

COMPARATIVE MATRIX

**PROPOSAL FOR A DECREE-LAW ON THE SPECIFIC
AMENDMENT OF THE COMMERCIAL CODE (Approved by
Decree-Law No. 2/2005, dated 27 December, partially amended by
Decree-Law No. 2/2009, dated 24 April)**

May 2018

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**PROPOSAL FOR A DECREE-LAW ON THE SPECIFIC AMENDMENT OF THE COMMERCIAL CODE
APPROVED BY DECREE-LAW No. 2/2005, DATED 27 DECEMBER AND
PARTIALLY ALTERED BY DECREE-LAW No. 2/2009, DATED 24 APRIL**

Art	Before	After (changes are highlighted) ¹	Impact
<p>The articles 1 to 89 regarding commercial activity were not amended in this revision because it was not included in the law of legislative authorization but these articles are part of the changes that will be made in the general revision of the commercial code.</p>			
90	<p>(Form of the articles of association)</p> <ol style="list-style-type: none"> The articles of association are entered into through a written document signed by all shareholders with the signatures notarized in person and shall be executed by public deed when real property is involved. The establishment of a company by merger, division or transformation of another company is governed by the respective provisions of this Code. 	<p>(Form of the articles of association)</p> <ol style="list-style-type: none"> The articles of association are entered into through a written document with the signatures of all shareholders or their legal representatives, signatures to be notarized by exemplar. The articles of association shall be executed by public deed when real property is transferred to the ownership of the company. The establishment of a company by merger, division or transformation of another company is governed by the respective provisions of this Code. 	<p>Unnecessary bureaucracy was eliminated by allowing the shareholders to assign signatory authority to their legal representatives, and by allowing the signatures to be notarized by exemplar rather than requiring in-person notarization.</p> <p>The requirement for executing the articles of association by public deed was reduced. The requirement now applies only when real property is transferred to the ownership of the company. Previously the execution by public deed was required in all cases involving real property, such as the use of real property as an in-kind payment or the transfer of real property between shareholders.</p>
92	<p>(Content of the articles of association)</p> <ol style="list-style-type: none"> The articles of association should contain: <ol style="list-style-type: none"> ... 	<p>(Content of the articles of association)</p> <ol style="list-style-type: none"> The articles of association should contain: <ol style="list-style-type: none"> [.....]; 	<p>Correction of error in the language used in item d).</p>

¹ Changes in the text are highlighted. Changes in numbering only are not highlighted.

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	b) ... c) ... d) o objecto da sociedade e).... f) ... g) ... h) ... i) ... j) ... l) ...	b) [.....]; c) [.....]; d) o objeto social (corporate purpose) e) f) [.....]; g) [.....]; h) [.....]; i) [.....]; j) [.....]; l) [.....];	
94	<p align="center">(Headquarters)</p> 1. The headquarters shall be established in a specific location. 2. The articles of association may authorize the management, with or without the consent of others, to move the headquarters within the national territory. 3. Without prejudice to the provisions of the preceding paragraphs, the company may establish specific locations to carry out specific business activities.	<p align="center">(Headquarters)</p> 1. The headquarters shall be established in a specific location, if it is known at the time of incorporation, or failing that, the headquarters may be established in the residence of one of the shareholders and must remain registered there until the start of its activity. 2. [.....]. 3. [.....].	Facilitates the establishment of new businesses by allowing the headquarters to be established at a shareholder’s residence. This lowers costs for companies that may not require a headquarters office. It also enables legal incorporation to be completed prior to completion of all start-up activities such as identifying office space.
105	<p align="center">(Special rights)</p> Special shareholder rights may only be created if stipulated by the articles of association.	<p align="center">(Special rights)</p> 1. Special shareholder rights may only be created if stipulated by the articles of association. 2. Special shareholder rights are those which, in addition to those inherent to the shareholder’s status, include rights of an equity or non-equity nature, namely: a) the right to elect one or more shareholders to the management or to take part in the management; b) the right to a percentage of profits, preferential or even different from the respective social participation;	The possibility to add special rights to a shareholding and create classes of shares, regardless of the stake in a company, promotes good corporate governance and attracts investments. The revisions add the definition of “special rights” and provide specific examples. In accordance with international best practice, the revisions allow for the granting of special rights to minority shareholders regardless of the capital held by that minority shareholder. The revisions also

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		<p>c) the right to subscribe capital but not to pay for it is up to the other shareholders to pay their subscribed part;</p> <p>d) the right to veto precise and determined social deliberations;</p> <p>e) the right to vote in favor or not of new shareholders;</p> <p>f) the right to specifically consent with the decision on a given matter;</p> <p>g) and others specifically as set out in the company's articles of association.</p> <p>3. Any shareholder, regardless of the amount of capital held, may be granted one or more special rights.</p> <p>4. A minority shareholder who holds one or more special rights has the duty not to overlap his individual interests to the interests of the company and to the duty of loyalty to it under penalty of abuse of his minority position.</p> <p>5. A minority shareholder who, in abuse of his or her minority rights and in violation of his duties, obstructs decision-making, is liable for damages caused to the company and its special rights may be withdrawn, depending on the severity.</p>	<p>address oppressive behavior by holders of special rights, also important to promoting good and efficient corporate governance and management.</p>
106	<p>(Suspension or modification of shareholders' special rights)</p> <p>The special rights of shareholders may not be suspended or modified in any case without the consent of the respective shareholder, unless expressly provided otherwise in the articles of association.</p>	<p>(Suspension or modification of shareholders' special rights)</p> <p>The special rights of shareholders cannot be suspended, restricted or modified without the consent of the respective holder, given at the General Meeting, without prejudice to the provisions in No. 5, final part of the previous article.</p>	<p>The original text allowed for the articles of association to provide for the suspension or modification of shareholders' special rights without the consent of the shareholder. This provision is eliminated, which provides greater protection for the rights of minority shareholders.</p>

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			<p>The new text also specifically prohibits the restriction of special rights, in addition to their suspension or modification. This clarifies and strengthens the protections for minority shareholders.</p> <p>The new text also requires that the shareholder provide their consent to changes of special rights at the General Meeting. This further protects the rights of minority shareholders and provides for greater transparency.</p>
112	<p>(Form of payment of share capital)</p> <ol style="list-style-type: none"> The nominal value of share capital raised in cash or in kind must be a multiple of fifty thousand meticais. 	<p>(Form of payment of the share capital)</p> <ol style="list-style-type: none"> Once the shareholders have established the amount of share capital, this can be paid in cash or in kind. [.....]. [.....]. [.....]. 	<p>The requirement for the minimum share capital to be 50,000 meticais and for all share capital to be a multiple of 50,000 meticais is eliminated. This facilitates the ease of doing business by allowing shareholders to establish any value of share capital appropriate for the company.</p>
116	<p>(Time of payment of the share capital)</p> <ol style="list-style-type: none"> Share capital participations must be fully paid up at the time of the incorporation, without prejudice to the provisions of the following paragraphs: [.....]. [.....]. [.....]. [.....]. 	<p>(Time of payment of the share capital)</p> <ol style="list-style-type: none"> Share capital participation are paid in on the date of the incorporation, without prejudice to the provisions of the following paragraphs. [.....]. [.....]. [.....]. [.....]. 	<p>The revision was changed "time" to "date" to be more specific and reduce possible interpretation conflicts.</p>
122	<p>(Right to information)</p> <ol style="list-style-type: none"> ... The rights set forth in paragraph g) of the previous number can be limited in the articles of 	<p>(Right to information)</p> <ol style="list-style-type: none"> [.....]. [Repealed]. The shareholder is entitled to consult and obtain 	<p>The revision repeals #2, which previously allowed the right to information about company management to be limited through the articles of association. (Note that the</p>

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	<p>association, and with respect to shareholders with limited liability, be subject to the holding of a certain percentage of capital stock that may not, under any circumstances, exceed five percent.</p> <p>3. The shareholder who uses, to the detriment of the company, information thus obtained will respond for the damages caused to it.</p> <p>4. In case of refusal of the information requested, the partner may request the court to order it to be provided, substantiating the request. After hearing the company the judge decides without further evidence within a maximum of 10 days. If the request is granted, the directors responsible for the refusal shall compensate the shareholder for the damages caused and reimburse him for the expenses that he has reasonably incurred.</p> <p>5. A shareholder who is given false, incomplete or manifestly not clear information may request the court to judicially review the company in accordance with article 124.</p>	<p>a copy of any minutes of a General Meeting, at any time, without the need for authorization given by the administration.</p> <p>4. The shareholder is also entitled to consult and obtain a copy of any management [meeting] minutes, with the prior authorization of the management, which may refuse based on the position that management meeting minutes contain confidential material, commercial or industrial secrets or material that should not be divulged to the public or [concern] an in-progress business matter, whose accessibility and eventual disclosure is may cause harm to the company.</p> <p>5. The articles of association may require ownership of a minimum percentage, which may not exceed five percent of the share capital, for the exercise of the right to information provided for in paragraph g) of No. 1 of this article.</p> <p>6. The shareholder who uses, to the detriment of the company, obtained information is liable for the damages caused.</p> <p>7. The shareholder to whom false, incomplete or manifestly unclear information is given may request the court to judicially review the company in accordance with article 124.</p> <p>8 In case of refusal of the information requested, the shareholder may request the court to order it to be provided, substantiating the request. After hearing the company the judge decides without further evidence within a maximum of 10 days.</p> <p>9. If the request is granted, the directors responsible for the refusal shall compensate the shareholder for the damages caused and reimburse him for the expenses that he has reasonably</p>	<p>provision regarding minimum share capital is retained as #5 in the revised version.)</p> <p>The revision adds #3 and #4 which provide further detail and clarification about the rights to the minutes of the General Meeting and the minutes of management meetings, and eliminates the time limits which were previously included in Article 167 (also proposed for repeal, see below).</p> <p>These revisions are in accordance with the Doing Business Protecting Minority Investors indicator which requires that shareholders shall have the right to inspect and copy any record maintained by the company regarding the company's activities, financial condition, and other circumstances relevant to their rights and duties, and therefore the right to inspect and copy should not be limited.</p> <p>However, the revisions maintain several limitations (can be limited for minority shareholders with <5% ownership; can be subject to approval by the management) and thus will improve Mozambique's score on the Protecting Minority Investors indicator but will not achieve the best possible score.</p> <p>Revisions #8 and #9 are simply re-numbered from the original #4.</p>

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		incurred.	
129	<p>(Competence of the company' General Meeting) In addition to other matters specially attributed to it by law or by the company's articles of association, it is the responsibility of the General Meeting to deliberate on the following matters:</p> <ul style="list-style-type: none"> a) Election and dismissal of the administration and the supervisory body; b) the balance sheet, the profit and loss account and the management report for the year; c) the management report and the opinion of the supervisory board or the single supervisor; d) the application of results for the year; e) the amendment of the articles of association; f) the increase and reduction of share capital; g) De-merger, merger, transformation of the company; h) dissolution of the company i) those that are not, by legal or statutory provision, included in the competence of other bodies of the company. 	<p>(Powers of the General Meeting) 1. It is exclusively up to the General Assembly to deliberate on the following matters:</p> <ul style="list-style-type: none"> a) the balance sheet and annual accounts; b) the management report and the opinion of the supervisory body; c) the application of the results of the annual exercise, distribution of profits, in this case, to be made up to six months after deliberation, and treatment to give to the damages; d) the election and dismissal of the shareholders of the Board of the General Meeting, with the administration and the supervisory body, whatever the cause; e) the call and reimbursement of provisions; f) the call and reimbursement of supplementary services; g) the call and reimbursement of ancillary services; h) the establishment and removal of special rights of the shareholders i) the amortization of quotas and, in the case of amortization by exclusion of shareholders, to be accompanied by the evaluation report made by an independent auditor; j) the exclusion of a shareholder; k) the increase and reduction of share capital, except for different legal provisions; l) the merger, division, transformation and dissolution of the company; and 	<p>The revision provides more detail and clarity about which matters are subject to the jurisdiction of the general meeting.</p> <p>The requirement to pay dividends ("distribution of profit") within six months of the decision by the General Meeting to do so is in accordance with best practice (and in fact exceeds the WB recommendation of one year).</p> <p>The revision to letter d) is in line with what is measured by the Protecting Minority Investors indicator for the appointment and removal of directors. Under the DB methodology, the general meeting of shareholders is the corporate body that should elect and remove directors.</p> <p>The revision (h) provides the power to establish or revoke special rights of shareholders in accordance with best practice and the DB indicator methodology as established in Article 106 above.</p> <p>The power of the General Meeting to establish compensation for the corporate bodies and to sell and encumber shares is also added.</p>

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		<p>m) other changes in the articles of association that are not a direct consequence of the decisions taken, as well as other matters that, by legal or statutory provision, are not included in the competencies of other corporate bodies.</p> <p>2. It is also up to the General Meeting, unless otherwise provided in the articles of association:</p> <p>a) to establish the remuneration of the corporate bodies, attributing this competence to a committee of which the members of the corporate bodies do not belong; and</p> <p>b) to sell and encumber shares.</p>	<p>The revision also streamlines corporate governance by eliminating the need for the General Meeting to deliberate on changes to the articles of association that are a direct consequence of other decisions approved by the General Meeting. (for example, the approval of a share capital increase will necessitate a change to the articles of association in relation to the share capital - it is no longer necessary to deliberate separately on that amendment to the articles of association).</p>
130	<p>(Participation of the shareholder in the General Meeting)</p> <p>1. ...</p> <p>2. Unless otherwise provided in the company's articles of association, the shareholder may be represented at the General Meeting by another shareholder, the spouse, descendant or ascendant, as long as, as an instrument of voluntary representation, such representative has a letter signed by the shareholder and addressed to the chairman of the board.</p> <p>3. The persons who form the governing bodies should attend the meetings of the general meeting, when called by the chairman of the board.</p>	<p>(Participation of the shareholder in the General Meeting)</p> <p>1. [...].</p> <p>2. The shareholder may be represented at the General Assembly by the spouse, descendant or ascendant, another shareholder, a third party or agent.</p> <p>3. The instrument of voluntary representation, referred to in paragraph 2, shall, however, be recorded in a written document, with enough information, signed by the shareholder and without any other formality, addressed to the Chairman of the General Meeting.</p>	<p>Standardization and simplification of requirements for representation of the shareholders in general meetings. The original Commercial Code had different requirements for representation of shareholders depending on the type of company. The revision also allows for the assignment of representation to a third party or agent (previously limited to a family member of another shareholder), improving the flexibility for active engagement by shareholders.</p> <p>The revision #3 maintains the obligation for proxy appointments to be given in a written form, which is in line with recognized best practices of improving access and increasing participation levels at shareholder meetings while ensuring proportionate measures to identify shareholders.</p>

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			Finally, the absence of a deadline to appoint a proxy, as currently provided in the law and maintained by the amendment, is considered a good practice.
139	<p align="center">(Majority)</p> <p>1. ... 2. The votes of shareholders who are prevented from voting pursuant to article 131 are not taken into account for determining the majority required by law or by the articles of association. 3. ...</p>	<p align="center">(Majority)</p> <p>1. [...]. 2. For determining the majority required by law or by the articles of association, abstentions or votes of those who are prevented from voting under article 131 are not counted. 3. [...].</p>	The wording has been modified so that in counting votes, in addition to those in conflict of interest, abstentions should also be excluded, and none of these votes should count for the formation of the majority required for the deliberation.
147	<p align="center">(Minutes)</p> <p>1. ... 2. ... 3. ... 4. The minutes may be drawn up in a separate document, and the signature of the shareholders should be notarized. 5. ...</p>	<p align="center">(Minutes)</p> <p>1. [...]. 2. [...]. 3. [...]. 4. The minutes may be drawn up in a separate document, and it should contain the signature of the shareholders. 5. [...].</p>	Elimination of notarization of the signatures of the shareholders. This is in accordance with good corporate governance which eliminates unnecessary bureaucracy while ensuring that through the signatures themselves, the shareholders are concurring with the minutes.
150	<p align="center">(Duty of diligence)</p> <p>The directors of a company shall act with the diligence of a prudent and coordinated manager, in the company's interests, taking into account the shareholders and employees' interests.</p>	<p align="center">(Duties of a company's directors)</p> <p>1. The directors of a company shall act with the diligence of a prudent and coordinated manager, in the company's interests, taking into account the shareholders' and employees' interests. 2. The directors may not, without the express prior consent of the shareholders, engage in a commercial activity competing with the activity covered by the company's corporate purpose, unless they have already exercised</p>	Previously, different standards applied to directors of limited companies and those of joint-stock companies. The revision brings together in one article a director's obligations and duties as generally applicable to all directors.

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		<p>that activity prior to their appointment to the position, known to all shareholders.</p> <p>3. The directors are forbidden to:</p> <p>a) enter into agreements with the company, obtain guarantees from the company and its obligations, receive payments on account of personal obligations contracted or receive advances of more than one month of monthly remuneration;</p> <p>b) take or use loans or credit, resources or assets of the company, for their own benefit or third parties, without prior authorization from the General Assembly;</p> <p>c) receive from third parties any personal advantage, in whatever form, due to the exercise of the function;</p> <p>d) perform acts of liberality at the expense of the company, unless authorized in advance by the General Assembly and such liberality is for the benefit of the employees of the company or the community where it acts, in view of the company's social responsibilities; and</p> <p>e) take advantages, for himself or for others, at the expense of having failed to take advantage of business opportunity of the company's interest.</p>	
167	<p>(Mandatory books)</p> <p>1. ...</p> <p>2. ...</p> <p>3. ...</p> <p>4. ...</p> <p>5. ...</p> <p>6. ...</p> <p>7. ...</p>	<p>(Mandatory books)</p> <p>1.[.....].</p> <p>2.[.....].</p> <p>3.[.....].</p> <p>4.[.....].</p> <p>5.[.....].</p> <p>6.[.....].</p> <p>7.[.....].</p>	<p>Paragraph 9 of this article is repealed because it is now addressed in detail in the proposed revision of Article 122.</p>

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	<p>8. ...</p> <p>9. The shareholder is entitled to consult and obtain a copy of any minutes of the meeting or resolution of the administration, provided that three months have elapsed since the date of the meeting or, before that period has elapsed, if authorized by the administration, considering that there is no risk of harm to company due to this disclosure.</p>	<p>8.[.....].</p> <p>9. Repealed.</p>	
246	<p>(Acts subject to registration and publication) Acts related to the company are subject to registration and publication in accordance with the law.</p>	<p>(Acts subject to registration and publication)</p> <ol style="list-style-type: none"> Acts related to the company are subject to registration and publication in accordance with the Law. If the company is subject to IRPC and is obliged to keep organized accounting, the balance sheet and annual accounts submitted to the General Meeting are, within 90 days after its carrying out, submitted to the Legal Entity Registry Office, and any interested party may request in writing its availability to that entity or company. 	<p>The revision eases the administrative and cost burdens to small taxpayers (subject to IRPC) by requiring limited and standardized documents to be made available publicly, but not requiring the same level of registration and publication as larger companies.</p>
247	<p>(Publications)</p> <ol style="list-style-type: none"> They should be made at the expense of the company in the Government Gazette. For companies, regardless of the corporate type, notifications, notices and convening addressed to shareholders or creditors, when the law or articles of association require them to be published, should be published in one of the most widely read newspapers in the place of the company's headquarters. 	<p>(Publications)</p> <ol style="list-style-type: none"> [.....]. [.....]. The content of the publication of the constitution of a trade company is made by simplified extract, and any interested party may obtain a copy of the articles of association from the Legal Entity Registry Office or from the company. The simplified extract shall contain the following elements: <ol style="list-style-type: none"> date of registration; unique number of legal entity; date of incorporation of the company; 	<p>The revision reduces the administrative and cost burdens for all firms by allowing for the publication of an extract of the articles of association, while maintaining transparency and supporting good governance by ensuring that the full articles of association can be obtained from the company, shareholders or the Registry Office.</p>

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		<ul style="list-style-type: none"> d) signature; e) headquarters; f) corporate purpose; g) share capital; h) form of distribution of the share capital among the shareholders, with their identification and their taxpayer identification numbers; i) form of the Administration and way of binding the company; j) identification of the administration members. 	
295	<p style="text-align: center;">(Share quota division)</p> <ol style="list-style-type: none"> 1. A share quota may only be divided by partial amortization, partial transfer, sharing or division between joint owners, each of the shares resulting from the division having a nominal value in accordance with the provisions of this Code. 2. The acts that affect the share division shall be contained in a public deed in the cases in which real property is considered and a written document signed by the interested parties with in-person recognized signatures or judicial decision. 3. The division of a share quota does not have to obtain the consent of the shareholders, without prejudice to the provisions of the law or the company's articles of association on the transfer of shares. 4. The division of a share quota has to be registered in the company's books. 	<p style="text-align: center;">(Share division)</p> <ol style="list-style-type: none"> 1. [.....]. 2. [Repealed] 3. The division of shares shall obtain the consent of the shareholders given at the General Meeting. 4. [Repealed]. 	<p>Paragraph 2 has been repealed, because there are no acts of division in which real estate is considered, since this is a mere division of existing shares.</p> <p>The Protecting Minority Investors indicator measures whether shareholders must approve the issuance of new shares. Although division of shares is not specifically measured, since the division affects the nominal value of each share, it is in better alignment with best practice to require the approval of shareholders at the General Meeting.</p> <p>Paragraph 4 has been repealed, as there is no share registry book in a share quota company. Share quotas are documented in the articles of association (published in the Gov't Gazette and company registration certificate).</p>
318	<p style="text-align: center;">(Votes and calculating the majority)</p> <ol style="list-style-type: none"> 1. Each two hundred and fifty thousand meticais of 	<p style="text-align: center;">(Votes and calculating the majority)</p> <ol style="list-style-type: none"> 1. Having the shareholders instituted the share 	<p>The revision #1 eliminates the reference to minimum share capital in accordance with</p>

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	<p>the nominal value of the share corresponds to one vote.</p> <p>2. However, the articles of association may, as a special right, allocate two votes for each two hundred and fifty thousand meticais of the nominal value of the share or shares of the shareholder.</p> <p>3. Unless otherwise provided for by the law or articles of association, the resolution shall be deemed to be taken when it obtains the majority of votes cast.</p> <p>4. Abstentions are not counted in the vote.</p>	<p>capital, each metical of the nominal value of the quota corresponds to one vote.</p> <p>2. However, the articles of association may assign, as a special right, another number of votes for each metical.</p> <p>3. The resolution shall be deemed to be taken when it obtains half of the votes, plus one, favorable.</p> <p>4. If there is no share capital, the vote counting is done according to the percentage to which each quota corresponds in the share capital.</p>	<p>best practice.</p> <p>Revision #3 ensures that a simple majority is always required and cannot be changed in the articles of association.</p> <p>The contents of the original #4 are addressed in the revision to Article 139 above.</p>
414	<p>(Participation in the general meeting)</p> <p>1. ...</p> <p>2. ...</p> <p>3. It is possible for the shareholder to be represented at the general meeting through a representative who is a lawyer, shareholder or director of the company, constituted by a written proxy granted with a fixed term of no more than twelve months.</p> <p>4. ...</p> <p>5. ...</p>	<p>(Participation in the general meeting)</p> <p>1. [.....].</p> <p>2. [.....].</p> <p>3. [Repealed]</p> <p>4. [.....].</p> <p>5. [.....].</p>	<p>Paragraph 3 is repealed because the shareholder representation at the general meeting is addressed in Article 129 above.</p>
417	<p>(Votes and calculating the majority)</p> <p>1. ...</p> <p>2. ...</p> <p>3. ...</p> <p>4. ...</p>	<p>(Votes and calculating the majority)</p> <p>1. [.....].</p> <p>2. [.....].</p> <p>3. [.....].</p> <p>4. [.....].</p> <p>5. The resolution shall be deemed to be taken when it obtains half of the votes, plus one, favorable.</p>	<p>Paragraph 5 was added since there was no definition of how a majority is formed to take decisions, and it does not allow for this to be changed by the articles of association. This is in accordance with corporate best practice and protects minority shareholders.</p>
433	<p>(The directors' obligations)</p> <p><i>Repealed</i></p>	<p>(The directors' obligations)</p> <p>[Repealed].”</p>	<p>This article is repealed because the contents are now addressed in the revision to Article 150.</p>