



## **The 3<sup>rd</sup> 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***

**Questionnaire – Armenia**

**By**

**Mr. Manukyan Hovhanes**

**Chairman**

**Commercial Court of the Republic of Armenia**

**hosted by**

**Securities and Stock Market State Commission of Ukraine**

**State Property Fund of Ukraine**

**PFTS**

**with the support of**

**The Government of Japan**



**The Global Corporate  
Governance Forum**

## Questionnaire

**NAME:** Manukyan Hovhanes

**TITLE:** Chairman

**ORGANISATION:** Commercial Court of the Republic of Armenia

**COUNTRY:** Armenia

**E-Mail:** [hmanukyuan@inter-as.com](mailto:hmanukyuan@inter-as.com)

**Tel:** 57 75 02

**Fax:** 57 56 61

### Questionnaire

#### Country background information

#### 1. Corporate Ownership structures:

##### 1.1 Number and aggregate annual turnover of Open Joint Stock Companies (publicly listed / traded companies):

126 companies

1.1.1 Number of listed companies that have never had any trades:

108 companies

1.1.2 Number of listed companies that have had more than one trade:

Shares of 18 companies

1.1.3 Number of companies that are regularly traded on a monthly basis:

Zero.

1.2 Number and aggregate annual turnover of Closed Joint Stock Companies (non publicly listed / non traded companies):

129 joint-stock companies<sup>1</sup>

1.3 Number and aggregate annual turnover of Joint Stock Companies with state owned stakes:

1.3.1 Where the State owns over 50% of the company:

105 joint-stock companies (see footnote 1)

1.3.2 Where the State owns from 30 to 50% of the company:

23 joint-stock companies (see footnote 1)

1.3.3 Where the State owns less than 30% of the company:

One joint-stock company (see footnote 1)

1.4 What is the aggregate market capitalisation of publicly listed / traded companies as a percentage of GDP?

In 2001, the ratio between “Approximate estimate of market capitalization”<sup>2</sup> and GDP was 1.56%.

1.5 Major sources of corporate financing? (Bank loans? State subsidies? Securities?)

The main sources of financing are bank loans, however, we do not have exact numerical data about the companies’ sources of financing.

1.5.1 What is the average debt-to-equity ratio of publicly listed / traded companies?

1.5.2 What is the aggregate amount of annual direct state subsidy to enterprises?

1.5.3 What is the aggregate amount of direct foreign investment in the domestic economy?

---

<sup>1</sup> Information provided concerns the joint-stock companies, whose register is maintained by the Central Depository of Armenia.

<sup>2</sup> The term “Approximate estimate of market capitalization” is used, because market capitalization is usually calculated based on fair prices of shares on a specific day. Here, the calculation was made based on the latest prices formed in 2001. Low liquidity of the market also justifies the lack of an exact calculation.

According to the information and analytical report of the National Statistic Service of Armenia, the total amount of foreign investment in Armenian legal entities was 151.9 billion Drams as of 10.01.2001 (approximately USD 279 million).

1.6 Total number of shareholders:

118,300 shareholders (see footnote 1), including

- 118,000 shareholders in open joint-stock companies,
- 300 shareholders in closed joint-stock companies.

1.6.1 – Average number of shareholders of open joint stock companies:

310 shareholders (see footnote 1)

1.6.2 - What percentage of these shares are held by:

We do not have precise information about the aggregate structure of share capital. However, the rules and conditions of privatisation resulted in a largely concentrated capital. In most cases, the concentration of capital is due to a large share of insiders (employees and executive managers) within the equity structure.

-employees:

-executive managers:

-foreign shareholders or institutional investors:

-the state:

-domestic corporations:

1.6.3 – Average number of shareholders of closed joint stock companies:

3 shareholders (see footnote 1)

1.6.4 - What percentage of these shares are held by:

The same as for 1.6.2

-employees:

-executive managers:

-foreign shareholders or institutional investors:

-the state:

-domestic corporations

1.7 Are there any cross shareholdings? If so is this a wide spread practice? Does it affect corporate control landscape?

Such practice is not widely used (5 cases have been registered for joint-stock companies, whose register is maintained by the Central Depository of Armenia) and does not have an impact on the corporate control situation.

1.8 Is there a trend towards the development of corporate groups? If so, for what reasons are corporate groups developing?

There is no significant trend.

1.9 Are there any special links between financial institutions and corporate groups?

There is no significant trend.

**2. Privatisation procedures:**

2.1 Percent of state commercial/production assets privatised to date:

As of 1 April 2001, according to the Ministry of State Property Management, 2,081 enterprises have been valued and 1,954 companies have been privatised, that is 94%. We must note that this percentage represents the ratio between the enterprises which were prepared for privatisation and the actually privatised enterprises.

2.1.1 Number and aggregate annual turnover of enterprises privatised to date:

As of 1 April 2001, 1,954 organizations have been privatised in Armenia (including those sold after a liquidation), 1,317 of which are open joint-stock companies. 103,521,124.0 Drams were paid, 29,766,020.0 of which in the form of vouchers (38.4%) and 63,755,104.0 in cash. In 2001, 294,263.5 was paid to privatise enterprises.

2.2 By what methods may state assets be privatised?

Assets owned by the state may be privatised by the following methods:

- Open subscription for shares
- Auction
- Tender (including international)
- Direct sale

- Public or private placement of new shares
- Placement of bonds which may be converted to shares
- Sale at specialized markets
- Transfer of the right to use the state property

2.2.1 Identify the percentage of assets privatised through each method.

- Open subscription for shares – 67.40%
- Auction – 2%
- Tender (including international) – 10.44%
- Direct sale – 8.39%
  
- Public or private placement of new shares – 0%
- Placement of bonds which may be converted to shares – 0%
- Sale at specialized markets 0.61%
- Transfer of the right to use the state property – 10.34%
- Sale of the assets of liquidated enterprises – 0.82%

### 2.3 What are the privatisation objectives and current methods used?

In accordance with the Annual State Property Privatisation Program for 1998-2000, the main objectives of privatisation are:

- Ensuring the growth of the proportion of privatised companies in the economy
- Increasing the performance of the privatised companies
- Elaborating the privatisation methods: the emphasis will be on tender privatisation and on sale to strategic investors
- Ensuring state budget revenue

### 2.4 To what extent may foreign investors participate in privatisation?

There are no restrictions for investors.

## **3. The legal and regulatory framework providing for shareholder rights**

3.1 Identify the principal normative acts establishing and protecting the rights of shareholders (title of act, promulgating state body, date of adoption, identification number)?

	Name of normative act	Body that approved normative act	Date of privatisation	Identification number
1.	Law of the Republic of Armenia "On Joint-Stock Companies"	People's Assembly	27 October 2001	РЪ-232
2.	Law of the Republic of Armenia "On Regulating the Securities Market"	People's Assembly	6 July 2000	РЪ-82
3.	Restatement of the Rules regulating the stock market	Securities Commission	28 September 2001	392/01

### 3.2 How recent and effective is the existing legislation?

- The Law of the Republic of Armenia "On Joint-Stock Companies" was passed in October 2001, so now it is difficult to say, whether or not it is effective.
- The Law of the Republic of Armenia "On Regulating the Securities Market" has been in effect for a year and a half. In accordance with it, the Securities Commission was established, whose principal function is to protect shareholder rights.

We should note that the laws that had been in effect, before the said laws were passed, were not very effective, because:

- The regulator did not have sufficient authority to exercise effective control
- Issuers did not provide periodic reports
- The scope and transparency of information filed by issuers were at a low level.

### 3.3 What are in your opinion the most important areas for reform of existing normative acts or the adoption of additional normative acts?

Two main legislative acts regulating corporate relationships were passed fairly recently. Some implementing legislation has already been passed, some are at the stage of development. Their effectiveness is not possible to determine, because too little time has passed since their enactment.

### 3.4 Are there any significant pending laws or normative acts?

In accordance with the Annual Program of the Securities Commission of Armenia for 2002, the following normative acts should be drafted this year in the field of shareholder rights protection.

- Regulation on the procedure for initial placement of shares and reorganization of joint-stock companies
- Normative acts regulating the system for managing collective investment.
- Regulation on the procedure for using voting ballots
- Regulation on the procedure for share tender offer.

- Regulation on the procedure for the filing of periodic issuer reports to shareholders.

The drafting of the Corporate Conduct Code is also discussed.

### 3.5 What procedures are required to amend the bylaws / regulations of a company?

In accordance with Article 84 of the Law of the Republic of Armenia “On Joint-Stock Companies,” the board of directors approves decisions on changes in corporate by-laws/ internal regulations.

### 3.6 What procedures are required to amend the charter of a company?

In accordance with Article 15 of the Law of the Republic of Armenia “On Joint-Stock Companies,” the general shareholders’ meeting of the company approves decisions on changes to the company charter. If the new changes limit shareholders’ rights, the shareholders who voted against this decision or didn’t participate in the general shareholders’ meeting are entitled to demand the re-purchase by the company of their shares.

## **Does the corporate governance framework protect the rights of shareholders?**

### **1. Ownership Rights**

*Basic shareholder rights include the right to secure methods of ownership registration and to convey or transfer shares.*

#### 1.1 Are Shareholders able to register their shares without undue difficulties? What are the steps, documents, permissions and time required to register shares? On what grounds may authorities refuse the registration of shares?

Yes, they are.

Title to securities is registered in the register of shareholders as follows:

#### 1. Opening a personal account for the new shareholder.

To open a new personal account, the shareholder must provide the following documents to the registrar:

- An order to open a new account
- A filled-out shareholder’s card
- A filled-out card of the shareholder’s proxy (if there is a proxy).

#### 2. The owner of the shares transfers the appropriate number of shares from his personal account to the personal account of the new shareholder.

To register a transfer of shares, the issuer (on placement of shares) or the share owner should provide the share transfer order to the depositary. The order is processed within 2 days and the decision is made within one day, total of 3 days. The depositary may refuse to register the transfer of shares, if

- the provided documents do not comply with the requirements
- there is not the appropriate number of shares in the share owner's account,
- if the share transfer order is not signed by the shareholder or his proxy and also if there are other technical mistakes.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 52

Law of the Republic of Armenia "On Regulating the Securities Market" – Articles 47, 112.

Restatement of the Rules regulating the stock market – Rules 112.1 b-13, 112.1 b-22

Describe any issues or problems arising in practice in connection with this matter

Due to a change in the law regulating the stock market, old shareholder accounts differ from the new ones. It will take some time to create a standard system of accounts, that is, to convert old accounts to new ones.

According to the information gathered in the course of inspections at joint-stock companies, conducted by the Securities Commission in 2001, violations concerning the maintenance of the register were identified in 8 open joint-stock companies (22.2% of the total number of inspected companies). The violations concerned:

- transfer of the register when an agreement with the depository was concluded
- absence of documentation (the documents supporting the change of share owners) which are the basis for registering
- maintaining and keeping the registers of registered securities and transactions with those.

1.2 How is share registration handled in public companies? What are the steps, documents, permissions and time required to register shares? On what grounds may authorities refuse the registration of shares?

In accordance with the Law of the Republic of Armenia "On Regulating the Securities Market," shares are registered with

1. The Securities Commission
2. The Stock Exchange.

Registration of shares and securities is a compulsory condition for reporting issuers (issuers with over 50 shareholders and net assets that correspond to the amount set by the Securities Commission). To register securities, an issuer must file a declaration of registering securities, whose format and content must correspond with the requirements stipulated by normative acts.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Regulating the Securities Market" – Articles 10, 20, 23.

Describe any issues or problems arising in practice in connection with this matter

Companies are reluctant to register their securities and some of them try to avoid the status of a reporting issuer. According to the information gathered in the course of inspections at joint-stock companies, conducted by the Securities Commission in 2001, 5 open joint-stock companies (13.9% of the total number of inspected companies) have not registered their securities in accordance with law.

### 1.3 How are registers regulated?

In accordance with Article 51 of the Law of the Republic of Armenia “On Joint-Stock Companies,” companies must begin maintaining the register of shareholders within one month after their state registration. If a company is a reporting issuer (a joint-stock company with over 50 shareholders and the value of assets that corresponds to the amount set by the Securities Commission), its register should be maintained by special organizations (the Central Depository).

### 1.4 What rights do shareholders and/or the public have to inspect a company’s register of shareholders?

In accordance with Rule 112.1 b-10 of the “Restatement of the Rules regulating the stock market,” the following are entitled to review the register:

#### 1. The issuer

The issuer can get information from the register at its request (within 3 days).

#### 2. Shareholders or their authorized representatives.

Shareholders may get information about (the depository must provide the information within one day).

- the changes in the personal account
- the issuer and the class of securities
- other things in the cases stipulated by current legislation.

The shareholders holding 10% of voting shares may be provided with a list of participants in the general shareholders’ meeting

#### 3. The Commission or some other State Agency

When making a request concerning the register of a company, the Commission or another State Agency should indicate legal grounds for the request and specify the required data. In turn, the depository is obliged to provide the information within 5 days.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 70

Law of the Republic of Armenia “On Regulating the Securities Market” – Articles 68-73.

Restatement of the Rules regulating the stock market – Rules 112.1 b-10, 26, 28, 29.

Describe any issues or problems arising in practice in connection with this matter

1.5 Are shares freely transferable in open versus closed joint stock companies? What are the restrictions?

1. Closed joint-stock companies

Shares of closed joint-stock companies are not freely transferable and may be offered only to a limited group of persons (the number of closed joint-stock company shareholders may not exceed 49). On sale, closed joint-stock company shareholders and the company itself have the right of first refusal in respect of buying the shares.

2. Open joint-stock companies

Shares of open joint-stock companies are freely transferable. On issue, shares of open joint-stock companies may be placed by open (free sale) and closed subscription.

Identify the relevant section(s) of the normative act(s) governing this issue

The Law of the Republic of Armenia “On Joint-Stock Companies” – Article 8, 46

Describe any issues or problems arising in practice in connection with this matter

Main problems relate to the right of first refusal in respect of shares of closed joint-stock companies and the period of validity of this right.

1.6 What are the requirements for authorising and issuing new capital?

In accordance with the Law of the Republic of Armenia “On Regulating the Securities Market,” the Securities Commission registers and authorises new share issues.

For a public offering, a declaration on registering the securities containing the issue prospectus should be lodged with the Commission. It is prohibited to sell/ transfer securities, if the declaration containing the issue prospectus complying with the requirements of law and normative acts is not registered.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Regulating the Securities Market” – Articles 4-11.

Describe any issues or problems arising in practice in connection with this matter

1.7 What pre-emptive rights to the purchase of company shares do shareholders enjoy, if any?

Company shareholders have the right of first refusal to buy company shares, if so stipulated by the company charter.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 37.

Describe any issues or problems arising in practice in connection with this matter

The main practical problems relate to:

- low rate of exercising the right of first refusal,
- internal procedural issues concerning the term of validity of the right of first refusal.

**2. Dividends**

*Basic shareholder rights include the right to share in the profits of the corporation.*

2.1 How are dividends of the company set and distributed?

Dividends are paid out of the net profit of the company in accordance with the list of shareholders entitled to receive dividends. The list is approved by the board of directors. Dividends may be paid on an annual, semi-annual and quarterly basis, unless otherwise stipulated by the company charter.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 49.

Describe any issues or problems arising in practice in connection with this matter

Companies mostly do not have a specific policy of using retained earnings, if it is decided not to pay dividends.

2.2 Under what circumstances may shareholders be restricted in their ability to share in profits?

Companies do not have the right to pay dividends, if:

- the charter capital has not been paid in full,
- the joint-stock company has not repurchased all its shares,
- at the moment of paying dividends the company is insolvent (bankrupt) or will become such after payment of dividends,
- the amount of net assets is less than the charter capital or will become such after payment of dividends.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 50

Describe any issues or problems arising in practice in connection with this matter

2.3 Can shareholders vote at general meetings on distribution of profits?

Yes, they can.

- Decisions on paying interim dividends are approved by the board of directors.
- Decisions on paying annual dividends are approved by the annual general shareholders’ meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 49

Describe any issues or problems arising in practice in connection with this matter

Shareholders often vote on this issue having insufficient expertise for understanding the financial situation at the company and, accordingly, for approving a professional decision.

2.4 What specific recourse do shareholders have in case of delays or refusal to pay dividends?

In the event of delays or refusals to pay dividends, provided that a decision to pay has been approved, shareholders can seek legal redress for damages in a court of law. They also may file a complaint with the securities commission.

2.5 Is the company allowed to purchase its own shares? Under what conditions?

It is allowed in accordance with Articles 54 and 57 of the Law of the Republic of Armenia “On Joint-Stock Companies.” The company may repurchase its shares, provided that there is an appropriate article in the company charter, in the following cases:

1. The general shareholders’ meeting approves a decision on decreasing the charter capital.
2. The board of directors approves a decision on company’s repurchasing its shares.
3. On demand of shareholders, in the following cases:
  - Reorganization
  - Abolition of the right of first refusal to buy company shares
  - Large transactions
  - Amendments to the charter

2.6 If a company purchases its own shares (treasury shares), who, if anyone, may exercise voting rights with respect to these shares?

If shares were purchased:

- in accordance with the decision of the general shareholders’ meeting to decrease the charter capital, the shares should be paid for at the moment of purchase.
- in accordance with the decision of the board of directors, no voting rights are attached to them. These shares should be sold within one year from the moment of their repurchase.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Articles 54, 58.

Describe any issues or problems arising in practice in connection with this matter

The main practical problems related to this matter are:

- The company does not give a proper notification to shareholders about their right to demand repurchasing, and, in turn, the shareholders are not well aware of their rights.
- Bank shareholders do not have this right in accordance with bank legislation.

**3. Major corporate changes and shareholder meetings**

*Shareholders have the right to participate in decisions concerning fundamental corporate changes and should have the opportunity to participate effectively and vote in shareholder meetings.*

3.1 How often do shareholder meetings have to be held?

Annual (regular) general shareholders' meetings are called in accordance with the company charter no later than 6 months after the end of financial year. Extraordinary meetings are called as needed.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 66.

Describe any issues or problems arising in practice in connection with this matter

The terms for holding AGMs are not observed. According to the Annual Program for 2002 of the Securities Commission, during 8 months of 2001 15 companies were inspected and 20% of those committed violations concerning the calling of the general shareholders' meeting.

### 3.2 What is the process and timeline for notification of shareholders?

1. Notification procedure:

Shareholders are notified with a notification letter or by publishing the notification in the press, if the latter is stipulated by the decision to call the meeting or by the charter.

2. The term for notification:

If there are more than 50 shareholders, they must be notified at least 15 days in advance of the meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 71.

Describe any issues or problems arising in practice in connection with this matter

The terms and procedure for notifying shareholders are not observed. According to the Annual Program for 2002 of the Securities Commission, during the 8 months of 2001 (15 companies were inspected) some violations were identified:

- no rules for notification existed (27%)
- the notification process had violations (67%)

### 3.3 How are foreign shareholders treated regarding notification and participation?

Foreign shareholders are notified as other shareholders.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 71.

Describe any issues or problems arising in practice in connection with this matter

3.4 What advance notification must shareholders receive of the agenda of shareholder meetings?

The meeting agenda is part of the advance notification of calling the general shareholders’ meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 71

Describe any issues or problems arising in practice in connection with this matter

Meeting agendas have a general character. Materials are often not provided.

3.5 What are the restrictions regarding the location of the general meeting?

The venue for holding the general shareholders’ meeting is approved by decision of the board of directors. There are no limitations as to choosing the meeting venue.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 73

Describe any issues or problems arising in practice in connection with this matter

3.6 Are there any restrictions on the participation of shareholders in the general meetings of shareholders? Of representatives of shareholders that are legal entities? Of proxies?

There are no limitations.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 70.

Describe any issues or problems arising in practice in connection with this matter

According to the Annual Program for 2002 of the Securities Commission, during the 8 months of 2001 (15 companies were inspected) some violations were identified related to:

- the compilation of the list of shareholders entitled to participate in the general shareholders’ meeting (67%)
- the absence of a decision to call the shareholders to participate in the general shareholders’ meeting (53%)

3.7 Are shareholders able to add items to the agenda? What is the procedure?

Yes, they are. Shareholders holding at least 2% of shares may within 30 days after the end of a fiscal year submit proposals for the agenda (not more than 2 proposals).

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 72

Describe any issues or problems arising in practice in connection with this matter

3.8 Are all shareholders able to vote at general meetings? What are the majorities required for the following issues?

The following persons are entitled to vote at general shareholders’ meetings:

- holders of common shares,
- holders of preferred shares, if so stipulated by normative acts or the company charter.

3.8.1 –on appointment and removal of directors?

Majority vote of the shareholders attending the meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 68

Describe any issues or problems arising in practice in connection with this matter

There is no institute of non-executive directors.

3.8.2 –on appointment and removal of external auditors?

Majority vote of the shareholders attending the meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 68

Describe any issues or problems arising in practice in connection with this matter

If it should be necessary to appoint or terminate a relationship with an external auditor during the periods between annual general shareholders’ meetings, an extraordinary general shareholders’ meeting must be called.

3.8.3 –on issuing share capital?

Majority vote of the shareholders attending the meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 68

Describe any issues or problems arising in practice in connection with this matter

3.8.4 –on the issuance of additional shares?

Majority vote of the shareholders attending the meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 68

Describe any issues or problems arising in practice in connection with this matter

3.8.5 –on major corporate transactions (i.e. acquisitions, disposal, mergers, take-overs, etc.)

Decisions on this issue are approved on a motion by the board by  $\frac{3}{4}$  majority vote of the shareholders attending the meeting. Exceptions are the cases of company acquisitions, where decisions are approved by the majority vote of the shareholders attending the meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 68

Describe any issues or problems arising in practice in connection with this matter

Information about large transactions not disclosed in a prompt and timely fashion.

3.8.6 –on transactions with related parties?

Decisions on related-party transactions are approved by a majority vote of shareholders attending the general shareholders’ meeting. Votes of affiliated persons should not participate in voting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 64

Describe any issues or problems arising in practice in connection with this matter

Parties do not inform of their affiliation.

3.8.7 –on changes to company business, strategy or objectives?

In accordance with Article 84 of the Law of the Republic of Armenia “On Joint-Stock Companies,” this issue is considered and decided by the board of directors.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 84

Describe any issues or problems arising in practice in connection with this matter

3.8.8 –on amendments to the statutes, articles or similar documents governing the company?

- In accordance with Article 84 of the Law of the Republic of Armenia “On Joint-Stock Companies,” the board of directors decides on changes to company by-laws/ regulations are approved by the board of directors.
- In accordance with Article 15 of the Law of the Republic of Armenia “On Joint-Stock Companies,” the general shareholders’ meeting decides on changes to the company charter. The decision is approved by a ¾ majority of shareholders attending the meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Articles 68, 15, 84.

Describe any issues or problems arising in practice in connection with this matter

3.8.9 –on any other relevant issue requiring a majority of votes?

- Forming the management board of the company,
- Electing members of the supervisory board,
- Approving annual reports,
- Approving annual dividends,
- Etc.

3.9 Are shareholders permitted to vote other than in person? By what means (by proxy, absentee, postal vote, telephone or electronically)?

Shareholders may vote in absentia via a representative, and in the event of holding the general shareholders’ meeting by correspondence – by mail.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 76

Describe any issues or problems arising in practice in connection with this matter

Current legislation does not set out a procedure for voting by mail, by telephone and electronically. It is anticipated that the rules regulating this process will be developed (Regulations on using voting ballots).

3.10 Do meeting notices clearly explain the procedures for voting? and appointment of proxies?

A notification should contain the following:

- Name and location of the company,
- Venue and term for holding the general shareholders' meeting,
- Date of compiling the list of shareholders entitled to participate in the general shareholders' meeting,
- Items of the agenda of the general shareholders' meeting,
- Process for reviewing the documents and information concerning

If the company has over 500 shareholders, it should provide shareholders with voting ballots along with the notification. The ballot should contain the rules for completing it.

If the company has more than 50 shareholders, shareholders should vote by ballot. However, in this case, ballots are not necessarily provided together with the notification.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 71, 79.

Describe any issues or problems arising in practice in connection with this matter

Notifications do not contain the rules for appointing a proxy.

### 3.11 Are shareholders able to convene extraordinary meetings? Under what conditions?

Shareholders owning 10% of voting shares can call an extraordinary general shareholders' meeting, provided they justify the need for it.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 76

Describe any issues or problems arising in practice in connection with this matter

### 3.12 What is the effect of shareholder resolutions on the company?

The question is not clear.

Identify the relevant section(s) of the normative act(s) governing this issue

Describe any issues or problems arising in practice in connection with this matter

#### **4. Equitable treatment**

*The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders.*

4.1 Does the corporate governance framework provide for different classes of shareholders (i.e. with varying voting rights or other special rights)? How are the existing classes defined?

Yes, it does.

Each class of securities provides its owners with equal rights. In accordance with the Law of the Republic of Armenia “On Joint-Stock Companies,” there are common shares and also these classes of preferred shares:

- with fixed dividends,
- with variable dividends,
- cumulative,
- convertible,
- and other types of preferred shares, if the latter is provided by the company charter.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 37, 38.

Describe any issues or problems arising in practice in connection with this matter

4.2 Within a class, do shareholders have the same voting rights?

Yes, they do.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 37, 38.

Describe any issues or problems arising in practice in connection with this matter

4.3 Are shareholders informed about their voting rights? Before they purchase?

- In accordance with Article 10 of the Law of the Republic of Armenia “On Regulating the Securities Market,” for public placement, the issue prospectus should contain information about the issued securities, including the voting powers.
- There are no specific requirements for private placement.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Regulating the Securities Market” – Article 10.

Describe any issues or problems arising in practice in connection with this matter

On private placement and private transactions, it is virtually impossible to control the provision to shareholders of information about rights and obligations arising in connection with the purchase of shares.

4.4 Are changes in voting rights required to be subject to shareholder vote in general meeting? Under what conditions?

Yes, they are.

Besides, in accordance with Article 38 of the Law of the Republic of Armenia “On Joint-Stock Companies,” shareholders holding a certain class of shares can vote at the general shareholders’ meeting on the issues of limiting the powers attaching to this class of shares.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 38.

Describe any issues or problems arising in practice in connection with this matter

4.5 Are beneficial owners of shares able to exercise their voting rights, even if shares are held by custodians, nominees? What rights to information and notice do beneficial owners have?

The custodian receives the notice of calling the general shareholders’ meeting and hand it over to the beneficiary owner in accordance with the agreement. There are no restrictions regarding the provision of information.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 71.

Describe any issues or problems arising in practice in connection with this matter

4.6 How many joint stock companies have floated securities on foreign capital markets? How do the holders of these securities exercise their corporate governance rights?

No such cases have been registered.

4.7 What are the restrictions provided by the legal or regulatory framework over who can become a shareholder? For example, do foreign shareholders have a limit access to 'strategic' companies?

There are no restrictions.

Describe any issues or problems arising in practice in connection with this matter

4.8 Are there special provisions in the legal or regulatory framework relating to certain categories of shareholders (such as employees, foreigners, and the state)? Please describe these provisions.

In accordance with Article 41 of the Law of the Republic of Armenia "On Joint-Stock Companies," company employees may be provided with "employees" shares whose circulation may have a temporal restriction (up to 3 years).

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 41.

Describe any issues or problems arising in practice in connection with this matter

Not used in practice.

4.9 Does the company have discretion over who can become a shareholder? Please specify.

Yes, it does in the case of private placement.

Is this specified by the company law or other related laws?

Law of the Republic of Armenia "On Regulating the Securities Market" – Article 4

Describe any issues or problems arising in practice in connection with this matter

## **5. The State as a shareholder**

### 5.1 Are the functions of the state as a regulator and the state as a shareholder clearly distinguished?

The state may be a company shareholder, however, state agencies may not be shareholders, which implies a certain division in functions of regulator and owner.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 11

Describe any issues or problems arising in practice in connection with this matter

### 5.2 Who has authority to exercise the state’s right as a shareholder (government ministry, privatisation agency, other)?

Ministries or privatisation agencies have such authority in accordance with the decision of the Armenian Government.

Identify the relevant section(s) of the normative act(s) governing this issue

Describe any issues or problems arising in practice in connection with this matter

### 5.3 Does the state maintain a publicly available register listing the stakes of the state in joint stock companies?

The maintenance of registers of companies in which the state is a shareholder is done as for any other companies. JSCs which are reporting issuers, including those where the state is a shareholder (with over 50 shareholders and net assets equal to the amount set by the Securities Commission), are obliged to have their register maintained by specialized organizations (Central Depository). Other companies may maintain their registers either themselves or with the help of specialized organizations.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Joint-Stock Companies” – Article 51.

Describe any issues or problems arising in practice in connection with this matter

### 5.4 Has the state become a minority shareholder, as part of a process of privatising formerly state owned enterprises?

In most JSCs, in which the state owns a stake of shares and whose register is maintained by the Central Depository, the state is a majority shareholder. According to the Central Depository, out of 129 JSC with state's participation 81% have state's stakes of shares exceeding 50%. 18% of companies have a state's stake of shares between 30% to 50% and only 1% have the state's stake of shares smaller than 30%.

5.5 Have bankrupt companies been re-nationalised? What was the procedure? Please provide examples.

In Armenia, no bankrupt companies have been nationalized.

5.6 Under what circumstances do state representatives have a seat on the board? What qualification must such persons have? Are they civil servants?

Representatives of the state have a seat on the board as other members of the board, either following their appointment or election. State representatives are mostly public servants.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 85

Describe any issues or problems arising in practice in connection with this matter

5.7 Do state representatives participate in shareholder meetings?

If the state is a company shareholder, its representative participates in general shareholders' meetings.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia "On Joint-Stock Companies" – Article 70

Describe any issues or problems arising in practice in connection with this matter

5.8 Does the state have the same rights as other shareholders? If not, does it have more rights or fewer? Please specify.

The state has the same rights as other shareholders.

5.9 Do state shares have a special status (in regard to voting rights, share in profit, over major strategic company decisions)?

No.

5.10 Does the legal framework provide for Golden shares?

It does not.

5.11 Does the state have the power to veto decision by the majority of shareholders? Please specify.

No, it does not.

5.12 What are in your opinion the concerns of the state as a shareholder (i.e strategic, social, financial, public service)?

In our opinion, the state as a shareholder in each individual case concerns itself with a certain group of issues related to the achievement of strategic, social, financial and budget objectives.

5.13 Do companies in which the state has a stake benefit from better conditions or privileges not generally enjoyed by, fully privatised companies? For example in terms of subsidies, tax payment? Does this distort competition?

No, they do not.

5.14 Describe any significant concrete examples where the state exerted influence in corporate decision making beyond which its percentage share ownership would normally permit it.

5.15 Describe any significant concrete examples where social or political concerns rather than a desire to maximise the long-term profitability of the company affected the state's behaviour as a shareholder.

## **6. Market integrity**

*Market for corporate control should be allowed to function in an efficient and transparent manner.*

6.1 Does the legal or regulatory framework (e.g., stock exchange listing rules) clearly set out the procedures for mergers, acquisitions and takeovers? Are there rules governing the substantial acquisition of shares?

The procedure for mergers, acquisitions and takeovers is regulated by Articles 19, 20 and 7 of the Law of the Republic of Armenia "On Joint-Stock Companies." Disclosure of information about significant acquisitions is regulated by the Law of the Republic of Armenia "On Regulating the Securities Market" – Articles 34 and 35.

Describe any issues or problems arising in practice in connection with this matter.

6.2 Are extraordinary transactions such as mergers and the sale of substantial portions of corporate assets clearly disclosed?

Reporting issuers disclose this information in periodic reports.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Regulating the Securities Market” – Article 31.

Describe any issues or problems arising in practice in connection with this matter

6.3 Describe anti-takeover devices commonly used to shield management or a group of shareholders from accountability?

Presently, takeover procedures in Armenia are not important in corporate relationships.

6.4 Are there further restrictions on changes of corporate control such as competition policy, government ownership provisions?

There are no restrictions.

6.5 Do minority shareholders have the right to sell their shares to the bidder for the same or equivalent price as agreed between the bidder and the controlling shareholder?

There are no restrictions.

6.6 What are the restrictions to insider trading? Has there been any cases involving insider trading? What actions have been taken?

Equity structure in Armenia is such that a significant proportion of transactions is effected between insiders.

6.7 How does domestic law define an “interested” or “related” party?

Interested parties are:

1. Members of the board of directors

2. Company administration

3. Shareholders owning 20% and more shares, if these shareholders and their relatives (spouse, parents, children, siblings) and all their business partners:

- are a party to the transaction or an intermediary or representative
- hold 20% and more shares of a party to the transaction, an intermediary or a representative
- hold positions in governance bodies of a party to the transaction, an intermediary or a representative.

6.7.1 Describe the procedures for approving or challenging transactions between the company and a related party

Transactions with a conflict of interest are approved by the board of directors, if:

- the amount of the transaction is less than 2% of company assets
- less than 2% of company shares are the subject of a deal.

6.7.2 What civil and administrative recourse does a shareholder have to challenge or invalidate a transaction between the company and an interested party?

Shareholders holding over 1% of shares may seek damages in court in connection with losses caused to the company by actions of members of the board of directors and the management board (see Article 90 of the Law of the Republic of Armenia “On Joint-Stock Companies”).

6.8 Who bears liability for losses caused to the company by harmful or exploitative related party transactions?

A person with the conflict of interest is liable to the company for damages. However, he/ she is released of responsibility if he/ she acted in good faith.

## **7. Enforcement and legal redress**

*All shareholders should have the opportunity to obtain effective redress for violation of their rights.*

7.1 Which are the most frequent shareholder right violations?

According to the information gathered in the course of inspections by the Securities Commission, these are the most frequent violations:

- violations related to the maintenance of the register and the registration of shares
- Violations related to the corporate governance of companies
- Financial violations.

7.2 Have companies been sanctioned for shareholder right violation?

Yes.

7.3 In the past five years how many cases have been pursued? What were the result?

The Securities Commission of Armenia has existed for one and a half years, since August 2000. Therefore, it is not possible to provide statistical data for 5 years.

- During 2000, the Securities Commission held 21 meetings dedicated mostly to normative issues.
- During 2001, the Commission held 103 meetings, at which 319 cases were considered. As a result of these hearings, 433 executive orders were issued to 277 organizations.

7.4 What are the sanctions provided by the legal framework?

In accordance with the Law of the Republic of Armenia “On Regulating the Securities Market,” the following sanctions are imposed:

- penalties
- executive orders to right the violations and not commit such violations in the future.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of the Republic of Armenia “On Regulating the Securities Market” – Articles 137, 138, 133.

Describe any issues or problems arising in practice in connection with this matter

7.5 To which authorities can shareholders appeal in pursuit of redress, especially during changes of corporate control? What are the powers of these authorities? Is there any arbitration procedure?

Shareholders may apply to the Securities Commission of the Republic of Armenia. In accordance with Article 121 of the Law of the Republic of Armenia “On Regulating the Securities Market,” the Commission is entitled to do the following to protect shareholder rights:

- Hold hearings and approve decisions in each individual case
- Inspect the companies that are subject to its control

There is also an arbitration procedure.

7.6 What are the procedures for shareholders to seek legal redress? Is this process long? Is this process costly?

A court of law must consider the application (the lawsuit) during two months following its submission. In the case of an urgent case, the court must consider it within one month.

The state duty is:

- for the first-instance court – 4,000 dram (approximately USD 7)

- for the Cassation Court – 10,000 dram (approximately USD 18).

7.7 Are class action lawsuits permitted? Have any class action lawsuits been filed?

Class action lawsuits are allowed but no cases of such lawsuits have been registered.

**8. Shareholder awareness**

8.1 Are shareholders sufficiently informed about their rights?

No.

8.2 To what extent do shareholders attend shareholder meetings and exercise their voting right?

Minority shareholders do not actively participate in general shareholders meeting due to violations of the shareholder notification rules as well as to their insufficient knowledge of their rights.

8.3 Have shareholder associations been created? If so, are they influential?

Such an association does exist. One of its functions is protection of shareholder rights of the members of the association.

8.4 Do voluntary codes of corporate governance practice encourage shareholders to exercise their rights?

No such cases are known to us.

8.5 Do shareholders pool their interests and/or votes (for example to elect board members)?

8.6 Are institutional investors active in the corporate governance field? If not, why? Mention some cases.

Now in Armenia there is no law regulating the activities of institutional investors. This is only natural that there are almost no institutional investors in the market.

8.7 What are the most frequent shareholder right violations?

According to the data gathered by the Securities Commission in the course of inspections at open joint-stock companies, the following violations occur the most frequently:

- Violations related to the maintenance of the register and the registration of shares,
- Violations related to companies' corporate governance,
- Financial violations.

8.8 What are from your point of view priority measures to improve shareholder rights?

In our opinion, improving legal education of shareholders will promote the observance of shareholder rights the most.