I. GENERAL PROVISIONS

OFFICE OF THE HEAD OF STATE

9112 Act 5/2012 of 6 July on Mediation in Civil and Commercial Matters.

JUAN CARLOS I

KING OF SPAIN

To all who may have sight and knowledge hereof.
Be it known that the Parliament of Spain [Cortes Generales] has passed and I come to sanction
the following Act.

RECITAL

I

One of the essential functions of the Rule of Law is to guarantee the judicial protection of the rights of citizens. This function entails the challenge of implementing a quality system of justice capable of settling the various disputes that arise in a modern and, at the same time, complex society.
In this context, dating from the nineteen seventies, recourse has been had to new, alternative dispute-resolution systems, among which special mention should be made of mediation, which has come to acquire growing importance as a complementary instrument of the Administration of Justice.
Among the advantages of mediation, special mention should be made of its ability to provide practical, effective and profitable solutions to specific disputes between parties, and this renders it an alternative to the judicial process or arbitral route, from which it has to be clearly differentiated. Mediation is constructed around the intervention of a neutral professional who facilitates the resolution of the dispute by the parties themselves, in an equitable manner, enabling the underlying relations to be maintained and keeping control over the outcome of the dispute.

II

Despite the upsurge that it has experienced in Spain in recent years, in the context of the Autonomous Regions [Comunidades Autónomas], until the promulgation of Royal Decree-Law [Real Decreto-ley] 5/2012 there was no general regulation of mediation which was applicable to the various civil and commercial matters while simultaneously ensuring its link with ordinary jurisdiction, and which thereby made the first of the pillars underpinning mediation effective, namely, the dejudicialisation of certain matters that can thus be afforded a solution better tailored to the needs and interests of the parties in dispute than any that could be derived from statutory enactments.
Mediation, as a formula for consensual conflict resolution, is an effective instrument for dispute resolution where the legal dispute affects subjective rights subject to power of disposal. As a peace-keeping institution, it contributes to the courts of law in this sector of the legal system being perceived as a last recourse in the event of it not being possible for the situation to be resolved by the mere will of the parties, and could be a suitable aid for reducing the courts' work load, by confining their intervention to such cases in which the parties in contention have proved incapable, on the basis of a consensual agreement, of putting an end to the conflictive situation.
Likewise, this Act incorporates Directive 2008/52/EC of the European Parliament and of the

Council of 21 May 2008 on certain aspects of Mediation in Civil and Commercial Matters, into Spanish law. Nevertheless, its regulatory ambit goes beyond the content of said European Union enactment, in line with the terms of Final Provision no. 3 of Act

15/2005 of 8 July, which amends the Civil Code [Código Civil] and Civil Procedure Act [Ley de Enjuiciamiento Civil] in matters of separation and divorce, and urges the Government to table a Mediation Bill before the Spanish Parliament.

Directive 2008/52/EC confines itself to laying down minimum rules for fostering mediation in cross-border disputes involving civil and commercial matters. For its part, the regulation contained in this law sets up a general regime applicable to all such mediation as takes place in Spain and seeks to have binding legal effect, albeit circumscribed to the scope of civil and commercial matters and based on a model that has had regard to the provisions of the UNCITRAL Model Law on International Commercial Conciliation of 24 June 2002.

In point of fact, the elapse of the period set for incorporating Directive 2008/52/EC into the Spanish legal system, which ended on 21 May 2011, justified recourse to the Royal Decree-Act which, as an appropriate enactment for bringing about this necessary adaptation of our law, put an end to the delay in complying with this obligation, along with the negative consequences that this entails for citizens and the State due to the risk of being penalised by the institutions of the European Union.

The exclusions envisaged hereunder are not intended to limit mediation in the spheres to which they refer but rather to reserve regulation thereof to the pertinent sectorial rules and regulations.

III

The mediation model is based on a decision freely and willingly made by the parties and on the intervention of a mediator, thus seeking an active intervention aimed at the dispute being resolved by the parties themselves. The regime contained in the Act is based on flexibility and respect for the autonomy of the will of the parties, whose wishes, expressed in the consensual agreement that puts an end to the dispute, may enjoy the status of a deed conveying an enforceable right, if the parties so desire, by being placed on record as a public deed. In no case does this Act seek to encompass the full richness and variety of mediation; it only seeks to establish its foundations and favour this alternative over judicial resolution of disputes. It is precisely here where the second pillar of mediation is to be found, i.e., the delegalisation or loss of the law's central role in favour of the principio dispositivo [Translator's note: principle of freedom of choice, namely, that parties are free to initiate, pursue and conclude legal proceedings], which also governs the relations that are the subject of the dispute.

The figure of the mediator is, in line with his natural make-up, the linchpin of the model, since it is he who helps find a consensual solution willingly desired by the parties. Mediation activity extends to many professional and social spheres, requiring skills which in many cases depend on the particular nature of the dispute. The mediator must, thus, have a general training that enables him to perform this task and, above all, offer an unequivocal guarantee to the parties for such civil liability as he might incur.

Equally, the Act uses the term "mediator" generically without prejudging whether there may be one or more.

Something to be borne in mind in this context is the very relevant role played by mediation services and institutions, which perform a fundamental task when it comes to organising and fostering the mediation process.

The corollary of this regulation is the recognition of the mediation agreement as a deed conveying an enforceable right, something that will be brought about by its being subsequently being placed on record as a public deed whose enforcement may be directly sought in the courts. In the regulation of the mediation agreement lies the third pillar of mediation, namely, "dejuridification", which consists of the content of the agreement for restitution or redress not necessarily being determined.

The flexible framework achieved by the Act seeks to be yet another inducement to favour recourse to mediation, such that mediation will neither have repercussions on subsequent procedural costs nor will its proposed use be permitted as a delaying strategy for complying with the parties' contractual obligations. This is to be seen in the option of prescription being

suspended at the date of initiation of the process as opposed to the general rule governing its interruption, with the aim of eliminating possible disincentives and preventing mediation from causing undesired legal effects.
This Act is strictly circumscribed to the ambit of the State's competence in matters of commercial, procedural and civil law, which enables a framework for the exercise of mediation to be structured without prejudice to any provisions that Autonomous Regions might lay down in the exercise of their competence.
In order to facilitate recourse to mediation, a process is put together which is easily set in motion, relatively inexpensive and short in duration.

IV

The provisions of this Act are structured in five Titles.
Under the heading of «General Provisions», Title I governs the material and spatial scope of the Act, its application to cross-border disputes, the effects of mediation on limitation and prescription periods, as well as mediation institutions.
Title II enumerates the main informing principles of mediation, to wit: the principle of voluntary participation and freedom to choose; the principle of impartiality; the principle of neutrality; and the principle of confidentiality. In addition to these principles, there are the rules or guidelines that are to guide the conduct of the parties to the mediation, such as good faith and mutual respect, as well as their duty to collaborate with and support the mediator.
Title III contains the minimum rules governing mediators, with an outline of the requirements that mediators must meet and their code of conduct. To ensure their impartiality, the circumstances that mediators must communicate to the parties are set forth, with the model European Code of Conduct for Mediators being used as the basis therefor.
Title IV regulates the mediation process. It is a simple and flexible procedure that makes it possible for the subjects involved in the mediation to be the ones who freely determine the fundamental stages thereof. The law confines itself to laying down the essential requisites for vesting any such agreement as the parties reach with validity, in every case on the premise that, reaching a consensual agreement is not something that is obligatory, since there are times, as practical experience of this institution shows, when it is not untoward for mediation simply to seek to improve relations, with no intent of reaching a agreement of specific content.
Finally, Title V lays down the procedure for enforcing agreements, with this being brought in line with the provisions already existing in Spanish law, and without differences being established vis-à-vis the regime for enforcing cross-border mediation agreements which have to be performed in another State; to this end, the agreement must be placed on record as a public deed as an essential condition for being deemed a deed conveying an enforceable right.

V

The final provisions render the law compatible with mediation being made part and parcel of judicial proceedings.
Hence, the Basic Official Chambers of Commerce, Industry and Navigation Act 3/1993 of 22 March and the Professional Societies Act 2/1974 of 13 February are reformed to include mediation, along with arbitration, among their functions, so permitting them to act as mediation institutions.
The Act also makes a series of amendments of a procedural nature, which facilitate the application of mediation in the context of civil proceedings. It thus regulates the parties' power of disposal with respect to the issue being tried and their power to submit to mediation, as well as the possibility of the court inviting the parties to reach a consensual agreement and, to this end, of their being informed of the possibility of having recourse to mediation. This is a novelty which, within respect for the will of the parties, seeks to promote mediation and the amicable resolution of disputes. Furthermore, a plea of lack of jurisdiction [declinatoria] is envisaged as a remedy against breach of agreement to mediate or against the filing of an action while mediation is under way.

Lastly, the amendment of the Civil Procedure Act consists of amending the necessary provisions for including mediation agreements among deeds that convey the right to a writ of execution.
These amendments serve to structure the appropriate interrelationship between mediation and civil proceedings, thereby reinforcing the efficacy of this institution.

VI

Finally, this Act reforms Act 34/2006 of 30 October on Access to the Professions of Barrister and Attorney-at-Law, with the aim of satisfying the legitimate expectations of law students who, at the date of promulgation of the latter Act, were enrolled in their university studies and, as a consequence of the promulgation thereof, find the conditions of access to the professions of barrister and attorney-at-law completely altered.
Under Act 34/2006, to obtain professional qualification as a barrister or attorney-at-law, apart from being in possession of the university law degree or corresponding graduate diploma, candidates are required to prove their professional proficiency by passing both the pertinent official specialised training acquired through training courses accredited by the Ministry of Justice and Ministry of Education, and a subsequent assessment.
The amendment passed is congruent with the Recital of Act 34/2006 itself, which declares its aim to be that of not shattering «the current expectations of students studying for a university law degree or diploma». Nevertheless, the vacatio legis of five years initially established by the Act has shown itself inadequate to the task of satisfying a group of students who have been unable to complete their studies in said period of five years.
This would entail resolving the problems of those students who registered for university law degrees prior to 31 October 2006, at a time when no professional qualifications were required for the exercise of the professions of barrister and attorney-at-law, and who were then unable to conclude their studies within the above time-frame. Owing to an oversight of the legislature, such students suffer from discrimination, in view of the fact that the legitimate expectations that they harboured at the time when they embarked upon their law studies have been shattered. In addition, however, advantage is taken of the occasion to recognise a special regime of access to professional practice for law graduates, whatever the date on which they commenced or concluded their studies, thus attending to various initiatives tabled in Parliament.
Moreover, provision is made for the situation of holders of foreign qualifications eligible for recognition as equivalent to a Spanish law degree by the introduction of a new additional provision, which allows entry to the legal profession by any person who initiated the qualification-recognition procedure before the Act came into force.
The future amendment will envisage the issue of professional qualifications by the Ministry of Justice.
Furthermore, to put an end to the uncertainty generated by Section 3 of the Sole Transitory Provision of said Act 34/2006, a technical improvement is introduced in the wording, by clarifying that it is not necessary to be in possession of a law degree or graduate diploma but that it will suffice to be in a position to obtain same, i.e., rather than material possession of the qualification, what is instead required is to have concluded one's studies when the Act comes into force. This thus safeguards the rights of graduates who, having concluded their studies, are nevertheless excluded from the scope of the Transitory Provision of the Act due to delay or oversight in applying to universities for their degrees or diplomas.

TITLE I

General provisions

Article 1. Definition.

1. Mediation is deemed to be that means of dispute resolution, however named or referred to, whereby two or more parties attempt by themselves, on a voluntary basis, to reach a consensual agreement on the settlement of their dispute with the assistance of a mediator.

Article 2. Scope of application.

1. This Act is applicable to mediations in civil and commercial matters, including cross-border disputes, provided that these in no way affect rights and obligations over which the parties have no power of disposal under the terms of the legislation applicable.
In the absence of express or tacit submission hereto, this Act shall be applicable where at least one of the parties has his domicile in Spain and the mediation is conducted on Spanish territory.
2. The following are, in every case, excluded from the scope of application of this Act:

a) criminal mediation;
b) mediation with public authorities;
c) labour-related mediation; and,
d) consumer-related mediation.

Article 3. Mediation in cross-border disputes.

1. A cross-border dispute exists where at least one of the parties is domiciled or has his habitual residence in a State other than that in which any of the other parties affected by the dispute is domiciled at the time when they agree to make use of mediation or recourse must be had thereto pursuant to any such statutory enactment as may be applicable. This definition is likewise deemed to extend to disputes envisaged or resolved by mediation agreement, wheresoever it may have been conducted, in a case where, as a result of the change in domicile of any of the parties, the agreement or any consequence thereof is sought to be enforced in the territory of another State.
2. In cross-border disputes between parties who reside in different Member States of the European Union, domicile shall be determined pursuant to Articles 59 and 60 of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Article 4. Effects of mediation on limitation and prescription periods.

A request for initiation of mediation pursuant to Article 16 shall suspend prescription or limitation of actions as from the date on which the record shows said request as having been received by the mediator or lodged at the mediation institution, as the case may be.
If, in the space of fifteen calendar days from receipt of the request for initiation of mediation the official record of the joint session envisaged under Article 19 should not be signed, the computation of time limits shall resume.
Suspension shall continue until the date of signature of the mediation agreement or, in default thereof, signature of the official record of the final session [Final Act], or when the mediation should come to an end for any of the reasons envisaged hereunder.

Article 5. Mediation institutions.

1. Mediation institutions are defined as public or private organisations, Spanish or foreign, and public bodies whose designated objects encompass the fostering of mediation, by facilitating access to and administration of same, including the appointment of mediators, with the need for transparency in said appointment to be ensured. If arbitration is also mentioned among their designated objects, measures shall be taken to ensure separation between the two activities.
The mediation institution may not perform the mediation service directly, nor shall it have greater participation therein than that envisaged hereunder.
Mediation institutions shall make known the identity of the mediators who act under their aegis, providing information, at the very least, about their training, specialisation and experience in the field of mediation to which they devote themselves.
2. These institutions may implement mediation systems by electronic means, particularly for any disputes that involve monetary claims.
3. The Ministry of Justice and the competent Public Authorities shall see to it that, in the performance of their activities, mediation institutions observe the principles of mediation

established hereunder, and shall also see to the good conduct of mediators, as provided for by the respective statutory regulations.

TITLE II

Principles informing mediation

Article 6. Voluntary participation and freedom to choose.

1. Mediation is voluntary.
2. Where there is a written agreement expressing an undertaking to submit any disputes which have arisen or may arise to mediation, the process agreed in good faith must be tried before recourse is had to the courts or any other extrajudicial solution. Said clause shall give rise to these effects even where the dispute turns on the validity or existence of the contract in which it is contained.
3. No person is bound to remain in the mediation process or conclude an agreement.

Article 7. Equality of parties and impartiality of mediators.

The mediation process shall ensure that the parties may participate with full equality of opportunity, maintaining the balance between their positions and respect for the points of view expressed by them, without the mediator being able to act to the detriment or in the interests of any of them.

Article 8. Neutrality.

The mediation proceedings shall be conducted in such a way that they enable the parties in dispute to reach a mediation agreement on their own, with the mediator acting in accordance with the provisions of Article 14.

Article 9. Confidentiality.

1. The mediation process and documentation used therein are confidential. The obligation of confidentiality extends to the mediator -who shall be protected by professional secrecy- to the mediation institutions and to the participant parties, inasmuch as they may in no way disclose any information which they might have been able to obtain from the process.
2. The confidentiality of the mediation and its content bars any mediator or person involved in the administration of the mediation process from being compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except where:

a) the parties are expressly relieved in writing of the duty of confidentiality; or,
b) this is required by a criminal court judge by a reasoned judicial ruling.

3. Breach of the duty of confidentiality shall give rise to liability in the terms envisaged by law.

Article 10. Parties to mediation.

1. Without prejudice to respect for the principles established hereunder, mediation shall be organised in such a manner as the parties deem suitable.
2. The parties subject to mediation shall conduct themselves vis-à-vis one another in accordance with the principles of loyalty, good faith and mutual respect.
Throughout the period during which the mediation is conducted, no party may bring a judicial or extrajudicial action relating to the subject matter thereof against any other party, with the exception of an application for interim measures or other urgent measures indispensable for avoiding the irreversible loss of assets and rights.
The undertaking to submit to mediation and the initiation thereof bars the courts from hearing any dispute submitted to mediation during the period in which said mediation is

being conducted, provided that the party concerned cite same by entering a plea of lack of jurisdiction.
3. The parties shall be required to collaborate with and support the conduct of the mediator at all times, showing appropriate deference towards his activity.

TITLE III

Rules governing mediators

Article 11. Conditions for practising as a mediator.

1. Any natural person who is in full exercise of his civil rights may be a mediator, provided that he is not prohibited from doing so by any statutory enactment to which he may be subject in the exercise of his profession.
Legal persons that devote themselves to mediation, be they professional societies or any other envisaged by the legal system, must, for the exercise thereof, designate a natural person who meets the requirements envisaged hereunder.
2. The mediator must be in possession of an official university degree or higher professional training qualification, and have undergone specific training for practising mediation, which shall be acquired by completing one or more specific courses imparted by duly accredited institutions and shall be valid for engaging in mediation activity anywhere throughout Spanish territory.
3. The mediator must take out an insurance policy or equivalent surety that covers civil liability arising from his conduct in any dispute in which he takes part.

Article 12. Quality and self-regulation of mediation.

The Ministry of Justice and competent Public Authorities, acting in collaboration with the mediation institutions, shall urge and require that mediators undergo appropriate initial and continuous training, that voluntary codes of conduct be drawn up and that mediators and mediation institutions adhere to such codes.

Article 13. Conduct of mediators.

1. The mediator shall facilitate communication between the parties and shall ensure that they have adequate information and counselling.
2. The mediator shall engage in active conduct aimed at bringing about a rapprochement between the parties, with respect for the principles laid down herein.
3. The mediator may resign from conducting the mediation, with the obligation to deliver an official note of record to the parties whereby he tenders his resignation.
4. The mediator may not initiate or must withdraw from any mediation where there are circumstances that may affect his impartiality.
5. Prior to initiating or continuing his task, the mediator must disclose any circumstance that may either affect his impartiality or generate a conflict of interests. Such circumstances shall, in every case, include:

a) all manner of personal, contractual or business relationships with one of the parties;
b) any direct or indirect interest in the outcome of the mediation; and,
c) the fact that the mediator, or any member of his enterprise or organisation, has previously acted in favour of one or more of the parties in any circumstance other than the mediation.

In such cases, the mediator shall only be able to accept or continue the mediation where he can give an assurance of his ability to mediate with total impartiality, provided that the parties consent thereto and place such consent expressly on the record.
The duty of disclosing such information persists throughout the mediation process.

Article 14. Liability of mediators.

Acceptance of mediation places mediators under an obligation to fulfil the task entrusted to

them loyally, incurring, in the event of failure to do so, liability for any damages that they may cause. The aggrieved party shall be entitled to direct action against the mediator and, where applicable, the pertinent mediation institution, regardless of any action for refund that he may have against the mediators. The mediation institution's liability shall arise as from the mediator's appointment or breach of any obligation that is incumbent upon him.

Article 15. Cost of mediation.

1. The cost of mediation, whether it may or may not have concluded by culminating in a consensual agreement, shall be divided equally between the parties, save where otherwise agreed.
2. Both mediators and mediation institutions may require the parties to deposit such funds as they deem necessary for attending to the cost of the mediation.

If the parties or any of them should fail to deposit the funds requested within the designated time limit, the mediator or the institution may treat the mediation as at an end. Nevertheless, in the event that any of the parties might not have made the respective deposit of funds, the mediator or the institution shall, before ending the process, notify the other parties thereof, in the event that they might be interested in making good the shortfall within the time limit designated therefor.

TITLE IV

Mediation process

Article 16. Request for initiation of mediation.

1. The mediation process may be set on foot:

a) by mutual agreement of the parties. In such a case, the request shall include the appointment of the mediator or mediation institution at which the mediation is to be conducted, as well as the agreement regarding the venue at which the sessions are to be held and the language or languages of the proceedings; or,
b) by one of the parties in compliance with an existing agreement between them to mediate.
a)
2. Requests shall be filed with the mediation institutions or with the mediator proposed by one of the parties to the others or already appointed by them.
3. In any case where mediation is initiated voluntarily while judicial proceedings are under way, the parties may mutually agree to request the suspension of said proceedings in accordance with the statutory regulations governing procedure.

Article 17. Information and informative sessions

1. On receipt of the request, and save where otherwise agreed by the parties, the mediator or mediation institution shall summons the parties for the purpose of holding the informative session. In the event of any party unjustifiably failing to attend the informative session, said party shall be deemed to abandon the requested mediation. Information as to which party or parties failed to attend the session shall not be confidential.
At said session, the mediator shall inform the parties of: any possible causes that may affect his impartiality; his profession, training and experience; the characteristics of the mediation, including the cost thereof, the organisation of the process and the legal consequences of any agreement that might be reached; as well as the time limit for signing the official record of the joint session.
2. Mediation institutions may hold open informative sessions for such persons as may be interested in availing themselves of this dispute resolution system, which shall in no case be a substitute for the information envisaged under subsection 1 hereinabove.

Article 18. Plurality of mediators.

1. The mediation shall be conducted by one or more mediators.
2. In any case where, by reason of the complexity of the matter or the convenience of the parties, several mediators might act in a single process, said mediators shall act in a co-ordinated manner.

Article 19. Joint session.

1. The mediation process shall commence by means of a joint session at which the parties shall express their desire for the mediation to be conducted, and shall place the following aspects on record:

a) the identification of the parties;
b) the appointment of the mediator and, as the case may be, of the mediation institution or the acceptance of that which is designated by one of the parties;
c) the subject matter of the dispute that is being submitted to the mediation process;
d) the agenda and maximum duration envisaged for the conduct of the process, without prejudice to any possible modification thereof;
e) information as to the cost of mediation or the bases for determination thereof, with separate indication as to the mediator's fees and other possible expenses;
f) the statement by the parties that they voluntarily accept the mediation and that they assume the obligations deriving therefrom; and,
g) the mediation venue and language of the process.

2. An official record of the joint session shall be kept, which shall note the above aspects and shall be signed by the parties and by the mediator or mediators. Failing this, said record shall state that the mediation has been essayed to no avail.

Article 20. Duration of the process.

The mediation process shall have as brief a duration as possible and the proceedings thereof shall be compressed into the minimum number of sessions.

Article 21. Conduct of mediation proceedings.

1. The mediator shall convoke the parties for each session by giving them the necessary advance notice, chair the sessions, and facilitate the setting-out of their positions and the communication thereof in a fair and balanced manner.
2. Communications between the mediator and parties in dispute may or may not be simultaneous.
3. The mediator shall notify all the parties of the holding of any meetings that might be held separately with any of them, without prejudice to the confidentiality of the matters addressed. The mediator may neither divulge nor disseminate any information or documentation that the party has produced without the latter's express authorisation.

Article 22. Termination of the process.

1. The mediation process may conclude in agreement or terminate without said agreement being reached, whether because some or all of the parties exercise their right to treat the proceedings as having coming to an end, by notifying the mediator thereof, or because the maximum period agreed by the parties for the duration of the process has concluded, as well as where the mediator should reasonably deem the positions of the parties to be irreconcilable or there should be any other cause that brings about the conclusion thereof. On termination of the process all such exhibits as the respective parties have lodged shall be returned to them. All such documents as do not have to be returned to the parties, shall be used to compile a case file which, once the process has ended, must be stored and kept by the mediator or, as the case may be, by the mediation institution, for a period of four months.
2. Resignation by the mediator from continuing the process or rejection by the parties of

their mediator shall only bring about the termination of the process in a case where a new mediator is not appointed.
3. The Final Act shall bring about the conclusion of the process and, where applicable, shall clearly and comprehensibly reflect the agreements reached or the termination of said process for any other reason.
The Act must be signed by all the parties and the mediator or mediators and an original thereof shall be handed to each of said parties. In the event that any party should not wish to sign the Act, the mediator shall have this circumstance noted therein, delivering a copy thereof to the parties who desire same.

Article 23. The mediation agreement.

1. The mediation agreement may address whole or part of the issues submitted to mediation.
The mediation agreement must record the identity and domicile of the parties, the place at and date on which it is entered into, the obligations which each party assumes and the fact that a mediation process has been pursued in accordance with the provisions hereof, with a note of the mediator or mediators who has/have intervened and, where applicable, the mediation institution at which the process has been conducted.
2. The mediation agreement must be signed by the parties or their representatives.
3. A copy of the mediation agreement shall be delivered to each of the parties, with another being reserved by the mediator for the record.
The mediator shall inform the parties of the binding nature of the agreement reached and of the fact that they may request that it be placed on record as a public deed for the purpose of embodying their agreement as a deed conveying an enforceable right.
4. To contest the terms agreed in the mediation agreement an application to have it rendered null and void may only be brought on grounds that render contracts invalid.

Article 24. Proceedings conducted by electronic means.

1. The parties may agree that some or all of the mediation proceedings, including the joint session and such subsequent sessions as are deemed appropriate, be conducted by electronic means, by videoconferencing or any other like sound and image transmission system, provided that the identity of those taking part and respect for the principles of mediation envisaged hereunder are ensured.
2. Any mediation involving a monetary claim for a sum not exceeding 600 euros shall preferably be conducted by electronic means, save where the use of such means is impossible for any of the parties.

TITLE V

Enforcement of agreements

Article 25. Formalisation of the deed conveying an enforceable right.

1. The parties may place the consensual agreement reached after a mediation process on record as a public deed.
The mediation agreement shall be produced by the parties to a Notary Public, accompanied by a copy of the official records of the joint and final sessions of the process, without any need for the mediator to be present.
2. In order to place the mediation agreement on record as a public deed, the Notary shall verify that it complies with the requirements stipulated hereunder and that its content is in no way unlawful.
3. In any case where a mediation agreement has to be enforced in another State, then, in addition to it being placed on record as a public deed, it shall be necessary to comply with such requirements as are, where applicable, laid down by the international conventions to which Spain is a party and the laws of the European Union.
4. In any case where the agreement has been reached in a mediation undertaken after the initiation of a court action, the parties may petition the court for formal recognition thereof

pursuant to the provisions of the Civil Procedure Act.

Article 26. Competent court for enforcement of mediation agreements.

Applications for enforcement of agreements resulting from a mediation initiated while judicial proceedings are under way shall be brought before the court which formally recognised the agreement.
If it is a case of agreements formalised after a mediation process, then the Court of First Instance of the place where the mediation agreement was signed shall be competent, pursuant to the provisions of Article 545, subsection 2 of the Civil Procedure Act.

Article 27. Enforcement of cross-border mediation agreements.

1. Without prejudice to the provisions laid down by European Union law and international conventions in force in Spain, any mediation agreement that has already acquired enforceability in another State may only be enforced in Spain where such enforceability flows from the intervention of a competent authority that performs functions equivalent to those performed by the Spanish authorities.
2. A mediation agreement that has not been declared enforceable by a foreign authority may only be enforced in Spain subject to its being placed on record as a public deed by a Spanish Notary Public at the request of the parties, or by one of them with the express consent of the others.
3. The foreign document may not be enforced in any case where it manifestly runs counter to Spanish public policy.

Additional Provision No. 1. Recognition of mediation institutions or services.

Mediation institutions or services established or recognised by Public Authorities in accordance with the law may assume the mediation functions envisaged hereunder provided that they meet the conditions stipulated therein for acting as mediation institutions.

Additional Provision No. 2. Fostering mediation.

1. The Public Authorities vested with competence for placing material means at the disposal of the Judicial Authorities shall make information available to the courts and public about mediation as an alternative to judicial proceedings.
2. The competent Public Authorities shall endeavour to include mediation within the free pre-trial counselling and guidance envisaged under Article 6 of the Free Legal Assistance Act 1/1996 of 10 January, to the extent that this might enable both litigiousness and the costs thereof to be reduced.

Additional Provision No. 3. Public deeds formalising mediation agreements.

To calculate the notarial fees for the public deed of formalisation of mediation agreements, the scale to be applied is that corresponding to «Documentos sin cuantía» [Translator's note: a fixed fee as opposed to a sliding-scale fee based on the monetary amount cited in the Deed] envisaged under Royal Decree 1426/1989 of 17 November, Annex I, number 1, whereby notaries' fee scales are approved.

Additional Provision No. 4. Equality of opportunity for persons with disability.

The mediation processes must ensure equality of opportunity for persons with disability. To this end, regard must be had to the provisions of Royal Decree 366/2007 of 16 March, which lay down the conditions of barrier-free accessibility and non-discrimination for persons with disability in their relations with the General Government Administration.
In particular, the following must be ensured: barrier-free accessibility of venues; and the use of sign language and support devices for oral communication, Braille, touch-based communication or any other means or system that will enable persons with disability to participate fully in the process.

The electronic means referred to in Article 24 hereof must comply with the conditions of accessibility envisaged under the Information Society and Electronic Commerce Services Act 34/2002 of 11 July.

Repeal provision.

Royal Decree-Law 5/2012 of 5 March on Mediation in Civil and Commercial Matters is hereby repealed.

Final Provision No. 1. Amendment to the Professional Societies Act 2/1974 of 13 February.

Article 5 ñ) of the Professional Societies Act 2/1974 of 13 February shall be reworded as follows:

«ñ) Fostering and developing mediation, as well as performing arbitration functions, both national and international, in accordance with the statutory provisions currently in force.»

Final Provision No. 2. Amendment to the Basic Official Chambers of Commerce, Industry and Navigation Act 3/1993 of 22 March.

Article 2, subsection 1 i) of the Basic Official Chambers of Commerce, Industry and Navigation Act 3/1993 of 22 March shall be reworded as follows:

«i) Fostering and developing mediation, as well as performing commercial arbitration functions, both national and international, in accordance with the statutory provisions currently in force.»

Final Provision No. 3. Amendment to Civil Procedure Act 1/2000 of 7 January.

Articles 19, 39, 63, 65, 66, 206, 335, 347, 395, 414, 415, 438, 440, 443, 517, 518, 539, 545, 548, 550, 556, 559, 576 and 580 of the Civil Procedure Act 1/2000 of 7 January shall be amended as follows:

One. Article 19, subsection 1 is to be worded as follows:

«1. The litigants have power of disposal over the issue being tried and may make waivers, abandon the suit, comply with or acquiesce to claims, submit to mediation or arbitration, and make settlements, compositions and compromises with respect to whatever may be the subject thereof, except where the law should prohibit same or establish limitations for reasons of general interest or in favour of third parties.»

Two. Article 39 is amended to read as follows:

«Article 39. Appraisal of the lack of international competence or jurisdiction at the instance of a party.

By entering a plea of lack of jurisdiction, the Respondent may claim lack of international competence or lack of jurisdiction on the grounds that the issue pertains to another jurisdictional sphere or level or that the dispute has been submitted to arbitration or mediation.»

Three. Article 63, subsection 1, paragraph one is to be worded as follows:

«1. By entering a plea of lack of jurisdiction, the Respondent and any person who may lawfully be a party to the action brought may claim lack of jurisdiction on the part of the court before which the claim has been filed, on the grounds that same properly falls to be heard by foreign courts, bodies of another jurisdictional sphere or level, arbitrators or mediators.»

Four. Article 65, subsection 2, paragraph two shall be reworded as follows:

«The court shall proceed in like manner if the plea of lack of jurisdiction is held to be based on the grounds of the matter having been submitted to arbitration or mediation.»

Five. Article 66 is to be worded as follows:

«Article 66. Appeals in matters of international competence, jurisdiction, submission to arbitration or mediation and objective competence.

1. An ordinary appeal may be lodged against a court order declining to hear a case on the grounds of lack of international competence, on the grounds of the matter pertaining to a court of another jurisdictional sphere or level, on the grounds of the issue having been submitted to arbitration or mediation, or on the grounds of lack of objective competence.
2. Against a court order rejecting lack of international competence, jurisdiction or objective competence, the sole recourse to be had is an appeal for reversal, without prejudice to the lack of these procedural prerequisites being pleaded in an appeal against the final decision.
The provisions of the above paragraph shall also be applicable in a case where the court order should reject submission of the issue to arbitration or mediation.»

Six. Article 206, subsection 2, rule 2 is amended to read as follows:

«2. Court orders shall be issued where any decision is handed down in appeals against practice directions or writs, where a ruling is made on the admissibility or inadmissibility of a claim, counterclaim, joinder of causes of action, admissibility or inadmissibility of evidence, judicial approval of compromise settlements, mediation agreements, compositions and settlements, interim measures, and nullity or validity of proceedings.
The following shall also be vested with the form of a court order: rulings that address procedural prerequisites, registry notes and entries and incidental matters, whether or not signalled out for any special procedure or formality hereunder, provided that in such cases the Act should require a court decision; as well as rulings that put an end to application or appeal proceedings before they have run their ordinary course, save where, with respect to the latter, the Act should lay down that these must be brought to a close by writ.»

Seven. A new subsection 3 is added to Article 335, worded as follows:

«3. Except where the parties agree otherwise, no opinion may be requested from any expert who may have taken part in a mediation or arbitration related to the same matter.»

Eight. Article 347, subsection 1, paragraph two is to be worded as follows:

«The court shall only deny requests for intervention which, by reason of their purpose and content, are to be deemed impertinent or useless, or where there is a duty of confidentiality stemming from the expert's intervention in a previous mediation process between the parties.»

Nine. Article 395, subsection 1, paragraph two shall be reworded as follows:

«Bad faith shall, in every case, be held to exist if, prior to the claim having been filed, a certified and substantiated demand for payment had been made on the Respondent, or if a mediation process had been initiated or a call for conciliation had been addressed to him.»

Ten. Article 414, subsection 1, paragraph two is replaced by the following:

«If not already done previously, at this hearing the parties shall be informed of the possibility of having recourse to negotiation, including recourse to mediation, for the purpose of trying to resolve the dispute, in which case the parties shall indicate at said hearing their decision with respect thereto and the reasons therefor.
The hearing shall be conducted in accordance with the provisions laid down in the following Articles, in order to: essay an agreement or settlement between the parties which would put

an end to the action; examine any procedural matters that might hinder the pursuit thereof; and, on termination of the hearing, by means of a decision on the subject matter of the claim, accurately define said subject matter and such points of fact or law on which there might be a dispute between the parties; and, where applicable, propose and admit evidence.

Having due regard for the subject matter of the action, the court may invite the parties to essay a settlement that will put an end to the proceedings, by means of a mediation process where applicable, urging them to attend an informative session.»

Eleven. Article 415, subsections 1 and 3 shall be reworded as follows:

«1. On the parties having duly come before it, the court shall formally declare the proceedings open and ascertain whether the dispute between the parties still exists.
Should they state that they have arrived at an agreement or show themselves willing to conclude same forthwith, they may abandon the action or request the court to accord formal recognition to what has been agreed.
The parties may also mutually agree to request the suspension of the action pursuant to Article 19.4, in order to submit to mediation or arbitration.
In such a case, the court shall previously examine whether the requirements of legal capacity and power of disposal are met by the parties or such of their duly accredited representatives as may be attending the proceedings.»
«3. Should the parties not reach an agreement or not show themselves willing to conclude same forthwith, the hearing shall continue as envisaged under the following Articles.
In any case where the court action has been suspended in order for recourse to be had to mediation, on termination of the latter, either party may apply for the suspension to be lifted and a date for the continuation of the hearing to be set.»

Twelve. A 4th exception is added to Article 438, subsection 3, worded as follows:

«4. In separation, divorce or annulment proceedings and in those whose aim is to achieve the civil effectiveness of ecclesiastical rulings or decisions, either spouse may simultaneously exercise an action for division of jointly owned property in respect of such goods or assets as the spouses may hold in ordinary indivisible community of property.
Should there be various goods or assets held in a regime of ordinary indivisible community of property, the court may, if one of the spouses so requests, consider said goods or assets as a whole for the purposes of forming lots or adjudicating them.»

Thirteen. Article 440, subsection 1 is to be worded as follows:

«Having examined the claim, the clerk of the court shall either give leave for it to be heard or give an account thereof to the court so that it may rule on what should properly be done pursuant to Article 404. Once leave is given for the action to be heard, the clerk of the court shall summons the parties for the holding of the hearing on the date and at the time designated for the purpose thereof, with the intervening period to be a minimum of ten days and in no case exceeding twenty days from the day next following the summons.
In the summons, the parties shall be informed of the possibility of having recourse to negotiation, including recourse to mediation, for the purpose of trying to resolve the dispute, in which case the parties shall indicate at said hearing their decision with respect thereto and the reasons therefor.
In the summons, it shall be placed on record that the hearing shall not be suspended by reason of the Respondent's failure to attend same, and the litigants shall be advised of the fact that they are to appear with the means of proof of which they seek to avail themselves, with the warning that, should they fail to attend and their statement be proposed and admitted, the facts of the examination shall be deemed to be admitted pursuant to Article 304. Similarly, the Claimant and Respondent are to be advised of the provisions laid down in Article 442 in the event that they should fail to appear at the hearing.
The summons shall also indicate to the parties that, within a period of three days next following receipt thereof, they must indicate all such persons who, due to the impossibility of their being made to appear in court by the parties themselves, must be summonsed

to the hearing by the clerk of the court in order to testify as parties or witnesses. To this end, the parties shall furnish all the necessary data and circumstances for serving said summons. Within the same period of three days, the parties may request that written replies be provided by legal persons or public bodies, by means of the procedures or formalities envisaged under Article 381 hereof.»

Fourteen. Article 443, subsection 3 is to be worded as follows:

«3. Once the Claimant has been heard regarding the matters referred to in the above subsection, and any other points as he may deem necessary to raise with respect to the capacity and representation of the Respondent, the court shall rule as to what should properly be done and, if it orders that the trial is to go ahead, the Respondent may then request that his dissent be placed on record, for the purpose of appealing against any such final judgement as might be rendered.
With due regard for the subject matter of the action, the court may invite the parties to essay a settlement that will put an end to the proceedings, where applicable by means of a mediation process, urging them to attend an informative session. The parties may also mutually agree to request the suspension of the action pursuant to Article 19.4, in order to submit to mediation or arbitration.»

Fifteen. Article 517, subsection 2.2 shall be reworded as follows:

«2. Arbitral awards or rulings and mediation agreements, with it being necessary for the latter to have been placed on record as a public deed pursuant to the Act on Mediation in Civil and Commercial Matters.»

Sixteen. Article 518 shall be reworded as follows:

«Article 518. Lapse of enforcement based on a court judgement, arbitral ruling or mediation agreement.

Enforcement based on a judgement, a ruling of the court or of the clerk of the court which approves a judicial settlement or an agreement reached in the proceedings, an arbitral ruling or a mediation agreement, shall lapse if the pertinent enforcement action is not brought within the period of five years next following the judgement or ruling becoming final.»

Seventeen. A new paragraph is added to Article 539, subsection 1, worded as follows:

«For enforcement deriving from a mediation agreement or arbitral award the intervention of a barrister and attorney-at-law shall be required, provided that the sum in respect of which enforcement is issued be in excess of 2,000 euros.»

Eighteen. Article 545, subsection 2 is to be worded as follows:

«2. Where the deed conveying the enforceable right is an arbitral award or a mediation agreement, the Court of First Instance of the place at which the award was made or the mediation agreement was signed shall be competent to deny or authorise the enforcement and corresponding writ of execution.»

Nineteen. Article 548 is amended:

«Article 548. Waiting time for enforcement of procedural or arbitral orders or mediation agreements.

Enforcement of procedural or arbitral orders or mediation agreements shall not be ordered within the period of twenty days next following the date on which the decision

against a party becomes final, or notice of the decision approving the settlement or signature of the agreement is given to the party against whom the order is to be enforced.»

Twenty. A new paragraph is added to Article 550, subsection 1 (1), worded as follows:

«Where the deed conveying the enforceable right is a mediation agreement placed on record as a public deed, it shall, in addition, be accompanied by a copy of the official record of the joint and final sessions of the process.»

Twenty-one. The wording of the header and first paragraph of Article 556, subsection 1 is amended to read as follows:

«Article 556. Objection to enforcement of procedural or arbitral orders or mediation agreements.

1. If the deed conveying an enforceable right should be a procedural or arbitral order against a party or a mediation agreement, the party against whom said order is to be enforced may, within the period of ten days next following notice of the writ ordering enforcement, object thereto in writing by pleading payment or compliance as per the terms laid down in the judgement, award or agreement, said payment or compliance to be supported by documentary evidence.»

Twenty-two. Article 559, subsection 1 (3) shall be reworded as follows:

«(3) absolute nullity of the writ of enforcement due to the fact that the judgement or arbitral award contains no decision against a party, or because the award or the mediation agreement fails to comply with the legal requirements needed for enforcement to be appurtenant thereto, or due to infringement, on enforcement being ordered, of the provisions laid down in Article 520.»

Twenty-three. Article 576, subsection 3 is to be worded as follows:

«3. The provisions laid down in the above subsections shall be applicable to all manner of judicial decisions of any jurisdictional sphere or level, arbitral awards and mediation agreements which impose the payment of a certain settled amount, save the special cases legally envisaged for the Revenue Authorities.»

Twenty-four. Article 580 shall be reworded to read as follows:

«Article 580. Cases in which no demand for payment is required.

Where the deed conveying an enforceable right consists of decisions by the clerk of the court, judicial or arbitral decisions or decisions that approve judicial settlements reached in the proceedings, or mediation agreements, which order given sums of money to be delivered, it shall not be necessary for payment to be demanded from the party against whom the order is to be enforced for seizure of his goods and assets to be effected.»

Final Provision No. 4. Amendment to Act 34/2006 of 30 October on Access to the Professions of Barrister and Attorney-at-Law.

Article 2 and the Sole Transitory Provision are amended and two new additional provisions, eight and nine, are added to Act 34/2006 of 30 October on Access to the Professions of Barrister and Attorney-at-Law, in the following terms:

One. Article 2, subsection 3 is amended to read as follows:

«The professional qualifications governed hereby shall be issued by the Ministry of Justice.»

Two. A new Additional Provision No. 8 is added, worded as follows:

«Additional Provision No. 8. Holders of Bachelor of Law degrees.

The professional qualifications regulated hereunder shall not be required in the case of any person who obtains a Bachelor of Law degree after the entry into force hereof, provided that within a maximum period of two years, to run from the date on which said person is in a position to apply for the issue of the official Bachelor of Law degree, he should join the Bar, as a practising or non-practising member of the profession.»

Three. A new Additional Provision No. 9 is added, worded as follows:

«Additional Provision No. 9. Recognised foreign qualifications.

The professional qualifications regulated hereunder shall not be required in the case of any person who at the date of entry into force hereof has applied for formal recognition of his foreign qualification as equivalent to a university law degree, provided that within the maximum period of two years, to run from the date on which said person should obtain said formal recognition, he should join the Bar, as a practising or non-practising member of the profession.»

Four. Subsection 3 of the Sole Transitory Provision is amended to read as follows:

«3. Any person who should at the date of entry into force hereof be in possession of a university law degree or graduate diploma or in a position to apply for the issue thereof and should not come within the ambit of the above subsection, shall have a maximum period of two years, to run from the date of the entry into force hereof, to join the Bar, as a practising or non-practising member of the profession, without being required to obtain the professional qualifications regulated herein.»

Final Provision No. 5. Right to legislate.

This Act is passed in accordance with the exclusive competence of the State in matters of commercial, procedural and civil legislation, established under Articles 149.1.6 and 149.1.8 of the Constitution. Notwithstanding the foregoing, the amendment of Act 34/2006 is made under the terms of Articles 149.1.1, 149.1.6 and 149.1.30 of the Constitution.

Final Provision No. 6. Incorporation of European Union laws.

By virtue hereof, Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of Mediation in Civil and Commercial Matters is incorporated into Spanish law.

Final Provision No. 7. Simplified mediation process by electronic means for monetary claims.

The Government, at the instance of the Ministry of Justice, shall promote the settlement of disputes involving monetary claims by a simplified mediation process which shall be conducted exclusively by electronic means. The claims of the parties, which shall in no case refer to arguments contesting points of law, shall be outlined in the process application forms and the response thereto to be sent by the mediator or mediation institution to the interested parties. The process shall have a maximum duration of one month to run from the date next following receipt of the application, and may be extended by agreement between the parties.

Final Provision No. 8. Statutory implementation of control of compliance with the mediation requirements laid down in the Act.

1. The Government, at the instance of the Ministry of Justice, may make statutory provision for such instruments as are deemed necessary for verifying compliance with the mediation

requirements laid down herein on the part of mediators and mediation institutions, as well as the publicising thereof. These instruments may include the creation of a Registry of Mediators and Mediation Institutions, under the aegis of the Ministry of Justice and co-ordinated with the Mediation Registries of the Autonomous Regions, in respect of which, having due regard for non-compliance with the requirements envisaged hereunder, a mediator may be struck off.
2. The Government, at the instance of the Ministry of Justice, may decide on the duration and minimum content of the course or courses that mediators will be previously required to complete in order to acquire the necessary training for the conduct of mediation, along with any such continuous training as they might have to receive.
The scope of mediators' obligation to insure against civil liability may be statutorily regulated and implemented.

Final Provision No. 9. Assessment of the measures adopted hereunder.

Within the space of two years, the Government must place before the Spanish Parliament a report on the application, effectiveness and effects of the set of measures adopted hereunder, for the purpose of assessing the functioning thereof.
Said report shall likewise include the possible adoption of other measures, both substantive and procedural, which, by means of timely initiatives, will improve mediation in civil and commercial matters.

Final Provision No. 10. Entry into force.

This Act shall come into force twenty days after the date of publication hereof in the Official Government Gazette [Boletín Oficial del Estado].

Accordingly,

I enjoin all citizens of Spain, private persons and authorities to keep, hold and observe this Act and see that same is duly kept, held and observed.

Done at Madrid, 6 July 2012.

JUAN CARLOS R.

President of the Government, MARIANO RAJOY BREY

L.: M-1/1958 - ISSN: 0212-033X