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ACT ON MEDIATION IN CIVIL AND COMMERCIAL MATTERS

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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 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 5/2012, OF 6TH JULY, ON MEDIATION IN CIVIL AND COMMERCIAL MATTERS

PREAMBLE

I

One of the essential functions of the Rule of Law is to secure effective judicial remedy of citizens' rights. That function implies the challenge of implementing a quality justice able to resolve the diverse conflicts that arise in a modern and, at the same time, complex society.

In this context, since the nineteen sixties, new alternative systems have been resorted to in order to resolve disputes, among which there is mediation, which has gradually taken on a growing importance as a complementary instrument of Administration of Justice.

Among the advantages of mediation, its ability to provide practical, effective, economical solutions to certain conflicts between the parties must be emphasised and as that this makes it an alternative to judicial or arbitration procedures, from which it must be clearly distinguished. Mediation is established on the basis of intervention by a neutral professional who facilitates resolution of the dispute by the parties themselves, in an equitable manner, allowing maintenance of the underlying relations and keeping control over the conclusion of the dispute.

II

In spite of the increase this has undergone in Spain in recent years, within the scope of the Autonomous Communities, until approval of Royal Decree-Law 5/2012, there was a lack of general regulations applicable to the diverse civil and commercial matters, while assuring their link to the ordinary jurisdiction, thus implementing the first of the axes of mediation, which is dejudicialisation of certain matters, that may have a solution that is more appropriate to the needs and interests of the parties in dispute than might arise from the legal provisions.

Mediation, as a mechanism for settlement among the parties themselves, as an effective instrument to resolve disputes when the legal conflict affects subjective rights of a renounceable nature. As an institution directed at the attainment of the legal peace, it contributes to conceiving the courts of law in this sector of the legal establishment as a last resort, in the event of it not being possible to settle the dispute solely at the will of the parties, and it may prove useful in reducing the workload thereof, reducing the intervention of the courts to cases in which the confronted parties have not been able to put an end to the dispute by agreement.

Likewise, this Act transposes Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, to Spanish Law. However, its regulation goes beyond the content of that European Union provision, in live with the terms set forth in Final Provision Three of Act 15/2005, of 8th July, amending the Civil Code and Civil Procedure Act in matters of separation and divorce, in which the Government was commissioned with submitting a bill on mediation to Parliament.

Directive 2008/52/EC is limited to establishing a minimum regulation to encourage mediation in cross-border litigation in civil and commercial matters. On the contrary, the provisions herein contained form a general regime applicable to all mediation that takes place in Spain and that is aimed at having a binding legal effect, although limited to the scope of civil and commercial matters and within a model that has taken into account the provisions of the Model Law by UNCITRAL on International Commercial Conciliation, of 24th June 2002.

Precisely the term for transposition of Directive 2008/52/EC to Spanish Law, that elapsed on 21st May 2011, justified resorting to a Royal Decree-Law as the adequate tool to perform the necessary adaptation of our Law, which brought an end the delay in fulfilling that obligation, with the consequential negative consequences that involved both for citizens and for State due to the risk of being penalised by European Union institution.

The exclusions foreseen in this Act are not intended to limit mediation in the scopes to which they refer, but rather to reserve their regulation to the relevant sectorial rules.

III

The mediation model is based on the voluntary commitment and free decision of the parties and on intervention by a mediator, whose active intervention is sought in order for the parties themselves to resolve the dispute. The regime the Act contains is based on flexibility and on respect for the autonomy of the will of the parties, whose will, expressed in the agreement that puts an end to the dispute, may be considered an executive title, if the parties so wish, by having it notarised. In no way does this regulation aim to enclose all the variety and richness of the mediation, but rather just to establish its bases and favour an alternative to judicial solution of the dispute. This is precisely where the second axis of the mediation lies, which is delegalisation, or loss of the central role of the law, to enhance a principle of disposal that also governs the relations giving rise to the dispute.

The figure of the mediator is, according to its natural conformation, the essential piece of the model, as it is him or her who helps to find the voluntary, dialogue-based solution that the parties desire. Mediation activity is deployed in multiple professional and social scopes, requiring skills that, in many cases, depend on the very nature of the conflict. The mediator must thus have a general training that allows him or her to perform that task and, above all, provide unequivocal guarantees to the parties over the civil liability in which he or she may incur.

Likewise, the Act uses the term mediator generically, without prejudging if one or several are involved.

In that context, the most important role of the mediation services and institutions, which perform a fundamental task when ordering and encouraging mediation procedures, is borne in mind.

A corollary of this regulation is recognition of the mediation agreement as an executive title, which shall take place with its subsequent notarisation in a public deed, execution whereof may be demanded directly before the courts. The third axis of mediation lies in regulation of the mediation agreement, which is delegalisation, consisting of not determining the content of the restorative or repair agreement in a necessary manner.

The flexible framework intended by the Act aims to be further encourage resorting to mediation, in order to avoid repercussion thereof on subsequent procedural costs and to prevent a strategy of drawing out fulfilment of the contractual obligations by the parties. This is embodied in the option of suspension of the expiry term when a procedure commences, in opposition to the general rules of interruption thereof, in order to eliminate possible lack of incentives and to avoid mediation having undesired legal effects.

This Act is strictly limited to the scope of powers of the State in matters of commercial, procedural and civil laws, which allow articulation of a framework to exercise mediation, without prejudice to the provisions handed down by the Autonomous Communities in the exercise of their powers.

In order to facilitate recourse to mediation, easily formalised, low cost and swift proceedings are articulated.

IV

The articles of this Act are structured in five titles.

Title I, under the heading “General Provisions”, regulates the material and spatial scope of the Act, its application to cross-border disputes, the effects of mediation on limitation and prescription periods, as well as the mediation institutions.

Title II lists the principles on which mediation is based, which are the principles of voluntary commitment and free disposal, that of impartiality, that of neutrality and confidentiality. In addition to these principles, there are the rules or directives that are to guide action by the parties in the mediation, such as good faith and mutual respect, as well as their duty to collaborate and support the mediator.

Title III contains the minimum statute of the mediator, determining the requisites to be fulfilled and the principles of action. In order to guarantee his or her impartiality, the circumstances the mediator must notify the parties of are specified, such disclosure being based on the European Code of Conduct for Mediators.

Title IV regulates the mediation procedure. It is a simple, flexible procedure that allows the subjects involved in mediation to be those who freely determine its fundamental phases. The rule is limited to establishing the indispensable requisites to provide validity to the agreement the parties may reach, always under the principle that being able to reach an agreement is not something obligatory as, sometimes, as shown by the experience in applying this institution, it is not strange for mediation to simply aim to improve relations, without intending to reach an agreement over specific content.

Finally, Title V establishes the procedure for execution of resolutions, adjusting to the provisions that already exist under Spanish Law and without establishing differences with the regime of execution of cross-border mediation agreements, enforcement of which must take place in another State; for which it shall require such a resolution to be embodied in a public deed as a necessary condition for it to be considered an enforceable title.

V

The final provisions make the regulation compatible inserting mediation into judicial proceedings.

Thus, this Act amends Act 3/1993, of 22nd March, Basic on the Official Chambers of Commerce, Industry and Navigation, and Act 2/1974, of 13th February, on Official Professional Associations, to include in their functions, along with arbitration, mediation, thus allowing their action as mediation institutions.

A series of amendments of a procedural nature are also performed, that facilitate application of mediation within civil judicial proceedings. It thus regulates the power of the parties to dispose of the object of the trial and submit to mediation, as well as the possibility of it being the judge who invites the parties to reach an agreement and, to that end, for them to seek information on the possibility of resorting to mediation. This is a novelty that, whilst respecting the will of the parties, aims to promote mediation and amicable solutions to litigation. On the other hand, an incident to decline jurisdiction is foreseen as a remedy in the face of refusal to comply with the terms of submission or in the case of a suit being filed while mediation is underway.

Lastly, amendment of the Civil Procedure Act includes the necessary provisions for inclusion of the mediation within the titles that give rise to dispatch to enforcement forthwith.

These amendments articulate adequate interrelation between mediation and civil judicial proceedings, reinforcing the effectiveness of the former.

VI

Lastly, this Act reforms Act 34/2006, of 30th October, on access to the professions of Barrister and Solicitor, in order to satisfy the legitimate expectations of law students who, at the moment of publication of that Act, were enrolled in their university studies and, as a consequence of publication thereof, have had the conditions for access to the professions of Barrister and Solicitor completely altered.

Pursuant to Act 34/2006, in order to obtain the professional qualification of Barrister or Solicitor, it is necessary, in addition to holding an official university of Licence in Law or that of Graduate in Law, or the relevant degree, to evidence professional capacity by having passed the relevant specialised, official training that is acquired through training courses accredited by the Ministry of Justice and the Ministry of Education, as well as passing a subsequent examination.

The amendment approved is in keeping with the recital of motives of Act 34/2006, which declares the objective of not thwarting “the present expectations of undergraduates studying for the Licence in Law or for the Graduate in Law.” However, the five-year term of *vacatio legis* that was initially set by the Act has proved insufficient to provide satisfaction to a set of students who have not been able to complete their studies within that five-year period. The aim is to resolve the problems of students who enrolled in degree courses in Law prior to 31st October 2006, at which moment professional qualifications were not required to practice the professions of Barrister and Solicitor, and who have not been able to conclude their studies within that term. Due to an undesired omission by the legislator, those students suffer discrimination, as the legitimate expectations they had on enrolling to study Law are thwarted. However, the occasion is also taken advantage of to recognise a special regime of access to professional

practice for holders of Licences in Law, whatever the moment of commencement or conclusion of their studies, thus attending to the diverse initiatives raised in Parliament.

On the other hand, the situation of holders of foreign degrees subject to recognition of equivalence to the Spanish Licence in Law degree is also considered, by introducing of a new additional provision that allows access to the legal professions by those who have commenced the recognition procedure prior to the Act coming into force.

The amendment envisaged establishes that the professional qualifications shall be issued by the Ministry of Justice.

Moreover, in order to put an end to the uncertainty arising from Section 3 of the Sole Transitional Provision of said Act 34/2006, a technical improvement is introduced in the text, clarifying that it is not necessary to actually hold the degree of Licence or Graduate in Law, but rather, it suffices to be able to obtain it; that is, it is not necessary to materially hold the degree diploma, but rather to have concluded the studies when the Act comes into force. The rights of graduates who, having concluded their studies and that due to delay or negligence in applying to the universities for the issuance of their degrees diplomas, are thus protected so as not to exclude them from the scope of the Transitional Provision of the Act.

TITLE I

General provisions

Article 1. Concept

Mediation means a way to resolve disputes, however named, whereby two or more parties attempt by themselves, on a voluntary basis, to reach an agreement with the assistance of a mediator.

Article 2. Scope of application

1. This Act is applicable to mediation in civil or commercial matters, including cross-border disputes, as long as these do not affect rights and obligations of which the parties may not dispose by virtue of the applicable laws.

In the absence of specific or tacit submission to this Act, it shall be applicable when at least one of the parties resides in Spain and the mediation is conducted within the Spanish territory.

2. In all cases, the scope of this Act excludes:

2.1. Penal mediation;

2.2. Mediation with the Public Administrations;

2.3. Labour mediation;

2.4. Mediation over consumer matters.

Article 3. Mediation in cross-border disputes

1. A dispute is cross-border when at least one of the parties is domiciled or is habitually resident in a State other than that in which any of other party, when they agree to use mediation, or when it is obligatory to resort to it pursuant to the applicable law. That status shall also be assigned to disputes foreseen, or resolved by means of mediation, whatever the place where it is conducted when, as a consequence of transfer of the domicile of any of the parties, the clause or any of its consequences, are intended to be enforced in the territory of a different State.

2. In cross-border litigation between the parties who live in the different Member States of the European Union, domicile shall be determined pursuant to Articles 59 and 60 of Council Regulation (EC) no. 44/2001, of 22nd December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Article 4. Effects of mediation on limitation and prescription periods

Application for commencement of mediation pursuant to Article 16 shall suspend the expiry of limitation or prescription periods as from the date on which receipt of the aforesaid application by the mediator or deposit thereof before the mediation institution, where appropriate, is recorded.

If, within the term of fifteen calendar days from receipt of the application to commence mediation, the minutes of the constituting session foreseen in Article 19 are not signed, calculation of the periods shall recommence.

The suspension shall last until the date of signing the mediation agreement or, failing that, signing the final minutes, or when the mediation concludes for any of the causes foreseen in this Act.

Article 5. Mediation institutions

1. Those entities, whether public or private concerns, Spanish or foreign, and Public Law Corporations, which include mediation within their ends, providing access and administration thereof, including appointment of mediators,

guaranteeing transparency in such appointment shall be deemed mediation institutions. If their object also includes arbitration, they shall adopt the measures to assure separation between these activities.

A mediation institution may not provide the mediation service directly, nor shall have further intervention in it other than foreseen by this Act.

Mediation institutions shall disclose the identity of the mediators acting within their scope, stating at least their training, specialisation and experience in the field of mediation that they perform.

2. These institutions may implement mediation systems by electronic means, especially for disputes in which monetary claims are involved.

3. The Ministry of Justice and the competent Public Administrations shall ensure that mediation institutions abide by the principles of mediation established in this Act when performing their activities, as well as those of good practice by mediators, in the manner established by its regulatory provisions.

TITLE II

Guiding principles of mediation

Article 6. Voluntary basis and free disposal

1. Mediation is on a voluntary basis.

2. When there is a written covenant that states commitment to submit a dispute that has arisen, or that might arise, to mediation, an attempt must be made in good faith to carry out the agreed procedure before resorting to the courts or to another out of court solution. This clause shall take effect even when the dispute may concern the validity or existence of the contract in which it is recorded.

3. Nobody is obliged to remain in a mediation procedure, nor to reach an agreement.

Article 7. Equality of the parties and impartiality of the mediators

The mediation procedure shall guarantee that the parties intervene with full equality of opportunities, maintaining the balance between their positions and respect for the points of view expressed therein, without the mediator being able to act to the detriment or in the interest of any of these.

Article 8. Neutrality[1]

The mediation actions shall be carried out so as to allow the parties in conflict to reach a mediation agreement themselves, the mediator acting pursuant to the terms set forth in Article 13.

Article 9. Confidentiality

1. The mediation procedure and documentation used therein are confidential. The confidentiality obligation covers the mediator, who shall be protected by professional secrecy, the mediation institutions and the parties intervening, so they may not disclose information they may obtain arising from the procedure.

2. The confidentiality of the mediation and its content prevents the mediators or persons who participate in the mediation procedure being obliged to declare or provide documentation in judicial proceedings or in arbitration on the information and documentation arising from mediation procedure or related thereto, except:

2.1. When the parties specifically state in writing that they are waived from the duty of confidentiality;

[1] Drafted pursuant to the correction of errors published in Official State Gazette number 178, of 26th July 2012.

2.2. When, by reasoned court order, this is requested by a judge belonging to criminal the jurisdictional order.

3. Breach of the duty of confidentiality shall generate liability under the terms foreseen in the laws in force.

Article 10. The parties to the mediation

1. Without prejudice to respect for the principles established in this Act, the mediation shall be organised in the manner the parties may deem appropriate.

2. The parties subject to mediation shall act among each other pursuant to the principles of loyalty, good faith and mutual respect.

During the time the mediation is being conducted, a party may not bring any judicial or extrajudicial action against the other party in relation to its object, except for application for injunctive measures or other indispensable urgent measures to avoid irreversible loss of assets and rights.

The commitment to submission to mediation and its initiation prevents the courts from hearing the disputes submitted to mediation during the time this is conducted, as long as the party concerned invokes such impediment by a motion to decline competence.

3. The parties shall provide permanent collaboration and support for the action by the mediator, maintaining adequate deference to his activity.

TITLE III

Statute of the mediator

Article 11. Conditions of practice of the mediator

1. Natural persons who are in full exercise of their civil rights may act as mediators, as long as this is not prevented by the legislation to which they may be subject in the practice of their profession.

Legal persons devoted to mediation shall be professional firms, or any other foreseen under the Law that fulfil the requisites foreseen in this Act to perform carry out mediation.

2. A mediator shall hold an official university degree or a higher vocational education qualification and have specific training to carry out mediation, acquired by completing one or several specific courses taught by duly accredited institutions, which shall be valid to perform mediation activities anywhere nationwide.

3. A mediator shall take out an insurance policy or an equivalent guarantee to cover the civil liability arising from his action in the disputes in which he intervenes.

Article 12. Capacity and auto-regulation of the mediation

The Ministry of Justice and the competent Public Administrations, in collaboration with the mediation institutions, shall encourage and require adequate initial and ongoing training of mediators, the drawing up of voluntary codes of conduct, as well as adhesion by these and the mediation institutions to such codes.

Article 13. Action by the mediator

1. The mediator shall facilitate communication between the parties and shall ensure they have sufficient information and advice.

2. The mediator shall actively intervene to ensure an approach to each other is achieved by the parties, respecting the principles enshrined in this Act.

3. The mediator may decline to conduct the mediation, with the obligation to deliver a certificate to the parties recording his resignation.

4. The mediator may not commence, nor shall abandon the mediation, when circumstances arise that affect his impartiality.

5. Before commencing his tasks, the mediator shall disclose any circumstance that may affect his impartiality or generate a conflict of interests. In any case, those circumstances shall include:

5.1. All kinds of personal, contractual or business relations with one of the parties;

5.2. Any direct or indirect interest in the result of the mediation;

5.3. If the mediator, or a member of his company or organisation, has previously acted in favour of one or several of the parties in any circumstance, except if what as involved was a mediation.

In such cases, the mediator may only accept or continue the mediation when he assures being able to mediate with total impartiality and whenever the parties consent and specifically record this.

The duty to disclose such information remains in force throughout the mediation procedure.

Article 14. Liability of mediators

Acceptance of the mediation binds the mediators to duly fulfil their mandate. Should they not do so, they shall be held liable for the damages and losses they may cause. The party damaged may take direct action against the mediator and, if appropriate, the relevant mediation institution, regardless of the reimbursement actions to which it is entitled against the mediators. The liability of the mediation institution shall arise from appointment of the mediator, or breach of the obligations thereof.

Article 15. Cost of mediation

1. The cost of mediation, whether or not it has concluded by agreement, shall be divided equally among the parties, save agreement to the contrary.

2. Both mediators and mediation institutions may require the parties to advance funds as deemed necessary to cover mediation costs.

Should the parties, or any of them, not advance the funds required within the term set, the mediator or the institution may declare the mediation as terminated. Notwithstanding this, if any of the parties has not made such provision, before resolving to terminate, the mediator or institution shall notify the other parties, in case they might have an interest in covering such provision within the term set.

TITLE IV

Mediation procedure

Article 16. Application for commencement

1. The mediation procedure may be commenced:

1.1. By common agreement between the parties. In that case, the application shall include appointment of the mediator or the mediation institution at which the mediation shall be carried out, as well as the covenant on the place where the sessions shall be carried out and the language or languages of the procedure;

1.2. By one of the parties, in fulfilment of a covenant to submit to mediation that may exist between them.

2. The application shall be filed before the mediation institution, or before the mediator proposed by one of the parties versus the other, or before the mediator already appointed by them.

3. When mediation is commenced on a voluntary basis, while judicial proceedings are underway, the parties, by mutual agreement, may apply for suspension thereof pursuant to the terms set forth in the procedural legislation.

Article 17. Information and information sessions

1. Once the application is received and except for agreement to the contrary by the parties, the mediator or mediation institution shall summon the parties to hold the information session. In the event of unjustified absence from the information session by any of the parties, it shall be understood to desist from the mediation requested. The information concerning which party or parties did not attend the session shall not be confidential.

At that session, the mediator shall inform the parties of the possible causes that may affect his impartiality, of his profession, training and experience; as well as the characteristics of the mediation, its cost, the organisation of the procedure, and the legal consequences of the agreement that may be reached, as well as the term to sign the minutes of the constitutive session.

2. Mediation institutions may organise open information sessions for persons who may be interested in resorting to this dispute resolution system, which under no circumstance shall substitute the information foreseen in Section 1.

Article 18. Plural mediators

1. The mediation shall be conducted by one or several mediators.

2. If, due to the complexity of the matter, or the convenience of the parties, action by several mediators in a same procedure were to take place, they shall act in a co-ordinated manner.

Article 19. Constitutive session

1. The mediation procedure shall commence by means of a constitutive session in which the parties shall declare their will to perform the mediation and shall record the following aspects:

1.1. Identification of the parties;

1.2. Appointment of the mediator and, where appropriate, of the mediation institution, or acceptance of the one appointed by one of the parties;

1.3. The object of the dispute submitted to the mediation procedure;

1.4. The schedule of actions and maximum duration foreseen to conduct the procedure, without prejudice to possible amendment thereof;

1.5. Information on the cost of the mediation, or the bases to determine such, with separate indication of the fees of the mediator and other possible expenses;

1.6. Declaration of voluntary acceptance of the mediation by the parties and that they accept the obligations arising therefrom;

1.7. The venue and language of the procedure.

2. Minutes of the constitutive session shall be drawn up to record these aspects. These shall be signed both by the parties as well as by the mediator or mediators. Otherwise, those minutes shall declare that mediation has been attempted to no avail.

Article 20. Duration of the procedure

The duration of the mediation procedure shall be as brief as possible and its actions shall be concentrated in the minimum number of sessions.

Article 21. Conducting the mediation activities

1. The Mediator shall summon the parties to each session the necessary notice; shall direct the sessions and facilitate explanation of their postures and their equal and balanced communication.

2. Communication between the mediator and the parties in dispute may or may not be simultaneous.

3. The Mediator shall notify all the parties of all meetings held separately with any of them, without prejudice to confidentiality of the matters discussed. The Mediator may not communicate or distribute the information or documentation that the party has provided him, except if it specifically authorises him to do so.

Article 22. Conclusion of the procedure

1. The mediation procedure may conclude in an agreement or end without reaching such an agreement, either because all or some of the parties exercise their right to put an end to the procedure, notifying the mediator of this or because the maximum term agreed by the parties for the term of the procedure has elapsed or when the mediator reasonably deems that the postures of the parties are irreconcilable or when another reason arises for him to deem the need for conclusion.

On conclusion of the procedure, each party shall be returned the documents it has provided. The documents that need not be returned to the parties shall be used to form a file that shall be conserved in the custody of the mediator or, where appropriate the mediation institution, once the procedure has concluded, for a term of four months.

2. Refusal by the mediator to continue the procedure, or rejection of their mediator by the parties, shall only cause conclusion of the procedure when they do not manage to appoint a new mediator.

3. The final minutes shall determine conclusion of the procedure and, where appropriate, shall record the agreements reached in a clear, understandable manner, or the conclusion of the procedure for any other reason.

The minutes shall be signed by all the parties and by the mediator or mediators, and an original copy shall be delivered to each one of them. Should any of the parties not wish to sign the minutes, the mediator shall record that circumstance thereon, delivering a copy to the parties who so wish.

Article 23. The mediation agreement

1. The mediation agreement may concern part or all of the matters submitted to mediation.

The mediation agreement shall record the identity and address of the parties, the place and date on which it is signed, the obligations undertaken by each party and that they have followed mediation procedure in keeping with the provisions of this Act, stating the mediator or mediators who have intervened and, where appropriate, the mediation institution at which the procedure was conducted.

2. The mediation agreement shall be signed by the parties or their representatives.

3. A copy of the mediation agreement shall be delivered to each one of the parties, another being reserved by the mediator for conservation.

The Mediator shall inform the parties of the binding nature of the agreement reached and that they may call for its notarisation in a public deed in order to configure their agreement as an enforceable title.

4. Only the action of nullity may be filed against the terms set forth in the mediation agreement due to causes that invalidate the contracts.

Article 24. Actions carried out by electronic means.

1. The parties may agree that all or any of the mediation actions, including the constitutive session and successive ones that are deemed to be convenient, shall be carried out by electronic means, by video-conference or other similar means of conveying voice or image, as long as these guarantee the identity of the parties intervening and respect for the principles of mediation foreseen in this Act.

2. Mediation involving claims for sums not exceeding € 600 shall preferably be carried out by electronic means, except of their use is not possible for any of the parties.

TITLE V

Enforcement of the resolutions

Article 25. Formalisation of the enforceable title

1. The parties may have the agreement resulting from a mediation procedure notarised in a public deed.

The mediation agreement shall be submitted by the parties to a Notary Public, accompanied by a copy of the minutes of the constitutive and final sessions of the procedure, without the presence of the mediator being necessary.

2. In order to carry out the notarisation of a mediation agreement in a public deed, the Notary Public shall verify fulfilment of the requisites established under this Act and that its content is not against the Law.

3. If a mediation agreement is to be enforced in another State, in addition to being notarised in a public deed, fulfilment of the appropriate requisites that may be established by the international conventions to which Spain is a party and the European Union provisions shall be necessary.

4. When an agreement has resulted from a mediation conducted after initiating judicial proceedings, the parties may request the court to validate it pursuant to the terms set forth in the Civil Procedure Act.

Article 26. Competent court to enforce a mediation agreement

Enforcement of an agreement resulting from a mediation commenced while judicial proceedings are in progress shall be requested before the court that validated the agreement.

If it is an agreement formalised after a mediation procedure, the competent court shall be the Court of First Instance of the place where the mediation agreement was signed, pursuant to the terms set forth in Section 2 of Article 545 of the Civil Procedure Act.

Article 27. Enforcement of cross-border mediation agreements

1. Without prejudice to the terms set forth in the European Union provisions and the international conventions in force in Spain, a mediation agreement that has already become enforceable in another State may only be enforced in Spain when that enforceable status arises from intervention of a competent authority that has equivalent functions to those performed by the Spanish authorities.

2. A mediation agreement that has not been declared enforceable by a foreign authority may only be enforced in Spain by prior notarisation in a public deed by a Spanish Notary Public at the request of the parties, or by one of them with the specific consent of the others.

3. A foreign document may not be enforced when it is manifestly contrary to Spanish public order.

Additional Provision One. Recognition of mediation institutions or services

Mediation institutions or services established or recognised by the Public Administrations according to the terms set forth in the laws may undertake the mediation functions foreseen in this Act as long as they fulfil the conditions established herein to act as mediation institutions.

Additional Provision Two. Promotion of mediation

1. The Public Administrations entrusted with providing the material resources to serve the Administration of Justice shall ensure information on mediation as an alternative to judicial process is made available to the jurisdictional bodies and to public at large.

2. The competent Public Administrations shall ensure mediation is included in free advice and orientation prior to judicial proceedings, foreseen under Article 6 of Act 1/1996, of 10th January, on Legal Aid, to the extent that it allows reduction both of litigation as well as the costs thereof.

Additional Provision Three. Public deeds to formalise mediation agreements

In order to calculate the notarial fees of the public deed of formalisation of the mediation documents, the relevant tariffs for "Documents without amount" shall be applied, as foreseen in Number 1 of Addendum I of Royal Decree 1426/1989, of 17th November, that approves the tariff for Notaries Public.

Additional Provision Four. Equal opportunities for the disabled

A mediation procedure shall guarantee equal opportunities for the disabled. To that end, the terms set forth in Royal Decree 366/2007, of 16th March, establishing the conditions of accessibility and non- discrimination of the disabled in their relations with the General State Administration shall be observed.

Especially, access to the environments shall be guaranteed by use of sign language or means to support verbal communication, Braille, tactile communication or any other means or system that allows the disabled to participate fully in the process.

The electronic resources referred to in Article 24 of this Act shall comply with the conditions of accessibility foreseen in Act 34/2002, of 11th July, on services for the information society and electronic commerce.

Repealing Provision

Royal Decree-Law 5/2012, of 5th March, on mediation in civil and commercial matters, is hereby repealed.

Final Provision One. Amendment of Act 2/1974, of 13th February, on Professional Associations

Letter ñ) of Article 5 of Act 2/1974, of 13th February, on Professional Associations, shall henceforth be drafted as follows:

> "ñ) To encourage and carry out mediation, as well as to perform national and international arbitration functions, pursuant to the terms established in the laws in force."

Final Provision Two. Amendment of Act 3/1993, of 22nd March, Basic on the Official Chambers of Commerce, Industry and Navigation

Letter i of Section 1 of Article 2 of Act 3/1993, of 22nd March, Basic on the Chambers of Commerce, Industry and Navigation, shall henceforth be drafted as follows:

"i) To encourage and carry out mediation, as well as to perform national and international arbitration functions, pursuant to the terms established in the laws in force."

Final Provision Three. Amendment of Act 1/2000, of 7th January, on Civil Procedure.

Articles 19, 39, 63, 65, 66, 206, 335, 347, 395, 414, 415, 438, 440, 443, 517, 518, 539, 545, 548, 550, 556, 559, 576 and 580 of Act 1/2000, of 7th January, on Civil Procedure, are hereby amended as follows:

One. Section 1 of Article 19 shall henceforth and shall henceforth be drafted as follows:

"1. The litigants are empowered to dispose of the object subject to trial and may renounce, desist from proceedings, withdraw, submit to mediation or to arbitration and compromise on that forming its object, except when the law prohibits this or establishes limitations due to the general interest, or in the benefit of a third party."

Two. Article 39 is hereby amended and shall henceforth be drafted as follows:

"Article 39. Appreciation of the lack of international competence or jurisdiction at the request of a party

The defendant may plea the Court to decline competence alleging lack of international competence or lack of jurisdiction, due to the matter belonging to another jurisdictional order, or due to the dispute having been submitted to arbitration or mediation."

Three. Paragraph One of Section 1 of Article 63 shall henceforth be drafted as follows:

"1. By means of a declinatory plea, the defendant and those who may be legitimate parties to the case promoted may allege the lack of jurisdiction of the court before which the suit has been filed, due to hearing thereof being the remit of foreign courts or of the bodies of another jurisdictional order or of arbitrators or mediators."

Four. Paragraph two of Section 2 of Article 65 shall henceforth be drafted as follows:

"The court shall proceed likewise, if it were to deem the declinatory plea grounded on the basis that the matter having been submitted to arbitration or mediation."

Five. Article 66 shall henceforth be drafted as follows:

"Article 66. Appeals in matters of international competence, jurisdiction, submission to arbitration or mediation, and objective competence

1. A remedy of appeal may be filed against the order abstaining from hearing a case due to lack of international competence, due to the matter belonging to a court of another jurisdictional order, or due to the matter having been submitted to arbitration or mediation due to lack of objective competence.

2. Only a remedy of repeal may filed against the order rejecting the lack of international competence, of jurisdiction or objective competence, without prejudice to allegation of lack of such procedural requisites in the appeal against the final judgement.

The terms set forth in the preceding paragraph shall also be applicable when the order rejects submission of the matter to arbitration or mediation."

Six. Rule 2 of Section 1 of Article 206 is hereby amended and shall henceforth be drafted as follows[2]:

"2. An order shall be handed down when an appeal is decided against an order or decree resolving on whether or not to admit a suit, a counter-claim, accumulation of actions, to admit or not to admit evidence,

[2] Drafted according to the correction of errors published in Official State Gazette number 178, on 26th July 2012. Ref. BOE-A-2012-9982.

judicial approval of transactions, mediation agreements and conventions, injunctive measures and nullity or validity of the actions.

Resolutions concerning procedural cases, annotations and registry inscriptions and incidental matters shall also be in the form of an order, whether or not special formalities are stated under this Act, as long as decision by the Court is required by the law in such cases, as well as those putting an end to actions at an instance or appeal before the ordinary formalities are concluded, except with regard to the latter, when the law has provided that they shall be concluded by decree".

Seven. A new Section 3 is hereby added to Article 335, drafted as follows:

"3. Except for an agreement to the contrary by the parties, an opinion may not be requested of an expert who has intervened in a mediation or arbitration related to the same matter."

Eight. Paragraph two of Section 1 of Article 347 shall henceforth be drafted as follows:

"The court shall only refuse applications for intervention that, due to their purpose and content, shall be deemed impertinent or useless, or when there is a duty of confidentiality arising from the intervention by the expert in a prior mediation procedure involving the parties."

Nine. The second paragraph of Section 1 of Article 395 shall henceforth be drafted as follows:

"In any case, it shall be construed that bad faith exists if, prior to filing the claim a verifiable and justified demand for payment is served on the defendant, or if a mediation procedure has been initiated, or a claim for conciliation has been served against that party."

Ten. Paragraph two of Section 1 of Article 414 is hereby replaced by the following:

"In this calling, if not performed before, the parties shall be informed of the possibility of resorting to negotiation in an effort to resolve the dispute, including resorting to mediation, in which case the parties shall inform of their decision in that regard and reasons thereof at the hearing.

The hearing shall be carried out according to the terms established in the following articles, to attempt to reach an agreement or transaction by the parties to put an end to the process, to examine the procedural matters that may prevent it being pursued and for its conclusion by judgement on its object, precisely defining that object and the points of fact or law over which there is dispute between the parties and, where appropriate, to propose and admit evidence.

Bearing in the object of the case, the court may invite the parties to attempt to reach an agreement to put an end to the proceedings, as appropriate through a mediation procedure, encouraging them to attend an informative session."

Eleven. Sections 1 and 3 of Article 415 shall henceforth be drafted as follows:

"1. Once the parties have appeared, the court shall declare the hearing open and shall verify if the dispute between them persists.

If the parties state they have reached an agreement or show that they are willing to conclude one immediately, they may desist from the proceedings or request the court to recognise the matters on which agreement has been reached.

The parties, by common agreement, may also request a stay in the proceedings pursuant to the terms foreseen in Article 19.4 in order to submit to mediation or arbitration.

In such a case, the court shall previously verify the concurrence of requisites of legal capacity and power of disposition of the parties or their duly accredited representatives attending the hearing."

"3. Should the parties fail to reach an agreement, or if they do not appear willing to conclude one immediately, the hearing shall proceed in accordance with the following articles.

When the proceedings have been stayed in order to resort to mediation, on its conclusion, either of the parties may apply for the stay to be lifted and a date be set to continue with the hearing."

Twelve. Exception 4 is hereby added to Section 3 of Article 438, drafted as follows:

"4. In separation, divorce or nullity proceedings, and those aimed at obtaining civil effectiveness of ecclesiastical resolutions or decisions, either of the spouses may simultaneously exercise the action of division of the common property with regard to assets they hold as ordinary common indivisible property. Should there be diverse assets as ordinary common indivisible property and if one of the spouses so requests, the court may consider them in aggregated in order to form batches or to award them."

Thirteen. Section 1 of Article 440 shall henceforth be drafted as follows:

"After examining the claim, the Court Clerk shall admit it or report it to the curt in order for it to resolve as appropriate according to the terms foreseen in Article 404. If the claim is admitted, the Court Clerk shall summon the parties for the holding of a hearing on the date and at the time stated for that purpose, at least ten days and not more twenty days following the day after the summons.

The summons shall inform the parties of the possibility of resorting to negotiation to attempt to resolve the dispute, including resorting to mediation, in which case they shall state their decision and reasons in that regard at the hearing.

The summons shall advise that the hearing shall not be suspended due to the defendant not attending and shall warn the litigants that they are to appear with the means of evidence they intend to use, with the warning that, if they do not attend and if their declaration were to be proposed and admitted, the facts of the examination may be considered to be admitted pursuant to the terms set forth in Article 304. Likewise, the claimant and defendant shall be notified of the provisions set forth in Article 442, in the event of them not attending the hearing.

The summons shall also advise the parties that, within the term of three days following receipt of the summons, they must state the persons who, due to them not being able to present them themselves, are to be summoned to the hearing by the Court Clerk, in order for them to declare as parties or witnesses. To that end, they shall facilitate all the necessary data and particulars to serve the summons. Within that same three- day term, the parties may request written answers to be provided by corporations or public entities, by means of the procedures established in Article 381 of this Act."

Fourteen. Section 3 of Article 443 shall henceforth be drafted as follows:

"3. Having heard the claimant on the matters referred to in the preceding section, as well as those it is considered necessary to propose regarding the personality and representation of the defendant, the Court shall resolve as appropriate and, if it orders continuation of the trial, the defendant may request his objection to be put on record, for the purposes of filing an appeal against the judgement handed down in due time.

Bearing in mind the object of the case, the Court may invite the parties to attempt to reach an agreement to put an end to the process, where appropriate, through a mediation procedure, calling on them to attend an informative session. The parties may also reach a common agreement to request suspension of the process pursuant to the terms foreseen in Article 19.4, to submit to mediation or arbitration."

Fifteen. Number 2 of section 2 of Article 517 shall henceforth be drafted as follows:

"2. Arbitration awards or findings and mediation agreements, the latter having to be notarised in a public deed pursuant to the Act on mediation in civil and commercial matters."

Sixteen. Article 518 shall henceforth be drafted as follows:

"Article 518. Expiry of enforcement action based on a court judgement, arbitration award or mediation agreement.

An enforcement action based on a judgement, resolution by the Court or the Court Clerk approving a judicial transaction or an agreement reached in the proceedings, an arbitration award or a mediation agreement shall expire if the relevant enforcement claim is not filed within five years following the judgement or resolution becoming final."

Seventeen. A new paragraph is hereby added to Section 1 of Article 539, drafted as follows:

"Intervention by a barrister and solicitor shall be required for enforcement arising from a mediation agreement or an arbitration award, as long as the sum for which enforcement is dispatched exceeds € 2000."

Eighteen. Section 2 of Article 545 shall henceforth be drafted under the following terms:

"2. When the title is an arbitration award or a mediation agreement, the Court of First Instance of the place where the award was handed down or where the mediation agreement was signed shall be competent to refuse or grant enforcement and the relevant dispatch thereof."

Nineteen. Article 548 is hereby amended as follows:

"Article 548. Waiting term for enforcement of procedural or arbitration resolutions or mediation agreements

Enforcement of procedural or arbitration resolutions or mediation agreements shall not be dispatched before twenty days have elapsed following that of the condemnatory order or resolution of approval of the covenant or of signing the agreement becoming final is served on the enforcement creditor."

Twenty. A new paragraph is hereby added to Point 1 of Section 1 of Article 550 drafted as follows:

"When the title is a mediation agreement notarised in a public deed, it shall also be accompanied by a copy of the minutes of the constitutive and final sessions of the procedure."

Twenty-one. The heading and paragraph One of Section 1 of Article 556 are hereby amended to read as follows:

"Article 556. Opposition to enforcement of procedural or arbitration resolutions or mediation agreements

1. If the enforcement title is a court resolution or arbitration award of condemnation or a mediation agreement, within ten days following notification of the order dispatching enforcement, the enforcement debtor may oppose this in writing, alleging payment or fulfilment of the terms ordered in the judgement, award or agreement, which shall be evidenced by the appropriate documentation."

Twenty- two. A new drafting is hereby given to Point 3 of Section 1 of Article 559:

"3. Radical nullity of dispatch of execution due to the judgement or arbitration award not containing pronouncements of condemnation, or because the award or mediation agreement does not fulfil the legal requisites established to give rise to enforcement, or due to infringement, on dispatching enforcement, of the terms set forth in Article 520.»

Twenty- three. Section 3 of Article 576 shall henceforth be drafted as follows:

"3. The terms established in the preceding sections shall be applicable to all kinds of court resolutions in any jurisdictional order, to arbitration awards and to mediation agreements containing an order to pay a net amount, except for the specialities legally foreseen for the Public Treasuries.".

Twenty-four. A new drafting is hereby provided to Article 580, which shall henceforth be drafted as follows:

"Article 580. Cases when it is not appropriate to require payment

When the executive title consists of resolutions by the Court Clerk, judicial resolutions or arbitration awards, or approving transactions or covenants reached within the proceedings, or mediation agreements, that

require a net in sum of money to be delivered, it shall not be necessary to require the enforcement debtor to pay to proceed to the attachment of his assets."

Final Provision Four. Amendment of Act 34/2006, of 30th October, on access to the professions of Barrister and Solicitor

Article 2 and the Sole Transitional Provision are hereby amended and two new Additional Provisions, Eight and Nine, are hereby added to Act 34/2006, of 30th October, on access to the professions of Barrister and Solicitor, under the following terms:

One. Section 3 of Article 2 is hereby amended and shall henceforth read as follows:

"The professional qualifications regulated by this Act shall be issued by the Ministry of Justice."

Two. A new Additional Provision Eight is hereby added, drafted as follows:

"Additional Provision Eight. Holders of a Licence in Law degree

The professional qualifications regulated by this Act shall not be required of those who obtain a Licence in Law degree after it comes into force, provided that, within the maximum term of two years from the moment of them being able to apply for the issuance of the official degree diploma of Licence in Law, they proceed to join the relevant professional association, as practising or non- practising members."

Three. A new Additional Provision Nine is hereby added, to read as follows:

"Additional Provision Nine. Recognition of foreign qualifications

The professional qualifications regulated under this Act shall not be required of those who had applied for recognition of equivalence of their foreign qualification to the degree of Licence in Law at the time this Act enters into force, provided the proceed to join the relevant professional association, as practising or non- practising members, within the maximum term of two years from the moment of obtaining that recognition."

Four. Section 3 of Sole Transitional Provision 3 is hereby amended to read as follows:

"3. Those who, at the time of this Act being enters into force, hold a Licence in Law or are Graduates in Law or are able entitled to apply for the degree diploma to be issued and are not covered by the preceding Section, shall have a maximum term of two years, from it coming into force, to proceed to join the relevant professional association, as practicing or non- practicing members, without being required to obtain the professional qualifications regulated herein."

Final Provision Five. Title of competence

This Act is handed down under the exclusive competence of the State in matters of commercial, procedural and civil legislation, established in Article 149.1.6 and 8 of the Spanish Constitution. Notwithstanding the foregoing, amendment of Act 34/2006 is performed pursuant to Article 149.1.1., 6. and 30 of the Constitution.

Final Provision Six. Transposition of the European Union provisions

By means of this Act, Directive 2008/52/EC of the European Parliament and of the Council, of 21 May 2008, on certain aspects of mediation in civil and commercial matters, is transposed to Spanish Law.

Final Provision Seven. Simplified mediation procedure by electronic means for amount based claims

The Government, at the initiative of the Ministry of Justice, shall promote resolution of disputes concerning claims of amount through a simplified mediation procedure that shall be conducted exclusively by electronic means. The claims by the parties, which under no circumstances shall dispute points of law, shall be recorded in the application forms of the procedure and the response that the mediator or the mediation institution shall provide to those concerned. The procedure shall have a maximum term of one month from the day following receipt of the application and shall be extendable by agreement of the parties.

Final Provision Eight. Implementing regulations of control of fulfilment of the mediation requisites required under the Act

1. The Government, at the initiative of the Ministry of Justice, may approve the implementing regulations that are considered necessary for verification of fulfilment of the requisites established in this Act for mediators and mediation institutions, as well as their publicity. These instruments may include creation of a Register of Mediators and Mediation Institutions, assigned to the Ministry of Justice and co-ordinated with the Mediation Registers of the Autonomous Communities, from which a mediator may be struck off due to infringing the requisites established in this Act.

2. The Government, at the initiative of the Ministry of Justice, may determine the duration and minimum content of the course or courses that must be completed by the mediators, on a prior basis, to acquire the necessary training to conduct mediation, as well as the ongoing training they must receive.

The implementing regulations may detail the scope of the civil liability insurance obligations for mediators.

Final Provision Nine. Evaluation of the measures adopted by this Act

Within the term of two years, the Government shall submit to Parliament a report on the application, effectiveness and effects of the set of measures adopted by this Act for the purposes of evaluating its operation.

That report shall also include possible adoption of other measures, both substantive as well as procedural, through the appropriate initiatives, in order to improve mediation in civil and commercial matters.

Final Provision Ten. Entry into force

This Act shall come into force twenty days after its publication in the “Official State Gazette”.

Thus,

I order all Spaniards, both individuals and public authorities, to abide by and ensure compliance of this Act.