

**REPORT
COMPLIANCE EVALUATION**

**ELEVENTH COUNCIL DIRECTIVE
of 21 December 1989
concerning disclosure requirements in respect of branches opened in a Member State by
certain types of company governed by the law of another State
(89/666/EEC)**

December 2008

This Compliance Report is designed to evaluate the compliance of the Armenian legislation governing the field of activities of branches of companies of foreign countries with the requirements laid down in the Eleventh Council Directive of 21 December 1989 (89/666/EEC).

This Report consists of 3 parts and an appendix

- Description of the EC Directive
- Compliance evaluation
- Conclusion.

1. Description of the EC Directive

The requirements of disclosure of information on branches opened in Member States by certain types of companies within the European Union are governed under the Eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC) (hereinafter referred to as ‘the Directive’).

The purpose of this Directive is to ensure the protection of shareholder and third party interests and to establish relevant requirements to the disclosure of information concerning branches.

This Directive consists of 18 Articles, and it regularizes the disclosure requirements with regard to branches of other Member States. It should be noted that regulating the disclosure of information with regard to branches of other Member States is applicable only in Member States, therefore comparison with the Armenian laws is not practical. The Directive also regularizes the disclosure requirements with regard to branches of companies in third countries.

Interestingly, the Directive covers all types of companies – joint stock companies and companies with limited liability.

In the Republic of Armenia, the aforementioned aspects are governed under the Armenian Laws on Joint-Stock Companies¹, on Banks and Banking², on Credit Organizations³, on

¹ AL-68, adopted on 30.06.1996, (Republic of Armenia NA Bulletin 1996/12, 01.09.1996).

² AL-232-N, adopted on 25.09.2001, effective from 06.12.2001, (Republic of Armenia Official Bulletin 2001/34 (166), 06.11.2001).

Insurance Companies and Insurance Activity⁴, on Securities Market⁵, on State Registration of Legal Entities⁶, and on Taxes⁷.

2. Compliance evaluation

1. Does the Armenian legislation specify as under which country's legislation shall activities of branches of companies in foreign countries be regulated?

Yes. According to Article 5 of the Armenian Law on Joint-Stock Companies, the creation of Company branches and representative offices abroad shall be carried out in line with the laws and legal acts of the host country, unless otherwise stipulated by the international treaties of the Republic of Armenia. According to Article 6 of the Armenian Law on Limited Liability Companies, the founding of Company branches and representative offices abroad shall be carried out in compliance with the laws and legal acts of the host country, unless otherwise stipulated by the international treaties of the Republic of Armenia.

As regards financial organizations, activities of Company branches are governed under the Armenian Law on Banks and Banking (Articles 14 and 15); the Armenian Law on Credit Organizations (Article 7); the Armenian Law on Securities Market (Articles 47 and 48); as well as the Central Bank Regulation 4/01 (Paragraph 8).

Article 7 of the Directive establishes that the documents and particulars concerning a branch opened in a Member State by a company which is not governed by the law of a Member State shall be disclosed in accordance with the law of the Member State of the branch. Where the disclosure requirements with regard to the branch differ from the disclosure requirements to the company, preference should be given to the disclosure requirements with regard to the branch, to the extent of the transactions which that branch has entered into.

Evaluation: the Armenian legislation complies with the requirement of the Directive.

2. Does the Armenian legislation regularize the activities of branches of company of foreign countries?

Yes, the Armenian legislation regularizes this aspect. According to Article 1(4) of the Armenian Law on State Registration of Legal Entities, separated units and bodies of legal entities are subject to state registration in the Republic of Armenia, and the procedure and terms and conditions for such registration shall be determined by the Government of Armenia. The activities of branches of company of foreign countries are also regulated under the Armenian Law on Taxes.

As regards financial organizations, the registration procedures applied in respect of the branch and representative office by a foreign investment firm are governed under the Armenian Law on

³ AL-359-N, adopted on 29.05.2002, effective from 04.07.2002, (Republic of Armenia Official Bulletin 2002/23 (198), 03.07.2002).

⁴ AL-177-N, adopted on 09.04.2007, effective from 30.09.2007, (Republic of Armenia Official Bulletin 26(550), 23.05.2007).

⁵ AL-195-N, adopted on 11.10.2007, (Republic of Armenia Official Bulletin 2007/53 (577), 31.10.2007).

⁶ AL-169, adopted on 03.04.2001.

⁷ AL-107, adopted on 14.04.1997.

Securities Market (Articles 43 and 44) and the Central Bank Regulation 4/01 (Chapter 6 provisions).

Articles 47 and 48 of the Armenian law on Insurance Companies and Insurance Activity establish provisions concerning the registration of the branch and representative office of a foreign company in the Republic of Armenia as well as the grounds for declining an application for registration. The Armenian Law on Banks and Banking also regularizes in detail these aspects.

Article 7 of the Directive provides that the documents and particulars concerning a branch opened in a Member State by a company which is not governed by the law of a Member State shall be disclosed in accordance with the law of the Member State of the branch.

Evaluation: the Armenian legislation complies with the requirement of the Directive.

3. Does the Armenian legislation provide for requirements to mandatory disclosure of information with regard to branches of companies of foreign countries? If yes, what documents should the mandatory disclosure cover?

The Armenian Law on Joint-Stock Companies does not provide for requirements to mandatory disclosure of information with regard to the Company branches.

According to Paragraphs 3 and 4 of the Republic of Armenia Government Resolution No. 670 on approving the procedure for registration of separated units and bodies of legal entities, in order for the separated units and bodies to be registered, the following documents need to be presented:

- an application (signed by the executive body of the stakeholder, management of the separated unit or body or by a person authorized by the stakeholder);
- a copy of the charter of Company and/or other documents constituting an instrument of incorporation;
- a copy of the document attesting state registration of Company;
- a competent authority's decision on creating a separated unit or body; on approving the charter thereof, and on appointing a manager or an acting manager of the separated unit or body;
- personal information on the manager of the separated unit and/or body (first, last name, passport details, residential address (where he/she is registered for residence), contact information);
- the charter of the separated unit and/or body, which shall be signed by a person authorized by the stakeholder, and/or verified by the seal of the stakeholder;
- a receipt of payment of the state due.

Legal entities of foreign countries shall present the documents, as referred to points 2 and 3 of registration of the separated unit and/or body, in Armenian language, in a consular verification, or translated into Armenian language and verified by the notary.

As regards financial organizations, the detailed list of the documents required for registration of the foreign investment firm's branches and representative offices opening in the territory of the Republic of Armenia are established under the Armenian Law on Securities Market, Article 43; the Armenian Law on Insurance Companies and Insurance Activity, Article 47; and the Armenian Law on Banks and Banking, Article 27.

Paragraph 7 of the Resolution establishes the list of documents required to present to remove the separated unit and/or body from registration. In addition to such documents presented to remove the separated unit and/or body of the foreign legal entity from registration, a reference material issued from the Tax Authorities of the Republic of Armenia attesting the lack of indebtedness to the Armenian State Budget and Social Security and a reference material issued from the stakeholder attesting the satisfied creditor liabilities or the lack of such liabilities need to be presented as well.

According to Article 8 of the Directive, the mandatory disclosure shall at least constitute the following documents and particulars:

- the address of the branch;
- the activities of the branch;
- the law of the State by which the company is governed;
- where that law so provides, the register in which the company is entered and the registration number of the company in that register;
- the instruments of constitution, and memorandum and articles of association if they are contained in a separate instrument, with all amendments to these documents;
- the legal form of the company, its object and, at least annually, the amount of subscribed capital;
- the name of the company and the name of the branch if that is different from the name of the company;
- the location of office and particulars of the persons who are authorized to represent the company in dealings with third parties and in legal proceedings;
- the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation;
- the accounting documents;
- the closure of the branch.

Evaluation: the Armenian legislation only partially complies with the requirement of the Directive.

4. Does the Armenian legislation provide for mandatory disclosure of accounting documents of branches of companies of foreign countries?

Yes. According to Article 5 of the Armenian Law on Taxes, natural persons and legal entities (including non-resident natural persons, units of foreign legal entities, branches and representative offices of foreign legal entities), institutions, local governments (hereinafter referred to as 'tax payers') must pay taxes, unless otherwise determined by the tax laws. According to 15 of the same law, tax payers must:

- maintain books and prepare statements on their financial and economic activities, as duly specified by a special Government of the Republic of Armenia procedure;
- provide, in a timely fashion, reports, statements, calculations and other relevant information and documents to the Tax Authorities, as determined by the Armenian Law.

As regards financial organizations, the mandatory disclosure of accounting documents of branches of companies of foreign countries is also regularized under the Armenian Law on Securities Market, Articles 43 and 83; the Armenian law on Insurance Companies and Insurance Activity; and the Armenian Law on Banks and Banking, Article 59.

According to Article 9 of the Directive, the compulsory disclosure shall apply to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the State which governs the company.

The Member State in which the branch has been opened may stipulate that the documents, constituting an instrument of incorporation, the charter and the accounting documents, must be published in another official language of the Community and that the translation of such documents must be certified.

It should be mentioned that this Article of the Directive is not applicable in respect of branches of credit organizations, of financial organizations and of insurance companies.

Evaluation: the Armenian legislation complies with the requirement of the Directive.

<p><i>5. Does the Armenian legislation establish a requirement to the format of letters and instructions/orders issued by the branches of companies of foreign countries?</i></p>

No. The Armenian legislation does not provide for such an arrangement.

According to Article 10 of the Directive, the Member States shall prescribe that letters and order forms used by a branch state the register in which the file in respect of the branch is kept together with the number of the branch in that register.

Evaluation: the Armenian legislation does not comply with the requirement of the Directive.

3. Conclusion

Based on the results of review of this Compliance Report, one may conclude that the Armenian legislation is mainly in compliance with the Eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC). Consideration should be given to the issue of providing for detailed requirements to mandatory disclosure of information in respect of the branch of foreign company, as this aspect is only partially regularized under the Armenian legislation. It should be noted, however, that this aspect has been regularized in detail in respect of financial organizations. Also, there is need to establish requirements to the format of letters and orders used by the branches of foreign companies.

	Question	Yes	No	Partially	Notes
1.	Does the Armenian legislation specify as under which country's legislation shall activities of branches of companies in foreign countries be regulated?	√			the Armenian Law on Joint-Stock Companies, Article 5, the Armenian Law on Limited Liability Companies, Article 6
2.	Does the Armenian legislation regularize the activities of branches of company of foreign countries?	√			The aspect of detailed requirements to mandatory disclosure of information in respect of branches of foreign companies is partially regularized under the Armenian legislation.
3.	Does the Armenian legislation provide for requirements to mandatory disclosure of information with regard to branches of companies of foreign countries? If yes, what documents should the mandatory disclosure cover?			√	the Armenian Law on Banks and Banking, Article 27; the Republic of Armenia Government Resolution No. 670 on approving the procedure for registration of separated units and bodies of legal entities, paragraphs 3 and 4; the Armenian Law on Securities Market, Article 43; the Armenian Law on Insurance Companies and Insurance Activity, Article 47
4.	Does the Armenian legislation provide for mandatory disclosure of accounting documents of branches of companies of foreign countries?	√			the Armenian Law on taxes, Article 5; the Armenian law on Securities Market, Articles 43 and 83; the Armenian Law on Insurance Companies and Insurance Activity; the Armenian Law on Banks and Banking, Article 59
5.	Does the Armenian legislation establish a requirement to the format of letters and instructions/orders issued by the branches of companies of foreign countries?		√		
	Total, 5 questions	3	1	1	