



## **The 3<sup>rd</sup> Meeting of the Eurasian Corporate Governance Roundtable**

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***Shareholder Rights, Equitable Treatment and the Role of the State***

**Questionnaire – Armenia**

**By**

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**The Global Corporate  
Governance Forum**

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## **QUESTIONNAIRE**

### **COUNTRY BACKGROUND INFORMATION**

#### **1. Corporate Ownership structures:**

##### **1.1 Number and aggregate annual turnover of Open Joint Stock Companies (publicly listed / traded companies):**

There are 126 such companies, but the total number, according to the data of the State Register, of the companies registered in Armenia is 1,156 OJSC.

##### **1.1.1 Number of listed companies that have never had any trades:**

There are such 108 companies.

**1.1.2 Number of listed companies that have had more than one trade:**

18 companies

**1.1.3 Number of companies that are regularly traded on a monthly basis:**

None

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

The number of CJSC registered in Armenia, according to the data of the State Register, is 3,105. The information whether their shares are quoted at the stock exchange is not available to us.

**1.3 Number and aggregate annual turnover of Joint Stock Companies with state owned stakes:**

The stakes of 1,215 CJSC are owned by the state, and the stakes of 404 companies are owned by the communities.

**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?**

In 2001, the ratio “Approximated Estimate of Market Capitalization”<sup>1</sup> to GDP is 1.56%.

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

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<sup>1</sup> Here the term “Approximated Estimate of Market Capitalisation” is used, as the market capitalisation used to be calculated on the basis of market value of shares as of some definite date. Here the calculation has been carried out on the basis of the latest values as of the year 2001. The absence of the precise estimate could be explained by market’s low liquidity.

The major funding sources are bank credits, though we are not in the possession of the exact numerical ratios of businesses' funding sources.

**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?**

According to the Informational and Analytic Report of the National Statistics Service of the Republic of Armenia the aggregate amount of direct foreign investments to the legal entities of the Republic of Armenia was **drams 151.9 bln.** (approximately **U.S. dollars 279 mln.**) as of 01.01.2001.

**1.6 Total number of shareholders:**

118.300 shareholders, including (see the footnote 1):

In OJS Companies – **118,000** shareholders

In CJS Companies – **300** shareholders.

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

**1.6.2 What percentage of these shares are held by:**

We do not possess accurate information on the aggregate corporate equity capital structure. Though the rules and terms of the privatization have resulted in the large-scale concentration of capital. In most of the cases concentration of capital has been called forth by a large portion of insiders (employees and executives) within the structure of corporate equity capital.

-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:**

See para. 1.6.2

- employees,
- executives,
- foreign shareholders or institutional investors,
- the state,
- domestic corporations.

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

This is not a wide spread practice (**5 such cases are registered for JSC keeping their register at the Central Depository of Armenia**); and it does not 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?**

No significant trend is observed.

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

No significant trend is observed.

**2. Privatization procedures:**

**2.1 Percent of state commercial/production assets privatized to date:**

As of April 1, 2001, and according to the data of the Ministry of State Property Administration **2,081 enterprises** have been valued; **1,954 enterprises** have been privatized, which is 94%. It must be noted that here the percentage ratio of evaluated enterprises ready for privatization to actually privatized enterprises is mentioned.

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

As of April 1, 2001, **1,954** entities (medium-scale and large enterprises), among them **1,317 OJSC**, have been privatized in Armenia (including those alienated after liquidation of their property). **103,521,124.0** thousand drams have been paid; **39,766,020.0** thousand drams in the form of certificates (**38.4%**) and **63,755,104** thousand drams in monetary form. **294,263.5** thousand drams were paid to privatize enterprises in 2001.

## **2.2 By what methods may state assets be privatised?**

State assets may be privatized by the following methods:

- Open subscription for shares,
- Auction,
- On competitive basis (including international tenders),
- Direct sale,
- Open or closed placing of new shares,
- Placement of bonds with the right to convert them into shares,
- Sale at special-purpose markets,
- Transfer of rights to use state property.

### **2.2.1 Identify the percentage of assets privatised through each method.**

- Open subscription for shares – **67.40%**
- Auction – **2%**
- On competitive basis (including international tenders) – **10.44%**
- Direct sale – **8.39%**
- Open or closed placing of new shares – **0%**
- Placement of bonds with the right to convert them into shares – **0%**
- Sale at special-purpose markets – **0.61%**
- Transfer of rights to use state property - **10.34%**
- Sale of liquidated enterprises' property – **0.82%**.

## **2.3 What are the privatisation objectives and current methods used?**

Pursuant to the Yearly Program of State Property Privatization for 1998 – 2000, the main objectives of privatization are as follows:

- Ensuring of privatized companies' level growth in the economy;
- Raising efficiency level of the privatized companies;
- Development of privatization methods; the principle emphasis is put on competitive methods of privatization and sale to strategic investors;
- Replenishment of the state budget.

## **2.4 To what extent may foreign investors participate in privatisation?**

No limitations for investors exist.

### 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)?

	Title of Act	Promulgating State Body	Date of Adoption	Effective Date	Identification Number
1	Constitution of Republic of Armenia	Referendum	July 5, 1995	July 13, 1995	
2	Civil Code of Republic of Armenia	People's Assembly	May 5, 1998	January 1, 1999	PԵ-239
3	Law of Republic of Armenia on Joint Stock Companies	People's Assembly	September 25, 2001	December 6, 2001	PԵ-232
4	Law of Republic of Armenia on Securities Market Regulation	People's Assembly	July 6, 2000	October 1, 2000 (in part)	PԵ-82
5	Code of Rules Regulating the Market of Securities	Committee for Securities	September 28, 2001	December 5, 2001	392/01

#### 3.2 How recent and effective is the existing legislation?

The Constitution was adopted in 1995. The provisions of the Constitution have direct force, but in practice it often comes unnoticed. One of the best guarantees for the right of ownership is Article 28 of the Constitution. In civil legislation (pursuant to the principles stipulated in the Constitution) the Civil Code plays the principle part. The legislation in general has been formulated in compliance with the provisions of the said Code. During the effective term of this Code a tendency to compare the subject matter of the Code's numerous provisions (it has 1,293 Articles) has been observed, which increases the efficiency of Code regulation. Specifically, in the course of settlement of disputes arising between the subjects or regulation of legal relationship a number of interrelated provisions of the Code, which by their meaning and regulation nature complement each other, form the basis for such settlements.

Though, the law is not an ideal one, it might be used efficiently subject to legal awareness of participants of legal relationship regulated by this law. In particular, improvement of legal awareness level of the aforesaid participants (especially of shareholders) is one of the main objectives of Association of Shareholders.

The Law of Republic of Armenia on Securities Market Regulation has been effective for one and a half years. In compliance with this law the Committee for Securities has been established. It uses exercises the authorities to protect rights of shareholders stipulated by the law quite efficiently.

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

With regard to reform of effective legislation, presently there exists an absolute necessity to perform codification of civil legislation. In the course of lawmaking certain regressive processes could be observed. Specifically: the structure of the civil legislation is a hierarchical one – the Constitution →

Civil Code → laws. In such hierarchy provisions of lower level normative acts have to result from provisions of higher level normative acts and have not to conflict with them.

As it was already mentioned, the Civil Code plays principal part. However, provisions of the normative acts approved after the year 1998 often conflict with this Code. Development of such process poses a great threat.

Moreover, it has to be mentioned that the amendments to the Law on Joint Stock Companies have to be introduced, which determine more precisely the procedure of companies' reorganization by means of division and split-off, and also the procedure for shares consolidation to protect shareholders' rights.

### **3.4 Are there any significant pending laws or normative acts?**

Drawing up of such an important act as the Corporate Behaviour Code is being discussed.

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

As per Article 84 of the Law of the Republic of Armenia on Joint Stock Companies, the decision to amend the by-laws / regulations of a company has to be approved by its Board of Directors.

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

Pursuant to sub-paragraph 1) of paragraph 1 of Article 115 of the Republic of Armenia's Civil Code and Article 15 of the Law of the Republic of Armenia on Joint Stock Companies amendments to company's charter are to be approved by a resolution of company's Shareholder meeting. Provided such recent amendments limit shareholders' rights, the shareholders, who have voted against such resolution or have not participated at such meeting, will have the right to demand the buy-out of their stake.

### ***Does the corporate governance framework protect the rights of shareholders?***

## **1. Ownership Rights**

*At the request of a shareholder the company shareholders register holder has to confirm shareholder's right of ownership by submitting an appropriate extract from the register.*

### **1.1. Are Shareholders able 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?**

Yes, they are.

The ownership right for securities is registered in the register of shareholders in the following way:

1. Opening of a personal account for a new shareholder.

To open a personal account a shareholder shall present to register holder the following documents:

- Power of Attorney to open a new account,
- Completed shareholder' record,
- Completed record of shareholder's authorised representative (if any).

2. Transfer of respective number of shares to new shareholder's personal account from personal account of shares' owner.

To register shares transfer, the issuer (during placing of shares) or owner of shares have to present to the register holder (Depository) with an order to transfer shares. The process of an order formulation (**2 days**) and of a decision-making (**1 day**) is **3 days long**. The depository may dismiss registration of shares' transfer should

- present documents be not in compliance with the requirements of legislation;
- an order to transfer shares be not signed by shareholder or his authorized representative.

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

1. The Law of the Republic of Armenia on Joint Stock Companies – Article 52
2. The Law of the Republic of Armenia on Securities Market Regulation – Articles 47, 112
3. Code of Rules Regulating the Market of Securities – Rules 112.1 6-13, 112.16-22.

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

The main problem is that the registers are kept with violations, especially in the companies, where the register has not been kept by the Central Depository. In such companies the registers have not been kept in a transparent manner for shareholders owing minority of shares. Another problem is the result of the situation, when a fair quantity of joint stock companies (about 10%) have not changed their privatization certificates to shares.

**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?**

Pursuant to the Law of the Republic of Armenia on Securities Market Regulation, the authorities for registration of shares shall be:

1. Committee for Securities
2. Stock exchange.

**Registration of shares and securities is compulsory for Accountable Issuers** (companies with the number of shareholders exceeding 50 entities and the amount of net wealth compliant with the amount determined by the Committee for Securities). To register securities an issuer has to submit Securities Registration Declaration; its appearance and subject matter shall be in compliance with the requirements of the normative acts.

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

The Law of the Republic of Armenia on Securities Market Regulation – Articles 10, 20 and 23.

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

The companies are reluctant to register their securities, and some of them are making attempts to avoid Accountable Issuer status. Pursuant to the OJS Companies inspection data (the inspection was performed by the Committee for Securities in 2001), **5 OJS Companies (13.9% of all the companies inspected)** have not registered their securities in compliance with the requirements of the law.

**1.3 How are registers regulated?**

Pursuant to Article 51 of the Law of the Republic of Armenia on Joint Stock Companies, a company shall start to keep a register within one month following its state registration. Provided a company has the Accountable Issuer status (a joint stock company with the number of shareholders exceeding 50 entities and the amount of net wealth compliant with the amount determined by the Committee for Securities), the register of such company has to be kept with the assistance of special-purpose bodies (the Central Depository).

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

As per the Rule 112.1 6-10 of “Code of Rules Regulating the Market of Securities”, the following entities have the right to familiarize themselves with register:

1. Issuer

An issuer may obtain register's data **within 3 days** following the submission of an appropriate request.

2. Shareholder or his / her authorized representative

A shareholder is entitled to obtain data (the Depository has to present such data **within one day**) about changes occurred on his / her personal account, issuer and the class of securities,

other information in cases stipulated in the effective laws.

The list of general meeting participants may be given to shareholders owing 10% of voting shares.

3. The Committee or any other State Institution

Submitting a request about the register of any company the Committee or any other State Institution must specify the legal grounds for such request and provide the list of the data requested. On its part, the Depository has to submit such data within **5 days** term.

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

1. The Law of the Republic of Armenia on Joint Stock Companies – Article 70
2. The Law of the Republic of Armenia on Securities Market Regulation – Articles 68 - 73
3. Code of Rules Regulating the Market of Securities – Rules 112.1 6-10, 26, 28, 29.

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

Keeping of the register by a company is not a transparent procedure due to the fact that the legislation is not stipulating any responsibility for any breach of regulation in the course of the register keeping.

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

No restrictions exist for OJS Companies for transfer of shares; the general meeting may resolve to perform closed placing of shares in the course of new shares floating. In CJS Companies, shareholders enjoy the pre-emptive right to buy shares during transfer and placing of new shares. The meeting is entitled to resolve not to use a non-pre-emptive right and determine the effective term of such resolution (but it shall not be longer than 1 year).

**1.6 What are the requirements for authorising and issuing new capital?**

As per the Law of the Republic of Armenia on Securities Market Regulation, the registration authority for authorization and issue of new shares shall be the Committee for Securities.

To perform public sale it is necessary to submit to the Committee the Declaration of Securities Registration containing Offering Circular of Issue. Sale / transfer of shares shall be prohibited should the Declaration containing Offering Circular of Issue, appearance and subject matter of which comply with the requirements of the Law and normative acts, be not registered.

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

The Law of the Republic of Armenia on Securities Market Regulation – Articles 4-11.

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

**1.7 What pre-emptive rights to the buy of company shares do shareholders enjoy, if any?**

Shareholders of OJS Companies enjoy the pre-emptive rights to buy company's shares provided it is stipulated in company's charter.

Shareholders of CJS Companies enjoy the pre-emptive rights to buy company's shares.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 8, 37.

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

Often, upon placing additional shares JS Companies do not take into account the pre-emptive right of existing shareholders to buy such shares. Additional shares are bought by a small number of shareholders, thus the control stock of shares is transferred to the minority of shareholders to the prejudice of the remaining majority.

**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?**

Dividends are paid from net profit of a company according to the list of shareholders entitled to collect such dividends. Such list should be approved by the Board of Directors. Dividends may be distributed on annual, biannual, quarterly basis, unless otherwise provided by company's charter.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 49, 50.

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

Inasmuch as national JS Companies do not use all levers of corporate management, in particular issue and placing of preference shares as one of the main tools to attract funds, consequently where are no problem with payment of dividends is registered for this group of shareholders. Though, only the limited number of JS Companies receive profit, even such JS Companies do not pay dividends. Such JS Companies reinvest their enterprises instead.

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

A company shall not be entitled to pay dividends, provided

The authorized fund has not been paid in full,

The Joint Stock Company has not bought out all shares,

The company has an insolvency status (is bankrupt) at the date of dividends payment or it may go bankrupt as a result of such dividends payment.

The amount of net assets is smaller than the Authorized Fund or become smaller as a result of such dividends payment.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 50.

### **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?**

Yes, they can.

Decisions on payment of interim dividends are taken by Board of Director.

Decisions on payment of annual dividends are taken by yearly meeting of shareholders.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 37, 38, 49, 67, 84; the Civil Code of the Republic of Armenia – Article 115.

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

Often Shareholders, voting on this issue, do not have adequate expertise to apprehend company's financial status and, consequently, to approve a qualified decision.

#### **2.4 What specific recourse do shareholders have in case of delays or refusal to pay dividends?**

In case of delays or refusal to pay dividends, provided the resolution on such payment is present, a shareholder is entitled to claim compensation for any damages incurred in court or file a complaint with the Committee for Securities.

Along with the said authorities, in case of violation of any of his / her rights (including a non-payment of dividends) a shareholder may turn to the Association of Shareholders for advice and assistance.

#### **2.5 Is the company allowed to buy its own shares? Under what conditions?**

The company is allowed to buy its own shares pursuant to Articles 54, 57 of the Law of the Republic of Armenia on Joint Stock Companies. The company may buy out its shares, should such Article is present in its charter, in the following cases:

1. Adoption of a decision on the reduction of the Authorized Fund.
2. The Board's decision to buy out.
3. At the request of shareholders, in the following cases:

§ Reorganization

§ Cancellation of pre-emptive right to buy company's shares

§ Introduction of amendments to the charter limiting shareholders' rights and in the event that shareholders have voted against or have not participated in voting on such decision.

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

Provided the shares have been bought out

§ under the meeting resolution to decrease the authorized fund, such shares have to be paid off at the moment of buyout.

§ under the decision of the Board on buyout, such shares do not provide voting authority, are not discounted, and their profit share is not paid.

Such shares have to be sold within one year after the date of the buyout.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 54, 55, 57, 58, 59.

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

Companies do not duly notify their shareholders about the right to demand buyout, and the shareholders, on their part, are not fully aware of their rights.

### **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?**

Annual (regular) meetings are convened pursuant to company's charter, not later than 6 months following the end of a fiscal year. Special meetings are convened as may be necessary.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 66, 74.

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

Deadlines for Annual Meetings are not observed. According to the data of the Association of Shareholders as of 2002, in the course of inspections during 12 months of 2001 (of 60 companies) the violations of procedure to convene annual meeting were discovered in 50% of the companies. 23% of the companies have not summoned their general meetings at all.

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

##### 1. Process for notification:

Shareholders are notified by the letter of notification or published announcement in case the latter is stipulated by the decision to summon meetings or the charter.

##### 2. Timeline for notification:

If the number of shareholders exceeds 50 entities, such shareholders shall be notified not later than 15 days prior to the meeting.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 71.

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

Timelines and procedures for shareholders notification are not observed. According to the data of the Association of Shareholders as of 2002 and the Committee for Securities in the course of inspections during 12 months of 2001 (of 60 companies) the following violations were discovered:

absence of notification rules (34%),  
breach of notification procedure (60%).

### **3.3 How are foreign shareholders treated regarding notification and participation?**

Foreign investors are notified in accordance with the general procedure.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 71.

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

It is necessary to note that there exist technical difficulties in the course of notification of foreign citizens.

### **3.4 What advance notification must shareholders receive of the agenda of shareholder meetings?**

The agenda of shareholder meeting is an integral part of beforehand notice on summoning shareholder meeting.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 71.

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

Notices do not contain the agenda.

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

The location of the general meeting is approved by the decision of Board of Directors. No restrictions regarding the choice of location of general meeting exist.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 73.

**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?**

No such restrictions exist.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 70, 76.

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

According to the data of the Association of Shareholders as of 2002, in the course of inspections during 12 months of 2001 (of 60 companies) the following violations were discovered:

violations when compiling the lists of shareholders entitled to participate in the meetings of shareholders (70%),  
absence of decision to convene the shareholders to participate in the meetings of shareholders (30%)

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

As per Article 72 of the Law on Joint Stock Companies, the shareholder(s) of a company owing not less than 2% of its shares has (have) the right, within 30 days after the end of a fiscal year or within longer term, to submit not more than 2 proposals with regard to the agenda of annual meeting and to nominate a candidate for the Board of Directors and the Auditing Committee. The number of such candidates should not exceed the number of seats established for such bodies.

The Board shall consider such nominations and approve an appropriate decision on putting such proposals on the agenda of annual meeting or the list of nominees or dismissing them within 15 days after the expiration of the said terms set forth in Article 72 of the Law. The Board is entitled to dismiss proposals only in the cases stipulated in Article 72 of the Law.

A substantiated decision of the Board on refusal to put the proposals submitted on the agenda of annual meeting or on the list of nominees shall be sent to the shareholder(s), who submitted such proposal or nominated a candidate, within 3 days after such decision is adopted.

The decision of the Board on refusal to put submitted proposals on the agenda of annual meeting or on the list of nominees may be appealed in court.

*As per Article 74 of the Law, the shareholders owing 10% of voting shares shall be entitled to request the Board to summon special meeting of shareholders, and such request shall specify the agenda of such meeting.*

The request to summon a special meeting of shareholders shall be rejected provided appropriate reasons exist stipulated in Article 74 of the Law. The Board shall adopt the decision to summon the special meeting of shareholders and shall approve its agenda.

**Any agenda approved by the Board and specified in meeting notice shall not be subject to alterations. Provided that the Board, within time limits stipulated in Article 74 of the Law, has not adopted an appropriate decision to summon the special meeting of shareholders or has adopted the decision to refuse to summon such meeting, such meeting may be convened by the persons, who has submitted such request. In such case the shareholders, who initiated the meeting, shall approve the agenda.**

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 68, 72 and 74.

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

According to our random investigation of meetings' minutes, it has been found out that the agendas of such meetings have been often amended at the time of such meetings; and the shareholders have been considering and adopting decisions on such issues, which are beyond the meeting's scope of authority pursuant to the Law and the company charter.

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

The following shareholders are able to vote at meetings:

- § Owners of ordinary shares,
- § Owners of preference shares.

**3.8.1 on appointment and removal of directors?**

Directors are appointed and removed by cumulative voting, if the number of shareholders exceeds 500 entities; and by the majority of votes, if the number of shareholders is less than 500 and cumulative voting is not stipulated by the charter.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 85.

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

The violations are mostly related to the elections of directors. The Law stipulates that companies having more than 500 shareholders elect their Board of Directors by the way of cumulative voting, whereas often the election of nominees is carried out by voting on individual nominees. In such cases small entrepreneurs are not able to have their nominee elected to the Board. Other frequent violation relates to the fact that the composition of

the Board is partially changed during a special meeting, which is contrary to the provisions of the Law in the event that the Board has been elected by cumulative vote.

### **3.8.2 on appointment and removal of external auditors?**

By majority vote of the owners of voting shares present at such meeting.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 67 and 68.

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

Taking into account the necessity to summon a special meeting of shareholders should the issue of appointment or removal of external auditors' activity over the period between annual meetings, in most of the cases this requirement of the Law is ignored by the Board, which adopts a respective decision on itself.

### **3.8.3 on issuing share capital?**

The scope of shares issue is set forth by Foundation Agreements and the outcome of placing is approved at general meeting by  $\frac{3}{4}$  of participants' votes. Within such limits the decision of shares issue is adopted by majority of votes of the Board of Directors.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 10, 12.

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

### **3.8.4 on the issuance of additional shares?**

By the majority of votes of those present at a meeting.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 68.

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

The Law on Securities Market Regulation stipulates for the submission of offering circular in case of shares' placing. Taking into account the fact that the Law has been adopted recently and no stable practice has existed in this country, companies are facing problems making up their offering circulars in compliance with any and all requirements. The main difficulties the companies face are called forth by the requirement that the offering circular has to contain information, which is treated by such companies as commercially confidential. Therefore, companies consider inexpedient to provide such information.

**3.8.5 on major corporate transactions (i.e. acquisitions, disposal, mergers, take-overs, etc.)**

In case the value of any transaction amounts to 25-50% of balance sheet assets, any decisions to conduct such transaction is to be taken by the Board unanimously. Should the Board fail to adopt the respective decision, the issues may be taken for consideration at the meeting of shareholders.

The decision on any major transaction shall be within the scope of general meeting authority if the value of such transaction exceeds 50 per cent of balance sheet assets. The decisions on any major transactions are taken by  $\frac{3}{4}$  of the votes of shareholders present at the meeting and being owners of the voting shares.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 68.

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

The main problems exist in the majority of companies, where a stake is hold by the state. Pursuant to the Law on Joint Stock Companies, which has recently lost its validity (it had been effective until 06.12.2001), for the companies with state's stake equal or exceeding 51% the valuation of company's assets should have been carried out by a state authority. Taking into account considerable fluctuations of the exchange rate of ruble and dram over pos-soviet period, the re-evaluation of assets had not been performed and subsequently the value of assets acquired at different periods of time was disproportionate. Very often the balance sheet assets with high market value are appraised low, and actually a major transaction is performed by Executive Bodies violating by this the limits of the authority of the latter. Pursuant to the requirements of the effective law, the issue of assets evaluation is within the authority of the Board, and we believe that such issue might be resolved upon application of this provision and introduction of the international accounting standards.

**3.8.6 on transactions with related parties?**

The decision on conducting any transaction, when an interested party exists, is taken by:

- I. The Board of Directors (supervisory board) by the majority vote of directors, who are not interested in conducting such transaction, in the event that the number of shareholders owing voting shares is less than 500 entities.
- II. The Board of Directors (supervisory board) by the majority vote of independent directors, in the event that the number of shareholders owing voting shares exceeds 500 entities.
- III. The decision on conducting transaction by the company, when an interested party exists, is taken by the majority vote of independent shareholders at the general meeting of shareholders owing voting shares, provided that:
  - the amount paid under such transaction and the value of assets subject to such transaction exceeds 2% of company's shares;
  - the transaction is a placing of voting shares of the company or any other securities converted into voting shares in the amount exceeding 2% of voting shares being already placed by such company.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 62, 63 and 64.

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

Violations often occur due to the lack of control on the part of Auditing Committees. Most of the companies do not keep their registers of Board of Directors' members, where the information on related parties should be provided. The consequences and responsibility for non-submission of the respective information on related parties of a transaction have not been stipulated.

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

The Board of Directors has the authority to determine main lines of company's business activity. If the purpose and line of company's business activity is set forth in its charter, the decision on change of company's line shall be taken by the shareholder meeting under procedure stipulated for introduction of any changes into the Charter.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 67, 68 and 83.

**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?**

The Articles of Association is the basic document governing business activity of a company. Procedures for adoption of the articles of association, for introducing amendments or additions to it, differ from those requirements established for other internal procedures.

Adoption of the Articles of Association, introduction of amendments and additions to it, approval of the revised version of the Articles of Association shall be carried out at the general shareholder meeting by  $\frac{3}{4}$  of the votes of the owners of voting shares present at such meeting. Internal statutes governing the activities of company's managing organs shall be approved by the majority vote of the Board of Directors.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 67, 68 and 84.

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

The draft Articles of Association are seldom thoroughly considered by owners (shareholders) of a company. The attitude towards company's Articles of Association (as well as towards the Constitution of the state) is not serious. Standard Articles of Association are adopted, which comply with rules of registration authorities, but later on problems arise, when it becomes clear that the Articles of Association do not stipulate the issues, which are not governed by the Law. As a result deadlock conditions occur often resulting in company's dissolution or lengthy court hearings.

**3.8.9 on any other relevant issue requiring a majority of votes?**

The following issues are resolved by the decisions of meetings taken by  $\frac{3}{4}$  of votes of the voting shares' owners present at such meetings:

- Approval and introduction of amendments to the Articles of Association and additions to such Articles of Association, adoption of the new revised version of the Articles of Association;
- Reorganization of a company;
- Establishment of maximum announced number of shares;
- Approval of annual statements, balance sheets, and income statement accounts;
- Dividends' amount approval.

Meetings decisions on the following issues are taken by  $\frac{3}{4}$  of voting shares' owners present at a meeting, but not less than by  $\frac{2}{3}$  of the votes of all voting shares' owners:

- Liquidation of a company;
- Reduction of the amount of company's authorized fund by the way of reducing the face value of shares, company's buyout of a portion of shares with the aim to reduce their total number or repayment of the shares, which have not been fully paid up, pursuant to the Article 29 of the present Federal Law, and also by repayment of the shares bought or bought out by such company in compliance with para. 3 of Article 72 and second sub-paragraph of para. 6 of Article 76 of the present Federal Law.

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

Meeting may take decisions by means of in absentia voting using voting paper. But in case of an annual meeting absentee voting is not allowed. Shareholders shall be entitled to participate at a meeting in person or to send their authorized representative.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 68, 69 and 71.

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

Serious problem is the absence of ability for a shareholder to vote electronically, inasmuch as a voting paper is valid only if it is bearing shareholder's signature. The respective law on electronic signature has not been adopted in Armenia yet.

**3.10 Do meeting notices clearly explain the procedures for voting? and appointment of proxies?**

The following issues should be specified in a notice:

Company's name and its location;

Meeting's place and timeline;

The date of drawing up of the list of shareholders entitled to participate at such meeting;

Meeting agenda issues;

Procedure for learning documents and information regarding the issues to be discussed at such meeting.

At the meeting of companies having 50 or more shareholders the voting is performed using voting papers, which should also contain information on voting procedure.

The issue of appointing an authorized representative is governed by Article 76 of the Law but the Law does not stipulate to specify the procedure of appointment in the meeting notice.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 71 and 79.

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

Often the ballot is either taken without using voting papers or such voting papers are not duly compiled or approved, to say nothing of violation of the procedure and timelines for notification.

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

See explanations of para. 3.7.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 76.

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

Minority shareholders do not have identical views and often are not able to arrange necessary 10% of votes. Besides, it may be noted that such practice is absent in Armenia because of shareholders ignorance of their rights. In this respect, the role played by the Association of Shareholders is indispensable, specifically to unite minority shareholders and to advise them of their rights. Especially as the analysis of the complaints received by the Association shows the necessity of such measures.

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

Shareholders take the decisions at the general shareholder meeting, and the enforcement of such meeting's decisions is mandatory. The Auditing Committee executes control over the enforcement of the shareholder meeting's decisions.

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

The Law of the Republic of Armenia on Joint Stock Companies – Articles 66 and 91.

**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?**

Yes, it does.

Each class of securities ensures equal rights to owners of this class of securities. Pursuant to the Law on Joint Stock Companies there exist ordinary shares and other following classes of preference shares:

Shares with fixed dividends;

Shares with variable dividends;

Cumulative shares;

Convertible shares;

And other types of preference shares, provided the latter is stipulated in the Articles of Association.

Owners of preference shares have the right to vote at general meeting provided reorganization or liquidation of the company is considered or in other cases governed by the Law. In particular, owners of the particular class of preference shares have voting authority, when amendments to the Articles of Association are considered limiting such shareholders' rights. Moreover, the Articles of Association of a company may provide for voting authority for owners of particular type of preference shares if such Articles of Association stipulate the possibility of exchanging preference shares to ordinary ones.

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

The Law of the Republic of Armenia on Securities Market Regulation – Articles 37 and 38.

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

The main problem is that the no preference shares have been issued in Armenia to date.

**4.2 Within a class, do shareholders have the same voting rights?**

Yes, they have the same voting rights.

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

The Law of the Republic of Armenia on Securities Market Regulation – Articles 37 and 38.

**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?**

§ Under open placing procedure, pursuant to Article 10 of the Law on Securities Market Regulation, the offering circular should contain information about securities issued, including the information about voting right.

§ Under closed placing procedure no special requirements exist.

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

The Law of the Republic of Armenia on Securities Market Regulation – Article 10.

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

The problem is in limited practice of placing shares by means of open subscription.

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

Such changes required being subject to vote (See explanations in Part II of para. 4.1).

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 38.

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

We have not observed any such problem.

**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?**

They are able to exercise such rights. The meeting notice is received by custodian or nominee, and such nominee hands it to Beneficiary Owner pursuant to a mutual agreement. No limitations on distribution of information are imposed.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 71.

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

We have not observed any such problem.

**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?**

Several companies turned to the Association of Shareholders to receive advice on such issue, and according to our estimates such actions are being prepared for the nearest future.

**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?**

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

No such problems exist.

**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.**

Individual provisions have been stipulated in the Law of the Republic of Armenia on Joint Stock Companies governing activity of the state as a shareholder. Though, pursuant to Article 11 of the Law and Article 128 of the Civil Code the state along with any other shareholders has equal rights. The state, communities or an authorized representative acting on their behalf at a shareholder meeting, when voting on the issues hereunder is taken, are authorized to participate only if the respective resolution of the Government has been adopted:

Reorganisation of the company;

Liquidation of the company;

Reduction of the amount of company’s authorized fund by the way of reducing the face value of shares, company’s buyout of a portion of shares with the aim to reduce their total number or repayment of the shares, which have not been fully paid up, pursuant to the Article 29 of the present Federal Law, and also by repayment of the shares bought or bought out by such company in compliance with para. 3 of Article 72 and second sub-paragraph of para. 6 of Article 76 of the present Federal Law.

Article 41 of the Law also stipulates existence of company employee shares. Though, judging by our practice, companies’ employees have not become their companies’ shareholders using the procedure stipulated in this Article of the Law, but as a result of partial free privatization of the state shares, which has been carried out.

The legislation does not provide for any other special provisions for individual categories of shareholders.

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

The Civil Code – Article 128.

The Law of the Republic of Armenia on Joint Stock Companies – Articles 10, 11, 12, 41 and 68.

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

It is not used in practice.

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

The company has such a discretion under closed placing procedure.

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

The Civil Code – Article 108.

The Law of the Republic of Armenia on Joint Stock Companies – Article 8.

The Law of the Republic of Armenia on Securities Market Regulation – Article 4.

**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?**

In compliance with the laws of the Republic of Armenia, the state and communities act in cases, governed by the civil laws, as equal participants along with other actors of such cases, specifically citizens and legal entities.

Namely, being a shareholder the state does not differ from other subjects of civil law, while from the point of view of the performance of government functions they are clearly distinguished.

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

The Civil Code – Article 128.

The Law of the Republic of Armenia on Joint Stock Companies – Article 11.

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

In practice, state institutions often violate the authority of the state as a shareholder by using their governmental resource.

Inasmuch as the state acts as a majority shareholder in most of the cases, such violations pose the greatest danger for minority shareholders. Though, our regular surveys testify that such tendency is gradually declining and the Association plays its important part in such developments executing

systematic communication with the shareholders aimed at improving their awareness about their rights and protecting such rights, including their judicial administration.

**5.2 Who has authority to exercise the state's right as a shareholder (government ministry, privatisation agency, other)?**

The authorities of the state as a shareholder are exercised by state governing bodies (mostly government ministries) authorized by the Government of the Republic of Armenia. The authorities of communities are exercised by local self-governing bodies.

The Ministry of Industry and trade of the Republic of Armenia exercise such authorities in most of the companies. After the government has resolved to privatize state shares of any company, such authorities are transferred to Ministry of State Property Administration.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 12.

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

As per Article 12 of the Law of the Republic of Armenia on Joint Stock Companies, the state has the right to transfer its authorities to one or more state governing bodies. However, pursuant to Article 76 of the Law a shareholder is entitled to participate at a meeting in person or through its authorized representative, at the same time in case of the presence of several powers of attorney, the most recent is deemed valid. Besides, such case causes difficulties in the course of company's administration.

**5.3 Does the state maintain a publicly available register listing the stakes of the state in joint stock companies?**

The law does not stipulate a provision for the state to keep a publicly available register listing the stakes of the state in joint stock companies. In practice, such register has not been kept also.

The register of companies, where the state has its stake, is kept in accordance with the general procedure (the register of a company is not publicly available. JS Companies, which have the Accountable Issuers status, including those with the stakes of the state (a Joint Stock Company having more than 50 shareholders and the net assets in the amount stipulated by the Committee for Securities) must keep their registers by special-purpose bodies (the Central Depository). The rest of the companies should either keep their registers on their own or with the assistance of special-purpose bodies.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 51.

**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 privatising formerly state owned enterprises?**

There exist such companies, where the state has become a minority shareholder as a result of investment privatization in such companies.

**5.5 Have bankrupt companies been re-nationalised? What was the procedure? Please provide examples.**

No cases of nationalization of bankrupt companies have occurred in Armenia.

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

The representatives of the state may have a seat on the supervisory board in accordance with the general procedure as appointed or elected members. The representatives of the state are mostly civil servants, though it is not a mandatory requirement.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 85.

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

**5.7 Do state representatives participate in shareholder meetings?**

In the event the state is a shareholder, its representative shall participate at general shareholder meetings.

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

The Law of the Republic of Armenia on Joint Stock Companies – Article 76.

**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.**

See paragraphs 4.8 and 5.1.

**5.9 Do state shares have a special status (in regard to voting rights, share in profit, over major strategic company decisions)?**

No, they don't.

**5.10 Does the legal framework provide for Golden shares?**

No, it does not.

**5.11 Does the state have the power to veto decision by the majority of shareholders? Please specify.**

No, it does not have such a right.

**5.12 What are in your opinion the concerns of the state as a shareholder (i.e. strategic, social, financial, public service)?**

Unlike other shareholders, the state seeks to get rid of the shares it owes, offering them for privatization. If by the way of alienation of the shares of some companies in operation (the value of such shares is relatively high) the state may become interested in a financial task, in other cases the state is interested in the presence of industrial investments.

In our opinion, the state as a shareholder in each concrete case is interested in a set of issues related to reaching social, financial and budget objectives.

**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?**

No, they don't benefit from it.

**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.**

In such OJS Companies as "Nairit", "Dohagorts" and "Kanaz" the state has voted in favor of the decisions to establish joint ventures with foreign investors by investing companies' fixed assets. The associated companies have remained responsible for repayment of the state debts. The purpose of such actions was to renew these plants' operation, which is a social and political task.

**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 takeovers? Are there rules governing the substantial acquisition of shares?**

The procedure for mergers, acquisitions and takeovers of companies is governed by Articles 19, 20 and 7 of the Law of the Republic of Armenia on Joint Stock Companies. The disclosure of information about sizeable acquisitions is governed by the Law on Securities Market Regulation – Articles 34 and 35 and also by special provisions of the Law of the Republic of Armenia on Economic Competition Protection.

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

Sometimes the procedure is violated during such activity, but the influence of it is insignificant.

### **6.2 Are extraordinary transactions such as mergers and the sale of substantial portions of corporate assets clearly disclosed?**

Such information is disclosed only in cases of Accountable Issuers activity and is provided in their regular reports. In other cases the disclosure of such information is not mandatory.

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

The Law of the Republic of Armenia on Securities Market Regulation – Article 31.

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

Insufficient transparency in the course of a company activity often results in abuse on part of the management in the detriment of the shareholders.

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

No significant tendencies to use such takeover devices have been observed.

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

In the occasions stipulated by the laws, the Committee of the Republic of Armenia for Economic Competition Protection has the right to take limiting measures, should the principles of competition be violated as a result of such changes of corporate control or features of unfair competition are observed in the course of such activity.

**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?**

No limitations have been stipulated for such activity.

**6.6 What are the restrictions to insider trading? Has there been any cases involving insider trading? What actions have been taken?**

The structure of share capital in Armenia results in the situation, when most of the trading is performed between insiders.

**6.7 How does domestic law define an “interested” or “related” party?**

The following parties are defined as interested in performing of a transaction:

- Members of the Board of Directors;
- A person having a position in other administrative bodies of the company;
- A shareholder jointly owing with his / her affiliated persons(s) 20 or more percent of company's voting shares.

or provided that such persons, their spouse, parents, children, brothers, sisters and all persons affiliated with them:

- act as a party to such transaction or a representative / intermediate;
- owe 20 or more percent of the shares of a legal entity being a party to such transaction or hold a position at administrative bodies of such legal entity.

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

Transactions with related parties shall be approved by the Board of Directors under following conditions:

- The amount of such transaction is less than 2% of company's assets;
- Less than 2% of company's assets are subject to such transaction.

If such conditions are not complied with, then the decision shall be taken by the general shareholder meeting (see Article 64 of the Law on Joint Stock Companies).

**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?**

The claim to declare a transaction invalid shall be presented only by a Joint Stock Company. In case such claimed transaction has not been enforced yet, then it will suffice to declare it invalid. Otherwise, a liability arises to remedy any losses caused. Such losses should be remedied to the company by the persons, who have used their ability to influence the process of transaction's conducting. In the event several persons are liable to the company, then their liability with regard to the company shall be deemed joint.

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

Persons listed in para. 6.7.

**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?**

In accordance with the surveys of the Association of Shareholders, including consideration of shareholders' claims, the following most frequent shareholder right violations have been discovered:

The violation of shareholder right to obtain information;

The violation of shareholder right to participate in company's administration. Specifically, some shareholders have not been notified or have been inappropriately notified about summoning of the general shareholder meeting, or general shareholder meeting has not been summoned at all;

The violation of the procedure to keep the register.

**7.2 Have companies been sanctioned for shareholder right violation?**

No court sanctions have ever been imposed.

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

The Association of Shareholders has been acting for 2 years, since April 2000. For this reason the statistics for the past five years is not available.

Hereunder the cases are listed, which the Association has brought to courts for the past 2 years.

#### OJSC “Konnekt” and others

In this case the General Prosecutor Office of the Republic of Armenia applied to court with a suit for recovering damage incurred by the state and resulted from alleged investment privatization “performed in an inappropriate manner” of 10% of additional issue shares bought by company’s employees (about 1,400 persons) in 1997, amounting to company’s retained income as of 1996.

Initially, the lawsuit had been brought against the management of the joint stock company. However, after the appropriate petition was filed, the shareholders of the company were declared a party to litigation, and the Association was recognized as a co-litigant. Substantiated legal objections regarding the subject matter of the suit had been drawn up and produced to the court, and also the necessary explanations were given during some court’s hearings. As a result, the General Prosecutor Office withdrew this suit being aware of the inconsistency of the charges brought against the company. Moreover, the counseling held with the members of various economic courts of first instance and with the representatives of the General Prosecutor Office resulted both in their withdrawal, in most of the cases, similar lawsuits from court proceedings and refrain from bringing similar new law suits.

*The Association finds this case important not only from the point of view of necessity to provide for supremacy of law (i.e. recognition ownership of said 10% of the shares as legal) but also because the General Prosecutor Office had been preparing 42 similar cases to be brought to court concerning tens of thousands of minority shareholders.*

#### CJSC “Galaktika”

In this case the Association is a claimant and acts on behalf of the number shareholders (members of the Association) of the said CJSC. It has brought a lawsuit on compulsory holding of annual general shareholder meetings. Taking into account CJSC management evasion to hold said meetings, the Association challenges the legitimacy of acting administrative bodies to be elected at a general meeting (the Board of Directors and the General Director) and the results of company’s activity for the period mentioned.

However, the management of CJSC, who has been openly ignoring shareholders’ rights so far, has recently turned to the Association with the request to provide necessary assistance to hold annual general meetings and correspondingly to bring company’s activity into compliance with the requirements of law.

At the moment, the Association is involved into appropriate negotiations and does not exclude the possibility to reach a “Reconciliation Agreement” at the next court session and respectively to provide necessary procedural and consulting assistance.

### **7.4 What are the sanctions provided by the legal framework?**

Pursuant to the Civil Code of the Republic of Armenia, in case of numerous or gross violations of the normative acts, a Joint Stock Company may undergo liquidation procedure in court.

In compliance with the Law of the Republic of Armenia on Securities Market Regulation, the following sanctions shall be stipulated:

Fines,

Orders to eliminate violation occurred and avoid such violations in the future.

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

The Civil Code – Article 67;  
The Law of the Republic of Armenia on Securities Market Regulation – Articles 137, 138 and 133.

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

No such court orders have been adopted in practice.

**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?**

The shareholders may turn to the Committee for Securities of the Republic of Armenia.  
As per Article 121 of the Law of the Republic of Armenia on Securities Market Regulation, the Committee for Securities, with the aim to protect the rights of shareholders, shall be entitled:

- to arrange hearings of cases and to adopt individual decisions for each of such cases;
- to inspect companies being within the scope of its control.

There is also an arbitration procedure existing.

**7.6 What are the procedures for shareholders to seek legal redress? Is this process long? Is this process costly?**

Any interested person may bring a respective lawsuit to court in order to protect his / her rights. Such court, on its part, and in the event any legal grounds stipulated by law to dismiss such lawsuit are absent, files such lawsuit or application within 3 days term. The hearings, as a rule, have to be held within one month. But very often consideration of the lawsuit in court lasts for months because of such court's workload. The term of 2 months is envisaged for the enforcement of court's order. This process could also last for a long time.

The state duty for lawsuit consideration is as follows:

- In the first instance court – from 1,000 drams to 4,000 drams or in the amount of 2% of the value of lawsuit;
- In the Court of Appeal – from 10,000 drams to 20,000 drams or in the amount of 3% of the value of lawsuit, but not more than 1,000 base duties.

The court costs include the amounts related to the lawsuit consideration, which should be paid to an expert, for calling a witness, for examination of evidences in the field and other actions related to consideration of the lawsuit.

**7.7 Are class action lawsuits permitted? Have any class action lawsuits been filed?**

The class action lawsuits are stipulated in the legislation.  
Such lawsuits have been filed by the Association (see para. 7.3).

**8. Shareholder awareness**

**8.1 Are shareholders sufficiently informed about their rights?**

No, they are not.

**8.2 To what extent do shareholders attend shareholder meetings and exercise their voting right?**

Minority shareholders participation at general meetings is low subject to violation of notification rules and lack of shareholders awareness of their rights.

**8.3 Have shareholder associations been created? If so, are they influential?**

With the aim to unite Armenia JS Companies' shareholders (and also the actors of other businesses), to protect and realize their legal rights and interests, to assist free market development and to provide for supremacy of law in corporate management field, a non-profit body, "The Association of Shareholders", has been established (registered by the order of the Minister of Justice of the Republic of Armenia No. 899 dated July 27, 2000, registration number 1639).

Precondition to establish such body was the necessity most of the body's incorporators have faced. Being members of the Boards of Directors of joint stock companies, they have been involved directly or indirectly into the corporate management and faced day-to-day need to improve corporate behavior of the participants of such activity, including the task to eliminate low level of shareholders and persons appointed to companies' administrative bodies awareness about their rights.

The Association's executives have been establishing close ties with all interested parties being aware of the importance and necessity of more efficient measures and organized approach, and also the urgency of strengthening the Association's role as a guarantor, which provides for observance of shareholders' legal rights, and implementation of objective and transparent process of corporate management.

**8.4 Do voluntary codes of corporate governance practice encourage shareholders to exercise their rights?**

The Corporate Management Code has not been adopted in Armenia to date.

**8.5 Do shareholders pool their interests and/or votes (for example to elect board members)?**

They do not. Though, the Association has been taken steps to introduce such “culture of plotting”.

**8.6 Are institutional investors active in the corporate governance field? If not, why? Mention some cases.**

At present Armenia does not have a law governing collective investment institutions. Naturally, institutional investors, practically, have not been active on the market.

**8.7 What are the most frequent shareholder right violations?**

In accordance with the data of surveys performed by the Association of Shareholders, the most frequent violations are as follows:

Violation of shareholder right to obtain information;

Violation of shareholders' rights to participate in company's administration. Specifically, shareholders have not been notified or have been inappropriately notified about summoning of general shareholder meeting, or general shareholder meeting has not been summoned at all;

Violation of the procedure for keeping register.

**8.8 What are from your point of view priority measures to improve shareholder rights?**

We are of the opinion, that the best way to improve observance of shareholders' rights is to raise shareholders' awareness. The Association of Shareholders puts every effort to tackle this issue.