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“El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 del Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación.”

ACT 60/2003 OF 23 DECEMBER ON ARBITRATION

PREAMBLE

I

Spain has always been sensitive to the calls for harmonising legal provisions on arbitration, in particular in connection with international trade, to further the use of this tool and the consistency of criteria in its application. That attitude is informed by the conviction that greater uniformity in the laws governing arbitration will enhance its effectiveness as a means of settling disputes.

Act 36/1988 of 5 December on Arbitration contributed to reaching that aspiration, explicitly mentioned in Royal Decree 1988 of 22 May, and paved the way for international commercial arbitration. According to that decree, “the strengthening of international trade, particularly with Latin America, and the lack of suitable arbitration services for international trade in Spain has led the business community in that area to resort to arbitration techniques whose roots lie in institutions with a different cultural and language background. The outcome, the severance of links with those countries in a matter of such growing common interest, can only have adverse effects for Spain.”

The present act intensifies that sensitivity and that aspiration, with every intention of bringing about significant qualitative change. In essence, the underlying criterion is to base Spanish legal provisions on arbitration on the Model Law adopted by the United Nations Commission on International Trade Law on 21 June 1985 (UNCITRAL Model Law). That text was recommended by the General Assembly in its Resolution 40/72 of 11 December 1985, “in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice”. This new Spanish legislation follows the United Nations recommendation, taking the Model Law as a point of departure. It has regard as well to the subsequent work performed by the Commission to include technical advances and attend to new needs arising in arbitration practice, particularly as regards the requirements of the arbitration agreement and the adoption of interim measures.

The Model Law strikes a subtle compromise between continental European and Anglo-Saxon legal tradition, the outcome of an exhaustive exercise in

comparative law. Consequently, its terms are not wholly in keeping with the traditional canons of Spanish law, but they do facilitate application of the law by actors working out of economic areas where Spain maintains active and growing commercial relations. The greater certainty about the content of the legal provisions on arbitration in Spain acquired by economic agents in those areas will favour and even encourage the conclusion of arbitration agreements that define this country as the place of arbitration. The Model Law is more readily comprehensible for international traders, accustomed to flexible rules that are readily adaptable to the particularities of specific cases arising in a wide diversity of scenarios.

This new legislation is enacted in the awareness of the indisputable advances attained by its precedent, Act 36/1988 of 5 December on Arbitration, in terms of the regulation and modernisation of this institution in the Spanish body of law. Since that act came into effect, arbitration has undergone considerable expansion in this country. The number and type of legal relationships, particularly contractual relationships, in which the parties conclude arbitration agreements have risen substantially. Institutional arbitration and its uniform application have been consolidated, particularly in international arbitration. An abundant corpus of legal doctrine has been generated, and the use of legal procedures to assist and supervise arbitration has been standardised.

These considerations have revealed, however, that another new and substantial step forward in the regulation of the institution is in order. Building on the *acquis* described, Spain is in a position to join the growing community of nations that have adopted the Model Law. Moreover, in the time lapsing since its entry into effect, a number of the shortcomings of Act 36/1988 have surfaced.

Particularly in international trade, arbitration as an institution must evolve at the same pace as legal transactions or otherwise fall behind. A country's domestic legislation on arbitration must provide advantages or incentives for natural and legal persons to opt for this dispute settlement channel, conducting arbitration on its soil in keeping with its rules. Consequently, enactment of the present legislation is requisite not only to accommodate the Model Law, but also to improve on and guide developments in arbitration practice.

II

The new rules are structured around nine titles.

Title I contains the general provisions on arbitration.

Article 1 determines the scope of the act, based on the following criteria.

Firstly, any provisions in international conventions to which Spain is a party are logically excepted.

Secondly, this act aims to be generally and fully applicable to all arbitration that is not subject to special rules, but at the same time to such arbitration, except where the particularities of the rules at issue run counter to the provisions hereunder or where the latter are explicitly stipulated to be inapplicable.

Thirdly, this act clearly opts for unified regulation of domestic and international arbitration.

Furthermore, it is aligned with the monistic approach (in which, with rare exceptions, the same provisions are applied to both domestic and international arbitration) rather than the dualistic philosophy (in which international and domestic arbitration are wholly or largely regulated by different rules). International arbitration needs to be regulated differently than domestic arbitration in very few, albeit well-justified, circumstances. While aware that international arbitration often entails different demands, this act draws from the notion (corroborated by present tendencies) that good international arbitration rules constitute good domestic arbitration rules and vice-versa. While the Model Law, spawned in UNCITRAL, is specifically designed for international trade, its provisions and solutions are perfectly valid for domestic arbitration in the vast majority of cases. The present act is consequently patterned upon legislation enacted in other countries that have deemed that the Model Law is appropriate not only for international commercial arbitration, but for arbitration in general.

Fourthly, the scope of application of the act is territorial. Nonetheless, certain rules relating to court intervention must also be applied to arbitration conducted abroad. The criterion in such cases is nonetheless territorial, for the provisions in question address procedural rules to be applied by Spanish courts.

Like Act 36/1988, Article 2 regulates the subject matters capable of being settled by arbitration based on a criterion of free choice. Nonetheless, a listing, even indicative, in the present act of matters that cannot be so defined is regarded as unnecessary. It suffices to provide that a dispute can be settled by arbitration where its object is a matter freely negotiated by the parties. In principle, matters that can be freely decided are arbitrable. Legal theory may identify certain issues within the realm of the parties' free choice whose arbitrability might expediently be excluded or limited. Nonetheless, such considerations lie outside the scope of general arbitration rules and should rather be addressed, as appropriate, in specific provisions contained in other legal texts.

In international arbitration, Article 2 also provides that States and the entities under their aegis may not invoke the prerogatives of their own legal systems in connection with matters subject to arbitration. The aim in this respect is to afford States exactly the same treatment as private parties.

Article 3 regulates the internationality of arbitration, which is relevant to the application of the articles that contain special rules for international arbitration conducted on Spanish soil. By defining, for the first time in Spanish legislation, when arbitration is international, the act facilitates the interpretation and application of its provisions in the context of international legal transactions. Moreover, a prior definition of international arbitration is requisite to the application of certain international conventions. The determination of the international nature of arbitration essentially follows the criteria set out in the Model Law. One additional instance is added, however: where the legal relationship from which the dispute stems has an impact on international trade. The aim of applying this criterion, expounded upon at length in other legal systems, is to accommodate cases which, while not conforming to all the elements laid down in the act, are indisputably international in light of the circumstances at issue. Moreover, the act addresses the issue of a person's or entity's multiple places of business acknowledged in other legal systems to avoid confusion when determining the internationality or otherwise of arbitration proceedings.

Article 4 contains a series of rules on interpretation, most significantly on the meaning afforded the default provisions of this act, by enabling the parties to freely surrender their prerogatives to the criteria of an arbitral institution or the content of arbitration rules. Most of the rules in this act are based on the primacy of the parties' independent choice. That choice, however, is understood to comprise the decisions that may be made, as appropriate, by the institution conducting the arbitration proceedings in keeping with its rules or the rules adopted by the arbitrators, further to the arbitration rules consented to by the parties. Pursuant to this integrating provision, the content of the arbitration agreement governs the form that future contracts will adopt. Hence, private independence in connection with arbitration may be expressed either directly, as statements of the parties' choice, or indirectly, in which the parties represent that arbitration is to be conducted by an arbitral institution or governed by a given set of arbitration rules. The term arbitral institution here refers to any entity, centre or organisation of the characteristics specified, governed by arbitration rules and engaging in arbitration in accordance therewith. Nonetheless, the parties may consent to specific rules without entrusting arbitration to any given institution, in which case the arbitration rules form part of the parties' free choice.

Article 5 establishes rules on the notifications, communications and calculation of the time limits for the commencement and continuation of

arbitration proceedings. It specifies the form, place and timing of notifications and communications and defines the term days to mean calendar days. While this rule is not applicable to court proceedings undertaken to assist or supervise arbitration, which are governed by procedural rules, it is applicable to the time limits for instituting these procedures, such as action brought for setting aside awards.

Article 6 contains a provision on the tacit waiver of objection to awards, directly inspired (like many others) by the Model Law, which binds the parties to the arbitration to file immediate and timely claim against any violation of default rules, i.e., rules from which the parties may derogate.

Article 7 on court intervention in arbitration is a corollary to the so-called negative consequence of the arbitration agreement, which prevents courts from hearing disputes subject to arbitration. Further thereto, court intervention in affairs subject to arbitration is limited to the assistance and supervision explicitly provided by law.

Article 8 lists the rules on objective and territorial jurisdiction for assistance and supervision of arbitration, including proceedings not regulated hereunder but in the Civil Procedure Rules. Jurisdiction for the enforcement of foreign awards is attributed to the superior provincial courts instead of (as formerly) to the First Bench of the Supreme Court, with a view to lightening the burden thereon and streamlining proceedings.

III

Title II regulates the requirements and consequences of arbitration agreements, without prejudice to the applicability of the general rules on contracts in all respects not specifically dealt with in this act. Generally speaking, the act aims to perfect the former legislation by clarifying certain items that have proven to be controvertible.

A number of innovations have been introduced with respect to the formal requirements for arbitration agreements.

The act reinforces the anti-formalist criterion. Although a written agreement is requisite and various formats are envisaged, compliance with this requisite is extended to arbitration agreements covenanted and set down on media other than hard copy, providing they assure a record of the content of the agreements is kept for future reference. This provision makes allowance for and acknowledges the validity of new communication technologies. Validity is afforded the so-called arbitration clause “by reference”, i.e., a clause included not in the main contract but in a separate document understood to form part of the main document further to the reference thereto in such main document. In addition, the parties’

willingness to submit to arbitration takes precedence over the formal requirements. The solution sought for the governing law applicable to arbitration agreements is inspired by the principle of conservation or the criterion most favourable to the validity of such agreements. In other words, an arbitration agreement is valid if it conforms to any of the three systems laid down in Article 9, item 6: party specification, applicability to the substance of the dispute, or Spanish law.

The act maintains the so-called positive and negative consequences of arbitration agreements. It provides that the procedure for averring the latter, particularly by the respondent, is a plea to the jurisdiction. It also specifies that the pendency of outstanding court proceedings involving a plea to the jurisdiction does not stall the commencement or continuation of arbitration, to ensure that the institution of court proceedings is not used for the mere purpose of obstructing or hindering arbitration. It further notes that a request for interim measures raised to a court does not by any means entail the tacit waiver of arbitration, although neither does it automatically establish the negative consequence of an arbitration agreement. This dispels any doubt that might persist around the possibility of the delivery of a court decision on interim measures in connection with a dispute brought to arbitration, even before the arbitration proceedings begin. This possibility is clearly stated in the Civil Procedure Rules, but must be set out in the legislation on arbitration as well. In addition, provision is made for the possible application to a foreign court for interim measures in connection with arbitration governed by Spanish law.

IV

Title III addresses the rules on arbitrators. The act prefers the term arbitrator or arbitrators to arbitral tribunal, which might be confounded with courts of law. Moreover, most of the provisions are applicable irrespective of whether one or several arbitrators are involved.

The act stipulates that unless otherwise agreed, only one arbitrator is to be appointed, for reasons of economy. The qualifications to be met by arbitrators are left to the discretion of the parties, by analogy to the rules in place in the countries where arbitration is most highly developed. There, the law lays down no requisites, other than that arbitrators must be natural persons in possession of their civil rights. The arbitrators may be freely appointed by the parties directly or by arbitral institutions, subject to no constraints unsuited to the circumstances of the case at issue. The act regulates the appointment of arbitrators very lightly, laying down provisions only to cover circumstances in which action is needed in lieu of an agreement by the parties to prevent arbitration from stalemating. While court action is required in such cases, the act purses a dual aim: to ensure speedy court proceedings and to provide the Judge of the Trial

Court with criteria on which to base an appointment. For the former, it provides for oral hearings and determines the non-admissibility of separate appeals against court's interim decisions in these proceedings and its decision on the appointment itself. For the latter, in connection with international arbitration, it recommends appointing a single or a third arbitrator whose nationality is other than those of the parties. Furthermore, the judge is not called upon in such proceedings to evaluate the validity of the arbitration agreement or verify whether or not the dispute is arbitrable, either at his own initiative or at the request of a party. If allowed, such a provision would retard the appointment inordinately and invalidate the rule whereby the arbitrators themselves are authorised, first of all, to decide on their own competence. Consequently, judges should only dismiss the request to appoint arbitrators where, exceptionally, no arbitration agreement is in place, i.e., when they can *prima facie* deem the non-existence of such an agreement. Judges may not, however, evaluate the requirements relating to the validity of the agreement in these proceedings.

Further to the act, all arbitrators, regardless of how they are appointed, are bound to honour due impartiality toward and independence from the parties to the arbitration. By way of a guarantee of compliance, they are bound to notify the parties of any fact or circumstance that might detract from such impartiality or independence. The act eliminates any reference to the reasons for challenging judges or magistrates or for their abstention, for such reasons are not regarded to be necessarily appropriate in arbitration nor to cover all possible cases. Instead, the text addresses the issue in more appropriate general terms.

For challenge proceedings, the premise is once again to allow the parties to choose freely between a direct agreement or submission to arbitration rules. The default arrangement is for the arbitrator or arbitrators to decide on challenges, without prejudice to the invocation of the grounds for challenge as a reason for setting aside an award. The ability to apply directly to the courts in the event of dismissal of a challenge would indisputably entail the advantage of a certain preliminary certitude of impartiality, but would likewise be an invitation to the use of this device as a delaying tactic.

The number of cases in which a challenge is unduly dismissed, giving rise to the subsequent annulment of the arbitral proceedings as a whole, is deemed to be much smaller than the number in which immediate challenges might be filed with the court authority to retard the proceedings.

The act also deals with other instances that may lead to the conclusion of an arbitrator's mandate and the appointment of a substitute. The possibility

of repeating proceedings already conducted is envisaged, but not compulsory.

V

Title IV addresses the important issue of arbitrator competence.

Article 22 lays down a rule of cardinal importance for arbitration: arbitrators are empowered to determine their own competence. This rule, christened in German as Kompetenz-Kompetenz, is enshrined in the 1988 act, albeit in less precise terms. It covers what is known as the separability of the arbitration agreement from the main agreement, to the effect that the validity of the former does not depend on the validity of the latter and that arbitrators are competent to judge the validity of the arbitration agreement itself. Moreover, the umbrella term “competence” must be understood to cover not only strictly related questions, but any other issues that may prevent reaching a decision on the merits of the case (with the exception of matters relating to the arbitrators, which are treated separately). The act provides that arbitrator competence-related issues must be posed in limine. A party collaborating actively in the appointment of arbitrators does not by any means tacitly waive his right to contend that they are objectively incompetent. This is a logical consequence of the Kompetenz-Kompetenz rule: if arbitrators are to decide on their own competence, the participating party merely contributes to the appointment of the person or persons vested with the power to decide on such competence. The contrary would lead to an absurd situation: the parties would have to remain passive during arbitrator appointment but would subsequently be enabled to challenge their competence to settle the dispute. Moreover, the rule on raising issues on arbitrator competence a priori is reasonably tempered by the provision whereby a tardy challenge may be justified, in the opinion of the arbitrators, when the party was unable to file it earlier and his attitude during the proceedings could not be interpreted as acceptance of such competence. Whether questions relating to their competence are settled prior to or with the merits is left to the discretion of the arbitrators.

The premise underlying the provisions of the act is that arbitrators may deliver as many awards as they deem necessary, whether to settle procedural issues or matters of substance; or a single award settling all issues.

Article 23 contains one of the act’s main innovations: arbitrators’ power to adopt interim measures. The parties may decide not to vest them with that power, either directly or by submission to arbitration rules, but are otherwise regarded to accept it. Defining the scope of this power in the act was deemed inexpedient.

Inasmuch as arbitrators obviously lack any enforcement authority, parties must apply to the judiciary to enforce interim measures in the same terms as they would for an award on the merits of the case.

If a distinction can be drawn between the declaratory and executive dimensions of interim measures, this act acknowledges arbitrators the former, except as otherwise agreed by the parties. This rule neither repeals nor restricts the possibility laid down in its Articles 8 and 11 and in the Civil Procedure Rules according to which a party may apply to the court authority for the adoption of interim measures. Arbitral and court powers in respect of interim measures are alternative and concurrent, without prejudice to calling into play the principle of procedural good faith.

VI

Title V regulates arbitration proceedings. Here also, the act stands on the premise of free choice, subjecting it and arbitrators' conduct to only two limitations, defined as the fundamental values of arbitration: the parties' right to defence and the principle of equality.

After guaranteeing the implementation of these basic rules, the act lays down default rules on arbitration proceedings from which the parties may derogate by agreeing otherwise either directly or via submission to institutional arbitration or arbitration rules.

In other words, the legal theory underlying these provisions is that they are permanently subordinated to the will of the parties concerned.

The act also provides for holding hearings and discussion at venues other than the place of arbitration. The determination of the place of arbitration is legally relevant in many respects, but its establishment should not lead to procedural inflexibility.

Arbitration begins when one party receives a request from the other to submit the dispute to arbitral settlement. It would appear to be logical to define the commencement of the legal consequences of arbitration in those terms, even where the object of the dispute has not yet been clearly demarcated. Other solutions would leave room for tactics that would tend to hamper the proceedings.

The determination of the arbitration language or languages is logically incumbent upon the parties and, failing that, upon the arbitrators. Nonetheless, unless one of the parties objects, documents may be furnished or proceedings conducted in a non-arbitration language with no need for translation. That consolidates a very widely applied rule on the admissibility of documents or statements in other languages.

The active and passive procedural positions characteristic of court proceedings are not necessarily present in arbitration, or not under the same terms inasmuch as the object of the dispute is determined gradually within the scope of the arbitration agreement. Arbitral practice, however, shows that the party initiating arbitration usually formulates a claim against the other party or parties, acting therefore as claimant, without prejudice to the respondent's entitlement to lodge a counter-claim. Subject to the parties' freedom of decision, arbitral proceedings may be reasonably structured around the claimant's and respondent's respective positions. This course, while advisable, needs to be elasticised, however, when defining the requirements to be met by the parties in the defence of their positions. Hence, no requirements are established on the form or content of the parties' written arguments. The purpose of the claim and the respective defence referred to in Article 29 is merely to inform the arbitrators of the object of the dispute, without prejudice to subsequent arguments. The rules that govern court proceedings in connection with claim and defence, the attendant documents or estoppel do not come into play here. Arbitral proceedings, even in the absence of an inter-party agreement, are designed very flexibly, in keeping with the needs of the institution.

That flexibility is also present in the subsequent conducting of the proceedings, which may in certain cases be predominantly in writing, if the circumstances of the case call for no hearings.

Nonetheless, as a rule hearings are held to take evidence. The act also attempts to prevent parties' inactivity from stalling arbitration or compromising the validity of the award.

The evidence-taking stage of arbitration is likewise characterised by parties' and arbitrators' maximum freedom, providing they honour the right to defence and the principle of equality, and maximum flexibility. The act establishes the rules on expert evidence, of vital importance in contemporary arbitration, only where the parties fail to make other arrangements.

These rules are designed to admit opinions issued by experts appointed directly by the parties or by the arbitrators, on their own initiative or at the request of a party, and to guarantee rebuttal of such opinions.

The act also regulates court assistance for evidence-taking, one of the traditional areas of court support for arbitration. Assistance need not necessarily consist of evidence-taking by the court; in some cases, other measures suffice to enable arbitrators to compile the evidence themselves. Examples might be security measures or summonses to deliver documents.

VII

Title VI refers to the award and other possible forms of terminating arbitral proceedings. Article 34 regulates the important issue of the rules that are to be applied to settling the substance of the dispute, based on the following criteria. 1) The premise, here as well as in the 1988 act, is parties' freedom of choice. 2) The rule in the 1988 act that favoured amicable composition is inverted. The preference for arbitration in accordance with the letter of the law rather than inter-party agreements is the prevailing trend in comparative jurisprudence. It is, moreover, highly questionable whether the parties' willingness to submit to arbitration, with no further specification, can be interpreted to mean their consent to e*x aequo et bono* dispute settlement rather than settlement based on the same legal criterion that would be applied in court. Arbitration *ex aequo et bono* is limited to cases in which the parties have explicitly agreed thereto, by literal reference to "fairness" or similar terms such as "equity and conscience" or to the arbitrator's role as "amicable compounder". Nonetheless, if the parties authorise a decision *ex aequo et bono* in accordance with specific legal rules, the arbitrators may not ignore the latter. 3) Following a trend observed in the most advanced legislations, no provision requires the applicable law to be related to the legal relationship or to the dispute, given the difficulty of enforcing any such requirement, whose end boundaries are blurry at best. 4) The act prefers the phrase "applicable legal rules" to "applicable law" inasmuch as the latter term appears to call for referral to a State's specific set of laws, when in some cases the rules to be applied are nestled in different sets of laws or rules of international trade. 5) The arbitrators are not bound by the act to a system of conflict of interest rules.

Where arbitration is conducted by more than one arbitrator, without prejudice to the rules directly or indirectly set by the parties, decisions are logically adopted by majority vote, and in the event of a tie, the president holds the casting vote. A new rule enables the president to decide on procedural issues, understood for these intents and purposes to mean not all issues that lie outside the substance of the dispute, but only procedural questions *sensu stricto*.

Provision is made for an arbitral award based on the content of a prior agreement reached by the parties. While that provision might appear to be unnecessary, since the parties may settle the dispute as they please, actually it is not, for via inclusion in an award, an agreement acquires the legal validity of the former. Arbitrators may not reject such requests at their discretion, but only on sound legal grounds.

The act simply affords legal coverage to common practice to which no exception may be taken.

The new legislation also provides for the possibility of partial awards, which may address any part of the substance of the dispute or other issues, such as arbitrators' competence or interim measures.

The act aims to accommodate flexible formulas for settling litigation often arising in arbitration practice. For instance, the respondent's possible liability is determined before the damages, if any, are quantified.

Partial awards carry the same weight as final awards and their content with respect to the issue settled is invariable.

As in the case of the arbitration agreement, the act envisages not only the use of electronic, optical or other types of media for the award, but also for non-written formats, providing a record is kept of the content, which must be accessible for subsequent reference. The act deems that any technology that meets the aforementioned requirements must be admissible for both the arbitration agreement and the award. Arbitration proceedings may, then, be conducted solely on computer, electronic or digital media, if the parties so decide.

Where not otherwise agreed by the parties, the act introduces a new start date for computing the time limit for delivering the award, i.e., the date the defence is submitted or the deadline for its submission. This new provision aims to adjust the pace of arbitral proceedings to practical demands. A period of 6 months from acceptance by the arbitrators has often proven to be impossibly short, leading on occasion to overly hasty proceedings or the omission of certain arguments or evidence to be able to meet the deadline. The act also deems that the period established may be extended by the arbitrators directly, with no need for an agreement among all the parties concerned.

The arbitrators are held responsible for any unjustified delays in disputes.

The act includes a few particulars on the decision regarding the payment of arbitration costs.

Notarisation of the award is no longer mandatory. As this requirement is absent in nearly all countries' arbitration legislation, it has been omitted, although a party may request to have the award notarised prior to notification if he deems it to be in his interests. Inasmuch as the award is consequently valid and enforceable irrespective of notarisation, the time limit for lodging action to set it aside is counted from the date of its notification; where notarisation is requested, it need not precede such notification. Nor does enforcement of the award depend on notarisation, although in that process the party concerned may, albeit exceptionally, challenge the authenticity of the award where appropriate.

The act envisages several abnormal ways in which arbitration may be terminated and provides a solution to the problem of extending arbitrators' duty to custody the proceedings.

The rules on correcting and clarifying the award adapt the time limits to actual circumstances and a distinction is drawn in this regard between domestic and international arbitration, for in the latter the arbitrators may encounter greater difficulties to hold their discussions in a single location. A new device, the additional award, is introduced to handle omissions.

VIII

Title VII deals with setting aside and reviewing awards.

The term "recourse" is avoided with respect to setting aside, as it is technically incorrect. Action for setting aside involves an objection to the validity of the award. It is conducted on the understanding that the grounds for setting aside the award must be appraised and must not, as a general rule, allow for a review of the arbitrators' decision on the merits. The list of grounds and their appraisal *ex officio* or at the request of a party draw their inspiration from the Model Law. The time limit for lodging an application for setting aside is lengthened. This should not be detrimental to the party favoured by the arbitrators' decision, since the award, even if objected to, is enforceable.

The procedures for applying for setting aside attempt to balance the need for agility with the defence of parties' rights. Consequently, the initial written application and respective defence are followed by oral proceedings.

IX

Title VIII addresses enforcement of the award.

Actually, all the general and specific provisions in this regard are contained in the Civil Procedure Rules. This act refers only to possible enforcement of the award during the pendency of proceedings for setting it aside.

The act opts to make the award enforceable even where objected to. It would make no sense, in a legal system with ample provision for the provisional enforcement of sentences, for the enforceability of the award to depend on the delivery of a final decision. The enforceability of a non-final award is tempered by the entitlement of the party concerned to obtain suspension of enforcement, subject to establishing security to cover the sum owed, plus costs and damages deriving from the delay in enforcement. These rules aim to counterbalance the interests of the parties involved.

X

Title IX, which regulates the exequatur of foreign awards, consists of a single article: in addition to maintaining the definition of foreign award as one not delivered in Spain, it invokes the international conventions to which Spain has adhered, and in particular to the 1958 New York Convention. Since Spain formulated no reservations to that convention, it is applicable regardless of the commercial nature or otherwise of the dispute and whether or not the award was delivered in a State party to the convention. This means that the scope of application of the New York Convention in Spain renders any domestic rules on the exequatur of foreign awards unnecessary, without prejudice to the provisions of other more favourable international conventions.

TITLE I

General provisions

Article 1.- *Scope of application*

1. This act will apply to domestic and international arbitration conducted on Spanish soil, without prejudice to the provisions laid down in treaties to which Spain may be party or laws with special provisions on arbitration.

2. The rules in items 3, 4 and 6 of Article 8, Article 9 except item 2, Articles 11 and 23 and Titles VIII and IX of this act will apply even when the place of arbitration is not on Spanish soil.

3. This act will apply to matters not addressed in the provisions on arbitration laid down in other laws.

4. Labour arbitration is excluded from the scope of this act.

Article 2. *Subject matters constituting the object of arbitration*

1. Disputes on matters regarded by law to involve free choice are apt for settlement by arbitration.

2. In international arbitration, when one of the parties is a State or a State-controlled company, organisation or enterprise, that party may not invoke prerogatives of its own law to circumvent obligations stemming from the arbitration agreement.

Article 3. *International arbitration*

1. Arbitration will be regarded as international in any of the following circumstances.

a) At the time when the arbitration agreement is concluded, the places of business of the parties thereto are located in different States.

b) Any of the following are located outside the State in which the parties have their places of business: the place of arbitration, determined in the agreement or pursuant thereto; the place where a substantial portion of the obligations of the legal relationship from which the dispute stems are to be performed; or the place to which the subject matter of such dispute is most closely related.

c) The legal relationship from which the dispute stems affects the interests of international trade.

2. For the purposes of the provisions of the preceding item, if a party has more than one place of business, his place of business will be the one most closely related to the arbitration agreement; and if a party has no place of business, his habitual residence will serve as the reference.

Article 4. *Rules of interpretation*

When a provision of this act:

a) leaves the parties free to decide on a certain issue, such freedom includes the right of the parties to authorise a third party, including an arbitral institution, to adopt that decision, except in the circumstances envisaged in Article 34;

b) refers to the arbitration agreement or any other inter-party agreement, such agreement will be understood to include any arbitration rules to which the parties have submitted;

c) refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim, except in the circumstances envisaged in Article 31, item a) and Article 38, sub-item 2.a).

Article 5. *Notifications, communications and calculation of time limits*

Except as otherwise agreed by the parties and excluding communications issued as part of court proceedings, the following provisions will apply.

a) Any written communication is deemed to have been received on the day it is delivered to the addressee personally or to his place of business, habitual residence or mailing address. Moreover, notices or communications may be validly sent by telex, fax or other electronic telecommunication methods or similar specified by the party concerned that ensure the traceability of statements or documents sent and received. If none of the aforementioned places can be found after making a reasonable inquiry, a written communication is deemed to have been received on the day it is delivered to or delivery is attempted at the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means establishing a record of attempted delivery.

b) The time limits defined hereunder will be counted from the day after receipt of the notification or communication. If the last day of the period is a holiday at the place of receipt, the time limit will be extended to the next business day. When a document is to be submitted within a given time, that obligation will be regarded as met if it is sent within that time, regardless of when it is received. For these purposes, days will be understood to mean calendar days.

Article 6. *Tacit waiver of the right to object*

A party who, aware of non-compliance with a default rule contained herein or any requirement under the arbitration agreement, fails to object to such non-compliance within the time limit or otherwise without undue delay, will be deemed to have waived his right to objection envisaged in this act.

Article 7. *Court intervention*

No court will intervene in matters governed hereunder except where so provided in this act.

Article 8. *Courts with jurisdiction over arbitration assistance and supervision*

1. The courts competent to appoint and dismiss court-appointed arbitrators will be as follows: the Civil and Penal Branch of the High Court of Justice of the region where arbitration takes place; where the place has yet to be determined, the court in the place of business or habitual residence of any of the respondents; if none of the respondents has a place of business or habitual residence in Spain, the court in the place of business or habitual residence of the claimant; and if he has none, the court in the place of his choice.

2. The Trial Court in the place of arbitration or the place where assistance is to be provided will be competent to provide court assistance for taking evidence.

3. Further to the provisions of Article 724 of the Civil Procedure Rules, competence to adopt interim measures will be incumbent upon the court with jurisdiction in the place where the award is to be enforced and, failing that, upon the court in the place where the measures are to carry legal consequences.

4. Pursuant to Article 545, item 2 of Act 1/2000 of 7 January on Civil Law Procedure, the Trial Court in the place where the awards or arbitral decisions are delivered will be competent to enforce such awards or decisions.

5. The Civil and Penal Branch of the High Court of Justice of the region where the award is delivered will be competent to rule on the application for setting it aside.

6. Competence for recognition of foreign arbitral awards or decisions will be incumbent upon the Civil and Penal Branch of the High Court of Justice of the region where the party whose recognition is requested or where the person affected by such awards or decision has his place of business or residence; and subsidiarily upon the respective court at the place of enforcement of such arbitral awards or decisions or where they are to carry legal consequences.

Trial Courts defined pursuant to the aforementioned criteria will be competent to enforce foreign arbitral awards or decisions.[1]

TITLE II

The arbitration agreement

Article 9. *Form and content of the arbitration agreement*

1. The arbitration agreement, which may adopt the form of either a separate agreement of an arbitration clause in a broader contract, must express the parties' willingness to submit to arbitration all or certain disputes arising between them in respect of a given legal relationship, whether contractual or otherwise.

[1] Items 1, 4, 5 and 6 amended pursuant to item 1 of the sole article of Act 11/2011 of 20 May

2. If the arbitration agreement is contained in an adhesion contract, its validity and interpretation will be governed by the rules applicable to such contracts.

3. The arbitration agreement must be in writing, in a document signed by the parties or an exchange of letters, telegrams, telexes, faxes or other telecommunication methods that ensure a record of the agreement is kept.

Where an arbitration agreement is accessible for subsequent reference on electronic, optical or other media, it will be regarded as compliant with this requisite.

4. An arbitration agreement consisting of a document exchanged by the parties in any of the formats established in the preceding item will be regarded as included in the contract between the parties.

5. An arbitration agreement will be regarded to exist if in an exchange of statements of claim and defence the existence of an agreement is alleged by one party and not denied by the other.

6. In international arbitration, the arbitration agreement will be valid and the dispute arbitrable if the requirements laid down in any of the following are met: the legal rules chosen by the parties to govern the agreement; the rules applicable to the substance of the dispute; or the rules laid down in Spanish law.

Article 10. *Testamentary arbitration*

Arbitration will also be valid where instituted under testamentary provisions to settle differences among non-forced heirs or legatees over issues relating to the distribution or administration of the estate.

Article 11. *Arbitration agreement and substantive claim before court*

1. The arbitration agreement binds the parties to its terms and prevents courts from hearing disputes submitted to arbitration, where invoked by the party concerned as a plea to the jurisdiction of the court.

Where claims are filed in ordinary court proceedings, the time limit for lodging the plea to the jurisdiction will be the first ten days within the period envisaged for submitting the defence, and for cases involving oral proceedings, within the first ten days after receipt of the summons for the hearing.

2. A plea to the jurisdiction will be no hindrance to the commencement or continuation of arbitral proceedings.

3. The arbitration agreement will not prevent a party, prior to or during the arbitral proceedings, from applying to a court for interim measures, or the court from granting such measures[2].

Article 11 *bis. Intra-enterprise arbitration*

1. Corporate enterprises may submit their disputes to arbitration.

2. The inclusion of a clause in the corporate by-laws on submission to arbitration will be subject to a two-thirds majority of the shares or stakes into which the share capital is divided.

3. The corporate by-laws may provide for objections to company agreements lodged by its shareholders or directors to be submitted to the decision of one or several arbitrators, to be appointed by the arbitral institution entrusted with the arbitration proceedings.[3]

Article 11 *ter. Setting aside of registrable corporate agreements under an award*

1. Awards setting aside a registrable agreement must be entered in the Mercantile Registry and an extract thereof published in the *Official Journal of the Mercantile Registry*.

2. Where the agreement objected to was entered in the Mercantile Registry, the award must call for the cancellation of such entry as well as of any subsequent entries contradictory to the award[4].

TITLE III

Arbitrators

Article 12. *Number of arbitrators*

The parties are free to determine the number of arbitrators, subject only to appointing an odd number thereof. Unless otherwise agreed, a single arbitrator will be appointed.

Article 13. *Arbitrator qualifications*

Persons in full possession of their civil rights may be arbitrators, unless prevented therefrom by the legislation to which they may be subject in the practice of their profession. No person will be precluded by reason of his

[2] Item 1 amended pursuant to item 2 of the sole article of Act 11/2011 of 20 May
[3] Added pursuant to item 3 of the sole article of Act 11/2011 of 20 May
[4] Added pursuant to item 3 of the sole article of Act 11/2011 of 20 May

nationality from acting as an arbitrator, unless otherwise agreed by the parties.

Article 14. *Institutional arbitration*

1. The parties may entrust the conducting of arbitration and appointing arbitrators to:

a) public law corporations and public entities whose rules allow them to perform arbitral duties;

b) not-for-profit associations and entities whose by-laws envisage engagement in arbitral activities.

2. Arbitral institutions will perform their duties in keeping with their own rules.

3. Arbitral institutions will ensure that arbitrators are independent and comply with the stated qualifications, and that their appointment is transparent[5].

Article 15. *Appointment of arbitrators*

1. Unless otherwise agreed by the parties, in arbitration not to be decided *ex aequo et bono* and conducted by a single arbitrator, such person will be required to be an attorney if acting as such.

When arbitration is to be conducted by three or more arbitrators, at least one must be an attorney.

2. The parties are free to agree on a procedure for appointing the arbitrator or arbitrators, providing the principle of equality is honoured. Failing such agreement, the following rules will apply.

a) In arbitration with a sole arbitrator, he will be appointed by the court at the request of a party.

b) In arbitration with three arbitrators, each party will appoint one arbitrator, and the two arbitrators thus appointed will appoint the third arbitrator, who will preside the proceedings. If a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of the latest acceptance, the appointment will be made by the court at the request of a party.

[5] Sub-item 1.a) amended and item 3 added pursuant to item 4 of the sole article of Act 11/2011 of 20 May

Where more than one claimant or respondent is involved, the latter will appoint one arbitrator and the former another. If claimants or respondents cannot agree on the appointment, all arbitrators will be appointed by the court at the request of a party.

c) In arbitration with more than three arbitrators, they will be appointed by the court at the request of a party.

3. If arbitrators cannot be appointed under the procedure agreed to by the parties, any party may apply to the competent court to appoint the arbitrators or, as appropriate, to adopt the necessary measures therefor.

4. Any claims lodged in connection with the provisions of the preceding items will be processed in oral hearings.

5. The court may dismiss a request for appointment only when, in light of the documents furnished, it deems that no arbitration agreement exists.

6. Where arbitrators are to be appointed by the court, it will draw up a list of three names for each arbitrator to be appointed. When drawing up the list, the court will have due regard to the requirements established by the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. Where a sole or a third arbitrator is to be appointed, the court will also have regard to the advisability of appointing an arbitrator of a nationality other than those of the parties and, as appropriate, of those of the arbitrators already appointed, in light of the circumstances prevailing. The arbitrators are subsequently appointed by lot.

7. The final decisions adopted on the questions attributed hereunder to the competent court will not be subject to appeal[6].

Article 16. *Arbitrator acceptance*

Unless otherwise agreed by the parties, arbitrators must notify the appointing party of their acceptance within 15 days counting from the day after notification of the appointment. If no notice of acceptance is received within the time limit established, the nominee will be understood to decline the appointment.

[6] Items 1 and 7 amended pursuant to item 5 of the sole article of Act 11/2011 of 20 May

Article 17. *Grounds for abstention and challenge*

1. All arbitrators must be and remain independent and impartial throughout arbitration. They may not maintain any personal, professional or commercial relationship with the parties.

2. Persons proposed to act as arbitrators must disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. From the time of their appointment, arbitrators will without delay disclose any such circumstances to the parties.

At any time during arbitration, a party may ask arbitrators to clarify their relationships with any of the other parties.

3. An arbitrator may be challenged only where circumstances are forthcoming that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the 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 was made.

4. Except as otherwise agreed by the parties, the arbitrator may not have intervened as a mediator in the same dispute[7].

Article 18. *Challenge procedure*

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

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

3. If the challenge under any procedure agreed upon by the parties or laid down in the preceding item is not successful, the challenging party may submit the challenge as grounds for objecting to 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

[7] Item 4 added pursuant to item 6 of the sole article of Act 11/2011 of 20 May

termination. If no agreement is reached on termination and the parties have stipulated no procedure to settle the difference, the following rules will apply.

a) Proceedings brought for termination of mandate will be the object of an oral hearing. The claim may include a request to appoint arbitrators under the terms set out in Article 15, should the court rule in favour of termination.

Final decisions will not be subject to appeal.

b) In arbitration with several arbitrators, the other arbitrators will decide the issue. If they are unable to reach an agreement, the provisions of the preceding sub-item will apply.

2. An arbitrator's withdrawal or the acceptance of the termination of his mandate by one of the parties pursuant to the provisions of the present article and item 2 of the preceding article will not imply acknowledgement of the validity of any of the grounds mentioned therein.

Article 20. *Appointment of a substitute arbitrator*

1. Whatever the reason for appointing a new arbitrator, a substitute will be appointed according to the rules applicable to the appointment of the arbitrator being replaced.

2. Once the substitute is appointed, the arbitrators, after hearing the parties, will decide whether the proceedings conducted prior to substitution must be repeated.

Article 21. *Liability of arbitrators and arbitral institutions. Provisioning funds*

1. Acceptance requires arbitrators and, as appropriate, the arbitral institution, to comply with their commission in good faith. If they fail to do so, they will be liable for any damages resulting from bad faith, recklessness or *mens rea*. In arbitration commissioned from an institution, the damaged party may file suit directly against it, irrespective of any action for indemnity lodged against the arbitrators.

Arbitrators or arbitral institutions on their behalf will be bound to take liability insurance or equivalent security for the amount established in the rules. Public entities and arbitral systems integrated in or under the aegis of governmental authorities are exempted from this obligation.

2. Unless otherwise agreed, both arbitrators and the arbitral institution may require the parties to provision the funds deemed necessary to cover

their fees and expenses and any others incurred during the proceedings. If no funds are provisioned, the arbitrators may suspend or terminate the arbitration proceedings. If one of the parties fails to provision funds within the time limit, prior to deciding to terminate or suspend the proceedings, the arbitrators will notify the other parties accordingly, affording them the opportunity to make payment of the amount owed by the new time limit, if they wish[8].

TITLE IV

Arbitrator jurisdiction

Article 22. *Arbitrator competence to rule on their jurisdiction*

1. Arbitrators may rule on their own jurisdiction, including any pleas with respect to the existence or validity of the arbitration agreement or any others whose acceptance would prevent consideration of the merits of the case. For that purpose, an arbitration clause that forms part of a broader contract will be treated as an agreement independent of the other terms thereof. The arbitrators' decision to the effect that the contract is null and void will not entail *ipso jure* the invalidity of the arbitration clause.

2. The pleas referred to in the preceding item may not be lodged later than the submission of the statement of defence. Appointment or participation in the appointment of an arbitrator will not preclude a party from lodging such a plea. A plea that the arbitrators are exceeding the scope of their authority must be lodged as soon as the matter alleged to lie beyond the scope of their authority arises during the arbitral proceedings.

Arbitrators may only admit a tardy plea if they consider the delay justified.

3. Arbitrators may rule on a plea referred to in this article either as a preliminary question or in an award on the merits. An arbitrators' decision may only be objected to by lodging an application for setting aside the award in which it is adopted. If the decision is adopted as a preliminary question and overrides the plea, institution of action to set aside the award will not imply suspension of the arbitration proceedings.

Article 23. *Arbitrators' power to order interim measures*

1. Subject to any contrary agreement by the parties, the arbitrators may, at the request of a party, grant any interim measures deemed necessary in

8 The second paragraph of item 1 added pursuant to paragraph 7 of the sole article of Act 11/2011 of 20 May

connection with the object of the dispute. The arbitrators may require the claimant to furnish sufficient security.

2. Irrespective of the form adopted by arbitral decisions on interim measures, the rules on setting aside and enforcement of awards will apply thereto.

TITLE V

Conducting arbitral proceedings

Article 24. *Principles of equality, review and rebuttal*

1. The parties will be treated with equality and each party will be given full opportunity to present his case.

2. The arbitrators, parties and arbitral institutions, as appropriate, are bound to honour the confidentiality of the information received on the occasion of arbitration.

Article 25. *Determination of procedures*

1. Subject to the provisions of the preceding article, the parties are free to agree on the procedure to be followed by the arbitrators in conducting the proceedings.

2. Failing such agreement, the arbitrators may, subject to the provisions of this act, conduct the arbitration in such manner as they deem appropriate. The power vested in the arbitrators includes the power to determine the admissibility, relevance, materiality, taking (even *ex officio*) and evaluation of the evidence.

Article 26. *Place of arbitration*

1. The parties are free to agree on the place of arbitration. Failing such agreement, it will 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 preceding item, the arbitrators may, unless otherwise agreed by the parties, meet at any place they deem appropriate for hearing witnesses, experts or the parties, inspecting goods or documents, or examining persons. Arbitrators may hold consultation meetings at any place they deem appropriate.

Article 27. *Commencement of arbitration*

Unless otherwise agreed by the parties, arbitration will commence on the date on which a request to submit the dispute to arbitration is received by the respondent.

Article 28. *Arbitration language*

1. The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement and where the question cannot be determined on the grounds of the circumstances of the case, arbitration will be conducted in any of the official languages of the place of the proceedings. A party alleging that he is unfamiliar with the language will be entitled to participate in hearings, rebuttals and defence in his own language, although such allegation may not retard the proceedings.

Unless otherwise stated in the agreement reached by the parties, the language or languages specified will be used in all written statements issued by a party, all hearings and all awards, decisions or other communications issued by the arbitrators, without prejudice to the provisions of the preceding paragraph.

Witnesses, experts and third parties intervening in the arbitration may use their own language in oral and written proceedings. In oral proceedings, anyone who is familiar with the language used may act as interpreter, subject to oath or promise.

2. Unless a party takes exception, the arbitrators may allow any document to be furnished or proceedings to be conducted in a language other than the arbitration language, with no need for translation[9].

Article 29. *Claim and defence*

1. Within the time limit agreed by the parties or determined by the arbitrators, the claimant will state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent may state his defence in respect of these particulars, unless the parties have agreed otherwise on the requisite elements of such statements. The parties may submit with their statements any documents they deem relevant or add a reference to the documents or other evidence they plan to submit or propose.

[9] Item 1 amended pursuant to item 8 of the sole article of Act 11/2011 of 20 May

2. Unless otherwise agreed by the parties, a party may amend or supplement his claim or defence during the course of the arbitral proceedings, except as the arbitrators judge the delay in submission to render admission of such amendment inappropriate.

Article 30. *Form of arbitral proceedings*

1. Subject to any contrary agreement by the parties, the arbitrators will decide whether to hold oral hearings for the presentation of statements or evidence and the issuance of conclusions, or whether the proceedings will be conducted in writing only. Unless the parties have agreed that no hearings will be held, they will be announced by the arbitrators at an appropriate stage of the proceedings, if so requested by a party.

2. The parties will be given sufficient advance notice of any hearing and may intervene therein directly or by proxy.

3. All written statements, documents or other instruments received by the arbitrators from one party will be communicated to the other party. The parties will likewise be notified of any documents, expert reports or other evidentiary instruments on which the arbitrators may base their decision.

Article 31. *Default of a party*

Unless otherwise agreed by the parties, if, in the absence of sufficient cause, in the arbitrators' judgement:

a) the claimant fails to communicate his statement of claim within the time limit, the arbitrators will terminate the proceedings unless the respondent expresses his intention to apply for relief or remedy;

b) the respondent fails to communicate his statement of defence within the time limit, the arbitrators will continue the proceedings without treating such failure in itself as an 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 it.

Article 32. *Experts appointed by arbitrators*

1. Unless otherwise agreed by the parties, the arbitrators, on their own initiative or at the request of a party, may appoint one or more experts to report to it on specific issues and call upon any of the parties to furnish the expert with all relevant information, display thereto all relevant documents or goods or afford him access to such documents or goods for examination.

2. If requested by a party or deemed necessary by the arbitrators, and subject to any contrary agreement by the parties, after delivery of their reports, experts will participate in a hearing to enable the arbitrators and the parties, themselves or assisted by experts, to put questions to them.

3. The foregoing is understood without prejudice to the parties' entitlement, unless otherwise agreed, to furnish reports authored by freely appointed experts.

Article 33. *Court assistance in taking evidence*

1. The arbitrators or a party with their approval may request a competent court to furnish assistance in taking evidence pursuant to the applicable rules on means of proof. Such assistance may consist of taking evidence by the competent court or adoption thereby of any specific measures needed to enable the arbitrators to do so.

2. If so requested, the court will take evidence under its exclusive supervision. Otherwise, the court will confine its action to ordering the relevant measures. In both cases the court clerk will furnish the applicant with a record of the proceedings.[10]

TITLE VI

Making of award and termination of proceedings

Article 34. *Rules applicable to substance of dispute*

1. The arbitrators will decide *ex aequo et bono* only where explicitly authorised by the parties to do so.

2. Without prejudice to the provision of the preceding item, in international arbitration, the arbitrators will 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 will be construed, unless otherwise indicated, as directly referring to the substantive law of that State and not to its conflict of laws rules.

Failing any indication by the parties, the arbitrators will apply the rules they deem appropriate.

[10] Item 2 amended pursuant to Article 18.1 of Act 13/2009 of 3 November

3. In all cases, the arbitrators will decide in accordance with the terms of the contract, having regard to standard practice in connection with the transaction.

Article 35. *Decision-making by more than one arbitrator*

1. In arbitral proceedings with more than one arbitrator, all decisions will be made by majority, unless otherwise agreed by the parties. If no majority is reached, the decision will be made by the president.

2. Unless otherwise decided by the parties or the arbitrators, questions of administration or procedure or that expedite the proceedings may be decided by the president.

Article 36. *Settlement by agreement*

1. If, during arbitral proceedings, the parties settle the dispute wholly or partially, the arbitrators will terminate the proceedings with respect to the items agreed upon and, if requested by the parties and the arbitrations perceive no reason for taking exception thereto, record the settlement in the form of an arbitral award on the agreed terms.

2. The award will be delivered as provided in the following article and will carry the same legal consequences as any other award delivered on the merits of the case.

Article 37. *Time limit, form, content and notification of award*

1. Unless otherwise agreed by the parties, the arbitrators will rule on the dispute in a single award or in as many partial awards as deemed necessary.

2. Subject to any contrary agreement by the parties, the arbitrators must deliver the award within 6 months of the date of submission of the defence referred to in Article 29 or the expiration of the deadline therefor. Unless otherwise agreed by the parties, this term may be extended by the arbitrators for a period of no longer than 2 months under a duly justified decision. Subject to any contrary agreement by the parties, failure to deliver the award within the time limit will not affect the validity of the arbitration agreement or of the award delivered, without prejudice to the liability that may be incurred by the arbitrators.

3. All awards must be issued in writing and signed by the arbitrators, who may specify how they voted. In arbitral proceedings with more than one arbitrator, the signatures of a majority of all arbitrators or of the president will suffice, provided that the reasons for the omissions are stated.

For the purposes of the provisions of the preceding paragraph, the award will be regarded to be in writing when a record is made of its content and the signatures and it is accessible on electronic, optical or other media for subsequent reference.

4. The award will state the grounds upon which it is based, except for awards delivered on agreed terms pursuant to the preceding article.

5. The award will state its date and the place of arbitration as determined in accordance with Article 26, item 1. The award will be deemed to have been made at the place specified.

6. Subject to agreement by the parties, the award will include the arbitrators' decision on arbitration costs, which will include their own fees and expenses, and, as appropriate, the fees and expenses of the parties' defence or representatives, the cost of the service rendered by the institution conducting the arbitration and all other expenses incurred in the arbitral proceedings.

7. The arbitrators will notify the parties of the award in the form and within the time limit agreed to by the parties or, failing that, by delivery of a signed copy of the award to each party, further to the provisions of item 3, within the time limit laid down in item 2.

8. The award may be notarised.

A party may apply to the arbitrators to have the award notarised, providing such request is raised prior to notification.[11]

Article 38. *Termination of proceedings*

1. Without prejudice to the provisions of the preceding article on notification and, as appropriate, notarisation of the award, and in the following article on award correction and clarification and additional awards, the arbitral proceedings terminate and the arbitrators' task concludes with the final award.

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

a) the claimant withdraws his claim, unless the respondent takes exception thereto and the arbitrators acknowledge a legitimate interest on his part in obtaining a final settlement of the dispute;

b) the parties agree on the termination of the proceedings;

[11] Items 2, 3 and 4 amended pursuant to item 9 of the sole article of Act 11/ 2011 of 20 May

c) the arbitrators find that continuation of the proceedings is unnecessary or impossible.

3. After the period specified by the parties lapses or, failing that, 2 months after termination of the proceedings, the arbitrators' obligation to conserve the respective documentation will expire. Within that period, a party may apply to the arbitrators for the return of the documents submitted thereby. The arbitrators will grant their consent, providing the confidentiality of arbitral consultation is not violated and the applicant defrays any forwarding expenses.

Article 39. *Correction and interpretation of award; additional award; overextension*

1. Within 10 days of notification of the award, unless another time limit has been agreed upon by the parties, a party may apply to the arbitrators for any of the following, subject to giving notice to the other party:

a) correction in the award of any errors in computation, clerical, typographical or similar errors;

b) an interpretation of a specific point or part of the award;

c) an additional award on claims presented in the proceedings and omitted from the award;

d) rectification of partial overextension of the proceedings in an award covering questions not submitted to the arbitrators or questions on a matter not subject to arbitration.

2. After hearing the other parties, the arbitrators will issue their decision on requests for correction of errors and interpretation within 10 days, and on requests for additional awards and rectification of overextension within 20 days.

3. The arbitrators may correct any error of the type referred to in sub-item 1.a) on their own initiative within 10 days of the date of the award.

4. The provisions of Article 37 will apply to arbitral decisions on correction and interpretation of the award, additional awards and overextension.

5. In international arbitration, the 10- and 20-day time limits established in the preceding items will be extended to 1- and 2-months, respectively.[12]

[12] Heading and items 1, 2 and 4 amended pursuant to item 10 of the sole article of Act 11/2011 of 20 May

TITLE VII

Setting aside and review of award

Article 40. *Action to set aside awards*

Application may be made to set aside a final award under the terms envisaged in this title.

Article 41. *Grounds*

1. An award may be set aside only if the applicant alleges and furnishes proof:

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

b) that the applicant 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 award contains decisions on questions not submitted to arbitration;

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 an imperative provision of this act, or, failing such agreement, was not in accordance with this act;

e) that the subject-matter of the dispute is not apt for settlement by arbitration;

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

2. The existence of the circumstances listed in sub-items 1.b), 1.e) and 1.f) may be determined by the court hearing the case for setting aside the award on its own initiative or at the request of the Public Prosecutor in connection with interests whose defence is legally attributed thereto.

3. In the instances envisaged in sub-items 1.c) and 1.e), only the decisions in the award on questions not submitted to the arbitrators or not subject to arbitration will be set aside, providing they can be separated from the others.

4. An application for setting aside an award must be made within 2 months of the date of notification thereof or, in requests made for correction, interpretation or an additional award, of the date of notification of the decision thereon, or of the deadline for such notification.

Article 42. *Procedure*

1. Application to set aside an arbitral award must be the object of an oral hearing, without prejudice to the following.

a) The application must be submitted as laid down in Article 399 of Act 1/2000 of 7 January on Civil Procedure Rules, in conjunction with any supporting documents, the arbitration agreement and the award, and, as appropriate, the claimant's proposal for the means of proof to be effected.

b) The Clerk of the Court will notify the respondent of the claim. In his defence, which must be submitted within 20 days, the respondent must attach any substantiating documents and propose all the means of proof from which he will draw. The claimant will receive copies of the defence and the attached documents to be able to submit any additional documents or propose further means of proof.

c) After the defence is received or the respective time limit lapses, the Clerk of the Court will set the date for the hearing, if so requested by the parties in their statements of claim and defence. If the applications contain no request for a hearing, or if the sole proof proposed is documentary and the documents were furnished and not objected to, or in the event of expert reports no ratification is needed, the court will deliver its sentence on those grounds.

2. The court's sentence will not be appealable.[13]

Article 43. *Res judicata and review of awards*

Arbitral awards constitute *res judicata*; i.e., they may be set aside or, as appropriate, the object of a request for review pursuant to the provisions on final sentences in Act 1/2000 of 7 January on Civil Procedure Rules, but of no other action.[14]

TITLE VIII

Enforcement of awards

Article 44. *Applicable rules*

Awards will be enforced in accordance with the provisions of the Civil Procedure Rules and this title.

[13] Item 1 amended pursuant to item 11 of the sole article of Act 11/2011 of 20 May

[14] Amended by item 12 of the sole article of Act 11/2011 of 20 May

Article 45. *Suspension, dismissal and renewal of enforcement in the event of application to set aside the award*

1. Awards are enforceable even when action has been brought to set them aside. Nonetheless, in that case the party concerned may apply to the competent court for suspension of enforcement, providing he provides security for the value of the sentence plus any damages that may stem from delayed enforcement. Such security may adopt any of the forms envisaged in Article 529, sub-item 3.2 of the Civil Procedure Rules. The court, upon receipt of the application for suspension, will hear the executant and deliver a decision on the security to be furnished.

This decision will not be appealable.

2. The Clerk of the Court will raise the suspension and order continuation of enforcement upon confirmation of dismissal of the action for setting aside the award. Continuation will be without prejudice to the executant's right to request indemnity for damages resulting from delayed enforcement, as appropriate, via the channels laid down in Articles 712 *et sequentes* of the Civil Procedure Rules.

3. The Clerk of the Court will raise enforcement, with the consequences envisaged in Articles 533 and 534 of the Civil Procedure Rules, upon confirmation of a ruling favourable to setting aside the award.

If setting aside affects only the questions referred to in Article 41, item 3 and other decisions set out in the award persist, setting aside will be regarded as partial for the purposes of Article 533, item 2 of the Civil Procedure Rules.[15]

TITLE IX

Exequatur of foreign awards

Article 46. *Foreign status of award. Applicable rules*

1. A foreign award is defined to be one delivered outside Spain.

2. Exequaturs for foreign awards will be governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958, without prejudice to the provisions of other more favourable international conventions, and the requisite procedural steps will be performed as set out in the Civil Procedure Rules for sentences delivered by foreign courts.

[15] Items 2 and 3 amended pursuant to Article 18.3 of Act 13/2009 of 3 November

Sole additional provision. *Arbitration on consumer goods*

This act will apply to issues respecting arbitration not addressed in Act 26/1984 of 19 July on the general defence of consumers and users, under whose provisions *ex aequo et bono* decisions may be established, except where the parties explicitly opt for arbitration in accordance with the letter of the law.

Sole transitional provision. *Transitional regime*

1. Arbitration in which the notification on submission of a dispute thereto was received by the respondent or in which the proceedings commenced prior to the entry into effect of this act will be governed by the provisions of Act 36/1988 of 5 December on Arbitration. That notwithstanding, the rules of this act on the arbitration agreement and its consequences will apply in all cases.

2. Awards delivered after this act enters into effect will be subject to its rules in connection with setting aside and review.

3. Proceedings for the enforcement of awards and exequaturs for foreign awards outstanding when this act enters into effect will be conducted in accordance with the provisions of Act 36/1988 of 5 December on Arbitration.

Sole abrogatory provision. *Abrogation*

Act 36/1988 of 5 December on Arbitration is hereby abrogated.

Final Provision one. *Amendment of Act 1/2000 of 7 January on the Civil Procedure Rules*

1. Article 517, item 2.2 is amended to read as follows.

> "2. Arbitral awards or decisions"

2. A new paragraph is added to Article 550, sub-item 1.1, with the following wording.

> "When the certificate of title is an award, it will include, in addition, the arbitration agreement and documents substantiating notification of the parties of the award."

3. A fourth sub-item is added to Article 559, item 1, as follows:

> "4. if the executive order is an un-notarised arbitral award, its lack of authenticity."

Final Provision two. *Competence*

This act is decreed by virtue of the State's exclusive competence in the area of mercantile and civil legislation pursuant to the Constitution, Article 149.1.6 and 8.a.

Final Provision three. *Entry into force*

The present act will enter into force 3 months after its publication in the Official State Journal.

I therefore order all Spanish citizens and authorities to honour and enforce this act.

23 December 2003

JUAN CARLOS K.

The President of the Government,
JOSÉ MARÍA AZNAR LÓPEZ

GOBIERNO DE ESPAÑA

MINISTERIO DE JUSTICIA