



General Assembly

Distr.: Limited
2 December 2013

Original: English

**United Nations Commission
on International Trade Law**
Working Group I (MSMEs)
Twenty-second session
New York, 10-14 February 2014

Observations by the Government of Colombia

The Government of Colombia has submitted to the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) the following observations in order to provide the Working Group with additional information for its deliberations. The text of the observations is reproduced as an annex to this note in the form in which it was received by the Secretariat, with formatting changes.

Note by the Secretariat

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Annex

The Colombian Simplified Corporation: an empirical analysis of a success story in corporate law reform*

I. Introduction

1. Law 1258 was enacted in Colombia on December 5, 2008.¹ During the last five years the country has witnessed a revolutionary turnaround in its Corporate Law.² This legislation introduced a new type of business entity referred to as the Simplified Corporation or *Sociedad por Acciones Simplificada* (also known as SAS, according to its acronym in Spanish).³ Following the most progressive approach to Corporate Law, this law reduced incorporation formalities to a simple filing before the Mercantile Registry. It also streamlined costs and requirements associated with the formation and operation of boards of directors, fiscal auditors, purpose clauses, and other formalistic requirements that existed before its enactment. Law 1258 made it clear that shareholders would be shielded from any liability concerning obligations arising from the business activities of the corporation. It also reduced old-fashioned prohibitions pertaining to shareholders and managers activities and, most significantly, it reinforced an effective principle of freedom of contract. Furthermore, by applying the method of *structural transplants*, this law also introduced an innovative enforcement environment where arbitration and administrative adjudication superseded inefficient judicial procedures.

2. The creation of this type of entity has changed the manner in which people do business in Colombia. The SAS has vigorously contributed to the regularization of thousands of businesses that in the absence of the benefits afforded by the new law would have remained in complete informality. It has also allowed for local and national governments to collect millions of dollars in taxes. At the same time, it has fostered an exponential growth in franchise fees charged by mercantile registries all over the country. Social security contributions as well as other payments to governmental agencies have also boosted within the last five years thanks to this

* The attached observations on a Model Act on Simplified Corporations was authored by Francisco Reyes Villamizar. This article is a summary of the following papers by the same author: *The Colombian Simplified Corporation An Empirical Analysis of a Success Story in Corporate Law Reform* (November 2013), Available at SSRN: <http://ssrn.com/> and *Modernizing Latin American Company Law: Creating an All-Purpose Vehicle for Closely Held Business Entities — The New Simplified Stock Corporation* (September 9, 2011). Penn State International Law Review, Vol. 29, No. 3, 2011. Available at SSRN: <http://ssrn.com/abstract=1925092> or <http://dx.doi.org/10.2139/ssrn.1925092>.

¹ Official Gazette N.47.194 of December 5th of 2008.

² Colombia is a Latin American developing country. It is a mid-size economy (the fourth in Latin America after Brazil, Mexico and Argentina). According to the World Bank its GDP for 2012 was US\$369.8 billion and it is ranked 30th within 214 countries on the GDP 2012 index (see: www.worldbankgroup.com).

³ The entity's name was taken from the French legislation enacted in 1994 concerning the *Société par Actions Simplifiée*. Additional legal provisions of the Colombian SAS were also transplanted from the French model. However, the entity also derives its inspiration from US and Colombian sources. In fact, certain reforms initiated in Colombia almost 20 years ago (Law 222 of 1995), which had had a limited impact in the business community were reviewed and incorporated within the SAS law.

new type of business entity. Furthermore, several accounting, legal and managing services have also flourished along the new business realities that the SAS has brought about. Even more significant still is the impact that this new form has had in the creation of new jobs. Statistical analysis suggests that the unemployment rate may have gone down after the introduction of this new type of business entity. According to statistical analysis rendered by the National Office of Corporations (*Superintendencia de Sociedades*), at least two and a half million people all over the country are employed through the existing SAS.⁴

3. The SAS has displaced all traditional business forms that existed during the 1971 Colombian Commercial Code rule.⁵ Today these outdated forms represent less than 4 per cent of the total amount of business entities that file articles of association before the country's 52 Mercantile Registries. Not surprisingly, the remaining 96,6 per cent of the new incorporations corresponds to the formation of new Simplified Corporations. This is probably due to the formalistic nature of the previous regulation and the SAS' reduced transaction costs, simplified structure and contractual flexibility. Moreover, the new type of entity has sparked legal innovation and fostered new business structures that were difficult to design in the recent past, given the rigidities of the Commercial Code regulation.

4. The Colombian SAS legislation is a simple but comprehensive legal system that governs relationships between shareholders and other corporate participants and outsiders, and also between the participants themselves. It is endowed with legal personality, investors ownership and full-fledged limited liability. All these features are available to corporate participants at the outset through an expeditious incorporation system. Concerning the relationships with outsiders, the law provides a system of exceptional shareholder liability through the application of the disregard of the legal entity theory, although restricted to the events of abuse or fraud.

5. Law 1258 of 2008 also aimed at curtailing opportunistic behaviour by controlling shareholders, directors and officers. By replacing *ex ante* directory rules by *ex post* legal standards, it has allowed for a more nuanced scrutiny of the insiders' activities. Standards such as good faith and fiduciary duties of directors and officers (also applicable to controlling shareholders) are intended to promote honest behaviour in the day-to-day affairs of the corporation. In order to make these new standards workable an innovative enforcement system has been put in place. A highly sophisticated Corporate Law court in which final judgments are obtained in an average term of four months has replaced a corrupt and inefficient judicial system in which protracted litigation was the dominant feature.

6. Within this advanced legal framework it is expected that the usually high consumption of private benefits of control by majority shareholders will decrease overtime. This qualitative change would allow for a more reasonable allocation of economic benefits among all the shareholders. Likewise it is expected that in the next future minority shareholders will be able to profit from the controlling shareholders' monitoring and managerial efforts without being exposed to the

⁴ Report rendered by the Deputy Superintendent for Economic Studies, Bogotá, September 2013.

⁵ Those types of entities were: (1) The General Partnership (*Sociedad Colectiva*), (2) The Corporation (*Sociedad Anónima*), (3) The Limited Liability Company (*Sociedad de Responsabilidad Limitada*), (4) The Limited Partnership by Quotas (*Sociedad en Comandita Simple*), and (5) The Limited Partnership by Stocks (*Sociedad en Comandita por Acciones*).

exponential risk of expropriation. In this manner, the conceivable distributional effects that may stem out of a more flexible regulatory business environment will be timely hampered by the efficient application of the above-mentioned standards.

7. The starting point for the Simplified Corporation's original proposal was the idea of facilitating the formalization of business entities and updating the legal system in order to introduce forward-looking approaches to Corporate Law. For that purpose, a thorough critical revision of the previous Company Law framework was required. This analysis was made under a functional Comparative Law methodology along with the application of relevant notions of Economic Analysis of Law. As expected, the results of such evaluation revealed the inadequacy of most Company Law provisions in place and the need to carry out an overhaul of both the legal and the institutional frameworks.⁶

8. Soon after the law was passed, the business community reacted eagerly to the new legal realities. The SAS has not only changed the manner in which people do business in Colombia, but it can also be credited for a significant change in the legal culture. This new type of business association has fostered additional legal reforms to other traditional institutions that were still present in old codes and statutes in Colombia.⁷ Surprisingly, until 2008 legal scholars found these outdated laws appropriate for the local business environment, and had unanimously hailed this antiquated legislation. Only after the SAS revolution, there is increasing awareness concerning the need to revise anachronistic legal institutions that still today hinder commerce and represent an obstacle to economic development.

9. Law 1258 of 2008 also represents a step forward in legislative technique. Although the SAS law is linked to the preceding general Corporation Laws, the application of any rule contained in these traditional norms takes place exceptionally and only to fill gaps where the parties have not made a specific provision in the by-laws. In fact, the SAS law contains general housekeeping rules that operate as default provisions, and are particularly useful for those parties who lack the expertise, time or resources needed to negotiate tailor made corporate contracts and shareholders agreements. To this effect, the Colombian Mercantile Registry offices have designed and implemented model by-laws that are extensively used by SMEs all over the country. In this manner entrepreneurs can significantly reduce transaction costs and proceed to the incorporation without the aid of costly advisors.⁸

10. Naturally, the SAS' opt in approach also allows for private parties to step out of the standard provisions contained in model by laws and to draft sophisticated agreements that are appropriate for more complex undertakings. The enabling non-directory provisions of Law 1258 have fostered private ordering and sparked innovation in Corporate Law across the country. Aside from the boilerplate type of agreements that are used by most start-ups, practicing attorneys are becoming

⁶ See Francisco Reyes, *Latin American Company Law, Reshaping the Closely Held Entity Landscape*, Durham, Carolina Academic Press, 2013.

⁷ For instance, Law 1429 of 2010 introduced substantial changes to the processes of dissolution and liquidation of corporations. Following the trend initiated with the SAS, this new law reduced unnecessary formalities and created hasty proceedings to wind up a business corporation.

⁸ See, for instance: www.ccb.org.co.

skilful at developing new legal structures suitable for a more sophisticated business environment.

11. The Colombian SAS has represented a substantial improvement in reducing transaction costs and providing contractual flexibility to business parties. In accordance with this approach, Law 1258 of 2008 requires formalities to be applied only with regard to those matters that have a functional effect on the marketplace. It also promotes private ordering, fosters the drafting of innovative shareholders agreements, and facilitates corporate capitalization through the issuance of all types of securities.

12. This new type of business entity is also intended to dramatically alter the inefficient enforcement landscape by aiding to the development of a specialized jurisdiction in which matters are rapidly resolved by proficient and honest judges. The deterring effect of decisions rendered by this jurisdiction in a short period of time has impacted the business community in an unprecedented manner. Knowing that justice will be on the side of those who play by rules, and that wrongdoers will be rapidly punished is signalling that Corporate Governance devices work at least in the context of closely held corporations. It remains to be seen, however, if in the long run this enforcement system will have a direct impact on the cost of capital.

13. Five years after the enactment of Law 1258 of 2008, the success of the Simplified Corporation has surpassed any expectation. The empirically measured success of the Colombian SAS in both the legal and business environment can be attributed to the friendly simplified nature of the substantive provisions that govern its incorporation and operation, and to the efficient results of the specialized jurisdiction that was put in place right after the SAS legislation was enacted.

14. The Colombian SAS can very well become an export product. It is a blend of Common Law and Civil Law approaches to Business Associations. Instead of adhering to dogma or established tradition it reflects the economic needs of common business people and successfully offers clear and sensible solutions to reduce entry barriers, ameliorate organizational problems and provide expedited dispute resolution mechanisms. This legislation is also an attempt to deal with agency problems that are common in most countries without taking into account each jurisdiction's ownership pattern. For this reason, the Organization of American States' Legal Committee has recommended the adoption of a Model Act on Simplified Corporations for all the countries in the Americas on the grounds that it represents a "very credible case in favour of legislative reforms to permit such innovative business forms" to promote economic growth.⁹

II. The Model Act on Simplified Corporations

15. Although the Simplified Corporation derives its name from the French *Société par Actions Simplifiée*, this entity closely resembles the hybrid business entities that have been set in place in the United States and the United Kingdom during the last several years. The proposed business entity is intended to allow for significant

⁹ See David P. Stewart, *Recommendations on the Proposed Model Act on the Simplified corporation*, OAS, 79th Regular Session, August 2011. Francisco Reyes Villamizar prepared the OAS Legal Committee's Model Act. It was crafted after the Colombian Law 1258.

contractual flexibility, while still preserving the benefits of limited liability and asset partitioning. The basic framework for the SAS's Model Act is based upon the following five pillars: (i) Full-fledged limited liability; (ii) Simple incorporation requirements; (iii) Contractual flexibility; (iv) Simple organizational structure; and (v) Fiscal transparency.¹⁰

16. The Model Act on Simplified Stock Corporations — crafted after the Colombian example — is not intended to serve as a partial amendment to be introduced to traditional business forms regulated in national codes and statutes.¹¹ Instead, it is recommended that its enactment take place on a separate legislation that could be linked to the existing system.¹² In this manner, the SAS should have to compete with other types of business forms.

1. Flexibility to regulate shareholder relationships

17. Under the simplified stock corporation model, shareholders acquire broad flexibility to freely regulate their relationships pursuant to a set of enabling provisions containing off-the-rack housekeeping rules that parties can opt out of and replace for tailor-made provisions, if needed.¹³ Therefore, shareholder protection can be achieved through devices of a contractual nature. In this manner, the antagonism between majority and minority shareholders may be ameliorated through *ex ante* negotiations. Agency costs can also be reduced as shareholders are able to satisfy their contracting interests, by setting up specific provisions on the corporate documents. For this purpose, the model act not only proposes enabling provisions, but also enhances the enforceability of shareholders' agreements. Through the latter device, it is possible to reach certain equilibrium between stockholders by means of sophisticated mechanisms in which rights and obligations can be crafted to carefully determine *a priori* expectations of all corporate participants. Therefore, clauses setting up drag along or tag along rights, put and call options and buy out agreements can be included in shareholders agreements. Following the incomplete contracts theory, this enhanced freedom of contract complemented by gap-filling through an efficient adjudication process is intended to provide an improved conflict-resolution scenario for shareholders.¹⁴

¹⁰ See Model Act on the Simplified Stock Corporations, et seq., *infra* Annex.

¹¹ Such as Commercial Codes and Corporate Law statutes existing in different countries in this region.

¹² See Joseph A. McCahery and Eric P.M. Vermeulen, McCahery, Joseph A., Vermeulen, Erik P. M., Hisatake, Masato and Saito, Jun, The New Company Law — What Matters in an Innovative Economy? (September 2006). ECGI — Law Working Paper No. 75/2006 at 20.

¹³ See e.g., Model Act on the Simplified Stock Corporations, §17, *infra* Annex (stating that “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”).

¹⁴ See William Bratton et al., *Comparative Corporate Governance and the Theory of the Firm: The Case Against Global Cross-Reference*, 38 Colum. J. Transnat'l L., 273-74 (1999).

2. Introduction of specific performance

18. In accordance with the theory of *structural transplants*,¹⁵ the remedy of specific performance is introduced to allow for the adequate enforcement of these agreements in the event of default. Furthermore, the model act incorporates a comprehensive regulation on the *abus de droit* (abuse of rights) theory, which is extrapolated from the French jurisprudence on Corporate Law.¹⁶

19. Under this theory, shareholders have the ability to bring judicial actions or arbitration complaints, not only on the grounds of abuses of controlling shareholders, but also concerning the same conduct where it has been deployed by minority shareholders, and also in the event of an abuse in symmetrical block shareholdings (i.e., dual ownership on a 50 per cent-50 per cent distribution).¹⁷ The abuse of right action may give rise to damages for the aggrieved party, as well as rescission of the abusive act. Fiduciary duties of care and loyalty can also be applicable to the officers and directors of the SAS. To complete the scenario of corporate law protections, the model act allows for the application of the shadow director doctrine, by means of which any person who intrudes in a positive management activity, without being a legally appointed manager or director, can be disciplined under fiduciary duties as if she were acting in such managerial capacity.¹⁸

3. Piercing the corporate veil to extend liability to controlling shareholder

20. Even if limited liability is one of the main features of the SAS, the Model Act provides for piercing the corporate veil in order to extend liability to controlling shareholders in the event of fraud or abuse.¹⁹ Such a procedure has to be brought before a specialized jurisdiction or an arbitration panel that will guarantee a more technical and expedited resolution for aggrieved creditors, as compared to the ordinary systems of adjudication which are handled before civil courts.²⁰

¹⁵ Such a concept implies that it is not sufficient for the importation of a rule to merely incorporate into the borrowing country the substantive principles or provisions that work properly in the foreign lending jurisdiction. Along with such substantive norms it is also necessary to incorporate the rules (procedural or otherwise) and factors that cause such provisions to operate properly, including all circumstances that determine its efficiency and enforceability. See Katharina Pistor et al., “Fiduciary Duty in Transitional Civil Law Jurisdictions”, in *Global Markets. Domestic Institutions, Corporate Law and Governance in a New Era of Cross-Border Deals*, New York, Columbia University Press, 2003, at 77-106.

¹⁶ Alexis Constantin, *Droit des Sociétés, Droit común et droit spécial des sociétés*, 2^a edición, Paris, Dalloz, 2005, at 85.

¹⁷ *Id.*

¹⁸ See Model Act on the Simplified Stock Corporations, § 27, 1, *infra* Annex (“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.”)

¹⁹ See Model Act on the Simplified Stock Corporations, § 41, *infra* Annex (“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.”)

²⁰ See Colombian Law 1258 of 2008, article 40, regarding arbitration and specialized procedures for the Simplified Stock Corporation of Colombia.

21. The SAS is as useful for local businessmen as it is for foreign investors. The Model Act seeks to remedy the legislative void existing throughout the region concerning hybrid business forms, as well as reducing transaction costs and providing entrepreneurs with enough flexibility to allow for private ordering in a multi-functional business form, suitable for all kinds of undertakings.²¹

4. Specific aspects of the SAS Model Act

22. The enabling nature of most of the SAS provisions is particularly relevant, due to the parties' ability to freely draft any clauses that may allow them to neutralize the sort of agency problems that usually characterize non-listed firms.²² By exercising this significant contractual freedom, shareholders can stay away from standardized corporate contracts. In this manner, creativity and innovation concerning new corporate structures may be fostered.

(a) Nature and legal personality

23. In the first place, the SAS is a business entity that may be created either by the execution of a contract or through the subscription of an incorporation document by the sole shareholder.²³ This feature is intended to provide investors with a high level of flexibility. The business entity is suitable either for the formation of small, single member corporations or large, multi-owner enterprises including entities forming part of corporate groups. The SAS can be used in any venture, irrespective of the number of shareholders that concur to incorporate it or who subscribe shares at a subsequent stage.²⁴ In fact, neither the entrance nor the exit of stockholders can affect the continuity of the corporate entity, as long as one person remains as a shareholder. In this way, the antiquated rules setting forth minimum and maximum numbers of shareholders are surpassed completely.

24. The legal personification of the SAS is produced once the document of incorporation (private or public deed) is filed before the Mercantile Registry. Registration of the simplified corporation has a "constitutive" nature, since it determines the regularity of the business association, the benefits arising from asset partitioning, and limited liability. The SAS designed to be registered online. Therefore, notarizations and other annoying formalities are altogether surpassed in the SAS scheme.

25. It is necessary to emphasize that the SAS is not conceived to be listed in a stock market. The SAS is a business association type designed to structure closely-held companies. The broad contractual flexibility that allows providing for rules concerning the squeeze out of shareholders, stocks with multiple voting rights, severe restrictions on stock transfers, among others, may be incompatible with the investor protection guidelines that are mandated for listed companies. For the same

²¹ For example, Model Act on the Simplified Stock Corporations, § 5, 5 allows for incorporators to state in the entity's by laws that corporation may engage in any lawful business, unless a restricted purpose has been set forth by the parties.

²² See, for example, Model Act on the Simplified Stock Corporations, § 5, 7, according to which, the parties enjoy considerable leeway to stipulate any provisions for the management of the business and for the conduct of its affairs, provided that at least one legal representative is appointed to conduct the affairs of the corporation in relation with third parties.

²³ See Model Act on the Simplified Stock Corporations, § 5, *infra* Annex.

²⁴ *Id.*

reasons, the French SAS statute does not allow the possibility of raising resources originating from private savings in the stock market (*appellation publique à l'épargne*).²⁵

(b) Incorporation and proof of existence

26. The Model Act indicates how the SAS may arise out of a contract or a unilateral act.²⁶ This approach is intended to supersede the old-fashioned discussion, so frequent in Latin America and even in Continental European countries, concerning the so-called one-person corporation. This significant improvement is immensely useful for structuring corporate groups where total corporate control may be centralized in a single parent corporation.

27. Among other things, the Model Act intends to reduce administrative and bureaucratic procedures and formalities necessary for the incorporation of a company. The corresponding provisions are aimed at reducing entry barriers in order to facilitate the creation of new businesses and mitigate the impact of transaction costs.²⁷ Accordingly, the required procedure to set up a SAS has been reduced to the filing of the formation document in the country's mercantile registry. Section 5 of the Model Act states that, 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."²⁸ Pursuant to the same provision, the formation document "shall be registered before the Mercantile Registry."²⁹

28. The SAS Model Act authorizes the parties to set up an unrestricted corporate purpose.³⁰ This approach is found to be more convenient due to efficiency considerations. Such a characteristic determines a meaningful difference in the economic conception of the stock corporation. Within the unrestricted purpose clause system, managers obtain a higher degree of discretionary authority to run the corporation. There is no need to amend the corporation's by-laws every time that a new, different business opportunity arises.

29. It is true that broadening the scope of business activities that the corporation can carry on ameliorates the impact of the ultra vires theory which has permeated most Latin American jurisdictions. Indeed, the traditional "specialty theory", by means of which the partners have to define *ex* restricted objects in the foundational documents, has also led to complicated and protracted litigation. The corollary of such specialty theory is closely linked with "ultra vires" concerns, for any act beyond the corporation's objects is deemed to be null and void. This legal consequence arises from the lack of legal capacity to undertake any activity beyond the purpose clause. As it is obvious within the SAS, parties can opt out this default provision and set up a restricted purpose clause in the corporate by-laws, defining

²⁵ See Dominique Vidal, *Droit des Sociétés* 585 (Paris, L.G.D.J. 2006) (Original date of publication).

²⁶ See Model Act on the Simplified Stock Corporations, § 5 & 6, *infra* Annex.

²⁷ *Id.*

²⁸ See *id.*

²⁹ *Id.*

³⁰ The paper suggests "any lawful purpose", see Model Act on the Simplified Stock Corporations, § 5, 5, *infra* Annex.

the specific corporation's main economic activities that, in turn, will determine the entity's legal capacity.³¹

(c) Capital contributions and shares

30. One of the most relevant aspects of the new statute has to do with the great flexibility afforded to entrepreneurs that intend to make cash contributions to the firm. The SAS can be funded through a variety of channels, which surpass even the financing mechanisms available for traditional stock corporations. Even if the SAS cannot undertake public issuances of shares due to its nature as an archetypical closely-held entity, the flexibility of its capital structure facilitates the process of raising resources from private actors.

31. Section 9 of the SAS Model Act allows entrepreneurs to freely allocate numerical values to the firm's authorized, subscribed, and paid-in capital.³² Furthermore, it allows for payment of the firm's subscribed capital to take place up to two years after the shares have been initially subscribed.³³ Firms can also issue classes of shares with varying rights.³⁴ Section 9 allows for capital subscription and payment to be carried out under "terms and conditions different to those set forth under the Commercial Code."³⁵ Under Section 10 of the SAS Model Act, firms can also issue "preferred shares with or without vote". This opens up myriad possibilities for entrepreneurs, who have traditionally been unable to freely determine the rights carried by shares that are issued in closely held firms.³⁶

32. In granting ample flexibility for firms to issue different classes of shares, the SAS Model Act not only favours capital-raising processes but perhaps more importantly, facilitates the administration of corporate affairs by entrepreneurs.

(d) Company organization

33. Simplifying the operation and organic structure is an important goal of hybrid business forms. Attaining such a goal ameliorates the costs associated with the company's operation. Accordingly, one of the principal aspects of the SAS legal regime is the creation of a flexible regime, which allows entrepreneurs to opt out of otherwise mandatory provisions.³⁷ The enabling character of this regulation also gives way to an enormous freedom of organization for the shareholders. Périn holds that within the regulation of the French Simplified Stock Corporation the combination of freedom of contract with the elements of stock corporations constitutes an unprecedented privilege in that country's legal system.³⁸ For any economic agent, the election of the SAS as a business structure corresponds to the

³¹ See Model Act on the Simplified Stock Corporations, § 5, 5, *infra* Annex.

³² See Model Act on the Simplified Stock Corporation, § 9, *infra* Annex.

³³ *Id.*

³⁴ See Model Act on the Simplified Stock Corporation, § 10, *infra* Annex.

³⁵ See Model Act on the Simplified Stock Corporation, § 9, *infra* Annex.

³⁶ See Model Act on the Simplified Stock Corporation, § 10, *infra* Annex.

³⁷ See Model Act on the Simplified Stock Corporation, § 5, *infra* Annex.

³⁸ Pierre-Louis Périn, *La Société par Actions Simplifiée: Etudes-Formules* 11 (Joly Editions 3rd ed. 2008).

desire of increasing the organization's efficiency by making it suitable to shareholders' necessities.³⁹

34. The SAS Model Act confers entrepreneurs with complete freedom over the company's internal organization structure. This is meant to lighten the firm's bureaucratic burden by reducing to a minimum its mandatory organs. Section 17 of the Model Act establishes in a very clear fashion that the SAS's structure may be freely defined in its by-laws, to wit: "Shareholders may freely organize the structure and operation of a simplified stock corporation in the by-laws."⁴⁰ In the absence of specific by-law provisions, "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."⁴¹

35. In this manner, the SAS's shareholders' assembly maintains a preponderant role that is reflected in the great variety of powers attributed to it. Therefore, most significant corporate transactions must be authorized by the shareholders duly gathered in the assembly or by the sole shareholder. Specifically, the Model Act, in its Section 37, confers upon the assembly the power to consider and approve the "financial statements and annual accounts" of the company.⁴² These documents must be submitted to the business entity's highest organ by the corporation's legal representative before the corresponding shareholders' assembly meeting. The same Section adds that when dealing with corporations with a single shareholder, she will approve all the company's accounts and will leave a record of such approval in the company minutes dutifully filed in the corporate books.⁴³

36. The by-laws may also create other organs such as the board of directors to carry on part of the activities usually performed by the assembly.

37. As the corporation's main governing body, the assembly draws the firm's policies, adopts structural decisions (conversions, mergers, split-up, winding up, etc.), approves financial statements, distributes profits and creates reserves.⁴⁴ As it is the general approach in the Model Act, the cited part of Section 17 is in part a default rule, subject to the parties' will. Therefore, it is viable to allocate some of the corporate powers assigned to the assembly in a different fashion.

(e) Meetings of the shareholders' assembly

38. The rules for the operation of the shareholders' assembly also contain meaningful modifications to traditional approaches, as once again the Model Act aspires to decrease unnecessary formalism. To this effect, the proposed changes simplify the existing rules for calling meetings of shareholders, as well as the provisions that govern quorum, majorities, actions without a meeting, etc. This is a very significant change since it removes a series of requirements based on

³⁹ *Id.*

⁴⁰ See Model Act on the Simplified Stock Corporation, § 17, *infra* Annex.

⁴¹ *Id.*

⁴² See Model Act on the Simplified Stock Corporation, § 37, *infra* Annex.

⁴³ *Id.*

⁴⁴ See Model Act on the Simplified Stock Corporation, § 20, *infra* Annex.

old-fashioned standards, which traditionally paved the road for innumerable lawsuits originating in these purely formalistic aspects.

39. In order to facilitate the decision making processes in the SAS, and bearing in mind that it is a useful instrument for foreign investment, the Model Act allows shareholders' assemblies to meet at any specific location, irrespective of its main domicile.⁴⁵ Another manner in which the Model Act seeks to facilitate the operation of shareholders' meetings is through the creation of alternative mechanisms for the adoption of decisions and the simplification of existing mechanisms for this same purpose.⁴⁶ In any event, due to the fact that these rules are enabling rather than mandatory, it will always be possible to stipulate different requirements for actions without a meeting to be effectuated.⁴⁷ Regarding notice of meetings, the parties can set up alternative mechanisms and define, within reasonable limits, the term between the delivery of such notice and the date when the meeting will be held. Section 19 of the cited Act allows for meetings "through any available technological devices or by written consent."⁴⁸ A provision like this clearly foresees the applicability of any available technological means of communication. The utilization of these devices will only increase through time, as local economies and jurisdictions become more integrated and intertwined. The SAS Model Act also allows for the shareholders to define in the by-laws the corporate organ that will be entitled to formulate the respective notice.⁴⁹

40. The mechanism regarding the waiver of notice to shareholders' meeting constitutes a great innovation in the simplified stock corporation. Under the general regime, omitting the notice of meeting or formulating it inadequately has the potential to disrupt the firm's internal affairs. In practice, the shareholders of a closely held corporation (which are often member of the same family) will not observe the full formalities required for calling meeting of the shareholders' assembly. However, this will not have any adverse effects for the shareholders, as they will in practice have full knowledge of the dealings undertaken in the assembly. Accordingly, it is reasonable to allow them to validate the formerly incurable breach of the formalities for calling meetings of shareholders, through the waiver of notice mechanism. So, if for example, after an assembly meeting in which there was sufficient quorum (though not a universal one) and decisions were taken with the proper majorities, it was established that the absentees shareholders were not dutifully called, this breach in the formalities for calling the meeting can be cured though a simple letter addressed to the corporation's legal representative. For this effect, the only requirement needed is the submission of a written document to the company before, during, or after the corresponding session.

41. In the same path of creating a more effective and balanced regime for the SAS than the one that exists for other business forms, the Model Act proposes the

⁴⁵ See Model Act on the Simplified Stock Corporation, § 18, *infra* Annex.

⁴⁶ See Model Act on the Simplified Stock Corporation, § 19, *infra* Annex.

⁴⁷ See Claude Penhoat, *Droit des Sociétés* 303 (AENGDE 5th ed. 1998). Claude Penhoat suggests diverse forms of deliberations within the French SAS structure, including vote cast directly by shareholders who attend the meeting, vote by correspondence, vote by proxy, and any other technique. The same author adds that, quorum and majority conditions are freely defined in the by-laws, except for some decisions requiring unanimity. *Id.*

⁴⁸ See Model Act on the Simplified Stock Corporation, § 19, *infra* Annex.

⁴⁹ See Model Act on the Simplified Stock Corporation, § 20, *infra* Annex.

creation of an implicit validation system for assembly decisions in cases where the notice of meeting given to all or some of the shareholders present at the assembly has been irregular or non-existent.⁵⁰ In fact, even if they were not summoned to the assembly, the law presumes that those shareholders attending the corresponding meeting have waived their right of notice. Nevertheless, Section 21 of the SAS Model Act allows present shareholders to demand an appropriate advance notice before the meeting takes place.⁵¹ The provision states that “the attendees in a given shareholders’ assembly will be deemed to have waived the right of being convened, unless such shareholders make a statement to the contrary before the meeting takes place.”⁵²

42. In summary, the rigidity of the current regulations in Latin American jurisdictions is attenuated in this subject matter by the introduction of innovative legal rules facilitating shareholders effective communication and, furthermore, by allowing entrepreneurs to dispense with unnecessary nullifications and other legal sanctions when no damage exists because of such omission.

III. Conclusion

43. The Colombian SAS legislation has proven to be an appropriate framework for the operation of all types of closely held corporations. The law that gave rise to this business entity was the result of a combination of Common Law and Civil Law types of modern business corporations. Five years after the enactment of Colombian Law 1258 of 2008 it seems clear that it is possible to achieve high impact changes from a relatively simple reform of outdated Corporate Law provisions.

44. The incorporation of more than 200,000 Simplified Stock Corporations during the first five years following the enactment of this law eloquently shows the usefulness of new corporate vehicles endowed with flexibility and simplified incorporation features. Through the SAS Colombia has achieved higher levels of economic formalization, access to credit and investment, increased collection of taxes, and the creation of new jobs.

45. The SAS experiment may be beneficial in other countries if appropriately transplanted. It could be particularly useful in developing and emerging economies where there is an increasing need for flexible and user-friendly corporate vehicles. The success of the SAS clearly suggests that businesspeople prefer flexibility to old-fashioned, misguided paternalism.

46. Welfare enhancement reforms such as the introduction of the Simplified Corporation would require, however, breaking up path dependence and overcoming certain pressure groups and backward looking legal traditions. For this purpose it would be extremely useful to prepare and promote a model act on Simplified Corporations. An instrument such as this could serve as a starting point in legislative processes for the amendment of Corporate Laws in several countries.

⁵⁰ See Model Act on the Simplified Stock Corporation, § 21, *infra* Annex.

⁵¹ *Id.*

⁵² *Id.*

Annex

Model Act on the Simplified Corporation (MASSC)

Chapter I

General Provisions

Section 1. Nature. — The simplified 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.

Section 2. Limited Liability. — The simplified 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 corporation.

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

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

Section 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 corporation will form a legal entity separate and distinct from its shareholders.

Section 4. Inability to Become a Listed Entity. — The shares of stock and other securities issued by a simplified corporation shall neither be registered within a stock exchange, nor traded in any securities market.

Chapter II

Formation and Proof of Existence

Section 5. Contents of the Formation Document. — A simplified 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) Name and address of each shareholder;
- (2) The name of the corporation followed by the words “simplified corporation” or the abbreviation “S.A.S.”;
- (3) The corporation’s domicile;
- (4) If the simplified 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 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 corporation.

Section 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 Section 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 corporation and the contents of the formation document will constitute the simplified corporation's by-laws.

Section 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.

Section 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 corporation and the provisions set forth in the formation document.

Chapter III

Special Rules Regarding Subscribed, Paid-in Capital and Shares of Stock

Section 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.

Section 10. Classes of Shares. — The simplified 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 labour, 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.

Section 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.

Section 12. Share Transfers to a Trust. — Any shares issued by a simplified 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.

Section 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.

Section 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.

Section 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.

Section 16. Change of Control in a Corporate Shareholder. — The by-laws may impose upon an incorporated shareholder the duty to notify the simplified 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 per cent 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 corporation

Section 17. Organization. — Shareholders may freely organize the structure and operation of a simplified 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 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.

Section 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 Section 22 hereof.

Section 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.

Section 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.

Section 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 Section 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.

Section 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 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.

Section 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.

Section 24. Shareholders' Agreements. — Agreements entered into between shareholders concerning the acquisition or sale of shares, pre-emptive 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 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 corporation 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.

Subsection 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.

Subsection 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.

Section 25. Board of Directors. — The simplified 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 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 on the by-laws, the board will be governed under the relevant statutory provisions.

Section 26. Legal Representation. — The legal representation of the simplified 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.

Section 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 corporation, unless such provision is opted-out in the by-laws.

Subsection 1. — Any individual or legal entity who is not a manager or director of a simplified 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.

Subsection 2. — Whenever a simplified 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.

Section 28. Auditing Organs. — A simplified 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

Section 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].

Section 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 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 corporation has been reduced;

- (2) The corporation's equity value has been diminished, or
- (3) The free transferability of shares has been constrained

Section 31. Conversion into another Business Form. — Any existing business entity may be converted into a simplified 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 corporation shall be registered before the *Mercantile Registry* [include the name of corresponding company registrar's office].

A simplified 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.

Section 32. Substantial Sale of Assets. — Whenever a simplified corporation purports to sell or convey assets and liabilities amounting to 60 per cent 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.

Section 33. Short-form Merger. — In any case in which at least 90 per cent of the outstanding shares of a simplified corporation is owned by another legal entity, such entity may absorb the simplified 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

Section 34. Dissolution and Winding Up. — The simplified 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 corporation shall be filed before the *Mercantile Registry* [*include the name of corresponding company registrar's office*].

Section 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 on 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 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.

Section 36. Winding Up. — The simplified 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

Section 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 corporation, such person shall approve all financial statements and annual accounts and will record such approvals in minutes within the corporate books.

Section 38. Shareholder Exclusion. — The by-laws may contain causes by virtue of which shareholders may be excluded from the simplified 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.

Section 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.

Section 40. Special Provisions. — The legal mechanisms set forth under Sections 13, 14, 38 and 39 may only be included, amended or suppressed from the by-laws by unanimous decision rendered by the holders of all issued and outstanding shares.

Section 41. Piercing the Corporate Veil. — The corporate veil may be pierced whenever the simplified corporation is used for the purpose of committing fraud. Accordingly, joint and several liabilities may be imposed upon shareholders, directors and managers in case of fraud or any other wrongful act perpetrated in the name of the corporation.

Section 42. Abuse of Rights. — Shareholders shall exercise their voting rights in the interest of the simplified 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.

Section 43. Cross-References. — The simplified 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.