
CLIENT NOTE

BOARD TIERS UNDER ARMENIAN COMPANY LAW



OVERVIEW

Various jurisdictions impose specific rules on board composition generally and its tiers specifically. Generally, the mainstream options for board tiers around the world are the one-tier (unitary) boards and the two-tier (dualistic) boards.

We often get asked about the mandatory board tiers under Armenian company law. Does Armenia have a one-tier or two-tier board structure? In this client note we have tried to explain the available board tier options in Armenia.

A representative country for one-tier boards is the United States, and for the two-tier board, it would be Germany. A few countries also employ the hybrid system, such as Japan.

Under the one-tier board system, the company will have only one board, which would include both the executive directors, such as the CEO and other executives, as well as the non-executives, or the supervisory directors. Normally, under this system, the board will be chaired by the CEO (dual roles of a CEO and Board Chair).

Under the two-tier board system, the company will have an executive or management board, which will be responsible for the day-to-day management of the company, and a supervisory board, which will consist of only non-executive supervisors/directors, who will be mandated to supervise the company and its management.

Obviously, we will not discuss the advantages or disadvantages of these two systems as such discussion will fall out of the scope of this client note, but we can certainly say that both systems have their advantages and disadvantages.

IN WHICH GROUP DOES THE ARMENIAN COMPANY LAW FALL INTO?

First, one should know that there are two mainstream company types under Armenian law, namely, the limited liability company, or the LLC, and the joint-stock company, or the JSC.

Second, one should also know when it is mandatory for a company (either an LLC or a JSC) to have a board in Armenia.

For a JSC, a board shall be established when the number of shareholders of the JSC is 50 or more (Article 83(1) of JSC Law). Of course, if the number of shareholders of a JSC is below 50, then the company's general meeting of shareholders (GMS) can foresee the existence of a board by the charter (in some jurisdictions this document is also known as the bylaws or the Articles of Association) of the company. In companies where the number of shareholders is below 50 and a board is not established, then the legal functions of the board shall be performed by the GMS (while the JSC Law lists the functions of the board, under Article 83, its main function is the **overall/general management of the company**).

Moreover, if the JSC is an open type (that is, the shares of the company can be freely transferred to 3rd parties without the right of first refusal by the other shareholders), then 1/3 of the board shall be independent members (note: Article 85 of the JSC Law lists the independence qualifications of the independent members of the board, but we will discuss those in another client note).

For an LLC, a board may be established by the decision of the GMS, which shall be enshrined by the charter. There are no requirements of having independent board members on an LLC board, although this is not forbidden.

The second board tier of a company under Armenian law is the management/executive board of the JSC (note: an LLC cannot have a management or executive board, as under the LLC Law an LLC can only have a CEO or President as the executive of the company), which should be only comprised of people who have executive functions in the company (note: the JSC (other than certain regulated entities mentioned below) can also abstain from having a collegial executive board and opt for a single executive, such as a General Director).

Having discussed the above one should also note that there are certain types of regulated entities that must have a Board of Directors or Supervisors, such as banks, insurance companies, credit organizations, etc. The Central Bank of Armenia (CBA), which is the regulator for financial institutions in Armenia closely monitors the compliance of the regulated financial entities to the corporate governance rules, including the existence, competence, and quality of work of supervisory boards of the Armenian financial institutions.

Moreover, an interesting fun fact about the supervisory practice of the Armenian regulator is that the CBA Board, as part of its fit-and-proper testing process reserves the right to interview the board directorship candidates, who are aspiring to sit on the board of a financial institution, before the final registration of such board director.

CONCLUSION

The above analysis allows us to conclude that under Armenian law, **companies operate under a two-tier board system**, in case they are mandated to have a Supervisory Board or a Board of Directors.

HOW CAN WE HELP?

Our team has extensive experience in corporate governance issues. We closely partner and work with the Armenian Institute of Directors (AloD) and the Corporate Governance Center (CGC). So please, do get in touch when you want to get sophisticated and tailored advice.

#board structure #boardofdirectors #corporategovernance #armeniancorporategovernance #boardtiers

NOTE: This material is for general information only and is not intended to provide legal advice

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