

CJI/RES. 188 (LXXX-O/12)

**PROJECT FOR A MODEL ACT ON
SIMPLIFIED STOCK CORPORATION**

THE INTER-AMERICAN JURIDICAL COMMITTEE,

RECOGNIZING the emergence of new forms of hybrid corporate organizations with respect to micro-businesses and small and medium enterprises;

CONSIDERING the contribution that these new forms of corporate organizations can make to the economic development in member states;

BEARING IN MIND the presentation made to the Inter-American Juridical Committee by Professor Francisco Reyes regarding these new forms of corporate organizations, his proposed Model Act and the Colombian experience in these matters;

CONSIDERING the “Recommendations on the proposed model act on the simplified stock corporation” (CJI/doc.380/11) presented by the rapporteur of the subject, Dr. David P. Stewart,

RESOLVES:

1. To express its gratitude to the rapporteur Dr. David P. Stewart for his report.
2. To approve the “Report of the Inter-American Juridical Committee: Recommendations on the proposed model act on the simplified stock corporation,” (CJI/doc.380/11 corr.1), which is attached to this resolution.
3. To transmit this resolution to the OAS Permanent Council for its due consideration and to send it to the General Assembly.

This resolution was approved unanimously at the meeting held on March 9, 2012 by the following members: Drs. Carlos Alberto Mata Prates, David P. Stewart, Fernando Gómez Mont Urueta, Jean-Paul Hubert, Miguel Aníbal Pichardo Olivier, Freddy Castillo Castellanos, Fabián Novak Talavera, José Luis Moreno Guerra and Ana Elizabeth Villalta Vizcarra.

CJI/doc.380/11 corr.1

REPORT OF THE INTER-AMERICAN JURIDICAL COMMITTEE.

**RECOMMENDATIONS ON THE PROPOSED MODEL ACT ON
THE SIMPLIFIED STOCK CORPORATION**

At our March 2011 regular session, the Chair proposed that the Committee should consider the topic of a “simplified stock corporation,” with particular reference to the new law adopted by the Congress of the Republic of Colombia in December 2008. In the interim, I have had an opportunity to review the draft of a new book by Professor Francisco Reyes entitled “A New Policy Agenda for Latin American Company Law: Reshaping the Closely-Held Entity Landscape.” This volume discusses in detail the background of Colombia Law 1258 and argues in favor of the adoption of similar legislation by other countries in Latin America. For that purpose, it proposes a “model act” for a Simplified Stock Corporation (as well as another for the resolution of conflicts arising from such corporations). It is my understanding that Professor Reyes will make a presentation on this subject to the Committee at its forthcoming meeting.

I believe that Professor Reyes’ proposal, and in particular the Model Act, is worthy of the Committee’s endorsement. Professor Reyes makes a very credible case in favor of legislative reforms to permit such innovative business forms and argues convincingly that these reforms would promote economic growth.

As contemplated by the Model Act, the simplified stock corporation (or “SAS”) is a hybrid business entity. It blends features of two business forms: partnerships and corporations. It is related to what are known in some legal systems as “closely held” corporations, limited liability partnerships, and *sociétés par actions simplifiées*. In the United States, various forms have been successfully adopted in Delaware, Wyoming and Texas; variations have also been adopted in the United Kingdom, France, Japan, Singapore, China, India and Canada. In Latin America, however, it is my understanding that besides Colombia, only Chile has enacted a similar law but it has encountered difficulty in implementation.

Under the Colombian approach, the SAS can be formed by one or more shareholders and can be incorporated by a relatively simple private or electronic document (as opposed to an expensive notarial deed of incorporation). The cost is minimal. The act of incorporation provides limited liability to its shareholders (except when the corporate veil is used to perpetrate a fraud or abuse the corporate form). It also provides protection to third party victims of the abusive or fraudulent use of the *ultra vires* doctrine by corporate officials. It enables the founders to choose an unlimited duration for the incorporation, and replaces the costly and ineffective formality of mandatory internal comptrollers (*comisarios*) with a more effective and less expensive supervision of external but fully qualified auditors. It also provides flexibility to corporate capital, greater contractual freedom, and increased access to capital.

The benefits of simplified business associations to economic development are supported by strong evidence. A recent study by Dr. Boris Kozolchyk and Dr. Cristina Castaneda of the National Law Center for Inter American Free Trade indicates that in our hemisphere, both big and small economies depend upon informally-created micro, small and medium-sized enterprises (“MiPymes”) for much of their employment. In El Salvador, MiPymes accounted for 99.6% of all of businesses in 2005, and 90.52% of these were microenterprises located in urban areas and especially in the capital city of San Salvador. Most Salvadoran micro-businesses are conducted by a single individual or with the assistance of one or two additional employees. In Brazil, according to a report from the Serviço Brasileiro de Apoio às Micro e Pequenas Empresas (Brazilian Service for the Support of Micro and Small Businesses), the number of microenterprises grew 9.1% from 1997 to 2003, from 9,477,973 to 10,335,962, employing over 13 million people. In Mexico, 99% of all Mexican businesses fall under the rubric of “micro,” “small” or “medium-sized” enterprises, employing approximately 60% of the population, and MiPymes are responsible for more than 20% of Mexico’s gross domestic product.

The lack of a progressive legislative framework permitting simpler and more modern business associations is often described as a major impediment to economic development within our hemisphere. Under many national legal codes, only certain types of business associations are permitted, such as (i) regular general partnerships (*sociedades en nombre colectivo*), (ii) limited partnerships (*sociedades en comandita*), (iii) joint stock companies or corporations (*sociedades anónimas*), whether of a fixed or variable capital, and (iv) limited liability companies (*sociedades de responsabilidad limitada*), which are often used as substitutes for family or closely-held corporations. These business forms have roots in European legal codes of the last century and often require businessmen to follow elaborate and costly notarial and administrative processes (“*trámites*”). These *trámites* supply missing formalities including the execution of verbose notarial *Escrituras Públicas* (public deeds) and numerous licenses often in the form of central or municipal taxes. These formalities cannot be ignored, since failure to comply might lead courts or administrators to declare a micro or small business “relatively null”, “absolutely null” or even a “non-existent” legal entity devoid of its “legal personality” (*personalidad jurídica*).

The Colombian Law of Simplified corporations (SAS) enacted in 2008 is the first and most successful Latin American statutory effort to correct this situation by requiring only formalities that have a functional and salutary effect upon the marketplace. It was authored by Professor Reyes, who is a highly regarded scholar and practitioner and who served as Colombia’s Superintendent of Companies. Professor Reyes’ book makes a strong case for the

benefits that would result from a new system. He begins by presenting evidence that the formalistic structure of traditional corporate law in Latin America remains a hindrance to the development of the economy of the region. Articles 2.7 through 2.12 show the continued adherence to outdated corporate law rules developed in a prior era and in other legal cultures. Tables 1 and 2 are particularly powerful in illustrating how much longer it takes to form a business and to enforce contracts in Latin American economies as compared to elsewhere in the world. The reforms in Colombia are discussed in Part 6, where Table 8 shows a notable reduction in the procedures, time and cost of enforcement of contracts.

Professor Reyes points out ways in which the financial, economic and legal structure of corporate business is different in Latin America than in source countries for traditional corporate law (particularly in the more concentrated and family-controlled nature of many entities, as compared to the more market-centric economies of the United States and the United Kingdom). An even more important difference is the difference between the needs of publicly held corporations from those which are “closely held.” Professor Reyes correctly wants to move the focus of legal reform to this part of the corporate landscape.

The Model Act proposed by Professor Reyes (Annex A to the book) suggests focuses on two of the key relationships in a closely held corporation — (i) the relationship of participants to outsiders and (ii) the relationship between the participants themselves. As to the first, the key concept is limited liability, which results from the simple act of incorporation. At the same time, protection of the interests of outsiders—creditors, employees, tort victims, etc.—is provided through the “piercing the corporate veil” concept in Article 42. As to the second relationship, the Model Act recognizes and enhances freedom of private contracting while at the same time protecting the interests of participants through the possibility of judicial relief through Article 43 on Abuse of Rights.

The SAS would have “legal personality” and could be organized as its shareholders might wish. It could issue various classes or series of shares, those shares and any other securities it issues could not be registered on any stock exchange nor traded in any market. The Model Law provides relatively simple rules regarding dissolution and “winding up.” Annex B to Prof. Reyes’ book proposes a separate Model Act on Procedural Rules for that process. Copies of Annexes A and B are attached for information.

Annex A

MODEL ACT ON THE SIMPLIFIED STOCK CORPORATION (MASSC)

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1. NATURE.--The simplified stock corporation is a for profit legal entity by shares, the nature of which will always be commercial irrespective of the activities set forth in its purpose clause.

ARTICLE 2. LIMITED LIABILITY.--The simplified stock corporation may be formed by one or more persons or legal entities.

Shareholders will only be responsible for providing the capital contributions promised to the simplified stock corporation.

Except as set forth in Article 41 of this Act, shareholders will not be held liable for any obligations incurred by the simplified stock corporation, including, but not limited to, labor and tax obligations.

There shall be no labor relationship between a simplified stock corporation and its shareholders, unless an explicit agreement has been executed to that effect.

ARTICLE 3. LEGAL PERSONALITY.--Upon the filing of the formation document before the Mercantile Registry [include the name of corresponding company registrar’s office], the simplified stock corporation will form a legal entity separate and distinct from its shareholders.

ARTICLE 4. INABILITY TO BECOME A LISTED ENTITY.--The shares of stock and other securities issued by a simplified stock corporation shall not be registered within a stock exchange, nor traded in any securities market.

CHAPTER II FORMATION AND PROOF OF EXISTENCE

ARTICLE 5. CONTENTS OF THE FORMATION DOCUMENT.--A simplified stock corporation will be formed by contract or by the individual will of a single shareholder, provided that a written document is granted. The formation document shall be registered before the Mercantile Registry [include the name of corresponding company registrar's office], and shall set forth:

- 1) The name and address of each shareholder;
- 2) The name of the corporation followed by the words "simplified stock corporation" or the abbreviation "S.A.S.";
- 3) The corporation's domicile;
- 4) If the simplified stock corporation is to have a specific date of dissolution, the date in which the corporation is to dissolve;
- 5) A clear and complete description of the main business activities to be included within the purpose clause, unless it is stated that the corporation may engage in any lawful business;
- 6) The authorized, subscribed and paid-in capital, along with the number of shares to be issued, the different classes of shares, their par value, and the terms and conditions in which the payment will be made;
- 7) Any provisions for the management of the business and for the conduct of the affairs of the corporation, along with the names and powers of each manager. A simplified stock corporation shall have at least one legal representative in charge of managing the affairs of the corporation in relation with third parties.

No additional formalities of any nature shall be required for the formation of the simplified stock corporation.

ARTICLE 6. ATTESTATION.--The Mercantile Registrar [include the name of corresponding company registrar's office] shall attest to the legality of the provisions set forth in the formation document and any amendments thereof.

The Registrar shall only deny registration where the requirements provided under Article 5 have not been met. The decision rendered by the Registrar shall be issued within three days after the relevant filing has been made. Any decision denying registration will only be subject to a rehearing conducted by the Registrar.

Upon the approval of a formation document by the Mercantile Registrar, challenges will not be heard against the existence of the simplified stock corporation and the contents of the formation document will constitute the simplified stock corporation's by-laws.

ARTICLE 7. ASSIMILATION TO PARTNERSHIP.--Where a formation document has not been duly approved by the Mercantile Registrar [include the name of corresponding company registrar's office], the purported corporation will be assimilated to a partnership. Accordingly, partners will be jointly and severally liable for all obligations in which the partnership is engaged. If the partnership has only one member, such member will be held liable for all obligations in which the partnership is engaged.

ARTICLE 8. PROOF OF EXISTENCE.--The certificate issued by the Mercantile Registrar [include the name of corresponding company registrar's office] is conclusive evidence as regards the existence of the simplified stock corporation and the provisions set forth in the formation document.

CHAPTER III

SPECIAL RULES REGARDING SUBSCRIBED, PAID-IN CAPITAL AND SHARES OF STOCK

ARTICLE 9. CAPITAL SUBSCRIPTION AND PAYMENT.--Capital subscription and payment may be carried out under terms and conditions different to those set forth under the Commercial Code or corporate statute [include the name of the relevant Code, Decree, Law or Statute]. In any event, payment of subscribed capital shall be made within a period of two years to be counted from the date in which the shares were subscribed. The rules for subscription and payment may be freely set forth in the by-laws.

ARTICLE 10. CLASSES OF SHARES.-- The simplified stock corporation may issue different classes or series of shares, including preferred shares with or without vote. Shares may be issued for any consideration whatsoever, including in-kind contributions or in exchange for labor, pursuant to the terms and conditions contained in the by-laws.

Any special rights granted to the holders of any class or series of shares shall be described or affixed upon the back of the stock certificates.

ARTICLE 11. VOTING RIGHTS.--The by-laws shall depict in full detail the voting rights corresponding to each class of shares. Such document shall also determine whether each share will grant its holder single or multiple voting rights.

ARTICLE 12. SHARE TRANSFERS TO A TRUST.--Any shares issued by a simplified stock corporation may be transferred to a trust provided that an annotation is made in the corporate ledger concerning the trustee company, the beneficial owners and the percentage of beneficial rights.

ARTICLE 13. LIMITATION ON THE TRANSFERABILITY OF SHARES.--The by-laws may contain a provision whereby the shares may not be transferred for a period not to exceed ten years, to be counted from the moment in which the shares were issued. Such term can only be extended by consent of all the holders of outstanding shares.

Any such limitation on share transferability shall be described or affixed upon the back of the stock certificate.

ARTICLE 14. AUTHORIZATION FOR THE TRANSFER OF SHARES.--The by-laws may contain provisions whereby any transfer of shares or of any given class of shares will be subject to the previous authorization of the shareholders' assembly, which shall be granted by majority vote or by any supermajority included in the by-laws.

ARTICLE 15. BREACH OF RESTRICTIONS ON NEGOTIATION OF SHARES.--Any transfer of shares carried out in a manner inconsistent with the rules set forth in the by-laws shall be null and void.

ARTICLE 16. CHANGE OF CONTROL IN A CORPORATE SHAREHOLDER.--The by-laws may impose upon an incorporated shareholder the duty to notify the simplified stock corporation's legal representative about any transaction that may cause a change in control regarding such shareholder.

Where a change in control has taken place, the shareholders' assembly, by majority decision, shall be entitled to exclude the corresponding incorporated shareholder.

Aside from the possibility of being excluded, any breach of the duty to inform changes in control may subject the concerned shareholder to a penalty consisting of a 20% reduction of the fair market value of the shares, upon reimbursement.

In the event set forth in this article, all decisions concerning the exclusion of shareholders, as well as the determination of any penalties, shall require an approval rendered by the shareholders' assembly by majority vote. The votes of the concerned shareholder shall not be taken into account for the adoption of these decisions.

CHAPTER IV

ORGANIZATION OF THE SIMPLIFIED STOCK CORPORATION

ARTICLE 17. ORGANIZATION.--Shareholders may freely organize the structure and operation of a simplified stock corporation in the by-laws. In the absence of specific provisions to this effect, the shareholders' assembly or the sole shareholder, as the case may be, will be entitled to exercise all powers legally granted to the shareholders' assemblies of stock corporations, whilst the management and representation of the simplified stock corporation shall be granted to the legal representative.

Where the number of shareholders has been reduced to one, the subsisting shareholder shall be entitled to exercise the powers afforded to all existing corporate organs.

ARTICLE 18. MEETINGS.--Meetings of shareholders may be held at any place designated by the shareholders, whether it is the corporate domicile or not. For these meetings, the regular quorum provided in the by-laws will suffice, pursuant to Article 22 hereof.

ARTICLE 19. MEETINGS BY TECHNOLOGICAL DEVICES OR BY WRITTEN CONSENT.--Meetings of shareholders may be held through any available technological device, or by written consent. The minutes of such meetings shall be drafted and included within the corporate records no later than 30 days after the meeting has taken place. These minutes shall be signed by the legal representative or, in her absence, by any shareholder that participated in the meeting.

ARTICLE 20. NOTICE OF MEETING.--In the absence of stipulation to the contrary, the legal representative shall convene the shareholders' assembly by written notice addressed to each shareholder. Such notice shall be made at least five days in advance to the meeting. The agenda shall in all cases be included within any notice of meeting.

Whenever the shareholders' assembly is called upon to approve financial statements, the conversion of the corporation into another business form, or mergers or split-off proceedings, shareholders will be entitled to exercise information rights concerning any documents relevant to the proposed transaction. Information rights may be exercised during the five days prior to the meeting, unless a longer term has been provided for in the by-laws.

Any notice of meeting may determine the date in which the Second Call Meeting will take place, in case the quorum is insufficient to hold the first meeting. The date for the second meeting may not be held prior to ten days following the first meeting, nor after thirty days from that same moment.

ARTICLE 21. WAIVER OF NOTICE.--Shareholders may, at any moment, submit written waivers of notice whereby they forego their right to be convened to a meeting of the shareholders' assembly. Shareholders may also waive, in writing, any information rights granted under Article 20.

In any given shareholders assembly and even in the absence of a notice of meeting, the attendees will be deemed to have waived their right of being summoned, unless such shareholders make a statement to the contrary before the meeting takes place.

ARTICLE 22. QUORUM AND MAJORITIES.--Unless otherwise specified in the by-laws, quorum to a shareholders' meeting will be constituted by a majority of shares, whether present in person or represented by proxy.

Decisions of the assembly shall be taken by the affirmative vote of the majority of shares present (in person or represented by proxy), unless the by-laws contain supermajority provisions.

The sole shareholder of a simplified stock corporation may adopt any and all decisions within the powers granted to the shareholders' assembly. The sole shareholder will keep a record of such decisions in the corporate books.

ARTICLE 23. VOTE SPLITTING.--Shareholders may split their votes during cumulative voting proceedings for the election of directors or the members of any other corporate organ.

ARTICLE 24. SHAREHOLDERS' AGREEMENTS.--Agreements entered into between shareholders concerning the acquisition or sale of shares, preemptive rights or rights

of first refusal, the exercise of voting rights, voting by proxy, or any other valid matter, shall be binding upon the simplified stock corporation, provided that such agreements have been filed with the corporation's legal representative. Shareholders' agreements shall be valid for any period of time determined in the agreement, not exceeding 10 years, upon the terms and conditions stated therein. Such 10 year term may only be extended by unanimous consent.

Shareholders that have executed an agreement shall appoint a person who will represent them for the purposes of receiving information and providing it whenever it is requested. The simplified stock corporation's legal representative may request, in writing, to such representative, clarification as regards any provision set forth in the agreement. The response shall be provided also in writing within the five days following the request.

SubArticle 1.--The President of the shareholders' assembly, or of the concerned corporate organs, shall exclude any votes cast in a manner inconsistent with the terms set forth under a duly filed shareholders' agreement.

SubArticle 2.--Pursuant to the conditions set forth in the agreement, any shareholder shall be entitled to demand, before a court with jurisdiction over the corporation, the specific performance of any obligation arising under such agreement.

ARTICLE 25. BOARD OF DIRECTORS.--The simplified stock corporation is not required to have a board of directors, unless such board is mandated in the by-laws. In the absence of a provision requiring the operation of a board of directors, the legal representative appointed by the shareholders' assembly shall be entitled to exercise any and all powers concerning the management and legal representation of the simplified stock corporation.

If a board of directors has been included in the formation document, such board will be created with one or more directors, for each of whom an alternate director may also be appointed. All directors may be appointed either by majority vote, cumulative voting, or by any other mechanism set forth in the by-laws. The rules regarding the operation of the board of directors may be freely established in the by-laws. In the absence of a specific provision in the by-laws, the board will be governed under the relevant statutory provisions.

ARTICLE 26. LEGAL REPRESENTATION.--The legal representation of the simplified stock corporation will be carried out by an individual or legal entity appointed in the manner provided in the by-laws. The legal representative may undertake and execute any and all acts and contracts included within the purpose clause, as well as those which are directly related to the operation and existence of the corporation.

The legal representative shall not be required to remain at the place where the business has its main domicile.

ARTICLE 27. LIABILITY OF DIRECTORS AND MANAGERS.--All Commercial Code [include the name of the relevant Code, Decree, Law or Statute] provisions relating to the liability of directors and managers may also be applicable to the legal representative, the board of directors, and the managers and officers of the simplified stock corporation, unless such provision is opted out of in the by-laws.

SubArticle 1.--Any individual or legal entity who is not a manager or director of a simplified stock corporation that engages in any trade or activity related to the management, direction or operation of such corporation shall be subject to the same liabilities applicable to directors and officers of the corporation.

SubArticle 2.--Whenever a simplified stock corporation or any of its managers or directors grants apparent authority to an individual or legal entity to the extent that it may be reasonably believed that such individual or legal entity has sufficient powers to represent the corporation, the company will be legally bound by any transaction entered into with third parties acting in good faith.

ARTICLE 28. AUDITING ORGANS.--A simplified stock corporation shall not, in any case, be legally mandated to establish or provide for internal auditing organs [include the name of corresponding auditing entity, e.g., fiscal auditor, auditing committee, etc.].

CHAPTER V

BY-LAW AMENDMENTS AND CORPORATE RESTRUCTURINGS

ARTICLE 29. BY-LAW AMENDMENTS.--Amendments to the corporate by-laws shall be approved by majority vote. Decisions to this effect will be recorded in a private document to be filed with the Mercantile Registry [include the name of corresponding company registrar's office].

ARTICLE 30. CORPORATE RESTRUCTURINGS.--The statutory provisions governing conversion into another form, mergers and split-off proceedings for business associations will be applicable to the simplified stock corporation. Dissenters' rights and appraisal remedies shall also be applicable.

For the purpose of exercising dissenters' rights and appraisal remedies, a corporate restructuring will be considered detrimental to the economic interests of a shareholder, inter alia, whenever:

- 1) The dissenting shareholder's percentage in the subscribed paid-in capital of the simplified stock corporation has been reduced;
- 2) The corporation's equity value has been diminished, or
- 3) The free transferability of shares has been constrained.

ARTICLE 31. CONVERSION INTO ANOTHER BUSINESS FORM.--Any existing business entity may be converted into a simplified stock corporation by unanimous decision rendered by the holders of all issued rights or shares in such business form. The decision to convert into a simplified stock corporation shall be registered before the Mercantile Registry [include the name of corresponding company registrar's office].

A simplified stock corporation may be converted into any other business form governed under the Commercial Code [include the name of the relevant Code, Decree, Law or Statute] provided that unanimous decision is rendered by the holders of all issued and outstanding shares in the corporation.

ARTICLE 32. SUBSTANTIAL SALE OF ASSETS.--Whenever a simplified stock corporation purports to sell or convey assets and liabilities amounting to 60% or more of its equity value, such sale or conveyance will be considered to be a substantial sale of assets.

Substantial sales of assets shall require majority shareholder approval. Whenever a substantial sale of assets is detrimental to the interests of one or more shareholders, it shall give rise to the application of dissenters' rights and appraisal remedies.

ARTICLE 33. SHORT-FORM MERGER.--In any case in which at least 90% of the outstanding shares of a simplified stock corporation is owned by another legal entity, such entity may absorb the simplified stock corporation by the sole decision of the boards of directors or legal representatives of all entities directly involved in the merger.

Short-form mergers may be executed by private document duly registered before the Mercantile Registry [include the name of corresponding company registrar's office].

CHAPTER VI

DISSOLUTION AND WINDING UP

ARTICLE 34. DISSOLUTION AND WINDING UP.--The simplified stock corporation shall be dissolved and wound up whenever:

- 1) An expiration date has been included in the formation document and such term has elapsed, provided that a determination to extend it has not been approved by the shareholders, before or after such expiration has taken place;
- 2) For legal or other reasons, the corporation is absolutely unable to carry out the business activities provided under the purpose clause;
- 3) Compulsory liquidation proceedings have been initiated;
- 4) An event of dissolution set forth in the by-laws has taken place;

- 5) A majority shareholder decision has been rendered or such decision has been made by the will of the sole shareholder, and
- 6) A decision to that effect has been rendered by any authority with jurisdiction over the corporation.

Whenever the duration term has elapsed, the corporation shall be dissolved automatically. In all other cases, the decision to dissolve the simplified stock corporation shall be filed before the Mercantile Registry [include the name of corresponding company registrar's office].

ARTICLE 35. CURING EVENTS OF DISSOLUTION.-- Events of dissolution may be cured by adopting any and all measures available to that effect, provided that such measures are adopted within one year, following the date in which the shareholders' assembly acknowledged the event of dissolution.

Events of dissolution consisting of the reduction of the minimum number of shareholders, partners or members in any business form governed under the Commercial Code [include the name of the relevant Code, Decree, Law or Statute] may be cured by conversion into a simplified stock corporation, provided that unanimous decision is rendered by the holders of all issued shares or rights, or by the will of the subsisting shareholder, partner or member.

ARTICLE 36. WINDING UP.--The simplified stock corporation shall be wound up in accordance with the rules that govern such proceeding for stock corporations. The legal representative shall act as liquidator, unless shareholders appoint any other person to wind up the company.

CHAPTER VII
MISCELLANEOUS PROVISIONS

ARTICLE 37. FINANCIAL STATEMENTS.--The legal representative shall submit financial statements and annual accounts to the shareholders' assembly for approval.

In the event that there is a single shareholder in a simplified stock corporation, such person shall approve all financial statements and annual accounts and will record such approvals in minutes within the corporate books.

ARTICLE 38. SHAREHOLDER EXCLUSION.--The by-laws may contain causes by virtue of which shareholders may be excluded from the simplified stock corporation. Excluded shareholders shall be entitled to receive a fair market value for their shares of stock.

Shareholder exclusion shall require majority shareholder approval, unless a different procedure has been laid down in the by-laws.

ARTICLE 39. CONFLICT RESOLUTION.--Any conflict of any nature whatsoever, excluding criminal matters, that arises between shareholders, managers or the corporation may be subject to arbitration proceedings or to any other alternative dispute resolution procedure. In the absence of arbitration, the same disputes will be resolved by (include specialized judicial or quasi-judicial tribunal).

The decisions rendered by the tribunal are final and shall not be subject to appeals before any court.

ARTICLE 40. SPECIAL PROVISIONS.--The legal mechanisms set forth under Articles 13, 14, 38 and 39 may be included, amended or suppressed from the by-laws only by unanimous decision rendered by the holders of all issued and outstanding shares.

ARTICLE 41. PIERCING THE CORPORATE VEIL.--The corporate veil may be pierced whenever the simplified stock corporation is used for the purpose of committing fraud. Accordingly, joint and several liability may be imposed upon shareholders, directors and managers in case of fraud or any other wrongful act perpetrated in the name of the corporation.

ARTICLE 42. ABUSE OF RIGHTS.--Shareholders shall exercise their voting rights in the interest of the simplified stock corporation. Votes cast with the purpose of inflicting harm or damages upon other shareholders or the corporation, or with the intent of unduly extracting private gains for personal benefit or for the benefit of a third party shall constitute an abuse of rights. Any shareholder who acts abusively may be held liable for all damages caused, irrespective of the judge's ability to set aside the decision rendered by the shareholders' assembly. A suit for damages and nullification may be brought in case of:

- 1) Abuse of majority;
- 2) Abuse of minority; and
- 3) Abusive deadlock caused by one faction under equal division of shares between two factions.

ARTICLE 43. CROSS-REFERENCES.--The simplified stock corporation shall be governed:

- 1) By this Law;
- 2) By the formation document, as amended from time to time; or
- 3) By statutory provisions contained in the Commercial Code [include the name of the relevant Code, Decree, Law or Statute] governing stock corporations.

Promulgation.--This Act shall be effective as of the date of its promulgation, and it repeals any and all statutes, acts, codes, decrees, or provisions of any nature that are inconsistent with this Act.

Annex B

**MODEL ACT ON PROCEDURAL RULES FOR THE RESOLUTION OF
CONFLICTS IN SIMPLIFIED STOCK CORPORATIONS**

CHAPTER I GENERAL PROVISIONS

Article 1. Purpose. The purpose of this Act is to provide the procedural rules that shall apply to the resolution of conflicts arising within a simplified stock corporation, as provided in Law [include name or number of the Act that regulates the simplified stock corporation].

All conflicts that arise between shareholders, or between them and the corporation, its managers, officers, auditors or third parties, including those related to the abuse of rights, piercing the corporate veil, liability of shadow directors and officers, shareholders' agreements, and decisions rendered by the shareholders' assembly or the board of directors, shall be subject to the special proceedings regulated in this Act.

Article 2. Principles. The following principles shall prevail in the special proceedings regulated herein: concentration, celerity, and brevity.

The principle of concentration requires that each step in a proceeding consolidate as many procedural acts as possible. A deferral of a proceeding may take place only under exceptional circumstances.

The principle of celerity requires that all procedures take place in the shortest amount of time. All decisions, measures, agreements, and, in general, any action that reduces the time frame of a proceeding, shall be preferred.

The principle of brevity requires that in a proceeding, the act that requires the least amount of procedures shall be preferred.

Article 3. Jurisdiction. The [include name of the administrative authority or specialized court in charge of proceeding] (hereinafter, referred to as "the authority") will have judicial powers with regard to any proceeding concerning the simplified stock corporation.

The [include name of the administrative authority or specialized court in charge of proceeding] shall have exclusive jurisdiction over such proceedings.

Article 4. Legal Standing. Legal standing shall be presumed with regard to shareholders and officers in any proceeding involving a simplified stock corporation, as well as with regard to the corporation itself. Third parties may provide summary evidence as proof of their legal standing.

CHAPTER II PROCEDURES

Article 5. Petition. The special proceeding for simplified stock corporations shall be deemed to have commenced with the filing of a complaint or petition. Such petition must contain: the name of the parties, the claims and pleadings, a brief description of the facts, a listing of the probative materials to be used as evidence, the legal foundations for each claim, the plaintiff's address and e-mail address for notification purposes, and the assumed defendant's address and e-mail for the same purpose.

A single petition may include all the pleadings involving one or more simplified stock corporations.

The anticipated evidence and documents that are in possession of the plaintiff are, under no circumstance, required to be attached to the petition as an exhibit. The mere listing of such evidence will suffice for all legal purposes.

Article 6. Filing of the Petition. The petition that complies with the above-mentioned requirements may be filed in writing or through a data message sent to the Electronic System for Conflict Resolution of Simplified Stock Corporations that will be created by [include name of the administrative authority or specialized court in charge of proceeding].

If the petition is filed in writing, the authenticity of such document shall be presumed, provided that it has been executed by the plaintiff or her legal representative. If the petition is

filed as a data message, the rules contained in [include name or number of the act or rule that regulates e-commerce and data messages] shall apply.

Article 7. Preliminary Study of the Petition. Within three days following the date in which the petition has been filed, the [include name of the administrative authority or specialized court in charge of proceeding] will determine if it complies with all legal requirements and will decide on its admissibility or inadmissibility.

If such authority finds that the petition complies with all legal requirements, it will be admitted. If the petition does not comply with the requirements provided for in this law, the aforementioned authority shall declare its inadmissibility and order the plaintiff to make the necessary corrections. The appropriate corrections will have to be undertaken within the next five days following the date in which the request was made.

An action may be dismissed only when the plaintiff has not made the necessary corrections within the aforementioned period, or when the authority has determined that it has no jurisdiction over the issues brought before it under this Act.

Article 8. Preliminary Measures. In proceedings regarding the specific performance of obligations contained in a shareholders' agreement, the authority will be entitled to issue preliminary injunctions immediately after determining the admissibility of the complaint. In all other proceedings, the authority will only be allowed to issue such injunctions after service of process has been made.

Article 9. Anticipated Judgment. If during the preliminary analysis of the petition the authority finds that the pleadings and facts brought forward by the plaintiff are fundamentally similar to the pleadings and facts that have been the matter of a previous dismissal by such authority, the authority shall dispense service of process to the defendant and render immediately a final decision or judgment on the merits of the case by resolving the matter in the same terms in which it was done in the previous case.

Should the plaintiff bring a motion to set aside the judgment, the authority shall decide, in no more than five days, if the decision will be revoked. In this case the proceedings will continue pursuant to the provisions of this Act. If the authority rejects the motion, the judgment shall be definitive, unless the special appeal contained in Article 28 shall be applicable.

Article 10. Service of Process. The petition shall be admitted by an order rendered by the authority. Service of process to the defendant or defendants shall take place in accordance with Article 29 of this Act. Along with the service of process, notification of the petition shall also take place.

Article 11. Notice to the Corporation and Joint Litigation. Notice concerning the commencement of proceedings shall be sent to the corporation or corporations involved in the complaint. It will be the corporation's legal representative duty to inform all shareholders, officers, directors, and auditors of the action that has been initiated before the authority. Any persons who may have an interest in the matter will be entitled to become a party to the process by filing a written statement in support of the plaintiff's pleadings, or bringing an opposition to them. Such statements must be filed within the five days following the notice given to the corporation.

The notice to the corporation shall also be published in the Electronic System for Conflict Resolution of Simplified Stock Corporations on the same date that it is sent to the corporation.

Article 12. Response to Complaint. After the expiration of the five-day term referred to in Article 11 above, the defendant or defendants shall have five additional days to provide a written response to the petition. Such answer may also be presented through a data message. The response shall include a response to all pleadings and claims included in the petition, as well as the defendant's counterclaims and legal defenses, a listing of the evidence, and the correct address and e-mail address for notifications (in the event that those presented by the plaintiff are incorrect).

Grounds for dismissal related to formal requirements shall only be heard in the preliminary hearing.

Article 13. Preliminary Hearing. Within the following five days after the expiration of the term referred to in Article 12 above, the authority shall summon the parties to a preliminary hearing in order to conduct mediation proceedings, curing any defects that may exist in the process, and make all determinations concerning the requests for evidence. The parties shall attend the hearing in person, or through their legal representative.

The preliminary hearing will be subject to the following rules:

1. **Opening:** The hearing will commence at the time provided in the summons. If any of the parties is unable to attend the hearing due to force majeure, such event shall have to be argued in advance to the commencement of the hearing. The hearing may be postponed only once. In this case, the new hearing shall take place within the five days following the initial date.
2. **Mediation.** Once the hearing has started, the parties will be asked if an agreement to resolve the issues has been reached or, in the alternative, if they have agreed on a method to solve the matter. In case the parties have reached an agreement, the authority shall verify its validity and approve it (if the case may be). If the parties have agreed on a method to solve the dispute, such procedure shall be validated by the authority.

If after the mediation has been conducted the parties fail to reach an agreement, the hearing will continue.

3. **Curing Defects in the Process.** The authority shall interrogate the parties on the defects that are deemed to affect the process. Immediately afterwards, the authority shall adopt the necessary measures to cure the defects in order to prevent nullities within the proceedings.
4. **Pleadings.** Subsequently, the parties will be entitled to present their pleadings and defenses before the authority.
5. **Requests for Discovery and Production of Evidence.** In the following stage of the preliminary hearing, the parties shall produce the evidence in their possession. The first to disclose the evidence will be the plaintiff, followed by the defendant.

After the production of evidence, the parties will have the opportunity to present the evidentiary stipulations governed under Article 23 of this Act.

Subsequently, the authority will solve all requests for production of evidence that have been made by the parties.

Afterwards, the parties will be ordered to produce evidence, which will be ascertained by the authority taking into account its relevance and conduciveness to the purposes claimed by each party.

The hearing referred to in this Article shall take place in one single day. It may, however, be deferred once or several times, provided that such deferral does not exceed three hours.

As soon as the hearing is concluded, the authority shall summon the parties to a new hearing for the taking of evidence, the presentation of closing arguments, and the rendering of the final decision.

Article 14. Hearing for the Taking of Evidence. After the commencement of the hearing, the taking of evidence shall take place in the following manner:

1. The deposition of expert witnesses designated by the parties shall be taken first. The authority may interrogate them on the issues that are not clear. The parties shall also be entitled to interrogate or refute them.

2. All records concerning evidence taken by in situ inspection of books and records conducted by the parties or their legal representatives shall be shown during the hearing.

After the evidence has been taken, each of the parties will provide the closing arguments by means of an oral presentation not to exceed 30 minutes. Subsequently, the authority will render the final decision orally.

After rendering the decision, the authority shall hear any requests for the special appeal contained in Article 28 of this Act.

The hearing referred to in this Article shall take place in one single day. It may, however, be deferred once or several times, provided that such deferral does not exceed three hours.

Article 15. Summary Decision. If at any juncture during the process the authority finds that there is sufficient evidence from which a definitive and unequivocal decision can be made, it may omit any subsequent procedural stages and render a final decision or judgment on the merits of the case.

CHAPTER III

SPECIAL PROVISIONS CONCERNING EVIDENCE

Article 16. Procedural Moment for the Request of Evidence. All evidence that the parties may wish to present during the proceeding shall be either listed or requested in the petition or its response. A request for the production of evidence cannot be made in any other stage of the proceedings.

Article 17. Prohibitions. The authority shall only admit or authorize the production of evidence that is pertinent, useful and conducive to the pleadings and defenses of the parties. A request for the production of evidence that has only an indirect or relation with the case shall be dismissed.

The authority shall not hear more than three witnesses for each of the parties.

The production of evidence by physical examination of exhibits shall only be ordered under exceptional circumstances. It shall be permitted only in the event that the alleged fact cannot be proven by any other means.

Article 18. Reading of Documents. Under no circumstances shall the actual reading of documentary evidence be required in any hearing. Access to such documents shall be permitted through the exhibits included in the docket.

Article 19. Presumption of Authenticity of Originals and Copies. All documents produced as originals or copies that contain the signature of the plaintiff, the defendant, their attorneys, the legal representative or any officer or manager of the corporation, shall be presumed to be authentic.

Article 20. Electronic Documents. Data messages shall be considered probative material under the terms of law [include name or number of the Act that regulates e-commerce and data messages].

Article 21. Deposition of Expert Witnesses. The deposition of all witnesses shall be taken orally. Rebuttals can only take place in the hearing regulated under Article 14 of this Act.

In the case of expert witnesses, summary proof of the technical or scientific ability, skill or knowledge on the subject upon which the witness has been called to testify, will suffice. Such proof concerning the expert witness' qualifications must be presented during the interrogation of the expert witness conducted by the authority.

Article 22. Evidence through *in situ* inspection of books and records. Once the authority has ordered the production of evidence by an inspection carried out in a specifically designated place pursuant to Article 14-2 of this Act, the party who requested it shall be responsible for carrying out the corresponding inspection, recording or filming the

examination in an appropriate medium and assuming all costs that such procedure may demand.

The authority shall not be required to attend the inspection, as the recording will suffice. The other party will be entitled to attend the examination, for which it must previously and timely be informed as to the date and time in which the inspection will take place.

Article 23. Stipulations Concerning Evidence. During the hearing for the taking of evidence, the parties may agree on the facts and circumstances that are to be considered proven in the case. For these facts and circumstances, the production of evidence will not be necessary.

The stipulations shall be duly recorded in writing, and must contain the signature of all plaintiffs and defendants or their legal representatives. Once the document has been executed, the stipulations will be informed to the authority for it to decide on their validity. If the stipulations are deemed to be valid, they will be taken into consideration by the authority when ordering the production of evidence.

Stipulations that are contrary to facts that are evident in the proceeding shall be deemed to be invalid by the authority.

Article 24. Burden of Proof. Each of the parties will be bound to prove the existence of the facts that support their claims and defenses. Nevertheless, when one of the parties is in a difficult position to produce evidence regarding a specific fact, whilst another party is in a better position to produce it, the authority may shift the burden of proof to the party with the ability to provide such evidence.

The shift in the burden of proof must be duly informed in the hearing for the taking of evidence.

CHAPTER IV

TIME LIMITS AND DEADLINES

Article 25. Waiver of Time Limits. The parties may, in all cases, renounce, expressly or implicitly, to the time limits and deadlines of a proceeding.

An implicit waiver of a time limit takes place when it can be inferred from the conduct of the parties that they do not wish to exhaust the time period that the law provides as when writings are filed by the parties before the time limit has elapsed.

Article 26. Observation of Time Limits. Time limits and deadlines shall be strictly observed and complied with by the parties and the authority.

CHAPTER V

APPEALS

Article 27. Motion to Set Aside Decisions of Authority and other Appeals. Orders or resolutions and decisions rendered by the authority regarding procedural aspect are not subject to appeal.

All other decisions rendered by the authority will only be subject to a motion to have them set aside by the same officer. Such motions shall have to be presented within three days after the challenged decision has been rendered or notified, as the case may be. The authority will have a five-day term to decide on these motions. Nevertheless, If the challenged decision is rendered in the course of a hearing, the motion to have it set aside will have to be presented and resolved during the same hearing.

Article 28. Special Appeal before a Superior. Under special circumstances provided for in this act, the final decision may be appealed before [include name of the highest administrative or specialized judicial authority with jurisdiction over the issues].

The appeal shall have to be presented orally in the hearing where the final decision is rendered. In that same hearing, the authority shall decide if the recourse is to be granted. The appeal will only proceed if the amount at stake exceeds [include amount in local currency].

Once the appeal has been granted, the party filing the recourse will have to file the appeal in writing within the following five days. Immediately afterwards, the authority will remand the entire docket to [include name of the highest administrative authority or specialized court with jurisdiction over the issues] in order to be resolved.

The final decision resolving the special appeal may only be rendered on the grounds of the written appeal filed by the objecting party, and the proceedings that have already taken place. New evidence will not be admitted at this stage.

CHAPTER VI

SERVICE OF PROCESS

Article 29. Service of Process Types. Service of process may take place under any of the following means: through personal notification, by publication, by the parties' tacit behavior, service during a hearing, and service by e-mail or any other data message.

Service through personal notification and service by publication shall be made as provided by [include name or number of procedural act or rules that regulate service of process]. In any event, service by publication will always be included in the authority's website.

Service by e-mail shall be made by sending the respective order or decision through an e-mail address that is certified by the authority as the official address for the purposes of service of process.

Article 30. Service Concerning Resolution that Admits the Complaint. The resolution whereby the petition for the initiation of a proceeding is admitted shall be served simultaneously to all the involved parties through any of the service of process mechanisms described in the preceding Article.

Article 31. Service of Other Resolutions or Decisions. Orders or decisions different from the resolution whereby the petition for the initiation of the proceeding is admitted shall be served by publication or by e-mail. However any decisions or order rendered during a hearing, including the final decision, shall be understood to have been served in the same hearing.

Article 32. Service through the Parties' Tacit Behavior. In any event in which a party behaves in a manner that could allow the authority to infer that such party has knowledge of the decision that was to be served, such party will be considered to have been tacitly served.

Article 33. Waiver of Defects Regarding Service of Process. In any case in which a defect in the service of process has been detected, the affected party will be entitled to send a written statement to the authority waiving any such defect that may have occurred.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Article 34. Abuse of Rights. Whenever the authority finds that the parties have behaved in an abusive manner during the process, will be entitled to impose fines to the party responsible for such abuse of rights.

Article 35. Alternative Procedural Provisions. The parties to any case governed under this law may propose to the authority procedural alternatives regarding the manner in which the process will take place, even if such proposals modify the order that has been provided in Chapter II of this Act.

If the authority considers that such proposals are relevant, that they will have a positive impact in expending the process, it will approve the suggested changes and proceed to undertake any required modifications in order for the process to continue as proposed by the parties.

Article 36. Stay of Proceedings. Any act performed by the parties with the objective of staying or delaying the process shall be considered as a serious indication of noncompliance and will be used against such party. If the authority becomes aware of such acts, it will adopt

the necessary measures to counteract them in order for the proceeding to continue in the most expedited fashion.

Article 37. Recording of Hearings. All hearings must be recorded by any accepted technological which are considered appropriate according to the circumstances.

Minutes for each hearing must be drafted in which at least the following aspects must be included: time and date, type of hearing, the name of the persons who participated in the hearing, any adjournments that could have taken place, a description of proceedings, decisions, recourses and appeals that might have been presented by the parties.

Article 38. Decisions Made by the Authority. Decisions made by the authority shall be included in resolutions or orders that may have a substantive or procedural nature. The decision by which the case is resolved is referred to as the final decision or judgment.

Article 39. Prohibitions. Preliminary exceptions and amendments to the pleadings, defenses, or petitions shall not be permitted in this proceeding.

Article 40. Statute of Limitations. The statute of limitations applicable to any action regarding the special proceeding for the simplified stock corporations will elapse in a term of five years.

The time prescribed herein shall be counted in accordance with the following rules:

1. If the cause of action, claim or issue is related to the piercing of the corporate veil, abuse of rights, or liability of SAS officers, directors and shadow directors, the term prescribed herein shall initiate from the moment in which the abusive or fraudulent act occurred.
2. If the cause of action, claim or issue involves the challenging of a decision of the shareholders' assembly or board of directors, the term prescribed herein shall initiate from the moment in which such decision was rendered.
3. If the cause of action, claim or issue involves the performance of obligations contained in a shareholders' agreement, the term prescribed shall initiate from the moment in which such obligation was to be performed.

Article 41. Application of additional Rules. Any issue that is not specifically regulated in this law will be governed under the [include name or number of act or rules of civil procedure].

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