



## SUB SECTION V

### Shareholders

Article 317. (Obligation to pay-up).- Subscribers shall be bound to pay-up the value of the shares subscribed under the conditions foreseen in the corporate agreement, the organization program or the resolutions of the meeting, and failing that, under the conditions established by the Board of Directors or the administrator of the company. In these last two cases, the conditions shall be published for three days in the Official Gazette and in another newspaper.

Article 318. (Delinquency in paying-up. Sanctions).- Subscribers not complying with the promised pay-ups shall fall in arrears by operation of law, due to the sole expiration of the terms.

Once in arrears, the company may, at its choice:

- 1) Judicially claim the compliance with the obligation with the interests previously agreed on the unpaid balance or, failing that, the current bank interest for active operations plus damages; except if otherwise established in the corporate agreement or in the subscription agreement.
- 2) Declare the subscription as rescinded, and the delinquent subscriber shall lose the amounts already paid in favor of the company, and the company shall include said amounts in the earnings or reserves. The company must, if applicable, obtain new subscriptions completing the legal minimum (article 280) within a one-year term and should it fail to do so, it must reduce the corporate assets.

The company may abandon at any time the chosen solution, adopting the other one, due to mere reasons of convenience.

The delinquent subscriber may not exercise the rights established by law or by the corporate agreement.

Article 319. (Fundamental rights of shareholders).- Shareholders shall be entitled to:

- 1) Participate and vote at shareholders' meetings.
- 2) Have an interest in the company's earnings and in the remainder of the liquidation, in case the company is wound up.
- 3) Supervise the management of corporate business.
- 4) Have preference regarding the subscription of shares, bonds convertible into shares and debentures convertible into shares.
- 5) Withdraw from the company in those cases provided by law.

These rights may only be conditioned, limited or invalidated when the law expressly authorizes to do so.

Article 320. (Right to receive a minimum dividend).- In corporations it shall be mandatory to distribute as dividend among shareholders at least 20% (twenty per cent) of the net earnings of each financial year.

Shareholders shall be entitled to demand the collection of the mandatory dividend in cash, regardless of the method of payment established by the company.

The obligation to pay dividends according to this article shall not apply when it is thus expressly resolved by a shareholders' meeting through a well-grounded resolution, with the approval of shareholders representing at least 75% (seventy-five percent) of the corporate assets and the favorable opinion of the company's auditors, if applicable.

No retribution implying an interest in the company's earnings may be paid if shareholders are not previously offered the payment of the mandatory dividend under the conditions foreseen in this article.

The provisions of this article shall not apply when the earnings of the financial year are destined to refund the legal reserve (paragraph two of article 93) or to cover the losses of previous financial years (paragraph two of article 98). Whenever a refund is made or losses are covered with a part of the earnings of the financial year, the percentage foreseen in the first paragraph shall be calculated on the remainder.

Article 321. (Right to obtain information).- Shareholders shall be entitled to receive written reports or copies of:

- 1) The roll of members of the board of directors and of the control body, if applicable, as well as of their respective substitutes.
- 2) The resolutions proposed by the board of directors or the administrator, as the case may be, at shareholders' meetings, and their grounds.
- 3) The list of shareholders registered for attendance to meetings and that of those who have actually attended meetings.
- 4) The minutes of the meetings.
- 5) The general balance sheet (general accounting statement and income statement), the memorandum of the administrating body and the report of the supervisor, if applicable.

Should the administrating body refuse to provide either totally or partially the requested information or copy, shareholders may request a Judge to order the surrender of such information. In this case, all expenses and fees shall be borne by the administrator or directors in default, who shall be individually and jointly liable.

Article 322. (Voting right of common shares).- Each common share shall entitle its holder to one vote.

The corporate agreement may require a minimum number of these shares, which may not be more

than ten, in order to grant the right to vote at meetings. Shareholders may group their shares in order to reach the established minimum, appointing a common representative.

Article 323. (Rights of preferred shares).- It may be agreed that preferred shares shall entitle their holders not only to those rights corresponding to common shares but also to any of the following rights:

- 1) Receive a fixed dividend or a percentage of the profits, provided the conditions to distribute them are fulfilled.
- 2) Add to the fixed dividend the percentage of the profits with which common shares are paid, concurrently therewith.
- 3) Priority in the refunding of capital, either with or without bonus, in case of liquidation of the company.
- 4) Choose a certain number of directors.

The preferences admitted by this article may be accumulated.

It may be stipulated that if during a financial year the fixed dividend is not totally paid, the difference shall be paid during the following financial year.

Preferred shares may be deprived of the voting right, except at ordinary meetings when the company is delinquent regarding the compliance with the agreed rights, and at extraordinary meetings considering resolutions or reforms entitling to withdraw from the company.

Preferred shares may not be issued for more than 50% (fifty percent) of the capital.

Article 324. (Abuse of the right to vote).- Shareholders shall be liable for the damages caused by the abusive exercise of the right to vote.

Article 325. (Conflict of interests).- Shareholders or their representatives who, in a given operation hold, on their own account or on account of a third party, interests contrary to those of the company, shall abstain from voting the agreements regarding said operation.

Should they contravene this provision, and if, without their vote, the necessary majority for a valid decision would not have been reached, they shall be liable for the damages caused.

Article 326. (Preemptive right).- Common shares, as well as preferred shares and dividend shares(\*), shall entitle their holders to a preemptive right to subscribe or acquire new shares of the same class and shall grant accretion rights, in proportion to the shares they possess. Share subscribers shall be entitled to the same right.

When, with the consent of the different classes of shares, given at special meetings (article 349), the proportionality among them is not maintained, their holders shall be deemed to be members of a sole class for the exercise of the preemptive right.

Likewise, the proportion of each shareholder in the capitalization of reserves, readjustments of asset values and other special funds registered in the balance sheet, shall be observed when paying dividends with shares and in similar procedures by which bonus shares are granted.

Those who are entitled to a preemptive right according to the foregoing paragraphs shall also have it regarding the subscription of debentures convertible into shares and bonds convertible into shares, issued in order to be onerously disposed of. There shall be no preemptive right in the conversion into shares.

The rights acknowledged by this article may not be suppressed or conditioned, except for the provisions of article 330.

Article 327. (Transfer to third parties).- Those who are entitled to a preemptive right may assign it to third parties or to others who are also entitled to such right.

Article 328. (Exercise of the preemptive right).- In the cases where the exercise of any of the rights established in article 326 is applicable, the company shall offer the shares during three days through announcements in the Official Gazette and in another newspaper.

Those who are entitled to preemptive rights shall exercise them within the thirty days following the last publication, provided the corporate agreement does not establish a longer term. The accretion right shall be exercised within the subsequent thirty days. Upon maturity of both terms, shares that have not been subscribed may be offered to third parties or to the public.

Article 329. (Legal action of the holder of preemptive rights).- All those entitled to preemptive rights, whom the company deprives from said rights, may judicially demand that the company cancel the subscriptions to which they would have been entitled. If the disposal or delivery of shares has already been fulfilled, the foreseen cancellation may not be performed; but the damaged parties shall be entitled to joint compensation by the company and the guilty administrator or directors, for the damages caused. In no case shall the compensation be inferior to the triple of the price for which the shares subscribed or acquired according to article 326 are issued. In both cases, expenses and fees incurred in during the legal proceedings shall be borne by the company or by the jointly liable persons. The actions referred to in the foregoing paragraph must be filed within the term of six months as of the maturity of the subscription term or as of the time in which the shares may be acquired. They may be initiated by the damaged party, the company's administrator or any of the directors or auditors.

Article 330. (Limitations to or suspensions of preemptive rights. Conditions).- The limitation to or suspension of preemptive rights in the subscription or acquisition of new shares may be resolved at extraordinary meetings, in particular cases and when the interest of the company thus demands it, provided their consideration is included in the agenda and the shares are shares to be paid-up with contributions in kind or given as payment of preexisting obligations, or if they refer to a contribution in money, the significance of which renders it absolutely necessary for the development of the corporate business or the financial cure of the company.

Dissident shareholders with preemptive right may withdraw from the company.

Article 331. (Shareholders' agreements).- Shareholders' agreements on the purchase and sale of their shares, exercise of preemptive rights and voting rights or any other licit objective shall be legitimate.

Contracting shareholders may exercise all their legal rights and actions for enforcing the due compliance of the undertaken obligations and against those who are bound to duly execute the agreement.

These agreements shall have no effects regarding third parties, except when:

- A) A copy with the notarized signatures is delivered to the company.
  - B) A copy is filed in the company's docket.
  - C) The agreement is entered in the shareholders' titles or appears in the book of Registered Shares.
- Once these requirements are fulfilled, the respective shares may not be negotiated in the Stock Exchange.

In the case of public limited companies, the administrating body shall inform each ordinary meeting of the policy on profit capitalization and dividend distribution resulting from the agreements deposited with the company. In no case may shareholders' agreements be invoked to exempt shareholders from their liability in the exercise of their right to vote.

Shareholders' agreements shall have a maximum effective term of fifteen years, without prejudice to a tacit or automatic extension of the term agreed upon by the parties.

## **SUB SECTION X**

### **Administration and representation**

Article 375. (Administration).- The administration of corporations shall be carried out by an administrator or a board of directors.

The corporate agreement may empower the shareholders' meeting to decide on either administration method and on the number of members of the board of directors.

In the case of public limited corporations the administrating body shall necessarily be a board of directors.

Article 376. (Representation).- The administrator or the president of the board of directors shall represent the company except if otherwise agreed.

Article 377. (Appointment).- The administrator or the directors shall be appointed at the shareholders' meeting.

In case there are series of shares, the by-laws may provide for each of them to elect one or more directors, regulating their election.

The election by holders of preferred shares with a right to elect one or more directors shall also be regulated in the by-laws.

Article 378. (Conditions to be an administrator or a director).- Individuals or legal entities, whether shareholders or not, able to engage in trade and who are not banned from engaging in trade or disqualified to do so may be appointed (article 80).

Officers of the state control body may not be administrators or members of the board of directors of corporations.

The administrators or directors shall cease on their duties should any grounds for incapacity, prohibition or disqualification arise.

Article 379. (Substitutions, Vacancies).- The corporate agreement may establish the substitution regime of the administrator or the directors for the case of temporary or permanent vacancy. Should the by-laws not provide for this situation, the following provisions shall apply:

In case the administrator's office is vacant, the internal control body shall appoint a temporary substitute. Should there be no control body, any shareholder may request the state control body to appoint a temporary administrator among the majority shareholders. The temporary administrator shall call, within a sixty-day term, the extraordinary meeting at which the permanent administrator shall be appointed.

Temporary administrators may only carry out urgent management acts.

In case a director's office is vacant, the substitute shall be appointed by the other directors and shall hold office until the following meeting. If an agreement is not reached among the latter or if all or the majority of the offices are vacant, the provisions established in paragraph two of this article shall apply.

The provisions of article 86 shall be applicable to substitutes.

Article 380. (Duration. Reelection. Holding of Office).- The by-laws shall establish the duration of the administrator or the directors in their offices. Should there be no provisions in this respect, they shall hold office for one year as of their appointment. They shall hold office until the appointment of their replacements, except in those cases established in the third paragraph of article 378.

They may be reelected.

The ceasing administrator or directors shall receive the acceptance of the office from those who have been appointed within a fifteen-day term as of the respective meeting. In those cases provided for in paragraphs two and four of article 379 this should be done by the chairman of the meeting. The elected person(s) shall express his (their) acceptance or refusal within the following five working days. The foregoing shall apply except if otherwise agreed. The omission of these duties shall constitute grounds for liability.

Article 381. (Removal).- The administrator or the directors shall be essentially revocable by the shareholders' meeting, even if their appointment arises from the by-laws.

Directors appointed by holders of a series of shares or by holders of preferred shares may only be revoked by them, except if the meeting has resolved to initiate a legal action for damages against them or if grounds for incapacity, prohibition or disqualification have arisen disqualifying them to carry out their duties.

Article 382. (Guaranty).- The corporate agreement or the meeting may establish that the administrator or the directors should grant a guaranty for the correct performance of their duties.

The guaranty may consist of pledging shares of the company.

The guaranties shall be discharged when the meeting approves the management of those who granted them.

Article 383. (Delegation).- The administrators and directors shall personally carry out their duties, without prejudice of what is established in article 82.

The directors may not vote by mail, but in case of absence, they may authorize another person to vote on their behalf. Their responsibility shall be that of the attending directors.

The administrating body may appoint managers and grant mandates and this shall not exclude the personal responsibilities of its members.

Article 384. (Resignation).- The resignation of a director shall be submitted to the board of directors, which must accept it, provided it does not affect its regular operation. Should it not be accepted, the resigning director shall continue to hold office until the pronouncement of the next meeting. If an administrator resigns the provisions of article 205 shall apply.

Article 385. (Remuneration).- The by-laws may establish the remuneration of the administrator or the directors. Failing that, the meeting shall do so annually.

In no case shall the maximum amount of the retributions to be received by the administrator or the whole of the directors, excluding salaries and other remunerations on account of the performance of permanent technical and administrative duties, exceed 10% (ten percent) of the profits in the first case and 25% (twenty-five percent) of the profits in the second case.

Such amounts shall be limited to 5% (five percent) when dividends are not distributed among shareholders, increasing in proportion to the distribution, until reaching the aforementioned limits, when the total profit is distributed. For the purpose of applying this article, the reduction of the distribution of dividends resulting from the deduction of the retributions of the administrator or the board of directors shall not be taken into account.

Article 386. (Board of Directors. Organization, meetings, resolutions).- The board of directors shall hold meetings according to the regime established in the by-laws or, should this not be the case, according to that agreed upon by its members, and shall meet every time any director thus requests it. In this last case, the president shall call the meeting to take place within five days as of such request. Should the president fail to call the meeting, any director may call it. Meetings shall be held with the attendance of half plus one of its members. In public limited corporations, the board of directors shall hold meetings at least once each month.

Resolutions shall be adopted by simple majority of the votes present, except when the law or the by-laws establish a higher majority. In case of an equality of votes, the president shall be entitled to a second vote.

Those voting blank or refraining from voting shall be deemed to have voted against the motion, except if such refraining results from a legal obligation.

Article 387. (Conflict of interests).- Those directors who, in certain business, have an interest contrary

to that of the company, either on their own account or on account of third parties, shall disclose this fact to the board of directors and to the internal control body, as the case may be, and refrain from intervening when such matters are dealt with and resolved. Should they fail to do so, they shall be liable for the damages they may cause to the company due to the execution of the operation.

In the case of an administrator, he shall refrain from carrying out such business, except if authorized by the shareholders' meeting.

Article 388. (Prohibition to enter into contracts with the company).- The provisions of article 84 shall apply to administrators and directors with the following exceptions: the administrator who enters into a contract with the company under the conditions of the first paragraph of the mentioned article, shall inform this fact at the next meeting; in the case of a body, the director who enters into such contract shall communicate it to the board of directors. The previous authorization required by the second paragraph shall be granted by the shareholders' meeting.

Article 389. (Concurrence with the company).- The administrator or the directors may not participate, on their own account or on account of third parties, in activities that compete with the company, except if expressly authorized by the meeting, otherwise they shall incur in liability (article 85).

Article 390. (Executive committee. Delegate directors).- The by-laws may organize an executive committee integrated by directors or authorize the board of directors to appoint one or more delegate directors, who shall be in charge of managing ordinary business. The board of directors shall supervise its performance and shall exercise the rights provided by law or the by-laws.

This organization shall not modify the obligations and responsibilities of the directors.

Article 391. (Liability).- The administrator or the directors shall be jointly liable towards the company, the shareholders and third parties for the damages resulting, either directly or indirectly, from the infringement of the law, the by-laws or the regulations, the wrongful performance of their duties according to the criterion of article 83 and for damages caused by abuse of power, fraud or gross fault. Those who have not voted the resolution and have entered their opposition in the minutes of the meeting or irrefutably communicated said opposition to the company within a term of not more than ten days as of the meeting at which said resolution was adopted, or as of the date in which they came into knowledge of such resolution, shall be exempted from liability. Abstention or ungrounded absence shall not be, by themselves, a cause for exemption of liability.

If the opposing party did not attend the meeting at which the resolution was approved, he must request its reconsideration and the procedure established in the foregoing paragraph shall then be followed.

In case of acts or facts that have not been resolved at meetings of the board of directors, the director who has not participated in the same shall not be liable (second paragraph of article 83), but he shall proceed according to the provisions of the foregoing paragraph as soon as he comes into knowledge of said acts or facts.

Article 392. (Extinguishment of liability).- The liability of the administrators and directors with

respect to the company shall be extinguished by the approval of their management, express resignation or transaction, resolved by the meeting, provided that said liability has not been caused by an infringement of the law, the by-laws or the regulations and that shareholders representing at least 5% (five percent) of the paid-up capital do not oppose, and provided the acts or facts giving rise to it have been specifically set forth and the issue has been included in the agenda. The extinguishment shall not be effective in case of forced liquidation or bankruptcy.

Article 393. (Legal action for damages filed by the company).- The action for damages shall be initiated by the company upon resolution of the shareholders' meeting, which may consider it even when the issue is not included in the agenda.

The resolution shall entail the removal of the affected administrator or directors, and the same meeting shall appoint substitutes.

The new administrator or the new board of directors shall be in charge of filing the complaint.

Should the company be under liquidation, the action shall be initiated by the liquidator.

Article 394. (Legal action for damages filed by the shareholders).- The action for damages may be initiated by the shareholders who have opposed to the extinguishment of the liability (article 392).

If the action foreseen in the first paragraph of article 393 is not initiated within the term of ninety days as of the approval, any shareholder may file it, without prejudice of the liability arising from the failure to comply with the ordered measure.

Article 395. (Legal action for damages filed by the creditors).- The company's creditors may only initiate the action for damages when the purpose of said action is to reconstruct corporate assets which are insufficient to cover the company's debts as a consequence of the acts or omissions giving rise to liability and provided the company or the shareholders have not yet initiated it.

(\*) Translator's Note: A dividend share entitles its holder to anticipatedly receive the value of his shares without the need to await the liquidation of the company.