



3rd Meeting of the Eurasian Corporate Governance Roundtable

President Hotel “Kyivsky”
Kyiv, Ukraine
17-18 April 2002

*SHAREHOLDER RIGHTS, EQUITABLE TREATMENT
AND THE ROLE OF THE STATE*



Notes to the Agenda

hosted by

Securities and Stock Market State Commission of Ukraine
State Property Fund of Ukraine
PFTS

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The Global
Corporate
Governance
Forum

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General Structure of the Meeting

- Each session will be organised in the following way:
 - Brief opening presentation and introduction of the panellists by the Chairman: 5 minutes
 - Main presentation: 15 – 20 minutes
 - Case studies: 10 minutes
 - Discussants: 10 minutes
 - Questions from the floor and general discussion: 30 minutes
 - Chairs will summarise the discussion and highlight the main conclusions
- Chairs are kindly requested to make sure that panellists respect these time constraints and to monitor the general discussion.
- These time limits are required in order to give enough and ample time for general discussion and to allow an open and active dialogue in a collegial atmosphere. All participants are consequently encouraged to take the floor and express their point of view during the periods allocated to general discussions.

The main objectives of the meeting are:

- To elucidate and prioritise the rules, procedures, practices and institutions necessary for the protection of shareholder rights and equitable treatment in the Eurasian region and to identify the main impediments to their implementation;
- To discuss policy issues and prioritise reforms efforts aimed at improving the enforcement of shareholder rights, using the OECD Corporate Governance Principles as an analytical framework.

Session I

The first session will discuss the connection between shareholder treatment and access to capital and provide participants with a selective overview of major trends in countries from the Eurasian region. Emphasis will be given to shareholder rights protection and more specifically to the importance of introducing a joint stock company law in Ukraine.

Main issues for discussion:

- Are investments growing in the Eurasian region? Is there a perceptible change in the behaviour of Eurasian corporations toward investors? What are the elements of change?
- What is the trend on Eurasian capital markets? Are capital markets becoming an important source of corporate financing? Do trends on capital markets have an impact on the corporate ownership structure of respective countries?

- Why is a joint stock company law important? What are the impediments to the introduction of a joint stock company law in Ukraine? What efforts have been made to improve the legal framework so far? How did the introduction of a joint stock company law contribute to protecting shareholder rights and attracting investors in other Eurasian countries? How can shareholders be better protected in Ukraine in the absence of a joint stock company law?

Session II

This panel discussion will focus on the impact of the state as shareholder on corporate governance practices. In spite of on-going privatisation, the state still remains a majority holder in a considerable number of large firms and a minority shareholder in a myriad of others. Consequently, regardless of its behaviour, the State has and will continue to have a significant impact on corporate governance practice in Eurasian countries.

The objective of this session is to discuss how the privatisation agenda and objectives impact the state's role and responsibility as shareholder. It will examine the current experience with state property management and factors leading to state passivity or over-involvement in the corporate governance of firms. In this regard, the state's roles as shareholder, stakeholder and regulator can contradict, leading to waste of corporate assets, to improper transfers of value to political supporters, stakeholders or society as a whole, and to oppression of other shareholders.

The session will also examine international experience in state property management, specifically, where privatisation of large enterprises has involved significant medium-term state-involvement in management.

Main issues for discussion:

- What has been the impact to date of State shareholding on minority shareholders' rights?
- What is the current practice in state asset management in Eurasian countries, especially concerning large enterprises? Which institutions are responsible for exercising corporate governance for the State? Is there a clear distinction between the exercise of ownership rights and the regulation of markets?
- What shares in major enterprises and industries currently remain under State ownership? How will privatisation programs effect these shares?
- How does the State balance its duties as shareholder, stakeholder and regulator?
- What can be learned from the experience of other transition countries?

Session III

Shareholders have the right to participate in decisions concerning certain key company matters, including the election of the company board, amendments to the statutes, changes in the capital structure and major extraordinary transactions. The principal forum for such participation is the general shareholder meeting.

The third session address various aspects of shareholder participation including shareholder representation at general meetings (AGM) and voting practices in the region. The discussion will focus on identifying the main gaps in practices of notification and registration for participation, voting rules/ procedures, proxy mechanisms, and the organisation of the AGM itself.

This session will also examine the rules and procedures for the registration of ownership and transfer of shares, as well as the role of depositories and custodians of share interests.

Main issues for discussion:

- What is the AGM's role in corporate governance?
- How do current practices for calling and organising AGMs compare? What are the major impediments to improving such practices?
- Across Eurasia, what voting mechanisms apply? Are shares within the same class given equal voting power? Are cumulative voting arrangements common? Are the proxy mechanisms often used? How does the recently enacted investor protection legislation impact on voting procedures?
- What are the recent changes in legal and regulatory framework across the region, and have they led to significant improvements in practices regarding AGM?
- What are the major challenges in making the AGM an effective instrument of governance in Eurasian countries?
- What are the main rules and procedures for shareholder-rights enforcement in respective Eurasian countries? Which institutions are responsible for their implementation? Are responsibilities clearly defined?
- What are some of the obstacles to registration and transfer of shares? How can regulatory monitoring of registration and transfer be improved? What are the latest regulatory developments in this area?

Session IV

This session will address the protection of minority shareholders from oppression by majority or controlling shareholders by means of asset stripping / abusive transfer pricing, share dilution, etc. Part one of this session will more particularly focus on self-dealing through asset stripping, which is one of the most significant and common abuses of shareholders' rights in the Eurasian region, as in other transition economies. Presentations will provide an international comparative perspective on regulatory measures undertaken to prevent such practices. The session will then examine and evaluate regulatory measures that have been undertaken to prevent asset-stripping and abusive transfer pricing in the respective Eurasian countries.

Main issues for discussion:

- What can be learned from international experience regarding related parties transactions and self-dealing?
- How extensive is self-dealing in Eurasian countries?
- What regulatory measures have been undertaken to prevent these practices in the respective Eurasian countries? To what extent have these measures been effective? What are the main obstacles to their effectiveness?

The second part of this session will more specifically address minority shareholder protection against capital market manipulation and share dilution. In most Eurasian countries, dilution of minority stakes has been a major problem. Insider trading has also become a threat to promoting shareholder value, investor confidence and efficient capital markets. Consequently, the final part of the session will analyse the potential role of stock exchanges and securities commissions in preventing and/or punishing fraud and abuse.

Main issues for discussion:

- How do minority/non-controlling shareholders respond to share dilution? How should the legal system help?
- How does actual practice compare across the region? More specifically, where do minority shareholders enjoy effective pre-emptive rights in the case of new share issues? What are the role and ability of stock exchanges and securities commissions in protecting shareholders' rights during major events?
- What are the main impediments to the development of an effective and transparent market for corporate control?
- Do stock exchanges in the region provide shareholders with an effective protection against insider trading? What legal provisions restrict or prohibit insider trading? How are these rules enforced? What are some of the obstacles in implementing them?
- How can financial institutions be provided with incentives to undertake some self-enforcement and promote the integrity of the market?

Session V

This session will focus on ways to improving the enforcement of minority shareholder rights by examining procedures for legal redress. This discussion will provide an occasion to review actions by Commercial Courts and the Securities Commission of respective countries with respect to investor rights.

Main issues for discussion:

- How effectively do legal systems in Eurasia provide mechanisms to seek legal redress? Are these mechanisms timely and accessible at a reasonable cost to minority shareholders?
- What is the role of self-regulatory institutions in developing enforcement mechanisms? What instruments do they use to promote compliance?
- What is the role of voluntary codes of best practice in enhancing and improving the enforcement of shareholders' rights? What regional initiatives are currently underway?

This session will also weigh the roles and responsibilities of investors in improving corporate governance practices. Participants will be invited to discuss what has been the role of shareholders in the global corporate governance movement so far and how they could in Eurasia have a more significant impact on corporate governance practice.

Main issues for discussion:

- What has been the international experience regarding the role of shareholders as agents of improved corporate governance?
- What are the means and ways by which shareholders may have an impact on corporate governance practice in Eurasian countries?
- What has been the impact of foreign investors on corporate governance practice in Eurasia? Have they been helpful and influential in setting better standards of corporate governance? What have been the main obstacles to their potential positive role in this regard?