Commercial Arbitration Act

Unofficial Translation of the new Venezuelan Commercial Arbitration Act

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Chapter I
General Provisions

Article 1. - This Act applies to commercial arbitration, provided that it does not contradict any multilateral or bilateral treaty in effect.

Article 2. – Arbitration may be institutional or independent. Institutional arbitration is conducted through the arbitration centers referred to herein, or those created under other laws. Independent arbitration is any such regulated by the parties without the participation of the arbitration centers.

Article 3. – Any dispute with settlement as an option, arising between people with the capability to settle, may be submitted to arbitration.

The following are exceptions:

a. Disputes contrary to public policy or involving crimes or misdemeanors, except with respect to the civil liability quantification, insofar as it has not been set forth by a final binding judgement;

b. Disputes directly concerning the sovereign activities or functions of the State or governmental persons or entities;

c. Disputes involving the civil status or capacity of persons;

d. Disputes regarding property or rights of legally disabled persons, without prior judicial authorization; and

e. Disputes on which a final binding judgement has been pronounced, except the pecuniary consequences arising from its enforcement insofar as they exclusively concern the parties to the proceedings and have not been determined by a final binding judgement.

Article 4. – Should one of the parties of an arbitration agreement be a corporation in which the Republic, the States, the Municipalities and the Autonomous Agencies hold a participation equal to or higher than fifty percent (50%) of its equity or a corporation in which the aforesaid persons hold a participation equal to or higher than fifty percent (50%) of its equity, the agreement

requires approval from the appropriate corporate entity and the written authorization from the directive Minister to be valid. The arbitration agreement shall specify the type of arbitration and the number of Arbitrators, in no case to be lower than three (3).

Article 5. – An "arbitration agreement" is an agreement by which the parties submit to arbitration all or certain disputes which have arisen or which may arise between them with respect to a defined legal relationship whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

Under the arbitration agreement the parties bind themselves to submit their disputes to the resolution of Arbitrators and therefore waive their right to judicial relief. Arbitration agreements exclude remedy from ordinary jurisdiction.

Article 6. – The arbitration agreement must be established in writing in any document or set of documents attesting to the will of the parties to bind themselves to arbitration. Reference made in an agreement to a document containing an arbitration clause shall constitute an arbitration agreement, provided that such agreement is established in writing and the reference is such as to make that clause part of the agreement.

For adhesion contracts, the will to submit to arbitration shall be done in the form of an express and independent declaration.

Article 7. – The arbitral tribunal may rule over its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For such purposes, an arbitration clause forming part of a contract shall be treated as an agreement independent of the terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not affect the validity of the arbitration clause.

Article 8. – Arbitration may be conducted at law or in equity. The former must respect legal provisions when issuing the awards. The latter shall proceed freely, according to the convenience and interests of the parties, mainly with regard to equity. Should the parties fail to indicate the type of arbitration, the Arbitrators will be deemed Arbitrators at law.

Arbitrators shall always bear in mind the terms of the contract and commercial usage and custom.

Article 9. – The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal taking into account the circumstances of the case, including the convenience of the parties. The arbitral tribunal may nevertheless meet, except as otherwise agreed by the parties, at any place deemed appropriate to deliberate, hear depositions from witnesses, experts or the parties, or to examine merchandises, other goods or documents.

Article 10. – The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the tribunal shall determine the language or languages that are to be used. This agreement, unless otherwise specified therein, shall apply to any written

statement by a party, any hearing or award, decision or other communication issued by the arbitration tribunal.

The arbitral tribunal may declare that any documentary evidence be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Chapter II
Institutional Arbitration

Article 11. – Chambers of commerce and any other merchant's associations, existing international associations, organizations relating to economic and industrial activities, organizations whose purpose is related to the promotion of alternative dispute resolution, universities and superior academic institutions and any other associations and organizations created after this date which establish arbitration as a means for dispute resolution, may organize their own arbitration centers. Centers created prior to the existence of this Law may continue to function under its terms and must adjust their regulations to the requirements hereof.

Article 12. – Within institutional arbitration, everything pertaining to the arbitration proceedings, including notices, the establishment of the tribunal, challenge and replacement of Arbitrators and the proceedings, shall be governed in conformity with the provisions of the arbitration rules of the arbitration center to which the parties have submitted themselves.

Article 13. – All arbitration centers located in Venezuela shall have their own rules. Such rules must contain:

a. Procedure for appointing the Director of the center and establishing the functions and powers pertaining to the position.

b Arbitration proceedings norms.

c. Procedure for preparing the lists of Arbitrators, to be reviewed and updated at least once per year; the requirements that such Arbitrators must meet; the grounds for exclusion from the list; registration formalities and appointment procedures.

d. Fees for Arbitrators and fees of administrative expenses, revisable and renewable every year.

e. Administrative norms applicable to the center; and

f. Any other necessary norm for the functioning of the center.

Article 14. – All arbitration centers must have a permanent headquarters, equipped with the necessary elements to support the arbitration tribunals. They must also have a list of at least twenty (20) Arbitrators.

Chapter III

Independent Arbitration

Article 15. – Should the parties fail to establish their own procedural norms for conducting independent arbitration, the rules established herein shall apply. Furthermore, such rules may be applied to institutional arbitration if so agreed by the parties.

Article 16. – The parties shall determine the number of Arbitrators, to be uneven in every case. Failing such determination, the number of Arbitrators shall be three (3).

Article 17. – The parties must jointly appoint the Arbitrators or delegate their appointment to a third party.

Failing such agreement on the appointment of the Arbitrators, each party shall elect one Arbitrator and the two Arbitrators thus appointed shall appoin the third, who will be the President of the arbitration tribunal.

Should one of the parties be reluctant to appoint his or her respective arbitrator, or should the two appointed Arbitrators fail to agree to appoint a third arbitrator, they may require the competent First Instance Judge to appoint the missing arbitrator.

Failing an agreement in a sole-arbitrator arbitration, the arbitrator shall be appointed, upon request of a party, by the competent First Instance Judge.

Article 18. – The Arbitrators must communicate in writing to those appointing them whether or not they accept the position, within ten (10) business days of notification. Silence from the Arbitrators must be deemed as refusal of the appointment.

Arbitrators who either refuse appointment, resign, pass away, are disabled or challenged, shall be replaced according to the rules applicable for their appointment.

Chapter IV
Arbitration Proceedings

Article 19. – Upon the Arbitrators acceptance of their appointments, the arbitration tribunal shall be established and the parties shall be notified of such establishment. The fees of the members of the arbitral tribunal and the amount deemed necessary for operating expenses shall be set at the establishment proceedings. The parties may file a plea to object to any of these amounts within five (5) business days of the notice of the order setting them. Such pleas must indicate the amounts deemed fair. Should the majority of the Arbitrators reject the objection, the arbitral tribunal shall cease functions.

Article 20. – Upon stipulation of expenses and fees, each party shall deposit its share within the next ten (10) days. The deposit is to be made to the order of the President of the arbitral tribunal who shall open a special account for such purpose.

Should one party pay its share and the other fail to do so, the party that allocated its share may

pay the share assigned to the other party within fifteen (15) business days.

The arbitration tribunal shall set in the award the costs of the arbitration and also indicate which party shall cover such costs and in what proportion.

Should the term for making the full deposit expire without the aforementioned deposit being made, the arbitral tribunal may rule its functions concluded, freeing the parties to resort to the judges of the Republic or to reinitiate arbitration proceedings.

Article 21. – Upon deposit of the expenses and fees, each of the Arbitrators shall receive a share not higher than the half part of the corresponding fees, and the balance shall be deposited in the account opened for such purposes. The President of the arbitral tribunal shall distribute the balance upon conclusion of the arbitration at the will of the parties, or upon enforcement of the arbitral award or the order clarifying, revising or complementing it.

Article 22. - If the arbitration agreement fails to set the term of duration of the process, it shall be of six (6) months from the establishment of the arbitral tribunal. Such term may be extended once or several times by the arbitration tribunal, either sua sponte or at the request of the parties or of their empowered attorneys. The days during which for legal reasons the proceedings are interrupted or suspended shall be added to the mentioned term.

Article 23. – The arbitral tribunal shall notify the parties of the first procedural hearing ten (10) business days in advance, providing the date, time and place where it is to be held. Such determination shall be notified through written communication to the parties or their empowered attorneys.

Article 24. – At the first hearing, the document containing the arbitration agreement and the terms of reference shall be read, and the claims of the parties shall be expressed along with a reasonable estimate of their amounts. The parties may present , with their allegations, any and every document that they consider relevant or refer to the documents or other evidence that they are to file.

Article 25. – The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. The plea for lack of appropriate jurisdiction of the arbitral tribunal must be filed within five (5) business days of the first procedural hearing.

The Parties shall not be precluded from raising such a plea by the mere fact that they have participated in the appointment or appointed an arbitrator. In any event, the arbitral tribunal may hear a plea raised after the set term if the reason for the delay is deemed justified.

Article 26. – Unless otherwise agreed by the parties, the arbitral tribunal may order any interim measures of protection it may consider necessary with respect to subject matter of the dispute. The arbitral tribunal may require the requesting party to provide appropriate securities.

Article 27. – The arbitral tribunal shall hold the hearings that it considers necessary, with or

without the participation of the parties, and shall decide whether to hold hearings for the presentation of evidence or for oral argument or whether the proceedings shall be conducted on the basis of documents and other materials submitted. No incidental proceedings will be permissible in arbitration proceedings. The Arbitrators must rule upon impediments and challenges, the challenging of witnesses and objections to expert opinions, and upon any other matters of similar nature that may arise. Pending opposition proceedings shall not prevent the continuation of the arbitration proceedings.

Article 28. – The arbitral tribunal or a party with the approval of the arbitral tribunal may request assistance of a competent Court of First Instance in taking necessary evidence and in order to enforce the requested interim measures of protection. The First Instance Court shall respond to such a request within the scope of its jurisdiction and in conformity with applicable norms.

Article 29. – The arbitration proceedings shall end with the issuing of an award. It is to be issued in writing and shall be signed by the arbitrator or Arbitrators constituting the arbitral tribunal. In arbitration proceedings with more than one arbitrator, the signatures of the majority shall suffice, provided however that the reason for any omitted signature or of any dissenting opinion is stated.

Article 30. – Unless the parties have agreed otherwise, the award shall state the reasons upon which it is based, and it shall state its date and the place of arbitration. The award will be deemed as to have been rendered at that place.

Article 31. – After the award is rendered, the arbitral tribunal shall notify each party by delivering a copy thereof signed by the Arbitrators, and it shall be binding.

Article 32. – The arbitration award may be clarified, corrected or complemented by the arbitral tribunal either sua sponte or at the request of one of the parties, within fifteen (15) business days of issuance of the award.

Article 33. – The arbitral tribunal shall cease functions:

1. When the corresponding expenses or fees established herein are not deposited within the established time.

2, At the will of the parties

3. Upon issuance of the final award, or any providence correcting or complementing it.

4. Upon expiration of the term established for the proceedings or any extension thereof.

Article 34. – Upon conclusion of the proceedings, the President of the arbitral tribunal shall cancel the expenses, pay the arbiters the balance of their fees, pay any pending expenses and return the balance to the parties following previously reasoned calculation.

Chapter V
Recusal or Disqualification of Arbitrators

Article 35. – The Arbitrators may be disqualified by the parties or may recuse themselves in accordance with the motives of disqualification or recusal stated in the Code of Civil Procedure.

Arbitrators appointed by agreement between the parties can only be disqualified on grounds subsequent to their appointment. Those appointed by the appropriate Judge or by a third party, may be disqualified within five (5) business days following the notice of the establishment of the arbitral tribunal in accordance with the procedures set herein.

Article 36. – When grounds for recusal arise, the arbitrator must notify the other Arbitrators and the parties, and shall in the meantime refrain from accepting the appointment or from continuing to hear the subject matter.

A party with a motive to disqualify any of the Arbitrators on grounds unknown at the time of the establishment of the arbitral tribunal, must express such motive within five (5) business days upon detection of grounds by way of a brief submitted to the arbitral tribunal. The challenged arbitrator shall be notified about the brief and shall have five (5) business days to express acceptance or objection.

Article 37. – Should the arbitrator deny the challenge or fail to express his or her opinion, the remaining Arbitrators shall accept or reject the challenge by reasoned opinion, and the parties shall be notified at the hearing to be held for such purpose within five (5) business days of the rejection of the challenge. A decision on the disqualification must be reached in such hearing.

Upon accepting the grounds for recusal or disqualification of an arbitrator, the remaining Arbitrators shall declare him or her excluded from the arbitration proceedings and inform the party who appointed him or her, so that party may replace said arbitrator. Should no appointment be made within five (5) business days of the notice of acceptance of the grounds, the appropriate First Instance Judge shall appoint a substitute at the request of the remaining Arbitrators. The rulings of the appropriate Judge shall be final.

Article 38. – If a tie occurs, with respect to the decision of the disqualification or recusal of one of the Arbitrators, or if there is a sole arbitrator, the matter shall be decided by the appropriate Judge within the jurisdiction where the arbitral tribunal is settled. No recourse is available against such order.

Article 39. – Should all the Arbitrators or the majority of them recuse themselves or be disqualified, the arbitral tribunal shall declare its functions concluded, allowing the parties to resort to judgment by the Judges of the Republic or reinitiate the arbitral proceedings.

Article 40. – The arbitral proceedings shall be suspended upon the event that one of the Arbitrators recuse themselves, accepts disqualification, or the formalities pertaining to either are commenced. The suspension shall continue until that incidental issue is resolved. Such

suspension must not affect the validity of any previous action.

The arbitration proceedings shall be suspended as well, upon incapacity or death of any of the Arbitrators, until a substitute is appointed.

The time necessary to complete the proceedings pertaining to the recusal or disqualification, the substitution of an arbitrator recused or disqualified, or the replacement of an incapacitated or deceased arbitrator, shall be deducted from the term set for the Arbitrators to render the award.

Chapter VI
Duties of the Arbitrators

Article 41. – It is the duty of the Arbitrators to attend all the hearings of the arbitration proceedings, unless they provide just cause. Should an arbitrator fail to attend two hearings without justification, he or she must be removed from office and shall reimburse the President of the arbitral tribunal, within the following five (5) business days, a percentage of the fees which the latter determines as sufficient for the services rendered. The arbitral tribunal shall notify the appointing party of the removed arbitrator, in order to find a substitute immediately.

Except as otherwise agreed by the tribunal, should an arbitrator accumulate four (4) absences, although justified, he or she shall be deemed disqualified and shall be removed from office. The arbitral tribunal shall notify tha appointing party to find a substitute. The removed arbitrator shall reimburse the President of the arbitral tribunal, the percentage of fees that the latter determines as sufficient for the services rendered.

Article 42. – Except as otherwise agreed by the parties, the Arbitrators shall maintain the confidentiality of the motions of the parties, of the evidence and of everything related to the arbitral proceedings.

Chapter VII
Setting Aside of the Award

Article 43. – Recourse to a court against an arbitral award may be made only by application for setting aside. It should be filed in writing before the appropriate Superior Court in the place of issuance of the award, within five (5) business days following the notice of the award or of the act correcting, clarifying or complementing it. The records of the arbitral tribunal must be enclosed with the application filed.

Unless requested by the party, the application for setting aside the arbitral award does not suspend its enforcement. Should it be rquested, the Superior Court will decide the matter, subject to the previous establishment of a security by such party in order to ensure the enforcement of the award and to cover the eventual damages should the application be rejected.

Article 44. – An arbitral award may be declared void only if:

a. The party against whom it is invoked furnishes proof that at the time of the arbitration

agreement the opposing party was under some incapacity.

b. The party against whom it is invoked was not given proper notice of the appointment of an arbitrator, or of the arbitration proceedings which require said notification, or was otherwise unable to present his case;

c. The composition of the arbitral tribunal or the arbitration proceedings was not in accordance with the requirements of this Act.

d. The award deals with a dispute not contemplated by the arbitration agreement, or contains decisions on matters beyond the scope of the matters submitted to arbitration.

e. The party against whom the award is invoked furnishes proof that it has not yet become binding to the parties, or has been previously set aside or suspended, pursuant to the terms of the submission to arbitration.

f. The Court hearing the application for setting aside the arbitral award establishes that the subject matter of the dispute may not be settled by arbitration according to this Act, or the subject matter of the award is in conflict with public policy.

Article 45. – The Superior Court shall not hear the application for setting aside when filed beyond the appropriate time established for its exercise or when it is founded upon grounds not corresponding with those herein.

The order, whereby the Superior Court accepts the application for setting aside the award, must indicate the amount of the bond which the applicant must post in order to secure the outcome of the proceedings. The term to post the bond shall be ten (10) days from the issuance of such order.

Should the bond not be posted or the request set aside the award not be supported by argument, the Court will dimiss the case.

Article 46. – Should the application for setting aside the award not be granted, the case shall be dismissed, the party requesting the award be set aside shall be ordered to pay the legal costs, and the award shall be binding between the parties.

Article 47. – Upon receipt of the application for setting aside and the posting of the bond, the Superior Court shall hear the argument to set aside pursuant to the provisions of the Code of Civil Procedure for standard proceedings.

Chapter VIII
Recognition and Enforcement of Awards

Article 48. – An arbitral award, regardless of the country of its rendition, shall be recognized by the ordinary jurisdiction as binding and unappealable, and upon application in writing to the appropriate Court of First Instance, shall be obliged to enforce by the latter without need of an exequatur, pursuant to the rules established by the Code of Civil Procedure regarding the

mandatory enforcement of judgements.

The party relying on an award or applying for its enforcement shall supply a duly certified copy of it by the arbitral tribunal, along with a translation into Spanish if necessary.

Article 49. - Recognition and enforcement of an arbitral award, regardless of the country in which it was rendered, may be refused only:

a. If the party against whom it is invoked furnishes proof that at the time of the arbitration agreement the other party was not qualified.

b. If the party against whom it is invoked was not given notice of the appointment of an arbitrator, or of the arbitration proceedings that require notification, or was otherwise unable to present his case;

c If the composition of the arbitral tribunal or the arbitration proceedings were not in accordance with the requirements of the law of the country where the arbitration took place.

d. If the award deals with a dispute not contemplated by the arbitration agreement, or contains decisions on matters beyond the scope of the matters submitted to arbitration.

e. If the party against whom the award is invoked furnishes proof that it has not yet become binding on the parties, or has been previously declared void or suspended by a competent authority, pursuant to the terms of the submission to arbitrate.

f. If the Court hearing the application for the recognition or enforcement of the arbitral award, establishes that the subject matter of the dispute is not arbitrable under the law, or the award is in conflict with public order.

g.If the arbitration agreement is invalid under the laws that the parties submitted it to.

Chapter IX
Provisional Norms

Article 50. – Arbitration agreements to which any of the parties is a corporation in which the Republic, the States, the Municipalities and the Autonomous Agencies hold a participation equal to or higher than fifty percent (50%) of its equity, or a corporation in which the aforesaid persons hold a participation equal to or higher than fifty percent (50%) of its equity, entered into before the promulgation of this Act, shall not require compliance with the requisites set forth in Article 4 in order to be valid.

Given, signed and sealed in the Federal Legislative Palace, in Caracas at the twenty fifth of march of One Thousand Ninety Eight. Years 187 of Independence and 138 of Federation.