

# Model Law on the Simplified Corporation: Status of Reforms in the Region

Document prepared by the Department of International Law for the Inter-American Juridical Committee



OAS

COMISSÃO JURÍDICA INTERAMERICANA  
COMITÉ JURÍDICO INTERAMERICANO  
INTER-AMERICAN JURIDICAL COMMITTEE  
COMITÉ JURIDIQUE INTERAMÉRICAIN



## **Charter of the Organization of American States**

### **Chapter XIV**

#### **The Inter-American Juridical Committee**

##### **Article 99**

The purpose of the Inter-American Juridical Committee is to serve the Organization as an advisory body on juridical matters; to promote the progressive development and the codification of international law; and to study juridical problems related to the integration of the developing countries of the Hemisphere and, insofar as may appear desirable, the possibility of attaining uniformity in their legislation.

##### **Article 100**

The Inter-American Juridical Committee shall undertake the studies and preparatory work assigned to it by the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs, or the Councils of the Organization. It may also, on its own initiative, undertake such studies and preparatory work as it considers advisable, and suggest the holding of specialized juridical conferences.

##### **Article 101**

The Inter-American Juridical Committee shall be composed of eleven jurists, nationals of Member States, elected by the General Assembly for a period of four years from panels of three candidates presented by Member States. In the election, a system shall be used that takes into account partial replacement of membership and, insofar as possible, equitable geographic representation. No two Members of the Committee may be nationals of the same State.

Vacancies that occur for reasons other than normal expiration of the terms of office of the Members of the Committee shall be filled by the Permanent Council of the Organization in accordance with the criteria set forth in the preceding paragraph.

##### **Article 102**

The Inter-American Juridical Committee represents all of the Member States of the Organization, and has the broadest possible technical autonomy.

##### **Article 103**

The Inter-American Juridical Committee shall establish cooperative relations with universities, institutes, and other teaching centers, as well as with national and international committees and entities devoted to study, research, teaching, or dissemination of information on juridical matters of international interest.

##### **Article 104**

The Inter-American Juridical Committee shall draft its statutes, which shall be submitted to the General Assembly for approval.

The Committee shall adopt its own rules of procedure.

##### **Article 105**

The seat of the Inter-American Juridical Committee shall be the city of Rio de Janeiro, but in special cases the Committee may meet at any other place that may be designated, after consultation with the Member State concerned.

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**Technical Secretariat of the Inter-American Juridical Committee**

Department of International Law of the Secretariat for Legal Affairs

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## Introduction

Many states in the Americas continue to use outdated corporate and commercial codes that hamper economic growth and development. Cognizant of this situation, in 2012 the Inter-American Juridical Committee of the Organization of American States approved a *Model Law on the Simplified Corporation (SAS Model Law)* that offers a simple alternative.<sup>1</sup> The OAS General Assembly took note and resolved that the *SAS Model Law* be disseminated “as widely as possible” and invited Member States “to adopt, in accordance with their domestic laws and regulatory framework, those aspects of the Model Law that are in their interest.”<sup>2</sup>

In furtherance of that mandate, the Department of International Law (DIL) has invited the Permanent Missions to the OAS to consider the appointment of a Focal Point within their respective governments. To date, eight states have done so.<sup>3</sup> These individuals have been consulted for their suggestions and contributions to this report; several of them took part in the virtual meeting

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<sup>1</sup> *Project for a Model Act on Simplified Stock Corporation*. CJI/RES. 188 (LXXX-0/12).

<sup>2</sup> *Model Law on the Simplified Corporation*. AG/RES. 2906 (XLVII-O/17). See Annex A to this report.

<sup>3</sup> Argentina, Brazil, Colombia, Ecuador, Mexico, Panama, Paraguay and Peru.

that had been organized by the OAS secretariat in 2019.<sup>4</sup> On that basis, a draft report was prepared that was circulated in 2020 through the Permanent Missions to their respective governments for comments, which have been incorporated into this final document.<sup>5</sup>

Part I is a compilation of reports on the status of reforms in eleven states within the region. Some states have initiated reforms by introducing new stand-alone legislation similar to the *SAS Model Law* while other states have chosen to reform existing laws, such as the relevant sections of commercial or civil codes. Over the course of the past decade, most states have introduced at least some kind of legislative reform to simplify the process of starting and registering a business.<sup>6</sup> The reports in Part I provide a brief description of some of the relevant and most recent reform initiatives.

Part II explains twelve key elements of the *SAS Model Law* that together comprise the essence of a simplified corporation, which are as follows: legal personality, limited liability, possibility of a single shareholder (owner), possibility of a single director, no minimum capital contribution, broad purpose clause or none at all, simplified incorporation documents, flexible organizational structure, no mandatory requirement for third party intermediaries to incorporate, decisions by majority vote, no mandatory internal auditors and maximum freedom of contract. The *SAS Model Law* is the first of its kind to include in a single international legal instrument all twelve, emerging as “global best practices” for simplified incorporation. Part II considers the relevance of each element to the intended objective of modernization and simplification, which thereby makes incorporation less costly and more accessible, particularly for Medium, Small and Micro Enterprises (MSMEs). The questions can be used as a tool for comparative analysis.

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<sup>4</sup> Organized by DIL in partnership with the OAS Department of Economic Development. [http://www.oas.org/en/sla/dil/newsletter\\_DDI\\_Virtual\\_Meeting\\_Model\\_Law\\_Simplified\\_Corporation\\_September-2019.html](http://www.oas.org/en/sla/dil/newsletter_DDI_Virtual_Meeting_Model_Law_Simplified_Corporation_September-2019.html).

<sup>5</sup> OEA/Sec. Gnl. DDI/doc. 3/21.

<sup>6</sup> *Advancing the Model Law on the Simplified Corporation: Initial Report on Status of Reforms in the Region*. OEA/Sec. General, DDI/doc.2/2018, February 15, 2018, Appendix A.



## Part I

### Status of Reforms

#### Argentina<sup>1</sup>

##### Summary of current state of reforms

In 2017, a new type of corporate entity was introduced in Argentina, called “*Sociedad por Acciones Simplificadas*” (SAS), by means of Law No. 27.349 the *Ley de Apoyo al Capital Emprendedor* (LACE) (Support for Entrepreneurial Capital Law). From the outset, there were both strengths and weaknesses in the law and its implementation.

As regards the law itself, the upside of the creation of a type of company outside the scope of the Corporations Law (Law No. 19.550) was that it brought certain benefits; however, they were offset by the loss of the rich general legal framework governing the creation, operation, dissolution, and liquidation of companies.

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<sup>1</sup> This contribution has been provided by the Undersecretary of Entrepreneurs, Secretariat for Small and Medium Enterprises and Entrepreneurs, Ministry of Productive Development (original in Spanish)..

Regarding its implementation, the SAS offered the advantages of digitalization and reduced registration times and costs; however, those benefits are confined to jurisdictions that adopted the simplified corporation. Of the 24 jurisdictions in Argentina, only four did so fully. The speed of registration, together with fewer requirements for documentation - for example, financial statements - encouraged the choice of this type of company. At the same time, however, control by the agencies with authority in this area was limited to formal control of legality.

Likewise, administration of digital SAS registries set up in jurisdictions that had acceded to the Law was assigned to the Secretariat for Modernization, thereby excluding the public records agencies from control over the system.<sup>2</sup>

As of the date of this report, the registration conditions established by Law No. 27.349 remain in force. From 2020 onwards, the General Inspectorate of Justice, as the corporate public records office of the Autonomous City of Buenos Aires, published a series of general resolutions<sup>3</sup> that, within the framework of its jurisdiction, introduced new requirements to be met by existing and prospective SAS. In June 2020, a bill proposing amendments to the current law passed the Argentine Senate and is currently being considered by the Chamber of Deputies.<sup>4</sup>

### Context and scope of the reforms

The introduction of the SAS by LACE sought to simplify the process of incorporation.<sup>5</sup> Although evaluating the results of the introduction of a new type of corporate entity takes a long time, as does monitoring and follow-up

<sup>2</sup> This secretariat was part of the Ministry of Modernization and later (2019) was incorporated into the Office of the Chief of Cabinet of Ministers.

<sup>3</sup> Inspector General of Justice of the Nation, General Resolutions N° 5/2020, N° 9/2020, N° 17/2020, N° 20/2020, N° 22/2020 and N° 23/2020.

<sup>4</sup> Dated June 11, 2020 (Bill S350-20 PL). The bill sent to the Chamber of Deputies of the Nation (CD 63-20) has received a positive opinion from that chamber's General Committee.

<sup>5</sup> Law No. 27.349/2017. The provisions that apply specifically to simplified corporations are Articles 33 to 62 under Title III.

on the reforms undertaken, improvement of the new corporate form itself and its implementation across all jurisdictions make it essential. This section considers substantive aspects of the scope of its implementation.

An analysis of the first few years of implementation of the SAS revealed progress as well as setbacks that require strengthening in the quest for systemic, robust, and agile responses to the need to facilitate the formalization of entrepreneurs.

The first issue that needs to be examined is the jurisdictional one, since Argentina is a federal state and processes for simplifying the incorporation and registration of new companies should synergize with national economic development as a whole, with special emphasis on regional economies.

Less than four years after the simplified corporation was first implemented, only four jurisdictions have fully embraced digitalization. Other jurisdictions have gone digital only to a limited extent, from the incipient introduction of online procedures, such as initial application forms or reservations, in some cases, to the possibility of submitting documentation via e-mail in others.

The registries where SAS registration was adopted with the least friction were those that were already doing so with other types of corporate entities. Similarly, those that went digital were those who were in a position to do so. The implementation of the simplified corporation did not take account of the disparities between different jurisdictions in terms of registry digitalization.

It was a tall order for public registries to comply with the 24-hour registration time period envisaged by the law.<sup>6</sup> At present, only two registries complete the registration process in approximately 48 hours, with one of them having the distinction of doing so in paper-based form. It should be clarified that in those jurisdictions other types of entity, such as the LLC, take slightly longer to register.

<sup>6</sup> Law No. 27.349/2017, Article 38.

## Modernizing with a federal perspective and scope

The life of a business or an SME does not begin and end with the administrative process that establishes it. The life of an enterprise has to do with the capacity of society's actors to generate productive activities and, of course, the policies implemented by the State to assist, finance and support them by encouraging innovation and digitalization. That is why the creation of new companies requires a systemic approach.

The Argentine Government is working at all levels and departments to simplify procedures. Since the beginning of the current administration's tenure in 2019, these processes have deepened. The exceptional conditions imposed by the pandemic as regards the in-person nature of procedures, the execution of public policies, and even public health monitoring, have accelerated this process. The digitalization challenge is not limited to administrative procedures, but also encompasses productive processes at the federal level in order to close the gaps that currently exist between different regions in Argentina.

It is necessary to promote and facilitate the creation of new companies, including simplification of procedures, digital registration and operation processes, costs commensurate with the stage and size of the enterprise, registration times that combine short deadlines with a firm guarantee of appropriate control and transparency mechanisms.

## Brazil

### Summary of current state of reforms

Although Brazil has not yet introduced legislative provisions to enable a "*Sociedade por Ações Simplificada*" (or equivalent type of company), it has enacted certain changes to reduce the burdens of incorporation for some small corporations. Under these new provisions, privately-held companies with less than 20 shareholders and shareholders' equity up to R\$ 10 million Brazilian reals are exempt from the requirement to publish notices to convene a general shareholders' meeting and related documents. Other provisions related to simplified publication requirements are expected to enter into force later on.

### Context / Background

In 2012, a bill was presented to include into Brazilian legislation a "*regime especial da sociedade anônima simplificada (RE-SAS)*" (special regime of limited liability company), for companies with less than 20 shareholders and a net worth of less than R\$ 100 million reals.<sup>1</sup> The bill proposed sole proprietorship, remote participation in the governing body and easier divestiture for members.<sup>2</sup>

The following two aspects of that bill were subsequently passed as Law 13.818/2019<sup>3</sup> on April 25, 2019:

<sup>1</sup> *Projeto de Lei 4303/2012* (Bill 4303/2012), presented by the house representative Laercio Oliveira and the senator of the PP-RS, Ana Amélia, The Bill would incorporate the possibility of a SAS into Article 294 of Law 6404/1976: [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=73F5965FE69FA7BF44B1061C2E5FC0A4.proposicoesWeb2?codteor=1251831&filename=Avulso+-PL+4303/2012](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra;jsessionid=73F5965FE69FA7BF44B1061C2E5FC0A4.proposicoesWeb2?codteor=1251831&filename=Avulso+-PL+4303/2012) (accessed March 15, 2021).

<sup>2</sup> See Warde (JR.) - Monteiro de Castro, "Regime especial da sociedade anônima simplificada" (Special regime for simplified corporations); Mota Fonseca, "A SA simplificada: um tipo societário para o venture capital" (A simplified SA: a corporate form for venture capital) in *Brazilian Journal of Commercial Law*, n° 6, 2015, p. 81 and following.

<sup>3</sup> Law 13.818/2019 of April 25, 2019 amends Law 6.404/1976 (Brazilian Corporate Law). Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2019-2022/2019/Lei/L13818.htm](http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Lei/L13818.htm) and [http://www.planalto.gov.br/ccivil\\_03/leis/l6404consol.htm](http://www.planalto.gov.br/ccivil_03/leis/l6404consol.htm) (accessed March 15, 2021).



Article 2, which is already in force,<sup>4</sup> amends Article 294 of Law 6.404/1976 (Brazilian Corporate Law), which article contains the provisions for certain publication exemptions for closed companies (those without publicly-traded shares) *i.e.*, the requirement to publish notices to convene a general shareholders' meeting and related documents.<sup>5</sup> The amendment has extended these exemptions to companies with less than 20 shareholders and shareholders' equity up to R\$ 10 million reais. Previously, this exemption under the bill would have only been available to companies with equity levels at R\$ 100 million reais; hence, the exemption has been extended to a much larger group of small- to medium-sized businesses.

Article 1 amends Article 289 of the Brazilian Corporate Law and thereby modifies other publication requirements.<sup>6</sup> As a result of this change, corporations subject to certain publication requirements may now publish these required notices in a more concise format in printed newspapers with the full text made available on their corporate website.<sup>7</sup> This amendment will enter into force January 1, 2022.<sup>8</sup>

<sup>4</sup> *Id.*

<sup>5</sup> Barbosa, Raimundo Gontijo, Camara, New Legislation – Law 13.818/2019. <http://brgc.com.br/en/new-legislation-law-no-13818-2019/> (accessed March 15, 2021).

<sup>6</sup> Article 289 of the Brazilian Corporate Law, as amended: "The publications ordered by this Law will obey the following conditions: I - they must be in a widely circulated newspaper published in the location where the company's headquarters is located, in a summarized form and with simultaneous disclosure of the entire documents on the same newspaper's website, which shall provide digital certification of the authenticity of the documents maintained on the own page issued by a certifying authority accredited within the scope of the Brazilian Public Key Infrastructure (ICP-Brazil);

II - in the case of financial statements, the summary publication must contain, at least, in comparison with the data for the previous fiscal year, global information or values related to each group and the respective classification of accounts or records, as well as extracts from relevant information included in the explanatory notes and in the opinions of the independent auditors and the fiscal council, if there is one."

<sup>7</sup> Barbosa, *et al*, *supra* note 5.

<sup>8</sup> Law 13.818/2019 of April 25, 2019, *supra* note 3.

## Chile

### Summary of current state of reforms

In 2013, Chile established a simplified regime for the creation, modification, and dissolution of a variety of different corporate entities. Using the online electronic platform known as "Your company in one day" it became possible to create an online company and obtain the company's tax identification number within 24 hours.

One of the corporate forms that can be created under this simplified regime is the "*Sociedad por Acciones*" (SpA) (Share or Joint-Stock Company). Available since 2007, with the subsequent legislative revisions that were adopted in 2019, it is now considered the option currently available in Chile that is most similar to the SAS.

### Context / Background

In 2007, Chile adopted Law 20.190,<sup>1</sup> called "*Introduce adecuaciones tributarias e institucionales para el fomento de la industria de capital de riesgo y continua el proceso de modernización del mercado de capitales*" (Introduce tax and institutional adjustments to promote the venture capital industry and continue the process of modernizing the capital market). Law 20.190 allows owners greater flexibility to create and manage a SpA.

Later in 2019, amendments were made to include additional provisions that regulate the SpA, among other corporate entities, by adding Articles 424 to 446 to the Chilean Commercial Code.<sup>2</sup> With these amendments, the SpA became the Chilean company type most similar to SAS.<sup>3</sup> Of the SAS twelve

<sup>1</sup> Law 20.190 <https://www.bcn.cl/leychile/navegar?idNorma=261427&idVersion=2019-05-24&idParte=> (accessed March 15, 2021).

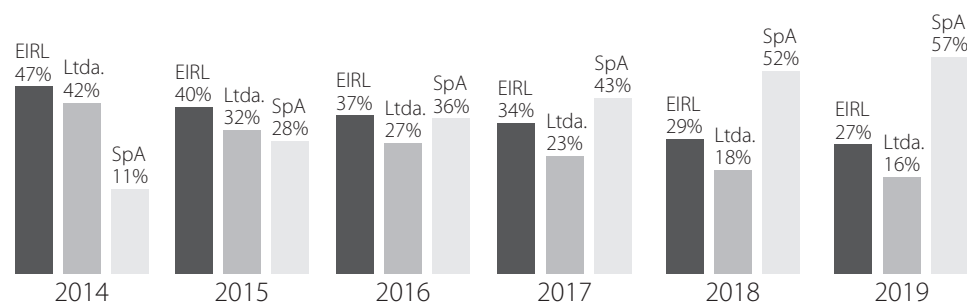
<sup>2</sup> Law 20.190 (2019 amendments) of May 24, 2019: <https://www.leychile.cl/Navegar?idNorma=261427> (accessed March 15, 2021).

<sup>3</sup> Ramírez, Alejandro H., SAS, Sociedad por Acciones Simplificada. Astrea, 2019, at p. 55.

(emerging) international standards, these three are included in the SpA: i) the possibility of a single shareholder, ii) simplified incorporation documents and iii) maximum freedom of contract.

The possibility of having a single shareholder is the biggest novelty of the SpA.<sup>4</sup> A single shareholder company may be defined as a company that is incorporated with one shareholder, or whose shareholders are reduced to one at a later date. This possibility has made the SpA the most widely used corporate form in Chile today, surpassing the “*Sociedad de Responsabilidad Limitada (Ltda.)*” (Limited Liability Company), and the “*Empresa Individual de Responsabilidad Limitada (EIRL)*” (Individual Limited Liability Company). The evolution of the SpA in Chile can be seen in the following chart.<sup>5</sup>

### Evolution of the SpA in Chile



In addition, in 2013 the incorporation of companies in Chile was impacted by a technological advancement with the enactment of the “*Simplifica el Regimen de Constitución, Modificación y Disolución de las Sociedades Comerciales*”, also known as “*Ley de Sociedades Express*” (Express Companies Act), published as

<sup>4</sup> Novoa Urenda, “The Latin American contribution to a model law of simplified companies,” *Arizona Journal of International and Comparative Law*, vol. 33, issue 1, 2016, at p. 167.

<sup>5</sup> Source: Registry of Companies and Societies (RES) and Ministry of Economy, Development and Tourism. For the year 2019, corresponding provisional data has been used as of March 2019.

Law 20.659<sup>6</sup> on February 8, 2013 and which came into force on May 2, 2013.<sup>7</sup> This Law simplifies the process for the incorporation, modification and dissolution of a variety of commercial companies.<sup>8</sup> By means of this Law the online electronic platform known as “Your company in one day”<sup>9</sup> became operational on May 2, 2013. Using this platform, it became possible to create an online company and obtain the company tax identification number (RUT) within 24 hours. Subsequently, in 2019 Chile amended Decree 45,<sup>10</sup> incorporating the following fundamental principles of the “Simplified Regime”: zero cost, information security, public information and data protection. Registration forms (*i.e.*, incorporation) can be completed with the use of an advanced electronic personal signature or, alternatively, by a notary with an advanced electronic signature of a Notary Public.

The new provisions of the Chilean Commercial Code that govern the SpA also reflect contractual freedom in that shareholders are permitted to establish their rights and obligations in a manner that is practically unrestricted. For example, Article 424 of the Commercial Code provides that: “The SpA will have a corporate bylaw in which the rights and obligations of the shareholders, its

<sup>6</sup> Law 20.659: “*Simplification of the Regime for Incorporation, Modification, and Dissolution of Commercial Companies*”: <https://www.leychile.cl/Navegar?idNorma=1048718> (accessed March 15, 2021).

<sup>7</sup> Decreto 45 (Decree 45) of May 2, 2013: <https://www.leychile.cl/Navegar?idNorma=1049693&tipoVersion=0> (accessed March 15, 2021). For amended version, see note 10, *infra*.

<sup>8</sup> The various entities to which the simplified regime applies include the following: 1) Individual Limited Liability Company (regulated by Law 19.857); 2) Limited Liability Company (regulated by Law 3.918, Articles 348 - 506 of the Commercial Code and Articles 2053 - 2115 of the Civil Code); 3) Closed Corporation, regulated by Law 18.046 and Supreme Decree 702; 4) Reciprocal Guarantee Corporation, regulated by Law 20.179, Law 18.046 and Supreme Decree No 702; 5) Commercial Collective, regulated by Articles 348 - 423 of the Commercial Code; 6) Company by Shares (SpA), regulated by Law 20.190 and Articles 424 - 450 of the Commercial Code; 7) Simple Limited Partnership, regulated by Articles 470 - 490 of the Commercial Code and 8) Limited Partnership in Shares, regulated by Articles 470 - 473 and Articles 491 - 506 of the Commercial Code.

<sup>9</sup> Ministry of Economy, Promotion and Tourism. *Simplified Regime* <https://www.tuempresanundia.cl/VD/RegimenSimplificado.aspx> (accessed March 15, 2021).

<sup>10</sup> Decreto 45 (2019 Amendments to Decree 45) of March 19, 2019: <https://www.leychile.cl/Navegar?idNorma=1049693&idParte=&idVersion> (accessed on March 15, 2021).

administrative regime and other covenants may be freely established unless as otherwise provided in this Paragraph. In the absence of provisions in the bylaws and the provisions of this Paragraph, the SpA will be governed in a supplementary manner by the rules applicable to closed corporation and only to the extent that such provisions do not conflict with the nature of the SpA.”

## Colombia<sup>1</sup>

### Summary of current state of reforms

Colombia has offered the possibility of a SAS since 2008, when Law 1258 “*Sociedad por Acciones Simplificada*” (Simplified Corporations) was enacted. Since then, nearly half a million SAS companies have been incorporated. Moreover, this law served as the basis for the *SAS Model Law*.

### Context / Background

The Law 222 of 1995<sup>2</sup> created the forerunner to the *Sociedad por Acciones Simplificada* through the possibility of the “*Empresa Unipersonal*” (sole proprietorship) within Colombian Corporate Law (Chapter VIII, articles 71-81). Although the *Empresa Unipersonal* constitutes a legal person independent of its owner that can be created by a private document and with fewer formalities than other types of companies, because it is limited to a single owner and is subject to other legal restrictions,<sup>3</sup> no more than 80,000 such entities were formed in over a decade of its existence. This number has now been reduced to about half because many sole proprietors chose to convert these entities into the SAS.

<sup>1</sup> Includes contributions from Fabio Andrés Bonilla Sanabria, Advisor to the Office of the Superintendent of Companies and Focal Point appointed by the Government of Colombia.

<sup>2</sup> Law 222: <https://www.wipo.int/edocs/lexdocs/laws/es/co/co063es.pdf> (accessed March 15, 2021).

<sup>3</sup> In particular, the prohibition that exists for the sole proprietor to contract with the sole proprietorship. This restriction, which initially made sense when the intention was to create an entity that would permit separation of the assets of an entrepreneur with a specific purpose, ceased to make sense once the entity was endowed with legal personality during the legislative process of said bill. In this regard, see: Bonilla Sanabria, F. 2008. “Unipersonalidad societaria: a propósito de un debate actual en el derecho colombiano,” *Revista e-mercatoria*, 7, 1 (June 2008), at p. 7.

By means of Law 1014 of 2006<sup>4</sup>, the Colombian Congress provided those microenterprises that wanted to organize as commercial companies the possibility to do so under the rules of the *Empresa Unipersonal* of Law 222 of 1995 (with the exception of limited partnerships that required two different types of partners). This law was not very well received, however, and in the face of discussions that arose during its short life, the legislature provided those entities that had been established under Law 1014 of 2006 the option, within a six-month window, to convert into a SAS.<sup>5</sup> Thereafter, on December 5, 2008 the option of the SAS was made possible through Law 1258;<sup>6</sup> instead of carrying out a comprehensive reform of the regulations contained in the Second Book of the Commercial Code (On Commercial Companies),<sup>7</sup> the preference was to create a new corporate system parallel to the regime provided for under said Code.<sup>8</sup> The legislator's intention was to create a competency framework that offers the option of different corporate types, noting in any case that the legal regime of the SAS makes several regulatory references to the corporate regime provided for in the Second Book of the Commercial Code and in Law 222 of 1995,<sup>9</sup> thereby creating a suitable coordination between a new type of corporate form and the current rules. Subsequently, through Law 1429 of 2010,<sup>10</sup> Colombian corporate legislation was updated and modernized once again to facilitate the process for the dissolution and liquidation of companies. It should be noted that the *SAS Model Law* was inspired by the successes of Law 1258 that introduced the simplified corporation to Colombia in 2008.<sup>11</sup>

<sup>4</sup> Article 22 of Law 1014 of 2006. <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1672727> (accessed March 15, 2021).

<sup>5</sup> Article 46 of Law 1258, *infra* note 6.

<sup>6</sup> Law 1258 of 2008, "*Sociedad por Acciones Simplificada*" (SAS): <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1676307> (accessed March 15, 2021).

<sup>7</sup> *Código de Comercio* (Decreto 410 de 1971) (Commercial Code (Decree 410 of 1971)): <https://www.wipo.int/edocs/lexdocs/laws/es/co/co054es.pdf> (accessed March 15, 2021).

<sup>8</sup> Cf. Reyes Villamizar, SAS. La sociedad por acciones simplificada (SAS. Simplified Corporations).

<sup>9</sup> Articles 16, 17, 19, 27, 30, 33, 39, and 45 of Law 1258 of 2008.

<sup>10</sup> Law 1429 "*Law of Formalization and Generation of Employment*": [https://www.sic.gov.co/sites/default/files/normatividad/Ley\\_1429\\_2010.pdf](https://www.sic.gov.co/sites/default/files/normatividad/Ley_1429_2010.pdf) (accessed March 15, 2021).

<sup>11</sup> See, "Report of the Inter-American Juridical Committee: Recommendations on the proposed model act on the simplified stock corporation," (CJI/doc.380/11 corr.1), annexed to "Project for a Model Act on Simplified Corporation" approved by the Inter-American Juridical Committee (CJI) in 2012 (CJI/RES.188 (LXXX-O/12): [http://www.oas.org/en/sla/dil/docs/CJI-doc\\_380-11\\_corr2.pdf](http://www.oas.org/en/sla/dil/docs/CJI-doc_380-11_corr2.pdf) (accessed March 15, 2021). Subsequently, in June 2017, the OAS General Assembly took note of the *SAS Model Law* (AG/RES. 2906) (See Annex A to this report).

Since 2010, the Colombian Government has taken multiple measures to encourage and promote the SAS throughout the country. Listed below are a number of the reforms developed in Colombia to facilitate the creation of businesses using the SAS form:<sup>12</sup>

- In August 2010, starting a business was made easier by establishing a new public-private health provider (Nueva EPS) that enables faster enrollment of employees and by introducing online pre-enrollment with the "*Instituto de Seguro Social*" (Social Security Institute).
- The Superintendency of Companies created a "*Guía Práctica de Preguntas y Respuestas*" (Practical Guide to Questions and Answers) related to Law 1258, with one hundred frequent questions and answers explaining various concerns related to this new type of company, the SAS.<sup>13</sup>
- In 2011, the process of starting a business was improved by reducing the number of days to register in the Social Security System.
- In 2012, the costs associated with starting a business were reduced by no longer requiring upfront payment of the commercial license fee.
- In 2013, the requirement to purchase and register accounting books at the time of incorporation was eliminated.
- In 2017, the company registration procedures were streamlined.
- In 2018, automatic registration of the status of corporate control became possible for any SAS with a single shareholder.
- In 2020, the requirement of opening a bank account to obtain the invoice authorization was removed. Also, by virtue of the extraordinary powers of the National Government to address effects of the COVID-19 pandemic during the economic, social and ecological emergency that had been declared, two decrees were issued that are relevant to the aforementioned developments: a) Colombian businesses that have been organized as the SAS corporate type have

<sup>12</sup> The World Bank, "Business Reforms in Colombia:" <https://www.doingbusiness.org/en/reforms/overview/economy/colombia> (accessed March 15, 2021).

<sup>13</sup> Superintendency of Companies, "Practical Guide to Questions and Answers on SAS": [https://www.supersociedades.gov.co/delegatura\\_ivc/Cartillas\\_Guias/121212-cartilla%20sociedad%20acciones%20simplificada%20\(5\).pdf#search=cartilla%20sociedad%20acciones](https://www.supersociedades.gov.co/delegatura_ivc/Cartillas_Guias/121212-cartilla%20sociedad%20acciones%20simplificada%20(5).pdf#search=cartilla%20sociedad%20acciones) (accessed March 15, 2021).

been enabled to raise capital by an exception to the restriction in Law 1258 (art. 4) and are allowed to issue debt securities that can be traded on the public securities market;<sup>14</sup> b) any SAS entities that decide to make use of this extraordinary financing measure must have a Board of Directors and a Statutory Auditor, if these are not in place already, and must establish an audit committee to verify the legality of the preparation and presentation of financial statements and compliance with the company's internal audit programs so as to ensure adequate risk disclosure.<sup>15</sup>

- In addition, the Superintendency of Companies, under the direction of the Ministry of Commerce, Industry and Tourism, is taking steps to prepare a bill to reform the general regime of companies. This project will be presented to Congress during the first quarter of 2021 (more details below).

From the date of entry into force of Law 1258, it was expected that not only would there be large numbers of SAS companies incorporated, but also that there would be migration to the SAS form of those that had previously been incorporated under another corporate forms.<sup>16</sup> More than a decade after enactment of Law 1258, nearly half a million companies have been incorpo-

<sup>14</sup> Legislative Decree 817 of 2020. By virtue of this decree, and for a period of two years as of June 2020, companies organized as SAS in Colombia can issue debt that is negotiated by professional investors in the public market. Said issues could be guaranteed by the National Guarantee Fund, provided that the issues do not have a term of more than 5 years and additional requirements are met regarding the disclosure of information and corporate governance.

<sup>15</sup> Decree 1235 of 2020.

<sup>16</sup> "Due to the flexible characteristics of the new type of company, the expectation is that there will be a gradual transition to the SAS by entrepreneurs incorporated under the traditional business forms. This same flexibility allows return to the concept of *"sociedad-contrato"* (company by contract), that is, to the predominance of contractual freedom over imperative rules that abound in the corporate regulation that precedes this law. The philosophy behind the new statute is to facilitate the creation and operation of companies in order to stimulate innovation and the development of new goods and services" (unofficial translation). Reyes Villamizar, Francisco *"La Sociedad por Acciones Simplificada: Al fin algo nuevo en el Derecho Societario Colombiano"* (The Simplified Corporation: At last something new in Colombian Corporate Law), posted in Arte y Cultura, Portafolio Consultorio Jurídico (December 11, 2008, by [lexbasecolombia.com/Blog](http://lexbasecolombia.com/Blog)).

rated under the SAS Law.<sup>17</sup> Moreover, by 2017 about 98% of companies that were being incorporated were doing so using the SAS form of incorporation, according to official statistics from 2009 to 2017.<sup>18</sup>

Year	New registrations of all types of companies	Registrations in SAS form	Percentage that corresponds to SAS
2009	40,490	21,809	54%
2010	47,356	38,725	82%
2011	58,676	53,713	92%
2012	62,685	59,239	95%
2013	63,891	60,975	95%
2014	72,213	69,578	96%
2015	63,205	61,315	97%
2016	65,240	63,710	98%
2017	70,022	68,621	98%

<sup>17</sup> *SAS, La Sociedad por Acciones Simplificada, Cuarta Edición conmemorativa de los 10 años de la Ley 1258 de 2008* (<https://www.supersociedades.gov.co/Noticias/Publicaciones/Documents/2018/boletin-abril-2018.pdf> (accessed March 15, 2021)).

<sup>18</sup> Source: Superintendency of Colombian Companies.

Among the benefits that Law 1258 brought to the Colombian corporate law, perhaps the most significant is that it has reduced the incorporation process to a filing before the Mercantile Registry with no requirement for paid-in capital at the time of formation, it allows a two-year window to fund the corporation, as per Chapter III, Article 9. The incorporation process can be completed in one week, including company formation and its registration with the corresponding authorities. A Public Notary is required only if physical assets are included as part of the capital and when ownership transfer is involved. With its simplified form, reduced costs and minimized formalistic requirements, the SAS eliminates the prohibitions that made investment difficult and constituted obstacles for entrepreneurs.

The most relevant characteristics of the SAS are, among others, as follows: i) possibility of single shareholder; it can be created by one person with no upper limit in the number of shareholders; (ii) incorporation documents are private; iii) limited liability; iv) indeterminate corporate purpose; v) indefinite term; and vi) it also reinforces the principle of freedom of contract, for example, in the recognition of shareholder agreements.

By simplifying incorporation, the SAS has also accelerated the business formalization process, which, in turn, impacts tax revenue; greater numbers of formalized businesses lead to a greater number of taxed businesses. Furthermore, Law 1258 introduced an innovative enforcement environment whereby arbitration and administrative dispute settlement are being encouraged prior to judicial procedures.

The Superintendent of Companies also has provided the following information regarding the draft to reform the general regime of companies.<sup>19</sup> This bill, under the direction of the Ministry of Commerce, Industry and Tourism, is expected to be presented to Congress during the first quarter of 2021, with the intention that debate thereof will be fully completed by the end of the year.

<sup>19</sup> Letter entitled: “Propuesta de proyecto de ley por medio del cual se moderniza el régimen societario colombiano con el fin de contar con instituciones más robustas que permitan el crecimiento y la recuperación económica y social” (Proposal for a bill by means of which the Colombian corporate regime is modernized in order to have more robust institutions that allow economic and social growth and recovery). Letter from the Superintendent of Companies of Colombia to the Minister of Commerce, Industry and Tourism dated March 4, 2021 (copy on file with DIL).

This initiative aims to strengthen different aspects of the Corporate Law of Colombia, recognizing that one of the reasons why it has been possible to “consolidate and maintain the vanguard” in this field is due to ongoing review of legal institutions so as to update and make adjustments to meet the needs of business. The modernization of legal institutions should be the purpose of public policy, especially when it comes to matters such as corporate law; businesses are subject to social and economic changes and the rules in force that govern their operations can affect business practices and competitiveness. The proposed reform introduces a high degree of flexibility and regular review so as to confirm that the policies in place continue to be efficient and provide entrepreneurs the necessary tools for business development, and that they also provide effective protection of owners and third parties, especially in a globalized business environment.

In this sense, and with the help of business associations, leaders from the business sector and academics, the Government of Colombia has developed a reform proposal along the following lines:

- 1.** Liability of administrators;
- 2.** Associates, duties and protection mechanisms;
- 3.** Flexibility of corporate rules;
- 4.** Modernization of corporate supervision;
- 5.** Jurisdictional powers and other procedural aspects applicable to the Superintendency of Companies;
- 6.** Strengthening the assets of companies;
- 7.** Incorporation, as permanent legislation, the special regulations on business insolvency that had been issued during the pandemic.

The reforms that have been made to the corporate regime in Colombia since 1995 have, as a common characteristic, a trend towards greater flexibility in the legal requirements applicable to companies that decide to undertake business through a corporate entity. Law 1258 of 2008 continued that trend,

but only in respect of one of the corporate types available - the SAS. Now, the intention is to extend this flexibility to other corporate forms.

If one considers the available statistics on corporate form, the prevalence of the SAS in Colombia is indisputable; this has given rise to a situation that is predictable, but not entirely desirable, namely, the progressive withering of other types of companies provided for in the Second Book of the Commercial Code. As can be seen from the disaggregation by company type in the table below, of the total number of commercial companies in Colombia, the SAS represents 58.4% of all companies that currently exist and that are registered in the commercial register, which includes all companies that have been created and are active pursuant to the Commercial Code of 1971.

#### Disaggregation of Companies Registered in RUES\*

Type of Corporate Entity	Number	Percentage
Empresas Unipersonales	42,230	5.08%
Sociedad Anonima	24,418	2.94%
Sociedad Colectiva	232	0.03%
Sociedad en Comandita por Acciones	1,784	0.21%
Sociedad en Comandita Simple	18,294	2.20%
Sociedad Extranjera	2,505	0.30%
Sociedad Limitada	256,321	30.85%
Sociedad por Acciones Simplificada (SAS)	485,102	58.38%
TOTAL	830,886	100.00%

\*Source: Unified Commercial and Social Registry (RUES), June 4, 2020.

Predominance of the SAS form is evident. If one also takes into account data from the Confederation of Chambers of Commerce concerning registration of companies in recent years, this predominance is even more noticeable: the traditional forms of business associations do not even reach 5% of companies registered monthly in the Mercantile Registry. This situation could, in the long term, lead to the disappearance of these other types of business forms regulated by the Code or, in the best scenario, their reduction to an infinitesimal number, a situation that is not desirable by comparison with one that includes the possibility of a variety of available options that can be adapted to meet the needs of entrepreneurs as well as some of the flexibilities available in the SAS.

One of the characteristics that makes the SAS more attractive is precisely its flexibility and broad contractual freedom. Most of the legal norms that govern the SAS serve in a supplementary role to the will of the parties. The flexibility offered by this contractual freedom also facilitates resolution of internal disputes; it enables determination of clear rules *ex ante* that facilitate governance and contribute to resolving disputes that may arise between business owners.

Therefore, the reform initiative aims to extend to other types of business forms the benefits that the SAS currently enjoys, specifically as follows:

1. Acceptance of “*unipersonalidad societaria*” (sole proprietorship), except in limited partnerships;
2. Flexibility of incorporation formalities;
3. Expansion of the scope of those who may be considered as shareholders of a company (including autonomous assets);
4. Possibility to waive notice requirements;
5. Possibility to hold virtual meetings or hybrid meetings without presence of all shareholders;
6. Relaxation of formalities in the event of short-form merger, special disposition of assets and reduction of capital.

In addition to extending the aforementioned benefits to other corporate forms, the proposal also seeks to incorporate into the Colombian legal system, institutions that are aimed at strengthening conflict resolution mechanisms, the responsibility of administrators and the protection of minority shareholders. In this way, the philosophy of Law 1258 of 2008 by which the SAS was adopted in Colombia will be followed.

## Dominican Republic

### Summary of current state of reforms

In the Dominican Republic, a new type of corporate form called the “*Sociedad Anónima Simplificada*” (SAS) (Simplified Limited Company) has been available since 2011 when reforms were introduced through Law 31-11. These reforms amended the “*Ley General de Sociedades Comerciales y Empresas Individuales de Responsabilidad Limitada*” (General Law of Commercial Companies and Individual Limited Liability Companies), hereinafter “*Ley de Sociedades*” (Companies Law). However, this form of the SAS in the Dominican Republic seems to vary in some significant ways from the Colombian and French laws after which it was apparently modeled.

### Context / Background

In the Dominican Republic, the Companies Law 479-08<sup>1</sup> was issued in 2008 and later modified by Law 31-11 in 2011.<sup>2</sup> The primary objective of this reform was to modernize the existing regulation on corporate law and, especially, to provide for the creation of a new type of company called “SAS.” The Dominican Republic began this reform initiative in 2008 with the aim of promoting and simplifying the creation of companies,<sup>3</sup> promoting entrepreneurship and facilitating the formalization of companies, mainly Micro, Small and Medium-sized Enterprises (MSMEs). Significant steps taken towards achieving that aim include the following:

- In 2008, the length of time to start a business was reduced; this was achieved by simplifying name registration and introducing online tax registration;

<sup>1</sup> Law 479-08 “*Ley General de las Sociedades Comerciales y Empresas Individuales de Responsabilidad Limitada*” (General Law of Commercial Companies and Individual Limited Liability Companies), issued on December 1st, 2008: <https://dgii.gov.do/legislacion/leyesTributarias/Documents/Otras%20Leyes%20de%20Inter%C3%A9s/479-08.pdf> (accessed March 15, 2021).

<sup>2</sup> Law 31-11 published in the Official Gazette No. 10605 of February 10, 2011, introduced amendments to Law 479-08. [https://transparencia.poderjudicial.gob.do/documentos/PDF/leyes/Ley\\_31\\_11.pdf](https://transparencia.poderjudicial.gob.do/documentos/PDF/leyes/Ley_31_11.pdf) (accessed March 15, 2021).

<sup>3</sup> The World Bank, “Business Reforms in Dominican Republic”: <https://www.doingbusiness.org/en/reforms/overview/economy/dominican-republic> (accessed March 15, 2021).



- In 2009, an online facility was established for completing registration formalities and incorporation fees were reduced;
- In 2012, the requirement for a proof of deposit of capital when establishing a new company was eliminated;
- In 2018, the length of time to register a company was reduced; this was achieved by streamlining processes at the Chamber of Commerce;<sup>4</sup> and
- In 2020, the minimum capital requirement for the incorporation of companies was reduced.<sup>5</sup>

The SAS incorporation process<sup>6</sup> has the following steps: (1) registration of the commercial name,<sup>7</sup> (2) drafting and signing of bylaws, (3) payment of the incorporation fee (1% of authorized share capital), (4) registration of the bylaws in the Commercial Register,<sup>8</sup> and (5) registration of the company in the “Dirección General de Impuestos Internos” (DGII) (General Directorate of Internal Taxes).<sup>9</sup>

Among the main characteristics of the SAS in the Dominican Republic are the following:

- It can be formed by two or more natural persons and there is no limit as to the maximum number of shareholders;<sup>10</sup>
- Its company name (trade name) must be followed by the words “Simplified Public Limited Company” or “SAS”;<sup>11</sup>

<sup>4</sup> Chamber of Commerce: <https://www.camarasantodomingo.do/Home> (accessed March 15, 2021).

<sup>5</sup> Law 68-19 modifies Law 479-08 “Companies Law”: <https://dgii.gov.do/legislacion/leyesTributarias/Documents/Otras%20Leyes%20de%20Inter%20C3%A9s/68-19.pdf> (accessed March 15, 2021).

<sup>6</sup> Steps for company incorporation: <http://www.competitividad.org.do/wp-content/uploads/2009/02/pasos-y-duracion-para-constituir-una-cia-pdf.pdf> (accessed March 15, 2021).

<sup>7</sup> *Oficina Nacional de la Propiedad Industrial* (National Office of Industrial Property): <https://www.onapi.gov.do/> (accessed March 15, 2021).

<sup>8</sup> Commercial Register: <https://camarasantodomingo.do/registro-mercantil/> (accessed March 15, 2021).

<sup>9</sup> General Directorate of Internal Taxes: <https://dgii.gov.do/Paginas/default.aspx> (accessed March 15, 2021).

<sup>10</sup> Companies Law, *supra* note 1, Article 369-1.

<sup>11</sup> *Id.*

- The liability of the shareholders is limited to the amount of their contributions<sup>12</sup> (limited liability for company losses);
- The share capital is divided into shares;<sup>13</sup>
- A minimum authorized capital contribution of three million Dominican pesos<sup>14, 15</sup> is required of which at least 10% must be subscribed and paid at the time of the company’s incorporation;<sup>16</sup>
- Its structure can be freely determined by its bylaws and other regulations that govern its operations;<sup>17</sup>
- No requirement for a “Comisario de Cuentas” (auditor) except in the issuance of private debt titles;<sup>18</sup>
- The supreme organ of the SAS is the general shareholders’ meeting,<sup>19</sup> which agrees or ratifies all its operations.

Accordingly, of the twelve (emerging) international standards for simplified incorporation, at least four of these have been included in the SAS in the Dominican Republic: i) limited liability; ii) simplified incorporation documents; iii) flexible organizational structure; and, iv) maximum freedom of contract.

Notwithstanding the provisions of Article 369-2 of the Companies Law, pursuant to which the structure and operations of the SAS may be freely determined by its bylaws, the same law establishes certain mandatory rules which must be observed in the same way as with the “*Sociedades Anónimas (SA)*” (limited companies), such as:

- Protection of minority shareholders;<sup>20</sup>
- Safeguarding the shareholders’ right to equality;<sup>21</sup>
- Those related to the preservation of creditors’ rights;<sup>22</sup>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, Article 11, paragraph IV.

<sup>14</sup> *Id.*, Article 369-6.

<sup>15</sup> Approximately US\$ 53,000.00 as of June 4, 2020.

<sup>16</sup> Companies Law, *supra* note 1, Article 369-6.

<sup>17</sup> *Id.*, Article 369-2.

<sup>18</sup> *Id.*, Article 369-4.

<sup>19</sup> *Id.*, Article 187.

<sup>20</sup> *Id.*, Article 369-2, paragraph I.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

- Those providing that the SAS can only issue nominative shares<sup>23</sup> that cannot be publicly traded on the stock market; and
- For tax purposes, the SAS must be registered in the National Taxpayers Registry of the General Directorate of Internal Taxes<sup>24</sup> and will be governed by the same rules applicable to other types of commercial companies.<sup>25</sup>

Also, it should be noted that the SAS law in the Dominican Republic differs in several aspects from French<sup>26</sup> or Colombian legislation<sup>27</sup>; for example, in the latter two countries, a simplified corporation may be formed by a single shareholder.

<sup>23</sup> *Id.*, Article 369-4.

<sup>24</sup> National Taxpayers Register of the General Directorate of Internal Taxes: <https://dgii.gov.do> (accessed March 15, 2021).

<sup>25</sup> Companies Law, *supra* note 1, Article 11, paragraph I.

<sup>26</sup> « *Code de Commerce de la République Française* » (Commercial Code of the French Republic), article L227-1: [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=40C7B-4B57E25693562E7792F10F267F0.tpdila16v\\_1?idSectionTA=LEGISCTA000006146048&cid-Texte=LEGITEXT000005634379&dateTexte=20160705](https://www.legifrance.gouv.fr/affichCode.do;jsessionid=40C7B-4B57E25693562E7792F10F267F0.tpdila16v_1?idSectionTA=LEGISCTA000006146048&cid-Texte=LEGITEXT000005634379&dateTexte=20160705) (accessed March 15, 2021).

<sup>27</sup> Law 1258 of 2008, “*Sociedad por Acciones Simplificada*” (SAS): <http://www.suin-juricol.gov.co/viewDocument.asp?ruta=Leyes/1676307> (accessed March 15, 2021).

## Ecuador<sup>1</sup>

### Summary of current state of reforms

Ecuador recently adopted a new corporate form called “Simplified Corporation” (SAS). This new type of company was introduced in the “*Ley Orgánica de Emprendimiento e Innovación*” (LOEI) (Law of Entrepreneurship and Innovation), which amended the Company Law. The LOEI was published in the Official Registry Supplement 151 on February 28, 2020, the date on which it entered into force. Its aim is to promote entrepreneurial spirit, and to facilitate and stimulate the development of entrepreneurship.

The approved text was based on the *SAS Model Law*, the *Colombian SAS Law* and specific features of Ecuadorian legislation, in addition to modernizing a series of recurring practices that needed to be improved.

### Context / Background

Already in 2006, Ecuador had introduced the possibility of establishing a sole proprietorship limited liability company under its corporate law as amended by Law 2005-27<sup>2</sup> “*Ley de Empresas Unipersonales de Responsabilidad Limitada*” (EURL) (Law on Sole Proprietorship Limited Liability Company). The main objective of Law 2005-27 was to regulate and formalize micro, small and medium-sized enterprises (MSMEs). Nevertheless, the EURL form was encumbered by requirements that discouraged its use, such as: i) high minimum capital;<sup>3</sup> ii) the purpose clause was limited to a single business

<sup>1</sup> Includes contributions from Esteban Ortiz-Mena, “*Intendente de Compañías de Quito*” (Superintendent of Companies of Quito) and Focal Point appointed by the Government of Ecuador.

<sup>2</sup> Ley 2005-27 (Law 2005-27): <https://www.derechoecuador.com/registro-oficial/2006/01/registro-oficial-26-de-enero-del-2006> (accessed March 15, 2021).

<sup>3</sup> *Id.*, Article 21 provides that: “The capital assigned to the Sole Proprietorship Limited Liability Company may not be less than the product of the multiplication of the minimum unified basic remuneration of the worker in general, by ten.”

activity;<sup>4</sup> iii) incorporation by public deed, which generates costs in time and money;<sup>5</sup> iv) approval before a judge (Ecuador suffers from saturation of judicial processes);<sup>6</sup> v) registration in the Mercantile Registry, which implies costs in time and money; vi) an EURL can only be incorporated by natural persons;<sup>7</sup> and, vii) an EURL must have a fixed term.<sup>8</sup>

Given that the EURL format under Law 2005-27 did not have the expected success, beginning in 2011, multiple measures were implemented to promote and simplify the creation of companies:<sup>9</sup>

- In 2011, starting a business was simplified by introducing an online social security registration system.
- In 2014, reforms were introduced in the “Law for the Strengthening and Optimization of the Securities Sector”<sup>10</sup>, among which the time for the incorporation of companies was reduced.

<sup>4</sup> *Id.*, Article 15 provides that: “The object of the Sole Proprietorship Limited Liability Company is the organized economic activity to which it must be dedicated, according to the act of its incorporation. Such object will exclusively comprise a single business activity.”

<sup>5</sup> *Id.*, Article 30 provides that: “The Sole Proprietorship Limited Liability Company will be established by public deed ...”

<sup>6</sup> *Id.*, Article 31 provides that: “Once the public deed of incorporation of the company has been granted, the manager-owner will address one of the civil judges of the company’s main domicile, requesting their approval and registration in the Mercantile Registry of said domicile.”

<sup>7</sup> *Id.*, Article 1 provides that: “Any natural person with legal capacity to carry out commercial acts may carry out, through a Sole Proprietorship Limited Liability Company, any economic activity that is not prohibited by law, limiting his civil liability for its operations to amount of the capital that would have been allocated for it.”

<sup>8</sup> *Id.*, Article 19: “Every Sole Proprietorship Limited Liability Company must be established for a specified period.”

<sup>9</sup> The World Bank, “Business Reforms in Ecuador”: <https://www.doingbusiness.org/en/reforms/overview/economy/ecuador> (accessed March 15, 2021).

<sup>10</sup> Law for the Strengthening and Optimization of the Securities Sector, published in Official Gazette Supplement 249 of May 20, 2014: [https://portal.supercias.gob.ec/wps/wcm/connect/9eafee03-f322-4bf3-9b51-f104153e811e/S249\\_20140520\\_LEY\\_ORG%C3%81NICCA\\_SECTOR\\_SOCIETARIO\\_BURS%C3%81TIL.pdf?MOD=AJPERES&CACHEID=9eafee03-f322-4bf3-9b51-f104153e811e](https://portal.supercias.gob.ec/wps/wcm/connect/9eafee03-f322-4bf3-9b51-f104153e811e/S249_20140520_LEY_ORG%C3%81NICCA_SECTOR_SOCIETARIO_BURS%C3%81TIL.pdf?MOD=AJPERES&CACHEID=9eafee03-f322-4bf3-9b51-f104153e811e) (accessed March 15, 2021).

- In 2016, the business registration process was simplified by eliminating the need to deposit 50% of the minimum capital into a special account.
- In 2017, the requirement to publish company charters in local newspapers was eliminated.
- In 2018, the “draft Law of Entrepreneurship and Innovation”<sup>11</sup> was presented in the National Assembly, which sought to promote an entrepreneurial ecosystem in Ecuador.<sup>12</sup>

In 2019, the aforementioned draft was discussed initially during the first debate. Then, on January 7, 2020, during the second debate it was approved by the National Assembly.<sup>13</sup> Subsequently, on February 18, 2020 a vote was taken on the partial objection sent by the President to the National Assembly, who approved the current and final text of the “Law of Entrepreneurship and Innovation” that contains a reform to the Company Law, which includes the legislation on Simplified Corporations. The text of the Law was sent to the Official Registry for publication, on February 28, 2020.<sup>14</sup> Ecuadorian legislation

<sup>11</sup> Draft Law of Entrepreneurship and Innovation, of December 19, 2018 - Official Letter DA-EAV-2018-033-0F: [http://www.fundacionmicrofinanzasbbva.org/revistaprogreso/wp-content/uploads/2019/03/Proyecto\\_de\\_Ley\\_Org%C3%A1nica\\_de\\_Emprendimiento\\_e\\_Innovaci%C3%B3n\\_k0vLmQZ-2.pdf](http://www.fundacionmicrofinanzasbbva.org/revistaprogreso/wp-content/uploads/2019/03/Proyecto_de_Ley_Org%C3%A1nica_de_Emprendimiento_e_Innovaci%C3%B3n_k0vLmQZ-2.pdf) (accessed March 15, 2021).

<sup>12</sup> The draft incorporates provisions that promote entrepreneurial capital, crowdfunding, intellectual property, entrepreneurial education, the internationalization of companies and BIC (Benefit and Collective Interest) companies.

<sup>13</sup> Draft Law of Entrepreneurship and Innovation, approved by the National Assembly on January 7, 2020: Official Letter No. PAN-CLC-2020-0217: <https://www.asambleanacional.gob.ec/sites/default/files/private/asambleanacional/filesasambleanacionalnameuid-29/Leyes%202013-2017/744-ealbornoz/ap-emp-07-01-2019.pdf> (accessed March 15, 2021).

“Although the SAS Law was approved by the National Assembly, for it to become a Law, it must comply with a procedure established in the Law. This procedure, in short, consists in sending the approved Law to the President for analysis. The President has 30 days to pronounce and return to the Assembly with his observations, if he has any. After this, the Assembly approves the observations and refers them to the Official Registry for publication. According to Ecuadorian legislation, the Law enter into force on the day of its publication”, Contribution by Esteban Ortiz, Superintendent of Companies of Quito, Ecuador and Focal Point for the Model Law.

<sup>14</sup> Law of Entrepreneurship and Innovation, published in Official Gazette Supplement 151 of February 28, 2020: <https://portal.supercias.gob.ec/wps/wcm/connect/76783625-5a7e-4ba0-888b-7e12adad61e7/Ley+Org%C3%A1nica+de+Emprendimiento+e+Innovaci%C3%B3n.pdf?MOD=AJPERES&CACHEID=76783625-5a7e-4ba0-888b-7e12adad61e7> (accessed March 15, 2021).

stipulates that the Executive Branch must issue the General Regulations of said Law within a period of 90 days from that date of publication; in this case, it had until May 28, 2020. However, as a consequence of the declared health emergency in the country, these deadlines have been suspended. As of the date of this report, there is a draft that should be close to being issued.<sup>15</sup>

The Law of Entrepreneurship and Innovation aims to establish a regulatory framework that encourages and promotes entrepreneurship, innovation and technological development, and that implements new corporate and financing modalities to strengthen the entrepreneurial ecosystem. Among its main provisions are the following:

**1.** Article 6 of the LOEI establishes the “*Consejo Nacional para el Emprendimiento e Innovación*” (CONEIN) (National Council for Entrepreneurship and Innovation), which will be in charge of promoting entrepreneurship and innovation in the country. In addition, a Technical Secretariat and an Advisory Council have also been created to support the work of CONEIN of advising, promoting and organizing entrepreneurship in Ecuador.

**2.** Article 12 of the LOEI establishes the “*Registro Nacional de Emprendimiento*” (RNE) (National Registry of Entrepreneurship) in which any natural or legal person may be registered, provided it has been in existence for less than five years since the date of entry into force of this Law, has fewer than 49 employees and sales of less than US\$ 1,000,000. Those registered in the RNE may access the commercial promotion of their products and services abroad through State agencies and they will have preferential access to financial services and public and private investment funds. The RNE will be administered by the Ministry of Production,<sup>16</sup> which will also be responsible for updating it, as established by this LOEI.

<sup>15</sup> *Supra* note 1.

<sup>16</sup> Ministry of Production, Foreign Trade, Investments and Fisheries: <https://www.produccion.gob.ec/> (accessed March 15, 2021).

**3.** Title 8 of the LOEI includes the reforms to the Ecuadorian Company Law<sup>17</sup> that provide for a new corporate form, called the “*Sociedad por Acciones Simplificada*” (Simplified Corporations). It offers the possibility of forming a type of commercial company through a simplified procedure to promote the formalization and development of companies.

Among the main characteristics of the SAS as provided by the Law, are the following:

- a.** Can comprise a one-person entity, made up of natural or legal persons;
- b.** No minimum capital requirements;
- c.** Has, unless expressly agreed otherwise, an indefinite term;
- d.** Registration is free of charge and can also be made digitally;
- e.** Characterized by maximum contractual freedom;
- f.** Flexible operational structure – a supervisory board is optional;
- g.** The shares cannot be publicly traded or registered as a public company;
- h.** Can be constituted without the help of intermediaries by means of a private document registered with the Superintendent of Companies, Securities and Insurance, without the need for process at the Mercantile Registry;

<sup>17</sup> Ecuadorian Company Law: <https://portal.supercias.gob.ec/wps/wcm/connect/77091929-52ad-4c36-9b16-64c2d8dc1318/LEY+DE+COMPA%C3%91IAS+act.+Mayo+20+2014.pdf?MOD=AJPERES&CACHEID=77091929-52ad-4c36-9b16-64c2d8dc1318> (accessed March 15, 2021).

- i. May carry out any lawful activity, with the exception that it cannot carry out activities related to financial, stock market, insurance or other operations that have special treatment, in accordance with the Law; and
- j. Subject to dissolution, liquidation and cancellation processes that will be efficient and fast, in order to improve time and costs.

## Guatemala

### Summary of current state of reforms

In 2019, the “*Ley de Fortalecimiento al Emprendimiento*” (Law on Strengthening Entrepreneurship) came into effect and its associated regulations were approved. This law, which aims to facilitate formalization of small businesses, enables the creation of a new form of company, the “*Sociedades de Emprendimiento*” (Entrepreneurship Company), a simplified form of corporate entity that can be registered through the online platform of the Commercial Registry (RM).

### Context / Background

Guatemala has been making efforts on implementing its growth strategy focused on opening and promoting trade since 1990<sup>1</sup> and this includes the following measures to promote and simplify business creation as of 2008:<sup>2</sup>

- In 2008, a one-stop shop was implemented to reduce the time required for new company registration;
- In 2015, certain registration fees were eliminated and the period of time that a notice of incorporation must be published was reduced;
- In 2018, the “*Ley de Fortalecimiento al Emprendimiento*” (Law on Strengthening Entrepreneurship)<sup>3</sup> was approved; and

<sup>1</sup> Ministerio de Economía, Republica de Guatemala, “*Informe de Situación y Evolución del Sector Micro, Pequeñas y Medianas Empresas (2015-2017)*” (Information on the Situation and Evolution of the MSME Sector): [https://www.mineco.gob.gt/sites/default/files/MIPYMES/informedesituacion\\_y\\_evolu\\_delsector\\_mipymedeguatemala2015-2017.pdf](https://www.mineco.gob.gt/sites/default/files/MIPYMES/informedesituacion_y_evolu_delsector_mipymedeguatemala2015-2017.pdf) (accessed March 15, 2021).

<sup>2</sup> The World Bank, “Business Reforms in Guatemala”: <https://www.doingbusiness.org/en/reforms/overview/economy/guatemala> (accessed March 15, 2021).

<sup>3</sup> The Law on Strengthening Entrepreneurship (Decree 20-2018): The Congress of the Republic of Guatemala approved the law on October 29, 2018 and it subsequently entered into force on January 29, 2019: <http://chilemonroy.com/docs/1541003615DECRETO%20N%C3%9AMERO%20%2020-2018.pdf> (accessed March 15, 2021).

- In 2019, upon its entry into force, this Law reduced the minimum capital requirement, reduced registration fees, and streamlined registration procedures.

The Law on Strengthening Entrepreneurship, which came into effect in 2019,<sup>4</sup> establishes the “*Sociedades de Emprendimiento*” (S.E.) (Entrepreneurship Company), as a new type of company for the constitution of micro or small companies. This Law establishes guidelines that: i) enable the S.E. to function as a mechanism to formalize entrepreneurship; and, ii) provides the necessary powers to the RM regarding authorization and registration procedures. By means of the Law on Strengthening Entrepreneurship, reforms were made to the Commercial Code<sup>5</sup> in order to incorporate and specify the characteristics<sup>6</sup> of the new corporate form of S.E. Among its main characteristics are the following:

- The S.E. is created as a new type of corporate form;<sup>7</sup>
- The registration process can be carried out through the online platform of the Commercial Registry;<sup>8</sup>
- The S.E. may be formed by one or more shareholders;
- The S.E. can receive monetary contributions<sup>9</sup> of up to five hundred thousand tax deductible quetzals for the S.E.’s growth and development;
- It must be transformed into another type of company if total income exceeds five million quetzals per year;
- Share capital may be paid up to two years after incorporation;
- The administrator of the S.E. must be one of its shareholders to be able to exercise such role;

<sup>4</sup> *Id.*

<sup>5</sup> “*Código de Comercio de Guatemala*” - Decreto 2-70 (Guatemala Commercial Code - Decree 2-70): <https://www.wipo.int/edocs/lexdocs/laws/es/gt/gt010es.pdf> (accessed March 15, 2021).

<sup>6</sup> Ministry of Economy: <https://www.mineco.gob.gt/registro-mercantil-inicia-con-inscripcion-de-sociedades-de-emprendimiento> (accessed March 15, 2021).

<sup>7</sup> Law on Strengthening Entrepreneurship (Art. 14) adds Subsection 6 to Art. 10 of the Commercial Code.

<sup>8</sup> *Registro Mercantil* (Commercial Registry): [www.minegocio.gt](http://www.minegocio.gt) (accessed March 15, 2021).

<sup>9</sup> Law on Strengthening Entrepreneurship (Art. 16) amends art 27 of the Commercial Code.

- No public deed is necessary to constitute or modify a S.E.;<sup>10</sup>
- The S.E. has no obligation to form the annual legal reserve of 5% of its net profits;<sup>11</sup>
- The shareholders’ meeting is the supreme organ of the S.E.;<sup>12</sup>
- The resolutions of the shareholders’ meeting will be taken by majority vote;<sup>13</sup>
- When the company is made up of a single shareholder, this will be the supreme organ of the S.E.;<sup>14</sup>
- The shares may not be sold, transferred, or traded on the stock market.<sup>15</sup>

Among the immediate economic benefits<sup>16</sup> of the Law on Strengthening Entrepreneurship are the following: i) incorporation costs are reduced, since notary intervention is not required; ii) the entrepreneur reduces its administration costs since, by law, the management must be by one of the shareholders; iii) the S.E. may have access to financing networks with third parties; and, iv) it may receive “contributions” without having to give shares in exchange, which also translates into a tax benefit for the contributor since contributions of up to five hundred thousand quetzals are tax deductible in the corresponding fiscal year.

On March 29, 2019, the Ministry of Economy published the Regulation of the Law on Strengthening Entrepreneurship.<sup>17</sup> The regulation<sup>18</sup> i) elaborates the norms contained in the Law; ii) outlines the structure and functions of the

<sup>10</sup> *Id.*, Article 15 amends Article 16 of the Commercial Code.

<sup>11</sup> *Id.*, Article 17 amends Article 36 of the Commercial Code.

<sup>12</sup> *Id.*, Article 25 adds Article 1046 to the Commercial Code.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, Article 33 adds Article 1054 to the Commercial Code.

<sup>16</sup> Ministry of Economy: <https://www.guatemala.gob.gt/ventajas-de-las-sociedades-de-emprendimiento/> (accessed March 15, 2021).

<sup>17</sup> Regulation of the Law on Strengthening Entrepreneurship was approved on March 29, 2019, in accordance with Article 38 of the Law on Government Agreement, Number 49-2019, which entered into effect on March 30, 2019: <https://sgp.gob.gt/wp-content/uploads/2019/03/AG-049-2019.pdf> (accessed March 15, 2021).

<sup>18</sup> Deloitte Legal: <https://www2.deloitte.com/content/dam/Deloitte/gt/Documents/legal/190404-nota-legal%2003.pdf> (accessed March 15, 2021).

Strengthening Entrepreneurship Unit; iii) provides regulations for incorporation of the S.E.; and, iv) provides regulations for registration of the S.E.

According to this regulation, the S.E. was created as a simplified form of company, with the aim of encouraging the formalization of entrepreneurial companies. Also, to facilitate the incorporation process of the S.E. in the Commercial Registry, entrepreneurs enjoy all the advantages provided by the existing electronic tools for payment of taxes and company operations. This may be done through the online platforms such as *Declaraguata*,<sup>19</sup> *Agencia Virtual* (Virtual Agency), *Factura Electrónica en Línea* (FEL) (Online Electronic Invoice), and the *Asistente Virtual RITA* (Virtual Assistant RITA), available from the website of the Superintendency of Tax Administration (SAT),<sup>20</sup> an institution that since July 18, 2019 has adapted its operating systems and processes to register the S.E., according to the guidelines established by the Ministry of Economy.<sup>21</sup>

<sup>19</sup> *Plataforma en línea Declaraguata* (Declaraguata online platform): <https://declaraguata.sat.gob.gt/declaraguata-web/> (accessed March 15, 2021).

<sup>20</sup> *Superintendencia de Administración Tributaria* (Tax Administration Superintendent): <https://portal.sat.gob.gt/portal/> (accessed March 15, 2021).

<sup>21</sup> Ministry of Economy: <https://www.mineco.gob.gt/registro-mercantil-inicia-con-inscripción-de-sociedades-de-emprendimiento> (accessed March 15, 2021).

## Mexico<sup>1</sup>

### Summary of current state of reforms

On March 14, 2016, Mexico made amendments to its “*Ley General de Sociedades Mercantiles*” (LGSM) (General Law of Commercial Companies) to enable the possibility of creating a new type of corporate form called the “*Sociedad por Acciones Simplificada*” (SAS). The SAS regime encourages and promotes formation of micro and small businesses by providing entrepreneurs with the necessary legal and technological tools that facilitate and simplify the procedures for incorporation by electronic means, through a cost-free process and without the need for a notary public or broker to formalize incorporation.

### Context / Background

Most businesses in Mexico are MSMEs. Numbering more than 4 million, these MSMEs generate 52% of GDP and 72% of employment in the country;<sup>2</sup> many are informal businesses. Since 2002, Mexico has promoted the “*Ley para el Desarrollo de la Competitividad de la Micro, Pequeña y Mediana Empresa*” (Law for the Development of the Competitiveness of [MSMEs])<sup>3</sup>. Its aim is to foster national economic development by encouraging the creation of MSMEs, supporting their viability, productivity, competitiveness and sustainability.

Towards this end, Mexico has implemented multiple measures to facilitate the creation of new companies.<sup>4</sup> In 2010, the electronic platform “*Tu Empresa*” (Your Company) was established for the incorporation of businesses under the corporate regime of Corporations (S.A.) or Limited Liability Companies (S. de R.L.), thereby

<sup>1</sup> Includes contributions from Jacqueline Casillas Cortés, Ministry of Economy.

<sup>2</sup> Álvaro Ramírez Martínez, *La creación de la Sociedad por Acciones Simplificada: Análisis constitucional de este nuevo régimen en materia de Sociedades Mercantiles*, (The creation of the Simplified Corporations: Constitutional analysis of this new regime in the area of Commercial Companies): <https://doi.org/10.32870/dgedj.v0i6.91> (accessed March 15, 2021).

<sup>3</sup> Law for Development of the Competitiveness of MSMEs, published on December 30, 2002: [http://www.diputados.gob.mx/LeyesBiblio/ref/ldcmpme/LDCMPME\\_orig\\_30dic02.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/ldcmpme/LDCMPME_orig_30dic02.pdf) (accessed March 15, 2021).

<sup>4</sup> The World Bank, “Business Reforms in Mexico”: <https://www.doingbusiness.org/en/reforms/overview/economy/mexico> (accessed March 15, 2021).

reducing the time required for incorporation.<sup>5</sup> In 2011, an online “*Ventanilla Única*” (one-stop shop) was launched to carry out procedures related to import, export and transit of foreign trade merchandise<sup>6</sup> and the minimum capital requirement (previously fifty thousand Mexican pesos) for the S.A. was eliminated.<sup>7</sup> In 2014, a legislative initiative was introduced to reform the LGSM in order to simplify incorporation and to offer a corporate form called “*Sociedades Anónimas Simplificadas*” (Simplified Public Limited Company); in 2016, this new corporate form was approved and its name was changed to “*Sociedad por Acciones Simplificada*” (SAS) (Simplified Corporation).<sup>8</sup>

In order to strengthen the formation and sustainability of MSMEs, support their successful entry into value chains within dynamic and strategic sectors, enhance their growth and thus generate more employment in the country, reforms were considered that would provide for a corporate regime in which entrepreneurs could formalize their businesses in a simple manner and with clear operational rules. Such reforms would also promote the use of information technologies by means of a computer platform to facilitate online incorporation of a business and all procedures subsequent to its incorporation. Towards these ends, in September 2016, regulations were published that govern the functioning and operations of the electronic system for simplified corporations.<sup>9</sup>

Among the main characteristics of the SAS are the following:

- It may be formed by one or more natural persons who must have a valid electronic signature;<sup>10</sup>

<sup>5</sup> “*Tu Empresa*” (“Your Company” online portal), see: [www.tuempresa.gob.mx](http://www.tuempresa.gob.mx) (accessed March 15, 2021).

<sup>6</sup> See: <https://www.ventanillaunica.gob.mx/> (accessed March 15, 2021).

<sup>7</sup> Decree by which various amendments and additions are made to the LGSM (and other laws). [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5224697&fecha=15/12/2011](https://www.dof.gob.mx/nota_detalle.php?codigo=5224697&fecha=15/12/2011) (accessed March 15, 2021).

<sup>8</sup> Decree by which various amendments and additions are made to the LGSM. [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5429707&fecha=14/03/2016](https://www.dof.gob.mx/nota_detalle.php?codigo=5429707&fecha=14/03/2016) (accessed March 15, 2021).

<sup>9</sup> *Reglas de Carácter General para el funcionamiento y operación del Sistema Electrónico de Sociedades por Acciones Simplificadas* (General Rules for the Functioning and Operation of the Electronic System of Simplified Corporations), published September 14, 2016: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5452591&fecha=14/09/2016](https://www.dof.gob.mx/nota_detalle.php?codigo=5452591&fecha=14/09/2016) (accessed March 15, 2021).

<sup>10</sup> “*Ley General de Sociedades Mercantiles*” (LGSM) [http://www.diputados.gob.mx/LeyesBiblio/pdf/144\\_140618.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/144_140618.pdf), Articles 260 and 262.

- Shareholders’ liability is limited to the amount of their contributions;<sup>11</sup>
- Pro-forma bylaws with simple administrative operations;<sup>12</sup>
- Incorporation through an electronic system established by the Ministry of Economy ([www.gob.mx/tuempresa](http://www.gob.mx/tuempresa));<sup>13</sup>
- It is not subject to the requirement of public deed or any other additional formality;<sup>14</sup>
- It is not subject to the requirement to segregate 5% of annual profits to constitute a reserve fund;<sup>15</sup>
- The shareholders’ meeting is the supreme body of the company and comprises all shareholders;<sup>16</sup>
- The representation of the company is the responsibility of the Administrator (role undertaken by a shareholder);<sup>17</sup> and
- There is no minimum capital contribution for incorporation.<sup>18</sup>

The SAS is also subject to the following restrictions:

- Its shareholders may not simultaneously be shareholders of another commercial company, if such participation would constitute control of that other company or its administration;<sup>19</sup>
- Its total annual income may not exceed five million Mexican pesos and if this amount is exceeded, the SAS must be converted into another corporate form;<sup>20</sup> and
- All shareholders must have a valid Advanced Electronic Signature (e.signature).<sup>21</sup>

<sup>11</sup> *Id.*, Article 260 provides that the SAS is constituted by one or more natural persons who are only responsible to pay their contributions represented by shares...

<sup>12</sup> *Id.*, Article 263.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, Article 262.

<sup>15</sup> *Id.*, Article 20.

<sup>16</sup> *Id.*, Article 266.

<sup>17</sup> *Id.*, Article 267.

<sup>18</sup> *Id.*, Article 217.

<sup>19</sup> Securities Exchange Law, Article 2, section III: [http://www.diputados.gob.mx/LeyesBiblio/pdf/LMV\\_090119.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LMV_090119.pdf) (accessed March 15, 2021).

<sup>20</sup> LGSM, *supra* note 10, Article 260.

<sup>21</sup> Tax Administration Services, obtaining “e.firma” (e.signature): <https://www.gob.mx/tramites/ficha/obtencion-de-e-firma/SAT137> (accessed March 15, 2021).



The incorporation process of a SAS must be carried out through the “*Sistema Electrónico de Constitución*” (Electronic Incorporation System) and is supervised by the Ministry of Economy. Citizens interested in incorporating a SAS must enter the Electronic Incorporation System using their electronic signature and provide information about the general aspects of the company (address, shareholder structure, contact information, purpose and administration); this constitutes the social contract to which consent is expressed by signature. Alternatively, one may request the registration of a SAS in the “*Registro Público de Comercio*” (RPC) (Public Commercial Registry)<sup>22</sup> or the “*Registro Federal de Contribuyentes*” (RFC) (Federal Taxpayers Registry) and obtain an electronic signature for one’s SAS.<sup>23</sup>

There are certain requirements of the SAS as to notice and transparency. The SAS is required to publish in the Electronic System of Publications of Commercial Companies:<sup>24</sup> i) contracts it has concluded; ii) notice when all capital contribution has been subscribed and paid, which must occur within one year from the date of incorporation; iii) call for a shareholders’ meeting; iv) annual report on the financial situation of the company; and, v) notice of inscriptions entered into the share registry as to increases or decreases in the variable share capital.

The main benefits of establishing a SAS in Mexico are that it can be incorporated in 24 hours entirely online, from any electronic device and free of charge, and it is the only form available for incorporation by a single natural person.<sup>25</sup> Thus, the SAS is the corporate form that is most adaptable to the immediate needs of any business venture.

<sup>22</sup> LGSM, *supra* note 10, Article 263.

<sup>23</sup> Servicio de Administración Tributaria, Modificación al anexo 1-a de la resolución miscelánea fiscal para 2016 trámites fiscales: <https://www.sat.gob.mx/personas/resultado-busqueda?words=miscelanea&locale=1462228413195&tipobusqueda=predictiva> (accessed March 15, 2021).

<sup>24</sup> “*Publicaciones de Sociedades Mercantiles*” (Publications on Commercial Companies): <https://psm.economia.gob.mx/PSM/> (accessed March 15, 2021).

<sup>25</sup> “*Tu Empresa*,” *supra* note 5.

## Paraguay<sup>1</sup>

### Summary of current state of reforms

In Paraguay, a new corporate form has been created, called “*Empresa por Acciones Simplificadas*” (EAS) (Simplified Company), through a law promulgated by the Executive Branch on January 8, 2020. Development of the associated regulations are currently underway. The main objectives behind enactment of the Law are: (i) to promote the formalization of economic activities, and (ii) to improve and streamline the processes of incorporation and operation of companies, while reducing administrative costs. Ultimately, this Law seeks to modernize and improve the business climate in Paraguay.

### Context / Background

In March 2019, representatives of three Ministries - Industry and Commerce (MIC), Finance, and Justice - and the Central Bank of Paraguay<sup>2</sup> presented three bills for the strengthening of the country’s economic policy: (i) “*Proyecto de Ley de Garantía Mobiliaria*” (Bill on Secured Transactions);<sup>3</sup> ii) “*Proyecto de Ley de Insolvencia*” (Bill on Insolvency Law);<sup>4</sup> and iii) “*Proyecto de Ley que crea Empresas por Acciones Simplificadas*” (Bill that establishes a Simplified Company).<sup>5</sup>

According to the World Bank, the three bills “seek to generate innovative tools to encourage the incorporation of new companies and the development of new sectors, reduce bureaucratic and costly procedures, promote access to

<sup>1</sup> Includes contribution from Miguel Cardozo, Tax Attorney, Treasury, Focal Point designated by the Government of Paraguay.

<sup>2</sup> See: <https://www.5dias.com.py/2019/03/buscan-mejorar-el-clima-de-negocios-en-el-pais/> (accessed March 15, 2021).

<sup>3</sup> Bill on Secured Transactions: [http://www.ministeriodejusticia.gov.py/application/files/6315/5370/7395/Proyecto\\_de\\_Ley\\_Garantia\\_Mobiliaria.pdf](http://www.ministeriodejusticia.gov.py/application/files/6315/5370/7395/Proyecto_de_Ley_Garantia_Mobiliaria.pdf) (accessed March 15, 2021).

<sup>4</sup> Bill on Insolvency Law: [https://www.ministeriodejusticia.gov.py/application/files/8815/5361/5615/Proyecto\\_de\\_Ley\\_Resolucion\\_de\\_la\\_Insolvencia.pdf](https://www.ministeriodejusticia.gov.py/application/files/8815/5361/5615/Proyecto_de_Ley_Resolucion_de_la_Insolvencia.pdf) (accessed March 15, 2021).

<sup>5</sup> Bill that creates a Simplified Company: [https://www.ministeriodejusticia.gov.py/application/files/4115/5360/9796/Proyecto\\_de\\_Ley\\_que\\_Crea\\_la\\_Empresa\\_por\\_Acciones\\_Simplificadas.pdf](https://www.ministeriodejusticia.gov.py/application/files/4115/5360/9796/Proyecto_de_Ley_que_Crea_la_Empresa_por_Acciones_Simplificadas.pdf) (accessed March 15, 2021).

financing and efficient financial recovery for companies.<sup>6</sup> Also, by simplifying procedures and shortening the process, the EAS will promote the formalization of Micro, Small and Medium Enterprises (MSMEs), as noted by Paraguay's Minister of Industry and Commerce.<sup>7</sup> This is a key issue for entrepreneurs in Paraguay; as has been explained by MIC's Deputy Minister for MSMEs, the proposed procedures for the incorporation of the EAS will reduce informality by "making it easier for entrepreneurs to use this new corporate form, which, apart from allowing the incorporation of a company in a simple way, in a short time and at a minimal cost, will formalize its projects and help to attract partners and investors."<sup>8</sup>

The Bill was approved on November 14, 2019 by the Senate and passed on December 11, 2019 by the House of Representatives. Subsequently, on January 8, 2020, the Executive Branch of Paraguay promulgated Law 6480, which was published on January 13, 2020.<sup>9</sup> This Law establishes the corporate form called "*Empresa por Acciones Simplificadas*" (EAS) (Simplified Company). Work to draft regulations to accompany Law 6480<sup>10</sup> and to adapt the system is currently underway and is expected to take no more than twelve months.<sup>11</sup>

Among the main characteristics of the EAS, the following can be highlighted:

- It can be incorporated with one or more natural or legal persons; however, a one-person EAS may not constitute or participate in another one-person EAS;<sup>12</sup>

<sup>6</sup> "Paraguay avanza en la mejora del clima de negocios" (Paraguay makes progress in improving the business climate). The World Bank, published on October 23, 2019: <https://www.bancomundial.org/es/news/feature/2019/10/23/paraguay-avanza-en-la-mejora-del-clima-de-negocios> (accessed March 15, 2021).

<sup>7</sup> See: <https://www.lanacion.com.py/negocios/2019/03/25/presentan-proyecto-de-ley-para-mejorar-apertura-de-empresas-en-el-pais/> (accessed March 15, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> Law 6480 establishes the Simplified Company (EAS): <https://www.bacn.gov.py/leyes-paraguayas/9100/ley-n-6480-crea-la-empresa-por-acciones-simplificadas-eas> (accessed March 15, 2021).

<sup>10</sup> "Borrador de Decreto Reglamentario de la Ley 6480" (Draft Regulatory Decree of Law 6480): <https://www.infocovid.mic.gov.py/ley-eas> (accessed March 15, 2021).

<sup>11</sup> Law 6480, *supra* note 9, Article 43.

<sup>12</sup> *Id.*, Article 1.

- The Ministry of Finance<sup>13</sup> will create an online form for incorporation of the EAS that will include a model standard bylaw;<sup>14</sup>
- Incorporation may be done free of charge entirely online, using these standardized forms, and will be complete in approximately 72 hours; this process will be centralized through the "*Sistema Unificado de Apertura y Cierre de Empresas*" (SUACE) (Unified System for Opening and Closing Companies)<sup>15,16</sup>;
- There is no need to travel to Asunción (the capital) to register an EAS in person;<sup>17</sup>
- Legal personality<sup>18</sup> is acquired once the EAS is registered with the Ministry of Finance, which in turn, will notify the "*Dirección General de los Registros Públicos*" (General Directorate of Public Registries);<sup>19</sup>
- All public entities involved in the process will have online access through the integration of databases and shared information;<sup>20</sup>
- Limited liability; the responsibility of each member of the EAS will be limited to the amount of their contributions;<sup>21</sup>

<sup>13</sup> Ministry of Finance: <https://www.hacienda.gov.py/web-hacienda/index.php> (accessed March 15, 2021).

<sup>14</sup> In the event that modifications are made to the model standard bylaw, SUACE will refer the matter to the "*Abogacía del Tesoro*" (Treasury Advocate), a dependency of the Ministry of Finance, so that it can review the proposed bylaw and provide an opinion. Law 6480, *supra* note 9, Articles 7 and 8. See also: Treasury Advocate: <https://drfs.abogacia.gov.py/simple/tramites/disponibles> (accessed March 15, 2021).

<sup>15</sup> SUACE: <http://www.suace.gov.py/> (accessed March 15, 2021).

<sup>16</sup> Law 6480, *supra* note 9, Article 5.

<sup>17</sup> Nonetheless, in addition to the online option, the EAS also can be created by a contract or unilateral act in a public or private document with signature certification by a notary public or registry official. *Id.*

<sup>18</sup> *Id.*, Article 3.

<sup>19</sup> General Directorate of Public Registries: <https://www.pj.gov.py/contenido/154-direccion-general-de-los-registros-publicos/154> (accessed March 15, 2021).

<sup>20</sup> Draft Regulatory Decree of Law 6480, *supra* note 10, Article 3 - These public entities include: i) *Subsecretaría de Estado de Tributación* (SET) (Undersecretary of State for Taxation), ii) *Abogacía del Tesoro* (Treasury Advocate), iii) *Ministerio de Trabajo, Empleo y Seguridad Social* (MTES) (Ministry of Labor, Employment and Social Security), and iv) *Instituto de Previsión Social* (IPS) (Social Welfare Institute).

<sup>21</sup> Law 6480, *supra* note 9, Article 4.

- No minimum capital contribution is required and the contribution (if any) may be made either in cash or other assets<sup>22</sup> and may be paid up to two years after incorporation;<sup>23</sup>
- Organizational structure can be freely determined;<sup>24</sup>
- Two mandatory bodies are i) the meeting of EAS members and ii) the legal representative;<sup>25</sup>
- No requirement for an administrative body (similar to a board of directors) nor an oversight body (such as the Trustee or the Supervisory Board);<sup>26</sup>
- No requirement to publish notice of meetings in widely circulated newspapers;<sup>27</sup>
- Will be required to keep accounting and corporate records;<sup>28</sup>
- May be transformed into any of the corporate forms provided by the Civil Code or special laws. Likewise, any other type of business entity may be transformed into an EAS;<sup>29</sup>
- Financial institutions will establish the necessary mechanisms so that the EAS can open bank accounts as quickly as possible. The maximum length of time needed to open an account is pending and is to be defined by regulation.<sup>30</sup>

Given the benefits outlined above, it is clear why the “*Asociación de Emprendedores de Paraguay*” (Association of Paraguayan Entrepreneurs)<sup>31</sup> states that this law will promote the formalization of companies, increase productivity and create more socially secure employment.

<sup>22</sup> *Id.*, Article 12.

<sup>23</sup> *Id.*, Article 10.

<sup>24</sup> *Id.*, Article 19.

<sup>25</sup> *Id.*, Article 21.

<sup>26</sup> *Id.*, Article 26.

<sup>27</sup> *Id.*, Article 22. Such publication is not required as notice of meetings of EAS members must be in writing and sent to members 5 business days prior to the meeting date; meetings of members and of the administrative body (if it exists) can be held remotely and recorded in the minutes with the signature of a single member.

<sup>28</sup> *Id.*, Article 31.

<sup>29</sup> *Id.*, Article 34.

<sup>30</sup> *Id.*, Article 35.

<sup>31</sup> Association of Paraguayan Entrepreneurs: <http://asepy.org/ley-de-empresa-por-acciones-suna-ley-para-que-emprender-en-paraguay-sea-mas-facil/> (accessed March 15, 2021).

## Peru<sup>1</sup>

### Summary of current state of reforms

Peru incorporated into its legislation a new alternative corporate form called “*Sociedad por Acciones Cerrada Simplificada*” (SACS) (Simplified Closed Corporation), through Legislative Decree 1409 of September 12, 2018. As outlined in Articles 1 and 2, the main objectives of this new regime are: (i) to promote an alternative to formalize economic activities of natural persons; and, (ii) to promote the productivity and business development of micro, small and medium-sized enterprises (MSMEs). In October 2019 the Regulation of Legislative Decree 1409 was approved and in the first quarter of 2020, the revision of the incorporation forms was completed. In June 2020 it was arranged that on December 14, 2020, the services to incorporate SACS will become operational at the national level, as well as registration in the Companies Registry.

### Context / Background

Prior to the availability of the new corporate form “*Sociedad por Acciones Cerrada Simplificada*” (SACS) (Simplified Closed Corporation), all companies in Peru had to be incorporated by public deed. These were incorporated under the scope of Legislative Decree 21621<sup>2</sup> or under Law 26887.<sup>3</sup> Beginning in 2008, several steps were taken to simplify incorporation, particularly aimed at MSMEs, as follows:

- In 2008, Legislative Decree 1049 - “*Decreto Legislativo del Notariado*” (Notary Legislative Decree),<sup>4</sup> enabled the reduction of registration and notary costs before the “*Superintendente Nacional de los Registros Públicos*”

<sup>1</sup> Includes contributions from Cesar Uyeyama Shibata, Attorney, National Council for Competitiveness and Formalization, Focal Point designated by the Government of Peru.

<sup>2</sup> Legislative Decree 21621 “*Ley de Empresa Individual de Responsabilidad Limitada*” (Individual Limited Liability Corporation Law): [https://mep.pe/intranetvirtual/Constitucion-y-Formalizacion/MEP\\_Constitucion\\_TramitesLegales\\_Ley-Empresa-Individual-Responsabilidad-Limitada-EIRL-N21621.pdf](https://mep.pe/intranetvirtual/Constitucion-y-Formalizacion/MEP_Constitucion_TramitesLegales_Ley-Empresa-Individual-Responsabilidad-Limitada-EIRL-N21621.pdf) (accessed March 15, 2021).

<sup>3</sup> Law 26887 “*Ley General de Sociedades*” (General Corporations Law): <https://www.wipo.int/edocs/lexdocs/laws/es/pe/pe061es.pdf> (accessed March 15, 2021).

<sup>4</sup> *Decreto Legislativo 1049* (Notary Legislative Decree): <http://webapp.regionsanmartin.gob.pe/sisarch/LEGISLACION/7.%20OTRAS%20NORMAS/Decreto%20Legislativo%20Notariado.pdf> (accessed March 15, 2021).

(SUNARP) (National Superintendent of Public Registries) and the College of Notaries by eliminating the requirement of registering the constitutional minutes of micro and small businesses as a public deed (Article 58 (i));

- In 2013, Supreme Decree 013-2013-PRODUCE,<sup>5</sup> approved the Law to Promote Productive Development and Business Growth. This Law provides the legal framework for the promotion of competitiveness, formalization and development of MSMEs by establishing policies of general scope; creating support for advertisement; and, encouraging private investment, production, and access to internal and external markets, among other policies that promote entrepreneurship;
- In 2017, Legislative Decree 1332,<sup>6</sup> regulated by Supreme Decree 006-2017-PRODUCE,<sup>7</sup> established the “Centros de Desarrollo Empresarial” (Business Development Centers), which offer advice and technical assistance on starting a business and had been created to promote formalization;
- On September 11, 2018, Legislative Decree 1409<sup>8</sup> was promulgated. It provides for the alternative corporate form called “SACS” to promote the formalization and dynamism of MSMEs;
- On January 31, 2019, the Peruvian government presented the National Competitiveness and Productivity Policy,<sup>9</sup> which develops objectives and guidelines, specifying the goals, indicators, actions, deadlines and entities responsible for their implementation.<sup>10</sup> Additionally, it provides for the preparation of a National Competitiveness and Productivity Plan

<sup>5</sup> Supreme Decree 013-2013-PRODUCE: <https://drive.google.com/file/d/0B1tqpNUHPXuC-Z2IPZnBzblIxbHM/edit> (accessed March 15, 2021).

<sup>6</sup> Created by Legislative Decree 1332 <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-que-facilita-la-constitucion-de-empresas-decreto-legislativo-n-1332-1471011-4/> (accessed March 15, 2021); these Centers “operate as physical and/or digital platforms that facilitate the constitution of legal entities, in accordance with the regulation provided for in Law 26887, the General Corporations Law, and other applicable provisions, for the formalization and business development” (Article 2).

<sup>7</sup> Supreme Decree 006-2017-PRODUCE: <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-aprueba-el-reglamento-del-decreto-legisl-decreto-supremo-n-006-2017-produce-1510285-3/> (accessed March 15, 2021).

<sup>8</sup> Legislative Decree 1409, published on September 12, 2018 in the Official Gazette “El Peruano”: <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-que-promociona-la-formalizacion-y-dinami-decreto-legislativo-n-1409-1690482-2/> (accessed March 15, 2021).

<sup>9</sup> See: [https://cdn.www.gob.pe/uploads/document/file/300526/d288579\\_opt.pdf](https://cdn.www.gob.pe/uploads/document/file/300526/d288579_opt.pdf) (accessed March 15, 2021).

<sup>10</sup> The SACS are linked to Priority Objective N° 6 on page 32, specifically with its Guideline N° 1 on page 35.

that will contain measures that facilitate the implementation of the SACS in Peru.<sup>11</sup> Thereafter, on October 1, the Ministry of Economy and Finance (MEF) approved the Regulation of Legislative Decree 1409,<sup>12</sup> which develops in detail the process for the constitution of a SACS;

- On June 1, 2020, the “Resolución del Superintendente Nacional de los Registros Públicos 061-2020-SUNARP/SN” (Resolution of the National Superintendent of Public Registries)<sup>13</sup> was published, which provides that as of December 14, 2020 the SUNARP will provide, at the national level, the necessary services to incorporate a SACS, as well as its registration in the Companies Registry.

The aforementioned Legislative Decree 1409 provides that incorporation of a SACS can be done through the use of a virtual platform “Sistema de Intermediación Digital de la Superintendencia Nacional de los Registros Públicos” (SID-SUNARP) and with the digital signatures of the founding shareholders (Digital Intermediation System of the National Superintendence of Public Registries)<sup>14</sup> and without the need to formalize through a public document. This Legislative Decree has been promoted by the “Consejo Nacional de Competitividad y Formalización” (CNCF) (National Council for Competitiveness and Formalization);<sup>15</sup> and responds to the recommendation of the OAS to adapt the Simplified Corporation regime to that of its *SAS Model Law*.<sup>16,17</sup> It is important to note that

<sup>11</sup> National Competitiveness and Productivity Plan approved by Supreme Decree 237-2019-EF, published on July 28, 2019.

<sup>12</sup> Regulations of Legislative Decree 1409, published on October 1, 2019 in the Official Gazette “El Peruano”; approved via Supreme Decree DS. 312 - 2019 - EF: <https://busquedas.elperuano.pe/normaslegales/aprueban-el-reglamento-del-decreto-legislativo-n-1409-decr-decreto-supremo-n-312-2019-ef-1812452-3/> (accessed March 15, 2021).

<sup>13</sup> Resolution of the National Superintendent of Public Registries 061-2020-SUNARP/SN, published on June 1, 2020 in the Official Gazette “El Peruano”: <https://busquedas.elperuano.pe/normaslegales/disponen-que-a-partir-del-14-de-diciembre-de-2020-la-sunar-resolucion-n-061-2020-sunarpsn-1867087-1/> (accessed March 15, 2021).

<sup>14</sup> SID-SUNARP: <https://www.sunarp.gob.pe/w-sid/index.html> (accessed March 15, 2021).

<sup>15</sup> National Council for Competitiveness and Formalization: <https://www.cnc.gob.pe/> (accessed March 15, 2021).

<sup>16</sup> *Model Law on the Simplified Corporation*. (See Annex A to this report).

<sup>17</sup> C. Uyeyama Shibata, *supra* note 1. “Con beneplácito compartimos el Decreto Legislativo que regula régimen societario alternativo para promocionar las MIPYMES denominado Sociedad por Acciones Cerrada Simplificada, promovido por el CNCF y publicado hoy (12 de septiembre de 2018), y que responde a la recomendación de la OEA de adaptar el régimen SAS de la ley modelo” (We welcome the Legislative Decree that regulates the alternative corporate form to promote MSMEs called Simplified Closed Corporation, promoted by the CNCF and published today (September 12, 2018), and which responds to the recommendation of the OAS to adapt the SAS regime to that of the *SAS Model Law*).

Legislative Decree 1409 will enter into force on the business day following the entry into operation of SID-SUNARP to process the constitution of the SACS.<sup>18</sup>

The main characteristics of the SACS are described below:

- It is incorporated by a private document through the use of the SACS Module of the SID-SUNARP,<sup>19</sup> which will contain the “*pacto social*” (social contract) and the SACS bylaws. Said incorporation must be subscribed by digital signature by the founding shareholders,<sup>20</sup> the directors (if any) and the general manager, according to the provisions established in the “*Ley de Firmas y Certificados Digitales*” (Digital Signatures and Certificates Act);<sup>21</sup>
- It may have between two and twenty shareholders, but these may only be natural persons;<sup>22</sup>
- The financial responsibility of the shareholders will be limited to the amount of their contributions, except in cases of labor or tax fraud;<sup>23</sup>
- The general provisions of the “*Ley General de Sociedades*” (LGS) and specific ones that regulate the “*Sociedad Anónima Cerrada*” (Closed Corporation) will be applied also to the SACS;<sup>24</sup>
- The purpose clause must be determined, lawful and possible, according to article 11 of the LGS;<sup>25</sup>
- Legal personality is acquired once the SACS is registered in the “*Registro de Personas Jurídicas de la Superintendencia Nacional de los Registros Públicos*” (SUNARP) (Registry of Legal Persons of the National Superintendence of Public Registries);<sup>26</sup>
- The company name must include the indication “Simplified Closed Corporation” or the acronym “SACS”;<sup>27</sup>
- There is no minimum capital requirement;<sup>28</sup>

<sup>18</sup> *Id.*, Legislative Decree 1409, *supra* note 8, Final Complementary Provisions. Fifth provision.

<sup>19</sup> *Id.*, Article 5.

<sup>20</sup> *Id.*, Article 7.

<sup>21</sup> Digital Signatures and Certificates Act – Law 27269: <https://www.minjus.gob.pe/wp-content/uploads/2014/03/Ley27269.pdf> (accessed March 15, 2021).

<sup>22</sup> Legislative Decree 1409, *supra* note 8, Article 4.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, *supra* note 8, Seventh Final Complementary Provision.

<sup>25</sup> LGS, *supra* note 3.

<sup>26</sup> Legislative Decree 1409, *supra* note 8, Article 5.

<sup>27</sup> *Id.*, Article 6, clause 2.

<sup>28</sup> *Id.*, Article 6, clause 6.

- Any share capital must be fully subscribed and paid with contributions only in money and/or non-recordable personal property;<sup>29</sup>
- A sworn statement must be included on the existence or veracity of the information provided, as well as the legal provenance of the funds contributed to the share capital by the founding shareholders;<sup>30</sup>
- The application for registration of the SACS, the payment of registration fees, the observations, corrections and annotations of registration are processed through the SID-SUNARP;<sup>31</sup>
- The SUNARP communicates to the “*Unidad de Inteligencia Financiera del Perú*” (UIF) (Financial Intelligence Unit of Peru), the relationship of the founding shareholders and the amount contributed as share capital once the SACS registration has taken place;<sup>32</sup>
- The annual shareholders’ meeting may be called only by the General Manager and with no less than three days’ notice (unless all shareholders are already present), by email or other means of communication as provided in the bylaws;<sup>33</sup>
- There is a right of preferential acquisition of shares;<sup>34</sup>
- At any time, the shareholders of a SACS may agree to adopt another corporate form in accordance with the provisions of the LGS and the Regulation of Legislative Decree 1409.<sup>35</sup>

Among the main characteristics of the Regulation of Legislative Decree 1409<sup>36</sup> are the following highlights:

- The fee for electronic registration of the SACS in the SID - SUNARP will be Eighteen and 70/100 Soles;<sup>37,38</sup>
- The SACS bylaws will establish the administrative entity, specify whether the company will have a board of directors or administrators, and its powers;<sup>39</sup>

<sup>29</sup> *Id.*, Article 6, clause 7.

<sup>30</sup> *Id.*, Article 6, clause 9.

<sup>31</sup> *Id.*, Article 10.

<sup>32</sup> *Id.*, Article 12.

<sup>33</sup> *Id.*, Article 13.

<sup>34</sup> *Id.*, Article 14.

<sup>35</sup> *Id.*, Article 15.

<sup>36</sup> *Supra* note 12.

<sup>37</sup> *Id.*, Article 2.

<sup>38</sup> Approximately US\$5.28.

<sup>39</sup> Regulations of Legislative Decree 1409, *supra* note 12, Article 11.

- The SACS must be established within 72 hours, calculated from the moment of provisional incorporation, with a name in the “*Índice Nacional de Personas Jurídicas*” (National Index of Legal Persons) in the SACS Module of the SID-SUNARP;<sup>40</sup>
- The process by which the registrar grants approval of the constitution of the SACS takes one business day. This process is subject to negative administrative silence;<sup>41</sup>
- The Ministry of Production (PRODUCE), promotes the constitution of small businesses using the SACS format through its Business Development Centers (CDE), by facilitating the free use of technology and offering advice to citizens,<sup>42</sup> among other actions according to the Regulations of Legislative Decree 1332;<sup>43</sup>
- Incorporation of the SACS includes the social pact and the bylaws<sup>44</sup> and it is verified in the “*Directorio Nacional de Personas Jurídicas*” (National Directory of Legal Persons) of the institutional portal of the SUNARP;<sup>45</sup>
- The SACS book is created in which the incorporation and other subsequent registrable acts are registered in the Registry of Legal Persons;<sup>46</sup>
- The “*Superintendencia Nacional de Administración Tributaria*” (SUNAT) – (National Superintendence of Tax Administration) will automatically assign a Unique Taxpayer Registry number (RUC) upon registration of the SACS as an incorporated business. Delivery of a “*Clave Sol*” (Sol key) will be carried out according to the procedure established for that purpose by said institution.<sup>47</sup>

<sup>40</sup> *Id.*, Article 17.

<sup>41</sup> *Id.*, Article 20.

<sup>42</sup> *Id.*, Final Complementary Provisions. First Provision.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*, Article 4, clause 1.

<sup>45</sup> *Id.*, Second Provision.

<sup>46</sup> *Id.*, Third Provision.

<sup>47</sup> *Id.*, Article 23.

## Uruguay<sup>1</sup>

### Summary of current state of reforms

In Uruguay, the “*Ley de Promoción de Emprendimientos*” (Law for the Promotion of Entrepreneurships) was enacted in September 2019, which creates a new corporate form called “*Sociedades por Acciones Simplificada*” (SAS) (Simplified Corporation). This new Law promotes the development of entrepreneurial culture, by regulating three main areas: (i) promotion of entrepreneurship; (ii) simplified corporations; and (iii) crowdfunding platforms. The SAS is proposed to simplify incorporation procedures, reduce their costs and make corporate structure more flexible to serve the needs of entrepreneurs and others in the initial stages of an undertaking. In December 2019 the Decree that regulates the SAS regime was issued; background documents make reference to the *SAS Model Law*, which was the main source of the reform.

### Context / Background

Previously, Uruguay only had “classic or traditional” corporate forms, such as the “*Sociedad Anónima*” (SA) (Stock Corporations) or the “*Sociedad de Responsabilidad Limitada*” (SRL) (Limited Liability Company), regulated by the “*Ley de Sociedades Comerciales*” (LSC) (Commercial Companies Law).<sup>2</sup> On April 10, 2019, the “*Cámara de Representantes*” (House of Representatives) unanimously approved the Bill for the Promotion of Entrepreneurship. On September 11, 2019, the Senate also unanimously<sup>3</sup> approved the bill. On September 18, 2019, the Law for the Promotion of Entrepreneurship (Law 19,820)<sup>4</sup> was promulgated by the Executive Branch, whereupon it entered into force.

<sup>1</sup> Includes contributions from Pedro Bellocq, Partner, Scelza & Montano, Uruguay.

<sup>2</sup> Commercial Companies Law, Law 16.060, enacted on September 4, 1989 and published on November 1, 1989: <https://parlamento.gub.uy/sites/default/files/ley16060.pdf> (accessed March 15, 2021).

<sup>3</sup> See: <https://www.presidencia.gub.uy/comunicacion/comunicacionnoticias/martin-dibarbure-ande-ley-fomento-emprendedurismo-parlamento> (accessed March 15, 2021).

<sup>4</sup> “*Ley de Fomento del Emprendedurismo - Ley 19.820*” (Law 19.820 Simplified Corporation), was enacted on September 18 and published in the Official Gazette on September 27, 2019, the date from which the law came into force: <https://www.impo.com.uy/diariooficial/2019/09/27/documentos.pdf> (accessed March 15, 2021).

The provisions in this new Law seek, among other objectives, to minimize costs and reduce the time required to incorporate; this is achieved through regulations that permit the use of existing technological tools in all phases (incorporation and “*funcionamiento orgánico*” (operations)).

The SAS main characteristics are described below:

- Capital is represented by shares;
- Limited liability: shareholders will not be responsible for obligations beyond the amount of their respective contributions; they are not responsible for labor, tax or any other type of debt incurred by the company (except in cases of fraud);<sup>5, 6</sup>
- The SAS will be subject to the following: (i) the provisions of Law 19,820, many of which provide for “*pacto estatutario en contrario*” (unless otherwise agreed by the bylaws). In matters not provided for in Law 19,820, the SAS will be governed by: (ii) the contract or the bylaws and (iii) any applicable provisions that are supplementary to those governing the SA.<sup>7</sup>
- The regulations expressly regulate the limitations of party autonomy that shareholders can exercise when drafting the bylaws of a SAS. In this sense, a set of rules is listed that are mandatory and cannot be waived by statutory agreement;<sup>8</sup>
- A SAS may be constituted by a natural person, a legal person other than a SA, or several natural or legal persons;<sup>9</sup>
- Incorporation is constituted by means of a public or private document that must be registered in the “*Registro de Personas Jurídicas, Sección Registro Nacional de Comercio*” (Registry of Legal Persons, National Registry of Commerce Section) and, within thirty days thereof for review, it will be considered incorporated;<sup>10</sup>
- Once the “SAS Digital Project” is implemented, the incorporation procedure may also be carried out entirely by digital means with use of a

<sup>5</sup> *Id.*, Article 8.

<sup>6</sup> *Supra* note 2, in accordance with the provisions of Articles 189 to 191 of the LSC.

<sup>7</sup> Law 19.820 Simplified Corporation, *supra* note 4, Article 9.

<sup>8</sup> *Id.*, Article 9 (2).

<sup>9</sup> *Id.*, Article 11.

<sup>10</sup> *Id.*

“*firma electrónica avanzada*” (advanced electronic signature) or other authentication mechanism as provided for in the regulations<sup>11</sup> and subsequent modifications may also be made by digital means. The implementation will be led by “*La Agencia de Gobierno Electrónico y Sociedad de la Información y Conocimiento*” (AGESIC) (Agency for the Development of Electronic Government and Information Society and Knowledge).<sup>12</sup> The SAS that is digitally incorporated must also be registered in the above-mentioned “*Registro Nacional de Comercio*”, which must approve this registration within 24 hours;<sup>13</sup>

- The company name must include the words “Simplified Corporation” or “SAS” and cannot be the same as that of any other existing company;<sup>14</sup>
- There is no maximum term of duration;<sup>15</sup>
- The corporate purpose clause may be undetermined and may provide that the SAS may carry out any lawful commercial or civil activity;<sup>16</sup>
- A SAS can be the owner of rural real estate and agricultural operations;<sup>17</sup>
- Share capital must be paid-up or fully subscribed upon incorporation of the company;<sup>18</sup>
- If the capital contribution is to be made in cash, a minimum of 10% must be paid upon incorporation or 100% if it is in kind;<sup>19</sup>
- The term for payment of subscribed capital may not exceed 24 months;<sup>20</sup>
- The bylaws can freely determine the structure of the company and governance of its operations. In the absence of statutory stipulations,

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, Article 12 (B).

<sup>15</sup> *Id.*, Article 12 (D).

<sup>16</sup> *Id.*, Article 12 (D).

<sup>17</sup> Law 18.092. <https://legislativo.parlamento.gub.uy/temporales/leytemp6197950.htm> (accessed March 15, 2021).

<sup>18</sup> Law 19.820 Simplified Corporation, *supra* note 4, Article 15.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

the provisions established for the SA will apply (Articles 342 and 343 of the LSC);<sup>21, 22</sup>

- Meetings of the assembly, the administrative body or internal auditors (if any), may be held in person, by videoconference, or by any other means of simultaneous communication;<sup>23</sup>
- Resolutions of the assembly, the administrative body or internal auditors (if any), may be adopted by means of written consent, provided that the bylaws so permit. Written consent may be given electronically, without the need for authentication;<sup>24</sup>
- The SAS is not obliged to have a board of directors or administrative body (unless required in the bylaws), in which case all administrative functions and representation will fall to the legal representative;<sup>25</sup>
- There is no requirement for internal auditors;<sup>26</sup>
- Regarding inspection by state auditors “*Auditoría Interna de la Nación*” (AIN) (National Internal Auditors), two levels are established according to these criterion: a) any SAS with annual income of less than approximately US \$ 4,335,000.00 will be submitted to a lighter degree of control; b) any SAS that exceed that level of annual income will be subject to the same controls as SA, except with respect to the incorporation and modification of bylaws that are not subject to AIN control.
- Any other type of commercial company, with the exception of the SA, may become a SAS if its partners or shareholders so decide at an assembly or partners’ meeting;<sup>27</sup>
- Dispute resolution of corporate conflicts may be made through the use of arbitration, if the bylaws so provide;<sup>28</sup>
- The SAS may open a bank account;<sup>29</sup> and
- The SAS has no limits as to billing.

<sup>21</sup> *Id.*, Article 21.

<sup>22</sup> *Supra* note 2.

<sup>23</sup> Law 19.820 Simplified Corporation, *supra* note 4, Article 23.

<sup>24</sup> *Id.*, Article 24.

<sup>25</sup> *Id.*, Article 29.

<sup>26</sup> *Id.*, Article 32.

<sup>27</sup> *Id.*, Article 37.

<sup>28</sup> *Id.*, Article 44.

<sup>29</sup> *Id.*, Article 45.

Those who cannot form, or transform into, a SAS include the following:<sup>30</sup>

- Companies that make public offerings of shares (public companies);
- Companies whose shareholders include any governmental entity or public persons;
- Companies engaged in activities for which a specific type of company is required (for example, financial intermediation institutions, in accordance with the provisions of the “*Decreto Ley 15.322*”);<sup>31</sup> and
- Companies that as of September 27, 2019 are an SA, regardless if in the future they are transformed to another type of company.

The new Law 19.820 creates a novel structure for the “conversion of sole proprietorship companies into SAS.” The law allows for transfer of assets into a newly established SAS without having to carry out the disposal of commercial establishments. To promote conversion, the law offers tax benefits for “*empresas unipersonales*” (sole proprietorship companies) that convert to a SAS within twelve months following the entry into force of this Law. They are exempt from:

- “*Impuesto a las Rentas de las Actividades Económicas*” (IRAE) (Corporate Income Tax) or, where appropriate, the “*Impuesto a las Rentas de las Personas Físicas*” (IRPF) (Personal Income Tax);<sup>32</sup>
- “*Impuesto al Valor Agregado*” (IVA) (Value Added Tax);<sup>33</sup>
- “*Impuesto a las Trasmisiones Patrimoniales*” (ITP) (Real Estate Transfer Tax).<sup>34</sup>

<sup>30</sup> *Id.*, Article 8.

<sup>31</sup> Decree 15.322: <https://www.impo.com.uy/bases/decretos-ley/15322-1982> (accessed March 15, 2021).

<sup>32</sup> Law 19.820 Simplified Corporation, *supra* note 4, Article 48(A).

<sup>33</sup> *Id.*, Article 48(B).

<sup>34</sup> *Id.*, Article 48(C).



The Decree 399/019<sup>35</sup> that regulates the SAS legal regime was issued by the Executive on December 23, 2019 and became effective as of January 1, 2020. This Decree mandates AGESIC to carry out the “SAS Digital”,<sup>36</sup> which will allow the implementation of a technological platform to establish and register SAS in a completely digital way. Until the platform is operational, a transitional incorporation procedure has been put into place.<sup>37</sup>

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<sup>35</sup> Decree 399/019 Regulations for Title II of Law 19.820 relative to the legal regime for the SAS, published on January 7, 2020: <https://www.impo.com.uy/bases/decretos/399-2019> (accessed March 15, 2021).

<sup>36</sup> *Id.*, Article 1.

<sup>37</sup> *Id.*, Article 3. This article provides for the following: (i) controls to avoid use of the same or similar names of existing companies, which will be carried out by the above-mentioned National Registry of Commerce Section); (ii) registration of the SAS within a period not exceeding 5 business days when the models provided by the agency itself are used; and, (iii) registration in the “*Registro Único Tributario*” (RUT) (Single Tax Registry) of the “*Dirección General Impositiva*” (DGI) (General Taxation Directorate), once this is requested by the RNC.



## Part II

### Twelve Key Elements of the SAS Model Law

The reports in Part I reveal the range and variety of reforms that are being undertaken throughout the region to simplify business start-up. While it is essential for each state to adopt an approach that suits its own legal framework, it is the collective “basket” that is key to the simplified corporate form.

Although “simple” and relatively concise, the *SAS Model Law* constitutes a comprehensive, complete, stand-alone piece of legislation. By comparison, in many states the topics covered by the *SAS Model Law* might be addressed by more than one law or by various sections within more than one code, all of which differs from one state to another. Secondly, in some states jurisdiction over the subject matter is shared, which results in legislation at both federal and provincial/state levels.

For this reason, it was thought that it would be helpful to break out key components of the *SAS Model Law* to assist with comparative analysis, given that these components might not necessarily be self-contained within a single piece of domestic legislation. This set of twelve elements comprise the essence of a simplified corporation and thereby make the process of incorporation less costly and more accessible, particularly for Medium, Small and Micro Enterprises (MSMEs). For those MSMEs that have previously been precluded from incorporation because of legal complexity and its associated costs, the

simplified alternative offered by the *SAS Model Law* encourages incorporation and formalization.<sup>1</sup> For those businesses already incorporated, a simplified model that improves efficiency and reduces costs will lead to enhanced competitiveness. The SAS is not intended to replace all existing business forms; the *SAS Model Law* does not apply, for example, to publicly traded corporations. Its primary objective is to provide an alternative, simplified corporate form suitable for the majority of MSMEs, or “closely-held” business entities.

The *SAS Model Law* is the first of its kind to include these twelve elements in a single international legal instrument, elements that are emerging as “global best practices” considered essential for simplified incorporation.<sup>2</sup> Most have been identified as key by various entities, including the World Bank,<sup>3</sup> the United Nations Commission on International Trade Law (UNCITRAL)<sup>4</sup> and the United Nations Conference on Trade and Development (UNCTAD)<sup>5</sup>, among others.

In Part II, each of these elements is considered in conjunction with the corresponding provisions in the *SAS Model Law*. The discussion will focus on the relevance of each element to the objectives of modernization and simplified incorporation. These twelve key elements are as follows: legal personality, limited liability, possibility of a single shareholder (owner), possibility of a single director, no minimum capital contribution, broad purpose clause or none at all, simplified incorporation documents, flexible organizational structure, no mandatory requirement for third party intermediaries to incorporate, decisions

<sup>1</sup> “Formalization” refers to the transition or migration from the informal, to the formal sector. Included among the Sustainable Development Goals, target 8.3 encourages states “to promote development-oriented policies that... encourage the formalization and growth of [MSMEs]” (emphasis added).

<sup>2</sup> See Annex B.

<sup>3</sup> *Id.*, See also the World Bank Group, Doing Business Reports. <https://www.doingbusiness.org/en/doingbusiness>.

<sup>4</sup> At UNCITRAL in recent years, Working Group I (WGI) has been focusing on the legal questions surrounding the simplification of incorporation. In the course of that work, WGI has developed recommendations that include many of these elements. UNCITRAL (2021). Draft Legislative Guide on an UNCITRAL Limited Liability Organization: Note by the Secretariat. A/CN.9/WG.I/WP.122, Annex. Draft legislative guide on an [UNLLO].

<sup>5</sup> The UNCTAD Secretariat has compiled lessons learned on business formation and registration that recommend several of these simplified elements. UNCITRAL (2016). Contribution by UNCTAD: Lessons Learned on Business Registration. A/CN.9/WG.I/WP.98 (see Background, p. 2 and Section D, para. 3 at p. 6).

by majority vote, no mandatory internal auditors and maximum freedom of contract.

The terminology used in this Part II is as follows:

- “Corporation” – an incorporated business entity that at a minimum contains the first two key elements of a separate legal personality and limited liability. In English as well as in Spanish,<sup>6</sup> terms have different meanings depending on the jurisdiction; “corporation” (rather than other terms such as “company”) will be used in this paper to refer to corporations in general.
- “Simplified corporation” (SAS) – an incorporated business entity formed pursuant to the *SAS Model Law* or similar legislation.
- “Law of incorporation” – a general reference to the domestic law that governs the business formation of an incorporated entity.
- “Business formation” – refers to constitution or establishment of the corporation<sup>7</sup> as a separate legal entity, known in English as “incorporation.”
- “Business registration” – refers to “a series of processes involving registration with multiple public agencies to be able to operate legally and within the ‘formal’ economy.”<sup>8</sup> This is an important distinction because in Spanish, “registro” (usually translated into English as “registration”) can sometimes refer to what in English is considered as “incorporation.”

<sup>6</sup> For example, some comparable terms in Spanish are as follows: *sociedad anónima* (stock corporation), *sociedad de responsabilidad limitada* (limited liability company).

<sup>7</sup> In this discussion, “formation” refers specifically to creation of an *incorporated* entity; however, depending on the type of business, formation may also refer to the moment of creation of a partnership, etc.

<sup>8</sup> UNCTAD Lessons Learned, *supra* note 5. Business formation constitutes one step within the process of business registration. Not only must a business be legally *formed*, it must also comply with many other laws and regulations to legally *operate* (e.g., registration as tax payer, licensing to provide food service, liquor, transport, etc.).

## 1. Legal Personality

### 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.

Legal personality is the concept by which the entity that is created is a separate legal entity from the person or persons who create, own and operate that entity. This fundamental legal concept is presented in the *SAS Model Law* in Article 3. As a basic concept, most laws of incorporation would already include this element.

### Question 1

Under your domestic laws\*, is an incorporated entity legally separate and distinct from its owners?

\*Refers to the SAS law, for those states that have such legislation, or alternatively, the "laws of incorporation."

## 2. Limited Liability

### Article 2. Limited Liability

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.

Limited liability is closely connected with legal personality; shareholders are limited in liability to the extent of their capital contributions and will not incur personal liability for the legally separate incorporated business entity. This fundamental legal concept is also presented early in the *SAS Model Law* in Article 2. It enables entrepreneurs to take business risks without fear that their personal assets will be jeopardized if the business should fail.

An important exception to the liability shield is flagged by reference to Article 41, which enables the court, "in case of fraud or any other wrongful act" to pierce the corporate veil and thereby impose joint and several liability on shareholders, directors and managers.

Here it is the exception that could represent a significant change. In many Latin American states, domestic laws include a more expansive range of exceptions to limited liability. It has been pointed out, however, that where grounds to pierce the corporate veil extend beyond the usual scope provided under the law of incorporation (*i.e.*, for fraud or wrongful acts), it effectively "creates exposure that is tantamount to strict liability" and that this discourages both domestic and foreign investment.<sup>9</sup> Again, as limited liability is a basic concept, most laws of incorporation would already include this element; review should focus on the exceptions.

### Question 2

Under your domestic laws, do owners (shareholders) of an incorporated entity enjoy limited liability? What are the exceptions, if any, to such limited liability?

<sup>9</sup> Reyes, Francisco (2011) "Modernizing Latin American Company Law: Creating an All-Purpose Vehicle for Closely Held Business Entities-The New Simplified Stock Corporation," 29 Penn State International Law Review 523, at p. 532. Available at: <http://elibrary.law.psu.edu/psilr/vol29/iss3/8> (accessed March 15, 2021). (See also early draft on file with DIL).

### 3. Possibility of Single Shareholder

#### Article 2

The simplified stock corporation may be formed by one or more persons or legal entities.

#### 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...

A significant contribution of the *SAS Model Law*, consistent with modernized laws around the world, is that it enables even the smallest business – operated by one person – to become an incorporated entity and enjoy the benefits of incorporation. This is stipulated in Article 2 and reinforced in Article 5.

This element could represent a major change in those jurisdictions where the single, owner-operated corporation has not been an available option. In many Latin American states, “incorporation” is considered to be of a contractual nature based on the concept that all forms of business association arise out of an agreement between two or more persons.<sup>10</sup> Article 5 recognizes this concept of “formation by contract” while also enabling “formation by will” of a single individual (manifested in written form). The individual may be either a natural person or legal entity.

#### Question 3

Under your domestic laws, is it possible for an incorporated entity to be formed by one person? May that one person be either a natural or a legal person?

<sup>10</sup> *Id.*, at p. 533.

### 4. Possibility of Single Director

#### 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.

If a SAS can be owned by one person, it should also be possible for it to be directed by one person. Article 25 of the *SAS Model Law* stipulates clearly that a board of directors for a simplified corporation is not required and that if the formation document does provide for a board, it can be comprised of one director.

This represents a dramatic step forward that can lead towards modernized and simplified incorporation. In many states, a board of directors is a requirement under the law, which also includes, sometimes together or within the requisite by-laws, extensive provisions regarding eligibility to serve as a director, election and removal, board meetings, notice of meetings, election of board members by shareholders; this, in turn, necessitates provisions governing shareholders’ meetings, notice of meetings, quorum requirements, and so forth. As all of these meetings require that minutes be recorded and approved, this in turn requires appointment of a secretary, with a description of the role and duties of that and other officers of the corporation, and so on. For the majority of small, incorporated entities, none of that is necessary; it merely adds complexity.

Frequently, preparation of all this accompanying documentation, which is required not only upon incorporation but also every year thereafter to meet annual reporting requirements, necessitates an intermediary, either because the documentation is beyond the expertise of many business persons or only because the law imposes such a requirement. In most states, under the current laws of incorporation, such provisions are mandatory for *all* corporations simply by default. This unnecessary complexity adds to the cost and puts the benefits of incorporation beyond the reach of most MSMEs.

For this reason, the *SAS Model Law* eliminates the *mandatory* aspect of these provisions – for the SAS. It is important to note that for other types of corporations such provisions may very well be necessary and should continue to be mandatory. As previously mentioned, the *SAS Model Law* does not apply to public corporations and as provided in Article 4, the shares of a simplified corporation are not eligible to be publicly traded.

#### Question 4

Under your domestic laws, is it a mandatory requirement for an incorporated entity to have a board of directors? If so, is it possible for the board to be comprised of one director?

## 5. No Minimum Capital Contribution

### Article 5. Contents of the Formation Document

(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;

### Article 2. Limited Liability

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

The *SAS Model Law* does not stipulate any minimum capital contribution.<sup>11</sup> It does, however, confirm the basic principle that shareholders will be responsible for any capital contributions promised (if any) as outlined in the formation document.

As this element represents the modern trend, for those states that continue to maintain a minimum capital contribution it would be prudent to reconsider the policy objectives. At one time it was thought that a minimum capital requirement was “a reasonable quid pro quo for members of business that is not publicly traded to receive the benefit of limited liability.”<sup>12</sup> But that objective is defeated if capital can be withdrawn almost immediately after registration.<sup>13</sup> Rather than imposing such a requirement, other mechanisms can be introduced that serve more effectively to protect creditors and other third parties. These include the following: requiring publicity as a limited liability entity; permitting exceptions to the liability shield (to pierce the corporate veil); requiring appropriate duty of care and standards of conduct; imposing liability for improper shareholder distributions; requiring transparent and accessible business records and registry information; and, providing adequate supervision and oversight.<sup>14</sup>

Minimum capital requirements are criticized for their effect of excluding small entrepreneurs from incorporation by imposing an unnecessary financial burden. Restrictive terms and conditions for capital contributions can also have a negative impact on the ability of the corporation to attract investment; instead of fixed, paid-in capital contributions, measures to ensure adequate cash flow are considered preferable.<sup>15</sup>

<sup>11</sup> Neither does it specifically state that none is required.

<sup>12</sup> UNCITRAL (2021), Annex, Draft legislative guide, *supra* note 4, para. 37.

<sup>13</sup> Rahman, Aminur (2013). Reforming business registration: a toolkit for the practitioners. Investment climate Washington, D.C.: World Bank Group.

Available at: <http://documents.worldbank.org/curated/en/577211468155378578/Reforming-business-registration-a-toolkit-for-the-practitioners> (accessed March 15, 2021).

<sup>14</sup> UNCITRAL (2021), Annex, Draft legislative guide, *supra* note 4, para. 38.

<sup>15</sup> *Id.*, para. 37.

**Question 5**

Under your domestic laws, is there a minimum capital requirement to form an incorporated entity?

**6. Broad Purpose Clause or None at All****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 5. Contents Of The Formation Document**

The formation document... shall set forth:

(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;

The language of Article 5 of the *SAS Model Law* suggests a broad purpose clause, even one so broad so that the SAS may engage in “any lawful business.” As per Article 1, the SAS is specified as a “for profit” entity of a commercial nature.

These provisions are consistent with the modern trend either to include no purpose clause at all or one that is as broad as possible. Here too, it may be useful to consider original policy objectives. At one time, the purpose clause

had been intended to protect shareholders and creditors by controlling how their assets were used.<sup>16</sup> Although some entities may be circumscribed by legislation in the range of activities in which they may engage (for example, banks or insurance companies), in general, most business entities today are permitted to engage in any and all lawful activities.

This element of the *SAS Model Law* may pose a significant challenge for many states in Latin America where the law of incorporation differentiates between “civil” and “commercial” companies. Where such differentiation results in the application of a different set of rules, it requires detailed analysis of the nature of the business and its purpose clause. Not only does this create legal uncertainty, it adds to the cost.<sup>17</sup>

A second related problem arises from the “specialty theory”; if the legal capacity of the corporation is dependent upon its purpose clause, then the acts of the corporation can be declared *ultra vires* – even at the initiative of the corporation itself – and this also creates uncertainty and potentially detrimental effects on third parties.<sup>18</sup> Review of this element might be more involved; change may require a significant shift in legal culture.

**Question 6**

Under your domestic laws, is it a requirement to include a “purpose clause” in the formation documents of an incorporated entity? If so, does this requirement allow a “broad” purpose clause to enable the incorporated entity to engage in “any lawful business activity”?

<sup>16</sup> World Bank Toolkit (2013), *supra* note 13, at p. 18.

<sup>17</sup> Reyes (2011), *supra* note 9, at p. 10 (early draft).

<sup>18</sup> *Id.*, at p. 15 (early draft).

## 7. Simplified Incorporation Documents

### Article 5. Contents of the Formation Document

- (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.

Simplification of the formation document is a key provision of the *SAS Model Law*; the objective is to reduce unnecessary burdens by minimizing the information required for incorporation while ensuring that information necessary for the protection of third parties is also provided.<sup>19</sup> The seven itemized re-

<sup>19</sup> While simplifying the process of incorporation is important, simplifying the legal requirements for annual reporting can also be of great assistance in reducing the burden and costs associated with running an incorporated business, which is of particular importance to MSMEs.

quirements listed in Article 5 are fairly standard. Equally important is the final clause of Article 5 (not shown above) that “no additional formalities of any nature shall be required for the formation of the simplified stock corporation” discussed below under Item 9. These two elements in combination will extend considerably the possibility and benefits of incorporation to many MSMEs.

It has been pointed out that excessive legal formalities for incorporation currently common throughout Latin America create barriers in the following ways. First, any failure to comply with the set mandatory rules usually results in nullification of the incorporated entity.<sup>20</sup> Secondly, most commercial codes contain many different grounds for possible nullification (including non-compliance with formalities) that can be used by any party to challenge the legal existence of the corporation; once again, the result is legal uncertainty which translates into added costs.<sup>21,22</sup> While this formalistic approach may be appropriate for large, publicly-held corporations, although even that is questionable, it is usually inapplicable to small, closely-held businesses.

Examination of current laws and practices may best be undertaken within a broader rubric of reconsideration of the *role* of law in this context, which should be to encourage adherence to *rule* of law. A first step in that regard would be to make compliance easier, through simplification.

### Question 7

Under your domestic laws, what information must be included in the formation documents to establish an incorporated entity?

<sup>20</sup> Reyes (2011), *supra* note 9, at p. 15 (early draft).

<sup>21</sup> *Id.*, at p. 14.

<sup>22</sup> *Id.*, at p. 13.



## 8. Flexible Organizational Structure

### 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.

The *SAS Model Law* also provides for flexibility in organizational structure and freedom to structure the internal framework and operations. This reflects an approach based on freedom of contract as a guiding principle. Such an approach may also require a shift in Latin America jurisprudence, where there still remains reluctance to recognize and uphold shareholder agreements.<sup>23</sup>

### Question 8

Under your domestic laws, to what extent is it possible for the owner(s)/shareholder(s) to freely organize the structure and operation of the incorporated entity?

## 9. No Mandatory Requirement of Intermediaries to Incorporate

### Article 5. Contents of the Formation Document

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

<sup>23</sup> *Id.*, at p. 12.

The provisions of Article 5 of the *SAS Model Law* eliminate requirement of “additional formalities of any nature” which includes those that frequently require involvement by an “intermediary” such as a notary, paralegal or lawyer. In most legal systems that use the “declaratory system of business registration”, the corporation is created at the moment the notice of registration is issued by the governmental authority.<sup>24</sup> This is the moment of “incorporation” or “formation.” In States that do not adhere to this declaratory system, formation occurs only after review of the formal correctness of the formation information as overseen by another third party, such as judicial authorities, an administrative agency or an intermediary. This adds considerably to the cost and delay associated with incorporation. Under such regimes that usually require the services of a notary to prepare the incorporation documents, costs of notarial services can constitute up to 80-84% of the total cost of business registration.<sup>25</sup> As was noted above under item 7, these two elements – simplified incorporation documents and elimination of mandatory intermediaries – will extend the possibility of incorporation to many MSMEs.

Urging the shift towards a more efficient “declaratory system” will undoubtedly be met with resistance, particularly by those third parties with vested interests in the traditional approach. It should be pointed out that this provision of the *SAS Model Law* does not prevent those who wish to do so from seeking third party assistance; it simply removes the mandatory aspect. It should also be noted that these provisions effectively remove the necessity for intermediary involvement only at the initial step of incorporation; this effect does not extend to other business activities where notarial – or judicial – oversight may very well continue to be a valid requirement.

<sup>24</sup> UNCITRAL (2016), Draft Legislative Guide on an [UNLLO]: Note by the Secretariat. A/CN.9/WG.I/WP.99, para. 59. In order to provide legal certainty as to when the entity comes into existence, the UNCITRAL Guide recommends that it should be formed once it is registered with the business registry. UNCITRAL (2021), Annex, Draft legislative guide, *supra* note 4, para. 48.

<sup>25</sup> UNCITRAL (2014). Report of [WGI] (MSMEs) on the work of its twenty-third session. A/CN.9/825, para.14.

**Question 9**

Do your domestic laws include a mandatory requirement for involvement (such as oversight or notarization) by a third-party intermediary (such as a notary public) in the formation process of an incorporated entity?

**Question 10**

Under your domestic laws, is it possible for decisions by the owners/shareholders of an incorporated entity to be made by majority vote? Under what circumstances is unanimous consent required?

**10. Decisions by Majority Vote****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 *SAS Model Law* provides that decisions shall be taken by majority vote unless the bylaws stipulate otherwise or the decision is for conversion to another corporate form (which requires unanimous consent pursuant to Article 35).

This reflects an international trend, where unanimous consent is required only for matters that are essential to the existence of the entity, such as dissolution and winding-up.<sup>26</sup> It may represent a change for those states where the laws of incorporation require unanimous consent for a much wider range of matters. Flexibility is provided here in that the bylaws may provide otherwise.

<sup>26</sup> UNCITRAL (2021). Annex, Draft legislative guide, *supra* note 4, para 10.

**11. No Mandatory Internal Auditors****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.].

The *SAS Model Law* eliminates the legal obligation of an internal audit with its associated administrative burdens and costs. Internal audits are usually unnecessary for MSMEs that are closely held, especially given that third parties such as creditors or contractors tend to prefer external auditors anyway.<sup>27</sup>

Internal audit requirements are frequently encountered in Latin America corporate law within the provisions described as having a “public policy” and “public order” character.<sup>28</sup> While appropriate for publicly-held corporations where the underlying purpose is to protect investors, such requirements are unnecessary for the closely-held or the SAS. As noted previously, this is why the *SAS Model Law* offers, not a replacement, but simply, an alternative.

<sup>27</sup> Reyes, Francisco (2012), Latin American Company Law from a Comparative and Economic Development Perspective – A New Policy Agenda for Latin American Company Law: Reshaping the Closely –Held Entity Landscape, Carolina Academic Press, at pp. 130-131

<sup>28</sup> Reyes (2011), *supra* note 9, at p. 8 (early draft).

**Question 11**

Do your domestic laws include a mandatory requirement for internal auditors of all incorporated entities?

**12. Maximum Freedom of Contract**

Although the *SAS Model Law* does not include a specific provision regarding freedom of contract, this may be implied from the provisions that have been discussed above, such as the flexible internal structure and recognition of shareholder agreements.

**Question 12**

Are your domestic laws consistent with the principle of maximum freedom of contract?

**Summary**

As was explained above, the domestic law that governs these twelve essential elements may be found across a number of different pieces of legislation that vary from state to state. In some, jurisdiction over the subject matter may be at both federal and at provincial or state levels, adding to the complexity of analysis. Therefore, the questions in Part II are offered as a starting point and an informative tool that could be used both for self-assessment and to gather information about the need for a reform initiative.

It is also important to note that, while the *SAS Model Law* addresses the important aspect of simplifying business *formation*, this is but one element in the full spectrum of business *registration*. OAS Member States may wish to remain apprised of work on that broader subject that is being undertaken

by other organizations.<sup>29</sup> Secondly, it must also be pointed out that although the focus of the discussion in Part II concerns the twelve elements considered essential for simplified incorporation, the *SAS Model Law* also contains many other features that should also be considered.

The approach outlined in Parts I and II is provided here in light of the mandate to disseminate the *SAS Model Law* as widely as possible so that OAS Member States may have the necessary information to adopt those provisions that, in accordance with their own legislation and internal norms, are in their own interests.

<sup>29</sup> UNCITRAL (2019), Legislative Guide on Key Principles of a Business Registry, adopted by the UN General Assembly. <https://undocs.org/en/A/RES/73/197> (accessed March 15, 2021).

## Annex A

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 entitled "Recommendations on the Proposed Model Act on the Simplified Corporation" (CJI/doc.380/11 corr. 1), adopted in March 2012;

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

BEARING IN MIND 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,

<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.

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 of the Organization of American States—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 Technical Secretariat of the CJI to provide those member states that so request with all collaboration and support necessary to implement the preceding paragraph.

## Model Act on the Simplified Stock Corporation (MASSC)<sup>2</sup>

### Chapter I General Provisions

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

<sup>2</sup> In subsequent discussions among the Rapporteur, the Colombian expert, OAS translators, and the Technical Secretariat, it was determined that the more accurate English translation of the Spanish *Sociedad por acciones simplificada* would be *Simplified Corporation*, instead of *Simplified Stock Corporation*, as it was originally rendered. A more accurate translation for *Ley Modelo* is *Model Law*, rather than *Model Act*.

**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

### Twelve Key Elements and Emerging International Standards for Simplified Incorporation

Element	OAS Model Law	World Bank <sup>1</sup>	UNCITRAL <sup>2</sup>	UNCTAD <sup>3</sup>
1. Legal Personality	Yes	Yes	Yes	Yes
2. Limited Liability	Yes	Yes	Yes	Yes
3. Possibility of single shareholder	Yes	(Yes)	Yes	Yes
4. Possibility of single director	Yes	(Yes)	Yes	(Yes)
5. No minimum capital contribution	Yes	Yes	Yes	Yes
6. Broad purpose clause or none at all	Yes	Yes	Yes	Yes
7. Simplified incorporation documents	Yes	Yes	(Yes)	Yes
8. Flexible organizational structure	Yes	Yes	Yes	Yes
9. No mandatory intermediaries (to incorporate)	Yes	Yes	(Yes)	(Yes)
10. Decisions by majority vote	Yes	(Yes)	(Yes)	-
11. No mandatory internal auditors	Yes	(Yes)	-	-
12. Maximum freedom of contract	(Yes)	Yes	(Yes)	Yes

\*(Yes) - brackets indicate that requirement of this element is implicit, rather than explicit.

<sup>1</sup> The World Bank, Doing Business Reports. Christow, D. *Simplified Companies as Tools for Formalization in Developing Countries: The World Bank Experience*. Powerpoint Presentation made at "Facilidades para la Creación de Sociedades: Ley Modelo," conference co-sponsored by La Asociación de Registradores de Latino América y el Caribe (ASORLAC) y La Cámara de Comercio de Bogotá, Colombia, held 29 & 30 September 2014 (copy on file with DIL).

<sup>2</sup> UNCITRAL (2021), Draft Legislative Guide on an UNCITRAL Limited Liability Organization: Note by the Secretariat. A/CN.9/WG.I/WP.122, Annex. Draft legislative Guide on an [UNLLO].

<sup>3</sup> UNCITRAL (2016), Contribution by UNCTAD: Lessons Learned on Business Registration. A/CN.9/WG.I/WP.98, Background, p. 2.

## Annex C

### Domestic Laws and Consistency with Twelve Key Elements for Simplified Incorporation

Element	Brazil	Chile	Colombia	Ecuador	Guatemala	Mexico	Paraguay	Peru	Dominican Republic	Uruguay
<b>Legal Personality</b>	-	Yes	Yes	Yes	Yes	(Yes)	Yes	Yes	(Yes)	Yes
<b>Limited Liability</b>	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Possibility of single shareholder</b>	-	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes
<b>Possibility of single director</b>	-	(Yes)	(Yes)	(Yes)	(Yes)	Yes	(Yes)	(Yes)	-	(Yes)
<b>No minimum capital contribution</b>	-	(Yes)	Yes	Yes	Yes ***	Yes	Yes	Yes	No	No
<b>Broad purpose clause or none at all</b>	-	-	Yes	Yes	-	(Yes)	(Yes)	No	-	Yes
<b>Simplified incorporation documents</b>	-	Yes	Yes	(Yes)	(Yes)	(Yes)	Yes	-	Yes	Yes
<b>Flexible organizational structure</b>	-	Yes	(Yes)	Yes	(Yes)	(Yes)	Yes	-	Yes	Yes
<b>No mandatory intermediaries (to incorporate)</b>	-	No	Yes ***	Yes ***	Yes	Yes	Yes ***	Yes	-	Yes ***
<b>Decisions by majority vote</b>	-	-	Yes	Yes	Yes	-	Yes	-	-	-
<b>No mandatory internal auditors</b>	Yes	-	Yes	Yes	-	-	Yes	-	Yes	Yes
<b>Maximum freedom of contract</b>	-	Yes	Yes	Yes	-	-	(Yes)	-	Yes	(Yes)

\*(Yes) Brackets indicate that requirement of this element is implicit, rather than explicit.

\*\* The information contained herein is not definitive and is provided only for convenience; where a space is left blank, it should not be interpreted to mean that the law does not contain a provision for this element, but merely that as of the date of this report, the information was not available to the authors.

\*\*\* See report.

## The Organization of American States

The Organization of American States (OAS) is the world's oldest regional organization, dating back to the First International Conference of American States, held in Washington, D.C., from October 1889 to April 1890. At that meeting the establishment of the International Union of American Republics was approved. The Charter of the OAS was signed in Bogotá in 1948 and entered into force in December 1951. The Charter was subsequently amended by the Protocol of Buenos Aires, signed in 1967, which entered into force in February 1970; by the Protocol of Cartagena de Indias, signed in 1985, which entered into force in November 1988; by the Protocol of Managua, signed in 1993, which entered into force on January 29, 1996; and by the Protocol of Washington, signed in 1992, which entered into force on September 25, 1997. The OAS currently has 35 member states. In addition, the Organization has granted permanent observer status to a number of states, as well as to the European Union.

The essential purposes of the OAS are: to strengthen peace and security in the Hemisphere; to promote and consolidate representative democracy, with due respect for the principle of nonintervention; to prevent possible causes of difficulties and to ensure peaceful settlement of disputes that may arise among the member states; to provide for common action on the part of those states in the event of aggression; to seek the solution of political, juridical, and economic problems that may arise among them; to promote, by cooperative action, their economic, social, and cultural development; and to achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the member states.

The Organization of American States accomplishes its purposes by means of: the General Assembly; the Meeting of Consultation of Ministers of Foreign Affairs; the Councils (the Permanent Council and the Inter-American Council for Integral Development); the Inter-American Juridical Committee; the Inter-American Commission on Human Rights; the General Secretariat; the specialized conferences; the specialized organizations; and other entities established by the General Assembly.

The General Assembly holds a regular session once a year. Under special circumstances it meets in special session. The Meeting of Consultation is convened to consider urgent matters of common interest and to serve as Organ of Consultation under the Inter-American Treaty of Reciprocal Assistance (Rio Treaty), the main instrument for joint action in the event of aggression. The Permanent Council takes cognizance of such matters as are entrusted to it by the General Assembly or the Meeting of Consultation and implements the decisions of both organs when their implementation has not been assigned to any other body; it monitors the maintenance of friendly relations among the member states and the observance of the standards governing General Secretariat operations; and it also acts provisionally as Organ of Consultation under the Rio Treaty. The General Secretariat is the central and permanent organ of the OAS. The headquarters of both the Permanent Council and the General Secretariat are in Washington, D.C.

Member States: **Antigua and Barbuda, Argentina, The Bahamas** (*Commonwealth of*), **Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica** (*Commonwealth of*), **Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, and Venezuela.**

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COMITÉ JURÍDICO INTERAMERICANO  
INTER-AMERICAN JURIDICAL COMMITTEE  
COMITÉ JURIDIQUE INTERAMÉRICAIN