

WHEN MINORITY SHAREHOLDER PROTECTION GOES TOO FAR

A Legal and Policy Analysis of Armenia's New Minority Shareholder Buy-Back Regime

On 11.05.2026 National Assembly of the Republic of Armenia adopted amendments¹ to the Law “On Joint Stock Companies” with the aim of further strengthening minority shareholder protection in Armenia. According to the amendments, minority shareholders can demand the company to buy back their shares if during at least five of the last 10 years of its operations, the company has not declared or paid dividends to them, or the dividends declared and paid are insignificant in comparison with the average annual return on the market value of the shares held by them. For this purpose, the market value of the shares is determined solely by reference to the company's net asset value, while the return is calculated using the bank interest reference rate established by the Central Bank, which as of 05.10.2026 amounts to 12%. The provision does not apply where the shareholders have agreed otherwise in a shareholders' agreement. In essence, the provision comes close to guaranteeing minority shareholders a minimum return on their equity investment- at least for so long as the company remains financially capable of honoring the resulting buy-back obligation.

The objective and rationale underlying the newly adopted rule are entirely understandable. Majority shareholders may exploit their position by depriving minority shareholders of any return on their investment while continuing to extract economic benefits from the company through alternative means, such as salaries, bonuses and other forms of remuneration. This concern is also reflected in the official justification² accompanying the amendments. The justification notes that, under the existing regulatory framework, the decision whether to distribute profits falls within the company's discretion, thereby enabling a majority shareholder to opportunistically “freeze” minority investors' capital by depriving them of return on their investment. The issue, therefore, is not whether such opportunistic conduct should be deterred, but whether the interference introduced by the new rule is proportionate to the objective it seeks to achieve given its potential adverse consequences and the availability of less intrusive and better-calibrated alternatives. This is the question this article seeks to explore.

¹ <https://www.arlis.am/hy/acts/225011>

² https://www.parliament.am/diskStorage/draft_docs8/P-1320_Himnavorum.pdf

We will proceed with our analysis in the following sequence. First, we will examine the retrospective application of the rule and its implications for existing companies. We will then consider its commercial effects, particularly its incompatibility with certain business models and its failure to make the company's profitability and financial capacity preconditions for the exercise of the buy-back right. Next, we will address the implications of linking the repurchase price to the net asset value of the shares. We will then turn to *Dodge v. Ford Motor Co.*, examining the decision's treatment of dividend distributions and that it did not develop into a general shareholder entitlement to the distribution of profits under US corporate law. Finally, we will explore alternative approaches that may achieve the intended minority-protection objective in a more proportionate manner.

Retrospective Application

The legislative act introducing the new triggers for company buy-back obligations provides that its provisions apply to companies established before the law entered into force, as well as to the operations of those companies and their shareholders. Now this produces a somewhat anomalous asymmetry. Namely, on one hand the buy-back obligation on the grounds of inadequate dividend distribution is dispositive meaning that shareholders may derogate from it by providing otherwise in a shareholders' agreement. On the other hand, existing companies, could not have made such an arrangement in anticipation of a statutory rule that did not yet exist, and therefore are bound by this obligation. Thus, the retrospective application of the amendment creates an asymmetry between existing companies and arrangements and companies that were established and/or have acquired minority shareholders after the new regulatory framework. The latter can structure their relationships from the outset with knowledge of the buy-back rule and may contract around it; the former made their historical dividend and investment decisions without that opportunity.

The provision that gives the rule a retrospective force naturally raises the following question: should the ten-year period for the purposes of determining the adequate level of dividends be calculated prospectively from the date of entry into force of the amendment, or does the provision allow for a retrospective assessment of the company's dividend distribution practices during the years preceding its application? To put it simply, can a shareholder demand a buy-back from the company now on the basis of inadequate dividend distributions during the preceding ten years, or can the right arise no earlier than 2036?

There are strong textual reasons for the former interpretation. The substantive provision refers to “at least five of the last ten years of the company’s operations,” while the transitional provision expressly extends the statute to the operations of companies and shareholders preceding its entry into force. Read together, these provisions appear capable of permitting historical dividend practices to be taken into account when determining whether the newly created right to demand buy-back has arisen.

Such an interpretation, however, raises a constitutional question. Article 73(1) of the Constitution provides that “Laws and other legal acts that worsen a person’s legal position shall not have retroactive effect.” The Constitutional Court has treated this prohibition as an important safeguard of legal certainty and has further explained it as imposing an obligation on the State to ensure respect for legitimate expectations concerning fundamental rights and the principle of legal certainty³. Turning back to the rule under discussion. When companies and controlling shareholders decided, for example, in 2020 or 2022, not to distribute dividends - or to distribute dividends below the benchmark subsequently introduced by the amendment - they acted within a legal framework under which those decisions did not give minority shareholders the buy-back right now established by law. The amendment changes the legal significance of those completed decisions: conduct that did not trigger a buy-back obligation when undertaken may now constitute one of the factual elements giving rise to such an obligation. This is particularly important from the perspective of legitimate expectations. Had the company and its controlling shareholders known that their dividend policy could ultimately trigger a mandatory buy-back obligation, they might have adopted a different dividend policy or negotiated a different arrangement with minority shareholders at the outset.

Legitimate Business Models with Dividend Retention

A key substantive concern raised by the newly introduced buy-back mechanism is its overinclusiveness. A prolonged period of limited or no dividend distributions does not, in itself, indicate unfair or abusive conduct toward minority shareholders. There are legitimate business models where retention of earnings over substantial periods is indispensable to the company’s strategy, continued development, and long-term value creation. By using the level and frequency of dividend distributions as a trigger for the

³ <https://www.arlis.am/hy/acts/222491> , point 116

buy-back right, the new rule captures situations in which the absence of substantial distributions reflects a legitimate business decision rather than an attempt to deprive minority shareholders of the economic benefits of their investment.

The most obvious example is a growth-oriented company. Such a company may generate accounting profits while deliberately reinvesting substantially all of those profits in expanding its operations, entering new markets, developing products, acquiring assets, or increasing production capacity. Substantial and recurring distributions may be fundamentally inconsistent with the strategy on which the business was built.

Consider Amazon as an example. In its early years as a public company, Amazon presented investors with a strategy centered on solidifying and expanding its market leadership. In its 1997 letter to shareholders⁴, the company clearly stated that “It’s All About the Long Term.” The letter explained that, at that stage of its development, Amazon chose to prioritize growth because it considered scale central to realizing the potential of its business model. A requirement effectively pushing such a company toward substantial distributions during that phase could interfere with the very growth strategy on which its business model depends.

Thus, in some businesses, retaining earnings is not a means of depriving shareholders of a return, but the mechanism through which the company seeks to generate that return in the first place.

Absence of the Profitability Precondition

A company may fail to distribute dividends at the level contemplated by the new rule for a much simpler reason: it may simply not be generating sufficient profits. Yet the dividend-related repurchase mechanism does not appear to make the company’s profitability during the relevant period a precondition for triggering the buy-back right. This is an important distinction. A company that generates substantial profits but chooses not to distribute them presents a fundamentally different case from a company whose financial performance does not allow it to generate an adequate return for its shareholders. In the latter case, the

⁴ <https://www.sec.gov/Archives/edgar/data/1018724/000119312513151836/d511111dex991.htm>

absence of dividends does not reflect an abusive withholding of profits, instead it reflects the ordinary realization of business risk.

This naturally raises the question of business risk allocation. An equity investor assumes the risk that the company may perform poorly and that the investment may generate little or no return for a prolonged period. Minority-shareholder protection is justified where the absence of return results from abuse by those controlling the company but not where the absence of return reflects the ordinary realization of business risk. If insufficient profitability itself contributes to the creation of a right to exit the investment at the company's expense, the mechanism effectively shifts part of the ordinary business risk away from the shareholder. Yet exposure to that risk is an inherent feature of an equity investment, irrespective of whether the investor holds a majority or minority position.

The absence of a profitability precondition creates a further concern where the company is close to or is already experiencing financial distress. A mandatory buy-back claim requires the company to direct resources towards buying out shareholders precisely when those resources may be needed to preserve liquidity, service liabilities and restore the viability of the business. A sufficiently substantial buy-back obligation could therefore further deteriorate the company's financial position and, in an extreme case, contribute to its insolvency. The mechanism may thus produce a paradoxical result: the company's inability to generate sufficient returns for its shareholders contributes to the creation of an additional financial obligation which further weakens the company's ability to recover. This also has implications beyond the relationship between controlling and minority shareholders, since the resulting deterioration in the company's financial condition may ultimately affect creditors and other stakeholders.

NAV as a Basis for Measuring Return and Determining Buy-Back Price

The new buy-back regime assigns net asset value of shares a dual role: it serves both as a basis for calculating the minimum adequate return and as a basis for determining the buy-back price, i.e. according to applicable provisions⁵ the minimum buy-back price is the NAV of the share. While NAV is a convenient and objectively ascertainable accounting measure, its use for these purposes raises a separate set of concerns.

⁵ Article 57 (3) and Article 59 (5) of the Law "On Joint-Stock Companies"

First, NAV does not necessarily reflect the fair or economic value of a company's shares. Their value depends not only on the accounting value of its assets and liabilities, but also on factors such as its profitability, expected future cash flows, growth prospects, risks, competitive position and intangible assets. A company holding significant assets but generating poor returns may be worth less. Where the economic value of the shares is below their NAV-based value, the statutory floor requires the company to buy back the shares at a price exceeding their actual economic value.

Second, it is questionable whether NAV provides an appropriate capital base to which the statutory bank interest rate should be applied for the purpose of assessing the adequacy of annual shareholder returns. The company's net assets are not necessarily a pool of financial capital capable of generating a return comparable to the statutory bank interest rate. They may consist of factories, machinery, real estate, inventories and other assets necessary for the operation of the business.

Finally, using NAV as the capital base for assessing the adequacy of shareholder returns may produce results that bear little relationship to the return actually earned by the particular shareholder. Consider a shareholder who acquires shares for AMD 5,000 per share at a time when the corresponding NAV is AMD 10,000 per share. If the company subsequently distributes an annual dividend of AMD 500 per share, the shareholder is earning a 10% cash return on the amount actually invested. Measured against NAV, however, the same dividend represents only a 5% return. The statutory test may therefore characterize a return as inadequate even though the shareholder is receiving a substantial return on the capital actually invested.

Dodge v. Ford and the Limits of a Shareholder Right to Dividends

There is a subtle historical echo in the newly introduced buy-back rule. More than a century earlier, *Dodge v. Ford Motor Co.* placed before the Michigan Supreme Court a dispute revolving around a familiar tension: the company's desire to retain and deploy its profits and the shareholders' claim to receive the economic benefits of their investment. The dispute arose after Henry Ford declined to continue paying substantial special dividends despite Ford Motor Company's extraordinary profitability and accumulated surplus. The court ordered the payment of a special dividend and famously stated that a business corporation is organized and carried on primarily for the profit of its shareholders.

At the same time, the court emphasized that dividend policy ordinarily falls within the discretion of directors and that judicial intervention requires an exceptional case involving fraud, bad faith, breach of duty or an abuse of discretion. The financial circumstances in Dodge were indeed exceptional. Ford Motor Company had accumulated a surplus of almost \$112 million, held nearly \$54 million in cash and municipal bonds, and expected annual profits exceeding \$60 million, while its total liabilities, including capital stock, amounted to only slightly more than \$20 million. Against that background, the court considered the refusal to make a further distribution not merely an exercise of business judgment, but an arbitrary withholding of surplus that could be distributed without detriment to the business. The case therefore concerned far more than the failure to provide shareholders with a particular level of return.

But even with its extraordinary circumstances, Dodge case did not develop into a shareholders' right to dividends. The subsequent development of Michigan law illustrates the limited reach of Dodge. Decades later, the Michigan Supreme Court reaffirmed that decisions concerning the declaration and amount of dividends fall primarily within the discretion of the board of directors. In *In re Butterfield Estate*, the court emphasized that, absent fraud, bad faith, or a comparable abuse of discretion, courts should not substitute their own judgment for that of directors in matters of dividend policy.

In sum, Judicial scrutiny is directed not at whether shareholders have received an objectively adequate rate of return, but at whether the directors have exercised their discretion within the limits imposed by fiduciary law.

A More Proportionate Alternative

The concerns identified above do not necessarily justify abandoning the newly introduced buy-back mechanism altogether. The objective pursued by the legislature is legitimate: controlling shareholders should not be permitted to use their position to deprive minority shareholders of any meaningful economic benefit from their investment while extracting value from the company through alternative channels. The difficulty lies not in the objective itself, but in the breadth of the mechanism chosen to pursue it. A more proportionate approach would therefore preserve the buy-back remedy while tailoring its application more closely to the abusive conduct it is intended to address.

First, a profitability precondition should be introduced. The buy-back rights shall be conditional upon the company generating a sufficient level of profits over the relevant period.

Second, the mechanism should require some indication that the controlling shareholder has in fact extracted economic benefits from the company while minority shareholders have been deprived of comparable participation in those benefits. Such benefits may take the form of disproportionate salaries or bonuses, management or consultancy fees, related-party transactions or other arrangements through which economic value is transferred to the controlling shareholder.

Third, the historical reference period should operate prospectively. The new regime may legitimately apply to companies established before its entry into force, but dividend decisions made before that date should not count towards satisfaction of the statutory trigger. Existing companies would not be permanently excluded from the protection of the new regime; rather, conduct undertaken before the creation of the buy-back mechanism would not subsequently acquire a new adverse legal consequence. Such an approach would substantially reduce the concerns regarding legal certainty and legitimate expectations discussed above while preserving the effectiveness of the mechanism going forward.

Finally, there is reason to reconsider the dispositive character of the new protection. If the rationale for legislative intervention is that minority shareholders are vulnerable to opportunistic conduct by controlling shareholders, permitting the parties to exclude the protection in advance through a shareholders' agreement creates a certain internal tension. The same imbalance of bargaining power that justifies statutory protection may also affect the minority shareholder's ability to resist a contractual waiver of that protection.

Some of these considerations are already reflected in Article 57(1)(3) of the Law "On Joint-Stock Companies", which provides a buy-back right where a decision, action or inaction of the company or the controlling shareholder causes manifestly adverse consequences for a non-controlling shareholder, including where the controlling shareholder receives a manifestly disproportionate advantage to the detriment of non-controlling shareholders.