The 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
Questionnaire – Ukraine

By
Ms. Galina Alexandrovna POGORELOVA
Legal adviser
Subsidiary Company “PFTS Technical Center”

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

with the support of
The Government of Japan
<table>
<thead>
<tr>
<th>NAME: Galina Alexandrovna POGORELOVA</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE: Legal adviser</td>
</tr>
<tr>
<td>ORGANISATION: Subsidiary Company “PFTS Technical Center”</td>
</tr>
<tr>
<td>COUNTRY: Ukraine</td>
</tr>
<tr>
<td>E-Mail: <a href="mailto:galina@pfts.com">galina@pfts.com</a></td>
</tr>
<tr>
<td>Tel: 2528808</td>
</tr>
<tr>
<td>Fax: 2528553</td>
</tr>
</tbody>
</table>

Questionnaire

Country background information

1. Corporate Ownership structures:

1.1 Number and aggregate annual turnover of Open Joint Stock Companies (publicly listed / traded companies):
   1.1.1 Number of listed companies that have never had any trades:
   1.1.2 Number of listed companies that have had more than one trade:
   1.1.3 Number of companies that are regularly traded on a monthly basis:

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

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

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

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

1.6 Total number of shareholders:

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

1.6.2 - What percentage of these shares are held by:
   - employees:
   - executive managers:
   - foreign shareholders or institutional investors:
   - the state:
   - domestic corporations:

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

1.6.4 - What percentage of these shares are held by:
   - employees:
   - executive managers:
   - foreign shareholders or institutional investors:
   - the state:
   - domestic corporations

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

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

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

2. Privatisation procedures:

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

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

2.2 By what methods may state assets be privatised?

   2.2.1 Identify the percentage of assets privatised through each method.

2.3 What are the privatisation objectives and current methods used?
2.4 To what extent may foreign investors participate in privatisation?

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)?


3.2 How recent and effective is the existing legislation?

Many provisions of law concerning regulation of corporation legal relationships are obsolete, proper stipulations of many issues are absent in the legislation related to corporation rights governance.

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

The entire area of ownership rights and circulation of securities in Ukraine, corporation rights, state regulation of securities market.

3.4 Are there any significant pending laws or normative acts?

Draft Law of Ukraine “On Securities and Stock Exchange” (has been submitted to Parliament)

Law of Ukraine “On Joint Stock Companies” (has been submitted to Parliament)

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

In every case, procedures are prescribed by the Charter of a Joint Stock Company. As a rule, the amendment requires approval by either higher governance body of the company (General Shareholder Meeting) or executive body, or supervision board (Joint Stock Company Council).

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

Amendment to the Charter may be effected solely subject to relevant resolution of the General Shareholder Meeting (Article 41 part 5 paragraph “b” of the Law of Ukraine “On Business Companies”).

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

*Articles 27 – 34 of the Law of Ukraine "On Business Companies", order of the Securities and Stock Market State Commission of Ukraine (SSMSCU) • 210, dated September 20, 1996 (revised as per the resolution of the SSMSCU • 18 of February 9, 2001), which established Regulations of registration of share issuance by open joint stock companies and enterprises’ bonds.*

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

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?

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

*Articles 27 – 34 of the Law of Ukraine "On Business Companies", order of the State Commission of Ukraine for Securities and Stock Market (SSMSCU) • 210, dated September 20, 1996 (revised as per the resolution of the SSMSCU • 18 of February 9, 2001), which established Regulations of registration of share issuance by open joint stock companies and enterprises’ bonds.*

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

1.3 How are registers regulated?


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

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

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

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

1.6 What are the requirements for authorising and issuing new capital?
Identify the relevant section(s) of the normative act(s) governing this issue

Law of Ukraine "On Business Companies", Article 34.

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?

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

Law of Ukraine "On Business Companies", Article 29. This issue has no relevant legal regulation under applicable law.

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

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?

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

Dividends are set and distributed in accordance with a Charter of a Joint Stock Company, relevant resolution of general shareholding meeting (Law of Ukraine "On Business Companies", part 2 Article 4, Articles 14-15, paragraph ‘b’ Article 10, paragraph ‘e’ Article 41).

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

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

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

Relevant resolution of general shareholding meeting (Law of Ukraine "On Business Companies", paragraph ‘b’ Article 10, paragraph ‘e’ Article 41).

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?

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

Subject to resolution of general shareholding meeting (Law of Ukraine “On Business Companies”, paragraph ‘b’ Article 10, paragraph ‘e’ Article 41).

Describe any issues or problems arising in practice in connection with this matter
2.4 What specific recourse do shareholders have in case of delays or refusal to pay dividends?

Courts of common jurisdiction if a shareholder is individual, and economic court in cases where a shareholder is a legal entity.

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

The company is allowed to purchase its own shares. Joint Stock Company may repurchase paid shares from a shareholder at account of amounts exceeding the amount of the statutory fund of the Company. The shares are repurchased for their further resale, distribution among the company’s employees or for their cancellation. So repurchased shares should be realized or cancelled during a term not exceeding one year. For this period of time, profits share distribution as well as voting and identification of quorum at general shareholder meetings are carried out without consideration of such own shares purchased by the Joint Stock Company. (Law of Ukraine "On Business Companies", Article 32).

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

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.

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?

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.

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

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.

3.3 How are foreign shareholders treated regarding notification and participation?

Identify the relevant section(s) of the normative act(s) governing this issue.
Legal regulation of this issue is unavailable, procedures of foreign shareholders notification is the same as provided for Ukrainian shareholders.

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?

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

45 days prior to the date of the general meeting (Law of Ukraine "On Business Companies", part 1 Article 45).

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

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

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

General shareholder meetings are normally held in the territory of Ukraine, at location of the Joint Stock Company except for cases where 10 % of share stock is owned by foreigners, stateless persons, foreign legal entities or international organizations; the Law of Ukraine "On Business Companies", part 1 Article 45.

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?

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

Transfer of shareholder’s authorities to another person is performed in accordance with the law. The registrar or the board of the Joint Stock Company can certify letter of attorney to participate and vote at general shareholder meetings.

Shareholders owning in aggregate more than 10 % of votes and/or the Securities and Stock Market State Commission of Ukraine can appoint their representatives in order to supervise registration of shareholders participating in general shareholder meetings; they should accordingly notify in writing the executive body of the Joint Stock Company on such intention prior to commencement of registration (Law of Ukraine "On Business Companies", part 1, Article 45).

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

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

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

3.8.1 – on appointment and removal of directors?

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

It is governed by the Charter of the Company (Law of Ukraine "On Business Companies”, Articles 47-48). By simple majority of votes unless the Charter of the Company specifies otherwise.

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

3.8.2 – on appointment and removal of external auditors?

As per the charter of a company: simple majority of votes unless the Charter of the Company specifies otherwise.

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

Unavailable.

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

3.8.3 – on issuing share capital?

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

As per the Charter of the Company: simple majority of votes unless the Charter of the Company specifies otherwise. (Law of Ukraine "On Business Companies”, Article 30).

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

3.8.4 – on the issuance of additional shares?

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

As per the Charter of the Company: simple majority of votes unless the Charter of the Company specifies otherwise. (Law of Ukraine "On Business Companies”, Article 30).

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.)

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

As per the Charter of the Company: simple majority of votes unless the Charter of the Company specifies otherwise.
¾ of votes required for introduction of changes and amendments to the Charter.

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

3.8.6 – on transactions with related parties?

As per the Charter of the Company: simple majority of votes unless the Charter of the Company specifies otherwise.

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

Article 7 of the Law of Ukraine "On Enterprise Profit Tax" establishes certain peculiarities of tax on transactions with related parties.

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

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

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

As per the Charter of the Company: simple majority of votes unless the Charter of the Company specifies otherwise.

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?

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

In relation to the Charter: 3/1 majority of votes is required (Law of Ukraine "On Business Companies", Article 42, paragraph “a”) In relation to other documents of the Company: simple majority of votes is required unless the Charter of the Company specifies otherwise.

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?

Majority of votes is required to pass any issue whatsoever.

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

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

Only by proxy. (Law of Ukraine "On Business Companies”, Article 44).

Describe any issues or problems arising in practice in connection with this matter
3.10 Do meeting notices clearly explain the procedures for voting and appointment of proxies?

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

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

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

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

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

*Resolutions passed by the General Shareholder Meeting are binding upon the Company. Law of Ukraine "On Business Companies", Article 41.*

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?

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

*Article 4 of the Law of Ukraine "On Securities and Stock Exchange" prescribes that owners of preference shares do not participate in management of a Joint Stock Company unless the Charter of the Company specified otherwise.*

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?

Identify the relevant section(s) of the normative act(s) governing this issue
Shareholders have the same voting rights. Article 5 of the Law of Ukraine "On Securities and Stock Exchange"

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?

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

This issue has not been regulated by the law.

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

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

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

This issue has not been regulated by the law.

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?

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

This issue has not been regulated by the law.

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?

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?

Restrictions are practically absent. Sales of share of “strategic” companies is prescribed by privatization plan and performed through auction sales and tenders.

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

Any such provisions relating to the above-mentioned persons are not available in law in relation to general issues of operation of the Joint Stock Company.

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

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

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

Company does not have discretion over this issue.

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?

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

Law has not distinguished these two notions. This issue is generally regulated by Law of Ukraine "On Ownership", Article 4, section 5.

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, privatization agency, other)?

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?

Identify the relevant section(s) of the normative act(s) governing this issue
The Third Meeting of the Eurasian Corporate Governance Roundtable, Kyiv, 17-18 April 2002

Regulation on Register of State Corporate Rights approved by the order № 72 of the National Agency of Ukraine for the Management of State Corporate Rights on May 14, 1999.

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 privatizing formerly state owned enterprises?
In some cases.

5.5 Have bankrupt companies been re-nationalized? What was the procedure? Please provide examples.
No such cases.

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

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

5.7 Do state representatives participate in shareholder meetings?

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

Resolution of the Cabinet of Ministers of Ukraine • 791 "On Management of State Corporate Rights” as of May 15, 2000.

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.
Yes, it has.

5.9 Do state shares have a special status (in regard to voting rights, share in profit, over major strategic company decisions)?
No, they do not.

5.10 Does the legal framework provide for Golden shares?

Yes, they does.

5.11 Does the state have the power to veto decision by the majority of shareholders? Please specify.
No.
5.12 What are in your opinion the concerns of the state as a shareholder (i.e. strategic, social, financial, public service)?

Budget revenues from dividends set for appropriate state corporate rights.

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?

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 take-overs? Are there rules governing the substantial acquisition of shares?

Law of Ukraine “On Business Competition” envisages permission granting by the Anti-Monopoly Committee of Ukraine for mergers, acquisitions, takeovers etc. Stock exchange Listing rules are set by the rules of the stock exchange.

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?

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

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

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

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?

6.6 What are the restrictions to insider trading? Has there been any cases involving insider trading? What actions have been taken?
6.7 How does domestic law define an “interested” or “related” party?

Law of Ukraine "On Enterprise Profit Tax" Par. 1.26 provides the definition of “related party”.

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

As prescribed by the Charter of the Company.

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?

Shareholder can claim recognition illegal nature of a transaction provided availability of sufficient grounds for that.

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

Law does not provide for this issue.

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?

7.2 Have companies been sanctioned for shareholder right violation?

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

7.4 What are the sanctions provided by the legal framework?

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

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?

7.6 What are the procedures for shareholders to seek legal redress? Is this process long? Is this process costly?
7.7 Are class action lawsuits permitted? Have any class action lawsuits been filed?
Class action lawsuits are permitted.

8. Shareholder awareness

8.1 Are shareholders sufficiently informed about their rights?
8.2 To what extent do shareholders attend shareholder meetings and exercise their voting right?
8.3 Have shareholder associations been created? If so, are they influential?
8.4 Do voluntary codes of corporate governance practice encourage shareholders to exercise their rights?
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.
8.7 What are the most frequent shareholder right violations?
8.8 What are from your point of view priority measures to improve shareholder rights?