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EL SALVADORAN ARBITRATION LEGISLATION

I. CODE OF CIVIL PROCEDURE OF EL SALVADOR*

Part One. Civil Proceedings Before Courts of First Instance

Book One. Preliminary Provisions

Title I. Proceedings and Participants

Chapter II. Essential Persons in the Proceedings

Section 3. Arbitral Proceedings

Article 56

Arbitral proceedings are those submitted to arbitrators, who depend exclusively on the will and free choice of the parties for their appointment and performance of their functions.

Article 57

Arbitrators may be either *de jure* arbitrators or *amiables compositeurs*; the latter may be called *árbitros-arbitradores* or *amiables componedores*.

Article 58

De jure arbitrators shall proceed as ordinary judges and conduct their proceedings and render their decisions in accordance with the rules of law. *Amiables compositeurs* shall proceed and render awards *ex aequo et bono* (*según su conciencia*), taking into consideration only truth and good faith (*verdad y buena fe*).

Article 59

With the exception of magistrates (*magistrados*) and judges of first instance, nationals or foreigners over twenty-one years of age

* Constitución y Códigos de la República de El Salvador (1947). Translated by Alejandro M. Garro and Luigi Fernando. Reprinted with their permission.

who are residents of the Republic and are able to read and write may be appointed *de jure* arbitrators or *amiables compositeurs*.

Article 60

No one who has free administration of his property may be deprived of his right to settle his civil disputes by arbitration.

Persons who have no such free administration may settle their disputes by arbitration only in cases, and in conformity with the formalities, provided by the law.

Article 61

The appointment of *de jure* arbitrators or *amiables compositeurs* shall be made in a public deed of submission (*escritura pública de compromiso*) in which the subject matter of the dispute, the persons appointed by the parties, and the powers granted to them shall be stated, on penalty of nullity of the arbitration. If the amount in dispute does not exceed 200 *colones*, the submission may be embodied in a simple document drawn up on paper costing thirty *centavos* (*papel de treinta centavos foja*), which shall be signed by the parties or by others on their behalf should they be unable to sign, as well as by two witnesses who are present at the time such agreement is reached (*que presencien el convenio*).

Article 62

In the deed or the document embodying the submission, the parties may enter an express reservation regarding their right to appeal; but nothing may be stipulated with regard to the petition to set aside an award. The reservation of the right to appeal implies a reservation of the right to petition (*súplica*), if such a right is available according to the nature of the dispute.

Article 63

A dispute may be submitted to one or more arbitrators or *amiables compositeurs* before the initiation of legal proceedings or when the dispute is still pending in first, second, or third instance.

Article 64

The following disputes may not be submitted to the decision of arbitrators or *amiables compositeurs*:

1) those concerning fiscal matters and interests of public institutions, unless they arise from contracts in which arbitration has been stipulated;

2) those concerning charity (*beneficiencia*);

3) those concerning divorce;

4) those concerning donations or legacies for food, shelter, and clothing;

5) those concerning the civil status of persons (*estado civil de las personas*);

6) those of natural or legal persons who may not submit such matters themselves, except in cases and in accordance with the formalities prescribed in the Civil Code, save the exception provided for in Article 419 of the Code.

Article 65

The deed of submission shall be submitted by any of the parties to a competent court of first instance, which shall notify the arbitrator or the *amiable compositeur* of his appointment. The arbitrator shall then accept his office and take the oath to administer justice fairly and promptly. The court shall deliver the submission to the arbitrator or *amiable compositeur*, at which time the arbitral proceedings shall commence. If the document of submission concerns an amount not exceeding 200 *colones*, the competent justice of the peace shall conduct the proceedings.

Article 66

If the parties fail to fix a time limit for the rendering of the award, *amiables compositeurs* shall render one within a period of forty days from the date of the acceptance of their appointment and taking of the oath of office, at which time the submission shall be delivered to them. *De jure* arbitrators shall perform their function within the time limits provided by law for ordinary judges, and they shall commence the performance of their function on the day following the acceptance of their appointment or, if that day is

a holiday, on the subsequent business day.

Article 67

Amiables compositeurs may not be removed from office during the time limit designated for the rendering of the award, except by the unanimous consent of the parties.

Article 68

Amiables compositeurs may not excuse themselves from the performance of their function once they have accepted the submission, nor may they be challenged thereafter unless the grounds for excuse or challenge arise after the submission. However, if the excuse or challenge is upheld, the record of the proceedings shall be transferred to that court competent to hear the case, which shall order that the record be closed (*para que los archive*). Grounds for withdrawal and challenge are those that are designated in this Code for ordinary judges and shall be subject to the rules provided therein.

Article 69

De jure arbitrators and *amiables compositeurs* may decide only in accordance with the formalities and on the dispute or specific issue submitted to them. The arbitrators may not render an award in any other form nor on any other dispute or issue. The award shall be null and void to the extent that it exceeds the issues submitted by the parties. The arbitrators may, however, declare which of the parties shall bear the costs of the proceedings.

Article 70

If several affairs, issues, or disputes entirely different from each other are submitted to the decision of arbitrators or *amiables compositeurs*, each one of the issues must be heard and decided separately, unless the deed or the document embodying the submission states that all the issues must be settled by a single award.

Article 71

All *de jure* arbitrators and *amiables compositeurs* must par-

ticipate in the proceedings and render the award, and what is decided by all or a majority of them shall constitute the ruling (*resolución*) judgment (*sentencia*). This shall be signed by each arbitrator; if one or more should refuse to sign, such refusal shall be mentioned in the judgment or award, which shall have the same effect as if it had been signed by all.

Article 72

In case of disagreement, the arbitrators or *amiables compositeurs* authorized to appoint a third arbitrator (*tercero en discordia*) shall do so in the same decision in which they state their disagreement. If the arbitrators are not authorized to appoint a third arbitrator or disagree on his appointment, the parties shall appoint the third arbitrator. If the parties fail to agree on the appointment of the third arbitrator within three days of the notification of the disagreement, the arbitrators or *amiables compositeurs* shall refer the case to the court that would have been competent in the absence of a submission, and the court shall appoint the third arbitrator. Third arbitrators who are thus appointed shall take the oath to administer prompt and full justice before the arbitrators or the *amiables compositeurs*. In all cases of disagreement concerning the dispute or the appointment of the third arbitrator, the arbitrators, *amiables compositeurs*, or the third arbitrator shall give in writing, and with their signatures attached, the reasons on which they base their opinions.

Article 73

The third arbitrator must render the award within a period of fifteen days from the date of acceptance of the appointment, unless the parties extend that period in the act of the appointment.

The decision of the third arbitrator shall constitute the award even if it does not agree with the opinion of any of the arbitrators or *amiables compositeurs*.

Article 74

Third arbitrators shall be appointed in each case through a decision to be rendered during the proceedings, which decision shall be signed both by those who are appointing them and by the clerk.

Article 75

De jure arbitrators shall conduct proceedings using the appropriate stamped paper and with the assistance of a secretary appointed by them. *Amiables compositeurs* are not subject to any formality. Both arbitrators and *amiables compositeurs* are authorized to administer oaths and examine witnesses and may take all types of evidence either on their own motion or upon request of interested parties (*supplicatorios*). They shall request the assistance of the ordinary courts when issuing coercive measures.

Article 76

Once the judgment or award is rendered and authorized, it shall be transferred to that court that would have been competent to hear the case had there been no submission. The court shall notify the parties of the award, admit the recourse of appeal and the petition to set aside an award, invest the award, on request, with the force of *res judicata*, and enforce it in accordance with the law.

The court shall also admit and hear applications for an interpretation of the judgment or the award, or for any clarification thereof, and shall return the record of the proceedings to the arbitrators or *amiables compositeurs* so that they may decide what is appropriate (*lo conveniente*).

Article 77

Unless agreed otherwise in the submission, *de jure* arbitrators shall collect the same fees that are provided for judges in the schedule of tariffs.

Amiables compositeurs shall also collect the fees designated by the parties and, in default thereof, they shall collect four percent of the amount of the award if the amount in dispute does not exceed 500 *colones*. If the amount in dispute exceeds this sum, they shall collect two percent of the amount, up to 4,000 *colones*. If the amount exceeds 4,000 *colones*, they shall collect, in addition, one percent of the amount that is over and above that sum.

Article 78

The submission terminates:

1) by the death or physical impediment of one of the arbitrators or *amiables compositeurs*, unless his replacement has been stipulated in the deed or document embodying the submission, or unless he is replaced subsequently by the parties;

2) by the expiration of the time limit designated by the parties or this Code without the *amiables compositeurs* having rendered the award;

3) by the destruction or loss, through no fault of any of the parties, of the object in dispute.

Article 79

All acts of arbitrators or *amiables compositeurs* shall be null and void after the termination of the submission or after their removal from office.

Title IV. Main Parts of the Proceedings

Chapter V

Section 2. Judicial Rulings and Their Enforcement

Article 451

Judgments rendered in foreign countries shall have, in El Salvador, the force provided for by the applicable international treaties.

Article 452

If there are no special treaties with the country where the judgments have been rendered, they shall be enforced in El Salvador if they meet the following conditions:

1) the judgment (*ejecutoria*) results from an action *in personam*;

2) the judgment has not been rendered by default;

3) the obligation whose performance is sought is legal in El Salvador;

4) the judgment meets the necessary requirements of authenticity under the laws of the country where it has been rendered as well as under the laws of El Salvador.

Article 453

Permission to enforce judgments rendered in foreign countries shall be obtained in advance from the Supreme Court of Justice. Before allowing or refusing the enforcement, the Supreme Court shall hear the party against whom the enforcement is sought within three days of such request.

If the opponent objects to the enforcement, alleging that any of the conditions required under the preceding article have not been met, the Supreme Court, if necessary, shall receive evidence thereof within the ordinary time limit. The Court shall render an appropriate decision and shall return the copy of the judgment (*ejecutoria*) together with a certified copy of its ruling.

Article 454

A foreign judgment shall be enforced in accordance with Article 450.

II. COMMERCIAL CODE OF EL SALVADOR**

Title II. Commercial Arbitration

Article 1004

An arbitration clause (*cláusula compromisoria*) in which the parties bind themselves to arbitrate all or only certain disputes that have arisen or may arise between them in relation to an affair of a commercial nature is valid even if it is not embodied in a public deed.

Persons capable of contracting according to this Code may agree on an arbitration clause.

Articles 68 and 69 of this Code shall apply to this type of arbitration.

** Decree No. 671 of May 8, 1970.

Article 1005

The appointment of the arbitrators shall be made in accordance with the form agreed on by the parties. Their appointment may be delegated to a third party, whether a physical or a legal person.

Article 1006

If the parties have not agreed on the number of arbitrators and the procedure for their appointment, each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third. Parties representing the same interest shall appoint a single arbitrator.

Any of the parties may request that the court fix a time limit for the other or others to make the necessary appointments. If no such appointment is made within the designated time limit, it shall be made by the court.

Article 1007

If any of the arbitrators does not accept his designation within eight days of being informed in writing of his appointment, he shall be replaced in accordance with the provisions followed for his appointment.

The same procedure shall be followed in cases of death or incapacity of an arbitrator after his appointment or if an arbitrator is successfully challenged.

Article 1008

After a preliminary hearing, the arbitrators may fix, at their discretion, the place of arbitral proceedings.

Article 1009

The arbitral tribunal shall function only with the participation of all the arbitrators.

The absence of any of the arbitrators for more than eight consecutive days without a justified cause shall be deemed a resignation and Article 1007 shall apply.

Article 1010

Arbitrators shall decide the dispute as *amiables compositeurs*, unless they are designated *de jure* arbitrators in the arbitral clause.

Article 1011

Arbitral decisions shall be made by a majority vote and shall deal with all the issues of disagreement submitted to the arbitrators. The award shall be rendered in writing within the period of time designated in the agreement, and it shall have the force of a final judgment.

Article 1012

An award shall be set aside on the following grounds:

- 1) nullity of the arbitral clause;
- 2) fraud or compulsion in the rendering of the award;
- 3) settlement of issues outside the scope of the dispute submitted to the arbitrators or omission of any of the issues submitted to them;
- 4) substantial defect in the proceedings if the arbitration is *de jure*;
- 5) contradictions in the award;
- 6) rendering the award after the designated time limit has expired.

III. LAW OF COMMERCIAL PROCEDURE OF EL SALVADOR***

Chapter III. Arbitral Proceedings

Article 12

If a partner (*un socio de una sociedad de personas*) wishes to arbitrate a certain matter arising out of the partnership, he shall request arbitration from the court that would have been competent to hear the case.

The application for arbitration must be in the form of a com-

*** Decree No. 360 of June 14, 1973.

plaint (*demanda*) and shall contain, in addition to a detailed report of the facts constituting the dispute, a detailed account of the issues to be settled by the award and the names and addresses of the other partners. The application shall be accompanied by the articles of incorporation (*escritura social*) or a certified copy of the registration of the articles of incorporation issued by the Commercial Registry.

The applicant shall also append as many copies of the request, made on plain paper, as there are partners. Any mechanical means of duplication may be used to make copies.

Article 13

The partners who fail to sign the application for arbitration shall be notified of the application and shall receive a copy of the same. They may respond as they see fit within three days of such notification.

Article 14

In the response referred to in the preceding paragraph, the partner shall clearly indicate whether he objects or agrees to arbitration. Moreover, for the purposes of Article 69 of the Code of Commerce, he may submit new issues to arbitration. If the partner does not file a response within the designated time limit, or if he does not clearly indicate in the answer whether he objects or agrees to arbitration, he shall be deemed to have agreed to arbitrate.

Article 15

If any or several of the partners object to arbitration, the issue shall be settled in summary proceedings.

If no one objects to arbitration, or if the court renders a final decision ordering arbitration, the court shall summon the arbitrators designated in the articles of incorporation for the purposes mentioned in Article 17.

If the arbitrators are not designated in the articles of incorporation, the court shall request the partners to appoint the arbitrators in accordance with Article 70 (II) of the Code of Commerce. The court shall also indicate the time limit within which such appointments shall be made.

Article 16

If the time limit expires without the court being notified in writing of the appointed arbitrators by all of the partners, or by a majority of them as the case may be, the court shall make the appointments.

Article 17

Once the arbitrators are appointed, they shall be summoned by the court in order to state whether they accept the appointment. In case of an affirmative reply, the court shall administer the oath of acceptance.

If any of the arbitrators fails to accept the appointment, he shall be replaced in accordance with the preceding articles.

Once they have taken the oath, the record of the proceedings shall be handed over to the arbitrators, who shall conduct the proceedings and settle the matter submitted to them. In the first decision they render, the arbitrators, pursuant to Article 71 of the Code of Commerce, must appoint a clerk.

Article 18

Once the award has been rendered, the arbitrators shall return the record of the proceedings to the court that administered the oath. The court shall notify the partners of the award.

If the award requires judicial approval in accordance with Article 72 of the Code of Commerce, the court shall render a judgment approving or disapproving the award within ten days of receiving the record. The award and the judgment shall be communicated simultaneously.

Article 19

If the award is rendered by *de jure* arbitrators and the parties have reserved the right to appeal, the appeal shall be filed with the court that communicated the award.

Regardless of the type of arbitration, the same court shall be competent to enforce the award or judgment.

Article 20

The preceding articles shall apply to commercial arbitration conducted pursuant to an arbitral clause, in accordance with Title II of the Fourth Book of the Code of Commerce and the following modifications:

1) In lieu of the articles of incorporation or the certification of the registrar, the contract embodying the arbitration clause shall accompany the request contemplated in Article 12.

2) The appointment of the arbitrators shall be made in accordance with Articles 1005, 1006, and 1007 of the Code of Commerce.

3) Commercial arbitration shall not take place if any of the parties lacks legal capacity at the time of requesting the enforcement of the arbitration clause.