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SPANISH ARBITRATION LAW*

LAW No. 36, DECEMBER 5, 1988

Let it be known that Parliament has approved and I hereby sanction the following law:

Replacement of the Private Law of Arbitration currently in force has been called for by diverse sectors and corporations. The Law of December 22, 1953 represented an undeniable advance over the prior situation. However, the Law of 1953 was created in order to solve civil law disputes through arbitration in the strictest sense of the word. Practice has demonstrated that the Law of 1953 is not adequately suited to settle disputes that arise in the course of international commerce.

The Law of December 5, 1988 (the "Law") has nine sections. Title I defines the scope of application of the Law and the subject matter of the arbitration and separates this institution from others. The distinction made in the Law of 1953 between the preliminary contract (*contrato preliminar de arbitraje*) and the submission (*compromiso*) is eliminated. The arbitration agreement (*convenio arbitral*), an instrument which embodies the right of persons to settle disputes according to their free will as recognized in Article 1, may cover disputes that arose in the past or those that may arise in the future. This new legal framework attempts to overcome the relative ineffectiveness of the arbitral clause (or preliminary arbitration contract) that was agreed to between the parties before the dispute had arisen. Formerly, in order to be binding, such arbitral clause had to be judicially confirmed once the dispute arose.

Title II introduces some major changes, such as the principle of informality in the arbitration agreement, the severability or autonomy of the arbitral clause from the main contract and, above all, the ability of the parties to defer the appointment of arbitrators and the organization of the arbitration process to third persons. The will of the parties is given wide latitude, but interim measures for the protection of the weaker party are adopted in case the parties negotiated the contract from unequal bargaining

* Translated by Alejandro M. Garro and Joseph Hill from 293 B.O.E. 34605-09 (Dec. 7, 1988).

positions. For example, an agreement placing any of the parties in a privileged position as to the appointment of arbitrators is impermissible. The Law also governs the effects of an arbitral clause incorporated into an adhesion contract. It also requires the notarization of the arbitration rules adopted by non-profit entities and associations, as well as corporations of public law, to which the parties entrust the administration of the arbitration.

Title III governs the capacity, incompatibility, challenge and removal of arbitrators. If there is a plurality of arbitrators, they shall choose a president of the arbitral tribunal, who shall be responsible for rendering the award if no majority agreement can be reached.

The arbitration procedure, covered in Title IV, is largely governed by the choice of the parties. However, the parties must comply with certain minimal safeguards, especially with regard to the right to be treated equally and the right to be heard and to present the case.

Title V deals with the award, requiring that it be reasonable and that the parties be notified in a timely manner. Another change introduced by the Law is the possibility of correcting clerical mistakes as well as errors of substance.

Title VI governs court intervention throughout the arbitration procedure. Such intervention has been reduced to what is deemed strictly necessary. For the sake of simplification of the arbitration procedure, and pursuant to what is established in other legal systems, if the parties fail to agree on the substance of the dispute submitted to arbitration, the arbitrators shall determine the issues of reference on their behalf. This mechanism will relieve the judiciary of some of the duties related to the judicial confirmation of the arbitral clause.

The arbitration agreement does not imply a waiver by the parties of their fundamental right to judicial protection provided for in Article 24 of the Constitution. Thus, Title VII provides for an appeal for setting aside the award (*recurso de anulación*). This appeal guarantees that the commencement, development and conclusion of the arbitration procedure shall conform to that established in the Law. The Law provides for the award to be set aside when it contravenes public policy (*orden público*). The notion of public policy must be interpreted in light of the principles of our Constitution. The competent body to hear the appeal is the Court of Ap-

peals (*Audiencia Provincial*) of the province where the award was rendered. This mechanism reflects a compromise between those who believe that an appeal against arbitral awards must be filed with the Supreme Court as if it were a recourse against a judicial decision, and those that postulate that the private nature of arbitral awards subjects the appeal to the jurisdiction of the judge of first instance. The Law has opted for this compromise solution, in the belief that a group competent in civil matters, like the Court of Appeals, as regulated by the Organic Law of the Judicial Branch, is competent to set aside an arbitral award. Moreover, the Law provides that while the proceedings for setting aside an award are pending, the interested party may request the adoption of interim measures of protection to guarantee the enforcement of the award.

Title VIII deals with judicial enforcement of arbitral awards. The section is sufficiently detailed so as to provide for the enforcement of the claim and the opposition to the same with sufficient guarantees for both parties.

Title IX provides for jurisdiction of the Supreme Court for the recognition of foreign arbitral awards, and for jurisdiction of the courts of first instance for their enforcement. These provisions shall be applied in the absence of pertinent international treaties that form part of the municipal law, treaties to which Spanish courts have resorted to with relative frequency.

Title X contains rules of private international law relating to the capacity to enter into an arbitration agreement, the validity and effects of the arbitration agreement, and the applicable law in order to decide the dispute in *de jure* arbitration. Pursuant to Article 10.5 of the Civil Code, the criteria for the choice of law requires some degree of connection between the applicable law and the dispute that is the subject matter of the arbitration. This was done in order to avoid the use of arbitration as a means to circumvent the law which must be applied in some international transactions.

The Law brings about a profound reform in arbitration in order to make this institution suitable not only to resolve disputes that arise in complex commercial relationships and isolated civil disputes, but also to regulate conflicts between the parties in consumer disputes. The Committee of Ministers of the Council of Europe, in its Recommendation of December, 1986, referring to certain steps to be taken for reducing the workload of the courts, requires that the governments adopt appropriate measures so that

“in applicable cases, arbitration may constitute a more accessible and efficient alternative to litigation.” Accordingly, the Law serves as a complementary norm, especially from a procedural point of view, to recent laws dealing with insurance, consumer protection, intellectual property and transportation which provides for the use of arbitration as a means of dispute resolution.

The Law provides for a simple and economic means to settle disputes through the free will of the citizens while concurrently guaranteeing equality of the parties. In accordance with Article 9 of the Constitution, the Law removes the obstacles that impede the freedom and equality of the individuals and legal entities.

TITLE I

General Provisions

Article 1

By prior agreement, natural persons or legal entities may submit disputes that have arisen or may arise in the future to the decision of one or more arbitrators, provided that the subject matter of the arbitration may be freely disposed of by the parties according to law.

Article 2

1. The following disputes cannot be subject to arbitration:

a) disputes which have been settled by final judicial decisions, except as to enforcement of such decisions.

b) disputes inseparably linked to others that cannot be subject to arbitration.

c) disputes which, according to law, require the intervention of the Public Ministry (*Ministerio Fiscal*) on behalf and in defense of those who lack legal capacity (*capacidad de obrar*) or legal representation and cannot act for themselves.

2. Labor arbitration is excluded from the scope of application of this Law.

Article 3

1. In order to be valid, arbitration must conform to the provi-

sions of this Law.

2. When two or more people, in a manner different than that prescribed by this Law, agree to the intervention of one or more third persons whose decision they expressly or tacitly accept after it has been rendered, the agreement shall be valid and binding if it meets the requirements necessary for a valid contract.

Article 4

1. The arbitrators shall settle the dispute according to law or their knowledge and understanding, as determined by the parties.

2. If the parties have not expressly opted for *de jure* arbitration, the arbitrators shall decide *ex aequo et bono* (*en equidad*), unless the administration of the arbitration is entrusted to a corporation or association, in which case the arbitration shall be governed by its rules.

TITLE II

The Arbitration Agreement and its Effects

Article 5

1. The arbitration agreement (*convenio arbitral*) shall express the unequivocal will of the parties to submit the settlement of all or some disputes that have arisen or may arise from determined legal relations, whether or not contractual, to the decision of one or more arbitrators. The arbitration agreement shall state that the parties are bound to comply with such a decision.

2. If the arbitration agreement is incorporated into an adhesion contract, the validity of this agreement and its interpretation shall conform to the laws governing this type of contract.

Article 6

1. The arbitration agreement must be in writing. It may consist of a clause incorporated into the main contract or it may be entered into in a separate agreement.

2. The agreement is deemed to be in writing not only when it is in a single written document signed by the parties, but also when it results from the exchange of letters or any other means of communication that furnishes written proof of the will of the par-

ties to submit to arbitration.

Article 7

Arbitration instituted solely on behalf of the testator to settle differences that can arise between heirs or beneficiaries (*legatarios*) for issues related to the distribution or administration of inheritances shall be valid.

Article 8

The nullification of a contract does not necessarily imply the nullification of the arbitration agreement.

Article 9

1. The content of the arbitration agreement may encompass the appointment of arbitrators and the determination of the rules of procedure. If the parties have not agreed on these, the parties may, at any time, add complementary agreements to the content of the arbitration agreement.

2. The parties may refer the appointment of arbitrators to a third person, whether natural or legal.

3. The arbitration agreement shall be null and void if in the agreement one of the parties stands in a privileged position with respect to the appointment of arbitrators.

Article 10

1. The parties may also entrust the administration of the arbitration and the appointment of arbitrators, in accordance with its rules, to:

a) public law corporations (*corporaciones de derecho público*) that may provide arbitration services according to their rules; or

b) non-profit organizations and entities whose bylaws provide for arbitration services.

2. The arbitration rules and their modifications of public law corporations and associations shall be notarized (*se protocolizarán notarialmente*).

3. The corporation or association shall be bound to administer

the arbitration as of the time of its acceptance.

Article 11

1. The arbitration agreement binds the parties to submit to arbitration pursuant to its terms, and it shall prevent judges and courts from hearing disputes that have been submitted to arbitration, provided that the interested party invokes the existence of the arbitration agreement at the earliest opportunity.

2. The parties may waive by agreement their right to arbitration, leaving open the judicial channels. A party shall be deemed to have waived its right to arbitrate when, after the filing of the statement of claim by another party, the first party undertakes any procedural activity other than a timely and proper plea as to the existence of the arbitration agreement.

TITLE III

The Arbitrators

Article 12

1. Any natural person in full enjoyment of his legal rights may serve as an arbitrator as of the time he accepts the appointment.

2. When the dispute is to be settled by *de jure* arbitration, the arbitrators must be practicing attorneys.

3. Those candidates who have some relation to the parties or to the dispute in a way that would establish the possibility of abstention or removal of a judge may not serve as arbitrators without prejudice to what is provided in Article 17.2.

4. Active judges, magistrates and prosecutors may not serve as arbitrators, nor may those who carry out public functions for which they are paid (*retribuidas por arancel*).

Article 13

The number of arbitrators shall be odd. If there are many arbitrators, the appointment of the president of the arbitral tribunal shall be made in accordance with the agreement of the parties. Failing such agreement, the number of arbitrators shall be three, and the president of the tribunal shall be chosen by a majority of arbitrators. If the arbitrators cannot reach an agreement, the eld-

est arbitrator shall serve as president. When the administration of arbitration has been entrusted to a corporation or association, the appointment of the president of the tribunal shall be made in accordance with its rules.

Article 14

The appointment of arbitrators in the case of Article 10.1 shall be carried out in conformity with the rules of the corporation or association, provided that these rules conform to the requirements of this Law and do not allow for the appointment of those who have previously failed to fulfill their functions within the established period, or who have been held liable by a judgment for their unsatisfactory performance in previous arbitrations.

Article 15

1. An arbitrator shall be informed of his appointment in a reliable manner so that he may accept.

2. If the arbitrators have not accepted their appointment in writing within fifteen days from the time of notification, it shall be presumed that they have declined the appointment.

3. The same form and effects apply where the appointment is made through a corporation or association or in the case provided for in Article 9.2.

Article 16

1. The acceptance of the appointment requires the arbitrators and the corporation or association, if applicable, to faithfully fulfill their duties. If they fail to do so, they shall be responsible for the damages caused by their fraud or fault (*dolo o culpa*). In arbitrations entrusted to a corporation or association, the injured party may bring a direct claim against the organization independently of any action which may be brought by the organization against the arbitrators.

2. Unless the parties provide otherwise, the arbitrator as well as the corporation or association may demand from the parties the deposit of funds deemed necessary to cover the fees of the arbitrators and the expenses that may be incurred in the administration of the arbitration.

Article 17

1. Arbitrators may be challenged on the same grounds as judges, subject to the provisions of the following paragraphs.

2. Arbitrators are subject to challenge for reasons that have arisen after their appointment. They may also be challenged for reasons that arose before their appointment when the challenging party has not participated directly in their appointment, or when the challenging party becomes aware of those reasons after the appointment has been made.

3. Those persons, corporations, or associations who are appointed as arbitrators must disclose any circumstances likely to give rise to their challenge as soon as those circumstances become known to them.

Article 18

1. If an arbitrator subject to challenge withdraws from office, another arbitrator shall be appointed according to the rules applicable for the appointment of substitute arbitrators.

2. If an arbitrator does not withdraw subsequent to the challenge, the challenging party may raise the issue of the challenge at the time of petitioning to set aside the award.

Article 19

Whatever the reasons for appointing a substitute arbitrator, the appointment shall be made according to the rules that were applicable to the appointment of the arbitrator that is being replaced.

Article 20

1. The arbitrators may appoint a secretary pursuant to the agreement of the parties.

2. Alternatively, the arbitrators may decide, if they deem it appropriate, who shall carry out the functions of a secretary. In no case may the president of the arbitral tribunal serve as secretary.

TITLE IV

*Proceedings**Article 21*

1. The arbitral proceedings must conform to the provisions of this Law, subject to the basic principles of hearing (*audiencia*), adversariness (*contradicción*) and equality of the parties.

2. The arbitration proceedings shall be conducted in accordance with the agreement of the parties or the rules established by the corporation or association to which the administration of the arbitration has been entrusted. Failing such agreement, or in the absence of such arbitration rules, the arbitrators may conduct the proceedings in such manner as they consider appropriate.

3. The parties may act on their own behalf or they may be represented by a practicing attorney.

Article 22

1. The arbitral proceedings are deemed to commence on the date the arbitrators have notified the parties, in writing, of their acceptance.

2. The inactivity of the parties shall not prevent the rendering of an award nor deprive it of validity.

Article 23

1. A plea that the arbitrators lack jurisdiction (*competencia objetiva*), that the arbitration agreement is nonexistent, null and void, or that it has expired shall be raised when the parties submit their initial pleadings.

2. If the arbitrators accept the plea raised on the grounds set forth in the preceding paragraph, the parties may resort to the courts to settle the issue. A ruling by the arbitrators accepting such plea may not be contested. A ruling by the arbitrators rejecting such plea may be contested by any party in an action to set aside the arbitral award.

3. In any case, the lack of objective jurisdiction of the arbitrators may be established by the courts even though it has not been raised by the parties.

Article 24

1. Failing agreement of the parties, and unless otherwise provided by the applicable arbitration rules, the arbitrators shall determine the place of arbitration as well as the place where any of the arbitral proceedings shall take place and will so inform the parties.

2. Failing agreement of the parties, the arbitrators shall determine the language or languages to be used in the arbitral proceedings and will so inform the parties. They may not select a language that neither party knows or that is not recognized as an official language in the place where the arbitration takes place.

3. The parties may choose a domicile where they may receive all notifications. In absence thereof, the domicile of the interested party or his representative shall be deemed to be his domicile.

Article 25

1. Unless otherwise agreed by the parties, and subject to the limitations in this Law as to the time limit in which to render an award, the arbitrators are not subject to a fixed time period for conducting the arbitral proceedings.

2. However, the arbitrators shall fix the time period within which the parties shall submit their pleadings (*alegaciones*).

Article 26

The arbitrators shall hear, at the initiative of any party or at their own initiative, all the evidence that they deem pertinent and admissible according to law. The parties shall be summoned to all evidentiary hearings, and they or their representatives may intervene in the production of evidence.

Article 27

Pursuant to Article 43, the arbitrators may request the assistance of the judge of first instance of the place where the arbitration takes place in taking evidence that the arbitrators cannot take by themselves.

Article 28

If in the course of arbitration a new arbitrator is substituted for a previous arbitrator, the taking of evidence shall be repeated, unless the substitute arbitrator, by reviewing the record of the proceedings, considers himself to be sufficiently informed of the case.

Article 29

Once the evidence has been produced, the arbitrators may agree to hear the parties or their representatives.

TITLE V

*The Arbitral Award**Article 30*

1. Unless otherwise agreed by the parties, the arbitrators shall render the award within a period of six months, starting from the date that the arbitrators agreed to settle the dispute or from the date that the last substitute arbitrator accepted his office. This period can only be extended by agreement of the parties. The arbitrators must be notified before the expiration of the initial period.

2. If the time period expires and no award has been rendered, the arbitration agreement shall expire and the parties are free to submit the dispute to the courts.

Article 31

Any time prior to the rendering of the award the parties to the arbitration agreement may terminate the arbitration or suspend it for a fixed period of time.

Article 32

1. The award must be rendered in writing. It shall include the personal identification of the arbitrators and the parties, the place where the award was rendered, the dispute submitted to arbitration, a summary of the evidence which has been produced, the pleadings of the parties, and the arbitral decision.

2. In *de jure* arbitration, the arbitrators shall state the reasons

upon which the award is based.

Article 33

1. The award shall be signed by the arbitrators and it may indicate the dissenting opinion of the arbitrators. If one of the arbitrators fails to sign the award, it shall be presumed that the arbitrator whose signature is omitted adheres to the decision of the majority.

2. The award shall be notarized and the parties shall be notified of the award in a reliable manner.

Article 34

The arbitral award, as well as any agreement or ruling of the arbitral tribunal, shall be decided by a majority of votes. If no majority agreement can be reached, the president's vote shall control. If a majority cannot be reached in favor of any decision, the award shall be rendered by the president of the arbitral tribunal.

Article 35

1. The arbitrators shall allocate the costs of arbitration in the award. The costs of arbitration include the fees and expenses duly justified by the arbitrators, the expenses of notarizing and clarifying the award, the costs of notification and production of evidence and, if applicable, the costs of the services rendered by the corporation or association that has been entrusted with administration of the arbitration.

2. Unless otherwise agreed by the parties, each party shall pay its own expenses. Common expenses are to be shared equally, unless the arbitrators decide that one of the parties has acted in bad faith.

Article 36

1. Within five days of the notification of the award, either party may request the arbitrators to correct any errors in computation or copy, any typographical error or any error of similar nature, or to clarify any specific point or omission in the award.

2. The arbitrators shall decide the request within ten days.

The decision shall be notarized and the parties shall be notified in a reliable manner. If the request is not resolved within the stipulated period, the request shall be deemed denied.

Article 37

A final arbitral award shall have the same effects as a final judgment. Recourse against an arbitral award may be made only by a petition for review (*recurso de revisión*), pursuant to what is established by the law of procedure for final judicial decisions.

TITLE VI

Judicial Intervention

Article 38

1. Failing agreement of the parties as to the appointment of the arbitrators, the judicial confirmation of the arbitration shall proceed at the request of any interested party and in accordance with the rules established in the following articles.

2. There shall be no judicial confirmation of the arbitration if any or all of the arbitrators who have been appointed directly by the parties fail to accept the appointment or find it impossible to render the award, or if the corporation or association that has been entrusted with the administration of the arbitration fails to accept the office. In this case, unless the parties reach an agreement, they may resort to the courts in order to settle the dispute.

Article 39

1. The judge of first instance of the place where the award is to be rendered shall have jurisdiction to proceed with the judicial confirmation of the arbitration. Alternatively, at the election of the claimant, the court of competent jurisdiction shall be that of the domicile or habitual residence of any of the respondents.

2. The claimant shall submit a statement of the claim in writing to the judge, indicating the points at issue. The claimant shall annex to the statement of the claim all documents supporting the arbitration agreement.

3. The judge shall proceed in accordance with the formalities provided for oral hearings.

Article 40

1. The failure of the respondent, or some of the respondents or their representatives, to appear shall not suspend the arbitral proceedings.

2. If the claimant, or all of the claimants or their representatives, fail to appear, the arbitral proceedings shall be terminated, unless any of the respondents or their representatives express an interest in the judicial confirmation of the arbitration, in which case the proceedings shall continue.

Article 41

1. When the parties appear before the court, the judge shall hear the parties or their representatives and encourage them to reach an agreement on the appointment of arbitrators.

2. If the parties fail to agree on the arbitrators or the method for their appointment, the judge shall proceed to their appointment through a lottery. The lottery shall be made from among the names included in the list of practicing attorneys of the bar association of the relevant judicial district or of the Lawyers' General Council (*Consejo General de la Abogacía*). The Ministry of Justice may require that those included in the list submit proof to the pertinent bar associations as to their training, experience, and skills.

3. The list of arbitrators shall consist of lawyers with more than five years of practice who have voluntarily applied to be included therein, provided they do not fall under the exceptions set forth in Article 14 and have a favorable personal record.

4. The lottery shall be done with three arbitrators of record and two alternates for each vacancy to be filled. In case of resignation, abstention, challenge, failure or impossibility to act, the first alternate shall take the place of the arbitrator of record and so on.

5. In *de jure* arbitration, if the appointment of arbitrators cannot be made pursuant to the preceding rules, the judge shall appoint practicing lawyers to serve as arbitrators. In the *amiable composition*, the judge shall request the remittance of lists made by professional associations, chambers of commerce, industry and shipping and other corporations. The judge may freely appoint the arbitrators from those included in the lists after hearing the proposals of the parties or in accordance with their agreement.

Article 42

1. The judge may deny the judicial confirmation of the arbitration only if he believes that the furnished documents do not reflect the will of the parties in a clear and unequivocal manner.

2. The ruling on the judicial confirmation of the arbitration shall not pass judgment on the validity of the arbitration agreement and it shall be final.

3. The ruling denying the judicial confirmation of the arbitration is appealable. No appeal may be taken against a ruling of the Court of Appeals. Under Title VII of this Law, the issues that were the object of debate may not be raised as grounds for setting aside the award.

Article 43

Whenever court assistance is necessary in the taking of evidence pursuant to Article 27, the arbitrator or the president of the arbitral tribunal shall request such assistance in writing from the judge of first instance of the place where the judicial summons are to take place or where the evidence is to be produced. The judge shall proceed in accordance with the rules of the Code of Civil Procedure. If requested by the arbitrator, the evidence shall be carried out under the judge's exclusive supervision. A copy of the evidentiary proceedings shall be turned over to the arbitrator who requested the taking of the evidence.

Article 44

The judge of first instance shall refuse to take evidence that does not conform to law. The judge's ruling on the legality of the evidence shall be final.

TITLE VII

*Petition to Set Aside an Award**Article 45*

An arbitral award may only be set aside if:

1. The arbitration agreement is null and void.
2. The formalities and essential principles established by this

Law have not been observed in the appointment of the arbitrators or in the conduct of the arbitral proceedings.

3. The award is rendered after the stipulated time period has expired.

4. The award deals with issues not submitted to arbitration, or the subject matter of the dispute is not capable of settlement by arbitration. In these cases, the award shall be set aside only with regard to those issues not submitted to, or not susceptible to arbitration, provided that these issues can be separated from the main dispute.

5. The award is in conflict with public policy (*orden público*).

Article 46

1. A petition to set aside an award shall be requested from the Court of Appeals of the place where the award was rendered.

2. A petition to set aside an award shall state the reasons on which it is based and shall be filed within ten days after the notification of the award, or after the clarification referred to in Article 36, if so requested by any of the parties.

3. A petition to set aside an award shall state the grounds on which it is based and shall indicate the evidence that is necessary and pertinent.

Article 47

1. A petition to set aside an award shall attach the documents pertinent to the arbitration agreement and the award.

2. The court shall compel the arbitrators to furnish a record of the arbitral proceedings, if such record is necessary and the petitioner was not able to obtain it.

Article 48

1. The other parties may object in writing to the petition to set aside an award within twenty days of receiving a copy of the petition. If necessary, the opposing parties shall submit the evidence that meets the requirements that have been set forth previously.

2. The evidence must be taken within a maximum period of twenty days.

Article 49

1. The parties may request a public hearing within six days of the termination of the period provided for the taking of the evidence. If any of the parties so requests, the court shall provide for a hearing within two days.

2. The Court of Appeals shall rule on the petition to set aside an award within ten days of the time period indicated in the preceding paragraph if there has been no public hearing, or within ten days of the termination of the public hearing. This ruling shall be final.

Article 50

1. After rendering of the award, the interested party may request the judge of first instance for interim protective measures to ensure the enforcement of the award once it becomes final.

2. While granting interim protective measures, the judge may fix the security that he considers appropriate. This ruling shall be final.

3. The request for interim protective measures must be submitted in writing, attaching a copy of the award. The judge shall decide within a period of three days after hearing the parties.

4. Interim protective measures shall be upheld until the ruling on the petition to set aside an award is made.

Article 51

The participation of an attorney or counselor in a petition to set aside an award is mandatory.

TITLE VIII

Enforcement of the Award

Article 52

Arbitral awards rendered in accordance with this Law shall be enforced pursuant to this Title to the extent and within the limits

of Spanish jurisdiction.

Article 53

The award becomes effective as of the time the parties are notified. If the period indicated in Article 46.2 has expired without compliance with the award, its enforcement may be sought before the judge of first instance of the place where it was rendered, in accordance with the procedures established for the enforcement of final judgment and pursuant to the following articles.

Article 54

1. The brief requesting enforcement of an arbitral award must annex a certified copy of each of the award, those documents attesting the notification of the award to the parties, and the arbitration agreement.

2. If applicable, a certified copy of the judicial ruling referred to in Article 49.2 shall also be attached.

Article 55

1. The judge shall give a copy (*dará traslado*) of the petition for enforcement and of the documents attached thereto to the other party. Within four days, the opposing party may raise the defense that a petition to set aside an award is pending pursuant to Title VII, attaching a copy of such petition. In this case, the judge shall issue an order without delay suspending the enforcement of the award until the Court of Appeals has ruled on the petition. If the award is set aside, the judge shall deny the enforcement of the award and shall attach a copy of the ruling referred to in Article 49.2.

2. Aside from the cases provided for in the preceding paragraph, the judge shall issue an order for enforcement of the arbitral award.

3. The orders referred to in the preceding paragraph are final.

TITLE IX

*Enforcement of Foreign Judgments in Spain**Article 56*

1. Foreign arbitral awards shall be enforced in Spain pursuant to the international treaties that form part of the municipal law and, failing this, in accordance with this Law.

2. A foreign arbitral award is one which has not been rendered in Spain.

Article 57

The enforcement of foreign awards may be requested by any of the parties before the Civil Chamber of the Supreme Court (*Sala en lo Civil del Tribunal Supremo*).

Article 58

1. The enforcement of the award shall be carried out pursuant to the rules of civil procedure applicable to the enforcement of foreign judgments.

2. If the enforcement of a foreign award is denied on account of formal irregularities, the interested party may renew the request for enforcement once said defects have been remedied.

Article 59

The court shall refuse enforcement only if the award is in conflict with public policy, or if the award deals with issues that are not capable of settlement by arbitration under Spanish law. Enforcement may also be refused at the request of any party or of the Public Ministry (*Ministerio Fiscal*) if:

a) The arbitration agreement is null and void under the applicable law.

b) The case falls within the purview of Article 45.2, in accordance with the applicable law.

c) The award contains decisions on matters that were not submitted to arbitration.

TITLE X

*Rules of Private International Law**Article 60*

The legal capacity of the parties to enter into an arbitration agreement shall be governed by their personal law (*ley personal*) with regard to the subject matter of the agreement.

Article 61

The validity of the arbitration agreement and its effects are governed by the law expressly chosen by the parties, provided that such law has some connection with the main legal transaction or with the dispute; failing this, by the law applicable to the legal relation resulting from the dispute; failing this, by the law of the place in which the award is to be rendered; and if this place has not been determined, by the law of the place where the parties entered into the arbitration agreement.

Article 62

In *de jure* arbitration, the arbitrators shall decide according to the law expressly chosen by the parties, provided that it has some connection with the main legal transaction or with the dispute; failing this, by the law applicable to the legal relation resulting from the dispute; and, lastly, in accordance with the law which is most appropriate to the circumstances surrounding the dispute.

Article 63

In the absence of a specific provision in this Law, the rules of the Preliminary Title of the Civil Code shall apply to the arbitration agreement, the conduct of the arbitral proceedings, and the rendering of the award.

ADDITIONAL PROVISIONS

First

1. To the extent that the following statutes fail to provide for the regulation of arbitration, this Law shall apply to the arbitra-

tions referred to by Law No. 26 of July 19, 1984, on consumer protection (*defensa de consumidores y usuarios*); Article 34.2 of Law No. 33 of August 2, 1984, on insurance (*seguro privado*); Law No. 16 of July 30, 1987, regarding transportation (*transportes terrestres*); and Article 143 of Law No. 22 of November 11, 1987, regarding intellectual property. The arbitral awards rendered by the arbitral tribunals provided for by these statutes are not required to be notarized.

2. The arbitrations referred to in the preceding paragraph are rendered free of charge.

Second

1. The Government shall provide for the name, composition, features, appointment and territorial scope of the arbitral tribunals and proceedings outlined in the regime provided for in Article 31 of Law No. 26 of 1984.

2. The following paragraph is added to Article 10.1 of Law No. 26 of July 19, 1984 on consumer protection:

The arbitration agreements entered into during the course of the contractual negotiations referred to in this Article shall be effective if they are clear and explicit and meet the other requirements established by law. The refusal of a consumer or user to enter into an arbitration agreement which is different to that provided for in Article 31 of this Law shall not prevent *per se* the making of the main contract.

Third

1. The following shall be added to Article 533 of the Code of Civil Procedure:

“8. The submission of a pending dispute to arbitration.”

2. The exception provided for in Article 1464(10) of the Code of Civil Procedure shall read as follows:

“10. The submission of a pending dispute to arbitration.”

Transitory Provisions

This Law shall apply to arbitration agreements entered into before this Law comes into force unless the arbitral proceedings

had already commenced at that time.

Abrogatory Provisions

1. The Law of December 22, 1953 governing arbitrations of private law is hereby abrogated.

2. Article 1687(4), of Title XXI, Section IX, of the Second Book of the Code of Civil Procedure is hereby abrogated.

3. Chapter 2, Title XIII, of the Fourth Book of the Civil Code is without effect.

4. All provisions in conflict with those included in this Law are hereby abrogated.

Therefore, I order all Spaniards, individuals and authorities as well, to observe and enforce this Law. *Palacio de la Zarzuela*, Madrid, December 5, 1988.

KING JUAN CARLOS I
FELIPE GONZALEZ MARQUEZ, PRESIDENT OF GOVERNMENT.