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including

- ANNEX I: The Consolidated Arbitration Law 60/2003 (incorporating 2009 and 2011 amendments)
- ANNEX II: Law of International Co-operation in Civil Matters (Law 29/2015)(Excerpts)
- ANNEX III: Act on Mediation in Civil and Commercial Matters (Act 5/2012, of 6th July)

Chapter I. Introduction

1. LAW ON ARBITRATION

a. The Arbitration Law

The Spanish Arbitration Law (Law 60/2003 of 23 December on Arbitration) came into force on 26 March 2004. There were minor changes in 2009, and in 2011 the Arbitration Reform Law (Law 11/2011 of 20 May) made significant modifications. The Consolidated Arbitration Law (hereafter “Arbitration Law” or “Law”) including the 2009 and 2011 amendments is attached as **Annex I** to this National Report).

The Arbitration Law is based on the 1985 text of the UNCITRAL Model Law on International Commercial Arbitration (“Model Law”), with some significant differences. These differences include the following:

- (1) the express provision in the Spanish Law for testamentary and corporate arbitration (Art. 10 and 11bis and 11ter Law);
- (2) in default of agreement of the parties the tribunal shall consist of a sole arbitrator (Art. 12 Law);
- (3) the requirement that a sole arbitrator, or at least one arbitrator in a tribunal of three or more members, be a “jurist” (Art. 15(1) Law);
- (4) the appointment of arbitrators in a multi-party arbitration (Art. 15(2)(b) Law);
- (5) the deferral of a judicial determination of the validity of a challenge to an arbitrator to after the issue of the award (Art. 18(3) Law);

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- (6) the professional responsibility of arbitrators and institutions and the mandatory requirement of insurance (Art. 21 Law);
- (7) express recognition of the confidentiality of arbitration (Art. 24 Law);
- (8) the language of the arbitration (Art. 28 Law, as amended in 2011);
- (9) the time limit for the issue of an arbitral award (Art. 37(2) Law);
- (10) the express provision for the destruction of documentation on the termination of the arbitration (Art. 38(3) Law);
- (11) the distinction between foreign and domestic arbitral awards for enforcement purposes, with special provision for the recognition of foreign awards (Art. 46 Law).¹

Spain has not made any modifications to the Arbitration Law to implement the 2006 amendments to the UNCITRAL Model Law. However, in two respects the Spanish legislation in 2003 anticipated the 2006 amendments to the Model Law, namely by providing for the validity of an arbitration agreement made by electronic means (Art. 9(3) Law), and by providing for the application of the provisions relating to the setting aside and enforcement of awards to interim measures (Art. 23(2) Law).

b. Scope of Law

The Arbitration Law applies to both domestic and international arbitrations and as far as possible establishes a single regime for domestic and international arbitrations. “International Arbitration” is defined in Art. 3 of the Arbitration Law. This three-point definition closely follows Art. 1(3) of the UNCITRAL Model Law, except that sub-para. (c) of the Model Law is replaced by a provision, derived from French law, which includes within the definition of international arbitration, disputes arising from “a legal relationship which concerns interests of international trade”. Among the specific provisions applying to international arbitration, a notable addition to the UNCITRAL Model Law text is Art. 2(2) of the Arbitration Law, derived from Art. 177(2) of the Swiss Private International Law Act, stating that a State party or entity cannot invoke the prerogatives of its own law to avoid its obligations arising from the arbitration agreement.

2. PRACTICE OF ARBITRATION

a. Practice

The current Arbitration Rules of the Court of Arbitration of the Official Chamber of Commerce, Industry and Services of Madrid entered into force on

1. On discussion of the differences with the UNCITRAL Model law see David J.A. Cairns, “The Spanish Application of the UNCITRAL Model Law in International Commercial Arbitration”, 22 *Arbitration International* (2006) pp. 573-595.

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1 March 2015, and were drafted to meet international standards. The Arbitration Rules are available on the website in both Spanish and English. In 2013 thirty per cent of the arbitrations of the Madrid Court of Arbitration were international, while seventy per cent were domestic.

Spain has an active professional body for Spanish and international arbitration practitioners in the form of the Spanish Arbitration Club (*Club Español del Arbitraje*). As at October 2016 the Spanish Arbitration Club had over 900 members in thirty-nine countries. It has a number of international chapters in European and Latin American countries, as well as a young arbitrators' group. The activities of the Spanish Arbitration Club include an annual Congress, the publication of the Spain Arbitration Review, a programme of seminars involving its international chapters, and internal commission to review legislative proposals. Further details are available on its website (<<http://www.clubarbitraje.com>>).

b. Arbitral institutes

The most important active arbitral institute in Spain is the Court of Arbitration of the Official Chamber of Commerce, Industry and Services of Madrid (*Corte de Arbitraje de la Cámara de Comercio, Industria y Servicios de Madrid*).

The contact details for the Madrid Court of Arbitration are as follows:

Corte de Arbitraje de la Cámara Oficial de
Comercio, Industria y Servicios de Madrid
C/ de las Huertas, 11 – Planta 3
28012 Madrid
Spain
Telephone: +34 91 538 35 85
E-mail: camara@camaramadrid.es
Website: <www.arbitramadrid.com>

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Chapter II. Arbitration Agreement

1. FORM AND CONTENTS OF THE AGREEMENT

a. Arbitration clause and submission agreement

No distinction is made between a submission agreement and an arbitration clause. The parties to an arbitration agreement may agree to submit current or future disputes to the decision of one or more arbitrators. The agreement itself must express the will of the parties to submit to arbitration all or some of the disputes that have arisen or that could arise in respect of a determined legal relationship, whether contractual or non-contractual (Art. 9(1) Law). The arbitration agreement may be contained in a clause incorporated in a main contract or it may be an independently expressed agreement. If the arbitration agreement is included in a standard form agreement, its validity and its interpretation shall be governed by the rules applicable to such contracts (Art. 9(2) Law).

b. Form requirements

The arbitration agreement shall be verifiable in writing or by any means that provides a record of the agreement. The latter requirement shall be satisfied when the arbitration agreement appears and is accessible for subsequent consultation in an electronic, optical or any other type of format (Art. 9(3) Law). An arbitration agreement may also be valid when in an exchange of statements of claim and defence it is alleged by one party and not denied by the other (Art. 9(5) Law).

For international arbitration, the arbitration agreement shall be valid if it complies with the requirements established by the applicable law chosen by the parties to govern the arbitration agreement, the law applicable to the merits, or Spanish Law (Art. 9(6) Law).

c. Model clause

The following may be used as a model clause for *ad hoc* arbitrations taking place in Spain:

“The parties agree to submit the resolution of all disputes arising from or in relation to this contract to the decision of a single arbitrator designated by common agreement of the parties. In case of failure to agree, an arbitrator

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will be designated by the competent judicial authority. The parties further agree to comply fully with the arbitral decision rendered. The arbitration will be in Madrid, Spain, and in conformity with the Spanish Arbitration Law 60/2003 of 23 December.”

The recommended English text of the clause of the Court of Arbitration of the Official Chamber of Commerce, Industry and Services of Madrid is as follows:

“Any dispute arising out of or relating to this contract, including any matter regarding its existence, validity or termination, shall be definitively settled by arbitration (in law/*ex aequo et bono*), administered by the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid, in accordance with its Arbitration Rules in force at the time the request for arbitration is filed. The arbitral tribunal appointed for such purpose will be formed by (three/ a sole) arbitrator (s) and the language to be used in the arbitration will be (Spanish/other). The place of arbitration will be (city+country).”

2. PARTIES TO THE AGREEMENT

a. Capacity

Natural and legal persons may submit to arbitration such disputes which have arisen or which may arise in matters which may be freely disposed of at law (Art. 2(1) Law).

Where the arbitration is international and one of the parties is a State or a State-controlled company, organization or agency, that party will not be able to invoke the prerogatives of its own law in order to avoid the obligations arising from the arbitration agreement (Art. 2(2) Law).

b. Bankruptcy

Arbitration is possible notwithstanding the insolvency of one of the parties. The declaration of insolvency does not by itself affect an arbitration agreement made by the debtor. However, the court administering the insolvency may suspend the effects of an arbitration agreement where it considers that the arbitration agreement could be prejudicial to the administration of the insolvency, subject to the provisions of international treaties (Art. 52(1) Insolvency Law 22/2003 of 9 July, as amended by the third final provision of the Arbitration Reform Law 2011). Arbitral proceedings in progress at the time of the declaration of insolvency will continue, under supervision of the administrator and the insolvency judge, until the issue of the award (Art. 52(2) and 51(2) and 51(3) of Insolvency Law 22/2003 of 9 July; decision of the Provincial Court of Appeal, Barcelona, no. 69/2016, 19 April 2016), and final

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awards issued either before or after the declaration of insolvency bind the insolvency judge (Art. 53(1) of Insolvency Law 22/2003 of 9 July).

c. State or State entities

A State or State entities can resort to arbitration in Spain under the Arbitration Law. Where a State or a State entity is a party to an international arbitration then it cannot invoke the prerogatives of its own law in order to avoid the obligations arising from an arbitration agreement (Art. 2(2) Law).

Subject to any agreement of the parties to the contrary, a foreign State party to an arbitration agreement arising from a commercial transaction cannot rely on the doctrine of State immunity in proceedings before Spanish courts relating to the validity, interpretation or application of the arbitration agreement, the arbitral proceeding, including the judicial appointment of the arbitrators, the confirmation, annulment or revision of the arbitral award, or the recognition of a foreign arbitral award: see Art. 16 *Ley Orgánica 16/2015 de 27 de octubre, sobre privilegios y inmunidades de los Estados extranjeros* (Organic Law 16/2015 of State Privileges and Immunities).

There are some specific provisions in Spanish law that define or limit the powers of the Spanish State or State entities to enter into arbitration agreements. Art. 50 of the Consolidated Law of Public Sector Contracts (RDL 3/2011 of 14 November) provides that State entities other than public administrations can submit their contractual disputes to arbitration in accordance with the Arbitration Law. Para. 3 of the first additional provision of the same Consolidated Law provides that contracts with foreign companies shall include, in appropriate circumstances, clauses designed to resolve differences that might arise by means of simple forms of arbitration. Art. 31 of Law 33/2003, of 3 November relating to the assets of public administrations provides that disputes relating to the rights and assets of the State itself ("*bienes y derechos del Patrimonio del Estado*") can only be submitted to arbitration following a procedure that requires a Royal decree from the Council of Ministers.

d. Multi-party arbitration

The Arbitration Law provides for multi-party arbitration with respect to the constitution of the arbitral tribunal in Art. 15(2)(b) and (c). Where there are multiple claimants or respondents, the claimants shall appoint one arbitrator and the respondents the other. If the claimants or respondents fail to agree on an arbitrator, all the arbitrators shall be appointed by the court.

3. DOMAIN OF ARBITRATION

a. Arbitrability

Parties to an arbitration agreement may submit to arbitration disputes which have arisen or which may arise in matters of which they may freely dispose of at law. Therefore, arbitration is not possible in any matters over which the parties lack the power of disposition under their personal law. Under Spanish law the following matters cannot be subject to arbitration: legal status of the person, adoption, matters related to marriage and alimony. Employment arbitration is specifically excluded from the scope of the Arbitration Law (Art. 1(4) Law).

While it would appear that under the Arbitration Law virtually any issue can be submitted to arbitration at the will of the parties, Art. 41(1)(f) provides that the award may be annulled when “the award is in conflict with public policy”. Spanish public policy is closely connected with constitutional principles and values which the parties are obliged to respect. Therefore, the matters clearly falling within the constitutional order which cannot be annulled or limited by private agreement could not be subject to arbitration.

A testamentary disposition may provide for arbitration for the settlement of disputes between beneficiaries or disputes in matters relating to the distribution or administration of the estate (Art. 19 Law). However, the case law demonstrates that public policy may be violated by any award that interferes in any way with the order of hereditary succession (judgment of the Supreme Court of 23 October 1992) or with the rules relating to filiation (judgment of the Supreme Court of 28 November 1992).

Certain disputes relating to the registration of trademark or opposition to registration of an industrial design can be submitted to arbitration with the agreement of the parties pursuant to the provision of specific legislation (Law 17/2001 of 7 December, of Trademarks; Law 20/2003 of 7 July, of the Legal Protection of Industrial Designs).

Camimalaga S.A.U. v. DAF Vehículos Industriales of (Provincial Court of Appeal, Madrid, 18 October 2013) confirms that a contractual dispute raising questions of European competition law (a matter of public policy) is arbitrable. It also confirms the validity of an agreement that confers alternative jurisdiction on an arbitral tribunal as well as a specific court (in this case in the Netherlands).

b. Filling gaps

There is no express power in the Arbitration Law to fill gaps in a contract. To the contrary, the arbitrators are required to “decide in accordance with the terms of the contract” (Art. 34(3) Law). However, Art. 1447 of the Civil Code provides that in sale of goods cases the parties can leave the fixing of the price to the decision of a determined person, which would include an arbitrator.

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c. Changed circumstances and adapting contracts

Spanish case law recognizes the possibility of modifying or terminating a long-term contract where there is hardship or fundamental change in circumstances. It is an exceptional remedy that does not apply where the change of circumstances was foreseeable or influenced by the party prejudiced by the change.

4. SEPARABILITY OF ARBITRATION CLAUSE

The Arbitration Law establishes the principle of separability of the arbitration agreement. The arbitration agreement can be an independent agreement entered into by the parties (submission agreement) or it may be incorporated into the body of the main contract (arbitration clause) (Art. 9(1) Law). In the case of a submission, the arbitrators are free to determine the validity of the arbitration agreement independently of the main contract; the nullity or novation of the latter would not imply the nullity of the arbitration agreement.

In the case of an arbitration clause, it is specifically provided in Art. 22(1) Law that the arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and that a decision by the arbitrators that the contract is null and void shall not entail by itself the invalidity of the arbitration agreement.

5. EFFECT OF THE AGREEMENT (SEE ALSO CHAPTER V.4 – JURISDICTION)

a. Court proceedings

Art. 11(1) Law provides that the parties to an arbitration agreement are obliged to comply with the agreement and courts must abstain from hearing disputes submitted to arbitration provided that, where judicial proceedings are commenced, the interested party invokes the arbitration agreement.

Art. 11(1) of the Arbitration Law identifies the procedure for challenging the jurisdiction of the court as a declinatory plea (*declinatoria*) of lack of jurisdiction. If the court upholds the objection to jurisdiction it will make a declaration to that effect and stay the judicial proceedings (Art. 65(2) Civil Procedure Law 2000).

In *Sinerco Proyectos y Obras S.L. v. BBVA* (Provincial Court of Appeal, Madrid, 31 January 2014) the court recognized that once an arbitration had begun, then any subsequent judicial proceedings initiated between the same parties with the same object should be stayed for *litis pendencia*. The proper course for a party that considered that an arbitral tribunal had no jurisdiction was not to commence court proceedings for the same conflict, but rather to oppose jurisdiction before the arbitral tribunal and, if this failed, to bring the matter before the courts via an application for annulment.

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The court undertakes a review in accordance with the *declinatoria* procedure in Arts. 63-67 of the Civil Procedure Law 2000.

The party must invoke the lack of competence of the court within the first ten days of the period to answer the statement of claim in ordinary proceedings, and within the first ten days after the summons to the hearing in verbal proceedings (Art. 11(1) Law).

b. Arbitral proceedings

The *declinatoria* in the judicial proceedings does not prevent the initiation or continuation of the arbitral proceedings (Art. 11(2) Law). The arbitrators may rule on any objections to jurisdiction either as a preliminary question or together with the remaining questions submitted to their decision relative to the merits (Art. 22(3) Law).

The *declinatoria* procedure applies equally to arbitral proceedings with a foreign seat, with the same time limit.

Chapter III. Arbitrators

1. QUALIFICATIONS

a. Requirements

Unless otherwise agreed by the parties, in an arbitration at law the sole arbitrator, or at least one arbitrator where there are three or more arbitrators, must be a “jurist”. A “jurist” is not defined but can be interpreted to mean that the arbitrator must hold a law degree or an equivalent professional qualification in law.

b. Restrictions

Any person who is in full enjoyment of their civil rights may serve as an arbitrator provided that the legislation to which the arbitrator is subject in the exercise of the profession does not prevent it (Art. 13 Law). For example, acting judges, magistrates and members of the Attorney-General’s office cannot serve as arbitrators as their functions are incompatible with serving as arbitrators.

There is no restriction regarding the nationality or residence of the arbitrators (Art. 13 Law).

Unless otherwise agreed by the parties, the arbitrator cannot have acted as a mediator in the same dispute (Art. 17(4) Law).

c. Disclosure requirements

A person proposed as arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. Arbitrators,

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from the time of their nomination, shall disclose to the parties without delay the occurrence of any such circumstances (Art. 17(2) Law).

2. APPOINTMENT OF ARBITRATORS

a. Procedure

The parties may freely agree on the procedure for the appointment of the arbitrators, provided that the principle of equal treatment is respected. Often this agreement is implicit, as when the parties agree to the use of the rules of an arbitral institution that provide for an appointment procedure. In the absence of any agreement a sole arbitrator shall be appointed by the competent court upon the request of any of the parties. In an arbitration with three arbitrators, each party shall nominate one arbitrator, and the two arbitrators thus appointed shall nominate the third arbitrator, who shall act as the presiding arbitrator. If a party fails to nominate an arbitrator within thirty days of receipt of the demand to do so from the other party, the appointment of the arbitrator shall be made by the competent court, upon request of any of the parties. The same procedure shall apply when the two arbitrators cannot reach an agreement on the third arbitrator within thirty days from the latest acceptance. Where there are multiple claimants or respondents, the former shall nominate one arbitrator and the latter another. If the claimants or the respondents do not agree on their nomination of the arbitrator, all of the arbitrators shall be appointed by the competent court upon request of any of the parties (Art. 15(2) Law).

b. Role of courts

The Arbitration Law provides for judicial assistance in the appointment of arbitrators. If the parties do not agree on the appointment of the arbitrators they will be designated by the court upon request of any of the interested parties (Art. 15(2) Law), as explained above.

The court shall only refuse to appoint the arbitrators when it considers that, on the basis of the documents submitted, the existence of an arbitration agreement is not established (Art 15(5) Law).

Zurich Insurance Plc. and Barcelonesa de Drogas and Productos Químicos Medifer Liquids, S.L. (Superior Court of Justice of the Comunidad Valenciana; 16 December 2013) confirms that on an application pursuant to Art. 15 Law the courts do not review the validity of the arbitration agreement or verify the arbitrability of the dispute, either *ex officio* or by request of a party. The court shall only refuse to appoint the arbitrators where *prima facie* there is no arbitration agreement.

When the court appoints an arbitrator, it shall make a list of three candidates for each arbitrator to be appointed and shall make the appointment by the drawing of lots. There shall be no appeal against final decisions

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regarding appointment, except where the refusal is based on the non-existence of the arbitration agreement.

3. NUMBER OF ARBITRATORS (SEE ALSO CHAPTER V.2 – MAKING OF THE AWARD)

Under Art. 12 of the Arbitration Act, the number of arbitrators must be uneven. Should the parties fail to agree on a specific number of arbitrators, there will be one arbitrator.

4. CHALLENGE TO ARBITRATORS

a. Grounds

An arbitrator may be challenged where there are justifiable doubts as to impartiality or independence or if the arbitrator lacks the necessary qualifications agreed between the parties.

A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made (Art. 17(3) Law).

Delforca 2008, Sociedad de Valores, S.A. v. Banco de Santander, S.A. (Provincial Court of Appeal, Madrid; 30 June 2011) addresses the meaning of justifiable doubts as to the impartiality or independence of an arbitrator for the purposes of Art. 17(3) Law (in the context of Art. 41(1)(d) and (f) Law). It is not sufficient to demonstrate a mere link between the arbitrator and the other participants in the arbitration. Rather the question is whether the circumstances suggest an arbitrator could act with a predisposition in favour or against one party, or would not be able to conduct him or herself in a balanced and objective way in the resolution of the dispute. It is not necessary to demonstrate actual partiality, but only that the circumstances create a reasonable doubt (*duda fundada*) as to impartiality.

The obligation of impartiality and independence extends to the institution administering the arbitration. In *E. Life Europe S.L. v. Institución Ferial de Madrid (IFEMA)* (Superior Court of Justice of Madrid; 13 November 2014) the court annulled an award on the basis that the institution administering the arbitration formed part of the Madrid Chamber of Commerce, which also owned 31 per cent of the respondent in the arbitration. The court found that the indirect interest of the arbitral institution in the outcome of the arbitration violated the principle of the equality of the parties (Art. 24(1) Law), which as a matter of public policy could not be waived.

b. Procedure

The procedure for challenging arbitrators may be freely agreed upon by the parties. Where there is no such agreement, the challenging party must raise the

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grounds for challenge within fifteen days after the notification of acceptance by the arbitrator or after becoming aware of any circumstance which may give rise to justifiable doubts as to his impartiality or independence. The arbitrators shall decide on the challenge (Art. 18(1) and 18(2) Law).

Where the challenge is unsuccessful, the party may also raise the challenge in applying to set aside the award (Art. 18(3) Law) (see below Chapter VII).

5. TERMINATION OF THE ARBITRATOR'S MANDATE

Subject to the provisions relating to the correction, clarification and issue of a supplement to the award, the arbitral proceedings and the mandate of the arbitrators terminate with the final award (Art. 38(1) Law). When there is a challenge to an arbitrator, his mandate terminates if he resigns, or the parties or the other arbitrators agree that the challenge should prevail (Art. 18(2) Law). Where an arbitrator becomes *de jure* or *de facto* unable to perform their functions or for other reasons fails to act without undue delay, his mandate terminates if the arbitrator withdraws from his office or if the parties or the other arbitrators agree on the termination. If the parties or the remaining arbitrators are unable to agree on a decision then an application for termination can be made to the competent court (Art. 19(1) Law).

The court's role in the termination of an arbitrator's mandate is restricted to certain circumstances of failure or impossibility to act pursuant to Art. 19 Law, as explained above.

A substitute arbitrator must be appointed to replace an arbitrator whose mandate has terminated. Irrespective of the reason for the appointment of a new arbitrator, the appointment shall be made according to the rules that were applicable to the appointment of the arbitrator being replaced (Art. 20(1) Law). Once the substitute arbitrator is appointed, the arbitrators, after hearing the parties, shall decide if it is appropriate to repeat any prior proceedings (Art. 20(2) Law).

6. LIABILITY OF ARBITRATORS

Art. 21(1) Law provides that arbitrators are "liable for the damage and losses they cause by reason of bad faith, recklessness or fraud". Art. 37(2) Law, dealing with the time limit for issuing an award, identifies a possible liability of arbitrators who fail to comply with the statutory time limits. Arbitrators are required to hold professional indemnity insurance. This liability may be limited by express agreement or in the institutional rules applying to an arbitration. For example, the current arbitration rules of the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid restrict liability to cases of fraud.

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There is a Supreme Court decision dealing with the question of arbitrator liability in a case of calculation errors in an award arising from an arbitration in equity, where the arbitrator subsequently refused to correct the errors on an application for clarification and correction (see Supreme Court Civil Chamber, Judgment 429/2009 of 22 June). The Supreme Court upheld the dismissal of the action against the arbitrator. The judgment states that a finding of professional liability on the part of an arbitrator required five prerequisites: the breach of duty must amount to at least gross negligence; the breach must exceed the “limits of the inevitable margins of error” inherent in arbitral proceedings; damage; causation; and exhaustion of other possible remedies (clarification, correction, annulment and revision) prior to commencing proceedings against the arbitrator.

Chapter IV. Arbitral Procedure

1. PLACE OF ARBITRATION (SEE ALSO CHAPTER V.3 – FORM OF THE AWARD)

a. Determination

Fundamental logistical issues such as the determination of the place and the language of the arbitration are best determined by the parties, either in the arbitration agreement itself or independently. Absent agreement, the arbitrators will decide the place where the arbitration will take place, as well as the place where hearings and other procedures will take place (Art. 26 Law).

b. Legal consequences

Where the place of arbitration is in Spanish territory then the Arbitration Law shall apply to both domestic and international arbitrations (Art. 1(1) Law).

The parties are free to choose the language or languages of the arbitration. Failing such agreement, and when the circumstances of the case do not allow the determination of the language, the arbitration will be conducted in any of the official languages of the place where proceedings are carried out. Accordingly, a party to an arbitration with a seat in a Spanish region that has an official language other than Spanish has a right, where the language is not specified or agreed, to use the regional language.

Experts, witnesses, and third persons that take part in the arbitration proceedings may use their own language, with a sworn interpreter (Art. 28(1) Law).

Unless the parties object, the arbitrators may order that any documents be submitted or any proceedings be performed in a language different from that of the arbitration without being translated (Art. 28(2) Law).

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2. ARBITRAL PROCEEDINGS IN GENERAL

a. Mandatory legal principles

Arbitral procedure is covered in Title V of the Arbitration Law. Flexibility is an essential feature of the Arbitration Law, always subject to fundamental legal principles. The fundamental principles which must be respected are: (1) equal treatment, (2) the right of each party to a full opportunity to present its case (3) the equality of the parties (Art. 24(1) Law).

b. Determining procedure

The proceedings themselves will be governed by party autonomy or by the rules established by the institution to which the administration of the arbitration has been entrusted. Otherwise, and subject to the provisions of the Arbitration Law, the arbitrators may conduct the arbitration as they consider appropriate (Art. 25 Law).

Art. 25(1) Law provides that the parties may freely agree on the procedure to be followed by the arbitrators in the conduct of the proceedings, subject to the fundamental principles of equity and due process.

3. EVIDENCE

a. General

The arbitrators have the power to determine the admissibility, relevance and usefulness of any evidence, the manner of taking evidence, and its weight (Art. 25(2) Law). However, where the evidence has been proposed by a party, the arbitrators may, after examining the application, refuse to take the evidence, should they deem the evidence irrelevant. There is a certain formality to the presentation or ‘proposal’ of evidence in Spanish arbitrations, and a decision to refuse evidence proposed by a party should be in writing and reasoned.

The refusal to receive evidence by an arbitral tribunal will only amount to a breach of the right of defence (and therefore justify annulment or refusal of recognition on public policy grounds) where the evidence was relevant, presented in the legally prescribed form and time, was rejected without reasons or through an arbitrary interpretation or error of the tribunal, and was material in the sense that its rejection gave rise to an effective breach of the right of defence (see *Turen Enerji Insaat Sanayi Ve Ticaret A.S. v. Essentium Grupo S.L.* (Superior Court of Justice of Madrid, No. 7/2015, 23 June 2015, where the court sets out the applicable principles and granted recognition to an ICC award where the arbitral tribunal had rejected five expert reports on the grounds of irrelevance).

The parties shall be summoned to all evidentiary hearings, and they or their representatives may participate in the hearings (Art. 30(2) Law).

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b. Witnesses (fact witnesses and party-appointed expert witnesses)

Witnesses giving oral evidence may be asked to swear or promise to state the truth at the discretion of the arbitrators (Art. 365 Civil Procedure Law 2000).

Where a witness is unwilling to appear before arbitrators, any of the parties may solicit the assistance of the judge of the Court of First Instance of the place where the arbitration is held or the place where the evidence is to be taken (Art. 33 Law).

The questioning of witnesses and experts by counsel is common practice in Spanish arbitration.

c. Documentary evidence and disclosure

Art. 29(1) of the Arbitration Law provides for at least one exchange of written pleadings. It provides further that the parties may submit with their pleadings all documents they consider to be relevant or make reference to the documents or other evidence they will submit or propose.

An oral hearing is not always required, and where the parties so agree the arbitrators may decide on the basis of written evidence and submissions only (Art. 30(1) Law). All documents submitted by one party shall be disclosed to the other party (Art. 30(3) Law).

There is no specific discovery or document disclosure procedure in the Arbitration Law. In Spanish civil procedure the parties may request the exhibition of documents in limited circumstances. Requests for disclosure of documents are, however, relatively common in international arbitrations with a seat in Spain.

4. TRIBUNAL-APPOINTED EXPERTS (SEE CHAPTER IV.3 FOR PARTY-APPOINTED EXPERT WITNESSES)

According to Art. 32 of the Arbitration Law, the arbitrators may, upon request of the parties, or at their own motion, appoint one or more experts to examine certain matters related to the procedure. The designated experts may also be questioned by the parties at a subsequent oral hearing.

The normal practice is to consult beforehand with the parties regarding the questions that will be submitted to the experts. The expert report must be in writing and a copy must be provided to the parties prior to the hearing (Art. 30(3) and 32(2) Law, and Art. 346 of the Civil Procedure Law 2000).

Unless the parties otherwise agree, the parties must have an opportunity to put questions to the tribunal-appointed expert (Art. 32(2) Law and Art. 347 of the Civil Procedure Law 2000). No special rules apply to the questioning of experts. Expert conferencing (where two experts are questioned simultaneously or question each other) is permitted and occurs in practice.

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5. INTERIM MEASURES OF PROTECTION (SEE ALSO CHAPTER I.1 – LAW ON ARBITRATION)

a. Power of tribunal

According to the Arbitration Law, unless the parties have otherwise agreed, arbitrators may “at the request of any party, order such interim measures as they consider necessary in respect of the subject matter of the dispute” (Art. 23(2) Law).

b. Role of court

The existence of the arbitration agreement does not prevent any of the parties from applying to a court for interim measures of protection nor prevent the court from granting them (Art. 11(3) Law). The Court may order interim measures in an appropriate case even when the place of arbitration is outside Spain (Art. 1(2) Law). The First Instance Court at the place where the award will be made or failing that at the place where the measures have to be implemented has jurisdiction regarding interim measures (Art. 8(3) and (4) Law and Art. 724 of the Civil Procedure Law).

The refusal by the Spanish courts of an application for interim measures in support of an arbitration is not an obstacle to the subsequent recognition and enforcement of an order made by an international arbitral tribunal for similar interim measures (*Marex Schiffahrtsgesellschaft v. Maltese Sun Maritime*, Superior Court of Justice of Valencia, 10 February 2012).

Art. 722 of the Civil Procedure Law provides that a party to an arbitration agreement can request interim measures prior to the commencement of the arbitral proceedings. Similarly, in accordance with applicable conventions and treaties, interim measures can be sought from a Spanish tribunal by a party to judicial or arbitral proceedings in a foreign country.

The Arbitration Law does not adopt Chapter IVA of the UNCITRAL Model Law (as amended in 2006), although in general terms Spanish law and practice are consistent with those provisions. The requirements for interim measures in Spanish procedural law (Art. 728 Civil Procedure Law 2000) are broadly similar to Art. 17A of the Model Law; the Arbitration Law (Art. 23(1)) authorizes the arbitrators to require appropriate security such as a bank guarantee from the applicant, as in Art. 17E of the Model Law; and the provisions for setting aside and enforcement of awards apply to interim measures, regardless of the form of those measures (Art. 23(2) Law). Accordingly, the form of the interim measure does not matter, as it will be treated in effect as an award.

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6. REPRESENTATION AND LEGAL ASSISTANCE

There are no specific requirements for acting as counsel within an arbitral procedure. The parties usually engage qualified and experienced lawyers.

There is no requirement that lawyers representing parties in Spanish arbitrations either must be Spanish-qualified lawyers or are to be accompanied by Spanish lawyers.

7. DEFAULT

Art. 31 Law deals with default of the parties. If a party fails to appear, the arbitral tribunal can continue with the proceeding and make an award.

The difference between the treatment of the claimant and the respondent is that where a claimant does not present a statement of claim the arbitrators may terminate the arbitration immediately (unless the respondent has a counterclaim), whereas where the respondent fails to file a statement of defence the arbitration continues without treating the failure as an admission of the facts alleged by the claimant.

8. CONFIDENTIALITY OF THE AWARD AND PROCEEDINGS

a. Confidentiality of the arbitral award and proceedings

Art. 24(2) of the Arbitration Law imposes a general obligation of confidentiality on the arbitrators, parties and arbitral institutions in relation to “information coming to their knowledge in the course of the arbitral proceedings”. The scope of the principle of confidentiality in arbitration must, however, be read subject to the constitutional principle that judicial proceedings are public (Art. 120(1) of the Spanish Constitution).

b. Confidentiality of arbitration-related court proceedings

Accordingly, while the arbitration itself may be confidential, judicial proceedings in support of the arbitration, such as interim measures, annulment or enforcement, are not confidential unless the court otherwise expressly so orders.

Documents filed in legal proceedings for recognition and enforcement of an arbitral award form part of the public record. A person with a legitimate interest can access the court file and documents referred to in decisions (Arts. 234 and 235 of the Organic Law of the Judiciary).

Any hearing in respect of recognition and enforcement will also be public. Judgments relating to the recognition and enforcement of arbitral awards are also public. In accordance with Spanish privacy legislation the parties can request the removal of names and other personal information from judicial decisions.

Chapter V. Arbitral Award

1. TYPES OF AWARD

Unless the parties otherwise agreed, the arbitrators will decide the dispute in a single award or in as many partial awards as they deem necessary (Art. 37(1) Law). Although no specific provisions are made for interim awards, a request for such an award might be granted in the appropriate circumstances.

Arbitral decisions in respect of interim measures, regardless of the form of those measures, can be enforced or set aside in the same manner and on the same grounds as a final award (Art. 23(2) Law).

2. MAKING OF THE AWARD

a. Decision-making

The Law requires an uneven number of arbitrators (Art. 12). Subject to the parties agreeing otherwise, where there is more than one arbitrator, decision-making shall be by majority. If a majority cannot be achieved, the presiding arbitrator shall decide (Art. 35 Law).

Art. 37(3) Law provides that the award shall be signed by the arbitrators “who shall be able to record their vote in favour or against”. This language was added by the Arbitration Reform Law 2011, and although the text is ambiguous, it probably allows a dissenting arbitrator either to record his dissenting vote or to issue a dissenting opinion.

b. Time limits

The Arbitration Law provides that, unless otherwise agreed by the parties, the award must be rendered within six months from the date of the submission of the statement of defence or from the expiry of the period to submit it. Unless otherwise agreed by the parties, this term may be extended by the arbitrators for a period not exceeding two months, by means of a reasoned decision. During the arbitral proceeding the parties may also mutually agree to terminate the arbitration (Art. 38(2)(b) Law).

Unless otherwise agreed by the parties the expiry of the time limit without the issue of the final award does not affect the effectiveness of the arbitration agreement or the validity of the award, without prejudice to the possible professional liability of the arbitrators (Art. 37(2) Law).

An agreement between the parties may take the form of acceptance of institutional rules that make provision for the time limit for rendering the award.

3. FORM OF THE AWARD

The arbitration award must be rendered in writing and signed by the arbitrators. The award shall be deemed made in writing when recorded and accessible in an electronic, optical or other type of format (Art. 37(3) Law).

The award must state the reasons upon which it is based (unless it is a consent award pursuant to Art. 36 Law) as well as the costs and fees of the arbitration (Art. 37(4) and 37(6) Law). *Viza Automoción S.A.U. v. Inser Robótica, S.A.*, (Superior Court of Justice of Galicia; 2 May 2012) affirms the need for every award (except a consent award), whether in law or in equity, to be reasoned, as reasons are a basic foundation of the rule of law and of public policy. An award without reasons, or with capricious or irrational reasons, may be annulled on public policy grounds (Art. 41(1)(f) Law).

The award shall be signed by the arbitrators. Where there is more than one arbitrator the award must be signed by the majority of arbitrators or by the presiding arbitrator, provided that an explanation is given for the omission of the signatures of the other arbitrators (Art. 37(3) Law).

The arbitral award must include the date and place where the award is rendered (Art. 37(5) Law).

4. JURISDICTION (SEE ALSO CHAPTER II.5 – EFFECT OF THE AGREEMENT)

a. Power of arbitrators

The power to decide on its own jurisdiction is specifically given to the arbitral tribunal in Art. 22(1) of the Arbitration Law. There is no right to submit this question to a court before the arbitral proceedings commence or before the arbitrators rule on their jurisdiction.

Sinerco Proyectos y Obras S.L. v. BBVA (Provincial Court of Appeal, Madrid, 31 January 2014) held that an agreement referring to arbitration “questions of interpretation, performance and execution” of a contract enabled the arbitral tribunal to consider all questions of jurisdiction, including the invalidity or nullity of the contract; and that an arbitration agreement could not be sliced up, so that the courts or the arbitral tribunal had jurisdiction depending on the nature of conflict, “as if the categories of ineffectiveness were watertight compartments”.

The tribunal rules on its jurisdiction by means of an award. The decision on jurisdiction may take place as a preliminary question or in an award on the merits. If jurisdiction is decided as a preliminary question, an application for annulment of the award on jurisdiction does not suspend the arbitral proceedings (Art. 22 Law).

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b. Objection to jurisdiction

Objections to the jurisdiction of the arbitrators based on lack of subject-matter jurisdiction of the arbitrators or on the inexistence, nullity or expiration of the arbitration agreement must be raised no later than the submission of the statement of defence. Objections that the arbitrators are exceeding the scope of their mandate must be raised as soon as the matter alleged to be beyond the scope of the mandate is raised in the arbitral proceedings. Later pleas may be admitted if the arbitrators consider them justified.

c. Role of court

If the question of the arbitrators' jurisdiction comes before the court, either incidentally or by way of an action for annulment, then this does not suspend the arbitral proceedings (Art. 11(2) and 22(3) Law).

5. APPLICABLE LAW

a. Law or equity

In both domestic and international arbitrations the parties may authorize the arbitrators to decide in equity rather than according to rules of law. Thus, arbitrators may be given the power to act as *amiables compositeurs*. However, in the absence of any express provision to the contrary, arbitrators are to decide in law (Art. 34(1) Law).

Arbitrations in equity differ in that a sole arbitrator in equity does not need to be a jurist (Art. 15(1) Law). Their equitable discretion is not absolute, mandatory laws and due process should be respected, and the award must be reasoned (*Viza Automoción S.A.U. v. Inser Robótica, S.A.*, (Superior Court of Justice of Galicia; 2 May 2012).

b. International arbitration

When an arbitration is international the arbitrators shall decide the dispute in accordance with the law chosen by the parties. Any choice of law shall be construed as to refer to substantive law and not to its conflict of laws rules. Failing a choice by the parties, the arbitrators shall apply the law that they consider appropriate. In all cases they shall decide in accordance with the terms of the contract and take into account applicable usages (Art. 34(2) and 34(3) Law).

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6. SETTLEMENT

During the arbitral proceedings the parties may wholly or partially settle the dispute and, if requested by both parties and not objected to by the arbitrators, the tribunal may record the settlement in the form of an arbitral award on agreed terms (Art. 36(1) Law). The award on agreed terms is not required to contain reasons (Art. 37(4) Law), but otherwise has the same effect as any other award on the merits of the case (Art. 36(2) Law).

7A. CORRECTION AND INTERPRETATION OF THE AWARD

Art. 39 of the Arbitration Law provides that within ten days of notification of the award, any party may request the arbitrators to correct any errors in calculation, any clerical or typographical errors, or any other type of error. Parties may also request clarification of any unclear concept or omission in the award (interpretation) and the extension of the award to claims made but not resolved in the arbitration (supplementary award) or to correct a partial excess of powers (when questions have been decided that were not submitted to decision or are not capable of being arbitrated).

If it is a domestic arbitration, the arbitrators shall then decide within ten days (for the correction of errors and clarification issues) or twenty days (for issues not decided in the award) following an oral hearing with the parties. If it is an international arbitration, the terms of ten and twenty days are extended to one month and two months respectively. Finally, the arbitrators may, on their own motion, correct any formal error within ten days of the date of the award (Art. 39 Law).

7B. ADDITIONAL AWARD

A tribunal that omits to decide an issue submitted to it may, on the request of a party, supplement the award to decide the issue (Art. 39 Law). The procedure is by way of a supplement to the award, and not by way of an additional award as envisaged by Art. 33(3) of the UNCITRAL Model Law. There is no specific provision as to the determination of the costs of a supplemented award, and the same rules apply as for the determination of the costs of the arbitration (Arts. 37(6) and 39(4) Law).

8. FEES AND COSTS

a. Costs in general

Art. 37(6) of the Arbitration Law stipulates that the arbitrators decide the costs of the arbitration in the award. Costs include the fees and expenses of the arbitrators, the fees and expenses of counsel or representatives, the costs of the institution administering the arbitration, and the other expenses of the arbitral proceedings.

b. Deposit

The arbitrators and the institution or association to which the arbitration has been entrusted may require the provision of funds to cover the fees of the arbitrators and any expenses which may arise in the administration of the arbitration. Should the parties fail to provide the funds, the arbitrators may suspend or terminate the arbitral proceedings. If one of the parties does not pay, the arbitrators shall give the other parties the opportunity to do so before suspending or terminating the arbitration (Art. 21(2) Law).

c. Fees of arbitrators

In institutional arbitrations the arbitrators' fees are normally fixed by the institution. In *ad hoc* arbitration they are usually agreed with the parties.

Arbitral institutions normally set fees based primarily on the amount in dispute. The parties and the tribunal can agree on an hourly rate or a fixed fee in an *ad hoc* arbitration in Spain. Professional fee schedules are published by the local Bar Associations. These schedules set forth the criteria for determining both attorneys' and arbitrators' fees. They are a consideration for parties who decide to choose Spain as their seat of arbitration. The fees are based on the amount in dispute, rather than on the number of hours worked by arbitration professionals.

The schedules distinguish between arbitrations in equity and arbitrations at law. A distinction is also drawn between arbitrations handled by one or by several arbitrators. An example of an institutional schedule of fees is that of the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid which can be found on its website.

d. Costs of legal assistance to parties

An arbitrator is required to include a decision on costs in their award. The decision on costs is always subject to the agreement of the parties. It may include the costs of legal assistance where these costs are requested (Art. 37(6) Law). The general rule in Spanish litigation is that a successful party is entitled to a portion of the costs of legal assistance (Art. 394 Civil Procedure Law).

There is no specific provision in the Arbitration Law that parties' legal costs must be reasonable. However, in Spanish litigation there are limits on the costs that may be awarded for legal representation, and the Supreme Court has

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confirmed that the costs of legal representation in litigation should be reasonable within the parameters of the profession, and not calculated solely on the basis of the amount in dispute but also be appropriate to the circumstances and complexity of the case (Decision of the Supreme Court No. 2901/2003, dated 21 January 2013).

e. Award on costs

There is no fixed rule regarding the award on costs in arbitration and costs may be shared equally, or the successful party may recover a portion of their costs. The current practice is that reasonable costs are awarded on the basis of the relative success and failure of the parties in the arbitration.

9. NOTIFICATION OF THE AWARD AND REGISTRATION

The arbitrators shall deliver a copy of the signed award to the parties within the period established for making the award, unless the parties have agreed to another form or time (Art. 37(7) Law). It is no longer a requirement that the award be notarized, although Art. 37(8) of the Arbitration Law provides that parties may require the arbitrators to do so.

There is no requirement that the original of the award be deposited at the arbitral institute. The originals are normally sent to the parties.

10. ENFORCEMENT OF DOMESTIC AND INTERNATIONAL AWARDS RENDERED IN SPAIN (SEE ALSO CHAPTER VI – ENFORCEMENT OF FOREIGN ARBITRAL AWARDS)

a. Leave for enforcement

Domestic awards and international awards rendered in Spain do not require separate leave for enforcement. Enforcement follows the same procedure as the enforcement of final judgments in the Spanish Civil Procedure Law.

b. Enforcement

Enforcement can be refused on the grounds that the award has been paid or otherwise complied with, prescription of the enforcement action, or settlement between the parties (Art. 556 Civil Procedure Law 2000). Enforcement can also be refused on procedural grounds, such as lack of authenticity of the award (Art. 559 Civil Procedure Law 2000). Enforcement can be suspended pending the determination of an action to set aside the award provided that the party against whom enforcement is sought offers security for the amount awarded, plus the damages and losses that might arise from the delay in the enforcement of the award (Art. 45(1) Law).

There is an appeal against a decision to grant or refuse enforcement (Art. 561(3) Civil Procedure Law 2000). There is no appeal against a decision

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relating to suspension of enforcement pending determination of an action to set aside an award (Art. 45(1) Law).

11. PUBLICATION OF THE AWARD

Arbitral awards are not normally published in Spain, where a general principle of arbitral confidentiality applies (Art. 24(2) Law).

Chapter VI. Enforcement of Foreign Arbitral Awards

1. ENFORCEMENT UNDER CONVENTIONS AND TREATIES

a. International conventions

Spain is a signatory to the following multilateral conventions that may facilitate the enforcement of a foreign arbitral award:

- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (“New York Convention”), ratified 12 May 1977;
- European Convention on International Commercial Arbitration of 21 April 1961, ratified 5 May 1975 (“Geneva Convention”);
- Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID Convention”), ratified 18 August 1994; and.
- Energy Charter Treaty, ratified 16 December 1997.

Spain has also entered into various bilateral treaties which facilitate the enforcement of arbitration awards including the following:

- Switzerland, ratified 6 July 1898;
- Colombia, ratified 16 April 1909;
- France, ratified 22 September 1970;
- Italy, ratified 27 July 1977;
- Uruguay, signed 4 November 1987;
- Czechoslovakia, ratified 22 September 1988;
- Mexico, ratified 17 April, 1989;
- Brazil, signed 13 April 1989;
- China, signed 2 May 1992;
- Bulgaria, signed 23 May 1993;
- Morocco, signed 30 May, 1997.

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b. Procedure

The first step in the enforcement of a foreign award is to apply for recognition of the award. Art. 46 of the Arbitration Law covers the recognition of foreign arbitral awards – that is, awards that have been rendered outside the Spanish territory – and states that such awards shall be recognized according to the New York Convention, without prejudice to the provisions of other more favourable international conventions.

Because Spain has signed the New York Convention without reserving the right to limit its application to those awards originating from other signatory countries, or to those awards arising out of relationships which are considered commercial, it appears that any foreign award falling within the scope of the Convention which a party wishes to have enforced in Spain will be subject to the New York Convention.

The procedure for the recognition (*exequatur*) and enforcement of a foreign award is now governed by *Ley 29/2015 de 30 de julio, de cooperación jurídica internacional en materia civil* (Law 29/2015 of International Legal Co-operation in Civil Matters, Title V, Arts. 52-55) (**Annex II** hereto).

Recognition of the foreign award should be requested from the Civil and Criminal Chamber of the Superior Court of Justice at the domicile or habitual residence of the party against whom recognition is sought, or the domicile or habitual residence of the party to whom they apply or the territorial competence at the place where the award must be enforced or where the award must produce its effects (Law Art. 8(6); Art. 73.1.c Organic Law of the Judiciary). In this way, the Civil Chamber of the Superior Court of Justice has jurisdiction over both the recognition of foreign arbitral awards and applications for the annulment of Spanish awards. There is no appeal from a recognition decision of the Civil Chamber of the Superior Court of Justice.

Interim and provisional measures may be recognized and enforced where their refusal would deny effective judicial protection and provided the measures were made after hearing the contrary party (Art 23.2 LA; Art. 41.4 Law 29/2015 of International Legal Co-operation in Civil Matters). Interim measures of protection can also be sought from the Spanish courts at the same time as recognition of the foreign award (Art. 54.2 Law 29/2015 of International Legal Co-operation in Civil Matters).

In accordance with Art. 54(1) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, ratified 18 August 1994, an ICSID arbitral award proceeds directly to enforcement without any prior requirement of recognition: see *Victor Pey Casado y Fundación Presidente Allende v. Republic of Chile* (Court of First Instance No. 101 of Madrid; Resolution and Decree of 6 March 2013).

A foreign State party cannot rely on the doctrine of State immunity to oppose the recognition of a foreign arbitral award in a commercial arbitration, subject to any agreement of the parties to the contrary (Art. 16 of Organic Law 16/2015 of State Privileges and Immunities).

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Once recognition is granted then enforcement of foreign awards is sought from the Court of First Instance and follows the same procedure as the enforcement of a domestic award. Enforcement against a foreign State party is governed by Arts. 17-20 of the Organic Law 16/2015 of State Privileges and Immunities.

The action for the enforcement of an arbitral award in Spain, including a foreign arbitral award, expires five years after the award became final (Art. 518 Civil Procedure Law 1/2000; Art. 50.2 Law 29/2015 of International Legal Cooperation in Civil Matters.)

Court review takes place in accordance with the criteria in Art. V of the New York Convention.

There is no right of appeal from a decision of the Civil and Criminal Chamber of the Superior Court of Justice relating to the recognition of a foreign arbitral award. There is a right of appeal from a decision relating to enforcement in the same manner as for domestic awards (Art. 561(3) Civil Procedure Law 1/2000).

c. Grounds for refusal

The New York Convention limits the judicial scrutiny of foreign arbitral awards to the points enumerated exhaustively in Art. V of the Convention, one of the most relevant being the denial of enforcement to any arbitral award that contravenes the public policy of the country in which is sought (Art. V(2)(b)).

d. Significant case law

France Telecom S.A., Orange S.A., Atlas Services Nederland B.V., France Telecom España S.A. v. Euskaltel S.A., (Superior Court of Justice of the Basque Country; 19 April 2012) is an important decision on the meaning of public policy in the context of recognition of a New York Convention award. The court stated that the Spanish concept of public policy in international arbitration is predominantly understood in the sense of a material and procedural minimum identified with imperative international law and the essential principles of the Spanish Constitution, i.e., the fundamental rights and public freedoms.

The decision of the Court of First Instance of Rubí of 11 June 2007 (Exequatur proceeding 584/06; noted in 5 Spain Arbitration Review (2009) pp. 171-189) is significant for its recognition of a foreign award that was subject to an action for annulment in its country of origin (France). Similarly, the Superior Court of Justice of Andalusia (Auto 29/2015; 29 July 2015) refused to stay the exequatur of an award subject to annulment proceedings in its country of origin (Italy), deciding to recognize the award notwithstanding what the Italian courts may decide.

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2. ENFORCEMENT WHERE NO CONVENTION OR TREATY APPLIES

In the absence of international treaties between Spain and the country where the award was rendered, then recognition can be sought from the Civil Chamber of the Superior Court of Justice following the process set out in Arts. 41-55 of the Law 29/2015 of International Legal Co-operation in Civil Matters. The award must be final, and recognition can be refused on the grounds set out in Art. 46 (including for breach of public policy or a manifest breach of the right of defence, where the Spanish courts have jurisdiction, where the award is irreconcilable with a Spanish decision or a prior decision in another state, or *litispendencia* in Spain). The substantive decision and the law applied in the foreign award cannot be reviewed during the recognition process (Art. 48).

If recognition is granted, then enforcement may be sought from the Court of First Instance and follows the same procedure as the enforcement of a domestic award.

3. RULES OF PUBLIC POLICY

The violation of rules of public policy is always a ground for refusal of recognition and for setting aside.

The law does not restrict this ground to violation of international public policy where the arbitration qualifies as an international commercial arbitration. The essential values of the Spanish Constitution as well as the mandatory requirements of international law form an indispensable part of the content of public policy in Spain: see *France Telecom S.A., Orange S.A., Atlas Services Nederland B.V., France Telecom España S.A. v. Euskaltel S.A.*, (Superior Court of Justice of the Basque Country; 19 April 2012). However, it remains to be seen whether Spanish courts will apply the new and controversial concept of “economic public policy” in the review of foreign arbitral awards.

Chapter VII. Means of Recourse

1. APPEAL ON THE MERITS FROM AN ARBITRAL AWARD

There are no provisions in the Arbitration Law for an appeal from an arbitral award to a second arbitral instance for review on the merits. In accordance with Art. 43 of the Arbitration Law, the award has *res judicata* effect, and only an action for annulment can be brought against the award.

There are no special provisions allowing for a judicial appeal on the merits of the arbitral award.

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2. SETTING ASIDE OF THE ARBITRAL AWARD (ACTION FOR ANNULMENT, VACATION OF THE AWARD)

a. Grounds for setting aside

According to Art. 41(1) Law an award may be annulled where the party making the application alleges and proves:

- “a) That the arbitration agreement does not exist or is not valid.
- b) That he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.
- c) That the arbitrators have decided questions not submitted to their decision.
- d) That the appointment of the arbitrators or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law.
- e) That the arbitrators have decided questions not capable of settlement by arbitration.
- f) That the award is in conflict with public policy.”

The court cannot enter into the merits of the dispute on an application to set aside. An award cannot be set aside on the basis of an error of law or fact (unless the error is of such a nature as to amount also to a breach of one of the criteria specified in Art. 41 Law).

Art. 41(1)(c) provides for annulment in cases of *extra petita*, while cases of *infra petita* are dealt with as a breach of public policy under Art. 41(1)(f). Spanish law has a well-developed doctrine of “congruence” or the required conformity between the claims in the arbitration and the determination in an award, covering both *extra petita* and *infra petita*. Congruence is based on the specific claims made in the pleadings, and not the mere allegations or arguments made in support of them. There is no requirement of a rigid correspondence between what is sought and what is decided, and it is sufficient for the award to adapt itself rationally to the claims of the parties and the facts on which they are based, to the point that complementary determinations of the tribunal are acceptable, although not sought by the parties, where they are intended to facilitate execution of the award or avoid new disputes. Incongruence must be sufficiently substantial to amount to a breach of the right of defence. The doctrine of congruence is derived from civil procedure and courts have recognized that it is appropriate to allow greater flexibility in arbitration (see *Construcciones Leon Rabadan S.L. v. Banco Bilbao Vizcaya Argentaria S.A* Superior Court of Justice, Madrid, 14 April 2016 (No. 34/2016); *Promomax S.L. v. Cabocan Limitada* Superior Court of Justice, Madrid, 3 February 2015 (No. 14/2015).

A violation of public policy will always constitute a ground for setting aside an award. Spain has an extensive arbitral concept of public policy, with possible breaches of a party’s right to present its case routinely considered

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under public policy rather than Art. 41(1)(b) Law (equivalent to Art. V.1.b of the New York Convention).

The Spanish concept of public policy in the context of international commercial arbitration is largely understood as the procedural and material minimum standards identified with mandatory international law and the essential values of the Spanish Constitution (*France Telecom S.A., Orange S.A., Atlas Services Nederland B.V., France Telecom España S.A. v. Euskaltel S.A.*, Superior Court of Justice of the Basque Country; 19 April 2012). Public policy includes the guiding principles and fundamental rights recognized by the Spanish Constitution and particularly as guaranteed in Art. 24, as well as the protection from patent arbitrariness referred to in Art. 9.3 of the Spanish Constitution, while excluding from this concept the justice of the award or the deficiencies or correctness of the decision. Public policy also includes the imperative norms relating to the freedoms guaranteed by European Community law, such as competition law (*Repos i Repàs, S.L. v. BBVA*, Superior Court of Justice of Madrid, 28 January 2015; judgment 13/2015).

The effective judicial protection guaranteed by Art. 24 of the Spanish Constitution requires judicial decisions and arbitral awards to be reasoned. An award must state facts and reasons sufficient to demonstrate the grounds of the decision, as well as being based on legal rules. Reasons alone are not sufficient; the reasons must have legal content and not be arbitrary. An arbitral award may be annulled for breach of public policy where there are no reasons, or the reasoning is capricious, a mere appearance, or expresses an irrational or absurd deductive process. Although examination for arbitrariness does not involve reconsideration of the merits, the premises and reasoning of an award have on occasion been examined in extensive detail (*Dexia Credit Local, S.A. v. Banco Sabadell SA* Superior Court of Justice of Madrid, 14 March 2016; *Transportes Juan Jose Gil SL v. Banco Bilbao Vizcaya Argentaria S.A.* Superior Court of Justice of Madrid, 3 November 2015).

An award may be annulled on public policy grounds for the failure to consider relevant and admitted evidence for reasons attributable to the tribunal (see *Delforca 2008, Sociedad de Valores, S.A. v. Banco de Santander, S.A.* Provincial Court of Appeal, Madrid; 30 June 2011), as well as on the grounds that the result was that a party was unable to present its case (Art. 41(1)(b) Law; *Fortalia Investment Group case*, Superior Court of Justice of Madrid, 3 November 2014).

It is a breach of procedural public policy, based on the right to an impartial judge guaranteed by Art. 24 of the Spanish Constitution, where there are justifiable doubts as to the impartiality and independence of an arbitrator in breach of Art. 17(1) and 17(3) Law (see *Delforca 2008, Sociedad de Valores, S.A. v. Banco de Santander, S.A.* Provincial Court of Appeal, Madrid; 30 June 2011).

Some recent decisions of the Superior Court of Justice of Madrid, arising from the review of domestic arbitral awards dealing with complex financial

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products, and building on the significance of European law to the Spanish conception of public policy, have applied an “economic public policy” identified with the general principle of contractual good faith in situations of inequality, disproportion or asymmetry between the parties by reason of the complexity of the product or disparate knowledge of the contracting parties (see *Repos i Repàs, S.L. v. BBVA*, Superior Court of Justice of Madrid, 28 January 2015; judgment 13/2015; *Transportes Juan Jose Gil SL v. Banco Bilbao Vizcaya Argentaria S.A.* Superior Court of Justice of Madrid, 3 November 2015). These decisions arguably overstep the bounds of annulment and amount to reconsideration of the merits, but this line of reasoning has not yet been applied to an international arbitral award.

The Arbitration Law is silent on whether the grounds for annulment in Art. 41 Law can be excluded by the parties, although as a matter of principle the grounds in Art. 41(1)(a), (c) or (d) could be excluded by agreement, but an agreement to exclude Art. 41(1)(b), (e) or (f) would be null and void.²

b. Procedure

The action for annulment is under the jurisdiction of the Civil and Criminal Division of the Superior Court of the Autonomous Region where it was rendered (Art. 8(6) Law).

The action for annulment must be filed within two months from the date on which the party filing the action received the award or, if a request for correction, clarification or to extend the award has been made, from the date on which that party received the decision on the request, or from the date on which the term for making that decision expired.

Art. 42 Law provides that the application to set aside will follow the procedure for verbal proceedings in the civil courts; it will be conducted according to the provisions of the Civil Procedure Law and must be accompanied by the documentation proving the arbitration agreement and the award, and, if applicable may contain a proposal of the evidence upon which the applicant intends to rely.

An opposing party may object in writing to the request for annulment within twenty days of receiving a copy of such request. If necessary, it shall submit the evidence supporting the objections.

Once the application is answered or the time period to do so has expired, the parties shall be summoned to a hearing, at which the applicant may propose new evidence in respect of the allegations contained in the respondent’s answer. Where the parties have not requested a hearing the court will proceed immediately to judgment.

2. See Bernardo M. Cremades and Alicia Martín Blanco, “Modification by Agreement of the Statutory Grounds to Set Aside International Arbitral Awards in Spain”, 18 *The American Review of International Arbitration* (2007, no. 3).

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The decision of the courts will not be subject to any further appeal. The filing of the appeal does not suspend the execution of the arbitration award, unless the court makes an order to the contrary. The enforcement is revoked if the award is set aside (see above Chapter V.10) (Art. 45 Law).

There is no power for a tribunal on a setting aside-application to remit any matter to the arbitral tribunal.

If a party was aware of a failure to comply with a provision of the Arbitration Law or a requirement of the arbitration agreement and failed to object in a timely fashion, that party shall be deemed to have waived the right to challenge the award on this ground (Art. 6 Law).

3. OTHER MEANS OF RECOURSE

The award that conforms to the Arbitration Law has the effect of *res judicata* (Art. 43 Law). Revision of the award can be sought on the same limited grounds that appear in Art. 510 of the Civil Procedure Law 2000, namely:

- (1) decisive documents, which were not available as a result of *force majeure* circumstances or by actions of the party in whose favour the award was rendered are obtained after the award is issued;
- (2) the award was based on documents which one of the parties did not know had been declared to be forgeries;
- (3) the award was rendered based on witness testimony and the witnesses have subsequently been convicted of perjury for the statements they gave which served as grounds for the award; and
- (4) the final award was obtained unfairly by means of bribery, duress or other fraudulent acts.

Chapter VIII. Conciliation / Mediation

1. GENERAL

Until recently, mediation in Spain was largely confined to regional legislation in the fields of labour and family law. There was no legal framework at a national level for civil and commercial mediation until 2012, except for certain archaic and unused provisions for judicially assisted conciliation in civil litigation.

The 2012 legislation has increased the profile of civil and commercial mediation, encouraging training in mediation and also judicial programmes to enable litigants to take advantage of mediation to reach an early settlement of their disputes. New mediation institutions have appeared offering services in

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civil and commercial mediation. The Madrid Chamber of Commerce established a specialist business mediation centre in 2014 for domestic and international disputes. Its contact details are:

El Centro de Mediación Empresarial de Madrid
C/ de las Huertas, 11
Madrid 28012
Spain
Telephone: +34 91 538 35 00 / 91 538 49 03
E-mail: mediacion@camaramadrid.es
Website: <www.mediamadrid.es>

2. LEGAL PROVISIONS

Spain enacted a mediation law in 2012 (Law 5/2012 of 6 July, of Civil and Commercial Mediation; hereafter “Mediation Law”). This law was further elaborated by Royal Decree 980/2013 of 13 December (see **Annex III**).

The Mediation Law gives effect in Spain to EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. The Mediation Law is not based on the UNCITRAL Model Law on International Commercial Conciliation (“Model Law”), although the explanatory note states that the Model Law was taken into account in its drafting.

The Mediation Law applies in civil and commercial disputes, including cross-border disputes, when one of the parties is domiciled in Spain and the mediation takes place in Spain (Art. 2 Mediation Law). The guiding principles of mediation in Spain are identified in Part II of the Mediation Law as: its voluntary character, equality of the parties, impartiality of the mediator, neutrality, confidentiality, and party autonomy.

A distinctive feature of the Mediation Law is the prescriptiveness of the mediation procedure set out in Part IV. The mediation begins with an information session, followed by a constitutive session. The constitutive session concludes with a written set of minutes which is either signed by the parties and the mediator that identifies the parties, the mediator, the conflict, the proposed procedure, costs, place and language of the mediation, and a declaration by the parties of their voluntary acceptance of the mediation, or a declaration by the mediator that the mediation has been attempted unsuccessfully (Art. 19 Mediation Law). The mediator is also required to produce a formal set of minutes on the termination of the mediation, which reflects the agreements reached or the other reasons for termination of the mediation (Art. 22 Mediation Law).

There are also provisions regarding the “mediation agreement” or the settlement agreement reached as a result of the mediation, including provision for the formalization of the mediation agreement as a public deed and its

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execution (Arts. 24-26 Mediation Law). A mediation agreement executed outside Spain is recognized and enforced in Spain in accordance with Law 29/2015 of International Legal Co-operation in Civil Matters, or by formalization as a public deed in Spain at the request of the parties or of one of the parties with the consent of the others (Art. 27 Mediation Law, as amended by the Third Final Provision of Law 29/2015 of International Legal Co-operation in Civil Matters).

A mediator in Spain is required to have a specified level of training in mediation, as well as professional indemnity insurance that covers mediation. There is an official registry of mediators and mediation institutions in Spain (Art. 11 Mediation Law and Royal Decree 980/2013 of 13 December).

There is no legal requirement or legislative incentive for the parties to attempt amicable resolution of a dispute before commencing judicial or arbitral proceedings. Some courts encourage the suspension of litigation for the purpose of mediation. There has long been provision in Spanish law for judicially assisted conciliation, but the procedure is not mandatory but rather initiated at the request of a party. The procedure is now provided for in Arts. 139-148 of *Ley 15/2015, de 2 de julio, de la jurisdicción voluntaria* (Voluntary Jurisdiction Law), and takes place before a Justice of the Peace or Judicial Secretary of the Court of First Instance or the Commercial Court.

The mediation procedure in Spain is confidential. Neither the mediator nor the parties can be compelled to give evidence or disclose documents in subsequent judicial or arbitral proceedings relating to information or documentation derived from the mediation, subject to limited exceptions (Art. 9 Mediation Law). Art. 17(4) of the Arbitration Law 2003 (as inserted by the Arbitration Reform Law 11/2011) provides that unless otherwise agreed by the parties an arbitrator shall not have acted as a mediator in the same dispute between the parties (see Judgment 25/2015, Superior Court of Justice of Madrid, 25 March 2015).

Chapter IX. Investment Treaty Arbitration

1. CONVENTIONS AND TREATIES

Spain is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“Washington Convention”), ratified on 18 August 1994. It is also a party to the Energy Charter Treaty, ratified on 16 December 1997.

At the time of writing, Spain had entered into seventy-three bilateral investment treaties (“BITs”). The latest bilateral investment treaty is the Spain-Vietnam BIT, which entered into force on 29 July 2011. On 4 January 2012 and 22 December 2013, Bolivia and South Africa denounced their BITs with

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Spain, although investments made prior to these dates will continue to enjoy the protections of the treaties for a further ten years. The list of Bilateral Investment Treaties signed by Spain can be found on the Spanish Government website (Secretaría de Estado de Comercio) at: <<http://www.comercio.es/es-ES/inversiones-exteriores/acuerdos-internacionales/acuerdos-promocion-proteccion-reciproca-inversiones-appri/Paginas/lista-appri-vigor.aspx>>.

Spain does have a model Bilateral Investment Treaty. However, the use of this model BIT in future will be subject to developments and policy at a European Union level relating to foreign direct investment.

From 1 December 2009 the Lisbon Treaty brought foreign direct investment within the common commercial policy of the European Union. Accordingly, in the future, investment policy affecting Spain will be developed at the European level (Art. 207 of the Consolidated Version of the Treaty of Functioning of the European Union).

In the exercise of this new competency the European Commission issued Regulation 1219/2012, designed to manage the transition towards a new EU comprehensive investment policy, notably by providing legal security for national bilateral investment treaties. In particular, the Regulation focuses on establishing transitional arrangements regarding those bilateral investment agreements which EU countries concluded with third countries prior to the Lisbon Treaty.

2. INVESTMENT ARBITRATION

At the time of writing, Spain is a party to approximately twenty-seven pending investment arbitration proceedings, most of which relate to the reforms carried out progressively from 2010 in the renewable energy sector. Before 2010, Spain had implemented the EU Directive 2001/77/EC establishing a feed-in tariff regime for the photovoltaic sector. In 2010, by means of a primary legislation (RDL 14/2010) and a decree (RD 1565), the government changed its photovoltaic legislation, capping the energy sale hours and the number of years the feed-in tariff would apply. Between 2013 and 2014, the government implemented further reforms that had a substantial impact on the profitability of the photovoltaic projects in Spain. Investors claim that Spain has breached its obligations under Arts. 10 and 13 of the Energy Charter Treaty. The legislative changes have also resulted in numerous domestic lawsuits from local investors.

The first investment arbitration award arising out of these reforms is *Charanne B.V. and Construction Investments S.A.R.L. v. The Kingdom of Spain* (SCC Arb No. 062/2012), issued on 21 January 2016. The majority of the tribunal found that the changes to the legal framework did not amount to an indirect expropriation or a violation of the investors' legitimate expectations. It

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further held that the host states are entitled to adapt their legal regimes “to respond to the changing circumstances in the public interest”.

3. FOREIGN INVESTMENT LEGISLATION

There is no recognition requirement for ICSID awards, which may be enforced directly following the procedure established for local judgments, pursuant to Art. 54 of the ICSID Rules (see *Victor Pey Casado and President Allende Foundation v. Republic of Chile* (Court of First Instance No. 101 of Madrid; Resolution and Decree of 6 March 2013). Enforcement against a foreign State party is governed by Arts. 17-20 of the Organic Law 16/2015 of State Privileges and Immunities.

Apart from international treaties, Spanish legislation on foreign investment does not include any specific provisions on dispute settlement.

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ANNEX I

THE CONSOLIDATED ARBITRATION LAW 60/2003 (incorporating 2009 and 2011 amendments)*

TITLE I. GENERAL PROVISIONS

Article 1. Scope of Application

1. This Law shall apply to any arbitration where the place of arbitration is in Spanish territory, whether of domestic or international character, without prejudice to the provisions of treaties to which Spain is a party or to legislation containing specific provisions relating to arbitration.

2. The provisions of Paragraphs 3, 4 and 6 of Article 8, of Article 9, except Paragraph 2, of Articles 11 and 23 and of Titles VIII and IX of this Law shall apply even when the place of the arbitration is outside Spain.

3. This Law shall be of supplementary application to any arbitration proceedings provided for in other legislation.

4. Employment arbitration is excluded from the scope of this Law.

Article 2. Subject Matter of Arbitration

1. All disputes relating to matters that may be freely disposed of at law are capable of arbitration.

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Translators' note: The following text is a consolidated translation of the Spanish Arbitration Law (Law 60/2003 of 23 December, on Arbitration) incorporating some minor amendments made in 2009 (Law 13/2009 of 3 November for the reform of procedural legislation for the introduction of the new judicial office), as well as the significant amendments of the Arbitration Reform Law 2011 (Law 11/2011 of 20 May, on the reform of Law 60/2003 of 23 December, on Arbitration and on the regulation of institutional arbitration in the General Administration of the State).

Wherever possible and appropriate we have used the English language of the UNCITRAL Model Law in this translation.

The Spanish text of the Arbitration Law 2003 begins with a lengthy Statement of Purposes (*Exposición de Motivos*), which is not translated here. The Statement of Purposes is not a normative part of a Spanish enactment. Similarly, the Preamble of the Arbitration Reform Law 2011 is not translated. However this translation does include the additional and final provisions of the Arbitration Law 2003 and the Arbitration Reform Law 2011, with their consequential amendments to other legislation.

The Law contains some expressions for which there is not a precise equivalent in either the UNCITRAL Model Law or the common law, or where the usage is unusual. It also makes references to other Spanish legislation. We have used occasional explanatory footnotes in these circumstances.

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2. Where the arbitration is international and one of the parties is a State or a company, organization or enterprise controlled by a State, that party shall not be able to invoke the prerogatives of its own law in order to avoid the obligations arising from the arbitration agreement.

Article 3. International Arbitration

1. An arbitration is international whenever any of the following circumstances exist:
 - a) That, at the time of the conclusion of the arbitration agreement, the parties have their domiciles in different States.
 - b) That the place of arbitration, determined in accordance with the arbitration agreement, the place of performance of a substantial part of the obligations of the legal relationship from which the dispute arises, or the place with which the dispute is most closely connected, is situated outside the State in which the parties have their domiciles.
 - c) That the dispute arises from a legal relationship which concerns interests of international trade.
2. For the purposes of the preceding paragraph, if a party has more than one domicile, the domicile shall be that which has the closest relationship to the arbitration agreement; and if a party has no domicile, it shall be its habitual residence.

Article 4. Rules of Interpretation

Where a provision of this Law:

- a) Allows the parties the power to freely determine a certain issue, that power includes that of authorizing a third party, including an arbitral institution, to make that determination, except in respect of the matters set out in Article 34.
- b) Refers to the arbitration agreement or to any other agreement between the parties, such agreement includes the provisions of any arbitration rules to which the parties have submitted themselves.
- c) Refers to a claim, it will also apply to a counterclaim, and where it refers to a defence, it will also apply to a defence to such counterclaim, except in respect of Paragraph a) of Article 31 and Sub-paragraph a) of Paragraph 2 of Article 38.

Article 5. Notifications, Communications and Calculations of Time

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

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

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

Article 6. Tacit Waiver of Powers of Legal Challenge¹

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

Article 7. Court Intervention

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

Article 8. Competent Courts for Assistance and Supervision of Arbitration

1. The Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Community at the seat of the arbitration shall have jurisdiction in respect of the judicial appointment and removal of arbitrators; if the seat has not yet been determined, then jurisdiction shall reside with this Chamber at the domicile or habitual place of residence of any of the respondents; if none of the respondents have their domicile or habitual place of residence in Spain, then at the domicile or habitual place of residence of the claimant, and if the claimant has no domicile or habitual place of residence in Spain, then the Civil and Criminal Chamber of the Superior Court of Justice at the place of the claimant's choice.

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

3. The Court² at the place where the award has to be enforced shall have jurisdiction in respect of interim measures and, in default of such court, that at the place where the measures have to be implemented, in accordance with Article 724 of the Civil Procedure Law.

4. The Court of First Instance of the place where awards or arbitral decisions are made shall have jurisdiction over enforcement in accordance with Paragraph 2 of Article 545 of the Civil Procedure Law 1/2000, of 7 January.

5. The Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Community of the place where the award was made shall have jurisdiction over an application to set aside the award.

1. *Translators' note:* Art. 6 refers to the waiver of the powers of legal challenge ("*las facultades de impugnación*") rather than the "right to object" ("*derecho a objetar*") referred to in the Spanish text of Art. 4 of the UNCITRAL Model Law. Art. 6 may therefore be more restricted than its UNCITRAL Model Law equivalent.

2. *Translators' note:* Although not specified in the Act, the reference here is clearly to the First Instance Court.

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6. For the recognition of awards and foreign arbitral decisions, jurisdiction shall reside with the Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Community of the domicile or place of residence of the party against whom recognition is sought or of the domicile or place of residence of the person to whom they apply, with the territorial jurisdiction alternatively determined by the place of enforcement or where those awards or arbitral decisions ought to take effect.

For the enforcement of awards and foreign arbitral decisions jurisdiction shall reside with the First Instance Court in accordance with the same criteria.

TITLE II. THE ARBITRATION AGREEMENT AND ITS EFFECTS

Article 9. Form and Content of the Arbitral Agreement

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

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

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

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

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

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

6. In respect of international arbitration, the arbitration agreement shall be valid and the dispute shall be capable of arbitration if it complies with the requirements established by the juridical rules³ chosen by the parties to govern the arbitration agreement, or the juridical rules applicable to the merits of the dispute, or Spanish law.

Article 10. Testamentary Arbitration

Arbitration may be validly provided for in a testamentary disposition to resolve disputes between beneficiaries or legatees⁴ in matters relating to the distribution or administration of the estate.

3. *Translators' note:* The Act uses the neutral expression “juridical rules” (“*las normas jurídicas*”) in preference to “applicable law” (“*derecho aplicable*”) to recognize that the applicable rules may be the rules of multiple legal systems, or of international commerce.

4. *Translators' note:* The Spanish text uses “*legatarios*” which includes the recipients of both real and personal property, and so is wider than the English “legatees” (which properly speaking refers only to a bequest of personal property), including also devisees of real property.

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Article 11. Arbitration Agreement and Substantive Claim Before a Court

1. The arbitration agreement obliges the parties to comply with the agreement and prevents the courts from hearing disputes submitted to arbitration, provided that an interested party raises an objection to jurisdiction.

The period to assert the objection to jurisdiction shall be within the first ten days of the period to answer the statement of claim for claims brought by ordinary proceedings,⁵ or within the first ten days after the summons to the hearing, for those that are brought by verbal proceedings.⁶

2. The objection to jurisdiction shall not prevent the initiation or continuation of the arbitral proceedings.

3. The arbitration agreement shall not prevent any of the parties, before or during the arbitral proceedings, from applying to a court for interim measures of protection nor prevent the court from granting them.

Article 11bis. Corporate Arbitration

1. Corporations shall be able to submit their internal disputes to arbitration.

2. The introduction into the corporate statutes of a clause of submission to arbitration will require the vote in favour of, at least, two thirds of the votes attached to the shares into which the capital is divided.

3. The corporate statutes shall be able to provide that the challenge to corporate resolutions by shareholders or directors is submitted to the decision of one or more arbitrators, entrusting the administration of the arbitration and the designation of the arbitrators to an arbitral institution.

Article 11ter. Annulment by Award of Registrable Corporate Resolutions

1. An award that declares null and void a registrable resolution shall be registered in the Commercial Registry. The “*Boletín Oficial del Registro Mercantil*”⁷ shall publish a summary.

2. If the impugned resolution were registered in the Commercial Registry, the award shall provide for, in addition, the cancellation of the registration, as well as of the cancellation of subsequent contradictory entries.

5. *Translators’ note:* “Ordinary proceedings” (“*juicio ordinario*”) are one of two forms of declarative civil proceedings provided for in the Spanish Civil Procedure Law (*Ley de Enjuiciamiento Civil*) 1/2000. This procedure applies to most claims. The claimant submits a statement of claim, and the respondent has twenty working days to submit an answer. A procedural hearing follows and the procedure is closed by the evidential hearing, where evidence is taken and oral closing submissions are presented by the parties.

6. *Translators’ note:* “Verbal proceedings” (“*juicio verbal*”) are the second form of declarative civil proceedings provided for in the Spanish Civil Procedure Law 1/2000. In general, this procedure applies to smaller claims, and after a brief statement of claim moves quickly to a single oral hearing that addresses all issues.

7. *Translators’ note:* The Official Gazette of the Commercial Registry.

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TITLE III. THE ARBITRATORS⁸

Article 12. Number of Arbitrators

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

Article 13. Capacity to Act as an Arbitrator

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

Article 14. Institutional Arbitration

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

- a) State corporations and state entities empowered to perform arbitral functions, according to their governing legislation.
- b) Non-profitmaking associations and societies whose rules envisage arbitral functions.

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

3. Arbitral institutions shall oversee compliance with the conditions as to the capacity of the arbitrators and the transparency of their appointment, as well as their independence.

Article 15. Appointment of Arbitrators

1. Unless otherwise agreed by the parties, in arbitrations that are not to be decided in equity, when the arbitration is submitted to a sole arbitrator, the arbitrator that acts as such shall be a jurist.

When the arbitration is submitted to three or more arbitrators, at least one of them shall be a jurist.

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

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

8. *Translators' note:* The Act invariably uses the expression "arbitrators" ("*árbitros*") in preference to the UNCITRAL Model Law's "arbitral tribunal" ("*tribunal arbitral*"). It occasionally uses "*colegio arbitral*" which we translate as "arbitral panel".

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

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

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

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

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

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

7. There shall be no appeal against final decisions in respect of matters attributed by this article to the competent court.

Article 16. Acceptance by the Arbitrators

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

Article 17. Grounds for Abstention and Challenge

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

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

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

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

4. Unless otherwise agreed by the parties, the arbitrator shall not have acted as mediator in the same dispute between the parties.

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Article 18. Challenge Procedure

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

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

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

Article 19. Failure or Impossibility to Act

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

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

There shall be no appeal against the final decisions made.

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

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

Article 20. Appointment of Substitute Arbitrator

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

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

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

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

The arbitrators or the arbitral institutions on their behalf shall take out civil liability insurance or an equivalent guarantee, to the amount established by regulation.⁹ State

9. *Translators' note:* As at October 2016, no regulation had been promulgated for this purpose.

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entities and arbitral systems forming part of or dependent on the public administrations are exempt from taking out this insurance or equivalent guarantee.

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

TITLE IV. THE JURISDICTION OF THE ARBITRATORS

Article 22. Competence of the Arbitrators to Rule on Their Jurisdiction

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

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

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

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

Article 23. Power of the Arbitrators to Order Interim Measures

1. Unless otherwise agreed by the parties, the arbitrators may, at the request of any party, order such interim measures as they may consider necessary in respect of the subject matter of the dispute. The arbitrators may require appropriate security from the applicant.

2. The provisions relating to the setting aside and enforcement of awards shall apply to the arbitral decisions in respect of interim measures, regardless of the form of those measures.

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TITLE V. THE CONDUCT OF ARBITRAL PROCEEDINGS

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

1. The parties shall be treated with equality and each party shall be given a full opportunity of presenting its case.

2. The arbitrators, the parties and the arbitral institutions, if applicable, are obliged to maintain the confidentiality of information coming to their knowledge in the course of the arbitral proceedings.

Article 25. Determination of Rules of Procedure

1. In accordance with the previous Article, the parties may freely agree on the procedure to be followed by the arbitrators in the conduct of the proceedings.

2. Failing such agreement, the arbitrators may, subject to the provisions of this Law, conduct the arbitration in such manner as they consider appropriate. The power conferred upon the arbitrators includes the power to determine the admissibility, relevance and usefulness of any evidence, the manner of taking evidence, including on the arbitrators' own motion, and its weight.

Article 26. Place of Arbitration

1. The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitrators having regard to the circumstances of the case and the convenience of the parties.

2. Notwithstanding the provisions of the previous paragraph, the arbitrators may, after consulting the parties and unless otherwise agreed by the parties, meet at any place they consider appropriate for hearing witnesses, experts or the parties, or to inspect objects, documents or persons. The arbitrators may deliberate at any place they consider appropriate.

Article 27. Commencement of Arbitration

Unless otherwise agreed by the parties, the date on which the respondent receives a request to submit a dispute to arbitration shall be considered as the date of commencement of the arbitration.

Article 28. Language of the Arbitration

1. The parties shall be free to agree on the language or languages of the arbitration. Failing such agreement, and when the circumstances of the case do not permit definition of the question, the arbitration will proceed in any of the official languages of the place where the proceedings are carried out. The party that alleges ignorance of the language will have the right to be heard, to answer and to defend in the language that it uses, without this allegation being able to justify the suspension of the proceeding.

Unless the agreement of the parties establishes otherwise, the language or languages provided for shall be used in the submissions of the parties, in the hearings, in the awards and in the decisions or communications of the arbitrators, without prejudice to the contents of the first paragraph.

In any case, the witnesses, experts and third persons that intervene in the arbitration, both in oral and in written proceedings, shall be able to use their own language. In oral proceedings and on their prior oath or promise any person knowing the language shall be able to be authorized as interpreter.

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2. The arbitrators, unless objected to by one of the parties, may order that, without need of translation, any documents be submitted or any proceedings be performed in a language different from that of the arbitration.

Article 29. Statements of Claim and Defence

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

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

Article 30. Form of the Arbitral Proceedings

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

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

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

Article 31. Default of the Parties

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

- a) The claimant fails to communicate his statement of claim in time, the arbitrators shall terminate the proceedings, unless, after hearing the respondent, the respondent indicates his intention to formulate a claim.
- b) The respondent fails to communicate his statement of defence in time, the arbitrators shall continue the proceedings without treating such failure as an acceptance or admission of the facts alleged by the claimant.
- c) Any party fails to appear at a hearing or to produce evidence, the arbitrators may continue the proceedings and make the award on the evidence before them.

Article 32. Expert Appointed by the Arbitrators

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

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

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

Article 33. Court Assistance in Taking Evidence

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

2. If it is so requested, the court shall take evidence under its exclusive supervision. Otherwise, the court shall limit itself to ordering the relevant measures. In both cases, the judicial secretary¹⁰ shall deliver to the applicant a certified copy of the proceedings.

TITLE VI. THE MAKING OF THE AWARD AND THE TERMINATION OF THE PROCEEDINGS

Article 34. Rules Applicable to Substance of Dispute

1. The arbitrators shall decide in equity only if the parties have expressly authorized them to do so.

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

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

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

Article 35. Decision-Making by Panel of Arbitrators

1. Where there is more than one arbitrator, any decision shall be made by a majority, unless otherwise agreed by the parties. If there is no majority, the decision shall be made by the presiding arbitrator.

2. Unless otherwise agreed by the parties or by the arbitrators, the presiding arbitrator may decide by himself questions of order, formalities and progress¹¹ of the proceedings.

10. *Translators' note:* The Judicial Secretary is an important official in Spanish courts, with functions similar to but broader than the deputy registrar or clerk of the court in common law systems.

11. *Translators' note:* In the Spanish text, “ordenación, tramitación e impulso”.

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Article 36. Award by Agreement of the Parties

1. If, during arbitral proceedings, the parties wholly or partially settle the dispute, the arbitrators shall terminate the proceedings in respect of the points agreed and, if requested by both parties and not objected to by the arbitrators, record the settlement in the form of an arbitral award on agreed terms.

2. An award on agreed terms shall be made in accordance with the provisions of the following Article and shall have the same effect as any other award on the merits of the case.

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

1. Unless otherwise agreed by the parties, the arbitrators shall decide the dispute in a single award or in as many partial awards as they deem necessary.

2. Unless otherwise agreed by the Parties, the arbitrators shall decide the dispute within six months from the date of the submission of the statement of defence referred to in Article 29 or from the expiry of the period to submit it. Unless otherwise agreed by the parties this period may be extended by the arbitrators, for a period not exceeding two months, by means of a reasoned decision. Unless otherwise agreed by the parties, the expiry of the period without the issue of the final award shall not affect the effectiveness of the arbitral agreement, nor the validity of the award, without prejudice to any liability which the arbitrators may have incurred.

3. The award shall be verifiable in writing and be signed by the arbitrators, who shall be able to record their vote in favour or against. Where there is more than one arbitrator, the signatures of the majority of the members of the arbitral panel or that of its presiding arbitrator alone shall suffice, provided that the reason for any omitted signature is stated.

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

4. The award shall state the reasons on which it is based, unless the award is made on agreed terms in accordance with the previous Article.

5. The award shall state its date and the place of arbitration as determined in accordance with Paragraph 1 of Article 26. The award shall be deemed to have been made at that place.

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

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

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

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Article 38. Termination of Proceedings

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

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

- a) The claimant withdraws its claim, unless the respondent objects thereto and the arbitrators recognize a legitimate interest on his part in obtaining a final settlement of the dispute.
- b) The parties agree on the termination of the proceedings.
- c) The arbitrators find that the continuation of the proceedings has for any other reason become unnecessary or impossible.

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

Article 39. Correction, Clarification, Supplement¹² and Excess of Powers in the Award

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

- a) To correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature.
- b) To clarify a point or a specific part of the award.
- c) To supplement the award as to claims presented in the arbitral proceedings and not resolved in the award.
- d) To correct the partial excess of powers in the award, when questions have been decided that were not submitted to their decision or not capable of arbitration.

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

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

12. *Translators' note:* The Spanish text avoids the reference in Art. 33 of the UNCITRAL Model Law to an "additional award" to address omissions. Instead it refers to a "*complemento del laudo*" for this purpose, which we have translated as the issue of a "supplement" to the award. The practical difference is that a successful application under Art. 33(3) of the UNCITRAL Model Law results in two separate awards (i.e., the original award and the additional award), while the procedure contemplated by the Spanish Arbitration Act suggests a single (though supplemented) award.

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4. The provisions of Article 37 shall apply to arbitral decisions relating to the correction, clarification, supplement of and excess of powers in the award.

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

TITLE VII. THE APPLICATION TO SET ASIDE AND REVISION OF THE AWARD

Article 40. Application to Set Aside the Award

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

Article 41. Grounds

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

- a) That the arbitration agreement does not exist or is not valid.
- b) That he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.
- c) That the arbitrators have decided questions not submitted to their decision.
- d) That the appointment of the arbitrators or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law.
- e) That the arbitrators have decided questions not capable of settlement by arbitration.
- f) That the award is in conflict with public policy.

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

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

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

Article 42. Procedure

1. The application to set aside an award shall follow the procedure for verbal proceedings, without prejudice to the following special rules:

- a) The statement of claim shall be filed in accordance with the provisions of Article 399 of the Civil Procedure Law¹³ accompanied by documentation

13. *Translators' note:* Art. 399 of the Civil Procedure Law 1/2000 sets out the requirements for a statement of claim in ordinary proceedings (see fn. 5 above).

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establishing the claim, the arbitral agreement and the award, and, if applicable, shall contain the proposal of the evidence on which the applicant intends to rely.

b) The judicial secretary shall notify the statement of claim to the respondent, in order that it may be answered within twenty days. The statement of defence, accompanied by documents justifying the opposition, shall propose all means of proof upon which the respondent intends to rely. This pleading, and the documents that accompany it, shall be notified to the applicant to enable the applicant to submit additional documents or propose the taking of evidence.

c) Once the statement of claim is answered or the time period to do so has expired, the judicial secretary shall summon the parties to a hearing, if the parties have so requested in their statements of claim and defence. If in their pleadings they have not requested a hearing, or when documentary evidence only has been proposed and these documents have already been submitted in the proceedings without being challenged, or where the expert reports do not require ratification, the court shall issue its judgement without further proceedings.

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

Article 43. Res Judicata and Revision of Awards

The award has the effect of *res judicata* and shall only be subject to an application to set aside and, where applicable, an application for revision in accordance with the provisions of Law 1/2000, of 7 January, of Civil Procedure, for final judgments.¹⁴

TITLE VIII. THE ENFORCEMENT OF AWARDS

Article 44. Applicable Rules

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

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

1. An award is enforceable even though an application to set aside has been made. Nevertheless, in that event the party against whom enforcement is sought may apply to the competent court for the suspension of enforcement, provided that it offers security for the amount awarded, plus the damages and losses that might arise from the delay in the enforcement of the award. The security may take any of the forms provided for in Paragraph 3(2) of Article 529 of the Civil Procedure Law.¹⁵ Once the application for suspension is filed, the court, after hearing the party seeking enforcement, shall fix the security. There is no appeal against this decision.

14. *Translators' note:* The grounds on which a final judgment may be revised are set out in Art. 510 of the Civil Procedure Law 1/2000, and relate to the appearance of new documents in defined circumstances, criminal proceedings finding evidence or testimony to be false, or corruption affecting the judgment.

15. *Translators' note:* Para. 3(2) of Article 529 of the Civil Procedure Law 1/2000 provides that security may take the form of cash, first-demand bank guarantee of indefinite duration or any other means that, in the opinion of the court, guarantees the immediate availability of the amount of the security.

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2. The judicial secretary shall lift the suspension and order that the enforcement continue when the court is satisfied that the application to set aside has been disallowed, without prejudice to the right of the party seeking enforcement to demand, if applicable, indemnification for the damages and losses caused by the delay in the enforcement, by means of the procedure set out in Article 712 and subsequent articles of the Civil Procedure Law.¹⁶

3. The judicial secretary shall revoke enforcement, with the consequences set out in Articles 533 and 534 of the Civil Procedure Law,¹⁷ when the court is satisfied that the application to set aside has been allowed.

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

TITLE IX. THE RECOGNITION¹⁸ OF FOREIGN AWARDS

Article 46. Foreign Character of the Award. Applicable Rules

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

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

Additional Provision. Consumer Arbitration

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

Transitional Provision. Transitional Regime

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

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

16. *Translators' note:* Art. 712 et seq. of the Civil Procedure Law 1/2000 relate to proceedings for the quantification of damages and losses.

17. *Translators' note:* Arts. 533 and 534 of the Civil Procedure Law 1/2000 relate to the repayment of money, the return of goods, costs and compensation, in the event of the revocation of provisional orders of execution.

18. *Translators' note:* Title IX and Article 46.2 relate only to “*exequatur*”, (“recognition”) of an award. The enforcement of a foreign award, after recognition, follows the procedure established in the Civil Procedure Law 1/2000 for the enforcement of domestic judicial decisions.

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

Repeal Provisions. Repeals

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

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

1. Sub-paragraph 2^o of Paragraph 2 of Article 517 shall be amended as follows:

“2^o. The arbitral awards or arbitral decisions.”

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

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

3. A new Sub-paragraph 4 is added to Paragraph 1 of Article 559, in the following form:

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

Second Final Provision. Jurisdictional Authority

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

Third Final Provision. Entry into Force

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

Madrid, 23rd of December, 2003.

ADDITIONAL AND FINAL PROVISIONS
OF THE ARBITRATION REFORM LAW 11/2011

Additional Provision: Legal disputes in the General Administration of the State and its public organizations

1. The relevant legal disputes that arise between the General Administration of the State and any of the public entities regulated in title III and in the ninth additional provision of Law 6/1997 of 14 April, relating to the organization and functioning of the General Administration of the State, or the Management Entities and Common Services of the Social Security or other state entities regulated by specific legislation that are determined by means of regulation, or between two or more of those Entities, shall be

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resolved by the proceedings provided for in this provision without being able to seek administrative or judicial means to resolve these disputes.

Similarly, this procedure shall be applicable to the legal disputes that arise between state corporations and public sector state foundations with their supervising Ministry, the Director-General of Patrimony or the organizations or public entities that hold the totality of their share capital or grant, except where internal mechanisms for the resolution of disputes are established.

2. For the purposes of this section, relevant legal disputes shall be those that, regardless of their amount, generate or could generate a long number of claims that have an economic amount of at least € 300,000 or that, in the judgment of one of the parties, is of essential relevance to the public interest.

3. When a dispute arises, the parties involved shall immediately notify it to the Government Commission for the Resolution of Administrative Disputes.¹⁹ This Commission will be presided by the Minister of the Presidency and will have as *ex officio* members the Minister of the Economy and Revenue and the Minister of Justice, with the latter also designating from within his scope the authority that shall act as the secretariat of the Commission. The Commission shall include the Minister or Ministers of the Departments affected by the dispute, on the terms to be fixed by regulation.

4. The Commission shall request the technical and legal reports that it considers necessary for the better understanding of the debated question. The secretariat of the Commission shall prepare the appropriate proposals of decision.

5. The Government Commission for the Resolution of Administrative Disputes shall issue a decision binding on the parties establishing the measures that each of them shall adopt to resolve the conflict or dispute. The decision of the commission will not be subject to any appeal to the Courts of Justice by the parties to the dispute.

6. This dispute resolution procedure will not apply:

- a) To questions of a criminal character, except in relation to the exercise of civil actions derived from crimes or offences.
- b) To questions of financial liability within the jurisdiction of the *Tribunal de Cuentas*,²⁰ subject to its specific regulatory legislation.
- c) To questions of responsibilities between distinct authorities within the same public Administration, which shall be governed by their specific provisions.
- d) To questions derived from the controls exercised by the Intervención General de la Administración del Estado, governed specifically by Law 47/2003, of 26 November, of General Supply, in the Law 38/2003, of 17 November, of General Subsidy, and other legislation implementing them.

First Final Provision: Modification of the Civil Procedure Law approved by Royal Decree of 3 February 1881

[Repealed by the Single Repeal Provision of Law 29/2015 of International Legal Cooperation in Civil Matters]

19. *Translators' note*: "Comisión Delegada del Gobierno para la Resolución de Controversias Administrativas", in the original Spanish.

20. *Translators' note*: The *Tribunal de Cuentas* is the administrative tribunal responsible for the audit and supervision of public accounts.

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Second Final Provision: Modification of the Civil Procedure Law 1/2000 of 7 January

The first paragraph of Article 722 is modified so that it shall have the following wording:²¹

“A person who proves to be party to an arbitration agreement shall be able to request precautionary measures from the Courts prior to the arbitral proceedings. They may also be requested by a person who proves to be a party to pending arbitral proceedings in Spain; or where applicable, to have requested the judicial assistance referred to in Article 15 of the Arbitration Law 60/2003, of 26 December; or in the case of an institutional arbitration, to have submitted the due application or request to the appropriate institution according to its Rules.”

Third Final Provision: Modification of Law 22/2003, of 9 July, of Insolvency

One. Proviso 4º of Article 8 is modified:²²

“4º. Any precautionary measure that affects the estate of the insolvent except those adopted in proceedings excluded from the jurisdiction [of the Commercial Court] in Paragraph 1 of this precept and, where applicable, in accordance with the provisions of Article 52, those adopted by arbitrators in arbitral proceedings, without prejudice to the jurisdiction of the judge to order their suspension, or request their release, when the judge considers they could be prejudicial to the administration of the insolvency.”

Two. Paragraph 1 of Article 52 shall have the following wording:²³

“1. The declaration of insolvency, by itself, does not affect the agreements to mediate nor the arbitral agreements made by the insolvent. When the court with jurisdiction considers that these agreements could be prejudicial to the administration of the insolvency it may order the suspension of their effects, always without prejudice to the provisions of international treaties.”

Fourth Final Provision: Jurisdictional Title

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

Fifth Final Provision: Entry into force

This Law shall enter into force twenty days after its publication in the “*Boletín Oficial del Estado*”.²⁴

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21. *Translators’ note:* Art. 722 of the Civil Procedure Law 1/2000 is entitled “Precautionary measures in arbitral proceedings and foreign litigation”. The second paragraph of this article, which is unchanged, relates to precautionary measures in support of foreign arbitral or judicial proceedings.
 22. *Translators’ note:* Art. 8 of the Insolvency Law 22/2003 relates to jurisdiction over insolvency, and provides that the Commercial Court has sole and exclusive jurisdiction over a list of six aspects of an insolvency, including proviso 4.
 23. *Translators’ note:* Art. 52 forms part of the section dealing with the effects of insolvency on individual actions and is entitled “Arbitral Proceedings”.
 24. *Translators’ note:* The date of publication in the *Boletín Oficial del Estado* (Official Gazette) was 21 May 2011.

ANNEX II

THE PROCEDURE FOR THE RECOGNITION OF FOREIGN ARBITRAL AWARDS IN SPAIN*

Law of International Co-operation in Civil Matters (Law 29/2015)(Excerpts)

TITLE V. THE RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS AND FOREIGN PUBLIC DOCUMENTS, THE RECOGNITION PROCEEDING AND REGISTRATION IN PUBLIC REGISTRIES

CHAPTER I. GENERAL PROVISIONS

Article 41. Scope of application

1. Final foreign decisions in a contentious proceeding shall be capable of recognition and enforcement in Spain in accordance with the provisions of this title.

2. Final foreign decisions adopted within the framework of a proceeding of voluntary jurisdiction shall also be capable of recognition and enforcement in accordance with the provisions of this title.

3. [...]

4. Interim and provisional measures shall only be capable of recognition and enforcement when their denial would suppose an infringement of effective judicial protection, and provided that they were adopted after the hearing of the opposing party.

Article 42. Recognition Proceeding

1. The proceeding for the specific purpose of declaring the recognition of a foreign judicial decision and, where appropriate, the authorization of its enforcement, shall be called a recognition proceeding.¹

2. [...]

CHAPTER IV. RECOGNITION PROCEEDING

Article 52. Jurisdiction

1. The Courts of First Instance at the domicile of the party against which recognition or enforcement is sought, or of the person to whom the effects of the foreign judicial decision refer, shall have jurisdiction in respect of requests for recognition. Alternatively, the territorial jurisdiction shall be determined by the place of enforcement or by the place where the decision must take effect. In the latter case,

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1. *Translator's note*: The Spanish text uses the Latin "*exequátur*" rather than the Spanish "*reconocimiento*" to identify the recognition proceeding.

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jurisdiction shall reside with the Court of First Instance before which the request for recognition was filed.²

2. The jurisdiction of the Commercial Courts to hear requests for the recognition of foreign judicial decisions dealing with matters within their jurisdiction shall be determined in accordance with the criteria established in paragraph 1.

3. Where the party against whom the recognition is sought is subject to insolvency proceedings in Spain and the foreign decision is related to matters within the jurisdiction of the insolvency judge, the jurisdiction to hear the request for recognition shall reside with the insolvency judge and shall follow the incidental insolvency procedure.

4. The Spanish courts shall review *ex officio* their jurisdiction in these proceedings.

Article 53. Availability of Legal Aid
[...]

Article 54. Procedure

1. The recognition procedure, in which the parties should be represented by a court agent³ and assisted by a lawyer, shall be initiated by a claim made by any person that may demonstrate a legitimate interest. The claim for recognition and the request for enforcement may be made in the same pleading. However, enforcement shall not take place until a decision has been made authorising recognition.

2. Interim measures to guarantee effective judicial protection may be requested in accordance with the provisions of the Law of Civil Procedure.

3. The claim should be directed to the party or parties against which the claimant seeks to enforce the foreign judicial decision.

4. The claim shall comply with the requisites of Article 399 of the Law of Civil Procedure and must include:

- a) The original or certified copy of the foreign decision, duly legalized or apostilled.
- b) The document that demonstrates where the decision was issued by default, the delivery or notification of service or the equivalent document.
- c) Any other document demonstrating the finality and enforceability, where applicable, of the foreign decision in the country of origin, which may appear in the decision itself or in the law applied by the tribunal of origin.
- d) The relevant translations in accordance with Article 144 of the Law of Civil Procedure.

5. The claim and accompanying documents shall be reviewed by the Judicial Secretary, who shall issue an order of admission, and forward them to the respondent in

2. *Translator's note:* However, in respect of the recognition of foreign arbitral awards and decisions, note that there is a specific jurisdictional provision in Art. 8(6) of the Arbitration Law that provides that jurisdiction in respect of the recognition of awards and foreign arbitral decisions shall reside with the Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Community of the domicile or place of residence of the party against whom recognition is sought or of the domicile or place of residence of the person to whom they apply, with the territorial jurisdiction alternatively determined by the place of enforcement or where those awards or arbitral decisions ought to take effect.

3. *Translator's note:* Spanish "*procurador*".

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order that an opposition may be filed within a period of 30 days. The respondent's opposition may be accompanied by documents which, *inter alia*, challenge the authenticity of the foreign decision, the correctness of the service of the respondent, [and] the finality and enforceability of the foreign decision.

6. Where the Judicial Secretary identifies a failure to correct a procedural defect or a possible cause of inadmissibility, in accordance with Spanish procedural laws, the relevant court shall be informed so that within ten days the court may rule on admissibility in cases where a possible lack of jurisdiction or competence has been identified or when the claim may have formal defects or the documentation be incomplete without having been rectified by the claimant within the five-day period granted for this purpose by the Judicial Secretary.

7. Once the opposition has been presented, or the time period has passed without presentation, the court shall issue a decision within ten days.

8. The Fiscal⁴ shall always participate in these proceedings, and for this purpose will receive a copy of all procedural communications.

*Article 55. Appeals*⁵

1. The recognition decision shall only be subject to an appeal in accordance with the provisions of the Law of Civil Procedure. If the appealed decision is upheld, the court may suspend enforcement or subject enforcement to the delivery of the appropriate security.

2. There shall be an extraordinary appeal for procedural violation or cassation against the decision issued in the second instance by the Provincial Court in accordance with the provisions of the Law of Civil Procedure.

4. *Translator's note:* "Fiscal" refers to a Spanish judicial officer that corresponds with a public prosecutor or district attorney in the criminal context but has no ready common law equivalent in civil matters such as the recognition of foreign judgments. The functions of the fiscal include the "defence of legality, of the rights of citizens and the public interest protected by Law, *ex officio* or at the request of persons interested" (Article 1 *Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal*).

5. *Translator's note:* Art. 55 only applies to proceedings commenced before the courts identified in Art. 52(1). These appeal provisions do not apply to proceedings for the recognition of foreign arbitral awards because such recognition proceedings take place before the the Civil and Criminal Chamber of the Superior Court of Justice of the Autonomous Communities in accordance with Art. 8(6) of the Arbitration Law, and not the courts identified in Art. 52(1).

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ANNEX III

ACT ON MEDIATION IN CIVIL AND COMMERCIAL MATTERS (Act 5/2012, of 6th July)*

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.

* Official translation, Ministry of Justice. In effect 27 July 2012.

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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.

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Article 8. Neutrality¹

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;

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.

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

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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.

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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.

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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.

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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.

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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

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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.

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