



The Global Corporate  
Governance Forum

# 5th Meeting of the Eurasian Corporate Governance Roundtable

*PRESENTATION OF THE PAPER  
“CORPORATE GOVERNANCE IN EURASIA: A COMPARATIVE OVERVIEW”*

*AND*

*A REVIEW OF CORPORATE GOVERNANCE REFORMS IN UKRAINE*

**Kyiv, Ukraine**  
*17 – 18 May 2004*

**Corporate Governance Reform in Azerbaijan**

*Alum Bati*

*(Partner, Salans; Honorary Legal Adviser to the British Ambassador to Azerbaijan; Adjunct Professor  
of Law, Western University)*

# Corporate Governance Reform in Azerbaijan

*Alum Bati*

*(Partner, Salans; Honorary Legal Adviser to the British Ambassador to Azerbaijan; Adjunct Professor of Law, Western University)*

## *Introduction*

The past year has seen a steady flow of legislation affecting the law relating to securities and corporate governance. The laws On Joint Stock Societies, 1994, and On Securities, 1998, have been repealed, and in part, consolidated, with some significant modifications, into the Civil Code, 2000. These amendments came into force on 6 March 2004. Also, a new law On Banks came into force on 30 March 2004, with, inter alia, some special corporate governance provisions relating to banks.

Normally, legal entities formed in Azerbaijan take the form of either limited liability societies or joint stock societies (open or closed) ('LLS' and 'JSS' respectively).

One important change (if that is what was intended) is that there is now a reference to 'nominal' value of a share in an LLS<sup>1</sup>. It always used to be the case that participants in an LLS did not have shares with nominal value but owned a percentage interest or 'share' in the company. By ascribing a nominal value to LLS shares, it appears that the Code is aligning LLSs with JSSs. However, it is possible that this is a drafting error and it is too early to tell what will transpire in practice.

The amendments now do make clear that an LLS or JSS cannot pay a dividend where it is insolvent (or where the payment would make it insolvent)<sup>2</sup>.

## *Corporate governance*

Corporate governance in an LLS is left much as before (in addition to an executive board, it may have a supervisory board and audit committee). As usual, drafting imprecision has created the potential for conflict: for instance, participants are given the 'right' to be elected to the governing bodies of the society<sup>3</sup>. One issue, however, that has been clarified is that the chief executive's contract is signed by the chairman of the general meeting of participants appointing him/her.

---

<sup>1</sup> *Civil Code*, 2000, Article 90.6-90.8. The amendments appear to have been lifted from the Russian law *On Societies with Limited Liability*. All references are to the Civil Code as amended unless otherwise stated

<sup>2</sup> Article 90-1.3, 106-3.9

<sup>3</sup> Article 91.1-1

As regards JSCs, some of the problems of holding inquorate shareholder meetings have been resolved. For instance, the reference to 60% ‘of shareholders’ has been amended to 60% of voting shares represented at the meeting<sup>4</sup>. The former rule was almost impossible to fulfil in companies with employee shareholders, generally privatized companies, which affected the success of privatization in general.

Lower quorum requirements also apply to adjourned meetings but, if a quorum still cannot be reached after two adjournments, the State Securities Committee must be informed and the general meeting (even if inquorate) may wind-up the JSC. Other possible difficulties in terms of corporate governance have been introduced: a shareholder may participate in a general meeting by proxy, or in writing (if permitted by the charter and having clearly specified his/her voting preference), but both methods require notarization of the shareholder’s signature.

The super-majority voting requirement for those important matters reserved to the shareholders of a JSC (e.g. amendments to the charter, winding-up or reorganization) has been reduced, other than for banks<sup>5</sup>, from three-quarters of votes present to two-thirds<sup>6</sup>. And the creation of branches is no longer a matter that is subject to super-majority voting.

Notices of annual general meetings of open-type JSCs must be published in the press 45 days prior to the meeting as well as notifying shareholders in writing. Closed-type JSCs are, as previously, only required to notify shareholders in writing<sup>7</sup>.

Importantly, resolutions of JSC general meetings must, within 15 days, be notified to the shareholders<sup>8</sup>. Minutes must be signed by the chairman and secretary and sealed. The minutes must specify:

- Time and place of the general meeting;
- Agenda;
- Number of voting shares represented at the meeting;
- Number of shareholders with voting rights taking part;
- Summary of proceedings;
- Results of voting in respect of each issue put to the vote;
- Precise text of each resolution passed.

---

<sup>4</sup> Article 107-2.1

<sup>5</sup> Cf. law *On Banks*, Article 24

<sup>6</sup> Article 107-5.1. The wording is still somewhat ambiguous and could be read perversely to mean two-thirds of the votes of all shareholders with voting rights in general, whether or not present at the meeting (in person or through a proxy)

<sup>7</sup> Article 107-1.4

<sup>8</sup> Article 107-5.3. Although the law does not specify how this should be done, one can surmise from Article 107-6.3 that this is on demand by the shareholder.

The new provisions provide for methods of counting votes at general meetings in JSCs with more than 100 shareholders: a panel of at least 3 tellers is required. The tellers have to add to the minutes of the meeting a record of the vote.

Though it had previously been the case that the supervisory board should be elected by the general meeting, it is now provided that the term of a director (other than for banks<sup>9</sup>) cannot exceed 3 years<sup>10</sup> and may be terminated before the expiration of the term by a resolution of the general meeting<sup>11</sup>. Supervisory board meetings must now be held on at least a quarterly basis (previously, no minimum requirement was specified), the chairman has a casting vote<sup>12</sup> and minutes of the meetings signed by the chairman must be maintained<sup>13</sup>. Other important corporate governance provisions include: the supervisory board is also given authority to approve transactions in which a member of the executive board has a conflict of interest<sup>14</sup>; both members of the supervisory and executive boards must disclose in the press any transaction by them with regard to the securities of the JSC prior to entering into such transaction<sup>15</sup>; no member of the executive board may own more than 20% of the JSC<sup>16</sup>; executive board members may only hold positions in other organisations with the consent of the general meeting or the supervisory board<sup>17</sup>; and an audit committee (or internal auditor), elected by the general meeting for a term not exceeding 3 years, is a requirement for a JSC with more than 50 shareholders<sup>18</sup> (previously, all JSCs were required to have an audit committee).

In relation to JSCs of an open type a transaction which exceeds 25% of the net asset value of the company must now be approved by a general meeting of shareholders and the method of disclosing details of such transactions should be specified in the charter<sup>19</sup>.

Nonetheless, there are a many matters still needing resolution: for instance, a participant may withdraw from an LLS and, where the *use*<sup>20</sup> of property has been contributed in kind to the charter capital, this property may be demanded back<sup>21</sup>; in JSCs, it is left to the general meeting to select the chairman of the supervisory board, which can only be done after the supervisory board has itself been elected<sup>22</sup>; and the

---

<sup>9</sup> In a bank, the term of both supervisory and management board members may not exceed 4 years – law *On Banks*, Article 26

<sup>10</sup> Article 107-7.4

<sup>11</sup> Article 107-7.6

<sup>12</sup> Article 107-9.2

<sup>13</sup> Article 107-9.3

<sup>14</sup> Article 107-10.5

<sup>15</sup> Article 107-10.6

<sup>16</sup> Article 107-10.7

<sup>17</sup> Article 107-10.4

<sup>18</sup> Article 107-11.1, 107-11.4

<sup>19</sup> Article 99.3

<sup>20</sup> The reference appears only to cover property where ownership itself has not been transferred

<sup>21</sup> Article 96.2

<sup>22</sup> Article 107-8

audit committee, although now given powers to demand documents from the company, it is now limited to carrying out audits with the approval of the general meeting or supervisory board<sup>23</sup>.

### *Preference shares*

One final comment, relating to preference shares. These were, and continue to be, permitted. However, the right to vote by preference shareholders at shareholder meetings is strictly limited to issues concerning reorganization, liquidation, and charter amendments (unless presumably the charter grants other rights)<sup>24</sup>. This has the potential to create problems when determining the quorum for meetings at which preference shareholders have rights to vote - they appear not to be encompassed by the term 'registered shareholders'<sup>25</sup> i.e. will not appear in the shareholder register and one wonders how they will be notified of a meeting relevant to their interests. It does appear that preference shareholders are not in reality equity holders but own securities much more akin to loan stock. As such, one might ask if a preference shareholder has the right, as do other JSC shareholders, to require the executive to provide a copy of the shareholders' register<sup>26</sup>.

---

<sup>23</sup> Article 107-11.5, 107-11.6

<sup>24</sup> Article 106-1.4, 106-1.5

<sup>25</sup> cf. Article 106-3.6

<sup>26</sup> Article 106-2.3