

AG/RES. 2906 (XLVII-O/17)

MODEL LAW ON THE SIMPLIFIED CORPORATION<sup>1/</sup>

(Adopted at the first plenary session, held on June 20, 2017)

THE GENERAL ASSEMBLY,

CONSIDERING the report of the Inter-American Juridical Committee “Recommendations on the Proposed Model Act on the Simplified Corporation” (document CJI/doc.380/11 corr. 1), adopted in March 2012;

MINDFUL of the contribution that these new forms of companies may make to economic development in the member states; and

MINDFUL ALSO that by resolution AG/RES. 2886 (XLVI-O/16) the Committee on Juridical and Political Affairs was requested to study the possibility that the Model Law be submitted to the General Assembly for consideration at this regular session,

RESOLVES:

1. To take note of the Model Law on the Simplified Corporation appended hereto.
2. To request the Inter-American Juridical Committee (CJI) and its Technical Secretariat – the Department of International Law of the Secretariat for Legal Affairs of the General Secretariat – to disseminate the Model Law as widely as possible among the member states.
3. To invite member states to adopt, in accordance with their domestic laws and regulatory framework, those aspects of the Model Law on the Simplified Corporation that are in their interest.
4. To instruct the General Secretariat, through its Department of International Law in the latter’s capacity as Technical Secretariat to the Inter-American Juridical Committee, to provide those member states that so request with all collaboration and support necessary to implement the preceding paragraph.

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<sup>1</sup>. The Bolivarian Republic of Venezuela does not agree to any commitment or mandate issued in this resolution as it did not participate in the negotiation of said resolution. It is still within the denunciation period established in Article 143 of the OAS Charter.

**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 46. CHOICE OF JURISDICTION.** Any contracts entered into by a simplified corporation with foreign natural or legal persons may include an agreement that any dispute arising on account of said contracts shall be resolved through international arbitration. In this case, the parties shall be free to determine the substantive and procedural rules under which the arbitrators shall settle the dispute. Any arbitration award handed down shall be enforceable and fully and directly valid, without any need for an official approval, exequatur, or any other procedure.

**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.