eliminated. As these grounds have not always proven appropriate in arbitration nor do they cover all possibilities, a general clause has been preferred. Regarding the proceeding to

challenge an arbitrator, once more the premise is party autonomy, either through explicit agreement or by reference to certain rules of arbitration. In the absence of the foregoing, it shall be the arbitrator or arbitrators who decide the challenge, without prejudice to the right to assert the grounds for challenge as a cause for setting aside the award. The right to a direct court appeal from a challenge that has been denied would provide, without a doubt, the advantage of preliminary certainty regarding impartiality, but it would lend itself to the use of this right as a dilatory tactic. The number of cases in which a challenge will be wrongly denied and eventually nullify the entire proceeding has been deemed far less likely than the number of cases in which an appeal would be brought immediately before the judicial authorities for the purpose of delaying the proceedings.

The Law also provides for cases that could lead to the withdrawal or removal of one of the arbitrators and the appointment of a substitute. In such cases the opportunity to repeat proceedings already carried out is provided for, although there is no obligation to do so.

## V.

Title IV is devoted to the important issue of the arbitrators' jurisdiction.

Article 22 establishes the rule — fundamental in arbitration — that arbitrators have the authority to rule on their own jurisdiction. This is the rule that doctrine has labeled with the German expression «Kompetenz-Kompetenz» and that the Law of 1988 had already confirmed in less specific terms. This rule comprises what is known as the separability of the arbitration agreement from the main contract, meaning that the validity of the arbitration agreement does not depend on the validity of the main contract and that the arbitrators even have jurisdiction to rule on the validity of the arbitration agreement. In addition, not only must issues that are strictly jurisdictional be included under the generic term of jurisdiction, but also any issues that could hinder a ruling on the merits of the controversy (except for those related to the arbitrators themselves, which are treated separately). The Law establishes the requirement that issues related to the arbitrators' jurisdiction be raised at the outset. It should be emphasized that the fact that one of the parties actively participates in the appointment of the arbitrators does not imply any type of waiver of the right to claim that the arbitrators lack jurisdiction. This is a logical consequence of the Kompetenz- rule: if it is the arbitrators who are to rule on their own jurisdiction, the party is simply contributing to the appointment of those who will be able to rule on said jurisdiction. The contrary would lead the party into an absurd situation: the party would have to remain passive during the appointment of the arbitrators in order to be able to later allege their lack of jurisdiction over the dispute. The rule that issues related to the lack of arbitrators' jurisdiction be alleged at the outset is reasonably adapted in those cases in which a belated allegation is, in the judgment of the arbitrators, justified, to the degree that the party was not able to make the allegation earlier and its attitude during the proceedings cannot be interpreted as an acceptance of the arbitrators' jurisdiction. Whether to rule on the issues regarding their jurisdiction previously to or together with the issues to be decided on the merits is left to the arbitrators' discretion. The law assumes that the arbitrators may issue as many awards as they deem necessary, whether on procedural or substantive issues, or they can issue one award deciding all issues.

Article 23 incorporates one of the principle new features of this Law: the authority of the arbitrators to grant interim measures. This authority can be rejected by the parties, directly or by reference to certain rules of arbitration; but in other cases they are deemed to have accepted it. The Law has deemed it preferable not to endeavor to determine the scope of the authority to grant interim measures. Obviously, arbitrators lack the authority to enforce their rulings, and so for enforcement of interim measures it will be necessary to turn to the courts, in the same terms as for an award on the merits. Nevertheless, where it is possible to distinguish between declaratory interim relief and an interim order to be enforced, this Law recognizes the arbitrators' authority to issue the former, unless the parties have agreed otherwise. This rule does not derogate from or restrict a party's opportunity, provided for in articles 8 and 11 herein and in the Law on Civil Procedure, to apply to the court for interim relief. The arbitrators and the court's authority to grant interim measures are alternative and concurrent, subject to the exercise of procedural good faith.

## VI.

Title V governs the arbitral proceedings. The Law once again starts with the principle of party autonomy; the only limits to that autonomy and to the arbitrators' conducting of the proceedings are the parties' right to be heard and the principle of equal treatment. These are fundamental values upon which the arbitral process, as legal process, is founded. Once these basic norms have been safeguarded, the rules set forth regarding the arbitral process are non mandatory and, as such, are only applicable if the parties have failed to agree, either directly or via their acceptance of either an institutional arbitration or specific rules of arbitration. In this way, the policy choices that underlie these rules are always subordinate to party autonomy.

With respect to the place of arbitration, it should be emphasized that hearings and deliberations may take place in a different place than the place of arbitration. The decision on the place or seat of arbitration is legally relevant in many ways, but it should not imply rigidity for conducting the proceedings.

The commencement of the arbitration is dated from the moment in which one party receives a notice of arbitration from the claimant. It makes sense that the legal effects of the commencement of the arbitration should arise at this time, even if the subject matter of the controversy is not perfectly delimited. Alternative solutions would allow behavior tending to hinder the proceedings.

The decision on the language or languages of the arbitration is, logically, up to the parties, or, in the absence of a decision by the parties, the arbitrators. Nevertheless, unless one of the parties objects, documents may be submitted or proceedings may be conducted in a language other than the language of the arbitral proceedings, without the need for translation. This confirms a widespread practice that allows the submission of evidence or witness statements in another language.

In arbitration, the same plaintiff and defendant roles as in the judicial process are not necessarily reproduced, or not in the same terms. In the end, the determination of the subject matter of the controversy, always within the scope of the arbitration agreement, takes place gradually. Nonetheless, arbitral practice shows that in any event the one who commences the arbitration makes a claim against an opposing party or parties and therefore becomes the claimant, without prejudice to the fact that the respondent may counterclaim. It therefore seems reasonable that, without prejudice to party autonomy, the arbitral procedure be structured on the basis of a duality of positions between the claimant and the respondent. This convenient structure should be adapted, however, when it comes to determining the proceedings necessary to the proper defense of the parties' respective positions. Thus, no exact requirements for the form and content of the parties' written allegations are established. The function of the statements of claim and defense referred to in article 29 is simply to enlighten the arbitrators on the subject matter of the dispute, subject to further allegations. Here the rules typical of judicial proceedings with regard to requirements for the statements of claim and defense, documents to attach or preclusion do not come into play. The arbitral process, even in the absence of an agreement between the parties, is fashioned with great flexibility, as modern arbitration requires.

This flexibility is found in all stages of the proceeding. In certain cases, the proceeding may be predominantly in writing if the circumstances of the case do not require hearings to be held. Nonetheless, the general rule is to hold hearings for the taking of evidence. In addition, the Law endeavors not to allow a party's inactivity to bring the arbitration to a standstill or jeopardize the validity of the award.

The evidentiary phase of the arbitration is also governed by the greatest possible autonomy for the parties and for the arbitrators —provided that the right to be heard and the principle of equal treatment are respected— and by the greatest possible flexibility. The Law only establishes rules on expert evidence, especially important in contemporary arbitration, applicable in the absence of the intent of the parties. These rules are designed to allow opinions from party-appointed experts as well as opinions from experts appointed by the arbitrators, on their own initiative or at a party's request, and to ensure due opportunity for cross- of the expertise.

Judicial assistance in the taking of evidence, one of the traditional functions of judicial support of arbitration, is likewise regulated. The assistance need not consist of the tribunal's taking certain types of evidence; in some cases other measures that permit the arbitrators to take the evidence themselves will suffice, such as, for example, measures to preserve the evidence or orders to produce documents.

## VII.

Title VI is devoted to the award and to the other possible ways of terminating the arbitral proceedings. Article 34 governs the important issue of which legal rules must be applied to the merits of the dispute, based on the following criteria: 1) As in the 1988 Act, the premise is, once again, party autonomy. 2) The rule of the 1988 Act, in favor of arbitration applying principles of equity, has been reversed. The preference for arbitration applying principles of law in the absence of an agreement between the parties is the most widely held position in comparative law. In addition, it is highly debatable that the intent of the parties to submit to arbitration, without more, may be presumed to include their intent that the dispute be resolved according to principles of equity and not according to the same legal criteria that would be applicable if a court were to decide. Equity-based arbitration is confined to those cases in which the parties have expressly agreed to it, either by way of a literal reference to «equity» or to similar terms such as that the decision be made «according to conscience», «*ex aequo et bono*» or that the arbitrator act as «*amiable compositeur*». Notwithstanding the foregoing, if the parties authorize a decision applying principles of equity and at the same time indicate applicable rules of law, the arbitrators may not ignore the latter indication. 3) Following the lead of the most advanced laws on arbitration, the requirement that the applicable law must have some connection to the legal relationship or to the dispute has been omitted, since this is a requirement that is not clearly defined and difficult to

control. 4) The Law prefers the expression «applicable rules of law» to «applicable law», insofar as the latter appears to include the requirement that reference be made to the law of a particular State, when in some cases what must be applied are rules from various laws or rules common to international trade. 5) The Law does not hold the arbitrators to a system of conflicts law.

In decision-making by a panel of arbitrators, and without prejudice to the rules that the parties, directly or indirectly, may have established, the logical rule of decision by majority is maintained, as is the rule that in the absence of a majority decision, the chairman shall decide. A new rule is introduced that grants the chairman the authority to decide on procedural matters, it being understood that such matters, for these purposes, are not any and all matters that are distinct from the merits of the dispute, but are instead, in a more restrictive sense, matters related to the mere administration or facilitation of the proceedings.

The possibility is foreseen of the arbitrators' making an award based on the contents of an agreement reached by the parties. This provision, which could be considered unnecessary —given that the parties have the authority to settle the matter under dispute— is actually not, since the contents of the settlement, by being incorporated into an award, acquire the legal effectiveness of an award. The arbitrators may not deny this request at their discretion, but only for a well-founded legal reason. The Law merely provides legal sanction for something that is already frequent in practice and deserves no objection.

As to the content of the award, the Law's recognition of the prospect of making partial awards must be emphasized — awards which may deal with a part of the merits of the dispute or with other issues, such as the arbitrators' jurisdiction or interim measures. The Law endeavors to make room for flexible formulas for dispute resolution that are common in arbitral practice. Thus, for example, the respondent's liability may first be determined, and only afterwards, where applicable, may the amount of damages be decided. A partial award has the same value as a final award and, with respect to the issue it decides, it is final.

With regard to the form of the award, it should be emphasized that — analogous to the provision on the arbitration agreement— the Law not only allows the award to be recorded in writing in electronic, optical or other formats but also not to be recorded in written form, as long as there is a record of its content and it is accessible for future consultation. Regarding the formal requisites for both the arbitration agreement and the award, the Law considers it necessary to allow the use of any type of technology that complies with the above-mentioned requirements. There may be arbitrations, then, in which only information technology, electronic or digital formats, is used, if the parties so deem it advisable.

The Law introduces the new feature that the time limit for making the award, in the absence of an agreement between the parties, shall begin to run from the submission of the statement of defense or expiry of the deadline for its submission. This new feature responds to the need for the swiftness typical of arbitration to be adapted to practical demands. A six-month time limit from the time of the arbitrators' acceptance has, in more than a few cases, turned out to be impossible to comply with, sometimes forcing the proceedings to be conducted too swiftly or certain stages of allegations, or especially proof, to be omitted. The Law deems it equally reasonable that the extension of the time limit can be agreed upon by the arbitrators directly, without the need for agreement among all the parties. A check on any possible unjustified delay in deciding the dispute is found, among other causes, in the professional liability of the arbitrators.

On the subject of awarding costs, certain clarifications on the possible contents of such an award have been added.

The mandatory deposit of the award with a Notary Public has been abolished. This requirement is unheard of in practically all laws on arbitration, which is why the Law has chosen not to maintain it, except if one of the parties, deeming it advantageous to its interests, requests it before the award has been notified. The award is therefore valid and effective even though it has not been deposited with a Notary Public, such that the time limit for bringing an action to set aside the award runs from its notification, with no need for the depositing of the award, when it has been requested, to precede notification. Enforcement of the award is likewise not dependent on its having been deposited with a Notary Public, although in the enforcement process, in a given case, the party against whom enforcement is sought can challenge the authenticity of the award — a case that is likely to be exceptional.

The Law takes into account certain ways that the arbitral proceedings may terminate atypically and provides a solution to the problem of the amount of time the arbitrators are obligated to keep the proceeding's documentation in their possession.

In the provision on correction and clarification of the award, the time limits are modified to make them more realistic, and they are different for domestic and international arbitration, since, in the latter case, it is likely that the arbitrators will have greater difficulty in deliberating together. Also, the feature of an addendum to the award is added, to make up for any omissions.

## VIII.

Title VII governs setting aside and review of the award. With regard to setting aside, the term «appeal» has been avoided, as it

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is technically inaccurate. What the action to set aside initiates is a proceeding to challenge the validity of the award. The Law continues to take as its premise that the grounds for setting aside an award must be limited and should not permit, as a general rule, a review of the merits of the arbitrators' decision. The catalogue of grounds and the issue of who may raise them—the arbitrators on their own motion or only at a party's request—are both inspired by the Model Law. The time limit for bringing an action to set aside is increased, something that need not harm the party which obtained an award or awards in its favor, because an award, even under challenge, is enforceable.

The procedure for making an application to set aside endeavors to combine the requirements of swiftness and of the parties' right to be heard. Thus, after a claim and a defense made in writing, the procedure of a verbal lawsuit is followed.

## IX.

Title VIII is devoted to enforcement of the award. In fact, the Law on Civil Procedure contains all the rules, both general as well as specific, on this subject. This Law concerns itself solely with the possibility of enforcement of the award while an application to set aside the award is pending. The Law opts for attributing enforceability to the award even though it may be under challenge. It would make no sense for the enforceability of the award to depend on its finality in a legal system that widely permits provisional enforcement of judgments. The enforceability of an award that has been challenged is mitigated by the ability of the party against whom enforcement is sought to obtain a suspension of enforcement by posting security for the amount of the award, plus costs and the damages that may arise from the delay in enforcement. This is a rule that endeavors to weigh the interests of the party seeking enforcement against those of the party against whom enforcement is sought.

## X.

Title IX governs *exequatur* of foreign awards, made up of a sole rule in which, in addition to maintaining the definition of foreign award as that which has not been made in Spain, cross-reference is made to international conventions to which Spain may be a party and, above all, to the New York Convention of 1958. Since Spain has made no reservation to this convention, it is applicable regardless of the commercial or non-commercial nature of the dispute and regardless of whether the award was made in a State that is party to the convention. Such a broad scope of application of the New York convention makes the provisions governing *exequatur* of foreign awards unnecessary, without prejudice to the provisions of other, more favorable, international conventions.

## TITLE I General Provisions

### Article 1. Scope of Application

1. This Act shall apply to any arbitration where the place of arbitration is in Spanish territory, whether of domestic or international character, without prejudice to the provisions of treaties to which Spain is a party or to legislation containing specific provisions relating to arbitration.
2. The provisions of paragraphs 3, 4 and 6 of Article 8, of Article 9, except paragraph 2, of Articles 11 and 23 and of Titles VIII and IX of this Act shall apply even when the place of the arbitration is outside Spain.
3. This Act shall be of supplementary application to any arbitration proceedings provided for in other legislation.
4. Employment arbitration is excluded from the scope of this Act.

### Article 2. Subject Matter of Arbitration

1. All disputes relating to matters within the free disposition(1.) of the parties according to law are capable of arbitration.
2. Where the arbitration is international and one of the parties is a State or a company, organisation or enterprise controlled by a State, that party shall not be able to invoke the "1" prerogatives of its own law in order to avoid the obligations arising from the arbitration agreement.

### Article 3. International Arbitration

1. An arbitration is international whenever any of the following circumstances exist:

(a) that, at the time of the conclusion of the arbitration agreement, the parties have their domiciles in different States.

(b) that the place of arbitration, determined in accordance with the arbitration agreement, the place of performance of a substantial part of the obligations of the legal relationship from which the dispute arises, or the place with which the dispute is most closely connected, is situated outside the State in which the parties have their domiciles.

(c) that the dispute arises from a legal relationship which concerns interests of international commerce.

2. For the purposes of the preceding paragraph, if a party has more than one domicile, the domicile shall be that which has the closest relationship to the arbitration agreement; and if a party has no domicile, it shall be his habitual residence.

#### **Article 4. Rules of Interpretation**

Where a provision of this Act:

(a) allows the parties the power to freely determine a certain issue, that power includes that of authorising a third party, including an arbitral institution, to make that determination, except in respect of the matters set out in Article 34.

(b) refers to the arbitration agreement or to any other agreement between the parties, such agreement includes the provisions of any arbitration rules to which the parties have submitted themselves.

(c) refers to a claim, it will also apply to a counterclaim, and where it refers to a defence, it will also apply to a defence to such counterclaim, except in respect of paragraph (a) of Article 31 and subparagraph (a) of paragraph 2 of Article 38.

#### **Article 5. Notifications, Communications and Calculations of Time**

Unless otherwise agreed by the parties, and excluding in all cases communications made in judicial proceedings, the following provisions shall apply:

(a) Any notification or communication is deemed to have been received on the day it is delivered to the addressee personally, or the day on which it is delivered at his domicile, habitual place of residence, place of business or mailing address. Likewise, notifications or communications made by telex, fax, or other means of telecommunications of electronic, telematic or similar nature that enable pleadings and documents to be sent and received with verification of their sending and receipt, in accordance with what has been designated by the addressee, shall be valid. If none of these addresses can be found after making a reasonable inquiry, the notification or communication is deemed to have been received on the day it is delivered or its delivery was attempted, by registered letter or any other verifiable means, at the addressee's last-known domicile, habitual place of residence, mailing address or place of business.

(b) The periods of time specified in this Act shall run from the day following receipt of the notification or communication. Where the last day of the period is an official "2"holiday at the place of receipt of the notification or communication, the period shall be extended until the following working day. Where a pleading has to be submitted within a period of time, the period of time shall be deemed to have been complied with if the pleading is forwarded within that time, although it is received later. Periods of time specified in days shall be computed in natural days.

#### **Article 6. Tacit Waiver of Powers of Legal Challenge(2.)**

Where a party, knowing of the non-compliance with any provision of this Act or any requirement of the arbitration agreement, does not state his objection within the period provided or, in the absence of such a period, as soon as possible, that party shall be deemed to have waived the powers of legal challenge provided for in this Act.

#### **Article 7. Court Intervention**

In matters governed by this Act, no court shall intervene except where so provided in this Act.

#### **Article 8. Competent Courts for Assistance and Supervision of Arbitration**

1. The First Instance Court at the seat of the arbitration shall have jurisdiction in respect of the judicial appointment of arbitrators; if the seat has not yet been determined, then jurisdiction shall reside with the First Instance Court at the domicile or habitual place of residence of any of the respondents; if none of the respondents have their domicile or habitual place of

residence in Spain, then that at the domicile or habitual place of residence of the claimant, and if the claimant has no domicile or habitual place of residence in Spain, then the First Instance Court shall be any of the claimant's choice.

2. The First Instance Court at the seat of the arbitration or that of the place where the assistance is required shall have jurisdiction in respect of judicial assistance in the taking of evidence.

3. The Court(3.) at the place where the award has to be enforced shall have jurisdiction in respect of interim measures and, in default of such court, that at the place where the measures have to be implemented, in accordance with Article 724 of the Civil Procedure Act.

4. The First Instance Court at the place where the award was issued shall have jurisdiction to enforce the award, in accordance with paragraph 2 of Article 545 of the Civil Procedure Act and, where applicable, Article 958 of the Civil Procedure Act of 1881.

5. The Provincial Court of Appeal at the place where the award has been made shall have jurisdiction in an application to set aside an award.

6. The jurisdictional entity to which the civil procedure rules attribute the enforcement of foreign judgments shall have jurisdiction in respect of the recognition of foreign awards.(4.)

## **TITLE II**

### **The Arbitration Agreement and its Effects**

#### **Article 9. Form and Content of the Arbitration Agreement**

1. The arbitration agreement, which may be in the form of a clause in a contract or in the form of a separate agreement, shall express the will of the parties to submit to arbitration all or some disputes which have arisen or which may arise between them in respect of a determined legal relationship, whether contractual or non-contractual.

2. If the arbitration agreement is included in a standard form agreement, its validity and its interpretation shall be governed by the rules applicable to these contracts.

3. The arbitration agreement shall be verifiable in writing, in a document signed by the parties or in an exchange of letters, telegrams, telex, facsimile or any other means of telecommunications that provides a record of the agreement.

This requirement shall be satisfied when the arbitration agreement appears and is accessible for its subsequent consultation in an electronic, optical or any other type of format.

4. The arbitration agreement appearing in a document to which the parties have expressly referred in any of the forms specified in the preceding paragraph shall be deemed incorporated into the contract.

5. There is an arbitration agreement when in an exchange of statements of claim and defence the existence of an arbitration agreement is alleged by one party and not denied by the other.

6. In respect of international arbitration, the arbitration agreement shall be valid and the dispute shall be capable of arbitration if it complies with the requirements established by the juridical rules(5.) chosen by the parties to govern the arbitration agreement, or the juridical rules applicable to the merits of the dispute, or Spanish law.

#### **Article 10. Testamentary Arbitration**

Arbitration may be validly provided for in a testamentary disposition to resolve disputes between beneficiaries or legatees(6.) in matters relating to the distribution or administration of the estate.

#### **Article 11. Arbitration Agreement and Substantive Claim Before a Court**

1. The arbitration agreement obliges the parties to comply with the agreement and prevents the courts from hearing disputes submitted to arbitration, provided that an interested party raises an objection (declinatoria) to jurisdiction.
2. The objection to jurisdiction shall not prevent the initiation or continuation of the arbitral proceedings.
3. The arbitration agreement shall not prevent any of the parties, before or during the arbitral proceedings, from applying to a court for interim measures of protection nor prevent the court from granting them.

**TITLE III**  
**The Arbitrators(7.)**

**Article 12. Number of Arbitrators**

The parties are free to determine the number of arbitrators, provided that there is an odd number. In the absence of any agreement between the parties only one arbitrator shall be appointed.

**Article 13. Capacity to Act as an Arbitrator**

All natural persons in full possession of their civil rights may act as arbitrators, provided that they are not restricted by the legislation applicable to them in the exercise of their profession. Unless otherwise agreed by the parties, no person shall be prevented by reason of his nationality from acting as an arbitrator.

**Article 14. Institutional Arbitration**

1. The parties may entrust the administration of the arbitration and the appointment of arbitrators to:

- a) Public corporations empowered to exercise arbitral functions, according to their governing legislation, and particularly the Tribunal for the Defence of Competition.
- b) Non-profitmaking associations and societies whose rules envisage arbitral functions.

2. Arbitral institutions shall exercise their functions in accordance with their rules.

**Article 15. Appointment of Arbitrators**

1. In internal arbitrations other than those to be decided in equity in accordance with Article 34, an arbitrator shall be a lawyer in practice unless otherwise expressly agreed to the contrary.

2. The parties are able to freely agree on the procedure for the appointment of the arbitrators, provided that there is no violation of the principle of equal treatment. In the absence of any agreement, the following rules shall apply:

(a) In an arbitration with a sole arbitrator, the arbitrator shall be appointed by the competent court upon the request of any of the parties.

(b) In an arbitration with three arbitrators, each party shall nominate one arbitrator, and the two arbitrators thus appointed shall nominate the third arbitrator, who shall act as the presiding arbitrator of the arbitral panel. If a party fails to nominate an arbitrator within thirty days of receipt of the demand to do so from the other party, the appointment of the arbitrator shall be made by the competent court, upon request of any of the parties. The same procedure shall apply when the two arbitrators cannot reach an agreement on the third arbitrator within thirty days from the latest acceptance.

Where there are multiple claimants or respondents, the former shall nominate one arbitrator and the latter another. If the claimants or the respondents do not agree on their nomination of the arbitrator, all of the arbitrators shall be appointed by the competent court upon request of any of the parties.

(c) In arbitrations with more than three arbitrators, all shall be nominated by the competent court upon request of any of the parties.

3. If it is not possible to appoint the arbitrators by the procedure agreed upon by the parties, any of the parties may apply to the competent court for the nomination of the arbitrators or, if appropriate, the adoption of the necessary measures for this

purpose.

4. The applications made in accordance with the previous paragraphs shall follow the form of verbal proceedings.(8.)

5. The court shall only refuse the request filed when it considers that, on the basis of the documents submitted, the existence of an arbitration agreement is not established.

6. Where the court proceeds to appoint arbitrators for the tribunal, it shall make a list of three names for each arbitrator to be appointed. In making this list, the court shall have regard to any qualifications established by the parties for an arbitrator and will take the measures necessary to guarantee independence and impartiality. In the case of the appointment of a sole or third arbitrator, the court shall also take into account the convenience of nominating an arbitrator of a nationality other than those of the parties and, where applicable, those of the arbitrators already appointed in light of the prevailing circumstances. Subsequently, the court will proceed to make the appointment of the arbitrators by means of the drawing of lots.

7. There shall be no appeal against final decisions in respect of matters attributed by this Article to the competent court, except in the case of refusal of the application filed in accordance with paragraph 5.

#### **Article 16. Acceptance by the Arbitrators**

Unless the parties have otherwise agreed, each arbitrator, within fifteen days from that following the communication of the nomination, should communicate his acceptance to whoever nominated him. If within the period established an acceptance is not communicated, the arbitrator shall be deemed to have not accepted his nomination.

#### **Article 17. Grounds for Abstention and Challenge**

1. An arbitrator shall be and remain independent and impartial during the arbitration. In no case shall he maintain any personal, professional or commercial relationship with any of the parties.

2. A person proposed as arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his nomination, shall disclose to the parties without delay the occurrence of any such circumstances.

At any time during the arbitration, any of the parties may request from the arbitrators clarification of their relationships with any of the other parties.

3. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

#### **Article 18. Challenge Procedure**

1. The parties are free to agree on a procedure for challenging an arbitrator.

2. Failing such agreement, a party who intends to challenge an arbitrator shall state the grounds within fifteen days after becoming aware of the acceptance or after becoming aware of any circumstance which may give rise to justifiable doubts as to his impartiality or independence. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitrators shall decide on the challenge.

3. If a challenge under any procedure agreed upon by the parties or under the procedure of the previous paragraph is not successful, the challenging party may in due course rely upon the challenge in applying to set aside the award.

#### **Article 19. Failure or Impossibility to Act**

1. If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. If there is no agreement of the parties on the termination of the mandate and there is no agreed procedure to overcome such disagreement, the following rules shall apply:

(a) The application for termination shall take the form of verbal proceedings. This application may be joined with the request for the nomination of arbitrators, as set out in Article 15, in case the application for termination is granted.

There shall be no appeal against the final decisions made.

(b) In an arbitration with more than one arbitrator, this question shall be decided by the remaining arbitrators. If they are unable to reach a decision, the procedure set out in the previous subparagraph shall apply.

2. The withdrawal of an arbitrator from his office or the agreement by one party to his termination, in accordance with the provisions of the present Article or those of paragraph 2 of the previous Article, does not imply acceptance of the validity of any ground referred to in these provisions.

#### **Article 20. Appointment of Substitute Arbitrator**

1. Irrespective of the reason for the appointment of a new arbitrator, he shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

2. Once the substitute arbitrator is appointed, the arbitrators, after hearing the parties, shall decide if it is appropriate to repeat any prior proceedings.

#### **Article 21. Responsibility of the Arbitrators and of the Arbitral Institutions. Provision of Funds**

1. Acceptance obliges the arbitrators and, where applicable, the arbitral institution to comply faithfully with their responsibilities, being, if they do not do so, liable for the damage and losses they cause by reason of bad faith, recklessness or fraud. Where the arbitration is entrusted to an arbitral institution, the injured party shall have a direct action against the institution, regardless of any actions for compensation available against the arbitrators.

2. Unless otherwise agreed, both the arbitrators and the arbitral institution may require from the parties the provision of funds that they consider necessary to meet the fees and expenses of the arbitrators and those that may be incurred in the administration of the arbitration. Should the parties fail to provide the funds, the arbitrators may suspend or terminate the arbitral proceedings. If one of the parties has not made its provision within the time fixed, the arbitrators, before deciding to terminate or suspend the proceedings, shall inform the remaining parties, so that they may provide the funds within a new period fixed by the arbitrators, should they wish to do so.

### **TITLE IV**

#### **The Jurisdiction of the Arbitrators**

#### **Article 22. Competence of the Arbitrators to Rule on their Jurisdiction**

1. The arbitrators may rule on their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any other objection the acceptance of which would prevent the arbitrators from entering into the merits of the dispute. For this purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrators that the contract is null and void shall not entail by itself the invalidity of the arbitration agreement.

2. The objections referred to in the previous paragraph shall be raised no later than the submission of the statement of defence, and the fact that a party has appointed or participated in the appointment of the arbitrators shall not preclude that party from raising such an objection. The objection that the arbitrators are exceeding the scope of their jurisdiction shall be made as soon as the matter alleged to be beyond the scope of their jurisdiction is raised during the arbitral proceedings.

The arbitrators shall only admit later objections if the delay is justified.

3. The arbitrators may rule on the objections referred to in this Article either as a preliminary question or together with the remaining questions submitted to their decision relative to the merits. The decision of the arbitrators may only be impugned by means of an application to set aside the award in which it is adopted. If the objections are dismissed "8"by means of a preliminary decision, the making of the application to set aside will not suspend the arbitral proceedings.

**Article 23. Power of the Arbitrators to Order Interim Measures**

1. Unless otherwise agreed by the parties, the arbitrators may, at the request of any party, order such interim measures as they may consider necessary in respect of the subject-matter of the dispute. The arbitrators may require appropriate security from the applicant.
2. The provisions relating to the setting aside and enforcement of awards shall apply to the arbitral decisions in respect of interim measures, regardless of the form of those measures.

**TITLE V**  
**The Conduct of Arbitral Proceedings**

**Article 24. Principles of Equal Treatment of Parties and of a Fair Hearing**

1. The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.
2. The arbitrators, the parties and the arbitral institutions, if applicable, are obliged to maintain the confidentiality of information coming to their knowledge in the course of the arbitral proceedings.

**Article 25. Determination of Rules of Procedure**

1. In accordance with the previous Article, the parties may freely agree on the procedure to be followed by the arbitrators in the conduct of the proceedings.
2. Failing such agreement, the arbitrators may, subject to the provisions of this Act, conduct the arbitration in such manner as they consider appropriate. The power conferred upon the arbitrators includes the power to determine the admissibility, relevance and usefulness of any evidence, the manner of taking evidence, including on the arbitrators' own motion, and its weight.

**Article 26. Place of Arbitration**

1. The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitrators having regard to the circumstances of the case and the convenience of the parties.
2. Notwithstanding the provisions of the previous paragraph, the arbitrators may, after consulting the parties and unless otherwise agreed by the parties, meet at any place they consider appropriate for hearing witnesses, experts or the parties, or to inspect objects, documents or persons. The arbitrators may deliberate at any place they consider appropriate.

**Article 27. Commencement of Arbitration**

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

**Article 28. Language of the Arbitration**

1. The parties are free to agree on the language or languages to be used in the arbitration. Failing such agreement, the arbitrators shall determine the language, having regard to the circumstances of the case. Unless otherwise agreed by the parties or determined by the arbitrators, the language or languages established shall apply to any written statement by a party, any hearing, and any award, decision or other communication by the arbitrators.
2. The arbitrators, unless one of the parties objects, may order that, without need of translation, any documents be submitted or any proceedings be performed in a language different from that of the arbitration.

**Article 29. Statements of Claim and Defence**

1. Within the period of time agreed by the parties or determined by the arbitrators and unless the parties have otherwise agreed as to the required elements of the statements of claim and defence, the claimant shall state the facts supporting his claim, the nature and circumstances of the dispute and the relief sought, and the respondent may answer the matters raised in the statement of claim. The parties may submit with their statements all documents they consider to be relevant or make reference

to the documents or other evidence they will submit or propose.

2. Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitrators consider it inappropriate to allow such amendment having regard to the delay in making it.

**Article 30. Form of the Arbitral Proceedings**

1. Unless otherwise agreed by the parties, the arbitrators shall decide whether to hold oral hearings for the presentation of oral argument, the taking of evidence and the submission of conclusions, or whether the proceedings shall be conducted solely in writing. However, unless the parties have agreed that no hearings shall be held, the arbitrators shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

2. The parties shall be given sufficient advance notice of any hearing and shall be able to take part directly or by means of representatives.

3. All statements, documents or other instruments provided to the arbitrators by one party shall be communicated to the other party. Likewise, any documents, expert reports or evidentiary instruments on which the arbitrators may rely in making their decision shall be communicated to the parties.

**Article 31. Default of the Parties**

Unless otherwise agreed by the parties, if, without showing sufficient cause in the opinion of the arbitrators:

(a) the claimant fails to communicate his statement of claim in time, the arbitrators shall terminate the proceedings, unless, after hearing the respondent, the respondent indicates his intention to formulate a claim.

(b) the respondent fails to communicate his statement of defence in time, the arbitrators shall continue the proceedings without treating such failure as an acceptance or admission of the facts alleged by the claimant.

(c) any party fails to appear at a hearing or to produce evidence, the arbitrators may continue the proceedings and make the award on the evidence before them.

**Article 32. Expert Appointed by the Arbitrators**

1. Unless otherwise agreed by the parties, the arbitrators may appoint, on their own motion or upon the request of any party, one or more experts to report to them on specific issues and may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents or objects for his inspection.

2. Unless otherwise agreed by the parties, if a party so requests or if the arbitrators consider it necessary, the expert shall, after delivery of his report, participate in a hearing where the arbitrators and the parties, by themselves or assisted by expert witnesses, have the opportunity to put questions to him.

3. The previous paragraphs shall be understood as being without prejudice to the power of the parties, unless otherwise agreed, to submit expert reports by experts freely appointed by them.

**Article 33. Court Assistance in Taking Evidence**

1. The arbitrators or any party with their approval may request from the competent court assistance in taking evidence, in accordance with the applicable rules on the taking of evidence. This assistance may consist in the taking of evidence before the competent court or in the adoption by the competent court of specific measures necessary in order that the evidence may be taken before the arbitrators.

2. If it is so requested, the court shall take evidence under its exclusive supervision. Otherwise, the court shall limit itself to ordering the relevant measures. In both cases, the court shall deliver to the applicant a certified copy of the proceedings.

**TITLE VI**

**The Making of the Award and the Termination of the Proceedings**

**Article 34. Rules Applicable to the Substance of the Dispute**

1. The arbitrators shall decide in equity only if the parties have expressly authorized them to do so.
2. Subject to the previous paragraph, where the arbitration is international, the arbitrators shall decide the dispute in accordance with such rules of law as are chosen by the parties. Any designation of the law or legal system of a given State shall be construed, unless otherwise stated, as referring to the substantive law of that State and not to its conflict of laws rules.

Failing any designation by the parties, the arbitrators shall apply the law that they consider appropriate.

3. In all cases, the arbitrators shall decide in accordance with the terms of the contract and shall take into account the applicable usages.

**Article 35. Decision Making by Panel of Arbitrators**

1. Where there is more than one arbitrator, any decision shall be made by a majority, unless otherwise agreed by the parties. If there is no majority, the decision shall be made by the presiding arbitrator.
2. Unless otherwise agreed by the parties or by the arbitrators, the presiding arbitrator may decide by himself questions of order, formalities, and progress(9.) of the proceedings.

**Article 36. Award by Agreement of the Parties**

1. If, during arbitral proceedings, the parties wholly or partially settle the dispute, the arbitrators shall terminate the proceedings in respect of the points agreed and, if requested by both parties and not objected to by the arbitrators, record the settlement in the form of an arbitral award on agreed terms.
2. An award on agreed terms shall be made in accordance with the provisions of the following Article and shall have the same effect as any other award on the merits of the case.

**Article 37. Time, Form, Contents and Notification of the Award**

1. Unless otherwise agreed by the parties, the arbitrators shall decide the dispute in a single award or in as many partial awards as they deem necessary.
2. Unless otherwise agreed by the parties, the arbitrators ought to decide the dispute within six months from the date of the submission of the statement of defence referred to in Article 29 or from the expiry of the period to submit it. Unless otherwise agreed by the parties, this period of time may be extended by the arbitrators, for a period not exceeding two months, by means of a reasoned decision.

The expiry of the period to issue the final award without the issue of the final award shall mean the termination of the arbitral proceedings and the termination of the office of the arbitrators. Nevertheless, it shall not affect the efficacy of the arbitration agreement, without prejudice to any liability the arbitrators may have incurred.

3. The award shall be made in writing and shall be signed by the arbitrators, who may add any dissenting opinion. Where there is more than one arbitrator, the signatures of the majority of all members of the arbitral panel or that of its presiding arbitrator alone shall suffice, provided that the reason for any omitted signature is stated.

For the purposes of the previous paragraph, the award shall be deemed made in writing when its content and signatures are recorded and accessible for consultation in an electronic, optical or other type of format.

4. The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms in accordance with the previous Article.
5. The award shall state its date and the place of arbitration as determined in accordance with paragraph 1 of Article 26. The award shall be deemed to have been made at that place.

6. Subject to the agreement of the parties, the arbitrators shall decide in the award on the costs of the arbitration, which shall include the fees and expenses of the arbitrators and, where applicable, the fees and expenses of counsel or representatives of the parties, the cost of the services provided by the institution administering the arbitration and the other expenses of the arbitral proceedings.

7. The arbitrators shall notify the award to the parties in the form and time agreed by the parties or, failing such agreement, by means of the delivery to each party of a copy "12" signed by the arbitrators in accordance with paragraph 3 within the period established by paragraph 2.

8. The award may be formalised before a Notary Public. Any of the parties, at their own expense, may require the arbitrators, before notification, to formalise the award before a Notary Public.

### **Article 38. Termination of Proceedings**

1. Without prejudice to the provisions of the previous Article, in respect of notification and, if applicable, formalisation of the award before a Notary Public, and the following article, regarding the correction, clarification and issue of a supplement to the award, the arbitral proceedings and the mandate of the arbitrators shall terminate with the final award.

2. The arbitrators shall also issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitrators recognise a legitimate interest on his part in obtaining a final settlement of the dispute.

(b) the parties agree on the termination of the proceedings.

(c) the arbitrators find that the continuation of the proceedings has for any other reason become unnecessary or impossible.

3. Where the period provided for by the parties for this purpose has expired or, in the absence of such provision, two months from the termination of the proceedings, the arbitrators' obligation to preserve the documentation of the proceedings shall cease. Within this period, any party may request that the arbitrators return the documents submitted by that party. The arbitrators shall accept the request provided that it does not breach the confidentiality of the arbitral deliberations and that the applicant agrees to meet the expenses of the delivery, if applicable.

### **Article 39. Correction, Clarification and the Issue of a Supplement to the Award(10.)**

1. Within ten days of receipt of the award, unless another period of time has been agreed upon by the parties, any party, with notice to the other party, may request the arbitrators:

(a) to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature.

(b) to clarify a point or a specific part of the award.

(c) to supplement the award as to claims presented in the arbitral proceedings and not resolved in the award.

2. After hearing the other parties, the arbitrators shall decide on applications for the correction of errors and for clarification within ten days, and for the issue of a supplement to the award within twenty days.

3. Within ten days of the date following the date of the award, the arbitrators, on their own motion, may correct any of the errors referred to under paragraph 1(a) of this Article.

4. The provisions of Article 37 shall apply to arbitral decisions relating to the correction, clarification or the issue of a supplement to the award.

5. Where the arbitration is international, the terms of ten and twenty days provided for in the previous paragraphs shall be one and two months, respectively.

## **TITLE VII**

### **The Application to Set Aside and Revision of the Award**

#### **Article 40. Application to Set Aside the Award**

An application to set aside a final award may be made in the terms provided for under this Title.

#### **Article 41. Grounds**

1. An arbitral award may be set aside only if the party making the application alleges and proves:

(a) that the arbitration agreement does not exist or is not valid.

(b) that he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.

(c) that the arbitrators have decided questions not submitted to their decision.

(d) that the appointment of the arbitrators or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act.

(e) that the arbitrators have decided questions not capable of settlement by arbitration.

(f) that the award is in conflict with public policy.

2. The grounds referred to in subparagraphs (b), (e) and (f) of the previous paragraph may be raised by the court hearing the application to set aside the award on its own motion or at the request of the Attorney-General in relation to interests the defence of which is conferred on him by law.

3. In the cases referred to in subparagraphs (c) and (e) of paragraph 1, the setting aside shall affect only the determinations of the award on questions not submitted to the decision of the arbitrators or not capable of arbitration, provided that they can be separated from the remainder.

4. An application for setting aside shall be made within two months from the date on which the party making that application had received the award or, if a request for correction, clarification or to supplement the award had been made, from the date on which the party making that application had received the decision on the request, or from the date on which the term for making that decision expired.

#### **Article 42. Procedure**

1. The application to set aside an award shall follow the procedure for verbal proceedings. Nevertheless, the statement of claim shall be filed in accordance with the provisions of "14"Article 399 of the Civil Procedure Act,(11.) accompanied by documentation proving the arbitral agreement and the award, and, if applicable, shall contain a proposal of the evidence upon which the applicant intends to rely. The respondent shall be notified of the application, in order that he may answer within twenty days. In the answer the respondent shall refer to the evidence upon which he intends to rely. Once the application is answered or the time period to do so has expired, the parties shall be summoned to a hearing, at which the applicant may propose new evidence in respect of the allegations contained in the respondent's answer.

2. There is no appeal from the judgment in respect of an application to set aside.

#### **Article 43. Res Judicata and Revision of Final Awards**

The final award has the effects of *res judicata* and shall only be subject to an application for revision in accordance with the procedure established in the Civil Procedure Act for final judgments.

### **TITLE VIII** **The Enforcement of Awards**

#### **Article 44. Applicable Rules**

The enforcement of the awards shall be governed by the provisions of the Civil Procedure Act and this Title.

**Article 45. Suspension, Dismissal and Continuance of Enforcement in the Case of an Application to Set Aside an Award**

1. An award is enforceable even though an application to set aside has been made. Nevertheless, in that event the party against whom enforcement is sought may apply to the competent court for the suspension of enforcement, provided that he offers security for the amount awarded, plus the damages and losses that might arise from the delay in the enforcement of the award. The security may take any of the forms provided for in paragraph 3(2) of Article 529 of the Civil Procedure Act.(12.) Once the application for suspension is filed, the court, after hearing the party seeking enforcement, shall fix the security. There is no appeal against this decision.

2. The suspension shall be lifted and the enforcement continue when the court is satisfied that the application to set aside has been disallowed, without prejudice to the right of the party seeking enforcement to demand, if applicable, indemnification for the damages and losses caused by the delay in the enforcement, by means of the procedure set out in Articles 712 and subsequent articles of the Civil Procedure Act.(13.)

3. The enforcement shall be revoked, with the consequences set out in Articles 533 and 534 of the Civil Procedure Act.(14.) when the court is satisfied that the application to set aside has been allowed.

If the application to set aside relates only to the questions referred to in paragraph 3 of Article 41 and other determinations of the award remain valid, then the application shall be considered successful in part, for the purposes provided for in paragraph 2 of Article 533 of the Civil Procedure Act.

**TITLE IX**  
**The Recognition(15.) of Foreign Awards**

**Article 46. Foreign Character of the Award. Applicable Rules**

1. A foreign award is an award which has been issued outside of Spanish territory.

2. The recognition of foreign awards shall be governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, made in New York, on 10 July 1958, without prejudice to the provisions of other more favourable international conventions, and shall take place in accordance with the procedure established in the civil procedure rules for judgments issued by foreign courts.

**Additional Provision. Consumer Arbitration**

This Act shall be of supplementary application to the arbitration referred to in the Law 26/1984, of 19 July, General Law for the Defence of Consumers and Users, and regulations pursuant to this Law may provide for a decision in equity, unless the parties expressly opt for arbitration at law.

**Transitional Provision. Transitional Regime**

1. In the cases where before the entry into force of this Act the respondent has received the request to submit a dispute to arbitration, or the arbitral proceedings have been initiated, the arbitration shall be governed by the provisions of the Law 36/1988, of 5 December, of Arbitration. Nevertheless, the provisions of this Act shall apply in respect of the arbitration agreement and its effects.

2. The provisions of this Act relating to the application to set aside and revision shall apply to awards made after the entry into force of this Act.

3. Proceedings for enforcement of awards and of recognition of foreign awards which are pending on the entry into force of this Act shall continue according to the provisions contained in the Law 36/1988, of 5 December, of Arbitration.

**Repeal Provisions. Repeals**

The Law 36/1988, of 5 December, of Arbitration is repealed.

**First Final Provision. Amendment of the Law 1/2000, of 7 January, of Civil Procedure.**

1. Subparagraph 2° of paragraph 2 of Article 517 shall be amended as follows:

2°. The arbitral awards or arbitral decisions.

2. A new sentence is added to subparagraph 1 of paragraph 1 of Article 550, in the following form:

Where the title is an award, it must also be accompanied by the arbitral agreement and the documents confirming its notification to the parties.

3. A new subparagraph 4° is added to paragraph 1 of Article 559, in the following form:

4°. If the title of enforcement were an arbitral award which has not been formalized before a Notary Public, its lack of authenticity.

**Second Final Provision. Jurisdictional Authority**

This Act is passed pursuant to the exclusive jurisdiction of the State for commercial, procedural and civil legislation, according to Article 149.1.6a and 8a of the Constitution.

**Third Final Provision. Entry into Force**

This Act shall enter into force three months after its publication in the “Boletín Oficial del Estado”.

Madrid, 23rd of December, 2003."17"

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\* Esta traducción tiene dos fuentes:

1. La exposición de motivos corresponde a Fernando Mantilla-Serrano, Ley de Arbitraje; una perspectiva internacional. Iustel 2005.

2. La ley en sí fue tomada de la traducción realizada por David J.A. Cairns y Alejandro López Ortiz de B. Cremades y Asociados para Kluwer. [www.kluwerarbitration.com]

\*\* Note on the Translation: Ley 60/2003 de 23 de diciembre, de Arbitraje was passed on 23 December 2003 and was officially published on 26 December 2003 in the Boletín Oficial del Estado. It came into force on 26 March 2004.

The Act is based on the UNCITRAL Model Law on International Commercial Arbitration, with significant changes. Wherever possible and appropriate the English language of the UNCITRAL Model Law has been used in this translation.

The Spanish text of the Act begins with a lengthy Statement of Purposes (Exposición de Motivos), which is not translated here. The Statement of Purposes is not a normative part of a Spanish enactment.

The Act contains some expressions for which there is no precise equivalent in either the UNCITRAL Model Law or the common law, or where the usage is unusual. It also makes reference to other Spanish legislation. Occasional explanatory footnotes have been used in these circumstances.

1. Matters capable of free disposition (“libre disposición”) are not exactly defined in Spanish law, and it is not clear how the courts will interpret “free disposition” in this context. If it is narrowly interpreted, then it might exclude disputes arising from economic rights subject to mandatory rules, such as unfair competition, intellectual property (subject to express provision to the contrary in specific legislation), and agency disputes.

2. Art. 6 refers to the waiver of the powers of legal challenge (“las facultades de impugnación”) rather than the “right to object” (“derecho a objetar”) referred to in the Spanish text of Art. 4 of the UNCITRAL Model Law. Art. 6 therefore appears more restrictive than its UNCITRAL Model Law equivalent, as the waiver applies only to possible court proceedings, and not to any rights to object to non-compliance before the arbitrators.

3. Although not specified in the Act, the reference here is clearly to the First Instance Court.
4. The effect of this paragraph is to attribute jurisdiction to the First Instance Court (cf. Art. 85 of the Fundamental Law of the Judiciary (Ley Organica de Poder Judicial)).
5. The Act uses the neutral expression “juridical rules” (“las normas jurídicas”) in preference to “applicable law” (“derecho aplicable”) to recognise that the applicable rules may be the rules of multiple legal systems, or of international commerce.
6. The Spanish text uses “legatarios” which includes the recipients of both real and personal property, and so is wider than the English “legatees” (which properly speaking refers only to a bequest of personal property), including also devisees of real property.
7. The Act invariably uses the expression “arbitrators” (“árbitros”) in preference to the UNCITRAL Model Law’s “arbitral tribunal” (“tribunal arbitral”). It occasionally uses “colegio arbitral” which has been translated as “arbitral panel”.
8. “Verbal proceedings” (“juicio verbal”) are one of two forms of declarative civil proceedings provided for in the Spanish Civil Procedure Act (Ley de Enjuiciamiento Civil) 2000. In general, this procedure applies to smaller claims, and after a brief statement of claims moves quickly to a single oral hearing that addresses all issues. This procedure is also referred to in Arts. 19(1)(a) and 42(1) of the Act.
9. In the Spanish text, “ordenación, tramitación e impulso”.
10. The Spanish text avoids the reference in Art. 33 of the UNCITRAL Model Law to an “additional award” to address omissions. Instead it refers to a “complemento del laudo” for this purpose, which has been translated as the issue of a “supplement” to the award. The practical difference is that a successful application under Art. 33(3) of the UNCITRAL Model Law results in two separate awards (i.e., the original award and the additional award), while the procedure contemplated by the Spanish Arbitration Act may result in a single (though supplemented) award.
11. Art. 399 of the Civil Procedure Act sets out the requirements for a statement of claim in ordinary proceedings. These are more extensive and detailed than those for verbal proceedings (cf. footnote 8 above).
12. Para. 3(2) of Art. 529 of the Civil Procedure Act provides that security may take the form of cash, first demand bank guarantee of indefinite duration or any other means that, in the opinion of the court, guarantees the immediate availability of the amount of the security.
13. Art. 712 et seq. of the Civil Procedure Act relate to proceedings for the quantification of damages and losses.
14. Arts. 533 and 534 of the Civil Procedure Act relate to the repayment of money, the return of goods, costs, and compensation, in the event of the revocation of provisional orders of execution.
15. Title IX and Art. 46(2) use “exequatur”, which translates as “recognition” of an award, but Art. 46(2), by incorporating through reference the New York Convention 1958, in fact deals with both the recognition and enforcement of foreign awards. The enforcement of a recognised foreign award will be in accordance with the New York Convention 1958, and will follow the procedure established in the Civil Procedure Act for the enforcement of domestic judicial decisions.