Act 60/2003, of 23rd December on Arbitration

PREAMBLE

I

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

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

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

The Model Law responds to a subtle compromise between the European-continental and Anglo-Saxon legal traditions as a result of a careful study of comparative law. Its wording does not, therefore, respond fully to the traditional canons of our legal system, but it facilitates its dissemination among operators belonging to economic areas with which Spain has active and growing trade relations. The economic agents of these areas will therefore acquire greater certainty about the content of the legal regime of arbitration in Spain, which will facilitate and even encourage the signing of arbitration agreements in which Spain is established as the place of arbitration. The Model Law is more accessible to economic operators in international trade, who are used to greater flexibility and adaptability of the rules to the peculiarities of specific cases arising in very diverse scenarios.

The new law was passed in awareness of the undeniable advances that its predecessor, Law 36/1988, of 5 December 1988, on Arbitration, brought about for the regulation and modernisation of the

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arbitration system in our legal system. During its validity, there has been a notable expansion of arbitration in our country; the type and number of legal relationships, especially contractual ones, for which the parties agree arbitration agreements, has greatly increased; institutional arbitration has become established; uniform practices have been consolidated, especially in international arbitration; a considerable body of doctrine has been generated; and the use of judicial procedures to support and control arbitration has been standardised.

However, the considerations made above reveal that, based on the acquis described above, it is necessary to promote another new and important advance in the regulation of the institution by means of the aforementioned incorporation of our country to the growing list of States that have adopted the Model Law. Moreover, the time that has elapsed since Law 36/1988 came into force has made it possible to detect gaps and imperfections in it.

Arbitration is an institution which, especially in its international commercial aspect, must evolve at the same pace as legal transactions, otherwise it will become outdated. A country's domestic law on arbitration must provide advantages or incentives for natural and legal persons to opt for this means of dispute resolution and for arbitration to take place in the territory of that State and under its rules. Therefore, both the need to improve and monitor the development of arbitration and to accommodate the Model Law make the enactment of this law necessary.

II

The new regulation is systematised in nine titles.

Title I contains the general provisions on arbitration.

Article 1 determines the scope of application of the law on the basis of the following criteria:

Firstly, the provisions contained in international conventions to which Spain is a party are, as could not be otherwise, left untouched.

Secondly, with regard to the contrast between ordinary arbitration and special arbitrations, this law is intended to be a general law, applicable, therefore, in its entirety, to all arbitrations that do not have a special regulation; but also supplementary to arbitrations that do have one, except insofar as their specialities oppose the provisions of this law or unless some legal rule expressly provides for their inapplicability.

Thirdly, with regard to the contrast between domestic arbitration and international arbitration, this law clearly opts for a unitary regulation of both.

Within what has been called the alternative between dualism (that international arbitration is regulated entirely or to a large extent by different rules than domestic arbitration) and monism (that, with few exceptions, the same rules apply equally to domestic and international arbitration), the law follows the monist system. There are few and very justified rules where international arbitration requires a different regulation from domestic arbitration. Even with the awareness that international arbitration often responds to different requirements, this law is based on the assumption - corroborated by the current

trend in the field - that a good regulation of international arbitration must also be good for domestic arbitration, and vice versa. The Model Law, given that it was developed within UNCITRAL/UNCITRAL, is specifically conceived for international commercial arbitration; but its inspiration and solutions are perfectly valid, in the vast majority of cases, for domestic arbitration. This law follows in this respect the example of other recent foreign legislations, which have considered that the Model Law is not only suitable for international commercial arbitration, but for arbitration in general.

Fourthly, the delimitation of the scope of application of the law is territorial. However, there are certain precepts, relating to certain cases of judicial intervention, which must also be applied to arbitrations that take place or have taken place abroad. The criterion, in any case, is also territorial, since these are procedural rules that must be applied by our courts.

Article 2 regulates the matters subject to arbitration on the basis of the criterion of free disposal, as did Law 36/1988. However, it is considered unnecessary for this law to contain any list, even an exemplary one, of matters that are not freely available. It is sufficient to establish that the arbitrability of a dispute coincides with the availability of its subject matter to the parties. In principle, arbitrable matters are matters that are available. It is conceivable that for reasons of legal policy there are or may be issues that are available to the parties and in respect of which it is desired to exclude or limit their arbitrability. But this goes beyond the scope of a general regulation of arbitration and may be the subject of specific provisions in other legal texts.

With regard to the matters subject to arbitration, the rule is also introduced for international arbitration that states and entities dependent on them cannot assert the prerogatives of their legal system. The aim is to ensure that the state is treated in exactly the same way as a private individual.

Article 3 regulates the determination of the international nature of the arbitration, which is relevant for the application of those articles that contain special rules for international arbitrations that take place in our territory. Thus, it is established for the first time in our legal system in which cases an arbitration is international; which should facilitate the interpretation and application of this law in the context of international legal traffic. Furthermore, it should be taken into account that there are international conventions whose application requires a prior definition of international arbitration. The determination of the international character of arbitration substantially follows the criteria of the Model Law. To these it is appropriate to add another: that the legal relationship from which the dispute arises affects the interests of international trade. This is a criterion that has been widely developed in other legal systems, which is intended to cover cases in which, although the elements previously established by the law do not exist, their international nature is unquestionable in the light of the circumstances of the case. On the other hand, the law avoids the confusion that the plurality of domiciles of a person, admitted in other legal systems, could cause when determining whether an arbitration is international or not.

Article 4 contains a series of rules of interpretation, among which those that give content to the legal provisions of this law by referring, at the will of the parties, to that of an arbitration institution or to the content of an arbitration regulation are particularly relevant. Thus, most of the rules of this law are based on the assumption that the autonomy of the will of the parties must prevail. But that will is understood to be made up of the decisions that may be adopted, where appropriate, by the institution administering the arbitration, by virtue of its rules, or those that may be adopted by the arbitrators, by virtue of the arbitration rules to which the parties have submitted. There is therefore a sort of

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integration of the content of the arbitration contract or arbitration agreement, which, as a result of this provision, becomes in such cases a normative contract. Thus, private autonomy in arbitration can be expressed both directly, through the parties' declarations of intent, and indirectly, through the declaration of intent to have the arbitration administered by an arbitration institution or governed by arbitration rules. In this sense, the expression arbitration institution refers to any entity, centre or organisation of the characteristics envisaged that has arbitration rules and, in accordance with them, is dedicated to the administration of arbitrations. However, it is specified that the parties may submit to a specific set of rules without entrusting the administration of the arbitration to an institution, in which case the arbitration rules also integrate the will of the parties.

Article 5 establishes the rules on notifications, communications and computation of time limits, which apply both to the actions aimed at setting the arbitration in motion and to its processing as a whole. The form, place and time of the notifications and communications are regulated. With regard to the calculation of time limits by days, it is stipulated that they are calendar days. This rule is not applicable in judicial proceedings for the support or control of arbitration, where the procedural rules apply, but it does apply to the time limits established, where appropriate, for the initiation of such proceedings, such as, for example, the exercise of the action for annulment of the award.

Article 6 contains a provision on tacit waiver of the powers of challenge, directly inspired - like so many others - by the Model Law, which obliges the parties to the arbitration to promptly and immediately denounce violations of the rules of procedure, i.e., those applicable in the absence of the parties' will.

Article 7, on judicial intervention in arbitration, is a corollary of the so-called negative effect of the arbitration agreement, which prevents the courts from hearing disputes submitted to arbitration. Thus, judicial intervention in matters submitted to arbitration must be limited to the support and control procedures expressly provided for by law.

Article 8 contains, directly or by reference, the rules of objective and territorial jurisdiction for the hearing of all arbitration support and control procedures, even those that are not regulated in this law, but in the Civil Procedure Act. For the exequatur of foreign awards, jurisdiction is attributed to the Provincial Courts, instead of - as until now - to the First Chamber of the Supreme Court, with the aim of relieving the latter and gaining speed.

III

Title II regulates the requirements and effects of the arbitration agreement, without prejudice to the application of the general rules on contracts in all matters not specifically provided for in this law. In general terms, the law attempts to perfect the previous legislation, clarifying certain points that had proved to be problematic.

Some novelties introduced with regard to the formal requirements of the arbitration agreement should be highlighted.

The law reinforces the anti-formalist criterion. Thus, although the requirement that the agreement must be in writing is maintained and the various forms of written record are contemplated, compliance with

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this requirement is extended to arbitration agreements agreed on media that leave a record, not necessarily written, of their content and that allow subsequent consultation. The use of new means of communication and new technologies is thus accommodated and recognised as valid. The validity of the so-called arbitration clause by reference, i.e. a clause that does not appear in the main contractual document, but in a separate document, but is understood to be incorporated into the content of the former by the reference made therein to the latter, is also enshrined. Likewise, the will of the parties as to the existence of the arbitration agreement overlaps with its formal requirements. As regards the law applicable to the arbitration agreement, a solution inspired by a principle of preservation or a criterion more favourable to the validity of the arbitration agreement is chosen. Thus, it is sufficient for the arbitration agreement to be valid under any of the three legal regimes indicated in Article 9(6): the rules chosen by the parties, those applicable to the substance of the dispute or Spanish law.

The law maintains the so-called positive and negative effects of the arbitration agreement. Regarding the latter, the rule is maintained that it must be asserted by the parties and specifically by the defendant through declinatory action. Furthermore, it is specified that the pendency of a judicial proceeding in which declinatory action has been filed does not prevent the arbitration proceeding from being initiated or continued; so that the initiation of a judicial proceeding cannot be used without further ado with the aim of blocking or hindering the arbitration. And it is clarified that the application for interim measures to a court does not in any way imply a tacit renunciation of arbitration, but neither does it simply trigger the negative effect of the arbitration agreement. This clears up any remaining doubts as to the possibility of interim measures of protection being granted by a court in respect of a dispute submitted to arbitration, even before the arbitration proceedings have begun. This possibility is undoubtedly possible in the light of the Code of Civil Procedure, but it is important that it is also provided for in arbitration legislation. Moreover, it covers a possible application for interim measures before a foreign court in respect of an arbitration governed by Spanish law.

IV

Title III is dedicated to the regulation of the figure of the arbitrator or arbitrators. The law prefers the expressions arbitrator or arbitrators to arbitral tribunal, which may cause confusion with judicial tribunals. Moreover, in most of the precepts, the reference to arbitrators includes both cases in which there is an arbitration panel and those in which the arbitrator is the sole arbitrator.

The law chooses to establish that in the absence of an agreement of the parties, a single arbitrator will be appointed. This is an option guided by reasons of economy. As regards the capacity to be an arbitrator, the criterion chosen is that the parties have the greatest freedom, as is the general rule today in the most advanced countries in the field of arbitration: nothing is imposed by law, except in the case of natural persons with full capacity to act. It will be the parties directly or the arbitral institutions which, with complete freedom and without restrictions - not appropriate to the reality of arbitration - will appoint the arbitrators. Only in cases where it is necessary to replace the will of the parties, the law foresees and regulates the situations that may arise in the appointment of arbitrators, in order to avoid the paralysis of the arbitration. In these cases, judicial action is necessary, although the aim is, on the one hand, to ensure that the judicial procedure can be quick and, on the other hand, to provide the judge of first instance with criteria for making the appointment. Examples of the former are the reference to the verbal trial and the non-appealability of the interlocutory decisions that the Court issues in this procedure, as well as the one that proceeds to the designation. An example of the latter is

the rule on the convenience of the sole arbitrator or third arbitrator in international arbitration being of a different nationality to that of the parties. It should also be emphasised that the judge is not called upon in this procedure to carry out, either ex officio or at the request of a party, a control of the validity of the arbitration agreement or a verification of the arbitrability of the dispute, which, if allowed, would unduly slow down the appointment and would empty of content the rule that it is the arbitrators who are called upon to rule, in the first instance, on their own competence. For this reason, the judge must only reject the request for the appointment of arbitrators in the exceptional case of the non-existence of an arbitration agreement, that is, when prima facie he can consider that an arbitration agreement does not really exist; but the judge is not called upon in this procedure to carry out a control of the requirements for the validity of the agreement.

It is the duty of all arbitrators, as well as of whoever has appointed them, to maintain due impartiality and independence vis-à-vis the parties to the arbitration. This is guaranteed by their duty to disclose to the parties any fact or circumstance likely to call into question their impartiality or independence. The reference to the grounds for abstention and disqualification of judges and magistrates is eliminated, as it is considered that they are not always appropriate in arbitration and do not cover all cases, and a general clause is preferred.

With regard to the recusal procedure, the premise is once again the freedom of the parties, either by direct agreement or by reference to arbitration rules. Failing this, it is established that the arbitrator or arbitrators will be the ones to decide on the challenge, without prejudice to the possibility of asserting the grounds for challenge as grounds for annulment of the award. The possibility of going directly to court against the decision rejecting the challenge would undoubtedly have the advantage of a preliminary certainty of impartiality, but it would lend itself to a dilatory use of this power.

It is considered that the cases in which a challenge will be improperly dismissed and will lead to the nullity of the entire arbitration proceedings will be much less frequent than the cases in which immediate claims would be made before the judicial authority with the aim of delaying the proceedings.

The law also deals with other cases that may lead to the dismissal of one of the arbitrators and the appointment of a replacement. The possibility is foreseen that in such cases it may be necessary to repeat proceedings already carried out, but there is no obligation to do so.

V

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

Article 22 establishes the rule, which is crucial for arbitration, that the arbitrators have the power to decide on their competence. It is the rule that the doctrine has baptised with the German expression Kompetenz-Kompetenz and which the 1988 Act already enshrined in less precise terms. This rule covers what is known as the separability of the arbitration agreement from the main contract, in the sense that the validity of the arbitration agreement does not depend on that of the main contract and that the arbitrators have jurisdiction to judge even on the validity of the arbitration agreement. Moreover, the generic term of jurisdiction is to be understood as including not only the issues that strictly speaking are such, but also any issues that may prevent a substantive ruling on the dispute

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(except those relating to the persons of the arbitrators, which have their own treatment). The law establishes the burden that questions relating to the competence of the arbitrators must be raised a limine. It should be emphasised that the fact that one of the parties actively collaborates in the appointment of the arbitrators does not imply any kind of tacit waiver to assert the objective incompetence of the arbitrators. This is a logical consequence of the Kompetenz-Kompetenz rule: if it is the arbitrators who are to decide on their own competence, the party is simply helping to designate the person or persons who may decide on this competence. The contrary would lead the party to an absurd situation: it would have to remain passive during the appointment of the arbitrators in order to be able to later assert its lack of jurisdiction over the dispute. The rule of prior assertion of the arbitrators' competence is reasonably modulated in cases where the late assertion is, in the opinion of the arbitrators, justified, insofar as the party was not able to make such an assertion beforehand and its attitude during the proceedings cannot be interpreted as an acceptance of the arbitrators' competence. It is up to the arbitrators to decide whether the issues relating to their jurisdiction should be resolved prior to or together with the substantive issues.

The law assumes that the arbitrators may make as many awards as they deem necessary, either to resolve procedural or substantive issues; or make a single award resolving all of them.

Article 23 incorporates one of the main novelties of the law: the power of arbitrators to adopt interim measures. This power may be excluded by the parties, either directly or by reference to arbitration rules, but otherwise they are deemed to accept it. The law has considered it preferable not to go into determining the scope of this interim power.

Obviously, arbitrators do not have enforcement powers, so that for the enforcement of the interim measures it will be necessary to resort to the judicial authority, in the same terms as if it were an award on the merits.

However, if within the interim relief activity it is possible to distinguish between a declaratory and an enforceable aspect, this law recognises arbitrators as having the former, unless otherwise agreed by the parties. This rule does not repeal or restrict the possibility, provided for in Articles 8 and 11 of this law and in the Civil Procedure Act, for the interested party to request the adoption of interim measures from the judicial authority. Arbitral and judicial powers in interim relief matters are alternative and concurrent, without prejudice to the principle of procedural good faith.

VI

Title V regulates arbitration proceedings. The law once again starts from the principle of party autonomy and establishes as the only limits to this principle and to the actions of the arbitrators the right of defence of the parties and the principle of equality, which are the fundamental values of arbitration as a process.

Once respect for these basic rules is guaranteed, the rules established on the arbitration procedure are dispositive and are therefore only applicable if the parties have not agreed anything directly or by their acceptance of an institutional arbitration or arbitration rules.

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Thus, the legal policy choices underlying these precepts are always subordinated to the will of the parties.
As far as the place of arbitration is concerned, it should be noted that hearings and deliberations may be held at a place other than the place of arbitration. The determination of the place or seat of arbitration is legally relevant in many respects, but its determination should not imply rigidity for the development of the procedure.

The commencement of the arbitration is fixed at the moment when one party receives the request of the other party to submit the dispute to arbitration. It seems logical that the legal effects of the commencement of arbitration are already produced at that moment, even if the subject matter of the dispute is not perfectly defined. Alternative solutions would allow actions tending to make the procedure more difficult.

The determination of the language or languages of the arbitration is logically up to the parties and, failing that, to the arbitrators. However, unless one of the parties objects, documents may be produced or proceedings may be conducted in a language other than the official language of the arbitration without the need for translation. This enshrines a widespread rule of practice, which allows the production of documents or statements in another language.

In arbitration, the active and passive procedural positions of a court case are not necessarily always reproduced, or not in the same terms. After all, the determination of the subject matter of the dispute, always within the scope of the arbitration agreement, takes place progressively. However, arbitration practice shows that the party initiating the arbitration always formulates a claim against the opposing party or parties and thus becomes the plaintiff, without prejudice to the defendant's right to counterclaim. It therefore seems reasonable that, without prejudice to the freedom of the parties, the arbitration procedure should be structured on the basis of a duality of positions between claimant and respondent. However, this convenience should be made more flexible when it comes to the requirements of the parties' acts in defence of their respective positions. Thus, no requirements are laid down as to the form and content of the parties' pleadings. The function of the claim and defence referred to in Article 29 is merely to inform the arbitrators of the subject matter of the dispute, without prejudice to subsequent pleadings. The rules specific to judicial proceedings do not come into play here as regards the requirements of the claim and defence, the documents to be submitted or the preclusion of the proceedings. The arbitration procedure, even in the absence of agreement by the parties, is configured with great flexibility, in accordance with the requirements of the institution.

This flexibility also applies to the further course of the procedure. The procedure may in certain cases be predominantly written, if the circumstances of the case do not require hearings.

However, hearings for the taking of evidence are the rule. The law also seeks to prevent the parties' inactivity from paralysing the arbitration or jeopardising the validity of the award.

The evidentiary phase of the arbitration is also governed by maximum freedom for the parties and the arbitrators - as long as the right of defence and the principle of equality are respected - and by maximum flexibility. The law establishes only rules on expert evidence, which are of singular importance in contemporary arbitration, applicable in the absence of will of the parties.

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These rules are aimed at allowing both expert opinions issued by experts appointed directly by the parties and those issued by experts appointed, ex officio or at the request of the parties, by the arbitrators, and at guaranteeing due contradiction with regard to the expertise.

Judicial assistance in the taking of evidence is also regulated, which is one of the traditional functions of judicial support for arbitration. The assistance does not necessarily have to consist of the court taking certain evidence; in certain cases, other measures that allow the arbitrators to take the evidence themselves, such as, for example, security measures or requests for the production of documents, will be sufficient.

VII

Title VI is devoted to the award and other possible forms of termination of the arbitration proceedings. Article 34 regulates the important question of which rules are to be applied to the resolution of the merits of the dispute, based on the following criteria: 1.o) The premise is, once again, as in the 1988 Act, the freedom of the parties. 2.o) The rule that the 1988 Act contained in favour of arbitration in equity is reversed. The preference for arbitration at law in the absence of agreement of the parties is the most generalised orientation in the comparative panorama. It is, moreover, highly debatable whether the will of the parties to submit to arbitration, without further specification, can be presumed to include the will to have the dispute settled in equity and not on the basis of the same legal criteria as if it had to be settled by a court. Arbitration in equity is limited to cases where the parties have expressly agreed, either through a literal reference to "equity", or similar terms such as a decision "in conscience", "ex aequo et bono", or that the arbitrator will act as an "amiable compositeur". However, if the parties authorise the decision in equity and at the same time indicate applicable rules of law, arbitrators cannot ignore the latter indication. 3.o) Following the orientation of the most advanced legal systems, the requirement that the applicable law must be related to the legal relationship or to the dispute is abolished, since this is a requirement of diffuse contours and difficult to control. 4.o) The law prefers the expression "applicable rules of law" to "applicable law", insofar as the latter seems to encompass the requirement of reference to a specific legal system of a State, when in some cases it is the rules of several legal systems or common rules of international trade that are to be applied. 5.o) The law does not subject arbitrators to a system of conflict rules.

In the adoption of decisions, in the case of an arbitration panel, and without prejudice to the rules that may be directly or indirectly established by the parties, the logical majority rule is maintained, and in the absence of a majority decision, the chairman decides. The rule is introduced that allows the chairman to decide procedural matters, understood as such, for these purposes, not any matters other than the substance of the dispute, but, to a more limited extent, those relating to mere procedural processing or procedural momentum.

The possibility is provided for the arbitrators to make an award on the basis of the content of a prior agreement reached by the parties. This provision, which could be considered unnecessary - given that the parties have the power of disposal over the subject matter of the dispute - is not, because through its incorporation into an award, the content of the agreement acquires the legal effectiveness of the former. The arbitrators cannot reject this request at their discretion, but only for a legally founded reason.

The law merely provides legal cover for something that is already common in practice and does not merit any objection.

With regard to the content of the award, it is worth highlighting the legal recognition of the possibility of issuing partial awards, which may deal with some part of the substance of the dispute or with other issues, such as the competence of the arbitrators or interim measures.

The law aims to accommodate flexible dispute resolution formulas that are common in arbitration practice. Thus, for example, the question of the defendant's liability can be decided first and only afterwards, if necessary, the amount of the award.

The partial award has the same value as the final award and, with regard to the issue it resolves, its content is invariable.

With regard to the form of the award, it should be noted that - analogous to the provisions of the arbitration agreement - the law not only allows the award to be made in writing on electronic, optical or other media, but also not to be made in written form, provided that in any case its content is recorded and accessible for subsequent consultation. Both in the regulation of the formal requirements of the arbitration agreement and those of the award, the law considers it necessary to admit the use of any technology that meets the aforementioned requirements. Therefore, arbitrations can be carried out using only computer, electronic or digital media, if the parties consider it appropriate.

The law introduces the novelty that the time limit for issuing the award, in the absence of an agreement between the parties, is calculated from the submission of the defence or from the expiry of the time limit for submitting it. This innovation responds to the need for the speed of arbitration to be adapted to practical requirements. A time limit of six months from the acceptance of the arbitrators has in many cases proved impossible to comply with and sometimes forces excessively rapid processing or the omission of certain acts of pleading or, above all, of evidence, due to the requirement to comply with the time limit for issuing the award. The law considers it equally reasonable that the extension of the time limit can be agreed by the arbitrators directly and does not require the agreement of all parties.
One of the reasons for any unjustified delay in deciding the dispute is to be found in the liability of the arbitrators.

With regard to the awarding of costs, certain clarifications have been introduced with regard to their possible content.

The requirement for notarisation of the award is abolished. This requirement is unknown in practically all arbitration legislation, which is why it has been decided not to maintain it, unless one of the parties requests it before the award is notified, as they consider it to be in their interests. The award is therefore valid and effective, even if it has not been notarised, so that the time limit for bringing an action for annulment runs from its notification, without it being necessary for the notarisation, when it has been requested, to precede the notification. Nor is the enforceability of the award dependent on its notarisation, although in the enforcement process, if necessary, the enforced party may, by way of opposition, assert the lack of authenticity of the award, an assumption that can be presumed to be exceptional.

The law contemplates certain forms of abnormal termination of the arbitration proceedings and provides an answer to the problem of the extent of the arbitrators' duty of custody of the proceedings.

In the regulation of the correction and clarification of the award, the time limits are modified to make them more appropriate to reality, and a distinction is made depending on whether the arbitration is domestic or international, given that in the latter case it may well happen that the difficulties of deliberation of the arbitrators in the same place are greater. The figure of the supplement to the award is also introduced to make up for omissions.

VIII

Title VII regulates the annulment and revision of the award.

With regard to annulment, the term "appeal" is avoided, as it is technically incorrect. What is initiated by the annulment action is a process of challenging the validity of the award. It is still assumed that the grounds for annulment of the award must be limited and must not, as a general rule, allow for a review of the substance of the arbitrators' decision. The list of grounds and their applicability ex officio or only at the request of a party are inspired by the Model Law. The time limit for bringing an action for annulment is extended, which should not be detrimental to the party that has obtained a conviction in its favour, because the award, even if challenged, is enforceable.

The procedure for bringing an action for annulment seeks to combine the requirements of speed and better defence of the parties. Thus, after a written claim and a written defence, the procedure is that of an oral hearing.

IX

Title VIII is devoted to the enforcement of the award.

In fact, the Civil Procedure Act contains all the rules, both general and specific, on this matter. This law deals only with the possibility of enforcement of the award during the pendency of the proceedings in which the annulment action is brought.

The law chooses to attribute enforceability to the award even if it is challenged. It would make no sense for the enforceability of the award to depend on its finality in a legal system that allows for the provisional enforcement of judgments to a large extent. The enforceability of the non-final award is qualified by the enforced party's power to obtain a stay of enforcement by providing security for what is due, plus the costs and damages arising from the delay in enforcement. This is a regulation that tries to balance the interests of the enforcing party and the enforced party.

X

Title IX regulates the exequatur of foreign awards, consisting of a single provision in which, in addition to maintaining the definition of a foreign award as one that has not been rendered in Spain, a reference

is made to the international conventions to which Spain is a party and, above all, to the New York Convention of 1958. Since Spain has not made any reservation to this convention, it is applicable regardless of the commercial nature of the dispute and whether or not the award was rendered in a State party to the convention. This means that the scope of application of the New York Convention in Spain makes a domestic legal regime of exequatur of foreign awards unnecessary, without prejudice to what other more favourable international conventions may provide.

TÍTLE I
GENERAL PROVISIONS

Article 1. Scope

1. This Law shall apply to arbitrations whose place of arbitration is within Spanish territory, whether domestic or international in nature, without prejudice to the provisions of treaties to which Spain is a party or of Laws containing special provisions on arbitration.

2. The rules contained in sections 3, 4 and 6 of Article 8, in Article 9, except for section 2, in Articles 11 and 23 and in Titles VIII and IX of this Law shall apply even when the place of arbitration is outside Spain.

3. This Law shall be of supplementary application to arbitration provided for in other Laws.

4. Labour arbitrations are excluded from the scope of application of this Law.

Article 2. Matters subject to arbitration

1. Disputes on matters of free disposal in accordance with the law shall be subject to arbitration.

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

Article 3. International arbitration

1. Arbitration shall have an international character when any of the following circumstances apply:

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

   b) The place of arbitration, determined in or pursuant to the arbitration agreement, the place of performance of a substantial part of the obligations of the legal relationship out of which the dispute arises or the place with which the dispute is most closely connected, is outside the State in which the parties have their domiciles.

   c) the legal relationship out of which the dispute arises concerns interests in international trade.

2. For the purposes of the preceding paragraph, if a party has more than one domicile, the domicile which has the closest connection with the arbitration agreement shall apply; and if a party has no domicile, his habitual residence shall apply.

Article 4. Rules of interpretation

Where a provision of this law:

a) leaves to the parties the power to decide a matter freely, that power shall include the power to authorise a third party, including an arbitral institution, to make that decision, except in the case provided for in Article 34.

b) If it relates to the Arbitration Agreement or any other agreement between the parties, it shall be deemed to include the provisions of the Arbitration Rules to which the parties have submitted.

c) Where it relates to the claim, it shall also apply to the counterclaim, and where it relates to the defence, it shall also apply to the defence to that counterclaim, except as provided in Articles 31(a) and 38(2)(a).

Article 5. Notices, communications and computation of time-limits

Unless otherwise agreed by the parties, and excluding in any event acts of communication in legal proceedings, the following provisions shall apply:

a) Any notice or communication shall be deemed to have been received on the day on which it was delivered personally to the addressee or on which it was delivered at the addressee's domicile, habitual residence, place of business or address. Likewise, notification or communication by telex, fax or other electronic, telematic or other similar means of telecommunication that allow for the sending and receipt of documents and documents with a record of their dispatch and receipt and that have been designated by the interested party shall also be valid. If, after reasonable enquiry, none of these places can be discovered, it shall be deemed to have been received on the day on which it was delivered or attempted to be delivered, by registered post or any other means that leaves a record, to the last known domicile, habitual residence, address or place of business of the addressee.

b) The time limits established in this Law shall be calculated from the day following the day on which the notification or communication was received. If the last day of the period is a public holiday at the place of receipt of the notification or communication, it shall be extended until the first following working day. Where a document is to be lodged within a time limit, the time limit shall be deemed to be met if the document is lodged within that time limit, even if it is received after that time limit. Time limits set in days shall be counted in calendar days.

Article 6. Tacit waiver of the powers of challenge

If a party, having knowledge of a breach of any provision of this Act or of any requirement of the arbitration agreement, fails to report it within the time limit provided for this purpose or, failing this, as soon as possible, he shall be deemed to have waived the right to challenge it provided for in this Act.

Article 7. Judicial intervention

No Court shall intervene in matters governed by this Act, except as provided for in this Act.

Article 8. Courts competent for the support and control functions of arbitration

1. For the judicial appointment and removal of arbitrators, the Civil and Criminal Division of the High Court of Justice of the Autonomous Community where the arbitration takes place shall have jurisdiction; if this has not yet been determined, that which corresponds to the domicile or habitual residence of any of the defendants; if none of them has domicile or habitual residence in Spain, that of the domicile or habitual residence of the plaintiff, and if the plaintiff does not have domicile or habitual residence in Spain either, that of his choice.

2. For legal assistance in the taking of evidence, the Court of First Instance of the place of arbitration or of the place where the assistance is to be given shall have jurisdiction.

3. For the judicial adoption of interim measures of protection, the competent court shall be that of the place where the award is to be enforced and, failing that, that of the place where the measures are to be effective, in accordance with the provisions of Article 724 of the Code of Civil Procedure.

4. For the enforcement of arbitral awards or decisions, the Court of First Instance of the place where the award was made shall have jurisdiction, in accordance with the provisions of paragraph 2 of Article 545 of Law 1/2000, of 7 January, on Civil Procedure.

5. The Civil and Criminal Division of the High Court of Justice of the Autonomous Community where the award was rendered shall have jurisdiction to hear the action to set aside the award.

6. For the recognition of foreign arbitral awards or decisions, the Civil and Criminal Division of the High 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 the effects of the award or decision refer, with territorial jurisdiction being determined subsidiarily by the place of enforcement or where the arbitral awards or decisions are to produce their effects.

7. For the enforcement of foreign awards or arbitral decisions, the Court of First Instance shall have jurisdiction according to the same criteria.

TITLE II
THE ARBITRATION AGREEMENT AND ITS EFFECTS

Article 9. Form and content of the arbitration agreement

1. The arbitration agreement, which may take the form of a clause incorporated into a contract or of a separate agreement, shall express the will of the parties to submit to arbitration all or certain

disputes which have arisen or may arise in respect of a particular legal relationship, whether contractual or not.

2. If the arbitration agreement is contained in a contract of adhesion, the validity of the arbitration agreement and its interpretation shall be governed by the rules applicable to such a contract.

3. The arbitration agreement shall be in writing, in a document signed by the parties or in an exchange of letters, telegrams, telexes, faxes or other means of telecommunication recording the agreement.

4. This requirement shall be deemed to be fulfilled if the arbitration agreement is recorded and accessible for subsequent reference in electronic, optical or other media.

5. The arbitration agreement shall be deemed to be incorporated into the agreement between the parties if it is contained in a document to which the parties have referred in any of the forms set out in the preceding section.

6. An arbitration agreement shall be deemed to exist when, in an exchange of statements of claim and defence, its existence is affirmed by one party and not denied by the other.

7. When the arbitration is international, the arbitration agreement shall be valid and the dispute shall be arbitrable if it meets the requirements established by the rules of law chosen by the parties to govern the arbitration agreement, or by the rules of law applicable to the substance of the dispute, or by Spanish law.

Article 10. Testamentary arbitration

Arbitration instituted by testamentary disposition shall also be valid for the settlement of disputes between non-forced heirs or legatees on questions relating to the distribution or administration of the estate.

Article 11. Arbitration agreement and claim on the merits before a court of law

1. The arbitration agreement obliges the parties to comply with its terms and prevents the courts from hearing disputes submitted to arbitration, provided that the party concerned invokes it by declining jurisdiction. The time limit for filing a plea of declinatory jurisdiction shall be within the first ten days of the time limit for answering the claim.

2. The plea of declinatory action shall not prevent the commencement or continuation of the arbitral proceedings.

3. The arbitration agreement shall not prevent either party, prior to the arbitral proceedings or during the arbitral proceedings, from applying to a Court for interim measures of protection, nor shall it prevent the Court from granting such measures.

Article 11 bis. Statutory arbitration

1. Capital companies may submit disputes arising within them to arbitration.

   The insertion in the articles of association of a clause on submission to arbitration shall require the favourable vote of at least two-thirds of the votes corresponding to the shares or holdings into which the capital is divided.

2. The articles of association may provide that the challenge of company resolutions by shareholders or directors shall be subject to the decision of one or more arbitrators, with the administration of the arbitration and the appointment of the arbitrators being entrusted to an arbitration institution.

Article 11 ter. Annulment by award of registrable company resolutions

1. An award declaring the nullity of a registrable agreement shall be entered in the Commercial Register. An extract shall be published in the "Official Gazette of the Commercial Register".

2. In the event that the contested resolution has been entered in the Commercial Register, the award shall also determine the cancellation of its entry, as well as the cancellation of any subsequent entries that contradict it.

TITLE III
THE ARBITRATORS

Article 12. Number of arbitrators

The parties are free to fix the number of arbitrators, provided that it is an odd number. In the absence of agreement, a single arbitrator shall be appointed.

Article 13. Capacity to be arbitrator

Natural persons who are in full exercise of their civil rights may be arbitrators, provided that they are not prevented from doing so by the law to which they may be subject in the exercise of their profession. Unless otherwise agreed by the parties, the nationality of a person shall not preclude him from acting as an arbitrator.

Article 14. Institutional arbitration

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

   a) Public law corporations and public entities that may perform arbitral functions, according to their regulatory rules.

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b) Associations and non-profit entities whose articles of association provide for arbitration functions.

2. Arbitral institutions shall exercise their functions in accordance with their own regulations.

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

Article 15. Appointment of arbitrators

1. Unless otherwise agreed by the parties, in arbitrations not to be decided in equity, where the arbitration is to be decided by a sole arbitrator, the arbitrator acting as such shall be required to be a lawyer.

   Where the arbitration is to be decided by three or more arbitrators, at least one of them shall be required to be a lawyer.

2. The parties may freely agree on the procedure for the appointment of the arbitrators, provided that the principle of equality is not infringed. In the absence of agreement, the following rules shall apply:

   a) In arbitration with a single arbitrator, the arbitrator shall be appointed by the competent Court at the request of any of the parties.

   b) In arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator, who shall act as chairman of the arbitral tribunal. If a party fails to appoint the arbitrator within 30 days after receipt of the other party's request to do so, the appointment of the arbitrator shall be made by the competent Court, at the request of either party. The same shall apply where the appointed arbitrators are unable to agree on the third arbitrator within 30 days of the last acceptance.

      Where there is more than one claimant or respondent, the claimants or respondents shall appoint one arbitrator and the respondents shall appoint another. If the claimants or respondents cannot agree on the arbitrator to be appointed by them, all arbitrators shall be appointed by the competent Court at the request of either party.

   c) In arbitration with more than three arbitrators, all the arbitrators shall be appointed by the competent Court at the request of any party.

3. If it is not possible to appoint arbitrators through the procedure agreed upon by the parties, either party may request the competent Court to appoint the arbitrators or, as the case may be, to take the necessary steps to do so.

4. Claims brought in relation to the provisions of the preceding paragraphs shall be substantiated by means of oral proceedings.

5. The Court may only reject the request made when it considers that, from the documents provided, the existence of an arbitration agreement is not apparent.

6. If the Court appoints arbitrators, it shall draw up a list of three names for each arbitrator to be appointed. In drawing up the list, the Tribunal shall take into account the qualifications required by the parties for arbitrators and shall take the necessary measures to ensure their independence and impartiality. If a sole arbitrator or a third arbitrator is to be appointed, the Court shall also take into account the advisability of appointing an arbitrator of a nationality other than those of the parties and, where appropriate, those of the arbitrators already appointed, having regard to the circumstances of the case. The arbitrators shall then be appointed by drawing lots.

7. No appeal shall lie from the final decisions on the issues referred to the competent court in this Article.

Article 16. Acceptance of arbitrators

Unless otherwise agreed by the parties, each arbitrator shall, within 15 days from the day following the communication of the appointment, communicate his acceptance to the person who appointed him. If no notice of acceptance is received within the limit established, he shall be deemed not to have accepted the appointment.

Article 17. Grounds for abstention and challenge

1. An arbitrator must be and remain during the arbitration independent and impartial. In any case, he may not have any personal, professional or commercial relationship with the parties.

2. A person proposed to be an arbitrator shall disclose all circumstances likely to give rise to justifiable doubts as to his or her impartiality and independence. The arbitrator shall, upon appointment, promptly disclose to the parties any circumstances that have arisen.

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

3. An arbitrator may be challenged only if he or she has circumstances giving rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess the qualifications agreed upon 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 has become aware after his appointment.

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

Article 18. Challenge procedure

1. The parties shall be free to agree upon the procedure for challenging the arbitrators.

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2. In the absence of agreement, a party challenging an arbitrator shall state the reasons for the challenge within fifteen days after becoming aware of the acceptance or of any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. Unless the challenged arbitrator withdraws from his office or the other party accepts the challenge, it shall be for the arbitrators to decide on the challenge.

3. If the challenge made in accordance with the procedure agreed upon by the parties or the procedure set out in the preceding paragraph is unsuccessful, the challenging party may, if appropriate, invoke the challenge when contesting the award.

Article 19. Failure or impossibility to perform the functions of an arbitrator

1. Where an arbitrator is *de jure* or *de facto* prevented from exercising his functions, or for any other reason fails to exercise them within a reasonable time, he shall cease to hold office if he resigns or if the parties agree on his removal. If there is disagreement on removal and the parties have not stipulated a procedure for resolving such disagreement, the following rules shall apply:

   a) The application for removal shall be dealt with by oral proceedings. The application for the appointment of arbitrators may be joined, under the terms provided for in Article 15, in the event that the application for removal is upheld.

      No appeal shall lie against the final decisions handed down.

   b) In arbitration with a plurality of arbitrators, the other arbitrators shall decide the matter. If they are unable to reach a decision, the provisions of the preceding paragraph shall apply.

2. The resignation of an arbitrator from his office or the acceptance by one of the parties of his termination, in accordance with the provisions of this Article or of paragraph 2 of the preceding Article, shall not be deemed to constitute recognition of the validity of any of the grounds mentioned in the aforementioned rules.

Article 20. Appointment of substitute arbitrator

1. Whatever the reason for the appointment of a new arbitrator, the appointment shall be made in accordance with the rules governing the procedure for the appointment of the substitute arbitrator.

2. Once the substitute arbitrator has been appointed, the arbitrators, after hearing the parties, shall decide whether it is necessary to repeat the proceedings already conducted.

Article 21. Liability of arbitrators and arbitral institutions. Provision of funds

1. Acceptance obliges the arbitrators and, where appropriate, the arbitration institution, to faithfully perform the assignment, and if they fail to do so, they shall be liable for any damages caused by bad faith, recklessness or fraud. In arbitrations entrusted to an institution, the injured party shall have a direct action against the same, independently of the actions for compensation that the latter may have against the arbitrators.

The arbitrators or the arbitration institutions on their behalf shall be required to take out civil liability insurance or an equivalent guarantee, in the amount established by regulation. Public entities and arbitration systems integrated or dependent on public administrations are exempt from taking out this insurance or equivalent guarantee.

2. Unless otherwise agreed, both the arbitrators and the arbitration institution may require the parties to make such provisions of funds as they deem necessary to cover the fees and expenses of the arbitrators and those that may arise in the administration of the arbitration. In the absence of provision of funds by the parties, the arbitrators may suspend or terminate the arbitral proceedings. If within the time limit any of the parties has not made such provision, the arbitrators, before agreeing to the termination or suspension of the proceedings, shall inform the other parties, in case they have an interest in making up for it within the time limit they set.

TITLE IV
JURISDICTION OF THE ARBITRATORS

Article 22. Power of the arbitrators to decide on their competence

1. The arbitrators shall have the power to decide on their own jurisdiction, including on objections relating to the existence or validity of the arbitration agreement or any other objections, the validity of which would prevent them from deciding on the merits of the dispute. For this purpose, an arbitration agreement forming part of a contract shall be deemed to be an agreement independent of the other provisions of the contract. The decision of the arbitrators declaring the nullity of the contract shall not in itself entail the nullity of the arbitration agreement.

2. The defences referred to in the preceding paragraph must be raised at the latest at the time the defence is submitted, and the fact of having nominated or participated in the appointment of the arbitrators shall not prevent them from being raised. The plea that the arbitrators have exceeded the scope of their competence shall be raised as soon as the matter exceeding the scope of their competence arises during the arbitral proceedings.

   The arbitrators may only admit defences raised at a later stage if the delay is justified.

3. The arbitrators may decide the defences referred to in this Article either before or together with the other issues submitted to them on the merits of the case. The arbitrators' decision may only be challenged by means of an action for annulment of the award in which it was made. If the decision rejects the defences and was adopted beforehand, the exercise of the action for annulment shall not suspend the arbitration proceedings.

Article 23. Power of the arbitrators to order interim measures of protection

1. Unless otherwise agreed by the parties, the arbitrators may, at the request of either party, grant such interim measures of protection as they deem necessary in respect of the subject-matter of the dispute. The arbitrators may require sufficient security from the applicant.

2. Arbitral decisions on interim measures, whatever form they may take, shall be subject to the rules on annulment and enforcement of awards.

TITLE V
THE CONDUCT OF ARBITRAL PROCEEDINGS

Article 24. Principles of equality, hearing and adversarial proceedings

1. The parties shall be treated equally and each party shall be given a fair opportunity to present its case.

2. The arbitrators, the parties and the arbitral institutions, if any, are bound to keep confidential the information which comes to their knowledge through the arbitral proceedings.

Article 25. Determination of the procedure

1. Subject to the provisions of the preceding Article, the parties shall be free to agree upon the procedure to be followed by the arbitrators in their proceedings.

2. In the absence of agreement, the arbitrators may, subject to the provisions of this Act, conduct the arbitration in such manner as they consider appropriate. This power of the arbitrators includes the power to decide on the admissibility, relevance and usefulness of the evidence, on the taking of evidence, even on their own motion, and on its assessment.

Article 26. Place / Seat of arbitration

1. The parties are free to determine the seat of arbitration. In the absence of agreement, it shall be determined by the arbitrators, taking into account the circumstances of the case and the convenience of the parties.

2. Without prejudice to the provisions of the preceding paragraph, the arbitrators may, after consulting the parties and unless otherwise agreed by them, meet at any place they deem appropriate to hear witnesses, experts or the parties, inspecting goods or documents, or examining persons. The arbitrators may hold deliberations at any place they deem appropriate.

Article 27. Commencement of arbitration

Unless otherwise agreed by the parties, the date on which the respondent receives the request to submit the dispute to arbitration shall be deemed to be the date on which the arbitration commences.

Article 28. Language of arbitration

1. The parties shall be free to agree on the language or languages of the arbitration. In the absence of agreement, and when the circumstances of the case do not allow the question to be delimited, the arbitration shall be conducted in any of the official languages of the place where the proceedings

take place. The party alleging ignorance of the language shall have the right to a hearing, contradiction and defence in the language used, without this allegation entailing the paralysation of the proceedings.

Unless otherwise provided in the agreement of the parties, the language or languages established shall be used in the written pleadings of the parties, in the hearings, in the awards and in the decisions or communications of the arbitrators, without prejudice to the provisions of the first paragraph.

In any case, witnesses, experts and third parties who intervene in the arbitration proceedings, both in oral and written proceedings, may use their own language. In oral proceedings, any person with knowledge of the language used may be authorised to act as interpreter, subject to an oath or promise by the interpreter.

2. The arbitrators, unless any of the parties object, may order that, without the need for translation, any document be submitted or any action carried out in a language other than the language of the arbitration.

Article 29. Claim and statement of defence

1. Within the period of time agreed upon by the parties or determined by the arbitrators, and unless the parties have agreed otherwise with respect to the contents of the claim and defence, the claimant shall state the facts relied upon, the nature and circumstances of the dispute and the relief sought, and the respondent may respond to the relief sought. The parties may, in making their pleadings, produce any documents which they consider relevant or refer to documents or other evidence which they intend to produce or adduce.

2. Unless otherwise agreed by the parties, either party may amend or supplement its claim or defence during the course of the arbitral proceedings, unless the arbitrators consider it inappropriate on account of the delay in making it.

Article 30. Form of the arbitral proceedings

1. Unless otherwise agreed by the parties, the arbitrators shall decide whether hearings shall be held for the presentation of submissions, taking of evidence and delivery of conclusions, or whether the proceedings shall be conducted in writing only. However, unless the parties have agreed that no hearings shall be held, the arbitrators shall schedule hearings at an appropriate stage of the proceedings if either party so requests.

2. The parties shall be summoned to all hearings sufficiently in advance and may participate in them directly or through their representatives.

3. All written submissions, documents and other instruments that a party submits to the arbitrators shall be communicated to the other party. Documents, expert opinions and other evidentiary instruments on which the arbitrators may base their decision shall also be made available to the parties.

Article 31. Failure of the parties to appear

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

a) The claimant fails to submit his claim within the time-limit, the arbitrators shall terminate the proceedings, unless, having heard the respondent, the latter expresses his wish to exercise any claim.

b) The respondent fails to submit his statement of defence within the time limit, the arbitrators shall continue the proceedings, without this omission being considered as acceptance or admission of the facts alleged by the claimant.

c) A party fails to appear at a hearing or to submit evidence, the arbitrators may continue the proceedings and make the award on the basis of the evidence before them.

Article 32. Experts appointed by arbitrators

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

2. Unless otherwise agreed by the parties, an expert shall, at the request of a party or when the arbitrators consider it necessary, after the presentation of his or her report, participate in a hearing at which the arbitrators and the parties, themselves or with the assistance of experts, may question him or her.

3. The provisions of the preceding paragraphs shall be without prejudice to the right of the parties, unless otherwise agreed, to provide expert opinions by freely appointed experts.

Article 33. Judicial assistance in the taking of evidence

1. The arbitrators or any of the parties with their approval may request the competent Court for assistance in the taking of evidence, in accordance with the rules applicable to it on the taking of evidence. Such assistance may consist in the taking of evidence before the competent court or in the adoption by the court of the specific measures necessary to enable the evidence to be taken before the arbitrators.

2. If requested to do so, the Tribunal shall conduct the taking of evidence under its sole direction. Otherwise, the Court shall confine itself to agreeing on the relevant measures. In both cases, the Court Registrar shall provide the applicant with a record of the proceedings.

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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 authorised them to do so.

2. Without prejudice to the provisions of the preceding paragraph, where the arbitration is international, the arbitrators shall decide the dispute in accordance with the rules of law chosen by the parties. Any indication of the law or legal system of a particular State shall, unless otherwise expressed, be construed as referring to the substantive law of that State and not to its conflict of laws rules.

   If the parties do not indicate the applicable rules of law, the arbitrators shall apply such rules of law as they deem appropriate.

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

Article 35. Decision-making by a panel of arbitrators

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

2. Unless the parties or the arbitrators have agreed otherwise, the chairman alone may decide questions of organisation, conduct and progress of the proceedings.

Article 36. Award by agreement of the parties

1. If during the arbitral proceedings the parties reach an agreement which puts an end to all or part of the dispute, the arbitrators shall terminate the proceedings with respect to the points agreed upon and, if both parties so request and the arbitrators see no reason to object, shall record such agreement in the form of an award on agreed terms.

2. The award shall be made in accordance with the provisions of the following Article and shall have the same effect as any other award made on the merits of the dispute.

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

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

2. Unless the parties have agreed otherwise, the arbitrators shall decide the dispute within six months of the date of the submission of the statement of defence referred to in Article 29 or of the expiry

of the time limit for the submission of the statement of defence. Unless otherwise agreed by the parties, this time limit may be extended by the arbitrators by reasoned decision for a period not exceeding two months. Unless otherwise agreed by the parties, the expiry of the time limit without a final award having been made shall not affect the effectiveness of the arbitration agreement or the validity of the award rendered, without prejudice to any liability that the arbitrators may have incurred.

3. Every award shall be in writing and signed by the arbitrators, who may record their vote for or against it. Where there is more than one arbitrator, the signatures of the majority of the members of the arbitration panel or only that of its chairman shall be sufficient, provided that the reasons for the absence of one or more signatures are stated.

   For the purposes of the provisions of the preceding paragraph, the award shall be deemed to be in writing when its content and signatures are recorded and accessible for subsequent consultation in electronic, optical or any other form.

4. The award shall always state the reasons on which it is based, unless it is an award made on terms agreed by the parties in accordance with the preceding Article.

5. The award shall state the date on which it was rendered and the place of arbitration, determined in accordance with Article 26, paragraph 1.

6. Subject to the agreement of the parties, the arbitrators shall make an award as to the costs of the arbitration, which shall include the fees and expenses of the arbitrators and, where appropriate, the fees and expenses of counsel or representatives of the parties, the cost of the service provided by the institution administering the arbitration and the other expenses incurred in the arbitral proceedings.

7. The arbitrators shall notify the award to the parties in the form and within the period of time agreed upon by them or, failing this, by delivering to each of them a signed copy in accordance with the provisions of paragraph 3, within the same period of time established in paragraph 2.

8. The award may be notarised. Either party may, at its own expense, request the arbitrators, prior to notification, to have the award notarised.

Article 38. Termination of the proceedings

1. Without prejudice to the provisions of the preceding Article on the notification and, where appropriate, the notarisation of the award, and of the following Article on its correction, clarification and supplement, the arbitral proceedings shall terminate and the arbitrators shall cease to hold office with the final award.

2. The arbitrators shall also order the termination of the proceedings when:

   a) The claimant withdraws its claim, unless the respondent objects thereto and the arbitrators recognise a legitimate interest of the claimant in obtaining a final settlement of the dispute.

   b) The parties agree to terminate the proceedings.

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

3. Upon expiry of the time limit set by the parties for this purpose or, failing this, two months from the termination of the proceedings, the obligation of the arbitrators to keep the documents of the proceedings shall cease. Within that period of time, either party may request the arbitrators to forward to it the documents submitted by it. The arbitrators shall grant such a request provided that it does not violate the confidentiality of the deliberations.

Article 39. Correction, clarification, supplementation of the award and overruling of the award

1. Within ten days after the notification of the award, unless the parties have agreed otherwise, either party may, with notice to the other, request the arbitrators to

   a) The correction of any error of computation, clerical, typographical or similar nature.

   b) The clarification of a specific point or part of the award.

   c) The supplementing of the award in respect of claims formulated and not resolved therein.

   d) The rectification of the partial overreaching of the award, when it has been decided on matters not submitted to its decision or on matters not subject to arbitration.

2. After hearing the other parties, the arbitrators shall decide on the requests for correction of errors and clarification within ten days, and on the request for supplementation and rectification of overruling, within twenty days.

3. Within 10 days of the date of the award, the arbitrators may, of their own motion, correct the errors referred to in paragraph a) of section 1.

4. The provisions of Article 37 shall apply to arbitral decisions on correction, clarification, supplementation and overruling of the award.

5. Where the arbitration is international, the periods of 10 and 20 days provided for in the preceding paragraphs shall be periods of one and two months respectively.

TITLE VII
ANNULMENT AND REVISION OF THE AWARD

Article 40. Action to set aside the award

An action for annulment may be brought against a final award under the terms provided for in this title.

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Article 41. Grounds

1. An award may be set aside only if the party seeking setting aside alleges and proves that

   a) That the arbitration agreement does not exist or is invalid.

   b) That it has not been duly notified of the appointment of an arbitrator or of the arbitral proceedings or has been otherwise unable to assert its rights.

   c) That the arbitrators have made a decision on matters not submitted to them.

   d) That the appointment of the arbitrators or the arbitral proceedings have not been in accordance with the agreement of the parties, unless such agreement was contrary to a mandatory rule of this Act, or, in the absence of such agreement, that they have not been in accordance with this Act.

   e) That the arbitrators have ruled on matters not subject to arbitration.

   f) That the award is contrary to public policy.

2. The grounds contained in paragraphs b), e) and f) of the preceding section may be assessed by the Court hearing the annulment action ex officio or at the request of the Public Prosecutor's Office in relation to the interests whose defence is legally attributed to it.

3. In the cases provided for in paragraph 1, subparagraphs c) and e), the annulment shall only affect the decisions of the award on matters not submitted to the arbitrators for decision or not arbitrable, provided that they can be separated from the other matters.

4. An action to set aside the award shall be brought within two months of its notification or, if correction, clarification or supplementation of the award has been requested, of the notification of the decision on such request, or of the expiry of the time-limit for its adoption.

Article 42. Procedure

1. The action for annulment shall be heard through the channels of the oral proceedings, without prejudice to the following specialities:

   a) The claim shall be presented in accordance with the provisions of Article 399 of Law 1/2000, of 7 January, on Civil Procedure, accompanied by the documents supporting its claim, the arbitration agreement and the award, and, where appropriate, shall contain the proposal of the means of proof whose practice the claimant is interested in.

   b) The Court Clerk shall transfer the claim to the respondent, so that he may reply within twenty days. In the defence, accompanied by the documents in support of his opposition, he shall set out all the evidence he intends to adduce. The plaintiff shall be served with this pleading and the

accompanying documents so that he may submit additional documents or propose the production of evidence.

c) Once the claim has been answered or the corresponding time limit has expired, the Court Registrar shall summon the parties to the hearing, if so requested by the parties in their pleadings and defence. If in their pleadings they have not requested a hearing, or if the only evidence proposed is that of documents, and these have already been produced in the proceedings without being challenged, or in the case of expert reports, ratification is not necessary, the Court shall issue a judgment without further formality.

2. No appeal shall lie from the judgment.

Article 43. *Res judicata* and review of awards

The award produces the effects of *res judicata* and only the action for annulment can be brought against it and, where appropriate, a review can be requested in accordance with the provisions of Law 1/2000, of 7 January, on Civil Proceedings for final judgements.

TITLE VIII
ENFORCEMENT OF THE AWARD

Article 44. Applicable rules

The enforcement of awards shall be governed by the provisions of the Code of Civil Procedure and this title.

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

1. The award is enforceable even if an action for setting aside has been brought against it. However, in such a case the respondent may apply to the competent court for a stay of enforcement, provided that he furnishes security for the value of the award plus any damages which may result from the delay in enforcing it. The security may be constituted in any of the forms provided for in the second paragraph of section 3 of Article 529 of the Code of Civil Procedure. Once the application for a stay has been lodged, the Court, after hearing the claimant, shall decide on the security. No appeal shall lie against this decision.

2. The Court Clerk shall lift the stay and order the continuation of enforcement when the Court is satisfied that the action for annulment has been dismissed, without prejudice to the right of the claimant to request, where appropriate, compensation for damages caused by the delay in enforcement, through the channels provided for in Articles 712 et seq. of the Code of Civil Procedure.

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3. The Court Clerk shall lift the enforcement, with the effects provided for in Articles 533 and 534 of the Code of Civil Procedure, when the Court is informed that the action for annulment has been upheld.

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TITLE IX
EXEQUATUR OF FOREIGN AWARDS

Article 46. Foreign status of the award. Applicable rules

1. A foreign award is defined as an award rendered outside Spanish territory.

2. The exequatur of foreign awards shall be governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10th June 1958, without prejudice to the provisions of other international conventions more favourable to its concession, and shall be substantiated according to the procedure established in the civil procedural system for judgments handed down by foreign courts.

Sole additional provision. Consumer arbitration

This law shall be of supplementary application to the arbitration referred to in Law 26/1984, of 19th July, General Law for the Defence of Consumers and Users, which in its implementing regulations may establish the decision in equity, unless the parties expressly opt for arbitration in law.

Sole transitional provision. Transitional regime

1. In cases in which, prior to the entry into force of this Act, the defendant has received the request to submit the dispute to arbitration or the arbitration proceedings have been initiated, the latter shall be governed by the provisions of Act 36/1988, of 5 December 1988, on Arbitration. However, the rules of this Act relating to the arbitration agreement and its effects shall apply in all cases.

2. Awards made after the entry into force of this Act shall be governed by the rules of this Act relating to annulment and review.

3. Proceedings for the compulsory enforcement of awards and for the exequatur of foreign awards which are pending at the entry into force of this Act shall continue to be conducted in accordance with the provisions of Act 36/1988, of 5 December 1988, on Arbitration.

Sole derogatory provision. Derogations

Law 36/1988 of 5 December 1988 on Arbitration is hereby derogated.

First final provision. Amendment of Law 1/2000, of 7 January, on Civil Procedure

1. Number 2 of paragraph 2 of article 517 shall be worded as follows: "2. Arbitration awards or decisions".

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2. A new paragraph is added to number 1 of paragraph 1 of Article 550 with the following wording: "When the certificate of title is an award, it shall also be accompanied by the arbitration agreement and the documents accrediting the notification of the award to the parties".

3. A number 4 is added to paragraph 1 of article 559 with the following wording: "4. If the enforceable certificate of title is an arbitration award which has not been notarised, the lack of authenticity of the award.

Second final provision. Empowerment of powers

This Act is enacted under the exclusive competence of the State in matters of commercial, procedural and civil legislation, established in Article 149.1.6.a and 8.a of the Constitution.

Third final provision. Entry into force

This Act shall enter into force three months after its publication in the Official State Journal.

Madrid, 23rd December 2003

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