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## Spain's Consolidated Arbitration Law

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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.

### 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  [page "49"](#) 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

## Document Information


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### Subject Matter of Arbitration

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

#### Article 3


### International Arbitration

1. An arbitration is international whenever any of the following circumstances exist:
  - a) that, at the time of the conclusion of the arbitration agreement, the parties have their domiciles in different States.
  - b) that the place of arbitration, determined in accordance with the arbitration agreement, the place of performance of a substantial part of the obligations of the legal relationship from which the dispute arises, or the place with which the dispute is most closely connected, is situated outside the State in which the parties have their domiciles.
  - c) that the dispute arises from a legal relationship which concerns interests of international commerce.
2. For the purposes of the preceding paragraph, if a party has more than one domicile, the domicile shall be that which has the closest relationship to the arbitration agreement; and if a party has no domicile, it shall be 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 authorising a third party, including an arbitral institution,  [page "50"](#) to make that determination, except in respect of the matters set out in Article 34.
- b) refers to the arbitration agreement or to any other agreement between the parties, such agreement includes the provisions of any arbitration rules to which the parties have submitted themselves.
- c) refers to a claim, it will also apply to a counterclaim, and where it refers to a defence, it will also apply to a defence to such counterclaim, except in respect of paragraph a) of Article 31 and subparagraph a) of paragraph 2 of Article 38.

#### Article 5


### Notifications, Communications and Calculations of Time

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

- a) Any notification or communication is deemed to have been received on the day it is delivered to the addressee personally, or the day on which it is delivered at his domicile, habitual place of residence, place of business or mailing address. Likewise, notifications or communications made by telex, fax, or other means of telecommunications of electronic, telematic or similar nature that enable pleadings and documents to be sent and received with verification of their sending and receipt, in accordance with what has been designated by the addressee, shall be valid. If none of these addresses can be found after making a reasonable inquiry, the notification or communication is deemed to have been received on the day it is delivered or its delivery was attempted, by registered letter or any other verifiable means, at the addressee's last-known domicile, habitual place of residence, mailing address or place of business.
- b) The periods of time specified in this 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 Challenge <sup>((1))</sup>**

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  [page "51"](#) 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 Court <sup>((2))</sup> 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.
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.  [page "52"](#)

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 estándar form agreement, its validity and its interpretation shall be governed by the rules applicable to these contracts.
3. The arbitration agreement shall be verifiable in writing, in a document signed by the parties or in an exchange of letters, telegrams, telex, facsimile or any other means of telecommunications that provides a record of the agreement.

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

type of format.

4. The arbitration agreement appearing in a document to which the parties have expressly referred in any of the forms specified in the preceding paragraph shall be deemed incorporated into the contract.
5. There is an arbitration agreement when in an exchange of statements of claim and defence the existence of an arbitration agreement is alleged by one party and not denied by the other.
6. In respect of international arbitration, the arbitration agreement shall be valid and the dispute shall be capable of arbitration if it complies with the requirements established by the juridical rules <sup>((3))</sup> chosen by the parties to govern the arbitration agreement, or the juridical rules applicable to the merits of the dispute, or Spanish law.

Article 10

### Testamentary Arbitration

Arbitration may be validly provided for in a testamentary disposition to resolve disputes between beneficiaries or legatees <sup>((4))</sup> in matters relating to the distribution or administration of the estate.

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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 <sup>((5))</sup>, or within the first ten days after the summons to the hearing, for those that are brought by verbal proceedings <sup>((6))</sup>.

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*" <sup>((7))</sup> 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.

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### Title III. The Arbitrators <sup>((8))</sup>

Article 12

### Number of Arbitrators

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

Article 13

### Capacity to Act as an Arbitrator

All natural persons in full possession of their civil rights may act as arbitrators, provided that they are not restricted by the legislation applicable to them in the exercise of their profession. Unless otherwise agreed by the parties, no person shall be prevented by reason of 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 freely agree on the procedure for the appointment of the arbitrators, provided that there is no violation of the principle of equal treatment. In the absence of any agreement, the following rules shall apply:

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

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


- c) In arbitrations with more than three arbitrators, all shall be nominated by the competent court upon request of any of the parties.
3. If it is not possible to appoint the arbitrators by the procedure agreed upon by the parties, any of the parties may apply to the competent court for the nomination of the arbitrators or, if appropriate, the adoption of the necessary measures for this purpose.
4. The applications made in accordance with the previous paragraphs shall follow the form of verbal proceedings.
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  [page "56"](#) their 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.

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:  [page "57"](#)

a) The application for termination shall take the form of verbal proceedings. This application may be joined with the request for the nomination of arbitrators, as set out in Article 15, in case the application for termination is granted. There shall be no appeal against the final decisions made.

b) In an arbitration with more than one arbitrator, this question shall be decided

by the remaining arbitrators. If they are unable to reach a decision, the procedure set out in the previous subparagraph shall apply.

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

Article 20

#### **Appointment of Substitute Arbitrator**

1. Irrespective of the reason for the appointment of a new arbitrator, 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 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.

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#### **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.

### 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.

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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.

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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 authorised as interpreter.

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

Article 32

### Expert Appointed by the Arbitrators

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

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

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

## Article 33

**Court Assistance in Taking Evidence**

1. The arbitrators or any party with their approval may request from the competent court assistance in taking evidence, in accordance with the applicable rules on the taking of evidence. This assistance may consist in the taking of evidence before the competent court or in the adoption by the competent court of specific measures necessary in order that the evidence may be taken before the arbitrators.
2. If it is so requested, the court shall take evidence under its exclusive supervision. Otherwise, the court shall limit itself to ordering the relevant measures. In both cases, the judicial secretary <sup>((10))</sup> 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.

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

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

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

## Article 35

**Decision Making by Panel of Arbitrators**

1. Where there is more than one arbitrator, any decision shall be made by a majority, unless otherwise agreed by the parties. If there is no majority, the decision shall be made by the presiding arbitrator.
2. Unless otherwise agreed by the parties or by the arbitrators, the presiding arbitrator may decide by himself questions of order, formalities, and progress <sup>((11))</sup> of the proceedings.

## Article 36

**Award by Agreement of the Parties**

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

## Article 37

**Time, Form, Contents and Notification of the Award**

1. Unless otherwise agreed by the parties, the arbitrators shall decide the dispute in a single award or in as many partial awards as they deem necessary.
2. Unless otherwise agreed by the Parties, the arbitrators shall decide the dispute within six months from the date of the submission of the statement of defence referred 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.

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

Article 38

### Termination of Proceedings

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

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

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

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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 Supplement <sup>((12))</sup> 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.
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.

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## **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 subparagraphs (b), (e) and (f) of the previous paragraph may be raised by the court hearing the application to set aside the award on its own motion or at the request of the Attorney-General in relation to interests the defence of which is conferred on him by law.
3. In the cases referred to in subparagraphs (c) and (e) of paragraph 1, the setting aside shall affect only the determinations of the award on questions not submitted to the decision of the arbitrators or not capable of arbitration, provided that they can be separated from the remainder.
4. An application for setting aside shall be made within two months from the date on which the party making that application had received the award or, if a request for correction, clarification or to supplement the award had been made, from the date on which the party making that application had received the decision on the request, or from the date on which the term for making that decision expired.

Article 42

### **Procedure**

1. The application to set aside an award shall follow the procedure for verbal proceedings, without prejudice to the following special rules:  [page "66"](#)
  - a) The statement of claim shall be filed in accordance with the provisions of Article 399 of the Civil Procedure Law <sup>(13)</sup> accompanied by documentation 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 judgements <sup>((14))</sup>.

### **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.

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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 <sup>((15))</sup>. Once the application for suspension is filed, the court, after hearing the party seeking enforcement, shall fix the security. There is no appeal against this decision.
2. The 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 Articles 712 and subsequent articles of the Civil Procedure Law <sup>((16))</sup>.
3. The judicial secretary shall revoke enforcement, with the consequences set out in Articles 533 and 534 of the Civil Procedure Law <sup>((17))</sup>, 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 Recognition <sup>((18))</sup> 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 favorable  [page "68"](#) 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 the Law 26/1984, of 19 July, General Law for the Defence of Consumers and Users,

and regulations pursuant to this Law may provide for a decision in equity, unless the parties expressly opt for arbitration at law.

### **Transitional Provision. *Transitional Regime***

1. In the cases where before the entry into force of this 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 the 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.
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 the Law 36/1988, of 5 December, of Arbitration.

### **Repeal Provisions. *Repeals***

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

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

1. Subparagraph 2.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 subparagraph 1 of paragraph 1 of Article 550, in the following form:

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

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

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

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### **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 organisations***

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 organisation 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 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 organisations 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 euros 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 <sup>((19))</sup>. 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  [page "70"](#) 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 <sup>((20))</sup>, 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**

Article 955 shall have the following wording:

*"Article 955*

*Without prejudice to treaties and other international rules, the jurisdiction over requests for the recognition and enforcement of foreign judgments and other judicial decisions, as well as foreign mediation agreements, shall reside with the Court of First Instance at the domicile or place of residence of the party against whom recognition or execution is sought, or 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 the sentences and decisions ought to take effect.*

*In accordance with the same criteria established in the previous paragraph the Commercial Court shall have jurisdiction over applications for the recognition and enforcement of foreign judgments and other judicial decisions that relate to their subject matter jurisdiction.*

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*The jurisdiction over the recognition of foreign awards and arbitral decisions resides, in accordance with the criteria established in the first paragraph of this Article, with the Civil and Penal Chambers of the Superior Courts of Justice, without any further appeal against their decision. The jurisdiction over the enforcement of foreign awards and arbitral decisions resides with the Courts of First Instance, in accordance with the same criteria".*

### **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 <sup>((21))</sup> :

*"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 proceeding 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 4.º of Article 8 is modified <sup>((22))</sup> :

*"4.º. 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 <sup>(23)</sup> :

“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”.

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#### 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 149.1.6.<sup>a</sup> and 8.<sup>a</sup> 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*” <sup>(24)</sup> .

Madrid, 20 May 2011

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(1) Article 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 Article 4 of the UNCITRAL Model Law. Article 6 may therefore be more restricted than its UNCITRAL Model Law equivalent.

(2) Although not specified in the Act, the reference here is clearly to the First Instance Court.

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

(4) 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.

(5) “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) “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) The Official Gazette of the Commercial Registry.

(8) 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”.

(9) As at December 2011, no regulation had been promulgated for this purpose.

(10) 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) In the Spanish text, “*ordenación, tramitación e impulso*”.

(12) The Spanish text avoids the reference in Article 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 Article 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.

(13) Article 399 of the Civil Procedure Law 1/2000 sets out the requirements for a statement of claim in ordinary proceedings (see footnote 5 above).

(14) The grounds on which a final judgment may be revised are set out in Article 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) Paragraph 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.

(16) Article 712 *et seq.* of the Civil Procedure Law 1/2000 relate to proceedings for the quantification of damages and losses.

(17) Articles 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) 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.

(19) "*Comisión Delegada del Gobierno para la Resolución de Controversias Administrativas*", in the original Spanish.

(20) The *Tribunal de Cuentas* is the administrative tribunal responsible for the audit and supervision of public accounts.

(21) Article 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) Article 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) Article 52 forms part of the section dealing with the effects of insolvency on individual actions and is entitled "Arbitral Proceedings".

(24) The date of publication in the *Boletín Oficial del Estado* (Official Gazette) was 21 May 2011.

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