



# LEGAL ALERT

## ALTERATION OF THE MOZAMBIQUE COMMERCIAL CODE

By means of Law no. 20/2017, of 28 December 2017, the Mozambican Government was authorised to proceed with the review of the Commercial Code, approved by Decree-Law no. 2/2005, of 27 December 2005, which had since been altered by Decree-Law no. 2/2009, of 24 April 2009. The scope of the authorisation included the incorporation and registration process for commercial companies, the protection of minority shareholders and the simplification of the procedures/use information technology means.

Decree-Law no. 1/2018, of 4 May 2018, which entered into force on that same date, altered the Commercial Code. Its Preamble places the cornerstone in the effort to adjust the Code “to the need for debureaucratisation and rendering more flexible and simple” to incorporate companies.

Although a more in-depth review of the Code was awaited, we highlight below some of the main alterations approved:

### **Incorporation process/simplification of procedures**

- The incorporation agreement may now be entered into by written agreement signed with signatures recognised by a notary public with reference to the ID document (except when transfer of real estate to the company occurs);
- The publication of the incorporation of the company is made by simplified excerpt – which shall contain mandatory elements – and any interested person may obtain copy of the articles of association (AoA);
- The in-person recognition of signatures in the minutes of shareholders is no longer required;
- Companies subject to Income Tax for Corporate Entities and with organized accounts shall deposit the balance sheet and annual accounts before the Commercial Registry Office;
- For the division of *quotas*, it is now necessary to obtain the approval from the General Assembly.



## Shareholders

- Widening of the rights to information of the shareholders;
- It may be required for shareholders to hold a minimum percentage to exercise the right to obtain written information regarding the management of the company (maximum 5% of the share capital);
- Alteration of the rules regarding votes and calculation of majority in private companies limited by *quotas* and public companies limited by shares;
- Specification of principles regarding liability of the company's estate.

## Minority shareholders

- Inclusion of list of special rights, which may only be created by a provision of the AoA, namely: (i) right to appoint one or more members for the board or to be part of the board; (ii) right to a preferential percentage of the profits or even a different one from the respective shareholding; (iii) right to veto precise and determined resolutions; (iv) right to vote favourably or not regarding entering into of the new shareholders;
- Obligation from the minority shareholders with special rights not to overlap their individual interest over those of the company and over their duty of loyalty towards it;
- The abuse of minority rights and violation of rights which obstruct the approval of resolutions may result in liability for damages caused to the company as well as, eventually, the loss of their special rights;
- As a general rule, special rights may only be suppressed, restricted or modified with the consent of their holder.

## Corporate bodies

- Alteration of the article referring to matters exclusively reserved for the General Assembly, which is now more detailed;
- Inclusion of a prohibition for directors to exercise competing activity, except if consented by shareholders or when they were already undertaking such activity when appointed;
- Inclusion of other prohibitions impending over the directors of the companies.