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CORPORATE GOVERNANCE MANUAL

**A Practical Guide for Joint Stock Companies
in the Republic of Armenia**



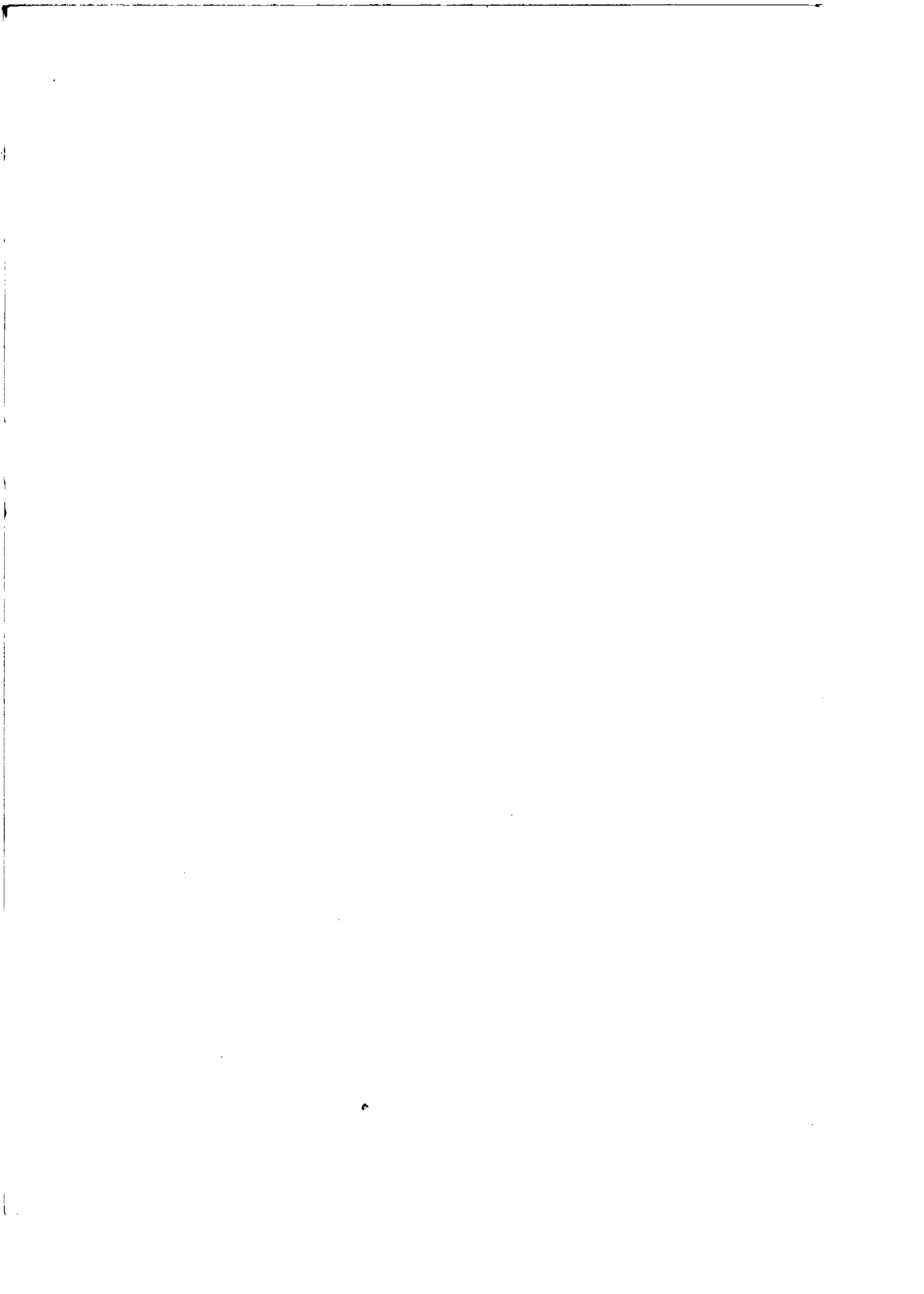
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**A Practical Guide for
Joint Stock Companies
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First edition

ISBN 99930-56-13-8

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A Member of the World Bank Group

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Any views of this Manual are those of the authors and do not necessarily represent the views of 1) the Dutch Government, 2) the World Bank Group and 3) the International Finance Corporation.

Throughout the Manual, there are intermittent references to both genders. Although the more frequent reference is male, it should be considered to include the female gender. IFC considers the English version of the Manual to be the official version. The English version prevails in the case of any ambiguity in terminology between the Armenian, Russian and English versions of the Manual.

There are inconsistencies between the Civil Code and the Law on Joint Stock Companies of the Republic of Armenia. In the case of inconsistencies, the Civil Code prevails according to Article 3 of the Law on the Enforcement of the Civil Code and Chapter 1, Article 1 of the Civil Code. The Manual refers to the provisions of the Civil Code in the case that there are inconsistencies with the Law on Joint Stock Companies and other legislative acts.

Published in the Republic of Armenia, June 2000.

IFC Armenia Corporate Governance Project

An electronic version of the Manual is available.

Prefaces

(Translated from Armenian)

Prof. Dr. Vladimir R. Nazaryan

Head of the Legal Division of the National Assembly of the Republic of Armenia

Handbook for Shareholders

According to Article 1 of the Civil Code of the Republic of Armenia, "the participants in the relations regulated by the civil legislation and other legal acts are physical persons (hereinafter - citizens), legal persons and also the Republic of Armenia and communes." Seen in the context of the Civil Code, it is obvious that legal entities, and commercial organizations in particular, are the most actively involved parties in market transactions. Chapter 5 of the Civil Code contains 78 articles on legal entities: the definition and description of organizational forms, the procedures of establishment, registration, and liquidation and reorganization (merger, accession, spin-off, and transformation) of a company.

According to the Civil Code, new laws can be adopted such as laws on "Limited Liability Companies" (Article 95), "Joint Stock Companies" (Article 106), "Cooperatives" (Article 117), "Societal Amalgamations" (Article 122), "Funds" (Article 123), "Unions of Legal Persons" (Article 125) and "State Registration of Legal Entities" (Article 56). As of today, only one law has been adopted but it contains many clauses that contradict the Civil Code.

The establishment of a legal framework is necessary for the definition and transfer of property rights in a market economy. As such, it is important to understand and enforce legislation that regulates markets. In this respect, I welcome the Corporate Governance Manual of the International Finance Corporation that, in my opinion, will become a guide for Joint Stock Companies in the Republic of Armenia.

Based on the clauses of the Civil Code and the Law on Joint Stock Companies of the Republic of Armenia, the authors have succeeded in creating a practical encyclopaedia on Joint Stock Companies. The authors have analyzed the concept of a Joint Stock Company, the procedures of its establishment, its charter, its securities and the rights of shareholders. The Manual elaborates on the management structure of a Joint Stock Company and contains chapters on the General Meeting of Shareholders, the Board of Directors, the Executive Director and the Management Team, the Control Committee (Controller), the independent external audit, branches and representative offices, subsidiaries and dependent companies, financial management, bankruptcy, reorganization and liquidation as well as documents of a Joint Stock Company.

The publication of this Manual will not only contribute greatly to the clarification of the legal framework regulating Joint Stock Companies but will also serve as a practical guide on how to establish, reorganize and liquidate a Joint Stock Company. It contains answers to virtually all questions related to the establishment and operations of a Joint Stock Company. In addition, the Manual contains comprehensive information on corporate governance so that readers may have a good understanding of various legal entities and how these can be established under Rule of Law principles.

Corporation law is a new phenomenon in the legal framework of the Republic of Armenia. Within this area, the Manual can be a source for further valuable research. We are welcoming the step made by IFC and hope that the collaboration between IFC and the Republic of Armenia will result in the production of other manuals and publications vital for the economic development of Armenia.

Prof. Dr. Vladimir R. Nazaryan

Dear Reader,

The securities market will play a significant role in the economy of the Republic of Armenia. There is still much to be done to solve the problems related to the development of a securities market. If we overcome the problems related to the establishment of a transparent securities market, we will increase the confidence of investors.

In this connection, IFC's initiative to draft and publish a Corporate Governance Manual is highly praiseworthy. The authors of the Manual have accomplished an important and voluminous task aimed at the clarification of legislation in Armenia for shareholders and persons eligible to participate in the management of Joint Stock Companies. This Manual will certainly prove to be useful for you while acquainting you with the principles of corporate governance.

In our opinion, the Manual is an important contribution to greater information about and understanding of the role and function of the securities market in Armenia.

Dr. Tigran Karapetyan

*Head of Securities Market Inspectorate
Yerevan, Republic of Armenia*

Acknowledgements

This Manual has been written by the IFC Corporate Governance Project in Armenia. The greatest debt of thanks is owed to the Project team of Armenian professionals led by the Dutch Corporate Governance Expert, Dr. Gregory F. Maassen, in their quest for practical, straightforward and clear explanations of the legal grounds, rules and principles of good corporate governance. Each of the team members - Areg Barsegian (Financial Markets and Financial Management), Arman Khachatryan (Privatization and Bankruptcy), Armen Manukov (Armenian Corporate Governance Practices and Legislation), Dr. Davit Karapetyan (Armenian and International Civil Law and Practices) and Arsen Nazaryan (Taxation and Corporate Law) - contributed to the writing of this Manual in the area of his individual expertise and through fierce, exhaustive and endless brainstorming sessions, as well as tedious verification of each statement of this Manual vis-à-vis applicable Armenian laws and regulations. Gregory F. Maassen wrote the text and had editorial responsibility for the English version of the Manual. Narek Harutunyan and Lusine Galstyan translated the English text into Armenian. Davit Karapetyan had editorial responsibility for the Armenian version of the Manual. Esther Demirchyan provided administrative assistance. Svetlana Hovasapyan coordinated public relations. This teamwork would also not have been successful without the persistence and dedication of Karine Sarajyan, Deputy Project Manager. Irina Niederberger, IFC Project Manager, provided guidance and oversight to the development and writing process of the Manual.

IFC extends special gratitude to Prof. Dr. Vladimir R. Nazaryan, Head of the Legal Department of the National Assembly of the Republic of Armenia for editing the final Armenian version of the Manual and his full support and encouragement during the Corporate Governance Project. IFC also thanks Dr. Tigran Karapetyan, Head of the Securities Market Inspectorate and his specialists for their continued cooperation and assistance.

In addition, IFC would like to thank the Institute of East European Law and Russian Studies of the University of Leiden and Prof. Alexander Mohr of the University of Amsterdam, Faculty of Law for their assistance during the drafting process of the Manual. In particular, IFC thanks Prof. Dr. William Simons, Mrs. Corinna Wissels and Dr. Rilka Dragneva for their comprehensive review of this Manual. Thanks are also extended to Prof. Dr. Frans A.J. van den Bosch of the Rotterdam School of Management, Erasmus University for his comments on the Manual and his assistance during the Corporate Governance Project. IFC is also thankful to Janet Katz, legal liaison of the American Bar Association, Central and East European Law Initiative in Armenia and Julie Bergh Penk, Senior Legal Specialist of USAID-Ronco in Armenia for proofreading the Manual and the lawyers of International Legal Consulting in Yerevan for reviewing the legal content and consistency of the Manual.

The IFC team in Armenia would like to thank Edward Nassim (IFC Europe II Director), Dick Ranken (IFC Europe II Country Manager), David Lawrence (IFC Program Manager) and Tom Rader (formerly IFC Armenia Office Head) for the development and support of the Corporate Governance initiative in Armenia. Special gratitude is extended to the team of the IFC Corporate Governance Project in Ukraine, especially to Darrin Hartzler (IFC Project Manager) and Nadia Senyk (IFC Deputy Project Manager), whose 1999 Ukrainian

Corporate Governance Manual served as a guide for the development of the Armenian Manual.

This Manual was produced as part of the IFC's Corporate Governance Project in the Republic of Armenia with the generous support of the Ministry of Economic Affairs of the Netherlands.

The Purpose of this Manual

This Manual focuses on the laws and practices applicable to Joint Stock Companies in the Republic of Armenia. Since many of Armenia's privatized enterprises are organized as Open and Closed Joint Stock Companies, this Manual has been developed to introduce essential concepts of corporate governance to shareholders, directors and managers of privatized enterprises and enterprises that will be privatized in the near future. The Manual has also been written to help government officials, lawyers, judges and others. The Manual takes into account applicable laws and regulations in the Republic of Armenia. The Manual also makes reference to the principles of corporate governance generally accepted by the international business community.

How to Use this Manual

The organization of this Manual is based on a practical approach to corporate governance. The Manual consists of a total of 15 chapters. Each chapter focuses on an important aspect of the Law on Joint Stock Companies and related laws. It is not necessary to read all the chapters at once. Find the topic of your interest in the table of contents of the Manual and the text in the chapter will guide you further. Each chapter makes references to topics that are discussed in other chapters of the Manual.

Many references to the articles of relevant laws are included in the chapters of the Manual. The articles are included to guide and assist you to look up the original text of the laws. Note, however, that Armenian legislation in this area is a work in progress. The Manual is therefore intended to supplement rather than to replace professional legal advice.

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CORPORATE GOVERNANCE AND SECURITIES MARKET REGULATION

The National Assembly of the Republic of Armenia has adopted the Law of the Republic of Armenia on the Regulation of Securities Market (LRSM) which entered into effect from August 1, 2000.

This addition to the Corporate Governance Manual discusses provisions of the LRSM related to Joint Stock Companies (JSCs), management and shareholders of JSCs.

1. Purpose of the LRSM and Definitions

The LRSM specifies procedures for activities of reporting issuers (companies), the publication of statements (reports) and the disclosure of information by managers and large shareholders of the reporting issuer.¹ The purpose of the LRSM is the protection of investors' interests and the ensuring of the transparency of the securities market in Armenia.²

The LRSM defines the concept of "reporting issuers," i.e. the companies that are obliged to follow the requirements of this law. In particular, it states that a company is considered to be a reporting issuer if:³

- any of its securities is registered with a stock exchange, or;
- the company has 50 or more owners of company's securities and the company's net assets exceed the threshold set by the Securities Commission (Commission) of the RA.⁴

JSCs that are listed on an Armenian stock exchange or companies that have 50 or more "owners of securities" and net assets exceeding the threshold specified by the Commission are subject to the regulations of the LRSM. In particular, a company has to file a registration statement with the Commission within 60 days after the number of registered owners of securities equals or exceeds 50 and the amount of net assets exceeds the threshold set by the Commission.⁵ At the same time, the LRSM allows for the reverse procedure, i.e. the termination of the registration. It can be done if the number of owners of securities of the company becomes less than 50 or the amount of net assets decreases below the threshold set by the Commission.⁶

¹ LRSM, Chapter 1, Article 1, Clause 1, Section B.

² LRSM, Chapter 1, Article 2, Clause 1, Sections A and B.

³ LRSM, Chapter 1, Article 4, Clause 1.

⁴ At the moment of the publication of this Manual, the Commission has not specified the threshold for the company's net assets.

⁵ LRSM, Chapter 3, Article 23, Clause 1.

⁶ LRSM, Chapter 3, Article 24, Clause 1.

2. Disclosure of Information by the Company

A reporting issuer is subject to disclosure requirements of the LRSM when the company:

- issues shares and other securities to the public;⁷
- is required to submit periodic reports to the Commission, its shareholders and the general public.⁸

2.1 Prospectus

To issue shares and other securities to the public, a company must prepare a prospectus and must submit to the Commission a securities registration statement. The LRSM regulates in detail both the content of these documents and the procedure for their submission and registration. In particular, the LRSM specifies that a prospectus must include information with respect to:⁹

- the issuer (the company), its governance/management structure, managers, directors and “significant owners of securities;”¹⁰
- securities previously issued by the issuer;
- financial situation of the issuer;
- activities of the issuer;
- securities to be issued.

2.2 Registration Statement

The LRSM specifies that a securities registration statement must include information on:¹¹

- names and compensation of members of the Board of Directors, the Executive Director, the Chief Accountant, members of the Management Team of the company and “significant owners of shares;”
- officials of the company whose annual compensation exceeds 10,000 times the minimum monthly wage (MMW);¹²
- transaction(s) entered into by the issuer with a value that exceeds 10,000 times the MMW;
- stock options;
- balance sheets, profit and loss statements, statements of changes in the capital for the last 3 years audited by an independent external auditor;
- quarterly statements (reports) required by the Commission.

The Company is also required to register any “material changes”¹³ to the prospectus and the registration statement.¹⁴

⁷ See LRSM, Chapter 2, Articles 5, 8 – 11.

⁸ See LRSM, Chapter 4, Articles 31 – 32.

⁹ LRSM, Chapter 2, Article 10, Clause 1.

¹⁰ This refers to the owners of 10 percent or more of the shares of the company. See LRSM, Chapter 1, Article 4, Clause 1.

¹¹ LRSM, Chapter 3, Article 20, Clause 2.

¹² See the Law of the Republic of Armenia on Minimum Monthly Wage, Article 3.

¹³ LRSM, Chapter 1, Article 4, Clause 1.

¹⁴ LRSM, Chapter 2, Article 10, Clause 4; LRSM, Chapter 2, Article 11, Clause 3.

2.3 Periodic Reports

Reporting issuers are required to disclose financial information to the Commission, the company's shareholders and the general public. Every reporting issuer must submit to the Commission:¹⁵

- all documents and information as specified by the Commission which are required for registration statements and for keeping information accurate;
- annual financial statement (verified by an independent external auditor);
- quarterly financial statements.

2.4 Publication of Information

The LRSM specifies how a company must disclose information to:

- the shareholders of the company;
- the general public;
- stock exchanges, when listed.

Companies with less than 500 shareholders must disclose information, documents and statements to **shareholders** of the company in a manner and procedure specified by the Commission.¹⁶

Companies with 500 and more shareholders are obliged to publish information, documents and statements to **the general public** in a manner and procedure specified by the Commission.¹⁷

If the reporting issuer is listed on a stock exchange, it must provide information, documents and statements also to the stock exchange regardless the number of shareholders of the company.¹⁸

3. Disclosure of Information by Management and Shareholders

The LRSM sets disclosure requirements for the management and "owners of a large number of securities" of a company.¹⁹ The following persons must file a statement with the Commission:²⁰

- any person who, as a result of one or several transactions, becomes "the owner of a large number of securities" of a reporting issuer;
- members of the Board of Directors, the Executive Director, members of the Management Team, the Control Committee or other officials of a reporting issuer (such as directors of branches and representative offices).

The statement must include:²¹

- information about the person's identity, occupation, position and citizenship;

¹⁵ LRSM, Chapter 4, Article 31, Clauses 1 and 2.

¹⁶ LRSM, Chapter 4, Article 31, Clause 3.

¹⁷ LRSM, Chapter 4, Article 31, Clause 4.

¹⁸ LRSM, Chapter 4, Article 31, Clause 2.

¹⁹ This refers to owners of 20 or more percent of the securities of the company. See LRSM, Chapter 1, Article 4, Clause 1.

²⁰ LRSM, Chapter 4, Article 36, Clause 1.

²¹ LRSM, Chapter 4, Article 36, Clause 1.

- the number of securities of the company of the same class owned by the person.

Within 15 days after the end of each month, these persons must file a statement with the Commission when any changes have occurred during the reporting month. If there is no statement filed, it is assumed that no changes have occurred.²²

4. Duties and Liabilities of the Management of the Company

4.1 Duties of Managers

The LRSM specifies duties of the managers of reporting issuers.²³ It provides that managers of the company are obliged to act in good faith and with reasonable care as if they are managing their own business, as well as by making such decisions that, to the best of their opinion, are in the interests of the company and its shareholders.²⁴

4.2 Administrative Liability

The LRSM imposes on the managers of the Company additional administrative and civil liability. The LRSM provides the possibility for the Commission to impose administrative sanctions on the managers of the company. It can take the form of a warning or a fine.²⁵

4.3 Civil Liability

Managers of the company who sign the prospectus, the registration statement of the company's securities, financial reports and other documents of the company that have been submitted to the Commission and disclosed to the general public are subject to civil liability for distorting or omitting any material information contained in these documents.²⁶ The LRSM also provides that the managers of a reporting issuer who voted for any decision that causes losses to the company or who advised the company in violation of duties specified by Article 40 of the LRSM and caused losses to the issuer are jointly and severally liable to the company.²⁷

It is important to note that any manager who directly or indirectly supervises any other manager who is subject to civil liability is jointly and severally liable with that manager for any losses caused by the supervised manager unless the supervising manager proves in the Court that he acted in good faith, that he was not aware of the violation and that he immediately informed the Commission about the violation.²⁸ In these cases, the company and any shareholder of the company has the right to file a claim against the managers of the company to recover losses caused to the company.²⁹

²² LRSM, Chapter 4, Article 36, Clause 2.

²³ This refers to members of the Board of Directors, the Executive Director, members of the Management Team, the Control Committee and other officials of the company (such as directors of branches and representative offices). See LRSM, Chapter 4, Article 40.

²⁴ LRSM, Chapter 4, Article 40.

²⁵ LRSM, Chapter 14, Articles 137 and 138.

²⁶ LRSM, Chapter 14, Article 142, Clause 1.

²⁷ LRSM, Chapter 14, Article 143, Clause 1.

²⁸ LRSM, Chapter 14, Article 146, Clause 1.

²⁹ LRSM, Chapter 14, Article 143, Clause 1.

INTRODUCTION

1.1 About IFC's Technical Assistance Program

The International Finance Corporation (IFC) is a member of the World Bank Group that is also composed of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the Multilateral Investment Guarantee Agency (MIGA) and the International Center for the Settlement of Investment Disputes (ICSID). IFC was established in 1956 to encourage private sector activity in developing countries. It does this primarily through three types of activities: financing private sector projects, helping Companies in the developing world to mobilize financing in international financial markets and providing advice and technical assistance to Companies and governments.

IFC advises Companies in developing countries on a wide variety of matters. This includes giving advice on the formulation of business plans, the identification of markets, products and technologies and the identification of financial and technical partners. IFC also provides advisory services through its Technical Assistance Program. IFC sees this Program as an important strategy for promoting private sector development in developing countries. The objectives of the Program are to promote a strong enabling environment for effective private sector investment and to support specific investments with appropriate forms of assistance. IFC also seeks to encourage best practices with regard to environmental and social impacts through its Technical Assistance Program and seeks to develop managerial and technical capacities with both private Companies and governmental agencies.

1.2 Background of the Technical Assistance Project in the Republic of Armenia

Since 1995, the privatization process in the Republic of Armenia has transformed state-owned Companies into Joint Stock Companies. According to the State Register of the Republic of Armenia,¹ a total of 2,854 Closed Joint Stock Companies (including 1,268 state-owned Closed Joint Stock Companies) and 1,184 Open Joint Stock Companies were officially registered in the Republic of Armenia by April 1, 2000. Tens of thousands of Armenians are currently holding shares in privatized Companies, fueling public interest in the management and governance of Companies. Within the scope of its economic reform program, the National Assembly of the Republic of Armenia has adopted a new Civil Code in 1998 that takes important steps to establish the necessary legal framework for good corpo-

¹ The "State Register" is currently the State agency that registers legal entities and related documentation in the Republic of Armenia.

rate governance.² In addition to the new Civil Code, working groups of the Armenian Government and the National Assembly are revising the 1996 Law on Joint Stock Companies and other relevant legislation.

1.3 Objectives of the Technical Assistance Project in the Republic of Armenia

The Joint Stock Company is new to most market participants in Armenia. This legal form requires cooperation between the shareholders, the Board of Directors and the managers of Joint Stock Companies. A Joint Stock Company has many rights, obligations and advantages that are not always understood by market participants. IFC's Corporate Governance Project aims to develop understanding on the part of shareholders, directors, managers and government officials of relevant laws and their underlying concepts to improve corporate governance practices of and legislation on Joint Stock Companies in Armenia.

1.4 What is Corporate Governance

A state-owned Company undergoes many changes in its financial and organizational structure after it has been registered as a privately owned Joint Stock Company. According to Armenian law, a Joint Stock Company must have: 1) a General Meeting of Shareholders, 2) a Control Committee (or a Controller), and 3) an Executive Director (or a Management Team). The Company must also have a Board of Directors when the Company has more than 50 shareholders. The field of corporate governance concentrates on the working relationships between these working bodies of Joint Stock Companies.³ According to internationally accepted standards, an effective corporate governance system is built upon the following principles:

- a Joint Stock Company should have a team of **managers** that is responsible for the daily operations of the Company;
- a Joint Stock Company should have a professional **Board of Directors** that reports to the **shareholders** of the Company and that approves the

² The new Civil Code (CC) was adopted by the National Assembly of the Republic of Armenia in third reading on May 5, 1998, and signed by the President on June 28, 1998. The Code went into effect on January 1, 1999.

³ The World Bank defines corporate governance as follows: "Corporate governance refers to that blend of law, regulation and appropriate voluntary private sector practices which enable the Company to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole. The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and, directors capable of independently approving the Company's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary."

Company's strategy, its major business plans and decisions independently from the interests of the management of the Company;

- financial information of a Joint Stock Company should be **transparent** and must be **disclosed** to the shareholders of the Company. This relates to financial information such as a balance sheet and a statement of profits and losses of the Company. A Joint Stock Company should also be open to its shareholders on operational matters such as the Company's market share of certain products and the projected growth rates for sales and earnings of the Company in the next year;
- management of a Joint Stock Company should **report** information to the shareholders and the Board of Directors of the Company. The Board of Directors should also report to the shareholders of the Company. This is what is called the **accountability** of a Company. This means that the Company must be **open** and must **provide timely and reliable information** to its shareholders.

Corporate governance also refers to laws and regulations that define the rights and duties of the shareholders, the Board of Directors and the management of Joint Stock Companies. An example is the Law on Joint Stock Companies of the Republic of Armenia. This law defines the responsibilities of directors and management to serve the interests of the Company and its shareholders.

1.5 The Importance of Corporate Governance

An effective corporate governance system is important to Armenian Joint Stock Companies because it helps Companies to understand how the rights and interests of shareholders, directors, management and employees must be respected and protected. In addition, corporate governance is important because it:

- increases the understanding of shareholders, directors and management in operating and governing a Joint Stock Company effectively and efficiently;
- helps management of Joint Stock Companies in complying with laws and regulations in the Republic of Armenia;
- assists management of Joint Stock Companies in avoiding interventions from the government for failing to recognize the rights and interests of shareholders, employees and other stakeholders;
- supports Joint Stock Companies in attracting domestic and foreign investments. An effective corporate governance system ensures that relevant financial and operational information is disclosed. This gives confidence to investors that the Company is managed and directed in a professional manner;
- facilitates economic development in the Republic of Armenia and assists the government to comply with internationally accepted regulatory and economic standards.

2: LEGAL ENTITIES AND COMMERCIAL ORGANIZATIONS

Following the breakup of the Soviet Union, the Republic of Armenia inherited an economy that was affected by the collapse of the central planning system and the disruption of traditional trading arrangements. Against the background of economic difficulties, the Armenian Government introduced a comprehensive reform and stabilization program. This program relied on a combination of tight financial policies, price liberalization, privatization, tax reform, and liberalization of the currency exchange and trade system to stimulate the private sector in the Republic of Armenia.

The privatization of state-owned Companies started in 1992. In this year, the Parliament adopted the "Law on Privatization of State Enterprises and Unfinished Construction Sites" and the "Law on Enterprises and Entrepreneurial Activity." These laws can be seen as the cornerstones of the initial privatization process in the Republic of Armenia. An important step forward was taken by the adoption of a new "Law on Privatization of State Property", adopted on 17 December 1997. The adoption of a new market-oriented Civil Code in May 1998, which replaced the Soviet-era Civil Code and the first generation of post-Soviet civil legislation, further enhanced privatization and legal reform policy. The new Civil Code and the secondary legislation, upon which it is based, have established the fundamental principles of the development of Armenia's current civil and commercial laws, creating a framework that regulates and bolsters Armenia's market economy. Chapter 5 of the Civil Code on legal entities and the 1996 Law on Joint Stock Companies in particular regulate the position and functioning of economic entities in the Republic of Armenia.

2.1 Commercial and Non-commercial Organizations

The privatization process and the systematic reform of civil law have resulted in the development of new forms of commercial organizations in the Republic of Armenia. The Civil Code defines Companies and partnerships as legal entities. A legal entity is an organization that: 1) has ownership of its property that is separate from that of its participants or shareholders, and 2) is liable for its obligations with this property. This means that a legal entity has its own rights, obligations and liabilities.⁴ A Joint Stock Company is an example of a legal entity. The Civil Code distinguishes two types of legal entities in the Republic of Armenia:⁵

- **Commercial Organizations:** This type of legal entity may be incorporated as Full and Limited Partnerships, Limited Liability Companies,

⁴ Civil Code (CC), Chapter 5, Article 50, Clause 1.

⁵ CC, Chapter 5, Article 51.

Companies with Supplementary Liability, Cooperatives⁶ and Open and Closed Joint Stock Companies.⁷

- **Non-commercial Organizations:** Non-commercial organizations may be incorporated as Societal Amalgamations, Funds, Cooperatives, Unions of Legal Entities and other legal entities provided by law in the Republic of Armenia.⁸

*Figure 2.1
Legal Entities in the Republic of Armenia*

L e g a l E n t i t i e s

Commercial Organizations

- Full Partnerships;
- Limited Partnerships;
- Limited Liability Companies;
- Companies with Supplementary Liability;
- Open and Closed Joint Stock Companies;
- Cooperatives.

Non-commercial Organizations

- Societal Amalgamations;
- Cooperatives;
- Funds;
- Unions of Legal Entities;
- other legal entities provided by laws in the Republic of Armenia.

2.2 Full Partnerships

A Full Partnership is one whose participants (general partners), in accordance with the Charter, are conducting entrepreneurial activity in the name of the Partnership and whose partners bear liability for its obligations with the property belonging to them.⁹

A Full Partnership is a legal entity that represents an association of two or more participants (general partners) who act as owners of the Company. The partners are jointly and severally liable with all their property for the obligations of the Partnership. This means

⁶ Depending upon the nature of activity, Cooperatives may be commercial or non-commercial organizations. See also CC, Chapter 5, Article 51, Clause 3.

⁷ CC, Chapter 5, Article 72, Clauses 2 and 3.

⁸ CC, Chapter 5, Article 51; CC, Chapter 5, Articles 122-127. Since this Manual focuses on commercial organizations, it is beyond the scope of this Manual to describe non-commercial organizations in more detail.

⁹ CC, Chapter 5, Articles 77-89. The definitions of legal entities used in this chapter are the definitions used in the English translation of the Civil Code or are based on these definitions.

that the liabilities of the partners go beyond the amount of the general partners' investment in the capital of the Partnership. A person may be a general partner only in one (1) Full Partnership.¹⁰ A Full Partnership is governed by a General Meeting of Partners. A Full Partnership does not issue shares. There are no limitations with respect to the number of partners a Full Partnership can have. A total of 1,736 Full Partnerships were registered in the Republic of Armenia as of April 1, 2000.

2.3 Limited Partnerships

A Limited Partnership is a Partnership in which, along with participants conducting entrepreneurial activity in the name of the Partnership and being liable for the obligations of the Partnership with their property (general partners), there are one or more contributor-participants (limited partners) who bear the risk of losses connected with the activity of the Partnership within the limits of the amounts of contributions made by them and who do not take part in the management of the Partnership.¹¹

A Limited Partnership is to a large extent similar to a Full Partnership. It is a legal entity that represents an association of two or more participants who act as owners or contributor participants. The difference between a Full and a Limited Partnership mainly lies in the liability of the partners of a Limited Partnership. A Full Partnership has only one (1) class of participants who are jointly and severally liable with all their property for the obligations of the Partnership. A Limited Partnership has two types of partners. First, it has general partners who are in charge of the daily operations of the firm. These general partners are liable for the obligations of the Partnership with all their property. A Limited Partnership also has one or more "contributor participants" or "limited partners." These limited partners do not take part in the conduct of the daily operations of the Company. They are only liable to the extent of their contributions to the capital of the Partnership. There are no limitations on the number of general and limited partners in a Limited Partnership, but an individual may be a general partner in only one (1) Limited Partnership. A total of 11 Limited Partnerships were registered in the Republic of Armenia as of April 1, 2000.

2.4 Limited Liability Companies

A Limited Liability Company is a Company founded by one or several persons and whose charter capital is divided into ownership shares of amounts determined by the Charter. The participants in a Limited Liability Company are not liable for its obligations; they bear the risk of losses connected with the activity of the Company within the limits of the value of the contributions made by them.¹²

¹⁰ CC, Chapter 5, Article 77, Clause 2.

¹¹ CC, Chapter 5, Articles 90-94.

¹² CC, Chapter 5, Articles 95-104.

Individuals and legal entities can establish and participate in a Limited Liability Company in the Republic of Armenia. Participants can only be held liable for the amount of their investment in the charter capital of the Company. They cannot be held liable with all their property for the obligations of the Company. The “General Meeting of Participants” is the highest body of a Limited Liability Company. During the Meeting, participants can make decisions on important business issues such as the approval of the Company’s annual report and the distribution of profits and losses. The management of a Limited Liability Company has to report to the General Meeting of Participants. Participants of a Limited Liability Company have the opportunity to sell their stake in the charter capital of the Company to third persons outside the Company if the Charter of the Company provides this right. In this case, participants have the right to buy the stake on a priority basis. The Limited Liability Company is the most popular commercial legal entity in the Republic of Armenia. A total of 19,432 Limited Liability Companies were registered as of April 1, 2000.

2.5 Companies with Supplementary Liability

A Company with Supplementary Liability is a Company founded by one or several persons and whose charter capital is divided into ownership shares of amounts determined by the Charter. The participants in such a Company jointly and severally bear subsidiary liability for its obligations with their property in a multiple of the value of their contributions, which multiple is identical for all of them and is determined by the Charter of the Company.¹³

When the assets of the Company are insufficient to satisfy creditors’ claims, the shareholders (“participants”) may be jointly and severally liable with their personal property. Unlike in a Full Partnership, the extent of their personal liability is limited to a multiple of their investment that is identical for all shareholders. Supplementary Liability Companies occupy an intermediary position between partnerships with unlimited personal liability, Limited Liability Companies and Joint Stock Companies which exclude personal liability. There were no Companies with Supplementary Liability registered in the Republic of Armenia as of April 1, 2000.

2.6 Open and Closed Joint Stock Companies

◆ See Chapter 3 of this Manual for a description of the characteristics of Joint Stock Companies.

2.7 Cooperatives

A Cooperative is a voluntary union of natural persons and legal entities that has the objective of making a profit or achieving any other goals

¹³ CC, Chapter 5, Article 105.

specified in the Charter. Each participant makes his contribution to the capital of the cooperative.¹⁴

Cooperatives represent a special form of legal entity in the Republic of Armenia. The Civil Code considers Cooperatives to be amalgamations whose activities can be both commercial and non-commercial. The highest body of a Cooperative is the "General Meeting of Members." Property that is owned by a Cooperative is divided into participatory shares of its members in accordance with the Charter of the Cooperative. A total of 6,028 Cooperatives were registered in the Republic of Armenia as of April 1, 2000.

¹⁴ CC, Chapter 5, Articles 117-121.

Table 2.1
A Comparison of Legal Entities (Commercial Organizations) in the Republic of Armenia

	Full Partnership	Limited Partnership	Company with Supplementary Liability	Limited Liability Company	Open Joint Stock Company	Closed Joint Stock Company
Liability for obligations of the legal entity	1) joint and several 2) subsidiary to that of the Company 3) unlimited with all personal property	1) joint and several 2) unlimited liability of general partners 3) liability limited to the amount of investment for limited partners	1) joint and several subsidiary liability to the extent of a multiple (defined by the Charter) of the value of participants' investment	1) limited to the amount of investment of participants	1) limited to the amount of investment of shareholders	1) limited to the amount of investment of shareholders
Control over decision-making	full control by all partners	full control by general partners	through the General Meeting of Participants and/or participation in the executive body	through the General Meeting of Participants and/or participation in the executive body	through the General Meeting of Shareholders (and/or participation in the Board of Directors if created)	through the General Meeting of Shareholders (and/or participation in the Board of Directors if created)
Organizational structure	no formal structure required	no formal structure required	the General Meeting of Participants and the executive body	the General Meeting of Participants and the executive body	the General Meeting of Shareholders, the Control Committee (Controller), the executive body (and a Board of Directors if created)	the General Meeting of Shareholders, the Control Committee (Controller), the executive body (and a Board of Directors if created)
Disclosure (not included the required disclosure of information to the State and State agencies)	disclosure to full partners only	disclosure to full and general partners only	disclosure to participants only	disclosure to participants only	disclosure to shareholders and the general public	disclosure to shareholders only unless the Company issues bonds or other securities to the general public

3. DEFINITION OF A JOINT STOCK COMPANY

A Joint Stock Company is a legal entity that can undertake a broad array of activities without interference from third parties or governmental authorities, provided it acts in accordance with Armenian laws and with the policies established by the shareholders, the Board of Directors, the Executive Director and the Management Team of the Company. According to the Civil Code: “a Joint Stock Company is a Company whose charter capital is divided into a defined number of shares.”¹⁵ Joint Stock Companies have the right to issue shares. The shareholders in such a Company are not liable for the Company’s obligations and only bear the risk of losses connected with the activity of the Company within the limits of their investment in the Company.

3.1 Advantages of Joint Stock Companies

The form of the Joint Stock Company offers the following advantages:

- **attraction of investment.** Companies have greater opportunities to attract investment at lower costs. The management of a Joint Stock Company can attract capital more widely through the offering of shares, corporate bonds and other means of financing. Incorporation as a Joint Stock Company is preferable mainly for Companies with a large number of shareholders. Railroads, airline Companies, power plants and other large Companies are often incorporated as Joint Stock Companies. The scale of these capital-intensive Companies is so large that no individual can provide enough capital to the Company to execute its operations;
- **diversification of risks.** The risks of a Joint Stock Company are spread through capital markets over a large number of shareholders that bear financial risks limited to the amount of money they have invested in the Company. This can be 20,000 Armenian Drams (AMD) but also 2,000,000 AMD or more, depending on the nominal value, the market value and the number of issued shares;
- **limitation of the risks of shareholders.** The risks of shareholders of a Joint Stock Company are limited to the value of their shares. Shareholders are not liable for the legal and financial obligations of a Joint Stock Company. This means that shareholders do not bear any liability for the obligations of the Company with their personal property. This makes the Joint Stock Company an appropriate corporate form when high risks are involved in the investment of money in certain products or services;
- **professional management.** The organizational structure of a Joint Stock Company makes it possible for the ownership and the management of the

¹⁵ CC, Chapter 5, Article 106, Clause 1.

Company to be separated. This gives shareholders wide discretion in employing a team of highly skilled managers who are responsible for the Company's daily operations and a Board of Directors that oversees these managers on behalf of the shareholders of the Company.

- ◆ **Chapter 6 of this Manual explains the opportunity of Joint Stock Companies to attract capital through the issuance of various types and classes of shares and other securities.**

3.2 Requirements and Disadvantages of Joint Stock Companies

It is important to understand that a Joint Stock Company is a complex legal entity that must meet many requirements and additional responsibilities in comparison with other commercial organizations in the Republic of Armenia. For example, a Joint Stock Company requires:

- **shareholders who are willing to invest in the Company.** There are costs associated with searching for and identifying those shareholders. In addition, the Company is confronted with costs when it issues shares;
- **a complex organizational structure** with a General Meeting of Shareholders, a Control Committee (Controller), an Executive Director, a Management Team and often a Board of Directors. There are costs associated with the organization of a General Meeting of Shareholders and the operations of other working bodies of the Company;
- **high minimum charter capital.** The minimum charter capital of an Open Joint Stock Company is 1,000 times the minimum monthly wage in the Republic of Armenia on the date of State registration of the Company. As of June 1, 2000, the minimum charter capital of an Open Joint Stock Company is 1,000,000 AMD;
- **compliance with stringent administrative and disclosure regulations.** An Open Joint Stock Company must publish annual financial reports and a balance sheet each year. An external independent auditor must audit these documents. There are costs associated with such an independent audit.

3.3 Differences Between Open and Closed Joint Stock Companies

Armenian law distinguishes between two types of Joint Stock Companies:

Open Joint Stock Companies: A Joint Stock Company is considered to be "Open" when its shareholders have the right to sell their shares without the consent of other shareholders of the Company. An Open Joint Stock Company has the right to conduct an open sub-

scription of shares.¹⁶ An Open Joint Stock Company can be reregistered into a Closed Joint Stock Company by amending the Charter of the Company and by reducing the number of shareholders.

Closed Joint Stock Companies: Shareholders of a Closed Joint Stock Company can sell their shares to third parties only after they have offered the shares to other shareholders of the Company. A Closed Joint Stock Company does not have the right to conduct an open subscription of shares. The shares of a Closed Joint Stock Company can only be distributed among its founders or other previously determined groups of persons. Its shares cannot be distributed to an unlimited group of shareholders.¹⁷ A Closed Joint Stock Company is only available for Companies with no more than 25 shareholders. If the Company has more than 25 shareholders, it must either reduce the number of shareholders or re-register as an Open Joint Stock Company by amending the Charter of the Company and fulfilling registration requirements within one (1) year.¹⁸

In comparison to the “Open” type, a Closed Joint Stock Company requires less charter capital and allows the Company to omit disclosing information about its financial situation to the general public. A Closed Joint Stock Company is also less flexible than an Open Joint Stock Company because:

- newly issued shares of a Closed Joint Stock Company can be distributed only among its founders or another previously specified group of persons;
- already issued shares of a Closed Joint Stock Company can be transferred only by observing the pre-emptive rights of other shareholders of the Company.

The firm name of a Joint Stock Company must contain the words “Open Joint Stock Company” or “Closed Joint Stock Company.”¹⁹ A total of 2,854 Closed and 1,184 Open Joint Stock Companies were officially registered in the Republic of Armenia as of April 1, 2000.

¹⁶ CC, Chapter 5, Article 107; Law on Joint Stock Companies (LJSC), Chapter 1, Article 8, Clause 2.

¹⁷ CC, Chapter 5, Article 108; LJSC, Chapter 1, Article 8, Clause 3.

¹⁸ LJSC, Chapter 1, Article 8, Clause 3.

¹⁹ CC, Chapter 5, Article 106, Clause 5.

Table 3.1
A Comparison of Open and Closed Joint Stock Companies

Topic	Open Joint Stock Companies	Closed Joint Stock Companies	References
Number of shareholders	No limit	Maximum of 25	LJSC, Chapter 1, Article 8, Clause 3
Minimum charter capital	1,000 times the minimum monthly wage on the date of State registration of the Company (currently 1,000,000 AMD)	100 times the minimum monthly wage on the date of State registration of the Company (currently 100,000 AMD)	LJSC, Chapter 3, Article 33, Clause 3
Issuance of shares	Open subscription. A closed subscription is permitted if the Charter does not restrict the issuance of shares through a closed subscription	The Company can distribute its shares only among founders or other previously specified groups of persons. The Company cannot issue shares through an open subscription and cannot offer its shares to an unlimited number of persons	CC, Chapter 5 Articles 107 and 108; LJSC, Chapter 1, Article 8, Clauses 2 and 3
Registration of shares	Mandatory registration with Securities Market Inspectorate	Is not mandatory	Law on the Circulation of Securities, Article 7; Government Decree # 140, 1999
Shareholder Register	Must be maintained by the Central Depository of Armenia	May be maintained by the Company or by the Central Depository of Armenia	LJSC, Chapter 6, Article 54, Clause 2; Government Decree # 211, 1999
Transferability of shares	No restrictions. The consent of other shareholders is not required	Restricted. The consent of other shareholders is required	CC, Chapter 5, Article 107, Clause 1; CC, Chapter 5, Article 109, Clause 1; LJSC, Chapter 1, Article 8, Clauses 2 and 3
Board of Directors	Is mandatory for a Company with over 50 shareholders	Is not mandatory	CC, Chapter 5, Article 115, Clause 2
Disclosure of information	The Company must publish an annual report, balance sheet and profit and loss statement	The Company must publish an annual report, balance sheet and profit and loss statement if the Company issues bonds or other securities to the general public. Otherwise, there are no disclosure requirements	CC, Chapter 5, Article 107, Clause 2; CC, Chapter 5, Article 108, Clause 3; LJSC, Chapter 13, Article 98
Annual independent audit	Mandatory for the review of information that must be disclosed	Not mandatory unless the Company issues bonds or other securities to the general public	CC, Chapter 5, Article 115, Clause 5; LJSC, Chapter 13, Article 96, Clause 2

3.3.1 Legislation Related to Joint Stock Companies

While all privately owned businesses, regardless of the legal form, are subject to certain fundamental laws, specific laws and governmental decrees specifically regulate the registration and operations of Joint Stock Companies in the Republic of Armenia. The Civil Code and the Law on Joint Stock Companies are particularly of interest to shareholders, directors, managers and employees of Joint Stock Companies. These laws define, among other things, the following aspects of a Joint Stock Company:

- legal status;
- establishment, liquidation and reorganization of the Company;
- charter capital, assets, shares and other securities of the Company;
- payment of dividends to shareholders;
- authority and responsibilities of the General Meeting of Shareholders, the Board of Directors, the Executive Director and the Management Team;
- authority and responsibilities of the Control Committee (Controller);
- disclosure of information.

The Civil Code and the Law on Joint Stock Companies apply to all Joint Stock Companies established in the territory of the Republic of Armenia unless otherwise provided by Armenian legislation.²⁰ Exceptions from this general rule may be found with regard to Companies engaged in banking, investment or insurance.²¹ Another exception involves privatization.²² The law regulating privatization, for example, determines specific features of the creation and registration of Companies established during the privatization of State enterprises.

In addition to the Civil Code and the Law on Joint Stock Companies, other laws are applicable to Joint Stock Companies including tax law, law on the registration of legal entities, law on bankruptcy, etc.

There are inconsistencies between the Civil Code and the Law on Joint Stock Companies of the Republic of Armenia. In the case of inconsistencies, the Civil Code prevails according to Article 3 of the Law on the Enforcement of the Civil Code and Chapter 1, Article 1 of the Civil Code. This Manual refers to the provisions of the Civil Code when there are inconsistencies with the Law on Joint Stock Companies and other legislative acts.

²⁰ LJSC, Chapter 1, Article 1, Clause 2.

²¹ LJSC, Chapter 1, Article 2.

²² LJSC, Chapter 1, Article 2.

3.3.2 What a Joint Stock Company Can Do

Joint Stock Companies can engage in any activity not prohibited by law.²³ To carry out its activities, a Joint Stock Company can:

- enter into contracts with other parties;
- act as a plaintiff and defendant in Court;
- hire and dismiss employees;
- own or lease movable and immovable property;
- sell or buy goods and services;
- open bank accounts;
- obtain credit and make loans;
- exchange Drams for foreign currency;
- import and export products, and;
- enter into any other legal business arrangements.

Although Joint Stock Companies are given a large degree of independence in their daily operations, there are a number of laws and regulations that limit Companies' activities for public policy reasons. As a general rule, all Companies must comply with laws and regulations governing commercial activities, including those that regulate:

- taxation;
- protection of the environment;
- customs controls;
- currency controls, and;
- import and export activities.

3.4 Charter of a Joint Stock Company

The Charter is the founding document of the Company and the principal internal document governing the business affairs of the Company. This document serves the purpose of regulating the mission and operations of the Company, its internal organization and its governance and management bodies. The Charter must be approved by the General Meeting of Shareholders and must be registered with the State register.

- ◆ **Chapter 4 of this Manual describes the establishment of a Joint Stock Company.**
- ◆ **Chapter 5 of this Manual describes the function of the Charter of a Joint Stock Company.**

²³ CC, Chapter 5, Article 52, Clause 2.

3.5 Capital of a Joint Stock Company

A Joint Stock Company is a legal entity whose charter capital is divided into a certain number of shares. The owners of these shares are called the shareholders of the Company. The shareholders of the Company do not own part of the property of the Company. They are only entitled to claim the rights attached to shares of the Company. For the purpose of simplicity, however, the Manual refers to shareholders as owners of shares.

Individuals as well as legal entities and the State can be shareholders of a Joint Stock Company. The money and other assets that a shareholder invests in a Joint Stock Company are used to establish and finance the operations of the Company. The Company uses the funds to purchase property or equipment, goods and services and to fund other activities that serve the goals of the Company.

- ◆ **Chapter 6 of this Manual describes the rights and duties of owners of shares and other securities of a Joint Stock Company.**
- ◆ **Chapter 12 of this Manual describes the internal and external funds of a Joint Stock Company.**

3.6 Working Bodies of a Joint Stock Company

3.6.1 General Meeting of Shareholders

The highest body of a Joint Stock Company is the General Meeting of Shareholders. It is through the General Meeting of Shareholders that shareholders can decide on the future course of the Company and can approve and raise objection with respect to the performance of the Board of Directors, the Executive Director and the Management Team of the Company. The decisions over some issues fall under the exclusive authority of the General Meeting of Shareholders. Others can be delegated to the Board of Directors, the Executive Director and the Management Team.²⁴

- ◆ **Chapter 7 of this Manual describes the authority and function of the General Meeting of Shareholders of a Joint Stock Company.**

3.6.2 Board of Directors

A Joint Stock Company must have a Board of Directors if the Company has more than 50 shareholders.²⁵ The shareholders elect members of the Board of Directors to implement the broad policies established by the General Meeting of Shareholders. The Board of Directors is accountable to the General Meeting of Shareholders and represents the interests of shareholders when the General Meeting of Shareholders is not in session. The Board of Directors is also responsible for the strategic direction of the Company and supervises the operations of the Executive Director and the Management Team of the Company.

²⁴ CC, Chapter 5, Article 115, Clause 1; LJSC, Chapter 10, Article 70, Clause 1.

²⁵ CC, Chapter 5, Article 115, Clause 2.

- ◆ Chapter 8 of this Manual describes the authority and the function of the Board of Directors of a Joint Stock Company.

3.6.3 Executive Director and the Management Team

Each Armenian Joint Stock Company must have an executive body consisting of an Executive Director and/or a Management Team. The Executive Director and the Management Team are responsible for the day-to-day management of the Company and perform an important role in the way the Company achieves the objectives set forth by the shareholders and the Board of Directors of the Company.

- ◆ Chapter 9 of this Manual describes the authority and function of the Executive Director and other managers of a Joint Stock Company.

3.6.4 Control Committee²⁶ (Controller)

Under Armenian law, it is mandatory for Joint Stock Companies to have a Control Committee or a Controller.²⁷ The Control Committee (Controller) is a separate body of the Company, elected by the General Meeting of Shareholders, which is responsible for the oversight of the financial and economic activities of the Company.

- ◆ Chapter 10 of this Manual describes the authority and function of the Control Committee (Controller) of a Joint Stock Company.

²⁶ This Committee is also called the "Audit Committee" or the "Inspection Committee."

²⁷ LJSC, Chapter 8, Article 94, Clauses 1 and 3.

4: HOW TO ESTABLISH A JOINT STOCK COMPANY IN THE REPUBLIC OF ARMENIA

There are two ways to establish a Joint Stock Company:²⁸

- foundation of a new Company, and;
- reorganization of an existing legal entity (merger, accession, division, spin-off, transformation).

For simplicity, this chapter concentrates on the foundation of a new Company and does not describe the reorganization of an existing legal entity. The procedure to establish a new Company is a complex procedure that ends with State registration. The Joint Stock Company is created as of the moment of its State registration.²⁹

4.1 Who Can Be Founders of the Company

Both citizens (natural persons) and legal entities can be founders of a Joint Stock Company.³⁰ An individual can be a founder of a Joint Stock Company only if he has a “full dispositive capacity.”³¹ Foreign citizens and legal entities may also be founders of a Joint Stock Company.³² State agencies and local self-government agencies cannot be founders or shareholders of a Joint Stock Company.³³ However, the State can be a founder and a shareholder of a Joint Stock Company.³⁴

4.1.1 The Decision to Establish a Company

A Joint Stock Company is established by a decision of its founders adopted at the Constituent Meeting of Shareholders. The decision to establish a Company is reflected in a

²⁸ CC, Chapter 5, Articles 53 and 63; LJSC, Chapter 2, Article 9.

²⁹ CC, Chapter 5, Article 56, Clause 3.

³⁰ CC, Chapter 2, Article 11, Clause 1; CC, Chapter 4, Article 21; CC, Chapter 5, Article 52.

³¹ CC, Chapter 4, Article 24. The “dispositive capacity” of a citizen is the ability of a person to acquire and exercise civil law rights, to create personal civil law duties and to fulfil these **by his own actions**. It arises at the age of 18. In cases prescribed by the Civil Code, an individual may acquire a “dispositive capacity” before the age of 18 and certain citizens may be deprived of their “dispositive capacity.” The “dispositive capacity” may also be limited for individuals who are 18 or older by a Court decision (CC, Chapter 4, Articles 31 and 32).

³² LJSC, Chapter 2, Article 10, Clause 3.

³³ CC, Chapter 5, Article 72, Clause 6.

³⁴ CC, Chapter 6, Article 128.

written contract on the Company's creation.³⁵ If the Company has a single founder, the Company is created by a decision of this person.³⁶

The founders are the only persons who can become shareholders at the time of the establishment of the Company and all of its shares must be allocated to the founders.³⁷

4.1.2 Companies with a Single Founder

For a Company with a single founder who will be the only shareholder of the Company, the process of establishing a Company is less complicated than the process of establishing a Company with multiple founders. First, the single founder decides to establish the Company, approves the Charter of the Company and appoints the working bodies of the Company (the Executive Director and the Controller).³⁸ He then prepares and signs a decision on the establishment of a Company that must be submitted to the State Register.

If a Company has a single founder, information about this should be contained in the Charter of the Company. A Joint Stock Company may not have as a sole shareholder another commercial organization consisting of one (1) person.³⁹

4.1.3 Companies with Multiple Founders

If a Company has two or more founders, they must execute a written contract on the establishment of a Company. This contract specifies the following issues:⁴⁰

- procedure for the founders' joint activity aimed at establishing a Company;
- procedure for the transfer of the founders' property to the Company;
- terms of the founders' participation in the Company's activity;
- personal information on the founders (name, passport data, mailing address);
- amount of the charter capital of the Company;
- types and classes of shares of the Company;
- amount and procedures on payment for shares of the Company;
- rights and duties of the founders with respect to the establishment of the Company;

³⁵ LJSC, Chapter 2, Article 10, Clause 2.

³⁶ CC, Chapter 5, Article 106, Clause 4. LJSC, Chapter 2, Article 10, Clause 1 provides that the number of founders may not be less than two, whereas the CC accepts the establishment of a Joint Stock Company by only one (1) founder. As the CC prevails, this provision of the LJSC is void.

³⁷ CC, Chapter 5, Article 111, Clause 3.

³⁸ Since the founder is the only shareholder of the Company and the Controller of a Company must be a shareholder of the Company, that founder must be the Controller of his Company. Hence, the founder cannot be the Executive Director of this Company.

³⁹ CC, Chapter 5, Article 106, Clause 4.

⁴⁰ CC, Chapter 5, Article 53, Clause 1; LJSC, Chapter 2, Article 10, Clause 2.

- names of persons authorized to represent the founders during the establishment of the Company before the Constituent Meeting of Shareholders;
- the distribution of liabilities that occurs in the process of establishing the Company among the founders, as well as procedures for returning payments made by the founders for shares in case: (a) the registration of the Company is rejected, (b) the Constituent Meeting of Shareholders is not held or (c) the Constituent Meeting of Shareholders disapproves the founders' activity.

4.2 Constituent Meeting

The decision to establish a Company must be made by the Constituent Meeting of Shareholders. The Constituent Meeting of Shareholders is the first Annual Meeting of Shareholders. It must be held within one (1) month after the term for the allocation of shares has expired.⁴¹ The Constituent Meeting of Shareholders of an Open Joint Stock Company is valid when two-thirds (2/3) of the founders' votes and two-thirds (2/3) of the total number of founders have been registered to participate in the Meeting. The Constituent Meeting of Shareholders of a Closed Joint Stock Company is valid when two-thirds (2/3) of the founders' votes have been registered to participate in the Meeting.⁴² If the original Meeting does not have a quorum, the founders must organize a new Constituent Meeting of Shareholders within 14 days after the original Meeting. The rescheduled Constituent Meeting of Shareholders of an Open Joint Stock Company is valid when more than 50 percent of the founders' votes and more than 50 percent of the total number of founders have been registered to participate in the Meeting. The rescheduled Constituent Meeting of Shareholders of a Closed Joint Stock Company is valid when more than 50 percent of the founders' votes have been registered to participate in the Meeting.⁴³

The Constituent Meeting of Shareholders:⁴⁴

- makes a decision to establish the Company by a simple majority vote of founders present at the Meeting;⁴⁵
- approves the allocation of shares by a simple majority vote of founders present at the Meeting;⁴⁶
- approves the Charter of the Company by a three-fourths (3/4) majority vote of founders present at the Meeting;⁴⁷

⁴¹ LJSC, Chapter 2, Article 12, Clause 1.

⁴² LJSC, Chapter 2, Article 12, Clause 2.

⁴³ LJSC, Chapter 2, Article 12, Clause 2.

⁴⁴ LJSC, Chapter 2, Article 12, Clause 4.

⁴⁵ LJSC, Chapter 10, Article 71, Clause 2.

⁴⁶ LJSC, Chapter 10, Article 71, Clause 2.

⁴⁷ LJSC, Chapter 10, Article 71, Clause 4.

- elects the Board of Directors, if established, by a simple majority vote of founders present at the Meeting;⁴⁸
- elects the Control Committee by a simple majority vote of founders present at the Meeting;⁴⁹
- approves the founders' report by a two-thirds (2/3) majority vote of founders present at the Meeting;⁵⁰
- discusses other items that fall within the authority of the General Meeting of Shareholders.

4.2.1 Founders' Report

The founders of a Joint Stock Company are required to submit a written report to the Constituent Meeting of Shareholders. This report must contain information on the following:⁵¹

- expenses incurred by the founders and their representatives with respect to the establishment and registration of the Company and a proposed procedure on how these expenses must be reimbursed by the Company;
- value of non-cash investments (such as intellectual property, real estate, equipment and shares of other Companies) made by founders in payment for shares of the Company;
- value and number of shares allocated to each founder of the Company;
- transactions entered into by the Company during its establishment.

The Control Committee (Controller) must verify the founders' report. If the Constituent Meeting of Shareholders does not approve the founders' report, the Company cannot be established.

4.3 Charter Capital

The charter capital is defined as the nominal value of all shares acquired by shareholders. The charter capital of a Company is intended to comprise a minimum amount of property guaranteeing the interests of shareholders and creditors of the Company.⁵²

4.3.1 Charter Capital Requirements

The charter capital cannot be less than the amount specified in the Law on Joint Stock Companies. The minimum charter capital of an Open Joint Stock Company is set at 1,000 times the minimum monthly wage on the date of State registration. The minimum charter

⁴⁸ LJSC, Chapter 10, Article 71, Clause 2.

⁴⁹ LJSC, Chapter 10, Article 71, Clause 2.

⁵⁰ LJSC, Chapter 2, Article 13, Clause 1.

⁵¹ LJSC, Chapter 2, Article 13, Clause 1.

⁵² CC, Chapter 5, Article 111, Clause 2; LJSC, Chapter 3, Article 33, Clause 1.

capital of a Closed Joint Stock Company is set at 100 times the minimum monthly wage on the date of State registration.⁵³

4.3.2 Authorized and Issued Shares⁵⁴

The total number of authorized (or announced) shares refers to the maximum number of shares of a same type that a Company can issue as specified by the Charter of the Company. The number of authorized shares of the Company can be changed by a simple majority vote of shareholders present at the General Meeting of Shareholders. Issued (or outstanding) shares are shares that have been offered for sale by the Company. The total number of issued shares is never more than the total number of authorized shares of the Company.⁵⁵

◆ **See also Chapter 12, Paragraph 12.2 of this Manual for more information on issued shares and the charter capital of a Joint Stock Company.**

4.3.3 Initial Subscription of the Capital

During the establishment of a Company, shares must be allocated and paid for at their nominal value as specified by the Charter of the Company.⁵⁶ According to the Civil Code, the nominal value of all allocated shares of the Company must be paid for in full.⁵⁷

The Charter of the Company specifies the form of payment for shares during the establishment of a Company. In general, payment for shares can be made in Drams, securities, property, property rights and other rights having monetary value unless otherwise provided by the Charter of the Company. The founders' contract specifies the monetary value of property paid by the founders for shares of the Company.⁵⁸

◆ **See also Chapter 6 of this Manual for a definition and description of shares and shareholders' rights.**

⁵³ CC, Chapter 5, Article 111, Clause 2; LJSC, Article 33, Clause 1. See also the Law on Minimum Monthly Wage, Article 3.

⁵⁴ LJSC, Chapter 3, Article 35.

⁵⁵ Since all shares of the Company must be fully paid at the moment of the Company's registration and the Board of Directors has no authority to issue additional shares within the limits of the number of authorized shares, it is practically not useful for a Company in Armenia to have authorized shares that are not issued by the Company.

⁵⁶ LJSC, Chapter 4, Article 47, Clause 1.

⁵⁷ CC, Chapter 5, Article 111, Clause 3. According to the LJSC, Chapter 3, Article 45, Clause 2, the founders must pay at least 50 percent of the nominal value of issued shares of the Company and the rest must be paid during one (1) year, if the Charter does not provide for another period. As the CC prevails, this provision of the LJSC is void.

⁵⁸ LJSC, Chapter 3, Article 45, Clause 4.

4.4 Charter of the Company

The Charter is the only founding document of the Company.⁵⁹ The Charter serves as the basis under which a Company operates. The Civil Code and the Law on Joint Stock Companies contain requirements related to the information that must be included in the Charter of a Company. These requirements must be fulfilled before the Company can be registered.

◆ See also Chapter 5 of this Manual for a description of the Charter of a Joint Stock Company.

4.5 State Registration

The founders of the Company can start the registration process of the Company after the Constituent Meeting of Shareholders has been held and the nominal value of all issued shares of the Company has been fully paid.

A Joint Stock Company must be registered with the State Register.⁶⁰ If the State Register does not register or rejects the registration of the Company, the founders of the Company can appeal to the Court the decision of the State Register.

4.5.1 Preparation of Registration Documents

The following documents must be prepared, filled out and signed by the founders:

- the application form of the State Register for the registration of Joint Stock Companies;
- the decision of the Constituent Meeting of Shareholders to establish a Company;
- a sufficient number of originally signed and sealed copies of the Charter of the Company. These must be approved by the Constituent Meeting of Shareholders;⁶¹
- a written statement of one or more commercial banks that the charter capital has been deposited to a bank account;
- a document that provides information on the mailing address of the Company;
- proof of ownership of the property that the founders have contributed to the Company.

⁵⁹ CC, Chapter 5, Article 55; LJSC, Chapter 2, Article 14.

⁶⁰ CC, Chapter 5, Article 56, Clause 1; LJSC, Chapter 2, Article 16, Clause 1.

⁶¹ Usually, the Company needs at least 6 copies of the Charter to fulfill registration requirements.

4.5.2 Registration with the State Register and Other State Agencies

As soon as all the required documents have been prepared, filled out and signed, the following steps are required to register the Company:

1. Register the name of the Company with the State Patent Department and receive a document certifying that the Company has registered its name;
2. Register the shares of the Company with the Securities Market Inspectorate and ask for a certification that the Company has registered its shares;⁶²
3. Obtain preliminary licenses from State agencies that are required to perform the activities of the Company;
4. Submit all documents that are required by the State Register and receive a State Registration Certificate;
5. Register the Company with the Tax Inspectorate in order to obtain a tax identification number;
6. Order a seal of the Company at “Kniq”;⁶³
7. Stamp all the original copies of the Charter of the Company and all other documents that must be submitted to the State agencies;
8. Register the Company with the State Pension Fund;
9. Obtain final licenses from State agencies that are required to perform the activities of the Company.

4.6 Pre-incorporation Liability of the Founders

The founders of the Company are jointly and severally liable for obligations connected with the establishment of the Company that arise prior to its State registration.⁶⁴ Once a Company has been established (registered), it will assume liability for these expenses. It does so through a decision of the General Meeting of Shareholders.⁶⁵ If the General Meeting of Shareholders refuses to approve the founders’ expenses, the founders remain personally liable.

⁶² Companies are sometimes allowed to register with the State Register while the Company is in the process of registering its shares and other securities with the Securities Market Inspectorate. In this case, the founders should request a document from the Inspectorate that the Company can proceed with the registration process while its shares and other securities are not registered with the Securities Market Inspectorate.

⁶³ This specialized State agency produces official stamps and seals in the Republic of Armenia.

⁶⁴ CC, Chapter 5, Article 54; LJSC, Chapter 2, Article 11, Clause 3.

⁶⁵ LJSC, Chapter 2, Article 11, Clause 3, second sentence provides that the Company is responsible for the founder’s liabilities related to the establishment of the Company only if the founders’ activity on the foundation of the Company is approved by the Constituent Meeting of Shareholders of the Company. Liabilities incurred after the Constituent Meeting, but before State registration and thus establishment of the Company are not covered by this provision and should therefore be regulated by a separate decision of the General Meeting of Shareholders.

5: THE CHARTER OF A JOINT STOCK COMPANY

In accordance with the Civil Code and the Law on Joint Stock Companies, every Joint Stock Company must have a Charter that is registered with the State Register. Without a Charter, it is not possible to create and operate a Joint Stock Company.⁶⁶

5.1 Provisions of the Charter

According to the Civil Code and the Law on Joint Stock Companies, the Charter of a Joint Stock Company must contain the following information:⁶⁷

5.1.1 General Information

- name and abbreviation of the name of the Company;
- location of the Company;
- legal form of the Company (Open or Closed);
- information on representative offices and branches if established by the Company.

5.1.2 Information on the Capital and Shares of the Company

- amount of the charter capital of the Company;
- procedures that must be followed when changes are made to the amount of the charter capital of the Company;
- types, classes, nominal value and number of shares issued by the Company;
- rights of shareholders attached to each type and class of shares of the Company;⁶⁸
- procedure for payment and amount of dividends and the liquidation value to be paid against each class of preferred shares of the Company;
- obligations of shareholders with regard to the payment of shares and other securities;
- size of the reserve fund and other funds established by the Company.

⁶⁶ See also LJSC, Chapter 2, Article 16, Clause 3, Section C.

⁶⁷ CC, Chapter 5, Article 55, Clause 2; LJSC, Chapter 2, Article 14, Clause 3.

⁶⁸ The Charter can define limitations on the total number and the nominal value of shares that can be owned by one shareholder or the total number of votes that can be held by one shareholder.

5.1.3 Information on the Working Bodies of the Company

- structure and composition of the Company's working bodies and the decision-making procedures that must be followed by these bodies;
- procedures that must be followed when the Company organizes General Meetings of Shareholders;⁶⁹
- list of issues related to the organization of the General Meeting of Shareholders on which the members of the Board of Directors must vote unanimously or by a qualified majority of votes;
- internal procedures related to the authority and the election, appointment and removal of members of the Board of Directors, the Executive Director and members of the Management Team of the Company;
- procedures for the operation of the Control Committee.

5.2 Other Provisions of the Charter

As long as they do not conflict with the Law on Joint Stock Companies and other laws in the Republic of Armenia, the Charter can also contain provisions such as:

- types of securities other than shares and bonds that can be issued by the Company and the nominal value and number of these securities;
- a direction that procedures for the operation of the Control Committee, the Board of Directors and the General Meeting of Shareholders are regulated by the by-laws of the Company;
- procedures for the distribution of profits (dividends) of the Company;
- procedures for the liquidation and reorganization of the Company;
- procedures for amending the Charter and other internal documents of the Company.

◆ See also the appendix to this Manual for an example of a Charter of an Open Joint Stock Company.

5.3 When to Amend the Charter

Since a Charter is used as the internal law of a Company, it must be amended whenever the Company makes changes in procedures and other legally required activities that must be specified in the Charter of the Company. For example, amendments to the Charter of the Company are required when the Company reorganizes, changes the amount of its charter capital, changes the rights attached to types and classes of shares of the Company and when the Company establishes a new branch or a representative office.

⁶⁹ Unless these procedures are specified in the by-laws of the Company. See also LJSC, Chapter 10, Article 71, Clause 5.

5.4 How to Amend the Charter

The General Meeting of Shareholders has the exclusive authority to amend the Charter by a three-quarters (3/4) majority vote of shareholders present at the General Meeting of Shareholders. As a practical matter, the Board of Directors prepares amendments to the Charter of the Company. The Company must register the amendments to the Charter with the State Register after any changes have been approved by the shareholders of the Company.⁷⁰ Changes in the Charter become effective after they have been registered with the State Register.⁷¹

5.5 Who Has the Right to Receive a Copy of the Charter

The Charter is an important source of information for the general public and prospective shareholders of the Company. Upon the request of any person, a Joint Stock Company must provide a copy of the Charter and a copy of amendments to the Charter. This must be done within 5 days of the request.⁷²

5.6 By-laws of the Company

The Charter does not usually specify in detail the working procedures of the General Meeting of Shareholders, the Board of Directors, the Control Committee, the Executive Director and the Management Team of the Company. Detailed procedures are usually established in the course of business and in the by-laws (internal legal documents) of the Company.

The by-laws of the Company supplement and extend the provisions of the Charter as long as they are consistent with Armenian laws and the Charter. By-laws are easier to amend and to correct than the Charter. The Law on Joint Stock Companies requires Companies to have by-laws on the rules of order of the Executive Director and the Management Team.⁷³ The Company must also have by-laws on the rules of order of the General Meeting of Shareholders if 1) the Charter of the Company does not contain procedures or, 2) when the General Meeting of Shareholders has not made a decision on procedures that must be followed when the Company organizes General Meetings of Shareholders.⁷⁴

By-laws on the General Meeting of Shareholders, the Board of Directors and the Control Committee (Controller), if any, must be approved and may be amended and repealed by the General Meeting of Shareholders. Other by-laws of the Company must be approved

⁷⁰ LJSC, Chapter 2, Article 17, Clause 1.

⁷¹ LJSC, Chapter 2, Article 17, Clause 2.

⁷² LJSC, Chapter 2, Article 14, Clause 4.

⁷³ LJSC, Chapter 11, Article 92, Clause 1.

⁷⁴ LJSC, Chapter 10, Article 70, Clause 1, Section M; LJSC, Chapter 10, Article 71, Clause 5. It is recommended that the Company has by-laws on the rules of order of the General Meeting of Shareholders. These do not have to be registered with the State Register while (changes in) the rules of order of the General Meeting of Shareholders in the Charter need to be registered.

and may be amended and repealed by the Board of Directors or the General Meeting of Shareholders if the Company does not have a Board of Directors.⁷⁵ The State Register does not need to be notified of amendments to the by-laws of the Company.

◆ **See also the appendix to this Manual for examples of by-laws of an Open Joint Stock Company.**

The Charter and the by-laws of the Company should only contain information that is required by Armenian legislation and provisions that are useful for a particular Company. They should not, however, repeat large portions of the Civil Code, the Law on Joint Stock Companies and other legislative acts.

⁷⁵ In these cases, this authority can also be delegated to the executive body of the Company. See also LJSC, Chapter 11, Article 87, Clause 2.

6: SHAREHOLDERS' RIGHTS AND SECURITIES OF A JOINT STOCK COMPANY

Securities are commercial documents that give the holders (owners) specific rights. A Joint Stock Company can only issue securities if it follows the procedures specified by Armenian legislation. There are two main types of securities that concern Joint Stock Companies:

- **shares:** shares indicate the participation of their holder in the charter capital of the Company. The liability of shareholders is limited to the amount stated on the certificates of shares. Generally, investors buy shares to earn dividends and to acquire control over the Company;
- **bonds:** a bond is a promise to repay the principal along with interest on a specified date of maturity. The Company generally issues bonds for a certain period with the purpose of raising borrowed working capital.

6.1 Reasons for Being a Shareholder of a Joint Stock Company

Individuals and legal entities may decide to purchase shares of Joint Stock Companies for a variety of reasons:

- **outside investors** may buy shares because they believe in the profitability of the Company and the quality of its management and employees. Outside investors may also seek control over the Company by acquiring a strategic stake in the Company;
- **inside investors (members of the Board of Directors, the Executive Director, members of the Management Team and employees)** may buy shares because they believe that their contribution increases the profitability of the Company. By voting as shareholders at the General Meeting of Shareholders, they have an additional opportunity to influence the decisions of the Company.

6.2 Common and Preferred Shares

The Law on Joint Stock Companies gives Companies the authority to issue common shares and various classes of preferred shares.⁷⁶

⁷⁶ Registered shares identify the owner who is entitled to the rights attached to the shares. See also LJSC, Chapter 3, Article 34, Clauses 1-2.

6.2.1 Common Shares

Common shares entitle the owners to vote as well as to receive dividends based on the number of shares they own. The Charter of the Company must define the number, the nominal value and the rights attached to common shares.⁷⁷ The total nominal value of all issued common shares cannot be less than 75 percent of the charter capital of the Company.⁷⁸ A Joint Stock Company cannot issue various classes of common shares in the Republic of Armenia. All common shares must have the same nominal value and must provide the same rights to the owners.

6.2.2 Preferred Shares

Preferred shares can entitle their owners to various preferences associated with the payment of higher or guaranteed dividends. Unless otherwise provided by the Law on Joint Stock Companies or the Charter of the Company, however, preferred shares do not grant the right to the owners to vote during General Meetings of Shareholders. The number, the nominal value and the rights attached to preferred shares of a certain class must be specified by the Charter of the Company. The total nominal value of all classes of issued preferred shares cannot be more than 25 percent of the charter capital of the Company.⁷⁹ A Joint Stock Company can issue various classes of preferred shares in the Republic of Armenia. All preferred shares of a certain class must have the same nominal value and must provide the same rights to their owners.⁸⁰ The Charter of the Company can provide the owners of a certain class of preferred shares with the possibility to convert their shares into common shares or other classes of preferred shares of the Company.⁸¹

6.2.3 Share Certificates

According to Armenian legislation, Joint Stock Companies can issue documented as well as undocumented shares.⁸² Generally, shareholders receive their shares in the form of a printed share or a share certificate. The form of a share certificate must meet requirements specified by the Law on Joint Stock Companies.⁸³

⁷⁷ LJSC, Chapter 3, Article 35, Clause 1.

⁷⁸ LJSC, Chapter 3, Article 39, Clause 3.

⁷⁹ LJSC, Chapter 3, Article 34, Clause 2.

⁸⁰ LJSC, Chapter 3, Article 40, Clause 1.

⁸¹ LJSC, Chapter 3, Article 40, Clause 2.

⁸² CC, Chapter 8, Article 152; LJSC, Chapter 3, Article 34, Clause 3.

⁸³ LJSC, Chapter 3, Article 41.

6.3 Rights of Owners of Common and Preferred Shares

6.3.1 Voting shares

The Law on Joint Stock Companies introduces the concept of voting shares, which refers to common shares as well as to those preferred shares to which voting rights are attached.⁸⁴ Although Armenian legislation specifies requirements regarding the rights of owners of common shares, it gives broad discretion to Joint Stock Companies to define the rights of owners of preferred shares (see the discussion in paragraph 6.3.3 in this chapter).

6.3.2 Types of Shareholders' Rights

The law distinguishes between the rights belonging to individual shareholders and the rights held collectively by shareholders owning a certain number of voting shares. It is also possible to distinguish shareholders' rights according to their nature. Some shareholders' rights concern the decision-making and the organization of Joint Stock Companies. Others are related to the capital of the Company and the return on shareholders' investment. See also table 6.1 for an overview of the different types of shareholders' rights and the next paragraphs in this chapter for a description of the rights of shareholders.

Table 6.1
An Overview of Shareholders' Rights

	Type of Shareholders' Rights	References	Bearer	Type of Shares
Organizational	The right to vote during the General Meeting of Shareholders (GMS) in person or by proxy	LJSC, Chapter 3, Article 39, Clause 1, Sections A, B and F; LJSC, Chapter 10, Article 79, Clause 1	Individual	Voting share
	The right to submit proposals to the agenda of the GMS	LJSC, Chapter 3, Article 39, Clause 1, Section G; LJSC, Chapter 10, Article 75	Collective (2%)	Voting share
	The right to review the list of shareholders eligible to participate in a GMS	LJSC, Chapter 10, Article 73, Clause 6	Collective (10%)	Voting share
	The right to read the minutes of a GMS	LJSC, Chapter 10, Article 85, Clause 2; LJSC, Chapter 13, Article 97, Clause 3	Individual	Voting share
	The right to appeal certain decisions of the GMS	LJSC, Chapter 3, Article 39, Clause 1, Section I; LJSC, Chapter 10, Article 71, Clause 8	Individual	Voting share

⁸⁴ LJSC, Chapter 10, Article 71, Clause 1.

Table 6.1 Continued

	Type of Shareholders' Rights	References	Bearer	Type of Shares
Organizational	The right to call an Extraordinary GMS	LJSC, Chapter 10, Article 77, Clause 1	Collective (10%)	Voting share
	The right to file a claim against the management on behalf of the Company	LJSC, Chapter 11, Article 93, Clause 4	Collective (1%)	Common share
	The right to elect, and to be a candidate for, managing and governance bodies of the Company	LJSC, Chapter 3, Article 39, Clause 1, Section B	Individual	Voting share
	The right to become a member of the Board of Directors without being elected	LJSC, Chapter 11, Article 88, Clause 2	Individual, (10%)	Voting share
	The right to receive general information	LJSC, Chapter 3, Article 39, Clause 1, Section E; LJSC, Chapter 13, Article 97, Clauses 3 and 4	Individual	Common and Preferred
Capital-Related	The right to request a review of the Company's activities	CC, Chapter 5, Article 115, Clause 5	Collective (10%)*	Common and Preferred
	The right to receive dividends	LJSC, Chapter 3, Article 39, Clause 1, Section C	Individual	Common; Preferred depending on the Charter
	The right to freely transfer shares	LJSC, Chapter 3, Article 39, Clause 1, Section L	Individual	Common; Preferred depending on the Charter
	Pre-emptive rights	LJSC, Chapter 3, Article 39, Clause 1, Section D; LJSC, Chapter 4, Article 50, Clause 1	Individual	Common; Preferred depending on the Charter
	The right to a liquidation quota	LJSC, Chapter 3, Article 39, Clause 1, Section J	Individual	Common; Preferred depending on the Charter

* This refers to 10 percent of the charter capital of the Company and not to the number of shares with voting rights as in all other cases of collective rights.

6.3.3 Right of Shareholders to Vote

Shareholders can participate in decision-making of the Company through their right to vote at the General Meeting of Shareholders. Shareholders can control the long-term di-

rection of the Company by electing members of the Board of Directors and by deciding on important matters that fall within the authority of the General Meeting of Shareholders.

The right to vote can be exercised personally or by a power of attorney.⁸⁵ A power of attorney gives its authorized holder the right to act on behalf of the shareholder and to make any decision the shareholder could have made at the General Meeting of Shareholders. Except for limitations provided by Armenian legislation, any individual can serve as a representative of a shareholder as long as this person is given a written power of attorney.⁸⁶ The power of attorney should explicitly state the way the representative must vote on items of the agenda of the General Meeting of Shareholders.

The right to participate in decision-making is more limited for owners of preferred shares than for owners of common shares. The owners of preferred shares do not have voting rights at General Meetings of Shareholders except under circumstances defined by Armenian legislation and the Charter of the Company.⁸⁷ These circumstances are specified in table 6.2.

Table 6.2
Voting Rights of the Owners of Preferred Shares

Circumstances	When Owners of Preferred Shares can Vote
The General Meeting of Shareholders discusses issues related to the reorganization or liquidation of the Company.	The owners of preferred shares can vote on issues that are directly related to the reorganization and liquidation of the Company.
The General Meeting of Shareholders discusses amendments to the Charter of the Company that restrict the rights of the owners of preferred shares (including their right to receive priority dividends).	The owners of preferred shares can vote on amendments to provisions of the Charter of the Company that restrict their rights to receive priority dividends and that restrict other privileges attached to preferred shares.
The Company did not pay or only partially paid dividends to the owners of preferred shares.	The owners of preferred shares have the right to vote on all issues during General Meetings of Shareholders until the Company has paid all dividends to the owners of preferred shares.
The Charter of the Company provides voting rights to the owners of preferred shares that can be converted to common shares.	The owners of convertible preferred shares have rights equal to the owners of common shares to vote during the General Meeting of Shareholders.

◆ **Chapter 7 of this Manual describes how the General Meeting of Shareholders operates as a decision-making body of Joint Stock Companies.**

⁸⁵ LJSC, Chapter 10, Article 79, Clause 1.

⁸⁶ CC, Chapter 19, Articles 321 – 325.

⁸⁷ LJSC, Chapter 3, Article 40, Clauses 1, 3-5.

6.3.4 Other Rights of Shareholders Related to the Right to Vote

Shareholders are granted a number of rights that ensure their right to vote during General Meetings of Shareholders, such as the right to:

- make proposals to the agenda of the General Meeting of Shareholders;⁸⁸
- receive minutes of the General Meeting of Shareholders;⁸⁹
- request the holding of an Extraordinary Meeting of Shareholders;⁹⁰
- appeal to the Court the decisions made during the General Meeting of Shareholders if the decision contradicts Armenian legislation and the Charter of the Company.⁹¹

6.3.5 Right of Shareholders to File a Claim on Behalf of the Company

Shareholders or a group of shareholders who own at least one (1) percent of common shares of the Company have the right to file a claim on behalf of the Company to cover the Company's losses that have been caused by:⁹²

- members of the Board of Directors;
- the Executive Director;
- members of the Management Team;
- managers of the Company.

6.3.6 Right of Shareholders to Participate in the Management of the Company

A shareholder can participate in the management of the Company if he is elected to be a member of the Board of Directors or when he is appointed as a member of the Management Team.⁹³ A shareholder who owns at least 10 percent of the shares of the Company with voting rights can always become a member of the Board of Directors.⁹⁴ This right is not granted to a group of shareholders that owns at least 10 percent of shares of the Company with voting rights.

⁸⁸ LJSC, Chapter 3, Article 39, Clause 1, Section G; LJSC, Chapter 10, Article 75.

⁸⁹ LJSC, Chapter 11, Article 85, Clause 2.

⁹⁰ LJSC, Chapter 10, Article 77, Clause 1.

⁹¹ LJSC, Chapter 3, Article 39, Clause 1, Section I; LJSC, Chapter 10, Article 71, Clause 8.

⁹² LJSC, Chapter 10, Article 93, Clause 4.

⁹³ LJSC, Chapter 3, Article 39, Clause 1, Section B.

⁹⁴ LJSC, Chapter 11, Article 88, Clause 2.

6.3.7 Right of Shareholders to Receive Information from the Company

Shareholders have the right to receive information on the activities of the Company.⁹⁵ The Charter and the by-laws of the Company specify the procedures that allow shareholders to have access to the following documents:⁹⁶

- Charter of the Company (including amendments to the Charter);
- Company's property ownership documents;
- documents approved by the General Meeting of Shareholders and the Board of Directors;
- by-laws of representative offices and branches of the Company;
- annual reports and financial statements of the Company;
- prospectus for the issuance of securities;
- minutes of the General Meeting of Shareholders and the Counting Commission;
- reports of the Control Committee and the independent external auditor, and;
- reports on the activities of the Company submitted to State agencies.

Upon the request of any shareholder, a Joint Stock Company must provide a copy of these documents within 5 days. The Company can only charge for the costs of copying and sending most of these documents. Shareholders have the right to receive free of charge copies of the annual report and financial statements of the Company and the reports of the independent external auditor and the Control Committee.⁹⁷

6.3.8 Right of Shareholders to Expert Review

A shareholder (or a group of shareholders) who owns **at least 10 percent of the charter capital** has the right to request an external independent audit of public and confidential information of the Company.⁹⁸

A shareholder (or a group of shareholders) who **owns at least 10 percent of the shares of the Company with voting shares** has the right to request an extraordinary audit of the Company's activities by the Control Committee (Controller).⁹⁹

⁹⁵ LJSC, Chapter 3, Article 39, Clause 1, Section E.

⁹⁶ LJSC, Chapter 13, Article 97, Clause 1.

⁹⁷ LJSC, Chapter 13, Article 97, Clause 4.

⁹⁸ CC, Chapter 5, Article 115, Clause 5. LJSC, Chapter 3, Article 39, Clause 1 provides that this right is granted to a shareholder or a group of shareholders owning at least 5 percent of the shares of the Company with voting rights. As the CC prevails, this provision of the LJSC is void.

⁹⁹ LJSC, Chapter 12, Article 94, Clause 2.

6.3.9 Right of Shareholders to Receive Dividends

If the Company earns an annual profit, it may be distributed to shareholders as dividends.¹⁰⁰ In the event that profits are distributed, each shareholder receives dividends in accordance with the number, types and classes of shares he owns. Dividends may be paid quarterly, semi-annually or annually.¹⁰¹ The following shareholders have the right to be included in the list of shareholders eligible to receive dividends:¹⁰²

- shareholders who are registered in the Shareholder Register at least 10 days before the decision is made by the Board of Directors to pay intermediate dividends;
- shareholders who are registered in the Shareholder Register as of the date the list of shareholders eligible to participate in the Annual Meeting of Shareholders is determined by the Board of Directors.

The calculation of dividends for each shareholder depends on the type and the class of shares, such as:

- **Common Shares:** the owners of common shares are entitled to receive dividends if the General Meeting of Shareholders has decided to distribute the profits to shareholders.¹⁰³ This is normally a fixed percentage of the nominal value of common shares. The Company does not guarantee the payment of dividends to the owners of common shares.¹⁰⁴ Owners of common shares receive their dividends after the Company has paid the dividends to owners of preferred shares if this procedure is provided by the Charter of the Company;
- **Preferred Shares:** the owners of preferred shares have a priority right to receive dividends from the Company if this is specified by the Charter of the Company.¹⁰⁵ This means that the owners of preferred shares are guaranteed an absolute right to receive dividends, whereas the payment of dividends to the owners of common shares is at the discretion of the General Meeting of Shareholders. The Charter of the Company defines the types of dividends for preferred shares:
 - **Dividends at a Fixed or Variable Rate:** the Charter of the Company can define fixed or variable rates based on the nominal value of preferred shares;
 - **Cumulative Dividends:** if a Company decides that it cannot pay dividends due to losses in one or more years, it can postpone the payment

¹⁰⁰ LJSC, Chapter 3, Article 39, Clause 1, Section C.

¹⁰¹ LJSC, Chapter 5, Article 52, Clause 1.

¹⁰² LJSC, Chapter 5, Article 52, Clause 4.

¹⁰³ LJSC, Chapter 10, Article 70, Clause 1, Section K.

¹⁰⁴ LJSC, Chapter 3, Article 39, Clause 2.

¹⁰⁵ CC, Chapter 5, Article 114, Clause 1.

of dividends to owners of preferred shares. The Charter of the Company may also provide that unpaid dividends can be accumulated and paid to owners of preferred shares in the first year that the Company becomes profitable;¹⁰⁶

- **Participating Dividends:** the Charter of the Company can give owners of preferred shares the right to participate in the distribution of dividends paid to the owners of common shares. The owners of preferred shares have the same rights with the owners of common shares to receive dividends if the Charter does not provide the amount and types of dividends to be paid to the owners of preferred shares.¹⁰⁷

If the Charter of the Company provides different classes of preferred shares, it must also specify the sequence of dividend payments for each class of preferred shares. The Company must pay the same amount of dividends to the owners of the same class of preferred shares. The Court can liquidate a Company if it fails to pay dividends to the owners of preferred shares during three consecutive years.¹⁰⁸

6.3.10 Pre-emptive Rights of Shareholders

Shareholders of a Joint Stock Company have pre-emptive rights. These rights give shareholders of the Company the right to buy shares on a priority basis when the Company decides to issue new shares. According to Armenian legislation, the Charter of the Company can give the owners of shares with voting rights and other securities convertible to shares with voting rights the right to buy new shares of the Company before they are offered to other investors.¹⁰⁹ Pre-emptive rights are not given to the owners of preferred shares who have acquired voting rights due to the liquidation or reorganization of the Company and as a result of discussing the amendments to the Charter of the Company that limit the rights of the owners of preferred shares.¹¹⁰ The General Meeting of Shareholders can temporarily restrict pre-emptive rights of shareholders for a maximum of one (1) year. This decision must be made by a simple majority vote of shareholders present at the Meeting.¹¹¹

6.3.11 Right of Shareholders to Freely Transfer Shares

The owners of common shares of an Open Joint Stock Company have the right to sell their shares to any person and at any price without the consent of the Company and its shareholders.¹¹² The Company can restrict the free transferability of employee shares and preferred shares.

¹⁰⁶ LJSC, Chapter 3, Article 40, Clause 2.

¹⁰⁷ LJSC, Chapter 3, Article 40, Clause 2.

¹⁰⁸ LJSC, Chapter 4, Article 40, Clause 7.

¹⁰⁹ LJSC, Chapter 3, Article 39, Clause 1, Section D. See also LJSC, Chapter 4, Article 50, Clause 1.

¹¹⁰ LJSC, Chapter 4, Article 50, Clause 3.

¹¹¹ LJSC, Chapter 4, Article 50, Clause 2.

¹¹² LJSC, Chapter 3, Article 39, Clause 1, Section L.

6.3.12 Right of Shareholders to Demand the Redemption of Shares

A shareholder can demand that the Company redeem his shares if the General Meeting of Shareholders has made a decision to reorganize the Company or to amend the Charter to restrict shareholders' rights while the shareholder or his representative:¹¹³

- voted against the decision, or;
- did not participate in the voting on this issue during the General Meeting of Shareholders.

In these cases, the Company must buy back shares at the market value of the shares.¹¹⁴

- ◆ See also Chapter 13, Paragraph 13.1.1 of this Manual for more information on the procedures a Joint Stock Company must follow in order to determine the market value of shares (as assets of the Company).

6.3.13 Rights of Shareholders During the Liquidation of the Company

Shareholders are residual claimants if a Joint Stock Company is being liquidated.¹¹⁵

- ◆ See also Chapter 14 of this Manual for more information on the priority rule for creditors and shareholders when a Joint Stock Company files for bankruptcy.

6.4 How the Rights of Shareholders are Protected by Armenian Legislation

Protection of shareholders' rights is crucial for the ability of Armenian Joint Stock Companies to attract domestic and foreign investment. An aspect of this protection represents the granting of procedural rights to shareholders such as the right to appeal the decisions of the General Meeting of Shareholders. Members of the Board of Directors, the Executive Director and members of the Management Team play an important role in the protection of shareholders' rights. The Charter of the Company must ensure that the rights of shareholders, and the mechanisms to protect their rights, are clearly defined.

Depending on the issue concerned, shareholders can appeal to the following institutions:

- Securities Market Inspectorate;
- Central Depository of Armenia;¹¹⁶
- Armenian Courts.

¹¹³ LJSC, Chapter 7, Article 60, Clause 1.

¹¹⁴ LJSC, Chapter 7, Article 60, Clause 3.

¹¹⁵ LJSC, Chapter 3, Article 39, Clause 1, Section J.

¹¹⁶ By Decree #210 of the Government of the Republic of Armenia, as of April 8, 1999, the "National Centralized Registrar" is renamed to the "Central Depository of Armenia."

6.5 Responsibilities of Shareholders of a Joint Stock Company

The main responsibility of shareholders is to pay the full value of issued shares. In addition, shareholders have the responsibility to:

- not disclose confidential information of the Company;¹¹⁷
- inform the Company about changes in information that must be kept in the Shareholder Register¹¹⁸ (see also paragraph 6.8 in this chapter);
- provide information with regard to interests they have in transactions of the Company.¹¹⁹

The Charter of the Company can specify other responsibilities of shareholders as long as they do not contradict Armenian legislation.¹²⁰

6.6 Bonds and Others Debentures

In addition to shares, the Company can issue bonds and other debentures to finance the activities of the Company.¹²¹ Bonds are primary securities that certify that the owners have made a loan to the Company.

6.6.1 Types of Bonds

The Law on Joint Stock Companies provides Companies with the authority to issue various types of bonds:¹²²

- Bonds *secured* by assets of the Company or guarantees made by third parties;
- Bonds *not secured* by assets of the Company or any guarantees made by third parties. A Joint Stock Company can issue unsecured bonds only after:
 - the Company has been registered with the State Register for at least 3 years, and;
 - after the annual financial statements of the Company have been approved for at least 2 preceding fiscal years in a manner specified by Armenian legislation.

¹¹⁷ LJSC, Chapter 3, Article 44.

¹¹⁸ LJSC, Chapter 6, Article 54, Clause 4.

¹¹⁹ LJSC, Chapter 9, Article 66.

¹²⁰ LJSC, Chapter 3, Article 44.

¹²¹ These refer to all types of bonds and bills of sale, deposit and savings certificates, letters of credit, promissory notes and collateral certificates. See LJSC, Chapter 3, Article 42.

¹²² LJSC, Chapter 3, Article 42.

- Bonds that can be *converted* into common shares, preferred shares and other securities of the Company.

The Board of Directors has the authority to issue bonds and other debentures if the Charter of the Company does not provide this authority to other working bodies of the Company. The total nominal value of all issued bonds cannot exceed the total value of the charter capital of the Company or the value of other assets that secure the rights of the owners to receive the nominal value of bonds on the date of maturity.¹²³

As with shares, the Company must maintain a list of owners of registered bonds and debentures.

Bonds give their owners the right to receive:

- **interest from the Company.** The owners of bonds do not receive dividends from the Company. They receive a fixed rate paid before the payment of dividends to the owners of common and preferred shares. The owners of bonds receive interest at least once a year regardless of the financial performance of the Company.¹²⁴ If the Company does not declare a profit or if the Company's profit is insufficient, the interest on bonds is paid from other resources (except the reserve fund of the Company). A failure to pay interest to the owners of bonds and other debentures can result in the Company being liquidated by the Court;¹²⁵
- **payments of the nominal value of bonds.** The owners of bonds have the right to receive back the nominal value of their bonds upon the date of maturity. If the Company's profit is insufficient, the nominal value of bonds is paid from the reserve fund of the Company.¹²⁶

6.6.2 Benefits of Issuing Bonds

There are several reasons why a Joint Stock Company can issue bonds in addition to shares. By issuing bonds, a Company can:

- attract additional financing without affecting the existing number, value, types and classes of shares of the Company;
- attract additional financing which, unlike shares, does not give its holders any rights to participate in decision-making of the Company;
- attract capital at a lower interest rate than the interest rate imposed by banks and other financial institutions;
- provide fixed, long-term interest to financiers and obtain an effective and accessible way to attract direct loans from potential investors.

¹²³ LJSC, Chapter 3, Article 42, Clause 2.

¹²⁴ Except for bonds that give owners the right to participate in the profits of the Company. See also LJSC, Chapter 3, Article 42, Clause 4.

¹²⁵ LJSC, Chapter 3, Article 42, Clause 4.

¹²⁶ LJSC, Chapter 3, Article 46, Clause 2.

6.7 Value of Shares and Bonds

6.7.1 Nominal Value of Shares and Bonds

The nominal value is printed on the certificate of securities. The nominal value of shares is usually not meaningful for the market. The nominal value is used only for the calculation of the charter capital of the Company. The nominal value of bonds is more important since it is used to calculate the interest that the owners of bonds must receive from the Company. The nominal value of bonds also indicates how much a Company must pay to the owners of bonds upon their maturity.

6.7.2 Market Value of Shares and Bonds

The market value is the present value of securities traded on the stock market and other secondary markets. Past and potential future performance, the dividend policy of the Company and interest rates and other macroeconomic factors affect the market value of securities. Changes in the market value of securities do not affect the financial statements of the Company. Changes in the financial status of Company, however, can affect the market value of securities of the Company.

6.8 Shareholder Register

A Joint Stock Company is required to maintain a Shareholder Register.¹²⁷ The Register is an important document that identifies shareholders and the owners of other registered securities of the Company and the number, nominal value, types and classes of shares and other registered securities they hold. The Shareholder Register is maintained to secure the rights of shareholders and to monitor the circulation of shares and other registered securities of the Company.

6.8.1 Content of the Shareholder Register

The Shareholder Register must contain the following information:¹²⁸

- family name, first name, mailing address and passport data of individuals who own shares and other registered securities of the Company;
- full name, bank account number, mailing address of legal entities that own shares and other registered securities of the Company as well as the name of the registration agency, the date and the serial number of registration of the Company;
- number, nominal value, types and classes of registered securities of the Company;

¹²⁷ LJSC, Chapter 6, Article 54, Clause 2. The Company must establish the Shareholder Register within one (1) month after the Company has been registered with the State Register. See also Government Decree of the Republic of Armenia, No. 351 on the "Approval of the Procedure on Maintaining the Register of the Owners of Registered Securities."

¹²⁸ LJSC, Chapter 6, Article 54, Clause 1.

- documents certifying that shareholders have acquired (fully paid) or sold registered securities of the Company;
- date of registration of shareholders in the Shareholder Register.

The Company cannot be held liable for any losses caused to shareholders and owners of other registered securities if they fail to submit the necessary information to the body responsible for maintaining the Shareholder Register of the Company. The Company, however, remains liable for maintaining the Shareholder Register in a manner specified by Armenian legislation.¹²⁹

6.8.2 The Central Depository of Armenia

According to Armenian legislation, all Open Joint Stock Companies must maintain the Shareholder Register with the Central Depository of Armenia.¹³⁰ The Depository is an independent Company whose business is to perform the following functions:

- maintaining individual accounts of shareholders and other owners of registered securities of the Company;
- registering transactions with shares and other registered securities of the Company;
- providing shareholders and owners of other registered securities with printed securities or security certificates;
- rendering services to Companies concerning the registration of shareholders and other activities of the Company.

6.8.3 Who has Access to the Shareholder Register

The following parties have access to the Shareholder Register:

- the Company (the issuer);
- owners of securities of the Company registered in the Shareholder Register;
- State agencies, in cases specified by Armenian legislation.

Although the Company (issuer) has the right to obtain all information about its shareholders in the Register, it does not have the right to disclose the information to the general public. Owners of registered securities are entitled to obtain information that is related to their personal accounts. They do not have the right to receive information related to other owners of securities of the Company.

¹²⁹ LJSC, Chapter 6, Article 54, Clause 3.

¹³⁰ Government Decree of the Republic of Armenia, No. 211 on the “Regulation of the process of Maintaining the Register of the Owners of Registered Securities.”

7: THE GENERAL MEETING OF SHAREHOLDERS

There are three different types of General Meetings of Shareholders: the Constituent Meeting of Shareholders, the Annual Meeting of Shareholders and the Extraordinary Meeting of Shareholders.

7.1 The Constituent Meeting of Shareholders

The first meeting of shareholders of a Joint Stock Company is called the Constituent Meeting of Shareholders. The founders of a Joint Stock Company must hold the Meeting in order to establish the Company. The Constituent Meeting of Shareholders is subject to special requirements for its organization.

◆ See Chapter 4 of this Manual for a more detailed description of the Constituent Meeting of Shareholders.

7.2 Competence of the General Meeting of Shareholders

The General Meeting of Shareholders is the highest decision-making body of the Company.¹³¹ It is through this Meeting that shareholders exercise their right to vote and to decide on the future course of the Company. The Meeting gives shareholders the opportunity to approve and to raise objections to the performance of members of the Board of Directors, the Executive Director and members of the Management Team of the Company.

7.2.1 Exclusive Competence of the General Meeting of Shareholders

The General Meeting of Shareholders cannot delegate to the Board of Directors, the Executive Director and the Management Team its authority to decide on the following issues:¹³²

(a) With Regard to the Structure of the Company

- changes to the Charter of the Company;
- approval of procedures related to the organization of the General Meeting of Shareholders;
- election of members of the Counting Commission (of the General Meeting of Shareholders);
- election and dismissal of members of the Board of Directors and the Control Committee (Controller);
- appointment of the independent external auditor of the Company;
- approval of the compensation and reimbursement of members of the Board of Directors;

¹³¹ CC, Chapter 5, Article 115, Clause 1. See also LJSC, Chapter 10, Article 69, Clause 1.

¹³² CC, Chapter 5, Article 115, Clause 1; LJSC, Chapter 10, Article 70, Clause 2.

- approval of proposals of the Board of Directors on the terms of compensation and reimbursement of members of the Control Committee (Controller);
- approval of the way shareholders are notified and provided with information;
- establishment of subsidiaries and participation in subsidiaries and dependent Companies;¹³³
- liquidation of the Company and the appointment of members of the Liquidation Committee;
- approval of the liquidation balance of the Company;
- reorganization of the Company.

(b) With Regard to the Capital and the Commercial Activities of the Company

- changes in the amount of the charter capital of the Company;¹³⁴
- determination of the number and value of shares that can be issued by the Company;
- decrease (split) and increase (consolidation) of the nominal value of shares of the Company;
- approval of the allocation of employee shares, the terms of payment for employee shares and the rights of owners of employee shares;¹³⁵
- limitation of the pre-emptive rights of shareholders;
- acquisition by the Company of its own shares in cases specified by law;¹³⁶
- approval of the annual report, balance sheets, profit and loss statements and the allocation of profits and losses of the Company;
- approval of the financial results of representative offices and branches of the Company;
- determination of the amount of annual dividend payments;
- entering into large transactions and interested transactions in cases specified by law.¹³⁷

¹³³ There is a confusion in the law: LJSC, Chapter 10, Article 70, Clause 1, Section T explicitly permits the General Meeting of Shareholders to delegate the authority to establish subsidiaries and dependent Companies to the Board of Directors. However, LJSC, Chapter 10, Article 70, Clause 2 provides an exhaustive list of authorities that can be delegated to the Board of Directors and Section T is not mentioned.

¹³⁴ CC, Chapter 5, Article 115, Clause 1, Section 1 prevails over LJSC. Chapter 10, Article 70, Clause 1, Section F, which does not allow the Board of Directors to make changes in the charter capital of the Company.

¹³⁵ LJSC, Chapter 3, Article 43, Clause 6.

¹³⁶ LJSC, Chapter 7, Article 57, Clause 1.

¹³⁷ LJSC, Chapter 8, Article 64, Clauses 1 and 2; LJSC, Chapter 7, Article 67, Clauses 3 and 5.

7.2.2 Authority of the General Meeting of Shareholders that can be Delegated to the Board of Directors

When specified by the Charter of the Company, the General Meeting of Shareholders has the authority to decide that the following issues can be delegated to the Board of Directors:

- appointment and dismissal of the Executive Director and members of Management Team of the Company;
- determination of the procedures related to the compensation and reimbursement of the Executive Director and members of the Management Team of the Company;
- establishment of representative offices and branches of the Company.

7.3 Organization of the Annual Meeting of Shareholders

In order to organize an Annual Meeting of Shareholders, the Board of Directors:

- makes a decision to hold the Annual Meeting of Shareholders;
- determines the date, time and location of the Annual Meeting of Shareholders;
- establishes the date when the list of shareholders eligible to participate in the Annual Meeting of Shareholders must be prepared;
- determines what information and materials must be provided to shareholders;
- determines the format and contents of ballots if the voting is held by ballots;
- determines and approves the agenda of the Annual Meeting of Shareholders;¹³⁸
- proposes candidates for the Counting Commission of the Annual Meeting of Shareholders.¹³⁹

The Law on Joint Stock Companies, the Charter or the by-laws of the Company specify several steps that must be followed in order to organize the Annual Meeting of Shareholders. These steps are described in more detail in the next paragraphs in this chapter and are presented in figure 7.1. If the Board of Directors fails to hold the Annual Meeting of Shareholders, the State Register can hold the Meeting on behalf of the Company.¹⁴⁰

◆ **See also Chapter 8, Paragraph 8.3.2 of this Manual for the description of the role of the Board of Directors with regard to the General Meeting of Shareholders.**

¹³⁸ LJSC, Chapter 10, Article 75, Clause 4.

¹³⁹ LJSC, Chapter 10, Article 78, Clause 1.

¹⁴⁰ LJSC, Chapter 10, Article 69, Clause 1.

Figure 7.1
The Organization of the Annual Meeting of Shareholders

Step 1: Make a decision to hold the Annual Meeting of Shareholders

See Paragraph 7.3.1 in this Chapter

The Board of Directors makes a decision to hold the Annual Meeting of Shareholders. If necessary, the Board of Directors appoints the members of the Organizing Committee to assist the Board of Directors.

Step 2: Prepare the list of shareholders

See Paragraph 7.3.2 in this Chapter

The Board of Directors requests the Depository to provide a copy of the list of shareholders. The Board of Directors prepares the list of shareholders no later than 60 days before the Annual Meeting of Shareholders.

Step 3: Include proposals of shareholders in the agenda of the Annual Meeting of Shareholders

See Paragraph 7.3.3 in this Chapter

Within 15 days after the deadline for the submission of proposals to the agenda of the Annual Meeting of Shareholders, the Board of Directors must notify shareholders of the approval of proposals.

Step 4: Set the agenda for the Annual Meeting of Shareholders

See Paragraph 7.3.4 in this Chapter

If the Company has more than 500 shareholders with voting rights, the Board of Directors must set the agenda of the Annual Meeting of Shareholders no later than 30 days before the Meeting.

Step 5: Notify shareholders of the Annual Meeting of Shareholders

See Paragraph 7.3.5 in this Chapter

If the Company has more than 500 shareholders with voting rights, the Company must notify shareholders of the Annual Meeting of Shareholders no later than 30 days before the Meeting.

Step 6: Hold the Annual Meeting of Shareholders

See Paragraph 7.3.6 in this Chapter

The Company follows the steps presented in paragraph 7.3.6 in this chapter in order to hold the Annual Meeting of Shareholders.

Step 7: Notify shareholders of the decisions made at the Annual Meeting of Shareholders

See Paragraph 7.3.7 in this Chapter

No later than 15 days after the Annual Meeting of Shareholders, the Chairman and Secretary prepare the minutes. Shareholders must be notified of the decisions made at the Meeting no later than 45 days after the Meeting.

7.3.1 Step 1 – Make a Decision to Hold the Annual Meeting of Shareholders

The first step is to make the decision that the Company is going to hold the Annual Meeting of Shareholders. Each Joint Stock Company must hold its Annual Meeting of Shareholders between the second and the sixth month after the end of each fiscal year.¹⁴¹ The time period between Annual Meetings of Shareholders must not exceed 16 months.¹⁴²

The Board of Directors can decide that it will receive assistance from an “Organizing Committee” in order to organize the Annual Meeting of Shareholders. This Committee can consist of the Executive Director, members of the Management Team, the Chairman of the Board of Directors and other members of the Board of Directors. Given the importance of the Annual Meeting of Shareholders, members of the Organizing Committee work closely together to avoid and resolve potential problems arising from the many details of holding the Annual Meeting of Shareholders.

Figure 7.2
Make the Decision to Hold the Annual Meeting of Shareholders (Step 1)

The Board of Directors decides to hold a Meeting

The Board of Directors appoints the Organizing Committee
This is optional

7.3.2 Step 2 – Prepare the List of Shareholders

The next task of the Board of Directors is to prepare the list of shareholders eligible to participate in the Annual Meeting of Shareholders.¹⁴³ The following shareholders are eligible to participate in Annual Meetings of Shareholders:

- owners of common shares;
- owners of preferred shares with voting rights.

◆ **See Chapter 6 of this Manual for more details on the voting rights attached to common and preferred shares of the Company.**

¹⁴¹ LJSC, Chapter 10, Article 69, Clause 1. The fiscal year in the Republic of Armenia ends on December 31. See the Law on Accounting, Chapter 4, Article 22, Clause 1.

¹⁴² The period between the second month after the end of the fiscal year (the earliest time when a Company can hold its Annual Meeting of Shareholders) and the sixth month after the end of the next fiscal year (the latest time when a Company must hold its next Annual Meeting of Shareholders) is 16 months and not 18 months as provided by LJSC, Chapter 10, Article 69, Clause 1.

¹⁴³ LJSC, Chapter 10, Article 73, Clause 3.

If shares are owned by more than one (1) individual, the right to participate in the Annual Meeting of Shareholders is given to the individual in whose name the shares are registered in the Shareholder Register of the Company.¹⁴⁴

The Board of Directors asks the Central Depository of Armenia to provide a list of shareholders of the Company. Based on the information from the Depository, the Board of Directors determines the list of shareholders who are eligible to participate in the Annual Meeting of Shareholders. The list must be prepared no later than 60 days before the Annual Meeting of Shareholders.¹⁴⁵

(a) Purpose of the List of Shareholders

The Board of Directors prepares the list of shareholders in order to:

- determine which shareholders are eligible to participate in the Annual Meeting of Shareholders, and;
- notify shareholders of the Annual Meeting of Shareholders.

Shareholders eligible to participate in the Annual Meeting of Shareholders have the right to receive information on their inclusion in the list of shareholders. Registered shareholders or a group of shareholders that own at least 10 percent of the shares with voting rights have the right to become acquainted with the complete list of shareholders of the Company.¹⁴⁶

(b) What to Do if Shareholders Sell their Shares Before the Annual Meeting of Shareholders

Shareholders, who sell their shares after the list of shareholders has been prepared, but before the Meeting is held, must transfer their voting rights to the new owners of the shares. In this case, the new owners of the shares have two options to exercise the rights attached to their newly acquired shares during the Annual Meeting of Shareholders.¹⁴⁷

- the former owner of the shares provides a power of attorney to the new owner of the shares that gives the new owner the right to participate in the Meeting;
- the former owner of the shares participates in the Meeting and votes in accordance with the instructions of the new owner of the shares.

¹⁴⁴ LJSC, Chapter 10, Article 79, Clause 1.

¹⁴⁵ LJSC, Chapter 10, Article 73, Clause 3.

¹⁴⁶ LJSC, Chapter 10, Article 73, Clause 6.

¹⁴⁷ LJSC, Chapter 10, Article 79, Clause 2.

Figure 7.3
Prepare the List of Shareholders (Step 2)

The Board of Directors establishes the date when the list of shareholders must be prepared

The Board of Directors obtains the list of shareholders from the Central Depository of Armenia

The Board of Directors prepares the list of shareholders eligible to participate in the Annual Meeting of Shareholders

7.3.3 Step 3 – Include Proposals of Shareholders in the Agenda of the Annual Meeting of Shareholders

(a) Proposals for the Agenda

Shareholders or a group of shareholders owning at least 2 percent of the shares of the Company with voting rights have the right to submit a maximum of 2 proposals for the agenda of the Annual Meeting of Shareholders. All proposals must be submitted in writing to the Board of Directors and must contain the following information:¹⁴⁸

- grounds for the proposal;
- first and last name of the shareholder(s) who submits the proposal;
- mailing address of the shareholder(s) who submits the proposal;
- a document from the Central Depository of Armenia that states the types of shares owned by the shareholder(s) who submits the proposal;
- a document from the Central Depository of Armenia that states the number of shares owned by the shareholder(s) who submits the proposal;
- signature of the shareholder(s) who submits the proposal.¹⁴⁹

(b) Proposal(s) for the Election of Members of the Board of Directors and the Control Committee (Controller)

Shareholders or a group of shareholders owning at least 2 percent of shares with voting rights of the Company have the right to propose candidates for the Board of Directors and the Control Committee (Controller). The number of candidates that can be proposed by shareholders is limited to the number of members specified for these bodies by the Charter

¹⁴⁸ LJSC, Chapter 10, Article 75, Clause 2.

¹⁴⁹ Although not required by the Law on Joint Stock Companies, it is recommended that shareholders sign their proposals.

of the Company.¹⁵⁰ All proposals must be submitted in writing to the Board of Directors and must contain the following information:¹⁵¹

- name of the candidate(s);
- first and last name of the shareholder(s) submitting the proposal;
- mailing address of the shareholder(s) submitting the proposal;
- a document from the Central Depository of Armenia that states the number and types of shares owned by the shareholder(s) who proposes a candidate(s);
- number and types of shares of the Company owned by the candidate(s);
- signature of the shareholder(s) submitting the proposal.

It is a good practice to inform nominees of their nomination for a position on the Board of Directors or the Control Committee (Controller) and to obtain the written consent of the candidates to stand for election before shareholders submit the proposal(s) to the Board of Directors.

(c) How to Submit Proposals

Shareholders must submit proposals for the agenda of the Annual Meeting of Shareholders within 30 days after the end of the fiscal year or a longer period specified by the Charter of the Company.¹⁵²

(d) How to Approve Proposals

The Board of Directors decides whether to include the proposals in the agenda of the Annual Meeting of Shareholders within 15 days of the deadline by which shareholders may submit proposals.

The Board of Directors can reject a proposal for the agenda of the Annual Meeting of Shareholders only on the following grounds:¹⁵³

- shareholders have not submitted the proposal within the period by which shareholders may submit proposals;
- a shareholder or a group of shareholders owns less than 2 percent of shares of the Company with voting rights;
- shareholders have submitted a proposal which is incomplete or does not otherwise comply with the requirements as indicated above in paragraph 7.3.3 in this chapter;
- the proposal contradicts Armenian legislation.

Within 3 days after the Board of Directors has made the decision to include or reject proposals, the Board of Directors must notify shareholders of its decision.¹⁵⁴ This must be

¹⁵⁰ LJSC, Chapter 10, Article 75, Clause 1.

¹⁵¹ LJSC, Chapter 10, Article 75, Clause 3.

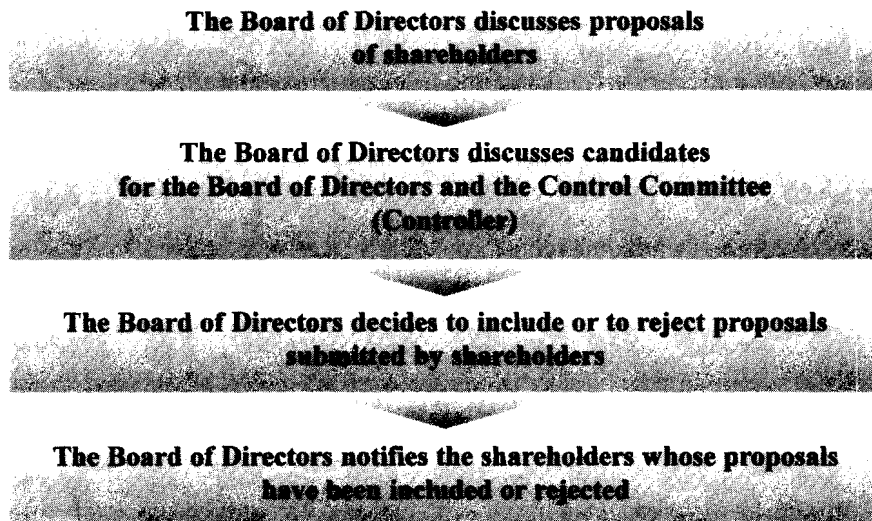
¹⁵² LJSC, Chapter 10, Article 75, Clause 1.

¹⁵³ LJSC, Chapter 10, Article 75, Clause 4.

¹⁵⁴ LJSC, Chapter 10, Article 75, Clause 5.

done through a written notice. Shareholders whose proposals have been rejected have the right to appeal the decision to the Court.¹⁵⁵

Figure 7.4
Include or Reject Proposals from Shareholders (Step 3)



7.3.4 Step 4 – Set the Agenda for the Annual Meeting of Shareholders

One of the most important tasks of the organizers of the Annual Meeting of Shareholders is to set the agenda of the Meeting. Most Annual Meetings of Shareholders use a standard agenda. Typically, this agenda includes the approval of:

- the annual financial report that summarizes the financial performance of the Company in the preceding year;
- major transactions that have been negotiated by the Company in the preceding year;
- amendments to the Charter of the Company;
- election of members for the Board of Directors and the Control Committee (Controller);
- other proposals of shareholders included in the agenda by the Board of Directors.

During the preparation of the agenda, every issue that must be presented to the Annual Meeting of Shareholders has to be precisely worded. The agenda should not contain a general item such as “miscellaneous.” Otherwise, the shareholders’ right to become familiar with all documents related to the agenda of the Meeting will be limited.

¹⁵⁵ LJSC, Chapter 10, Article 75, Clause 6.

The law also states that the Company must prepare the following documents for the Annual Meeting of Shareholders:¹⁵⁶

- financial statements;
- annual report;
- report of the Control Committee (Controller);
- report of the independent external auditor of the Company on the financial and economic activities of the Company;
- information on proposed candidates for the Board of Directors and the Control Committee (Controller);
- amendments to the Charter of the Company and the by-laws on the General Meeting of Shareholders, if any;
- other information that must be presented to shareholders at the Annual Meeting of Shareholders.

Figure 7.5

Set the Agenda of the Annual Meeting of Shareholders (Step 4)

The Board of Directors sets the agenda of the Annual Meeting of Shareholders

The Board of Directors prepares documents for the Annual Meeting of Shareholders

7.3.5 Step 5 – Notify Shareholders of the Annual Meeting of Shareholders

Proper notification represents an important guarantee for the exercise of shareholders' rights. It can be understood best by considering the following:

(a) When to Notify

The Charter defines the timelines for the notification of shareholders.¹⁵⁷ When the Company has more than 500 shareholders with voting rights, the Company is required to notify its shareholders at least 30 days before the Annual Meeting of Shareholders.¹⁵⁸ It is recommended that Companies with fewer shareholders apply the same rule.

(b) Who Should be Notified

The following parties must be notified by the Company of the organization of the Annual Meeting of Shareholders.¹⁵⁹

¹⁵⁶ LJSC, Chapter 10, Article 74, Clause 4.

¹⁵⁷ LJSC, Chapter 10, Article 74, Clause 2.

¹⁵⁸ LJSC, Chapter 10, Article 74, Clause 2.

¹⁵⁹ LJSC, Chapter 10, Article 74, Clause 1.

- owners of shares with voting rights;
- members of the Board of Directors;
- the Executive Director and members of the Management Team;
- members of the Control Committee (Controller);¹⁶⁰
- the independent external auditor when he is invited to present his conclusions on the financial statements of the Company.

(c) How to Notify

The method of notification must be specified by the Charter or by decision of the General Meeting of Shareholders. In addition to a written notice, different forms of mass media can be used. If no procedure is established, the law provides for a notification through registered mail.¹⁶¹

(d) What to include in the Notification

The notice must include the following information:¹⁶²

- the name and address of the Company;
- the date, time and location of the Annual Meeting of Shareholders;
- the date as of which the Board of Directors has prepared the list of shareholders eligible to participate in the Annual Meeting of Shareholders;
- the agenda of the Annual Meeting of Shareholders;
- the procedures on how shareholders can obtain information from the Company related to the organization and the agenda of the Annual Meeting of Shareholders.

◆ See the appendix of this Manual for an example of a notification form.

Figure 7.6
Notify Shareholders of the Annual Meeting of Shareholders (Step 5)

**Prepare the notification of shareholders and include
all necessary information in the notice**

Notify shareholders and others

¹⁶⁰ Members of the Control Committee (Controller) must always be notified by registered mail, even if they are registered as shareholders of the Company. Members of the Control Committee (Controller) can vote during the Annual Meeting of Shareholders only if they own shares with voting rights of the Company.

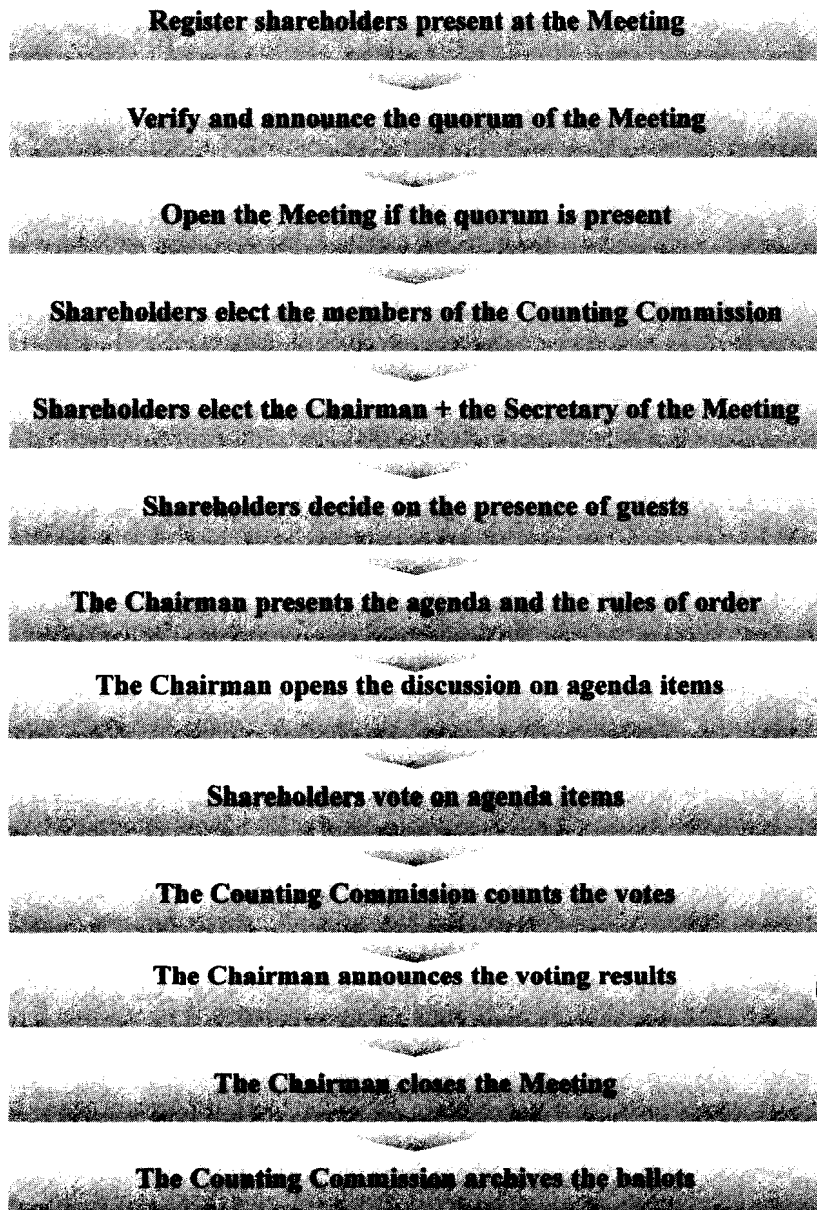
¹⁶¹ LJSC, Chapter 10, Article 74, Clause 1.

¹⁶² LJSC, Chapter 10, Article 74, Clause 3.

7.3.6 Step 6 – Hold the Annual Meeting of Shareholders

The next step is to hold the Annual Meeting of Shareholders. In order to hold the Meeting, the Company should follow several steps presented in figure 7.7.

Figure 7.7
Hold the Annual Meeting of Shareholders (Step 6)



1: Register Shareholders Present at the Meeting

Before the Annual Meeting of Shareholders can be opened, the Company must register shareholders or their representatives present at the Meeting. The registration of shareholders is usually done by a body (or individuals) that has been specified by the Charter of the Company. In practice, the same body that notifies the shareholders of the Annual Meeting of Shareholders often does the registration of shareholders. In order to register shareholders, the Company must:

1. Check documents which verify that shareholders or their representatives have the right to participate in the Meeting;
2. List shareholders or their representatives who will participate in the Meeting;
3. Hand out ballots to shareholders or their representatives present at the Meeting (if the Company has 500 or fewer shareholders with voting rights).

◆ **See also Paragraphs 7.4.2-7.4.4 in this Chapter for more information on the use of ballots during General Meetings of Shareholders.**

2: Verify and Announce the Quorum of the Meeting

The same body (or individuals) that has registered shareholders or their representatives for the Meeting often also verifies and announces the quorum of the Meeting. The quorum is verified by counting the number of shares of the Company with voting rights owned both by shareholders present in person and those represented by a power of attorney. The quorum must be verified before the Annual Meeting of Shareholders can be officially opened.

The Annual Meeting of Shareholders can only be held if the owners of more than 50 percent of the shares of the Company with voting rights have been registered to participate in the Meeting.¹⁶³ If the quorum is present, the Meeting is deemed to be valid.

In the absence of the quorum, the Meeting must be rescheduled. The Law on Joint Stock Companies provides that:

- the rescheduled Meeting can be held no earlier than 10 days after the original Meeting. That period is used to notify shareholders of the date, time and location of the rescheduled Annual Meeting of Shareholders;
- if the rescheduled Annual Meeting of Shareholders is held later than 20 days after the original Meeting, the Board of Directors must prepare a new list of shareholders eligible to participate in the Meeting.

The rescheduled Annual Meeting of Shareholders is valid if more than 30 percent of shareholders with voting rights have been registered to participate in the Meeting.¹⁶⁴

¹⁶³ LJSC, Chapter 10, Article 80, Clause 1.

¹⁶⁴ LJSC, Chapter 10, Article 80, Clause 3.

Only matters on the agenda of the original Meeting can be discussed on the rescheduled Annual Meeting of Shareholders. It is not possible to amend the agenda of the rescheduled Annual Meeting of Shareholders.

3: Open the Meeting

The Annual Meeting of Shareholders can be opened if a quorum is present. The person who opens the Meeting raises the issue of electing the members of the Counting Commission, the Chairman of the Meeting and the Secretary of the Meeting. The Chairman of the Board of Directors is often elected as the Chairman of the Annual Meeting of Shareholders.

4: Elect Members of the Counting Commission

Upon the proposal by the Board of Directors, the Annual Meeting of Shareholders must elect members of the Counting Commission¹⁶⁵ when the Company has more than 25 shareholders with voting rights.¹⁶⁶ This Commission performs the following functions:¹⁶⁷

- verifies the quorum of the Annual Meeting of Shareholders;
- explains the voting procedures to shareholders and their representatives present at the Annual Meeting of Shareholders;
- ensures that voting procedures are followed. It must make sure that all decisions made at the Meeting meet the special voting requirements related to various agenda items of the Annual Meeting of Shareholders;
- calculates the number of votes cast during the Annual Meeting of Shareholders;
- summarizes voting results;
- writes the minutes of the voting and the voting results;
- transfers the ballots to the archive of the Company.

The number of members of the Counting Commission, if established, cannot be less than three. The following individuals cannot be members of the Counting Commission:¹⁶⁸

- members of the Board of Directors;
- the Executive Director;
- members of the Management Team;
- members of the Control Committee (Controller).

The Board of Directors can recommend to the Annual Meeting of Shareholders candidates for the Counting Commission. If the Company has more than 500 shareholders with voting

¹⁶⁵ The Commission is also called the “Tabulation Committee.”

¹⁶⁶ LJSC, Chapter 10, Article 78, Clause 1.

¹⁶⁷ LJSC, Chapter 10, Article 78, Clause 4.

¹⁶⁸ LJSC, Chapter 10, Article 78, Clause 2.

rights, the functions of the Counting Commission can be transferred to a specialized registrar.¹⁶⁹

5: Elect the Chairman of the Meeting

The next step is the election of the Chairman of the Annual Meeting of Shareholders. The Chairman of the Board of Directors normally presides over the Annual Meeting of Shareholders if the Charter of the Company does not provide otherwise.¹⁷⁰ If the Chairman of the Board of Directors is also the Executive Director of the Company, it is recommended that another member of the Board of Directors chair the Annual Meeting of Shareholders. The Charter and the by-laws of the Company can further specify the rules of selecting the Chairman of the Annual Meeting of Shareholders.

6: Elect the Secretary of the Meeting

The next step is the election of the Secretary of the Annual Meeting of Shareholders. The Secretary makes sure that issues discussed or raised at the Meeting, together with any decisions made, are recorded in the minutes of the Annual Meeting of Shareholders.

7: Decide on the Presence of Guests

As a practical matter, the Company can also invite potential investors, employees, government officials, journalists, experts and other individuals and organizations that do not own shares of the Company to attend the Annual Meeting of Shareholders. Shareholders have the right to decide on the presence of guests. The Charter and the by-laws can further specify the rules related to the invitation of guests to the Annual Meeting of Shareholders.

8: The Chairman Presents the Agenda and the Rules of Order

The Chairman presents the agenda of the Meeting to the shareholders. In addition, the Chairman explains the rules of order of the Meeting and asks the Chairman of the Counting Commission to explain the voting procedures to shareholders.

9: The Chairman Opens the Discussion on the Agenda

The next step is the presentation and the discussion of the items on the agenda of the Annual Meeting of Shareholders. The Chairman can invite members of the Board of Directors, the Executive Director and members of the Management Team to comment on items on the agenda before shareholders vote. The Chairman of the Meeting can also ask invited (external) experts to explain the items to shareholders.

10: Shareholders Vote

Once one or more items are discussed, the Chairman of the Meeting asks shareholders to vote on the items on the agenda. Shareholders cannot vote on items not included in the agenda of the Annual Meeting of Shareholders. Decisions are usually made by a simple majority vote of shareholders present at the Meeting. Some items require the approval of a larger majority of shareholders present at the Annual Meeting of Shareholders.

¹⁶⁹ LJSC, Chapter 10, Article 78, Clause 3.

¹⁷⁰ LJSC, Chapter 10, Article 89, Clause 2, Section D.

- ◆ **The voting procedures of the Annual Meeting of Shareholders are explained in more detail in Paragraph 7.4 in this Chapter.**

11: The Counting Commission Counts the Votes

The Counting Commission calculates the number of votes cast during the Annual Meeting of Shareholders and summarizes the voting results in its minutes. The calculation of votes can be done:

- directly after the voting on one (1) item has taken place, or;
- after the voting on a number of items has taken place.

The Counting Commission presents the voting results in its minutes to the Chairman of the Annual Meeting of Shareholders.

12: The Chairman Announces the Voting Results

The Chairman announces to shareholders the voting results that have been summarized in the minutes of the Counting Commission and presents the next item on the agenda (see step 9 in this paragraph).

13: The Chairman Closes the Meeting

The Chairman closes the Annual Meeting of Shareholders when all items on the agenda have been discussed and voted on.

14: The Counting Commission Prepares Minutes and Archives the Ballots

The Counting Commission must record the voting results of the Annual Meeting of Shareholders and must:

- prepare the minutes containing the voting results of the Annual Meeting of Shareholders;
- ensure that members of the Counting Commission sign the minutes of the Counting Commission, and;¹⁷¹
- immediately after signing the minutes, ensure that the ballots are sealed and transferred to the archive of the Company to secure the confidentiality of the voting process.

- ◆ **See also Paragraphs 7.4.2-7.4.4 in this Chapter for more information on ballots.**

The Annual Meeting of Shareholders normally lasts no longer than one (1) day. If the Annual Meeting of Shareholders takes longer, the Board of Directors must prepare a separate list of shareholders for each day that the Annual Meeting of Shareholders is held.¹⁷²

¹⁷¹ LJSC, Chapter 8, Article 84, Clause 1.

¹⁷² LJSC, Chapter 10, Article 80, Clause 1.

7.3.7 Step 7 – Notify Shareholders of Decisions Made at the Annual Meeting of Shareholders

The Company must prepare the minutes of the Annual Meeting of Shareholders within 15 days after the Meeting.¹⁷³ The Chairman and the Secretary of the Annual Meeting of Shareholders must sign two copies of the minutes. The minutes must contain the following information:

- location and date of the Annual Meeting of Shareholders;
- total number of voting shares and total number of votes that were present during the Annual Meeting of Shareholders;
- name of the Chairman and the Secretary of the Annual Meeting of Shareholders;
- agenda of the Annual Meeting of Shareholders;
- summary of speeches and discussions held during the Annual Meeting of Shareholders;
- minutes of the Counting Commission including the items that were voted on and the voting results of the Annual Meeting of Shareholders;
- decisions made at the Annual Meeting of Shareholders.

*Figure 7.8
Notification of Shareholders on Decisions Made
at the Annual Meeting of Shareholders (Step 7)*

Prepare the minutes of the Counting Commission

Prepare minutes of the Annual Meeting of Shareholders

Prepare notices of decisions made by shareholders

Notify shareholders

The minutes are inserted in the minute book of the Company that is kept with the books and records of the Company. The minutes of the Counting Commission must be attached to the minutes of the Annual Meeting of Shareholders. Shareholders must be provided with information regarding the decisions of the Annual Meeting of Shareholders as well as the voting results within 45 days after the Meeting.¹⁷⁴ In order to be transparent, a Com-

¹⁷³ LJSC, Chapter 10, Article 85, Clause 1.

¹⁷⁴ LJSC, Chapter 10, Article 71, Clause 7.

pany should provide shareholders with details of all decisions by mail or publication in a newspaper with a circulation of at least 1,000 copies. If financially feasible, all shareholders should ideally receive a copy of the minutes of the Annual Meeting of Shareholders.

Provided that they had due notice of the Meeting, the decisions of the Annual Meeting of Shareholders are binding for all shareholders, whether or not they were present during the Meeting and when these decisions are not recognized invalid by the Court.

7.4 How Decisions are Made at the Annual Meeting of Shareholders

Voting is normally carried out through the principle of “one share – one vote.” Preferred shares can give shareholders more than one (1) vote per share.¹⁷⁵ For example, 5 common shares with one (1) vote each may be equal to one (1) preferred share with 5 votes. Decisions are usually made by a majority vote of shareholders physically present at the Annual Meeting of Shareholders or who are represented by a power of attorney.¹⁷⁶ The law and the Charter of the Company can provide a larger number of votes necessary to make decisions at the Annual Meeting of Shareholders. The election of members of the Board of Directors requires cumulative voting in Companies with more than 500 shareholders with voting rights.¹⁷⁷

- ◆ See Chapter 8, Paragraph 8.2.1 of this Manual for more information on cumulative voting.

7.4.1 Representation of Shareholders

Shareholders can vote at the Annual Meeting of Shareholders in person or by a power of attorney.¹⁷⁸

- ◆ See Chapter 6 of this Manual for more information on the right of shareholders to vote during General Meetings of Shareholders.

7.4.2 Voting Through Ballots

A ballot (“voting paper”) is a printed document that represents a way to vote at the Annual Meeting of Shareholders. Voting by ballot permits shareholders to keep their decisions on items secret because the individual voting results are only disclosed to the Counting Commission. Voting by ballots is also important to protect the rights of shareholders. A ballot gives shareholders the opportunity to verify their votes on items during the Annual Meeting of Shareholders. In addition, a ballot can help shareholders to prove to the Court

¹⁷⁵ LJSC, Chapter 3, Article 40, Clause 5.

¹⁷⁶ LJSC, Chapter 10, Article 71, Clause 2.

¹⁷⁷ LJSC, Chapter 11, Article 88, Clause 3.

¹⁷⁸ LJSC, Chapter 10, Article 79, Clause 1.

that they have voted for or against a certain decision at the Annual Meeting of Shareholders. In Companies with more than 25 shareholders with voting rights, shareholders must vote through ballots.¹⁷⁹ The Board of Directors of the Company determines the form and the contents of ballots.¹⁸⁰ A ballot should include the following information:¹⁸¹

- name of the Company;
- date, time and location of the Annual Meeting of Shareholders;
- list and the order of items on which shareholders can vote;
- first and last names of candidates for the Board of Directors and the Control Committee (Controller), if elected;
- instructions on how shareholders must complete and sign the ballot.

The format of ballots depends on the voting procedures of the Annual Meeting of Shareholders. The ballot can be one document that contains all items on which shareholders can vote. In this case, the Counting Commission presents the voting results to the Chairman of the Meeting after shareholders have voted on all items on the agenda. The ballot can also consist of separate pages each containing one (1) or several items on which shareholders can vote. In this case, the Counting Commission presents the voting results to the Chairman of the Meeting after shareholders have voted on items on each page.

◆ **Examples of ballots are included in the appendix to this Manual.**

7.4.3 How Ballots Must be Filled Out

A vote can only be counted if a shareholder gives only one (1) answer to a question related to a certain item on the ballot. This must be done by leaving one (1) box empty and by crossing out the remaining boxes. For example, a shareholder wants to vote against a certain item at the Annual Meeting of Shareholders. In the first example in figure 7.9, the shareholder fills out only one (1) box. His vote is not valid. Shareholders must follow the second example by crossing out the two boxes he does not support, leaving blank the box that represents his choice. This method helps to prevent later changes to the ballot. Incorrectly filled out questions on the ballot do not affect the right of shareholders to fill out and to vote on other items on the ballot.¹⁸²

¹⁷⁹ LJSC, Chapter 10, Article 82, Clause 1.

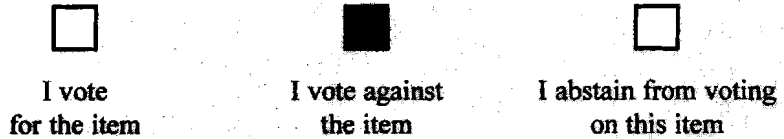
¹⁸⁰ LJSC, Chapter 10, Article 82, Clause 2.

¹⁸¹ LJSC, Chapter 10, Article 82, Clause 3.

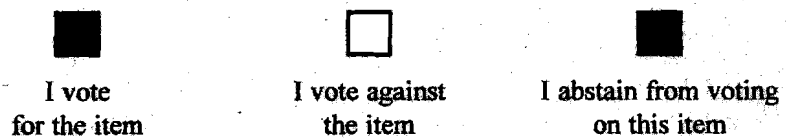
¹⁸² LJSC, Chapter 10, Article 83.

Figure 7.9
How to Fill Out Ballots

An Incorrectly Filled Out Question on a Ballot



A Correctly Filled Out Question on a Ballot



7.4.4 The Use of Ballots in Companies with More than 500 Shareholders with Voting Rights

Ballots must be sent to shareholders if the Company has more than 500 shareholders with voting rights following the notification procedures discussed in paragraph 7.3.5 in this chapter.

7.5 Extraordinary Meetings of Shareholders

In addition to the Annual Meeting of Shareholders, the Company can hold Extraordinary Meetings of Shareholders. Although the procedure for holding an Extraordinary Meeting of Shareholders resembles in many ways the procedure for holding the Annual Meeting of Shareholders, there are some differences that must be taken into account.

7.5.1 When Extraordinary Meetings of Shareholders are Held

Extraordinary Meetings of Shareholders are usually held if certain urgent issues arise that must be clarified with shareholders of the Company. The law states that the following parties can request an Extraordinary Meeting of Shareholders:¹⁸³

- the Board of Directors;
- the Control Committee (Controller);

¹⁸³ LJSC, Chapter 10, Article 77, Clause 1.

- the independent external auditor;
- a shareholder (or a group of shareholders) who owns at least 10 percent of shares of the Company with voting rights as of the date of the request.

The law specifies that the written request of shareholders that own at least 10 percent of shares of the Company with voting rights must contain the following information:¹⁸⁴

- first and last name(s) of the shareholder(s) submitting the request;
- number of each type and class of shares owned by the shareholder(s) submitting the request;
- signature of shareholder(s) submitting the request.

The Board of Directors decides on the format and contents of the notification of shareholders when the Board of Directors calls the Meeting.¹⁸⁵

7.5.2 Who Makes the Decision to Hold the Extraordinary Meeting of Shareholders

Within 10 days of the request of shareholders or other parties, the Board of Directors decides if the Extraordinary Meeting of Shareholders will be held. The Board of Directors can refuse to hold the Extraordinary Meeting of Shareholders on the following grounds:¹⁸⁶

- parties have submitted the request for an Extraordinary Meeting of Shareholders when they do not meet the requirements of the procedures;
- shareholders have requested the Extraordinary Meeting of Shareholders when they do not own (enough) shares of the Company;
- the items for the proposed agenda of the Extraordinary Meeting of Shareholders are not within the authority of the General Meeting of Shareholders.

The Board of Directors must notify parties within 3 days after it has made the decision to hold or not to hold an Extraordinary Meeting of Shareholders.

The decision of the Board of Directors to reject the parties' request to hold an Extraordinary Meeting of Shareholders can be appealed to the Court.¹⁸⁷ The initiating party can hold the Extraordinary Meeting of Shareholders if the Board of Directors:¹⁸⁸

- has rejected the request, or;
- has not made a decision within 10 days after it has received the request to organize an Extraordinary Meeting of Shareholders.

¹⁸⁴ LJSC, Chapter 10, Article 77, Clause 3.

¹⁸⁵ LJSC, Chapter 10, Article 77, Clause 1.

¹⁸⁶ LJSC, Chapter 10, Article 77, Clause 4.

¹⁸⁷ LJSC, Chapter 10, Article 77, Clause 5.

¹⁸⁸ LJSC, Chapter 10, Article 77, Clause 6.

7.5.3 Agenda of the Extraordinary Meeting of Shareholders

Parties who request an Extraordinary Meeting of Shareholders are responsible for the agenda of the Meeting.¹⁸⁹ They must make sure that the agenda includes all proposed items for discussion in sufficient detail for shareholders to be able to make a reasonable judgment on the issue. The Board of Directors cannot make any changes to the agenda of the Extraordinary Meeting of Shareholders that has been called by other parties.

7.5.4 Decisions Made by Written Consent

The law provides the opportunity for shareholders to vote and to make decisions by written consent during General Meetings of Shareholders.¹⁹⁰ This means that General Meetings of Shareholders can be held while shareholders and their representatives are not physically present at the Meeting. A General Meeting of Shareholders that is held by written consent is valid if owners of 50 percent of the shares of the Company with voting rights have participated in the voting.

Shareholders can vote and make decisions through written consent on most issues that fall within the authority of the General Meeting of Shareholders. Shareholders cannot vote and make decisions through written consent on:¹⁹¹

- the approval of the annual report, balance sheet, profit and loss statement and the distribution of profit and losses of the Company;
- the approval and payment of annual dividends;
- the approval of the annual results of the Company's branches and representative offices.

These decisions are made at the Annual Meeting of Shareholders.

¹⁸⁹ LJSC, Chapter 10, Article 72, Clause 2.

¹⁹⁰ LJSC, Chapter 10, Article 72.

¹⁹¹ LJSC, Chapter 10, Article 72, Clause 1.

8: THE BOARD OF DIRECTORS

It is important for Joint Stock Companies to have a Board of Directors that understands that it must operate independently from the management to safeguard the interests of the shareholders of the Company. This chapter presents an overview of the structure, composition and authority of the Board of Directors, and the election, compensation and liabilities of its members.

8.1 Structure and Composition of the Board of Directors

According to the Civil Code, a Board of Directors is mandatory for Joint Stock Companies with more than 50 shareholders.¹⁹² The Board of Directors must consist of at least 3 members. A Company with more than 500 shareholders with voting rights must have at least 7 members on the Board of Directors. These members are elected by the General Meeting of Shareholders and do not include members who have a seat on the Board of Directors based on the “ten percent rule” as discussed in paragraph 8.1.1 in this chapter.¹⁹³

The Charter of the Company can provide for a number of members of the Board of Directors that is greater than the minimum number required by law. If the number of members of the Board of Directors becomes less than 50 percent of the number specified by the Charter, the Board of Directors must organize an Extraordinary Meeting of Shareholders to elect new members to the Board of Directors.¹⁹⁴

8.1.1 Who can be a Member of the Board of Directors

Only natural persons with “full dispositive capacity”¹⁹⁵ can be a member of the Board of Directors.¹⁹⁶ An authorized natural person can represent in the Board of Directors a legal entity that is a shareholder of the Company. An individual can occupy only one (1) position on the Board of Directors.

Directors are elected by the shareholders or nominated according to the “10 percent rule.” Shareholders who own at least 10 percent of the shares of the Company with voting rights are entitled to have a seat on the Board of Directors without being elected by the General Meeting of Shareholders.¹⁹⁷ This right is not granted to a group of shareholders (acting together) that owns 10 or more percent of the shares of the Company with voting rights.

¹⁹² This is, regardless the number of voting rights that are attached to the shares of the Company. See also CC, Chapter 5, Article 115, Clause 2.

¹⁹³ LJSC, Chapter 11, Article 88, Clauses 2 and 4.

¹⁹⁴ LJSC, Chapter 11, Article 90, Clause 2.

¹⁹⁵ See also Chapter 4, Paragraph 4.1 of this Manual for a definition of the “dispositive capacity” of a natural person.

¹⁹⁶ LJSC, Chapter 11, Article 88, Clause 5.

¹⁹⁷ As of the date of preparing the list of shareholders who are eligible to participate during the General Meeting of Shareholders. See also LJSC, Chapter 11, Article 88, Clause 2.

Best corporate governance practices show that a member of the Board of Directors should have the following qualifications:

- the trust of shareholders, other members of the Board of Directors, managers and employees of the Company;
- the ability to relate to the interests of all stakeholders of the Company and to make well-reasoned decisions;
- professional expertise, education and contacts useful for the Company;
- international business experience, knowledge of national issues and trends and knowledge of the market and products of the Company and its competitors;
- the ability to translate knowledge and experience into solutions that can be applied to the Company.

8.1.2 Differences Between Inside and Outside Directors

The Executive Director and members of the Management Team who are also members of the Board of Directors are called “Inside Directors.” Inside Directors are not allowed to form a majority on the Board of Directors in Armenian Joint Stock Companies.¹⁹⁸ This means that, at a minimum, a Joint Stock Company must have 2 members of the Board of Directors who do not have an executive position in the Company when the Company has 500 or fewer shareholders with voting rights. A Company with more than 500 shareholders with voting rights must have at least 4 members on the Board of Directors who do not occupy an executive position in the Company. The Charter of the Company can provide other limitations related to the qualifications of members of the Board of Directors.¹⁹⁹

“Outside Directors” are those who do not combine an executive position in the Company with a seat on the Board of Directors. It is important for Joint Stock Companies to have a majority of Outside Directors on the Board of Directors because of their:

- independence of judgment and impartiality;
- broad experience and knowledge;
- contacts which may help the Company to gain access to external financial resources and markets;
- presence which gives (foreign) investors and shareholders the confidence that there is a proper system of checks and balances in place within the Company.

In the West, well known financiers, bankers, lawyers, scientists and members of the Management Team of other Companies often serve on the Board of Directors as Outside Directors, even when they are not shareholders of the Company.

¹⁹⁸ LJSC, Chapter 11, Article 88, Clause 5.

¹⁹⁹ LJSC, Chapter 11, Article 88, Clause 5.

8.1.3 The Chairman of the Board of Directors

The Board of Directors is a collective body, which refers to the fact that: 1) all members have equal rights and duties, 2) all members bear a joint and several liability and, 3) members act together as a body according to specific decision-making procedures. For efficiency and representation purposes, the members of the Board of Directors elect their Chairman.²⁰⁰ The Chairman of the Board of Directors is elected by a majority vote of the total number of members of the Board of Directors if the Charter or the by-laws of the Company do not require a greater number of votes. The General Meeting of Shareholders does not have the authority to elect the Chairman of the Board of Directors.

In a Company with more than 500 shareholders with voting rights, the Chairman of the Board of Directors cannot be the Executive Director of the Company or occupy another paid executive position in the Company.²⁰¹ In line with international corporate governance standards, it is recommended that this rule also be observed in Companies with 500 or fewer shareholders with voting rights.

According to the law, the Chairman of the Board of Directors has the authority to:²⁰²

- organize the work of the Board of Directors;
- enter into contracts with the Executive Director and members of the Management Team;²⁰³
- enter into contracts with the independent external auditor of the Company;²⁰⁴
- organize and preside over meetings of the Board of Directors;
- sign the decisions and minutes of the Board of Directors;
- have a deciding vote at meetings of the Board of Directors in case of a tie vote (if this is provided by the Charter of the Company);²⁰⁵
- preside over General Meetings of Shareholders if the Charter of the Company does not provide otherwise;
- sign securities and certificates of the Company;²⁰⁶
- perform any other duties as specified in the Charter and the by-laws of the Company.

²⁰⁰ LJSC, Chapter 11, Article 89, Clause 1.

²⁰¹ LJSC, Chapter 11, Article 89, Clause 1.

²⁰² LJSC, Chapter 11, Article 89, Clause 2.

²⁰³ LJSC, Chapter 11, Article 91, Clause 2.

²⁰⁴ LJSC, Chapter 12, Article 95, Clause 2.

²⁰⁵ LJSC, Chapter 11, Article 90, Clause 3.

²⁰⁶ LJSC, Chapter 3, Article 41, Clause 2; LJSC, Chapter 3, Article 42, Clause 5.

8.1.4 Committees of the Board of Directors

Western Boards of Directors often form special committees to advise on specific issues and questions. These may be issues of concern to the Board of Directors such as the compensation of the Executive Director. Board Committees cannot make decisions over issues that are the responsibility of the Board of Directors as a collective body.

8.2 Election and Dismissal of Members of the Board of Directors

The General Meeting of Shareholders elects members of the Board of Directors for a period of one (1) year.²⁰⁷ Shareholders (or a group of shareholders) who have at least 2 percent of the shares of the Company with voting rights have the right to propose candidates for the Board of Directors.²⁰⁸ There is no limitation on the number of times members of the Board of Directors can be re-elected.²⁰⁹

8.2.1 Cumulative Voting

Armenian law stipulates that, in Companies with more than 500 shareholders with voting rights, members of the Board of Directors must be elected through a system of cumulative voting.²¹⁰ Cumulative voting is a system that helps shareholders who own a small number of shares (the so-called minority shareholders) to have a representative on the Board of Directors of the Company. During cumulative voting, members of the Board of Directors are elected collectively.

It is possible to give the following example: The agenda of the General Meeting of Shareholders indicates that shareholders will elect 10 members to the Board of Directors. The Company has 2,500 shareholders who collectively own a minority of 20 percent of the shares with voting rights (3,000 shares). The Company also has one (1) majority shareholder who owns 80 percent of the shares of the Company (12,000 shares). The Company has issued in total 15,000 shares with voting rights.

Under a normal voting arrangement, each director is elected separately by a simple majority vote of shareholders present at the General Meeting of Shareholders. In this case, the majority shareholder with 80 percent of the shares has more votes than the minimum number of votes necessary to elect each member of the Board of Directors. He can easily out-vote the minority shareholders owning 20 percent of the shares.

Cumulative voting works differently. All shareholders receive per share a number of votes equal to the number of directors that will be elected. In our example, 2,500 shareholders of

²⁰⁷ It is most practical that members of the Board of Directors are elected for a period that equals the period between two consecutive Annual Meetings of Shareholders. In the case of the formation of a new Company, the Company's Constituent Meeting elects the first members of the Board of Directors. See also LJSC, Chapter 2, Article 12, Clause 4.

²⁰⁸ LJSC, Chapter 10, Article 75, Clause 1.

²⁰⁹ LJSC, Chapter 11, Article 88, Clause 1.

²¹⁰ The Charter of a Company with 500 or fewer shareholders with voting rights can also specify that the election of members of the Board of Directors must take place through cumulative voting. See also LJSC, Chapter 11, Article 88, Clause 3.

the Company receive a total of 30,000 votes (3,000 shares x 10 votes). The majority shareholder has 120,000 votes (12,000 shares x 10 votes). The 10 candidates that receive the most votes are elected to the Board of Directors. The majority shareholder can vote for 8 candidates with 120,000 votes. The minority shareholders are guaranteed that 2 candidates are elected to the Board of Directors if they use the 30,000 votes for the 2 candidates. In summary:

- 10 candidates will be elected to the Board of Directors through cumulative voting;
- the Company has 2,501 shareholders; 2,500 shareholders own 3,000 shares (20 percent) and one (1) shareholder owns 12,000 shares (80 percent);
- the minority shareholders have a total of 30,000 votes (10 votes x 3,000 shares);
- the majority shareholder has a total of 120,000 votes (10 votes x 12,000 shares);
- the shareholders have in total 150,000 votes to elect 10 members of the Board of Directors;
- if the majority shareholder uses all votes to elect 8 candidates, the minority shareholders can use their 30,000 votes to vote for 2 other candidates. This guarantees that the minority shareholders will be able to elect 2 directors since the 10 candidates receiving the most votes are elected to the Board of Directors.

8.2.2 Dismissal of Members of the Board of Directors

Members of the Board of Directors are dismissed by a simple majority vote of shareholders present at the General Meeting of Shareholders. If the members are elected through cumulative voting, the decision on the dismissal of members of the Board of Directors must be made for all members of the Board of Directors. In this case, it is not possible to dismiss just one member of the Board of Directors. The General Meeting of Shareholders has the authority to dismiss members of the Board of Directors before the end of their term in office.²¹¹

8.3 Authority of the Board of Directors

According to the law, the Board of Directors has the authority to make decisions regarding:²¹²

- general management and the organization of the Company;
- the General Meeting of Shareholders;
- the election and supervision of the Management Team;

²¹¹ LJSC, Chapter 11, Article 88, Clause 1.

²¹² LJSC, Chapter 11, Article 87, Clause 1.

- the capital and assets of the Company;
- decisions on other issues determined by the law, the Charter and the by-laws of the Company.

8.3.1 Role of the Board of Directors in General Management and the Organization of the Company

The Board of Directors plays an important role in the general oversight of the management and the internal organization of the Company. It has the authority to:

- develop by-laws of the Company including those that must be approved by the General Meeting of Shareholders;
- approve the administrative and organizational structure of the Company;²¹³
- establish branches and representative offices;²¹⁴
- approve the annual operational budget of the Company.²¹⁵

The Executive Director and the Management Team of the Company are responsible for the preparation of the financial statements of the Company. The Board of Directors verifies the annual financial statements of the Company before the General Meeting of Shareholders approves them. The Board of Directors verifies the annual financial statements of the Company at least 30 days before the General Meeting of Shareholders.²¹⁶

8.3.2 Role of the Board of Directors with Regard to the General Meeting of Shareholders

(a) Preparation and Organization of the General Meeting of Shareholders

The Board of Directors plays an important role in the organization of General Meetings of Shareholders and the development of related procedures.²¹⁷ The Board of Directors is responsible for:

²¹³ This authority can be delegated to the Executive Director (the Management Team) by the Charter and by decision of the General Meeting of Shareholders if the Company does not have a Board of Directors. See also LJSC, Chapter 11, Article 87, Clause 1, Section V; LJSC, Chapter 11, Article 87, Clause 2.

²¹⁴ This is if the authority is delegated to the Board of Directors by the Charter of the Company or by decision of the General Meeting of Shareholders. See also LJSC, Chapter 10, Article 70, Clause 1, Section U.

²¹⁵ This authority can be delegated to the Executive Director (the Management Team) by the Charter and by decision of the General Meeting of Shareholders if the Company does not have a Board of Directors. See also LJSC, Chapter 11, Article 87, Clause 1, Section W.

²¹⁶ LJSC, Chapter 13, Article 96, Clause 3.

²¹⁷ See also LJSC, Chapter 10, Article 76.

- holding General Meetings of Shareholders;
- making decisions on the information and materials that must be provided to the shareholders during the preparation of General Meetings of Shareholders;
- preparing the list of shareholders eligible to participate in General Meetings of Shareholders;
- discussing and compiling the list of proposed candidates who can be elected to the Board of Directors and the Control Committee (Controller) during the General Meeting of Shareholders and verifying that the legal requirements for such a list have been met;
- determining and approving the agenda of the General Meeting of Shareholders;
- proposing candidates for the Counting Commission of the Company.

In addition to this authority, the Board of Directors makes decisions on all other issues related to the preparation and organization of the General Meeting of Shareholders that fall within the authority of the Board of Directors.

The Charter of the Company must specify how the Executive Director or the Management Team organizes the General Meeting of Shareholders and approves the agenda of the General Meeting of Shareholders if the Company does not have a Board of Directors.

(b) Submitting Proposals for the Agenda of the General Meeting of Shareholders

The Board of Directors can submit the following items for the agenda of the General Meeting of Shareholders:²¹⁸

- limitations of rights and privileges of shareholders who possess shares and other securities that can be converted to shares of the Company;
- the procedures by which shareholders of the Company are notified and provided with information and materials, and procedures related to the selection of mass media to inform shareholders of General Meetings of Shareholders;
- means to decrease (split) and increase (consolidate) the nominal value of shares of the Company;
- reorganization and liquidation of the Company;²¹⁹
- approval of large and interested transactions;
- acquisition of the Company's allocated shares;
- establishment of subsidiaries and the participation of the Company in subsidiaries and dependent Companies;
- establishment of branches and representative offices.

²¹⁸ LJSC, Chapter 10, Article 71, Clause 3.

²¹⁹ LJSC, Chapter 2, Article 27, Clause 3.

(c) Organization of Extraordinary Meetings of Shareholders

The Board of Directors has the authority to call Extraordinary Meetings of Shareholders. The Board of Directors does not have the right to determine or to change the agenda of the Extraordinary Meeting of Shareholders if the Meeting is called upon the request of other parties.²²⁰

The Board of Directors must organize an Extraordinary Meeting of Shareholders within 45 days after other parties have requested the Meeting.

- ◆ **Chapter 7, Paragraph 7.5 of this Manual describes the role of the Board of Directors in the organization of Extraordinary Meetings of Shareholders.**

8.3.3 Election and Supervision of the Management Body

The Board of Directors is responsible for the:

- appointment and dismissal of the Executive Director and members of the Management Team;²²¹
- development of procedures related to the compensation and reimbursement of the Executive Director and members of the Management Team.²²²

8.3.4 Responsibilities with regard to the Capital and the Assets of the Company

(a) Issuance of Shares

The Board of Directors can decide to issue authorized shares.²²³ The issuance of shares results in changes to the charter capital of the Company that must be approved by a simple majority of shareholders present at the General Meeting of Shareholders.

- ◆ **Chapter 6, Paragraph 6.2 of this Manual describes the types and classes of shares that can be issued by Joint Stock Companies.**

(b) Managing the Reserve Fund of the Company

Each Joint Stock Company must have a reserve fund that is not less than 15 percent of the charter capital of the Company.²²⁴ This fund is used to cover the Company's losses and the costs of redemption of shares and bonds when the profit of the Company is insufficient for this purpose. The decision whether and when to use the reserve fund is made by the Board of Directors.

- ◆ **Chapter 12, Paragraph 12.2.4 of this Manual describes the purposes of the reserve fund of Joint Stock Companies.**

²²⁰ LJSC, Chapter 10, Article 77, Clause 2.

²²¹ The General Meeting of Shareholders has the authority to appoint and dismiss the Executive Director and members of the Management Team of the Company unless the Charter of the Company delegates this right to the Board of Directors. See also CC, Chapter 5, Article 115, Clause 1, Section 3.

²²² LJSC, Chapter 11, Article 87, Clause 1, Section J.

²²³ LJSC, Chapter 11, Article 87, Clause 1, Section F.

²²⁴ LJSC, Chapter 3, Article 46, Clause 2.

(c) Payment of Dividends

The Board of Directors develops the procedures related to the payment of annual dividends to shareholders of the Company. The Board of Directors must submit the procedures to the agenda of a General Meeting of Shareholders for approval by the shareholders of the Company.²²⁵

The Board of Directors has the authority to prepare the list of shareholders who are entitled to receive dividends. The Board of Directors makes the decision on the size and the distribution of quarterly and semi-annual dividends. The General Meeting of Shareholders makes the decision on the payment of annual dividends after the Board of Directors has advised the General Meeting of Shareholders on this matter.²²⁶

- ◆ **Chapter 12, Paragraph 12.7 of this Manual describes the payment of dividends to shareholders of Joint Stock Companies.**

(d) Approving Large and Interested Transactions

The Board of Directors has the authority to approve large and interested transactions in cases specified by law. Except under circumstances defined by the Law on Joint Stock Companies, the Board of Directors determines the market value of assets related to large and interested transactions.²²⁷

- ◆ **Chapter 13 of this Manual describes in more detail large and interested transactions of Joint Stock Companies.**

Table 8.1
The Authority of the Board of Directors

Authority	Conditions	References
Determination of the Company's main direction		LJSC, Chapter 11, Article 87, Clause 1, Section A
Approval of the annual operational budget of the Company	Can be delegated to management body by the Charter or by decision of the General Meeting of Shareholders (GMS) if the Company does not have a Board of Directors	LJSC, Chapter 11, Article 87, Clause 1, Section W
Establishment of branches and representative offices	If delegated by the Charter or by decision of the GMS	LJSC, Chapter 10, Article 70, Clause 1, Section U; LJSC, Chapter 11, Article 87, Clause 1, Section R
Approval of the Company's by-laws (except by-laws on the GMS)	Can be delegated to the management body by the Charter or by decision of the GMS if the Company does not have a Board of Directors	LJSC, Chapter 11, Article 87, Clause 1, Section P

²²⁵ LJSC, Chapter 11, Article 87, Clause 1, Section M. See also LJSC, Chapter 5, Article 52.

²²⁶ LJSC, Chapter 5, Article 52, Clause 3.

²²⁷ LJSC, Chapter 11, Article 87, Clause 1, Section H. See also LJSC, Chapter 7, Article 62.

Table 8.1 Continued

Authority	Conditions	References
Approval of the administrative and organizational structure of the Company	Can be delegated to the management body by the Charter or by decision of the GMS if the Company does not have a Board of Directors	LJSC, Chapter 11, Article 87, Clause 1, Section V
Organizing and holding the Annual GMS		LJSC, Chapter 10, Article 73, Clause 3; LJSC, Chapter 10, Article 74; LJSC, Chapter 10, Article 75, Clause 4; LJSC, Chapter 10, Article 76; LJSC, Chapter 11, Article 87, Clause 1, Sections B, C and D
Calling and holding an Extraordinary GMS		LJSC, Chapter 10, Article 77; LJSC, Chapter 11, Article 87, Clause 1, Section B
Verification of the annual financial statement before submitting to the GMS		LJSC, Chapter 13, Article 96, Clause 3
Proposals on the size and distribution of dividends		LJSC, Chapter 11, Article 87, Clause 1, Section M
Appointment, dismissal, compensation and reimbursement of members of the executive body	If delegated by the Charter to the Board of Directors	CC, Chapter 5, Article 115, Clause 1, Section 3; LJSC, Chapter 11, Article 87, Clause 1, Section J
Preparing proposals on the compensation and reimbursement of members of the Control Committee (Controller)		LJSC, Chapter 11, Article 87, Clause 1, Section K
Determination of the remuneration of the independent external auditor		LJSC, Chapter 11, Article 87, Clause 1, Section L
Issuance of bonds and other securities	If the Charter does not provide otherwise	LJSC, Chapter 3, Article 42, Clause 1; LJSC, Chapter 11, Article 87, Clause 1, Section G
Determination of the market value of assets		LJSC, Chapter 7, Article 62; LJSC, Chapter 11, Article 87, Clause 1, Section H
Acquisition of shares and other securities		LJSC, Chapter 11, Article 87, Clause 1, Section I
Use of the Company's reserve fund		LJSC, Chapter 11, Article 87, Clause 1, Section O
Entering into large and interested transactions		LJSC, Chapter 8, Article 64; LJSC, Chapter 11, Article 87, Clause 1, Section T; LJSC, Chapter 9, Article 67, Clauses 1,2 and 4; LJSC, Chapter 11, Article 87, Clause 1, Section U

8.4 Procedures for Decision-Making by the Board of Directors

The purpose of the meetings of the Board of Directors is to discuss any activities, policies and strategies of the Company for which the Board of Directors bears responsibility. The Board of Directors may hold meetings as often as necessary. As a practical matter, the Board of Directors should hold *regular meetings* once every two months and at least one (1) *annual meeting*. The Charter or the by-laws of the Company must specify the minimum number of meetings.²²⁸ The annual meeting of the Board of Directors is held to review and approve the balance sheet, the Company's financial statements, the report of the Control Committee (Controller) and the report of the independent external auditor. According to international standards, the annual meeting of the Board of Directors must be held not later than three months after the end of the fiscal year and must be held prior to the Annual Meeting of Shareholders.

8.4.1 Who Has the Right to Call a Meeting of the Board of Directors

The Board of Directors meets upon the request of one of the following parties:²²⁹

- the Chairman and other members of the Board of Directors;
- the Control Committee (Controller);
- the independent external auditor;
- the Executive Director or the Management Team;
- other persons specified by the Charter of the Company.

8.4.2 Quorum of Meetings of the Board of Directors

The Charter of the Company specifies the quorum necessary for the Board of Directors to make decisions during its meetings. No decision can be made and no valid meeting can be held without the presence of the quorum.²³⁰ The quorum of the meeting cannot be less than 50 percent of the number of members of the Board of Directors as specified by the Charter of the Company.

8.4.3 Voting During Meetings of the Board of Directors

Decisions are normally made by a simple majority vote of members present at the meeting of the Board of Directors. The law, the Charter and the by-laws of the Company can provide additional voting requirements. For instance, the Board of Directors must vote unanimously on decisions related to large and interested transactions. Each member of the Board of Directors has one (1) vote. The law prohibits the transfer of the right to vote

²²⁸ LJSC, Chapter 11, Article 90, Clause 1.

²²⁹ LJSC, Chapter 11, Article 90, Clause 1.

²³⁰ The Board of Directors can make the decision to call an Extraordinary Meeting of Shareholders in the case of an absence of the quorum due to the death of directors or when members have resigned from the Board of Directors. See also LJSC, Chapter 11, Article 90, Clause 2.

during meetings of the Board of Directors from one member to another. The Charter of the Company can specify that the Chairman of the Board of Directors has a deciding vote during the meeting if votes are equal.²³¹

The Charter and the by-laws of the Company may also provide that members of the Board of Directors can vote by conference call or through other methods of communication if members cannot be physically present during meetings of the Board of Directors.²³²

8.4.4 Minutes of Meetings of the Board of Directors

The law states that the Board of Directors must keep minutes of its meetings. The minutes must be prepared within 10 days after the meeting²³³ and must be kept in the archives of the Company. The minutes must contain the following information:

- location and time of the meeting;
- names of the persons present at the meeting;
- agenda of the meeting;
- voting results and decisions made by the Board of Directors.

The Chairman of the Board of Directors is responsible for the quality of the minutes. He signs the minutes of the meeting of the Board of Directors. According to international standards, members of the Board of Directors are often required to designate a Secretary of the Board of Directors who prepares the minutes of the Board of Directors. In international practice, the Chief Legal Counsel of the Company often serves as the Secretary of the Board of Directors. In this case, the minutes are often signed by the Chairman and the Secretary of the Board of Directors. This practice is also recommended for Armenian Joint Stock Companies.

◆ **An example of minutes of a meeting of the Board of Directors is included in the appendix to this Manual.**

8.5 Compensation and Reimbursement of Members of the Board of Directors

Members of the Board of Directors may receive compensation for their work.²³⁴ For example, members of the Board of Directors can:

- be paid for each meeting they attend;
- receive additional compensation for work on Committees of the Board of Directors;

²³¹ LJSC, Chapter 11, Article 90, Clause 3.

²³² LJSC, Chapter 11, Article 90, Clause 1.

²³³ LJSC, Chapter 11, Article 90, Clause 4.

²³⁴ LJSC, Chapter 11, Article 86, Clause 2.

- receive additional compensation for serving as the Chairman of the Board of Directors.

Members of the Board of Directors can also be reimbursed for transportation costs and other relevant business expenses related to their duties as members of the Board of Directors. The General Meeting of Shareholders determines the compensation and reimbursement of members of the Board of Directors.

8.5.1 Compensation Committee of the Board of Directors

According to Western standards, it is generally accepted as a good practice of Boards of Directors to have a Compensation Committee. This Committee reviews and makes recommendations to the Board of Directors and the General Meeting of Shareholders on the compensation, stock options and other benefits of members of the Board of Directors, the Executive Director and members of the Management Team of the Company. It is strongly recommended that the Compensation Committee be composed only of Outside Directors (directors who do not occupy an executive position in the Company). Members of the Board of Directors who: 1) hold the position of the Executive Director, 2) who are a member of the Management Team or employees of the Company, or 3) who have family or business relationships with the Executive Director and members of the Management Team should not be allowed to have a seat on the Compensation Committee of the Board of Directors.

8.6 Duties and Liabilities of Members of the Board of Directors

Members of the Board of Directors must act in the interests of the Company and in a conscientious and reasonable way when they exercise their rights and fulfill their duties.²³⁵ They must act in good faith, and with diligence and care. Standards for the interpretation of these terms, as well as standards for professional behavior, develop slowly in a country's judicial system and economy. Therefore, when explaining these duties, the Manual refers to principles generally accepted in the West.

8.6.1 Duty of Care

Members of the Board of Directors are responsible for discharging their duties in good faith, and with care and professionalism. This means that a member of the Board of Directors must act honestly, refrain from being passive and not cause the Company to act in any unlawful way. Members of the Board of Directors should, in particular:

- regularly attend meetings of the Board of Directors;
- place matters on the agenda of meetings of the Board of Directors;

²³⁵ CC, Chapter 5, Article 57, Clause 1; LJSC, Chapter 11, Article 93, Clause 1.

- ensure that the Executive Director and members of the Management Team provide adequate information to the Board of Directors so that its members are properly informed on corporate matters;
- exercise a reasonable amount of supervision.

Failing to act in such a way may lead to responsibility for fraud and negligence.

8.6.2 Duty of Loyalty

The duty of loyalty requires members of the Board of Directors to exercise their powers in the interests of the Company. It obliges members of the Board of Directors to put the interests of the Company first when there is a conflict of interest between the Company, (controlling) shareholders and other stakeholders of the Company. The duty of loyalty usually prohibits members of the Board of Directors from:

- participating in a competing Company, unless this is approved by a majority of disinterested members of the Board of Directors;
- participating in transactions involving a potential conflict of interest with the Company, such as large and interested transactions (described in chapter 13 of this Manual);
- using corporate property and facilities for personal needs;
- using information or business opportunities for private advantage created by virtue of their position on the Board of Directors.

8.6.3 Liabilities of Members of the Board of Directors

Armenian law states that members of the Board of Directors can be held liable for actions that cause a loss to the Company.²³⁶ Members of the Board of Directors cannot be held liable for losses as a result of a decision made by the Board of Directors if they:²³⁷

- voted against the decision made by the Board of Directors, or;
- if they were not present at the meeting of the Board of Directors when the decision was made.

Members of the Board of Directors are not relieved from liability after their resignation or dismissal from the Board of Directors for actions and decisions made during their term as a member of the Board of Directors. Members of the Board of Directors who have caused losses to the Company are jointly and severally liable to the Company.

The Company or shareholders (or a group of shareholders) who own at least one (1) percent of the common shares of the Company have the right to submit a claim to the Court

²³⁶ CC, Chapter 5, Article 57, Clause 3; LJSC, Chapter 11, Article 93, Clause 2. These losses include: 1) the expenses and legal costs which a person incurs to restore violated rights; 2) actual loss or damage to property suffered by this person; 3) lost profits, and; 4) any income received by members of the Board of Directors as a result of the violation. See also CC, Chapter 3, Article 17, Clause 2.

²³⁷ LJSC, Chapter 11, Article 93, Clause 2.

against members of the Board of Directors to cover the losses of the Company.²³⁸ In addition, members of the Board of Directors of the Company may be subject to a wide range of criminal and/or administrative sanctions for violating tax laws, labor laws, currency laws, environmental laws and other laws. According to Western standards, members of the Board of Directors are also liable for the accuracy of information in annual reports and other reports distributed to the shareholders of the Company.

8.6.4 Protection from Liability of Members of the Board of Directors

(a) Business Judgment Rule

In Western Companies, members of the Board of Directors are often protected by the presumption that if they have acted in good faith and in a manner they considered to be in the best interests of the Company, they should not be held liable. This is called the business judgment rule and it can be used to defend members of the Board of Directors from lawsuits.

(b) The Indemnification of Members of the Board of Directors

International practice allows members of the Board of Directors to protect themselves from liability for losses incurred in the course of performing their duties. Such mechanisms are:

- “Officers and Directors” liability insurance, and;
- inclusion of provisions in the Charter and the by-laws of the Company not prohibited by law that indemnify members of the Board of Directors against most claims, litigation expenses and liabilities.

(c) Compensation for Legal Costs

In many Western Companies, a member of the Board of Directors can be reimbursed for expenses incurred in defending a claim related to his role as a member of the Board of Directors, provided that he acted honestly, in good faith and in the best interests of the Company and in compliance with the law, the Charter and the by-laws of the Company.

8.7 Information Disclosed by the Board of Directors

Armenian Joint Stock Companies must maintain a list of individuals who are currently members of the Board of Directors of the Company.²³⁹ The information must be made available upon the request of shareholders of the Company and must include the following information:

- first name, last name and date of birth of members;
- office and home addresses and phone numbers of members;

²³⁸ LJSC, Chapter 11, Article 93, Clause 4.

²³⁹ LJSC, Chapter 11, Article 86, Clause 3.

- educational background, current occupation and profession of members;
- date when individuals became members of the Board of Directors;
- date when individuals resigned from the Board of Directors;
- number of terms members have served on the Board of Directors;
- number of shares of the Company with voting rights that are owned by members of the Board of Directors;
- information on other legal entities where members of the Board of Directors occupy a position as a member of the Board of Directors, the Executive Director or a member of the Management Team;
- other information specified by the Charter and the by-laws of the Company.

8.7.1 Information about By-laws on the Board of Directors

Shareholders have the right to receive a copy of the by-laws that regulate the procedures of the Board of Directors if the Company has established these by-laws. The Company must provide a copy of this document within 5 days of the request by shareholders. The Company may charge shareholders for the expenses of copying and mailing this document.²⁴⁰

8.7.2 The Corporate Governance Statement in Annual Financial Reports

It is recommended by international corporate governance guidelines that shareholders have easy access to information on members of the Board of Directors of Open Joint Stock Companies. To satisfy the expectations of both domestic and foreign investors, most of the information that must be registered by the Company should also be included in a separate section of the annual report of the Company, taking into consideration the privacy of members of the Board of Directors. It is becoming an increasingly common practice for Open Joint Stock Companies in the West to include a corporate governance statement in the annual financial report of the Company. This statement is written by the Board of Directors to inform shareholders of the Company on the main corporate governance practices of the Company. The corporate governance statement often includes the following information related to the Board of Directors during the past fiscal year of the Company:

- a description of the mission and activities of the Board of Directors;
- the number, location and duration of meetings of the Board of Directors;
- how often members of the Board of Directors have attended meetings;
- the names of members who have attended less than half of the meetings of the Board of Directors;
- the number of meetings held with the Executive Director and members of the Management Team;

²⁴⁰ LJSC, Chapter 13, Article 97, Clauses 1 and 4.

- how members of the Board of Directors were informed of developments in the Company and what type of information they received from the Executive Director and the Management Team;
- how many (overseas) on-site visits were conducted by members of the Board of Directors;
- the leadership structure of the Board of Directors (if the Chairman of the Board of Directors is also the Executive Director (CEO) of the Company);
- how the Executive Director and the Management Team are evaluated;
- on what items the Board of Directors has voted secretly;
- the composition of committees of the Board of Directors and a description of the activities of these committees;
- how often the Board of Directors has met with the independent external auditor and the Control Committee (Controller);
- the compensation received by members of the Board of Directors. Separate figures are often given for salary and performance related elements of the compensation of members of the Board of Directors;
- whether members of the Board of Directors were reimbursed and paid for meetings they did not attend;
- the number of shares of the Company owned by members of the Board of Directors and the number of shares they have bought from the Company;
- the opinion of the Board of Directors on the internal control system of the Company.

9: THE EXECUTIVE DIRECTOR AND THE MANAGEMENT TEAM

The Executive Director and the Management Team perform an important role in the way Companies achieve the objectives set forth by the shareholders and the Board of Directors of the Company. This chapter discusses the role, function and authority of the Executive Director and the Management Team.

9.1 The Executive Body of Joint Stock Companies

The structure of the executive body of a Joint Stock Company is flexible under Armenian legislation. The executive body can be an individual (the Executive Director) or a collective body (the Executive Director and members of the Management Team). The Management Team often consists of the Executive Director, Deputy Directors, the Chief Accountant and other members.²⁴¹

The executive body is responsible for the daily management of the Company and the implementation of decisions made by the General Meeting of Shareholders and the Board of Directors. Furthermore, the executive body has the authority to decide all issues that do not fall within the competence of the General Meeting of Shareholders and the Board of Directors.²⁴² The authority of the executive body may be transferred by a written contract to another commercial organization or a private entrepreneur by decision of the General Meeting of Shareholders.²⁴³

It is recommended by international standards that the Executive Director and members of the Management Team:

- have the necessary **education, knowledge and experience** to hold the position;
- possess **personal characteristics** enabling them to interact and cooperate with other members of the Management Team;
- have a **good command of the industry** in which the Company operates.

9.1.1 Authority of the Executive Director

The Executive Director has the authority to:²⁴⁴

- chair the Management Team when the Company has formed one;

²⁴¹ LJSC, Chapter 11, Article 92, Clause 1.

²⁴² CC, Chapter 5, Article 115, Clause 3; LJSC, Chapter 11, Article 91, Clause 2.

²⁴³ CC, Chapter 5, Article 115, Clause 3; LJSC, Chapter 11, Article 91, Clause 5.

²⁴⁴ LJSC, Chapter 11, Article 91, Clauses 1 and 3.

- use the Company's property and funds under the authority vested in him by the Charter and the by-laws of the Company and by decision of the General Meeting of Shareholders and the Board of Directors;
- approve the annual budget of the Company if the Company has no Board of Directors;²⁴⁵
- represent the Company in the Republic of Armenia and abroad;
- act on behalf of the Company;
- open bank accounts;
- submit proposals on employment regulations and the administrative and organizational structure of the Company for approval by the Board of Directors;
- submit proposals on the Charter and the by-laws of representative offices and branches of the Company for approval by the Board of Directors;
- approve the administrative and organizational structure of the Company in the absence of a Board of Directors;²⁴⁶
- assign and delegate duties to members of the Management Team and other employees of the Company and determine the scope of their authority;
- monitor the actions of members of the Management Team and other employees of the Company;
- hire and dismiss employees except those who are appointed by the General Meeting of Shareholders or the Board of Directors;
- make motivational and disciplinary decisions regarding employees;
- implement decisions of the General Meeting of Shareholders and the Board of Directors and report back to these bodies.

The Charter and the by-laws of the Company can provide additional authority to the Executive Director.²⁴⁷

9.1.2 Authority of the Management Team

The Charter of the Company must make a distinction between the responsibilities of the Executive Director and the Management Team if the Company has both an Executive Director and a Management Team.²⁴⁸ The law, the Charter and the by-laws of the Company and a written contract of the Company can specify further the authority of members of the Management Team.

²⁴⁵ LJSC, Chapter 11, Article 87, Clause 2.

²⁴⁶ LJSC, Chapter 11, Article 87, Clause 2.

²⁴⁷ LJSC, Chapter 11, Article 91, Clause 3.

²⁴⁸ LJSC, Chapter 11, Article 91, Clause 1.

9.2 Composition of the Management Team

According to Western practice, the Management Team can consist of several positions:

9.2.1 The Chief Operating Officer/Deputy Executive Director

The Chief Operating Officer often acts as the Deputy Executive Director and replaces the Executive Director during his absence. The Chief Operating Officer may prepare monthly, quarterly and annual reports on the Company's operations and performance. The Chief Operating Officer may also be in charge of training programs for technical personnel. Any senior officer who has the required experience and knowledge, such as the Chief Financial Officer or the Chief Legal Counsel, can also be appointed as a Deputy to the Executive Director.

9.2.2 The Chief Financial Officer/Chief Accountant

The Chief Financial Officer ensures that the Company's cash flow is sufficient to meet its obligations and that money of the Company is spent wisely. The Chief Financial Officer is also involved in strategic planning of the Company's activities with other members of the Management Team, as well as in making important financial and investment decisions. The Chief Financial Officer also manages the coordination and control of various departments such as the accounting, finance and investment departments to assure the wise and balanced distribution of financial resources.

◆ See also Chapter 12, Paragraph 12.1 of this Manual for a description of the responsibilities of the Chief Financial Officer and the Chief Accountant.

9.2.3 The Chief Legal Counsel (also known as the General Counsel)

As the head of the Legal Department, the Chief Legal Counsel may also be a member of the Management Team. He verifies that activities of the Company comply with all applicable laws and regulations and he advises the Board of Directors and the Management Team. The Chief Legal Counsel also works with members of the Management Team on strategic planning of the Company's activities. The Chief Legal Counsel prepares internal corporate documents that specify policies and directives to be approved by the General Meeting of Shareholders or the Board of Directors, and oversees the compliance with these policies and directives. The Chief Legal Counsel assures the accuracy and legality of all documents issued by the Company. The Chief Legal Counsel often negotiates agreements on the Company's behalf and defends the Company's interests in regular and arbitration Courts and in other forums for settling disputes.

9.2.4 The Marketing Director

The Marketing Director may also be invited to become a member of the Management Team. He is responsible for boosting demand for the Company's products and services, thus increasing Company's sales and revenues. The Marketing Director formulates the Company's pricing strategy together with the Chief Financial Officer and works with the Chief Operating Officer to find the most favorable distribution channels. In addition, the

Marketing Director is responsible for marketing research, advertising campaigns and other promotional work, whether handled internally or contracted out to specialized agencies. In some cases, the Marketing Director has overall responsibility for the image the Company presents to outsiders, thereby incorporating public relations within his area of responsibility.

9.2.5 The Executive Director of a Representative Office, a Branch, a Dependent Company or a Subsidiary

Executive Directors of representative offices, branches, dependent Companies and subsidiaries may be invited to become a member of the Management Team of the (Parent) Company. Through their membership, they can assist the (Parent) Company with its activities outside the primary location of the Company.

- ◆ See also Chapter 11 of this Manual for more information on representative offices, branches, dependent Companies and subsidiaries.

9.2.6 The Secretary of Management

The Secretary of Management prepares the minutes of management meetings and oversees the delivery of legally required notices to shareholders, management, third parties, State agencies and others. The Secretary assists the Executive Director in preparing and holding meetings of management. The Secretary also supervises the maintenance, preparation and submission of reports and other documents to State agencies in accordance with applicable legislation.

9.3 Appointment and Dismissal of the Executive Director and Members of the Management Team

The Board of Directors appoints the Executive Director and members of the Management Team if the Charter of the Company delegates this authority to the Board of Directors.²⁴⁹ The Chairman usually negotiates and signs the contract with the Executive Director. If the Executive Director also occupies the position of the Chairman of the Board of Directors, the contract with the Executive Director is made with a member of the Board of Directors other than the Chairman of the Board of Directors.²⁵⁰ If the Company has more than 500 shareholders with voting rights, the law prohibits the Executive Director from combining his position with the position of the Chairman of the Board of Directors.²⁵¹ The Charter and the by-laws of the Company can further specify the procedures related to the appointment of individuals to the Management Team of the Company.

- ◆ See also the appendix to this Manual for an example of by-laws on the Management Team of an Open Joint Stock Company.

²⁴⁹ LJSC, Chapter 10, Article 70, Clause 1, Section H; LJSC, Chapter 11, Article 91, Clause 1.

²⁵⁰ LJSC, Chapter 11, Article 91, Clause 2.

²⁵¹ LJSC, Chapter 11, Article 89, Clause 1.

9.3.1 Management Contracts

The terms of employment of the Executive Director and members of the Management Team are usually based on written contracts.²⁵² One should distinguish between ordinary labor contracts entered into with employees of the Company that are regulated by the Labor Code and civil law contracts entered into with the Executive Director and members of the Management Team that are regulated by the appropriate provisions of the Civil Code.²⁵³ According to Western standards, these contracts should include the following terms:

- description of the manager's rights and duties;
- compensation and working hours;
- sanctions to be applied for failing to carry out one's responsibilities;
- benefits and other privileges (e.g., discounts on purchases of the shares of the Company, healthcare, compensation of housing costs);
- provisions on the indemnification against losses arising from the fulfillment of professional duties;
- the term (duration) of the contract;
- the manager's commitment not to disclose confidential or proprietary information during the term of the contract and for a certain period thereafter;
- the manager's commitment not to enter into a competitive business during the term of the contract and for a certain period following its termination, if the manager has expertise essential to the competitive position of the Company;
- a commitment to protect the interests of the Company and its shareholders;
- grounds for early termination of the contract.

9.3.2 Dismissal of the Executive Director and Members of the Management Team

The General Meeting of Shareholders can dismiss without any cause and at any time the Executive Director and members of the Management Team unless the Charter of the Company delegates this authority to the Board of Directors.²⁵⁴ As a general practice, the Executive Director and members of the Management Team of the Company can be dismissed for:

- incompetence;
- abuse of office;

²⁵² LJSC, Chapter 11, Article 91, Clause 4.

²⁵³ See also CC, Chapter 39, Articles 777-781 and CC, Chapter 40, Articles 782-790.

²⁵⁴ LJSC, Chapter 11, Article 91, Clause 6.

- disclosure of confidential information to third parties;
- violation of the law and the Charter of the Company, and;
- any other actions contrary to the interests of the Company and its shareholders.

The Charter and the by-laws of the Company can specify further the procedures related to the dismissal of the Executive Director and members of the Management Team of the Company.

9.4 Meetings of the Management Team

The Executive Director organizes weekly or biweekly meetings with members of the Management Team. Additional meetings can be called when required. The Charter and the by-laws of the Company can specify further the procedures related to the organization of meetings of the Management Team.²⁵⁵

9.4.1 Minutes of Management Team Meetings

The law states that the Management Team must keep minutes of every meeting. These minutes must be made available to the following parties:²⁵⁶

- members of the Management Team;
- members of the Control Committee (Controller);
- the independent external auditor.

The Executive Director signs the minutes of the meetings.²⁵⁷ In addition, the Secretary of the Management Team must also sign the minutes of the management meetings if this authority is specified in the Charter or the by-laws of the Company.

9.5 Compensation and Reimbursement of the Executive Director and Members of the Management Team

The Board of Directors determines the compensation and reimbursement of expenses of the Executive Director and the members of the Management Team if the Charter of the Company delegates this authority to the Board of Directors.²⁵⁸ If the Executive Director also occupies the position of the Chair of the Board of Directors, it is recommended that Board members who do not have an executive position in the Company determine the salary of the Executive Director. The General Meeting of Shareholders gives final approval of the contract after the Board of Directors has determined the salary.²⁵⁹

²⁵⁵ LJSC, Chapter 11, Article 92, Clause 1.

²⁵⁶ LJSC, Chapter 11, Article 92, Clause 2.

²⁵⁷ LJSC, Chapter 11, Article 92, Clause 3.

²⁵⁸ LJSC, Chapter 11, Article 87, Clause 1, Section J.

²⁵⁹ LJSC, Chapter 10, Article 70, Clause 1, Section S.

The Executive Director and members of the Management Team can also occupy paid positions in other organizations with the permission of the Board of Directors.²⁶⁰

9.5.1 Management Incentives

A Company can increase the motivation of the Executive Director and members of the Management Team by providing financial incentives tied to the Company's performance. Although these can take the form of cash bonuses, many Western Companies partially compensate their managers with shares and stock options.²⁶¹ This encourages managers to increase the value of the Company's securities by improving the Company's profitability. Such incentives benefit shareholders and managers alike and are widely used in international practice.

Armenian law provides Open Joint Stock Companies with the authority to sell their shares at a discount to employees.²⁶² This is of particular importance to members of the Management Team who are also employees. The incentives for employees to buy employee shares lie mainly in the discount they receive. The law states that employees can purchase shares of the Company at a price level that is not less than 25 percent of the nominal value of the shares.

For example, consider that the market value of a share is currently 4,000 AMD while the nominal value of the share is 800 AMD. The Company decides that it will offer employees shares with a maximum discount of 75 percent of the nominal value of the shares. This means that employees can buy shares for 200 AMD while the market value of shares is 4,000 AMD. The discount on the market value of shares in this case is 3,800 AMD. In summary:

Market value of the share	4,000 AMD
Nominal value	800 AMD
Discount of maximum 75%	600 AMD

Purchase price	200 AMD

Final discount for employee	3,800 AMD

There are some restrictions related to the allocation of employee shares:

- only shares that have been acquired by the Company from its shareholders (the market) can be reallocated as employee shares;²⁶³

²⁶⁰ LJSC, Chapter 11, Article 91, Clause 4.

²⁶¹ A stock option gives the owner the right to buy or sell shares of a Company on a certain date in the future for a certain market value.

²⁶² LJSC, Chapter 3, Article 43.

²⁶³ The Company should use a special fund to acquire shares from the market. The reserve fund cannot be used for these purposes. See also LJSC, Chapter 3, Article 46, Clause 3 and Chapter 12, Paragraph 12.2.4 of this Manual.

- the nominal value of employee shares cannot differ from the nominal value of the same type and class of shares of the Company;
- the total amount of the nominal value of allocated employee shares cannot be more than 25 percent of the charter capital of the Company;
- the circulation of employee shares can be restricted by the Charter of the Company and by decision of the General Meeting of Shareholders for a maximum of three years after the date that employee shares have been allocated.²⁶⁴

The General Meeting of Shareholders must approve the procedures related to the allocation of employee shares, the payment for employee shares and the rights of employees to buy employee shares.²⁶⁵

9.6 Duties and Liabilities of the Executive Director and Members of the Management Team

The Executive Director and members of the Management Team are held to the same standards of loyalty and care as members of the Board of Directors and are personally liable for actions that cause a loss to the Company.

- ◆ **See Chapter 8, Paragraph 8.6 of this Manual for a description of the duties and liabilities of members of the Board of Directors.**

²⁶⁴ Upon the request of the family of an employee, the Company is obligated to buy back employee shares at the market value of the shares if the employee dies during the period that the circulation of employee shares is restricted. The Company has to pay the nominal value of shares to the family if the market value is lower than the nominal value of the shares. See also LJSC, Chapter 3, Article 43, Clauses 2 and 4.

²⁶⁵ LJSC, Chapter 3, Article 43, Clause 6.

10: THE CONTROL COMMITTEE (CONTROLLER) AND THE INDEPENDENT EXTERNAL AUDITOR

10.1 The Control Committee

Under Armenian law, it is mandatory for Joint Stock Companies to have a Control Committee or a Controller.²⁶⁶ The Control Committee is an independent body of the Company that inspects the financial and economic activities of the Company. A Controller can perform the duties of the Control Committee when the Company has fewer than 50 shareholders with voting rights.²⁶⁷

10.1.1 Functions of the Control Committee

The law specifies the following functions of the Control Committee:²⁶⁸

- reviewing the financial and economic activities of the Company;
- ensuring compliance of documents and decisions of the Company with Armenian legislation and the Charter of the Company.

The Control Committee undertakes an audit at least once a year. In addition, the Committee can undertake extraordinary audits:

- on its own initiative;
- upon the decision of the General Meeting of Shareholders;
- at the request of the Board of Directors, or;
- at the request of a shareholder or a group of shareholders owning at least 10 percent of the shares of the Company with voting rights.²⁶⁹

10.1.2 Authority of the Control Committee

The Control Committee ensures that the Company's financial reporting system is accurate and that it presents a true picture of the financial strengths and weaknesses of the Company. The Control Committee oversees the total audit of the Company's financial processes, including the internal control system and the use of generally accepted accounting principles. The Control Committee also helps to prevent fiscal mismanagement and

²⁶⁶ CC, Chapter 5, Article 115, Clause 1, Section 2; LJSC, Chapter 12, Article 94.

²⁶⁷ LJSC, Chapter 12, Article 94, Clause 3.

²⁶⁸ LJSC, Chapter 12, Article 94, Clauses 1 and 2.

²⁶⁹ LJSC, Chapter 12, Article 94, Clause 2.

fraudulent financial reporting by the Board of Directors, the Executive Director and the Management Team of the Company.

In order to execute its functions, the Control Committee has the authority to:

- check the founders' report presented during the Constituent Meeting of Shareholders;²⁷⁰
- oversee the implementation of all decisions made by the General Meeting of Shareholders, the Board of Directors, the Executive Director and the Management Team of the Company;
- call Extraordinary Meetings of Shareholders;²⁷¹
- check the accuracy of information presented in financial reports and other documents of the Company;
- invite experts such as the independent external auditor appointed by the General Meeting of Shareholders;
- call a meeting of the Board of Directors to discuss any issue that is of interest to the Control Committee.²⁷²

The Charter of the Company can further specify the authority of the Control Committee.

10.1.3 Report of the Control Committee

The Control Committee reports directly to the General Meeting of Shareholders. The Control Committee presents its conclusion on the Company's annual financial report, the balance sheet, the financial reporting system and the Company's financial strengths and weaknesses to the General Meeting of Shareholders in a written report. The report includes:²⁷³

- an analysis of the Company's financial activities;
- an analysis of the financial resources (funds) of the Company and the way the resources are used by the Board of Directors, the Executive Director and the Management Team;
- a statement that information provided in financial reports of the Company is accurate and reliable;
- a statement that financial reports have been compiled and written in compliance with Armenian legislation and the Charter of the Company;
- a statement that decisions of the General Meeting of Shareholders, the Board of Directors, the Executive Director and the Management Team have been made in compliance with Armenian legislation and the Charter of the Company;
- any other relevant information.

²⁷⁰ LJSC, Chapter 2, Article 13, Clause 2.

²⁷¹ LJSC, Chapter 10, Article 77, Clause 1.

²⁷² LJSC, Chapter 11, Article 90, Clause 1.

²⁷³ LJSC, Chapter 12, Article 94, Clause 5.

The General Meeting of Shareholders cannot approve the annual financial report of the Company without the report of the Control Committee.²⁷⁴

10.1.4 The Importance of Providing Accurate Information to the Control Committee

The Board of Directors, the Executive Director and members of the Management Team should establish working relationships with the Control Committee to ensure that the Control Committee receives accurate information from the Company. Members of the Board of Directors, the Executive Director, members of the Management Team and employees of the Company are required to provide all relevant documents and other materials necessary for the Control Committee to oversee the financial activities of the Company. This also includes information on the Company's branches and representative offices.

10.1.5 Composition of the Control Committee

As a general rule, members of the Control Committee should be chosen based on their financial expertise and understanding of the business in which the Company is engaged. The minimum number of members of the Control Committee and their terms in office is specified by law, by decision of the General Meeting of Shareholders and by the Charter of the Company. Armenian law specifies that:

- members of the Control Committee must be shareholders of the Company who have a full dispositive capacity;²⁷⁵
- the Control Committee must have a minimum of three members;²⁷⁶
- members of the Control Committee cannot be a member of the Board of Directors or a member of any executive body of the Company.

10.1.6 Election of Members of the Control Committee

Shareholders (or a group of shareholders) who have at least 2 percent of the shares of the Company with voting rights have the right to propose candidates for the Control Committee.²⁷⁷ Members of the Control Committee are elected for a period of 3 years by a simple majority vote of shareholders present at the General Meeting of Shareholders. The Charter can provide for a greater number of votes necessary to elect members of the Control Committee.²⁷⁸

²⁷⁴ LJSC, Chapter 12, Article 94, Clause 6; LJSC, Chapter 13, Article 96, Clause 2.

²⁷⁵ See also Chapter 4, Paragraph 4.1 of this Manual for a definition of the "dispositive capacity" of a natural person.

²⁷⁶ The exact number of members of the Control Committee must be specified by the Charter of the Company or by decision of the General Meeting of Shareholders. See also LJSC, Chapter 12, Article 94, Clause 3.

²⁷⁷ LJSC, Chapter 10, Article 75, Clause 1.

²⁷⁸ LJSC, Chapter 10, Article 70, Clause 1, Section 1; LJSC, Chapter 10, Article 71, Clause 2; LJSC, Chapter 12, Article 94, Clause 3.

In Companies with more than 25 shareholders with voting rights, members of the Board of Directors, the Executive Director and members of the Management Team who are shareholders of the Company cannot vote on the election of members of the Control Committee.²⁷⁹

The Chairman of the Control Committee is elected by a simple majority vote of members of the Control Committee.

The Charter and the by-laws of the Company can provide additional requirements for members of the Control Committee.

10.1.7 Termination of the Authority of Members of the Control Committee

The authority of members of the Control Committee can be terminated by a simple majority vote of shareholders present at the General Meeting of Shareholders. The Charter can provide for a greater number of votes necessary to terminate the authority of members of the Control Committee.²⁸⁰

In Companies with more than 25 shareholders with voting rights, members of the Board of Directors, the Executive Director and members of the Management Team cannot vote on the termination of the authority of members of the Control Committee.

10.1.8 Compensation and Reimbursement of Members of the Control Committee

The Board of Directors is responsible for the development of procedures and terms related to the compensation and reimbursement of members of the Control Committee. The General Meeting of Shareholders must approve these.²⁸¹

10.2 The Independent External Auditor

10.2.1 Independent External Audits of the Company's Financial Statements

In order to ensure the quality of the Company's financial reporting system, Open Joint Stock Companies should invite an independent external auditor to audit the financial activity of the Company.²⁸² An audit is a thorough review of the Company's accounts, financial reports and other documentation to ensure their accuracy, completeness and conformity with applicable legislation and standards. The audit is an important element of financial control to protect the interests of shareholders. It gives the Company's shareholders, managers and employees an outside professional opinion about the Company's financial position. An independent external audit may also boost the Company's credi-

²⁷⁹ LJSC, Chapter 12, Article 94, Clause 3.

²⁸⁰ LJSC, Chapter 12, Article 94, Clause 3; LJSC, Chapter 10, Article 71, Clause 2.

²⁸¹ LJSC, Chapter 11, Article 87, Clause 1, Section K.

²⁸² CC, Chapter 5, Article 115, Clause 5.

lity and prospects for attracting investment by increasing transparency and ensuring greater accountability.

An independent external auditor must be invited in instances specified by law (mandatory audit).²⁸³ The law requires Joint Stock Companies to have an independent audit when:

- the final annual report and the financial statements of the Company are published. An Open Joint Stock Company must publish these financial statements each year;²⁸⁴
- the Company issues and receives payments for shares in the form of assets which are worth more than 200 times the minimum monthly wage in Armenia. The value of these assets must be determined by an external independent auditor;²⁸⁵
- the market value of the Company's assets must be determined in Companies with more than 500 shareholders with voting rights;²⁸⁶
- the Company buys back shares upon the demand of its shareholders;²⁸⁷
- a shareholder (or a group of shareholders) owning at least 10 percent of the charter capital of the Company requests an audit.²⁸⁸

It is recommended that an independent external auditor be invited by the Company to determine the market value of the assets when the Company concludes large transactions. A Company can also carry out a voluntary audit in instances specified by the Charter of the Company.

10.2.2 Who Can be the Independent External Auditor

The independent external auditor can be any natural person (or legal entity) who has a license for this activity granted by the appropriate State agencies. The external auditor must be independent of the Company and its management and should not have any financial interest in the Company.²⁸⁹

10.2.3 Who Can Appoint the Independent External Auditor

The Chairman of the Board of Directors normally signs the contract with the external auditor while the General Meeting of Shareholders approves the contract by a majority vote of shareholders present at the Meeting. The Charter can provide for a greater number

²⁸³ CC, Chapter 5, Article 115, Clause 5.

²⁸⁴ CC, Chapter 5, Article 107, Clause 2; CC, Chapter 5, Article 115, Clause 5.

²⁸⁵ The Law on Minimum Monthly Wage, Article 3. See also LJSC, Chapter 3, Article 45, Clause 4.

²⁸⁶ LJSC, Chapter 7, Article 62, Clause 2.

²⁸⁷ LJSC, Chapter 7, Article 62, Clause 2.

²⁸⁸ CC, Chapter 5, Article 115, Clause 5.

²⁸⁹ CC, Chapter 5, Article 115, Clause 5.

of votes necessary to appoint an independent external auditor.²⁹⁰ A shareholder (or a group of shareholders) owning at least 10 percent of the charter capital can invite an independent external auditor without the approval of the General Meeting of Shareholders.²⁹¹

10.2.4 The Report of the Independent External Auditor

The independent external auditor must provide a report on the Company's annual report, the financial statements of the Company, its financial reporting system and the Company's financial strengths and weaknesses.²⁹² The report must meet the same requirements as the report prepared by the Control Committee of the Company. If the Company plans to be active in international markets, it is recommended that the external auditor prepare the report in accordance with internationally accepted accounting principles.

10.2.5 Compensation of the Independent External Auditor

The Company normally pays for the services of the independent external auditor when he has been requested to report on the Company's financial statements. The Board of Directors has the authority to determine the compensation of the external auditor.²⁹³ A shareholder (or a group of shareholders) owning at least 10 percent of the charter capital of the Company, who invites an independent external auditor, must pay for the costs of the audit.²⁹⁴

10.2.6 The Control Committee and the Independent External Auditor

As a practical matter, an independent external auditor can be selected and appointed by the General Meeting of Shareholders based on the recommendations of the Control Committee. The Control Committee may also receive and review the reports of the independent external auditor and make recommendations to the General Meeting of Shareholders based on the conclusions of the auditor.

²⁹⁰ LJSC, Chapter 12, Article 95, Clause 2. See also LJSC, Chapter 10, Article 70, Clause 1, Section J; LJSC, Chapter 10, Article 71, Clause 2.

²⁹¹ CC, Chapter 5, Article 115, Clause 5.

²⁹² LJSC, Chapter 12, Article 95, Clause 1.

²⁹³ LJSC, Chapter 10, Article 87, Clause 1, Section L.

²⁹⁴ LJSC, Chapter 12, Article 95, Clause 3.

11. REPRESENTATIVE OFFICES, BRANCHES, DEPENDENT COMPANIES AND SUBSIDIARIES

A Joint Stock Company can establish representative offices and branches in the Republic of Armenia and foreign countries.²⁹⁵ A Joint Stock Company can also establish and participate in subsidiaries and participate in dependent Companies.²⁹⁶ The differences between representative offices, branches, dependent Companies and subsidiaries are discussed in this chapter.

11.1 Representative Offices and Branches

11.1.1 What is a Representative Office

A representative office is a separate subdivision of a Joint Stock Company that represents and protects the interests of a Company in regions situated outside the Company's primary location.²⁹⁷ A representative office enters into agreements and performs legal functions on behalf of the Company. It does not sell and produce products or carry out other economic functions of the Company.

11.1.2 What is a Branch

A branch is a separate subdivision of a Joint Stock Company located outside the Company's primary location. Its primary function is to produce and sell products and to carry out other economic functions of the Company. A branch of a Company also performs the functions of a representative office.²⁹⁸

11.1.3 How to Establish Representative Offices and Branches

The Board of Directors can be authorized by the General Meeting of Shareholders to establish representative offices and branches.²⁹⁹ A representative office or branch must have a Charter that must be registered with the local Register separate from the Charter of the Company.³⁰⁰ In addition, the Charter of the Company must be amended to ensure that it contains information on the new representative office and branch.³⁰¹ The State Register

²⁹⁵ CC, Chapter 5, Article 61; LJSC, Chapter 1, Article 6.

²⁹⁶ CC, Chapter 5, Articles 75 and 76; LJSC, Chapter 1, Article 7.

²⁹⁷ CC, Chapter 5, Article 61, Clause 1; LJSC, Chapter 1, Article 6, Clause 3.

²⁹⁸ CC, Chapter 5, Article 61, Clause 2; LJSC, Chapter 1, Article 6, Clause 2.

²⁹⁹ LJSC, Chapter 10, Article 70, Clause 1, Section U.

³⁰⁰ Law on State Register of Enterprises, Article 10.

³⁰¹ CC, Chapter 5, Article 61, Clause 3.

must be notified within one (1) month after the amendment of the Charter of the Company.³⁰² Representative offices and branches of a Joint Stock Company can officially start their activities after the steps in figure 11.1 have been completed.

Figure 11.1
How the Board of Directors Establishes Representative Offices and Branches

The Board of Directors of the Company decides to establish a representative office or a branch

The Board of Directors proposes changes to the Charter of the Company and presents the Charter of the representative office or branch to the General Meeting of Shareholders

The shareholders approve the amended Charter of the Company and the Charter of the new representative office or branch

The Company notifies the State Register on amendments made to its Charter

The representative office or branch registers its Charter with the local Register

The new representative office or branch can officially start its activities after the local Register registers the Charter

11.1.4 Legal Status of Representative Offices and Branches

Representative offices and branches are not legal entities.³⁰³ The management of representative offices and branches acts on behalf of and under the authority of the Company on the basis of a power of attorney.³⁰⁴ The power of attorney determines the scope of the authority of the management of representative offices and branches. The management of representative offices and branches must keep a separate balance sheet that is consolidated with the balance sheet of the Company.

³⁰² LJSC, Chapter 1, Article 6, Clause 6.

³⁰³ CC, Chapter 5, Article 61, Clause 3; LJSC, Chapter 1, Article 6, Clause 4.

³⁰⁴ CC, Chapter 5, Article 61, Clause 3.

11.1.5 Representative Offices and Branches in Foreign Countries

The Company must act in accordance with foreign laws, foreign practices and international treaties of the Republic of Armenia when it establishes representative offices and branches in other countries.³⁰⁵

11.1.6 Liability of Representative Offices and Branches

Since representative offices and branches of a Joint Stock Company are not legal entities, the Company is liable for all obligations incurred as a result of activities of its representative offices and branches.³⁰⁶ A claim arising from activities of the representative office or branch against the Company may be filed in the Court in the region where the representative office or branch is located.³⁰⁷

*Table 11.1
A Comparison of Representative Offices and Branches
of a Joint Stock Company*

	Representative Office	Branch
Legal Status	Separate subdivision that is not a legal entity	Separate subdivision that is not a legal entity
Functions	Legal representation of the Company	All or part of the functions of the Company and legal representation
Liability	No liability, the Company is liable	No liability, the Company is liable
Establishment	The General Meeting of Shareholders or the Board of Directors	The General Meeting of Shareholders or the Board of Directors

11.2 Dependent Companies and Subsidiaries

The difference between dependent Companies and subsidiaries lies mainly in the amount of investment in and the extent to which a Joint Stock Company (the Parent Company) can influence the management of dependent Companies and subsidiaries.

11.2.1 What is a Dependent Company

A Joint Stock Company participates in a dependent Company when it owns more than 20 percent of the charter capital of a Limited Liability Company or more than 20 percent of the shares with voting rights of a Joint Stock Company.³⁰⁸ The Parent Company can influence the management of a dependent Company through the General Meeting of Share-

³⁰⁵ LJSC, Chapter 1, Article 6, Clause 1.

³⁰⁶ LJSC, Chapter 1, Article 6, Clause 5.

³⁰⁷ Civil Procedure Code, Chapter 12, Article 83, Clause 8.

³⁰⁸ CC, Chapter 5, Article 76, Clause 1.

holders of the dependent Company.³⁰⁹ A Joint Stock Company must disclose its participation in a dependent Company as soon as it acquires the shares of this Company.³¹⁰

11.2.2 What is a Subsidiary

A subsidiary is a Company that is controlled by another Company, which is able to predetermine the decisions taken by the former.³¹¹ That control can take two forms:

- by virtue of a dominant participation in the charter capital of the subsidiary. In this case, the dominant Company influences the management of the subsidiary by exercising its shareholder's rights through the General Meeting Shareholders (or the General Meeting of Participants);
- the dominant Company can exercise control on the basis of a contract with the subsidiary. Such contracts are entered into by a decision of the General Meeting of Shareholders of the Parent Company and the subsidiary. The contract grants the Parent Company the right to broadly direct the activities of the subsidiary, but also to regulate issues of mutual obligations and liability, the distribution of profits and the termination of the contract.

11.2.3 How to Establish Dependent Companies and Subsidiaries

The General Meeting of Shareholders has the authority to decide on the establishment of and the participation in subsidiaries as well as on the participation in dependent Companies.³¹²

◆ See also Chapter 7, Paragraph 7.2.1 (a) of this Manual for more information on the rights of the General Meeting of Shareholders to establish subsidiaries and to participate in dependent Companies and Subsidiaries.

11.2.4 Legal Status of Dependent Companies and Subsidiaries

Dependent Companies and subsidiaries are separate legal entities registered with the State Register. Dependent Companies and subsidiaries can be incorporated as Limited Liability Companies. Companies with Supplementary Liability and Open or Closed Joint Stock Companies.

³⁰⁹ The Parent Company can also influence the management of the dependent Company through the General Meeting of Participants if the dependent Company is incorporated as a Limited Liability Company or as a Company with Supplementary Liability. See also CC, Chapter 5, Article 99, Clause 1.

³¹⁰ CC, Chapter 5, Article 76, Clause 2.

³¹¹ CC, Chapter 5, Article 75, Clause 1. LJSC, Chapter 1, Article 7, Clause 2 provides another definition of a subsidiary. However, as the CC prevails, this provision of the LJSC is void.

³¹² LJSC, Chapter 1, Article 7, Clause 5.

11.2.5 Dependent Companies and Subsidiaries in Foreign Countries

A Joint Stock Company must act in accordance with foreign laws, foreign practices and international treaties of the Republic of Armenia when it establishes or participates in subsidiaries and participates in dependent Companies in other countries.³¹³

11.2.6 Liability of Dependent Companies and Subsidiaries

Since dependent Companies and subsidiaries are legal entities, they are liable for all their obligations. Dependent Companies and subsidiaries are not liable for obligations and debts of the Parent Company.

11.2.7 Liability of the Parent Company

The Parent Company is liable for obligations of the subsidiary if the subsidiary:³¹⁴

- suffered losses as a result of transactions entered into by the subsidiary based on instructions given by the Parent Company. In this case, the Parent Company is jointly and severally liable with the subsidiary Company. The Parent Company has the right to give mandatory instructions to the subsidiary Company only if this authority is provided by a contract between the Parent Company and the subsidiary;
- has been declared bankrupt as a result of the Parent Company's fault. In this case, the Parent Company bears subsidiary (supplementary) liability for the subsidiary's debts, i.e., when the funds of the subsidiary are not sufficient to satisfy the creditors' claims.³¹⁵ The subsidiary's bankruptcy is considered to be a result of the Parent Company's fault if it has occurred as a result of the implementation of instructions given by the Parent Company.

Shareholders of the subsidiary have the right to file a claim in the Court to cover the subsidiary's losses that have occurred as a result of the Parent Company's instructions given to the subsidiary.³¹⁶

³¹³ LJSC, Chapter 1, Article 7, Clause 1.

³¹⁴ CC, Chapter 5, Article 75, Clauses 3 and 5.

³¹⁵ CC, Chapter 26, Article 415.

³¹⁶ CC, Chapter 5, Article 75, Clause 4.

Table 11.2
A Comparison of Dependent Companies and Subsidiaries
of a Joint Stock Company

	Dependent Company	Subsidiary
Legal Status	Separate legal entity	Separate legal entity
Legal Form	Limited Liability Company (LLC); Company with Supplementary Liability (CSL); Open and Closed Joint Stock Company (O/CJSC)	LLC, CSL and O/CJSC
Investment of the Parent Company	More than 20 percent of the charter capital of LLC and CSL; More than 20 percent of the voting shares of O/CJSC	More than 50 percent of the charter capital of LLC, CSL and O/CJSC
Influence on Decision-making	Through the General Meeting of Shareholders (or Participants)	Through the General Meeting of Shareholders (or Participants) and/or a written contract
Liability for Obligations of the Parent Company	No liability	No liability
Liability of the Parent Company	No liability	<u>Joint and several</u> : for obligations that occurred as a result of instructions of the Parent Company; <u>Subsidiary</u> : in case of a bankruptcy as a result of instructions given by the Parent Company
Establishment	By the General Meeting of Shareholders (or Participants) of the Parent Company	By the General Meeting of Shareholders (or Participants) of the Parent Company
Disclosure by the Parent Company	Immediately after the investment	Immediately after the investment

12: FINANCIAL MANAGEMENT

The Company needs financial management in order to make informed decisions on how to attract capital and how to use the Company's finances efficiently. Financial analysis, planning, forecasting as well as controlling the formation and use of the financial resources of the Company are called financial management of the Company.

12.1 Who is Responsible for the Financial Management of the Company

The Executive Director, the Management Team and financial officers are responsible for the financial management of the Company. In particular, the Chief Financial Officer/Chief Accountant has the responsibility to:

- control and analyze the flow of financial resources (cash flow) of the Company;
- carry out financial forecasting and planning on the basis of the strategic policy of the Company;
- develop the optimal level of production and sales of the Company and identify the best sources for their financing;
- develop budgets, track productivity and measure performance;
- implement the Company's policy on the use of credit;
- make financial and investment decisions based on past experience and current market conditions.

When carrying out these responsibilities, the Chief Financial Officer and other financial specialists must comply with the law, the Charter and the by-laws of the Company.

◆ See also Chapter 9, Paragraph 9.2.2 of this Manual for more information on the responsibilities of the Chief Financial Officer/Chief Accountant.

12.2 Internal Sources of Financing (Internal Funds)

A Company cannot operate successfully without sufficient financial resources and their rational use. The financial resources of the Company can be obtained from internal funds and external funds. According to the Law on Joint Stock Companies, a Company can establish and maintain various internal funds. The charter capital and the reserve fund are mandatory for Joint Stock Companies.³¹⁷

³¹⁷ LJSC, Chapter 3, Article 33; LJSC, Chapter 3, Article 46, Clause 1.

12.2.1 Charter Capital

A Joint Stock Company creates its charter capital by issuing shares. The money is used by the Company to finance its long-term objectives and business.

12.2.2 How a Company Can Increase its Charter Capital

The Company can increase its charter capital through several methods:³¹⁸

- issuing new shares. A Joint Stock Company can only issue new shares if previously allocated shares are completely sold and fully paid.³¹⁹ A Company cannot issue new shares in order to cover losses that have been incurred by the Company;³²⁰
- increasing the nominal value of allocated shares.

The decision to increase the charter capital can be made by a simple majority vote of shareholders present at the General Meeting of Shareholders unless the Charter of the Company provides for a greater number of votes.³²¹

12.2.3 How a Company Can Decrease its Charter Capital

There are two ways to decrease the charter capital of a Joint Stock Company:³²²

- decrease the number of shares by acquiring and then canceling them, and;³²³
- decrease the nominal value of allocated shares.

The decision to decrease the charter capital must be made with a qualitative majority (3/4) vote of shareholders present at the General Meeting of Shareholders.³²⁴ In order to protect the rights of creditors, the Company must inform its creditors in writing within 30 days after the General Meeting of Shareholders has made the decision to decrease the charter capital of the Company. Creditors have the right to demand that the Company terminate or prematurely perform its obligations and compensate them for all losses connected with the decision to decrease the charter capital within 30 days after the creditors have received the notification.³²⁵

The General Meeting of Shareholders must decrease the charter capital if the report of the independent external auditor or the Control Committee (Controller) indicates that the

³¹⁸ CC, Chapter 5, Article 112; LJSC, Chapter 3, Article 37.

³¹⁹ LJSC, Chapter 3, Article 37, Clause 3.

³²⁰ LJSC, Chapter 3, Article 37, Clause 7.

³²¹ CC, Chapter 5, Article 112, Clause 1; LJSC, Chapter 10, Article 71, Clause 2.

³²² CC, Chapter 5, Article 113, Clause 1; LJSC, Chapter 3, Article 38, Clause 1.

³²³ This is allowed only if the Charter of the Company has such a provision. See also CC, Chapter 5, Article 113, Clause 3; LJSC, Chapter 3, Article 38, Clause 1.

³²⁴ CC, Chapter 5, Article 113, Clause 1; LJSC, Chapter 3, Article 38, Clause 2.

³²⁵ CC, Chapter 5, Article 113, Clause 2; LJSC, Chapter 3, Article 38, Clause 3.

value of Company's net assets is less than its charter capital. In this case, the Company must decrease its charter capital to the value of its net assets.³²⁶ The Company cannot decrease its charter capital if it becomes less than the minimum amount required by Armenian legislation. At that point, the Company must be liquidated.³²⁷

◆ See Chapter 4, Paragraph 4.3 of this Manual for more information on the charter capital of a Joint Stock Company.

12.2.4 Reserve Fund

The reserve fund is another internal mandatory fund of a Joint Stock Company. Part of the Company's profit is deducted to form the reserve fund. The reserve fund must be not less than 15 percent of the charter capital of the Company. If the reserve fund is less than 15 percent of the charter capital, the Company must transfer a minimum of 5 percent of its profit to the reserve fund of the Company. The positive difference between the nominal value and the market value of the shares of the Company also can be used for this purpose. Only the Board of Directors has the right to use the reserve fund of the Company.³²⁸ The reserve fund is used to cover losses, to redeem bonds and to buy back issued shares of the Company when its profit is not sufficient.³²⁹ The reserve fund cannot be used for other purposes.

12.2.5 Other Internal Funds

The Charter of a Joint Stock Company may establish other internal funds such as stock option, dividend payment and other funds. These internal funds are formed through a deduction from the net profit of the Company.³³⁰

12.2.6 Retained Earnings (Undistributed Profit)

The main principles for the distribution of the Company's net profit must be specified in the Charter of the Company. Actual profit distribution is made in accordance with the current and strategic policy set by the Board of Directors and is approved by the General Meeting of Shareholders. Determining the optimal profit distribution is the task of the Chief Financial Officer. Generally, a portion of the profit is used to pay dividends. The remaining profit can be used to extend and renew production, invest in securities, acquire real estate, create and replenish the Company's funds for social programs and to pay bonuses to the Company's employees. Profit that has not been distributed as dividend or that has not been used for the formation of internal funds can be used for other purposes of the Company and is referred to as retained earnings.³³¹

³²⁶ This is mandatory for Joint Stock Companies that have been registered for at least 2 years with the State Register. See also LJSC, Chapter 3, Article 46, Clause 5.

³²⁷ CC, Chapter 5, Article 113, Clause 4; LJSC, Chapter 3, Article 38, Clause 1.

³²⁸ LJSC, Chapter 11, Article 87, Clause 1, Section O.

³²⁹ LJSC, Chapter 3, Article 46, Clause 2.

³³⁰ LJSC, Chapter 3, Article 46, Clauses 1 and 3.

³³¹ LJSC, Chapter 3, Article 46, Clause 4.

12.2.7 Additional Capital

A Joint Stock Company can have additional capital. This internal fund is formed by the Executive Director or the Management Team after the value of the Company's fixed and current assets, shares, cash and other assets has been reevaluated. For example, when the Company is borrowing money from a commercial bank, it may be asked to reevaluate its fixed assets by an independent external auditor. If the appraisal results in a positive difference between the balance and value of the fixed assets, the differences in value can be transferred to the additional capital of the Company. Additional capital of the Company has only balance sheet value.

12.3 External Sources of Financing (External Funds)

External funds are debts and liabilities of the Company. The Company normally pays a fee or interest to commercial banks, other financial institutions and individuals for borrowed money. External (borrowed) funds include:

- bank and other loans;
- amounts owed for goods and services;
- unpaid salaries, taxes and interest on bonds;
- funds received from the issuance of bonds.

12.4 Using the Financial Resources of the Company

In order to increase its profits, the Company may decide to invest capital in new projects such as an extension of its operating facilities, research and development of new technology or the manufacturing of new products. For any actual project, it is necessary to calculate the financial resources required and their use in advance for the whole period of construction or implementation. This is the most important task of the Company's financial management. In international practice, it is called "capital budgeting."

In order to earn a profit, part of the Company's finances may be invested in the shares of other Companies, treasury bills or other securities. In international practice, treasury bills are often the most reliable and liquid securities. When buying securities of other Companies, the Company's financial management must carefully study current market conditions, as well as information on Companies whose securities the Company plans to acquire.

12.5 Disclosure of Financial Information

In accordance with Armenian tax legislation, Companies must submit the following forms to the Tax Inspectorate:³³²

- balance sheet: Tax Form No. 1;
- profit and loss statement: Tax Form No. 2;

³³² These refer to forms that have been developed and approved by the Tax Inspectorate.

- equity flow statement: Tax Form No. 3;
- cash flow statement: Tax Form No. 4;
- notes to the statements and a summary of the Company's accounting principles: Tax Form No. 5;
- tax calculation forms.

In addition, an Open Joint Stock Company must make the following information available to the public:³³³

- annual report;
- balance sheet;
- profit and loss statement;
- notification of Annual Meetings of Shareholders;
- prospectuses in case of public offering of securities.³³⁴

The publication of financial information of Open Joint Stock Companies is important to shareholders of the Company, State agencies and other interested parties. It provides essential information on the financial results of the Company. The disclosure of reliable financial information is also important for the Company since it enables local and foreign financial organizations and potential investors to evaluate the performance of the Company in order to decide whether to invest in the Company.

12.6 Financial Forecasts of the Company

A Company needs to forecast its sales and other earnings in order to determine the need for future financial resources. The Chief Financial Officer and other specialists of the Company are responsible for completing the Company's financial forecasts. For a short term forecast (e.g., 3 years or less), a Company's sales and earnings estimates are based on publicly available information from different sources: creditors, the Company's management and employees, partners, competitors and other sources.

12.6.1 Historical Data and Financial Forecasts

The financial statements as described in paragraph 12.5 in this chapter provide only historical information of the Company. The analysis of historical information does not guarantee that the performance of the Company will remain the same or will improve in the future. Historical information, however, can be used for financial forecasts of the Company's future performance.

³³³ CC, Chapter 5, Article 107, Clause 2; LJSC, Chapter 13, Article 98.

³³⁴ Governmental Decree of the Republic of Armenia, No. 140 on the "Approval of Securities, Prospectuses of the Issuance of Securities and Submission of Information by the Issuers of Securities to the Authorized State Agency that Regulates and Supervises the Securities Markets and the Disclosure of Information."

12.6.2 Financial Forecast Techniques

There are many different models and techniques to forecast the performance of the Company. The forecast of sales is generally based on previous sales of the Company and other historical data of the Company. Among other strategies, the Company can:

- increase prices of products to increase the gross profit margin;
- decrease prices of products to increase the market share of products;
- maintain current prices of products to maintain the current market position of products.

The sales forecast can be based on a pessimistic or optimistic scenario:

- a **pessimistic scenario** takes into consideration all possible factors that can have a negative impact on the projected sales of the Company. If the Company's projected sales are based on a scenario that is too pessimistic, the Company may lose potential investment possibilities. A Company may, for example, base a forecast on a scenario that does not take into consideration the possibility that the market may grow. As a result, the Company may not anticipate demand and may not be able to sell more products in the market;
- an **optimistic scenario** assumes that these negative factors will not influence the projected sales of products in the near future. If the Company's projected sales are based on a scenario that is too optimistic, it may be confronted with low turnover, an increase of fixed and overhead expenses and low profit margins.

The Chief Financial Officer and other financial specialists of the Company should find a balance between the two scenarios. This will help the Company to attract investment.

A Company's projected sales and other earnings are related to the market value of the shares of the Company. In the event a Company appears to be profitable, the value of its shares may rise in the stock market. If this occurs, a shareholder may be able to sell its shares in the market at a price greater than the nominal value of the shares. If the shareholder chooses not to sell the shares, the shareholder may continue to participate in the Company's success by receiving dividends of the Company.

12.7 Payment of Dividends

The payment of dividends must be made in Armenian Drams. The Charter of the Company can also specify that the payment of dividends can be made with assets,³³⁵ although it is always preferable that dividends are paid in cash. The Company should pay dividends from its year-end net profit. Under normal conditions, the Company must not pay dividends if the Company has not earned any profit.

³³⁵ LJSC, Chapter 5, Article 52, Clause 1.

12.7.1 Dividends and Preferred Shares

If the Company has issued preferred shares, the Company can create a special internal fund for the payment of dividends to the owners of preferred shares. In the absence of a profit, the dividends on preferred shares must be paid from this internal fund or when insufficient, from other internal funds (excluding the reserve fund). If the amount of dividend for the owners of common shares for a given year exceeds the dividend for preferred shares (as determined by the Charter of the Company), the General Meeting of Shareholders can decide that owners of preferred shares receive the same dividend as the owners of common shares.³³⁶

12.7.2 The Board of Directors and the Payment of Dividends

The Board of Directors makes the decision on the payment of intermediate dividends (quarterly and semi-annually), determines the amount and the form of dividends (cash or assets) and determines the procedures related to the distribution of dividends.³³⁷ The Board of Directors makes a separate decision on each intermediate dividend payment and must each time prepare a separate list of shareholders eligible to receive dividends.³³⁸

12.7.3 The General Meeting of Shareholders and the Payment of Dividends

The General Meeting of Shareholders approves the payment of annual dividends, the procedures related to the payment of annual dividends and the date that the annual dividend is paid to the shareholders. The total amount of annual dividends cannot be less than the sum of previously paid intermediary dividends.³³⁹

The General Meeting of Shareholders has the authority to decide on the payment of annual dividends to the owners of common shares. The General Meeting of Shareholders can also postpone or partially cancel the payment of dividends on preferred shares for a maximum of one (1) year.³⁴⁰ Each year, the General Meeting of Shareholders must decide on the payment of annual dividends if the Company decides to pay dividends.

12.7.4 Limitations on the Payment of Dividends

The Law on Joint Stock Companies provides limitations on the payment of dividends. The General Meeting of Shareholders and the Board of Directors cannot declare and approve dividends when the:³⁴¹

- charter capital of the Company has not been fully paid;

³³⁶ LJSC, Chapter 5, Article 52, Clause 2.

³³⁷ LJSC, Chapter 5, Article 52, Clause 3; LJSC, Chapter 11, Article 87, Clause 1, Sections M and N.

³³⁸ LJSC, Chapter 5, Article 52, Clause 4.

³³⁹ LJSC, Chapter 5, Article 52, Clause 3.

³⁴⁰ LJSC, Chapter 5, Article 52, Clause 3.

³⁴¹ LJSC, Chapter 5, Article 53, Clause 1.

- Company has not bought back all shares under circumstances specified by law;
- financial and economic state of the Company corresponds with insolvency or bankruptcy conditions or when these conditions would occur because of the payment of dividends;
- value of the Company's net assets is less than the sum of the charter capital and the reserve fund or when the value of net assets will decrease below such sum as a result of the payment of dividends.

12.7.5 Cost of Paying Dividends

The Company pays the costs of the distribution of dividends. These include costs related to the notification, calculation and transfer of dividends to shareholders.

12.7.6 Dividends and the Payment of Taxes

Shareholders of Joint Stock Companies (resident and non-resident natural persons) do not have to pay income tax on dividends.³⁴² Dividends also are not subject to profit tax for resident legal entities.³⁴³ Dividends paid to non-resident legal entities are subject to profit tax.³⁴⁴

³⁴² Law on Income Tax, Chapter 4, Article 10, Clauses 1 and 2; Law on Income Tax, Chapter 9, Article 35, Clause 2.

³⁴³ Law on Profit Tax, Chapter 4, Article 26.

³⁴⁴ The current rate is 15 percent of the gross amount paid. See also the Law on Profit Tax, Chapter 10, Article 56, Clause 2.

13: LARGE AND INTERESTED TRANSACTIONS

13.1 Definition of a Large Transaction

According to the Law on Joint Stock Companies, a transaction (or several interrelated transactions) is considered to be large when the transaction directly or indirectly relates to the:³⁴⁵

- acquisition or sale of assets by the Company, provided that the value at the date of the transaction (decision) is at least 25 percent of the book value of the Company's assets. However, these transactions are not considered to be large when they are carried out within the regular activities of the Company, or;
- allocation of common shares and preferred shares convertible to common shares provided that the total value of these shares is at least 25 percent of the total nominal value of previously allocated common shares of the Company.

13.1.1 Determination of the Value of Assets

The market value of assets must be determined before a Company can enter into a large transaction.³⁴⁶ Generally, the Board of Directors determines the market value of assets.³⁴⁷ However, if one or more members of the Board of Directors have a (potential) conflict of interest with respect to a large transaction, they do not participate in the decision to enter in such a transaction. In other cases specified by law, the market value of assets is determined by:

- an external independent auditor (appraiser) if the Company has more than 500 shareholders with voting rights;
- an authorized State body if more than 50 percent of the shares of the Company with voting rights are owned by the State;
- the Court.

13.1.2 The Board of Directors and Large Transactions

The Board of Directors has the authority to enter into large transactions³⁴⁸ if at the date of the transaction the market value of assets (related to the transaction) is not more than 50

³⁴⁵ See LJSC, Chapter 8, Article 63, Clause 1.

³⁴⁶ LJSC, Chapter 8, Article 63, Clause 2.

³⁴⁷ LJSC, Chapter 11, Article 87, Clause 1, Section H. See also LJSC, Chapter 7, Article 62, Clause 2.

³⁴⁸ LJSC, Chapter 11, Article 87, Clause 1, Section T; LJSC, Chapter 8, Article 64, Clause 1.

percent of the book value of the Company's assets.³⁴⁹ Such a transaction requires the unanimous consent of members of the Board of Directors present at the meeting of the Board of Directors. If the Board of Directors cannot make a decision on such a large transaction, it may submit the issue for the agenda of the General Meeting of Shareholders. In this case, the General Meeting of Shareholders must make a decision with at least a simple majority vote of shareholders present at the Meeting.³⁵⁰

13.1.3 The General Meeting of Shareholders and Large Transactions

The General Meeting of Shareholders must approve large transactions if at the date of making the decision to enter into the transaction the market value of the assets (related to the transaction) is more than 50 percent of the book value of the Company's assets.³⁵¹ The General Meeting of Shareholders makes a decision on these transactions by a three-fourths (3/4) majority vote of shareholders present at the Meeting.³⁵²

13.2 Definition of an Interested Transaction

An interested transaction refers to any transaction where a conflict of interest may occur between the Company, its shareholders, directors and managers. The following parties can be recognized as an interested party in a transaction:³⁵³

- members of the Board of Directors of the Company;
- the Executive Director, members of the Management Team and the Control Committee (Controller) of the Company;
- a shareholder or a group of shareholders acting together that owns at least 20 percent of the shares of the Company with voting rights;
- spouses, parents, children, sisters and brothers of members of the Board of Directors, the Executive Director, members of the Management Team, other managers and shareholders who own at least 20 percent of the shares of the Company with voting rights, as well as parties cooperating with individuals previously listed above.

³⁴⁹ If the market value of assets subject to a transaction is less than 25 percent of the book value of the Company's assets, the transaction is not considered to be large. See also LJSC, Chapter 8, Article 64, Clause 1.

³⁵⁰ Although the General Meeting of Shareholders or the Board of Directors have the authority to enter into **large transactions**, it is the authority of the Executive Director to sign contracts with respect to large transactions.

³⁵¹ LJSC, Chapter 8, Article 64, Clause 2.

³⁵² LJSC, Chapter 10, Article 70, Clause 1, Section Q; LJSC, Chapter 10, Article 71, Clause 4.

³⁵³ LJSC, Chapter 9, Article 65.

Parties are considered to be interested if they:

- act as a transacting party, participate in the transaction as an intermediary or participate as a representative of a party;
- own at least 20 percent of the voting stake in the transacting, intermediary or representative Company, or;
- hold a managerial or governance position in the transacting, intermediary or representative Company.

For example, there is a transaction between Joint Stock Company A and Limited Liability Company B. Company C acts as an intermediary in the transaction. In this case, the transaction is considered interested when:

- a member of the Board of Directors of Company A acts as a representative of Company B;
- a shareholder who owns 25 percent of the voting shares of Company A is the Executive Director of Company B;
- the Executive Director of Company A owns 30 percent of the charter capital of Company C (the intermediary).

Another example of an interested transaction would be when Company A enters into a contract to lease its equipment to a member of the Board of Directors of Company A. In this case, the director of Company A is a transacting party who has an interest in the transaction.

13.2.1 Interested versus Independent Members of the Board of Directors

The law makes a distinction between interested and independent members of the Board of Directors. Independent members of the Board of Directors do not occupy certain positions within the Company as specified by law, such as the position of Executive Director or member of the Management Team of the Company. Interested members of the Board of Directors have an interest in a transaction.

Figure 13.1
Interested Transactions

Interested Parties	Position in the Transaction
members of the Board of Directors of the Company;	act as a transacting party or participate in the transaction as an intermediary or a representative of a party, or;
the Executive Director and members of the Management Team and other management bodies of the Company;	own at least 20 percent of a voting stake in the transacting, intermediary or representative Company, or;
a shareholder or a group of shareholders acting together that own at least 20 percent of the Company's shares with voting rights;	hold a managerial or governance position in the transacting, intermediary or representative Company.
spouses, parents, children, sisters and brothers of members of the Board of Directors, the Executive Director, members of the Management Team, and other managers and shareholders that own at least 20 percent of the shares of the Company with voting rights, as well as other parties cooperating with individuals listed above.	

13.2.2 The Board of Directors and Interested Transactions

In Companies with fewer than 500 shareholders with voting rights, the decision to enter into interested transactions must be made by a majority of members of the Board of Directors present at the meeting of the Board of Directors who are not considered to be an interested party.³⁵⁴

³⁵⁴ LJSC. Chapter 9, Article 67, Clause 1.

In Companies with 500 and more shareholders with voting rights, the decision to enter into interested transactions must be made by a majority of independent members of the Board of Directors present at the meeting of the Board of Directors.³⁵⁵

In order to make a decision on any interested transaction, the Board of Directors must ensure that the Company:

- receives payments that are not less than the market value of transferred assets or provided services;
- does not pay more than the market value of acquired assets or provided services.

13.2.3 The General Meeting of Shareholders and Interested Transactions

The General Meeting of Shareholders makes the decision whether to enter into an interested transaction when:³⁵⁶

- all members of the Board of Directors have been recognized as an interested party;
- the market value of the transaction is more than 2 percent of the book value of the Company's assets;
- one or more related transactions are carried out with the purpose of issuing shares with voting rights and other securities convertible to shares with voting rights while the number of shares is more than 2 percent of the number of previously issued shares of the Company.

Interested transactions must be approved by a simple majority vote of shareholders present at the General Meeting of Shareholders who are not considered to be an interested party in the transaction.³⁵⁷

An interested transaction does not require the approval of the General Meeting of Shareholders when the transaction is:³⁵⁸

- a loan to the Company (granted by an interested party);
- conducted with a party in the ordinary course of business before this party becomes an interested party.

Under these circumstances, the Board of Directors is authorized to approve interested transactions.

³⁵⁵ LJSC, Chapter 9, Article 67, Clause 2.

³⁵⁶ LJSC, Chapter 9, Article 67, Clauses 3 and 5.

³⁵⁷ Although the General Meeting of Shareholders or the Board of Directors have the authority to enter into **interested transactions**, the Executive Director has the authority to actually sign contracts with respect to interested transactions.

³⁵⁸ LJSC, Chapter 9, Article 67, Clause 4.

13.2.4 Disclosure of Information on Interested Transactions

The law requires Joint Stock Companies to disclose information on interested transactions in order to avoid any conflicts of interest between the Company and those parties who are involved in an interested transaction. Interested parties are required to disclose information to the Control Committee (Controller), the Board of Directors and the independent external auditor. Interested parties must disclose information regarding:³⁵⁹

- legal entities (name and address) in which interested parties, independently or together with other persons cooperating with interested parties, own 20 percent of the shares of the Company with voting rights;
- legal entities (name and address) in which interested parties hold managerial or governance positions;
- transactions (completed or pending) in which persons act as interested parties.

13.2.5 Liability for the Violation of Requirements with Respect to Interested Transactions³⁶⁰

If the requirements of the law with respect to interested transactions are violated, the Court can declare the transaction invalid. Interested parties are liable to the Company for the amount of losses caused to the Company as a result of an invalid transaction. If several persons are responsible for losses, they are held jointly and severally liable.

³⁵⁹ LJSC, Chapter 9, Article 66.

³⁶⁰ LJSC, Chapter 9, Article 68.

14: BANKRUPTCY - FINANCIAL REORGANIZATION AND LIQUIDATION

A Company can be terminated and liquidated in a number of ways:³⁶¹

- by a decision of the shareholders of the Company. Shareholders can decide to terminate the activities of the Company when the period for which the Company was created has expired or when the purpose for which the Company was created has been achieved;
- by an act of the Court when the registration of the Company has been pronounced by the Court as invalid;
- by an act of the Court when the Company has acted without licenses and in case of multiple or gross violations of Armenian legislation;
- as a result of bankruptcy of the Company.

Important note to the reader:

On January 30, 1999, the Council of Court Chairmen made Decision No. 5 to recommend that all Courts of the Republic of Armenia suspend proceedings on bankruptcy cases based on Article 106, Clause 3 of the Civil Procedure Code of the Republic of Armenia. The Council of Court Chairmen stated that due to the enactment of the Civil Code and Civil Procedure Code, there is an ambiguity with respect to the regulation of bankruptcy proceedings in Armenian legislation. Article 71 of the Civil Code specifies that a legal entity can be declared bankrupt in accordance with the grounds and procedures specified by the Civil Procedure Code. At the same time, the Civil Procedure Code does not contain any provisions that regulate bankruptcy proceedings. The National Assembly of the Republic of Armenia has not adopted the appropriate sections regarding bankruptcy proceedings at the time of the publication of this Manual. Moreover, Article 3 of the Law on the Enforcement of the Civil Code of the Republic of Armenia stipulates that "until laws and other legal acts containing provisions of civil law are changed to conform with the Code, those provisions must be applied only to the extent that they do not contradict the Code." Therefore, although the application of the Law on Bankruptcy is not officially suspended, practically there are no bankruptcy proceedings in the Courts of the Republic of Armenia. As a result, this chapter describes the bankruptcy proceedings in the Republic of Armenia in general terms with references to Armenian legislation.

³⁶¹ CC, Chapter 5, Article 67, Clause 2.

14.1 Definition and Legal Regulation of Bankruptcy

Bankruptcy is a complex procedure confirming the state of insolvency of a Company,³⁶² placing the Company in a special regime to allow its creditors to submit claims. Bankruptcy proceedings have two possible outcomes. The first one is the **financial reorganization** of the Company. Its objective is to restore the solvency and the financial stability of a Company. The second outcome is the **liquidation** of a Company. It allows the Company to terminate its operations, to sell off its property and to achieve the best possible distribution of its assets among claimants of the Company.

The possibility of Companies and creditors to start bankruptcy proceedings is important for the following reasons:

- it protects the interests of the creditors of the debtor Company;
- it allows the debtor Company to seek financial reorganization;
- the threat of bankruptcy represents a powerful device for disciplining managers;
- it contributes to the overall health of the economy by addressing the problems of ailing businesses.

The procedures, rights and obligations of a debtor Company, creditors, the Court and other parties in bankruptcy proceedings are defined by the Civil Code, the Law on Bankruptcy³⁶³ and the Law on Joint Stock Companies. According to Armenian legislation, the Court can declare a Company bankrupt when the Company has liabilities to one or more creditors exceeding 1,000,000 AMD which are overdue by 30 days or more.³⁶⁴

14.2 Who Can Initiate Bankruptcy Proceedings

Either the debtor Company or its creditors can initiate bankruptcy proceedings. Creditors who initiate bankruptcy proceedings typically do so after they have evaluated whether they stand a better chance of collecting their debts by preserving the debtor Company as an on-going business concern or by pursuing the liquidation of the debtor Company's assets.

14.2.1 Voluntary Bankruptcy Proceedings

By initiating voluntary bankruptcy proceedings, the debtor Company may avoid going deeper into debt and has the opportunity to negotiate proposals for improving its financial position. As a result, the debtor Company is often able to restructure the business, repay its debts and resume its operations within a reasonable period of time. Armenian legislation allows such voluntary declaration of bankruptcy if the appropriate conditions are present.

³⁶² Insolvency refers to the shortage of liquid assets needed by the Company to satisfy the claims of its creditors over a certain period of time.

³⁶³ The full name of the Law on Bankruptcy is the "Law on Insolvency (Bankruptcy) and Financial Rehabilitation of Legal Entities, Enterprises not having the Status of a Legal Entity, and Entrepreneurs."

³⁶⁴ Law on Bankruptcy (LoB), Chapter 1, Article 2, Clause 1.

According to Armenian legislation, the debtor Company can initiate voluntary bankruptcy proceedings by submitting a petition to the Court. The following documents must be attached to the petition:

- current accounting books of the debtor Company;
- a list of the debtor Company's property including investments, fixed and current assets, intangible assets and other assets;
- names and addresses of creditors;
- nature and value of claims of each creditor;
- financial statements for the last reporting period;
- statement explaining why the Company should be financially reorganized.

14.2.2 Involuntary Bankruptcy Proceedings

Involuntary bankruptcy proceedings are initiated by the creditors of the debtor Company. The creditors initiate the bankruptcy proceedings by submitting a petition to the Court that provides evidence supporting their claims.

The Court registers the petition upon its filing and notifies the debtor Company of the filing of the bankruptcy petition.³⁶⁵ The Company can object to the initiation of involuntary bankruptcy proceedings.

The Court can demand from the creditors a deposit that cannot exceed a total of 500,000 AMD to cover Court expenses. If the petition is rejected, the Court covers its expenses from the deposit and returns the remaining amount to the creditors. If the Court accepts the petition, the Court returns the deposit to the creditors who have submitted the petition.³⁶⁶

14.3 Bankruptcy Proceedings

When the Court accepts the petition from the Company (voluntary) or from creditors (involuntary), it must decide whether to institute bankruptcy proceedings. The Court notifies the following parties of its decision:³⁶⁷

- the debtor Company;
- all creditors of the debtor Company;
- the State Register;
- the State Property Register;
- the State Tax agency.

³⁶⁵ LoB, Chapter 2, Article 9, Clause 2.

³⁶⁶ LoB, Chapter 2, Article 9, Clause 4.

³⁶⁷ LoB, Chapter 2, Article 10.

Within 2 days after instituting the bankruptcy proceedings, the Court appoints a bankruptcy administrator. The bankruptcy administrator calls the first meeting of creditors within 28 days after the decision of the Court.

14.3.1 Authority of the Bankruptcy Administrator

The bankruptcy administrator is in charge of the management of the debtor Company and the implementation of bankruptcy proceedings. In addition, the bankruptcy administrator has the authority to:³⁶⁸

- make an inventory of the debtor Company's assets;
- take measures to secure the debtor Company's assets;
- call and preside over meetings of creditors;
- check the accuracy of information provided by the debtor Company;
- examine the legality of creditors' claims;
- accept and waive claims, return collateral, sell or otherwise alienate the debtor Company's property and extend guarantees with the consent of the Court.

The debtor Company and the creditors can appeal the bankruptcy administrator's actions to the Court. The appeal does not automatically suspend the bankruptcy administrator's activities.³⁶⁹

14.4 Financial Reorganization of a Joint Stock Company

Financial reorganization comprises a system of measures geared toward avoiding the liquidation of the debtor Company. Financial reorganization enables the debtor Company to continue its operations and to satisfy the claims of creditors fully or partially. It also helps creditors and shareholders to avoid the considerable expenses, time and effort associated with the official liquidation of a bankrupt debtor Company. Financial reorganization may involve:

- restructuring of debt payments;
- restructuring of commercial activities and market reorientation;
- liquidation of unprofitable production facilities;
- sale of some of the assets of the debtor Company;
- merger of the debtor Company with a more powerful entity that agrees to pay off its debts;
- restructuring of the labor force.

³⁶⁸ LoB, Chapter 2, Articles 13 and 14.

³⁶⁹ LoB, Chapter 2, Article 17. Clause 1.

14.4.1 Financial Reorganization Plan

Part of the financial reorganization process is the development of a financial reorganization plan. The following parties can submit a financial reorganization plan to the Court for approval.³⁷⁰

- the debtor Company;
- the bankruptcy administrator;
- creditors possessing 1/3 of the total value of secured claims;
- creditors possessing 1/3 of the total value of unsecured claims;
- shareholders owning 1/3 of the charter capital of the debtor Company.

The debtor Company pays the costs of the reorganization plan if the bankruptcy administrator or the debtor Company initiates the plan. In other cases, the parties who have initiated the financial reorganization plan pay the costs. The financial reorganization plan usually contains information on:³⁷¹

- which, when and how creditors will be paid;
- how the payment of debts will be rescheduled;
- how the debtor Company can restore its solvency and profitability;
- sale prices of assets and procedures describing how the assets of the debtor Company will be sold;
- bankruptcy administrator's fees, administrative costs and a description of how these costs will be paid;
- how the creditors' claims will be satisfied if the financial reorganization plan fails.

14.4.2 Hearings on the Financial Reorganization Plan

The Court accepts the financial reorganization plan for hearing once it meets the requirements of Armenian legislation. The Court distributes copies of the plan to the bankruptcy administrator, the debtor Company and all known creditors. The Court can ask for the opinion of an expert on the feasibility of the plan. The Court publishes its decision to hold a hearing on the financial reorganization plan in an official newspaper with a circulation of at least 1,000 copies.³⁷²

14.4.3 Meeting of Creditors

The Court calls a meeting of creditors to discuss and to make a decision on the financial reorganization plan. The Court may approve the financial reorganization plan when creditors accept the plan. After the Court approves the financial reorganization plan, the claims and rights of creditors and other interested parties are rescheduled according to the plan.

³⁷⁰ LoB, Chapter 3, Article 49, Clause 2.

³⁷¹ LoB, Chapter 3, Article 50.

³⁷² LoB, Chapter 3, Article 51, Clause 3.

14.5 Liquidation of a Joint Stock Company

In the course of bankruptcy proceedings, the debtor Company can be liquidated when a financial reorganization plan has:

- not been submitted to the Court;
- been rejected by the Court or the creditors;
- failed to restore the solvency and profitability of the debtor Company.

14.5.1 How to Sell Assets of the Debtor Company

The bankruptcy administrator is in charge of the sale of the debtor Company's assets when the Company is being liquidated. Before the assets of the Company can be sold, the bankruptcy administrator must publish the decision to sell the assets of the Company in an official newspaper with a circulation of at least 1,000 copies. Sale of the assets of the debtor Company takes place at least 20 days after the notice of the sale has been published.³⁷³

The bankruptcy administrator notifies all creditors whose claims exceed 5 percent of the total value of claims about the sale of assets when the value of assets exceeds 10 percent of the total value of claims.

The sale of assets can be done either through an auction or direct sale. If the assets are sold through an auction, the bankruptcy administrator notifies the Court, the debtor Company and the creditors at least 30 days before the auction. The notification includes the following information:

- the place where the assets are located and where the auction will be held;
- a detailed description of the assets;
- the date of registration of the assets (real estate);
- minimum price of the assets.

14.5.2 Priority Rule

Armenian legislation identifies the following order of priority for the payment of claims:³⁷⁴

1. Secured creditors;
2. Court expenses and the compensation of the bankruptcy administrator;
3. Compensation for harm caused to the life and health of individuals as a result of the debtor Company's activities;
4. Employment contracts and salaries;
5. Mandatory payments to the government (taxes, social security, etc.);
6. Unsecured creditors;

³⁷³ LoB, Chapter 4, Article 56.

³⁷⁴ CC, Chapter 5, Article 70; LoB, Chapter 4, Article 61.

7. Other creditors' claims arising from:³⁷⁵
 - a) unpaid interest on unsecured claims;
 - b) loans made to the Company;
 - c) promissory notes with a maturity greater than 10 years;
 - d) rights attached to preferred shares;
 - e) gifts and inheritance;
8. Shareholders of the debtor Company.

Claims of creditors and other claimants in the same priority group are paid proportionally. Claims of each successive group of creditors and other claimants are satisfied only after the full satisfaction of claims of the preceding group.³⁷⁶

Any property or assets of the debtor Company left after the satisfaction of all claims must be distributed among shareholders of the debtor Company proportionally to their investment in the debtor Company in the following order:

- owners of preferred shares;
- owners of common shares.

14.5.3 Liquidation Procedure

After the assets of the debtor Company have been sold and the proceeds are distributed among the creditors and other parties, the bankruptcy administrator presents a liquidation report to the Court together with the balance sheet of the debtor Company. Copies of the liquidation report and the balance sheet are mailed to the debtor Company and its creditors. The debtor Company and its creditors can appeal the bankruptcy administrator's conclusions in the liquidation report to the Court.

14.6 Closing of Bankruptcy Proceedings

Bankruptcy proceedings are officially closed when:

- the Court decides that the financial reorganization plan has been successfully implemented;³⁷⁷
- the Court approves the liquidation report. The liquidation process of the Company is completed after the State Register registers the Company as liquidated.³⁷⁸

Bankruptcy proceedings can be terminated at any time by decision of the Court if the assets of the debtor Company are not sufficient to cover the Court's litigation expenses.

³⁷⁵ LoB, Chapter 4, Article 62.

³⁷⁶ CC, Chapter 5, Article 70, Clause 1; LoB, Chapter 4, Article 63.

³⁷⁷ LoB, Chapter 5, Article 69, Clause 2. If the financial reorganization plan fails, the Court must continue bankruptcy proceedings and start the liquidation process.

³⁷⁸ CC, Chapter 5, Article 69, Clause 7; LJSC, Chapter 2, Article 32, Clause 3; LoB, Chapter 5, Article 74, Clause 1.

15: DOCUMENTATION

Armenian Joint Stock Companies are required by law to maintain certain documents to prove that the Company conducts its business in accordance with Armenian legislation, its Charter and its by-laws. Documents can be divided into the following groups: (a) corporate, (b) financial, (c) personnel and (d) commercial documents.

15.1 Corporate Documents

Corporate documents are those which relate to the establishment of the Company and to the functioning of its bodies. They allow the Company to present a picture of its activities to shareholders, working bodies of the Company, State agencies, potential investors and the general public.

15.1.1 Documents Related to the Establishment of the Company

The following documents relate to the establishment of the Company:

- constituent agreement of founders to establish the Company;
- privatization documents (if the Company was established as a result of privatization);
- Charter of the Company;
- Company's State registration certificate;
- amendments to the Charter of the Company.

15.1.2 Documents Related to the General Meeting of Shareholders

The following documents relate to the General Meeting of Shareholders:

- by-laws on the General Meeting of Shareholders;
- documents (receipts, notices) confirming proper notification of shareholders about the holding of General Meetings of Shareholders;
- requests of the Control Committee, the independent external auditor or the shareholders to hold an Extraordinary Meeting of Shareholders;
- list of shareholders eligible to participate in the General Meeting of Shareholders;
- documents confirming that the Company has provided the shareholders eligible to participate in General Meetings of Shareholders the opportunity to become acquainted with all documents regarding a particular Meeting;
- minutes of the General Meeting of Shareholders and the Counting Committee;

- decisions of the General Meeting of Shareholders;
- ballots used by the General Meeting of Shareholders.

15.1.3 Documents Related to the Board of Directors, the Executive Director and the Management Team

The following documents relate to the Board of Directors, the Executive Director and the Management Team:

- by-laws (if any) on the Board of Directors;
- documents (receipts, notices) confirming proper notification of directors about the meetings of the Board of Directors;
- documents stating the reason(s) why directors have not participated in meetings of the Board of Directors, if any;
- minutes of meetings of the Board of Directors;
- copies of reports and documents of presentations held by members of the Board of Directors;
- decisions adopted by the Board of Directors;
- by-laws on the Executive Director and the Management Team of the Company;
- minutes of meetings of the Management Team;
- decisions adopted by the Executive Director and the Management Team.

15.1.4 Documents Related to the Control Committee (Controller)

The following documents relate to the Control Committee (Controller):

- by-laws (if any) on the Control Committee;
- documents (receipts, notices) confirming proper notification of members of the Control Committee about the meetings of the Control Committee;
- documents stating the reason(s) why members have not participated in meetings of the Control Committee, if any;
- minutes of meetings of the Control Committee;
- reports of the Control Committee on extraordinary audits;
- Control Committee's conclusions, presented to the General Meeting of Shareholders, on annual financial reports, the balance sheet, the financial reporting system and the financial strengths and weaknesses of the Company;
- reports of the Control Committee about the compliance of the Charter and by-laws of the Company with Armenian legislation.

15.2 Financial Documents

Financial documents include all documents needed 1) to monitor the Company's financial performance, 2) to prepare reports to shareholders and investors and 3) to comply with tax legislation.³⁷⁹ The external independent auditor examines financial documents in the course of preparing regular reports to the Control Committee and the General Meeting of Shareholders. Financial documents include:

- bank account statements;
- balance sheet;
- monthly, quarterly and annual financial reports, profit and loss statements and income and cash flow statements;
- copies of all business plans approved by the General Meeting of Shareholders together with any financial projections.

15.3 Personnel Documents

Personnel documents ensure the proper documentation of the relationship between the Company and its employees. This allows management to make quick and effective decisions regarding personnel issues. The Personnel Department or the Company's Chief Legal Counsel keeps personnel documents including:

- service documents (labor books) of the Company's employees;
- personnel files specifying each employee's full name, address, date of employment, position, salary, changes in employment status, evaluations and merit ratings;
- employee training materials and programs (including employee manuals);
- copies of individual and collective employment agreements (labor contracts), either current or expired;
- job descriptions;
- salary schedules;
- descriptions of all employee benefits provided by the Company (i.e. vacation, health insurance, pensions, bonuses and employee shares);
- records of all the Company's contributions to funds such as the State pension fund, social security funds, health insurance plans and the employment benefit fund.

³⁷⁹ See also the "Law on Accounting."

15.4 Commercial Documents

Commercial documents include contracts entered into by the Company and reports the Company is required to file with State agencies.

15.4.1 Contracts and Agreements

The following documents relate to contracts and agreements:

- loan documents, sale/purchase agreements, pledges, guarantees and other agreements under which the Company is directly or indirectly indebted for borrowed money;
- leases and deeds for real estate used or owned by the Company;
- agreements with suppliers, distributors and transporters and any other contracts with third parties entered into by the Company;
- originals of licenses and patents issued to the Company by State agencies.

15.4.2 Litigation and Arbitration

The following documents relate to litigation and arbitration:

- claims filed by or against the Company;
- Court judgments involving the Company;
- other documents regarding legal disputes.

15.4.3 Securities

The following documents relate to securities:

- proof of registration of the Company's securities;
- Shareholder Register;³⁸⁰
- reports regarding the issuance and circulation of securities of the Company, including prospectuses.³⁸¹

³⁸⁰ Governmental Decree of the Republic of Armenia, No. 211, on the "Regulation of the Process of Maintaining the Register of the Owners of Registered Securities."

³⁸¹ Governmental Decree of the Republic of Armenia, No. 140, on the "Approval of Registration of Securities, Prospectuses of the Issuance of Securities and Submission of Information by the Issuers of Securities to the Authorized State Agency that Regulates and Supervises the Securities market and the Disclosure of Information."

15.4.4 Intellectual Property

The following documents relate to intellectual property:

- industrial property such as patents, industrial designs, trademarks,³⁸² trade names and firm names;³⁸³
- copyrights in documented form such as scientific publications (including monographs, theses, reports on scientific research), construction, technical and design plans, audio-visual compositions, architectural plans, computer programs, databases and layouts of integrated chips;
- know-how such as commercial, technological and other confidential information;
- licensing agreements entered into by the Company for the use of inventions covered by patents belonging to third parties and licensing agreements allowing third parties to use the Company's patents.

15.4.5 Periodic Reports to State Agencies

Armenian law requires Joint Stock Companies to periodically submit reports to State agencies. It is recommended that Companies establish internal regulations on documents that need to be reported to State agencies.

15.5 Keeping Documents

Current documents are agreements that are still in effect, documents regarding current Court and arbitration proceedings and reports that need to be submitted to State agencies.

Archived documents are expired agreements, documents regarding closed Court and arbitration proceedings, annual financial reports and other (current) documents about the Company's activities.

The Company must archive or maintain the following documents:³⁸⁴

- Charter of the Company including all amendments and prior versions;
- all by-laws and other internal documents that are approved by the General Meeting of Shareholders and other governing bodies of the Company;
- by-laws of all representative offices and branches of the Company;
- annual reports of the Company;
- documents stating ownership of assets that are included in the balance sheet of the Company;

³⁸² The "Law of the Republic of Armenia on Trademarks, and Service Marks, the Names of the Places of Production of Goods."

³⁸³ The "Law of the Republic of Armenia on Firm Names."

³⁸⁴ LJSC, Chapter 13, Article 96, Clause 1 and LJSC, Chapter 13, Article 97, Clause 1.

- prospectus for the issuance of securities;
- all accounting documents and accounting books;
- financial and statistical reports submitted to State agencies;
- minutes of General Meetings of Shareholders;
- minutes of meetings of the Board of Directors, if any;
- minutes of meetings of the Control Committee, if any;
- minutes of meetings of the Management Team, if any;
- minutes of the Counting Committee, if any;
- ballots;
- reports of the Control Committee;
- reports of the independent external auditor;
- reports of State agencies concerning the Company;
- other documents required by the General Meeting of Shareholders, the Charter and the by-laws of the Company, the Board of Directors, the Executive Director and the Management Team.

According to the Law on Accounting, a Company must archive documents, computer disks and tapes, accounting software, registration books, accounting books, financial reports and documents related to internal accounting procedures for at least five years.³⁸⁵ If Armenian legislation does not specifically provide the procedures for the maintenance of documents, the Company must ensure that documents are maintained in compliance with procedures that have been approved by the General Meeting of Shareholders.

³⁸⁵ Law on Accounting, Chapter 3, Article 19, Clauses 1-3.

APPENDIX:

- Charter
- By-laws on the Rules of Order of the General Meeting of Shareholders
- By-laws on the Rules of Order of the Executive Director and the Management Team
- Example of the agenda of the Annual Meeting of Shareholders
- Notice of the Convening of the Annual Meeting of Shareholders
- Proxy #1
- Proxy #2
- Proxy #3
- Minutes of the Meeting of the Board of Directors
- Ballot Card for the Election of the Executive Director
- Ballot Card for the Election of the Control Committee
- Ballot Card for the Election of the Board of Directors

<p>REGISTERED</p> <p>by the <<name of the appropriate State agency that registers legal entities in the Republic of Armenia.>></p> <p>Registration #: _____</p> <p>Certificate Serial #: _____</p> <p>Head of <<name of the appropriate State agency that registers legal entities in the Republic of Armenia.>></p> <p>_____</p>	<p>APPROVED</p> <p>by the General Meeting of Shareholders of Open Joint Stock Company (name):</p> <p>“ _____ ”</p> <p>As of _____ 20__</p> <p>Decision #: _____</p> <p>Minute #: _____</p> <p>Chairman of the General Meeting of Shareholders:</p> <p>_____</p> <p>Signature of the Chairman of the General Meeting of Shareholders:</p> <p>_____</p>
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**CHARTER
OF OPEN JOINT STOCK COMPANY**

“ _____ ”
(Name)
City _____ 20__

Important Note: *This is an example of a Charter that reflects the common practice of Western Companies to include in the Charter only information that is required by legislation and provisions that are useful for a particular Company. This version only contains provisions that are required by the Civil Code and the Law on Joint Stock Companies in the Republic of Armenia. See also chapter 5 of this Manual for more information on the Charter of a Joint Stock Company.*

Please remember that only the Charter needs to be registered. By-laws and other internal documents of the Company do not need to be registered.

Disclaimer: The contents of this Charter and the accompanying by-laws are not intended to be and may not be viewed as legal advice. Always seek legal advice before submitting a Charter to the appropriate State agencies that register legal entities in the Republic of Armenia.

Article 1.

1. The Open Joint Stock Company “_____” (hereinafter referred to as the Company) has been established in accordance with the Civil Code of the Republic of Armenia, the Law on Joint Stock Companies of the Republic of Armenia, and other legislative acts of the Republic of Armenia (hereinafter referred to as Armenian legislation).

Article 2.

1. The full name of the Company is:
In Armenian _____;
In Russian _____;
In English _____.
2. The abbreviated name of the Company is:
In Armenian _____;
In Russian _____;
In English _____.

Article 3.

1. The Company is a Joint Stock Company whose charter capital is divided into a defined number of shares.
2. The Company has a seal, a stamp, as well as trademarks and other requisites of a legal entity.

Article 4.

1. The Company's address is: _____.
2. The Company has the following representative offices:
_____ (name + address)
_____ (name + address)
_____ (name + address)
3. The Company has the following branches:
_____ (name + address)
_____ (name + address)
_____ (name + address)

Article 5.

1. The Company issues common shares and can issue different classes of preferred shares.
2. The Company can issue bonds and other securities as provided by Armenian legislation.

Article 6.

1. The charter capital of the Company is _____ Dram
(_____) in words.
2. The charter capital of the Company is divided into the following shares:

Types and classes of shares	Number of issued shares	Nominal value of shares in Dram	Percentage of total charter capital
Common shares			
Preferred shares Class A (if any)			
Preferred shares Class B (if any)			

Article 7.

1. The charter capital of the Company can be changed only by a decision of the General Meeting of Shareholders.

Article 8.

1. All of the Company's issued shares may be acquired by one (1) shareholder.

Article 9.

1. All common shares provide the same rights.
2. The owners of common shares of the Company have the rights specified by Armenian legislation and this Charter.
3. The Company does not guarantee payment of dividends to the owners of common shares of the Company.

Article 10.³⁸⁶

1. The class A preferred shares give their owners, in comparison with the owners of common shares and other classes of preferred shares, first priority for receipt of dividends and the liquidation value of shares belonging to them.
2. The dividend on each preferred share of class A is ____ Dram per year, payable annually no later than ____ days after the date of the Annual Meeting of Shareholders.
3. Unpaid or not fully paid dividends on class A preferred shares shall accumulate and be paid subsequently.
4. The liquidation value of a class A preferred share is ____ Dram.

³⁸⁶ This article is only relevant if the Company has issued preferred shares.

5. Each class A preferred share provides to its owners ____ votes on all issues on which class A preferred shares deliver the right to vote.
6. The class B preferred shares give their owners second priority for receipt of dividends and the liquidation value of shares belonging to them, after the payment of dividends on the class A preferred shares and payment of the liquidation value of class A preferred shares.
7. The dividend on each preferred share of class B is ____ Dram per year, payable annually no later than ____ days after the date of the Annual Meeting of Shareholders.
8. Unpaid or not fully paid dividends on class B preferred shares shall accumulate and be paid subsequently.
9. The liquidation value of a class B preferred share is ____ Dram.
10. Each class B preferred shares provides to its owners ____ votes on all issues on which class B preferred shares provides the right to vote.

Article 11.

1. The procedure and the form of payment for shares and securities of the Company are specified by Armenian legislation and by decision of the General Meeting of Shareholders.

Article 12.

1. The reserve fund is ____ (at least 15) percent of the charter capital of the Company.
2. The annual amount added to the reserve fund consists of ____ (at least 5) percent of the Company's profit until the fund reaches the amount specified by Article 12.1 of this Charter.
3. The reserve fund may be used only by a decision of the Board of Directors.
4. The Company also has the following funds:
 1. _____;
 2. _____.

Article 13.

1. The Company has the following bodies:
 - the General Meeting of Shareholders;
 - the Board of Directors;
 - the Management (the Executive Director and the Management Team);
 - the Control Committee.

Article 14.

1. The Annual Meeting of Shareholders must be held on [insert a period between March 1 and June 30].

2. The procedures for preparing and holding a General Meeting of Shareholders are specified in the by-laws of the Company.

Article 15.

1. The Civil Code, the Law on Joint Stock Companies, the Charter and the by-laws of the Company determine the authority of the General Meeting of Shareholders.
2. The General Meeting of Shareholders can delegate the following authority to the Board of Directors of the Company:
 - the appointment and dismissal of the Executive Director;
 - determination of procedures related to the compensation and reimbursement of the Executive Director.

Article 16.

1. The number of votes required to make a decision by the General Meeting of Shareholders is specified by Armenian legislation.
2. Voting at the General Meeting of Shareholders is conducted by ballots. The form and content of ballots are approved by the Board of Directors.

Article 17.

1. The Civil Code, the Law on Joint Stock Companies, the Charter and the by-laws of the Company determine the authority of the Board of Directors.

Article 18.

1. The Board of Directors consists of ___ elected members.
2. Natural persons who are not shareholders of the Company can be elected to the Board of Directors.

Article 19.

1. The quorum of meetings of the Board of Directors is ___ (more than 50) percent of the total number of members of the Board of Directors.
2. Members of the Board of Directors can vote by conference call or through other methods of communication if they cannot be physically present during meetings of the Board of Directors.

Article 20.

1. The Management of the Company is comprised of the Executive Director and the Management Team.
2. The Management of the Company has the authority to decide all issues regarding the daily management of the Company which do not fall within the authority of the General Meeting of Shareholders and the Board of Directors.

3. The Executive Director is appointed and dismissed by the General Meeting of Shareholders.
4. Members of the Management Team are appointed and dismissed by the Board of Directors.

Article 21.

1. The Management Team is comprised of:
 - the Executive Director;
 - the Deputy Executive Director;
 - the Chief Accountant;
 - _____;
 - _____.

Article 22.

1. The Civil Code, the Law on Joint Stock Companies, the Charter and the by-laws of the Company determine the authority of the Executive Director and the Management Team.
2. The Executive Director has the authority to:
 - _____;
 - _____.
3. The Management Team has the authority to:
 - _____;
 - _____.

Article 23.

1. The Company has a Control Committee.
2. The Control Committee is comprised of____(at least 3) members.
3. Members of the Board of Directors, the Executive Director and members of the Management Team cannot participate in the election and dismissal of members of the Control Committee.

Article 24.

1. In order to audit the financial and economic activities of the Company, the Company has an external independent auditor.
2. The General Meeting of Shareholders approves the external independent auditor of the Company. The Board of Directors signs the contract with the external independent auditor of the Company. The contract with the external independent auditor determines the terms of his service, his authority and compensation.

3. An independent external audit is carried out in instances specified by Armenian legislation.
4. An independent external auditor may not:
 - be an affiliated person of the Company, a person occupying an official position in or an employee of the Company or its affiliates, or the spouse, parent, child, brother, or sister of a person occupying an official position in the governing and management bodies of the Company and its affiliates;
 - own shares or securities of the Company or other property or property rights with regard to the Company and its affiliated persons;
 - enter into transactions with the Company or its affiliates not connected with his activity as an external independent auditor;
 - enter into transactions with the Company or its affiliates not connected with his activity as an external independent auditor under which the amount of compensation depends on the results of the audit.

Article 25.

1. Amendments to this Charter or a new version of the Charter must be approved by a three-fourths (3/4) majority vote of shareholders present at the General Meeting of Shareholders.

APPROVED

by the General Meeting of Shareholders of Open Joint Stock Company

Name: _____

Decision #: _____

Minute #: _____

As of _____ 20__

The Chairman of the General Meeting of Shareholders:

Signature of the Chairman of the General Meeting of Shareholders:

**BY-LAWS
ON THE RULES OF ORDER
OF THE GENERAL MEETING OF SHAREHOLDERS
OF OPEN JOINT STOCK COMPANY**

" _____ "

CITY _____ 20__

Important Note: *The Law on Joint Stock Companies requires Companies to have by-laws on the rules of order of the General Meeting of Shareholders that specify procedures that must be followed when the Company holds General Meetings of Shareholders when these are not specified in the Charter of the Company or established by a decision of the General Meeting of Shareholders. See also Chapter 5 of this Manual for more information on the by-laws of a Joint Stock Company.*

Remember that only the Charter needs to be registered. By-laws and other internal documents do not need to be registered.

Disclaimer: The contents of these by-laws and the accompanying Charter are not intended to be and may not be viewed as legal advice.

Article 1.

1. These by-laws have been developed on the basis of Armenian legislation and the Charter of Open Joint Stock Company " _____ " (hereinafter referred to as the Company) and determine the procedures for preparing, calling, holding, and making decisions by General Meetings of Shareholders (hereinafter referred to as the Meeting).
2. Any issues arising during the preparation, calling and holding of the Meeting that are not regulated by these by-laws are governed by provisions of Armenian legislation and the Charter of the Company. The provisions in Armenian legislative acts prevail if provisions of these by-laws contradict the relevant provisions of Armenian legislation.

Article 2.

1. The Meeting is the highest decision-making body of the Company.
2. The Company must hold its Annual Meeting on [insert a period between March 1 and June 30].
3. The Company can hold Extraordinary Meetings of Shareholders if required.

Article 3.

1. The Meeting has the authority to:
 - make changes to the Charter of the Company;
 - make changes to the amount of the charter capital of the Company;
 - elect and dismiss members of the Board of Directors and the Control Committee;
 - appoint and dismiss the Executive Director;
 - approve the annual report, balance sheets, profit and loss statements and the allocation of profits of the Company;
 - liquidate and reorganize the Company;
 - appoint members of the Liquidation Committee, approve the liquidation plan, and intermediary and final liquidation balances of the Company;
 - determine the number and the nominal value of shares that are issued by the Company;
 - appoint the independent external auditor of the Company;
 - determine the amount and the procedures for the payment of annual dividends;
 - approve the financial results of representative offices and branches of the Company;
 - limit the pre-emptive rights of shareholders;
 - approve, amend and repeal by-laws on the rules of order of the Meeting;
 - elect members of the Counting Committee for the Meeting;
 - determine the way shareholders are notified and provided with information about the Company;
 - determine procedures related to the selection of mass media to notify shareholders of Meetings;
 - decrease (split) and increase (consolidate) the nominal value of shares of the Company;
 - enter into large and interested transactions;
 - approve the acquisition of shares of the Company;
 - approve the terms of compensation and reimbursement of the Executive Director and members of the Control Committee;

- approve the compensation and reimbursement of members of the Board of Directors;
 - establish subsidiaries, participate in subsidiaries and dependent Companies;
 - approve the allocation of employee shares, the terms of payment for employee shares and the rights of owners of employee shares;
 - exercise other authority specified by Armenian legislation, the Charter and the by-laws of the Company.
2. The authority of the Meeting as specified by Article 3.1 of these by-laws cannot be delegated to the management bodies of the Company.
 3. The Meeting has no authority to discuss and to decide issues that do not fall within the authority of the Meeting.

Article 4.

1. The Annual Meeting is prepared and called by the Board of Directors. The Board of Directors may appoint an organizing committee to perform administrative functions related to the preparation and holding of the Meeting. In this case, the Board of Directors remains responsible for preparing and convening the Meeting.
2. An Extraordinary Meeting can be convened by the initiative of the Board of Directors and upon the request of the following parties:
 - the Control Committee;
 - the independent external auditor;
 - a shareholder or a group of shareholders owning at least 10 percent of shares of the Company with voting rights as of the date of the request.

Article 5.

1. The written request of shareholders who own at least 10 percent of the shares of the Company with voting rights to hold an Extraordinary Meeting must contain the following information:
 - grounds for the request;
 - first and last name of the shareholder(s) submitting the request;
 - mailing address of the shareholder(s) submitting the request;
 - number, types, and classes of shares of the Company owned by the shareholder(s) submitting the request;
 - statement from the Shareholders Register of the Company that verifies the number, types, and classes of shares of the Company owned by the shareholder(s) as of the date of submitting the request;
 - signature of the shareholder(s) submitting the request.

Article 6.

1. Within 10 days of the request of shareholders or other parties to hold an Extraordinary Meeting, the Board of Directors decides if the Extraordinary Meeting will be held. The Board of Directors can refuse to organize the Extraordinary Meeting only on the following grounds:
 - parties have submitted the request to hold an Extraordinary Meeting but did not meet the requirements as specified by Article 5.1 of these by-laws;
 - shareholders have requested the Extraordinary Meeting but do not own (enough) shares of the Company as specified by Article 5.1 of these by-laws;
 - all items for the proposed agenda of the Extraordinary Meeting do not fall within the authority of the Meeting.
2. The Board of Directors must notify parties submitting the request within 3 days after it has made the decision to organize or not to organize an Extraordinary Meeting.
3. The initiating party can hold the Extraordinary Meeting if the Board of Directors has 1) rejected the request or 2) when the Board of Directors has not made a decision within 10 days after it has received the request to organize an Extraordinary Meeting.
4. Parties whose request to organize an Extraordinary Meeting has been rejected by the Board of Directors have the right to appeal the decision to the Court.

Article 7.

1. Shareholders must be notified ____ days (or ____ days, if the Company has more than 500 shareholder with voting rights) before the Annual Meeting. The shareholders (and other participants) must be notified through a written notice.
2. The following individuals must be notified of the Meeting:
 - owners of shares with voting rights of the Company;
 - members of the Board of Directors;
 - the Executive Director and members of the Management Team;
 - members of the Control Committee;
 - the independent external auditor when he is invited to present his conclusions on the financial statements of the Company.
3. The notice must include the following information:
 - name and address of the Company;
 - date, time and location of the Meeting;
 - procedure for and the time when the registration of shareholders eligible to participate in the Meeting starts and ends;
 - date as of which the Board of Directors has prepared the list of shareholders eligible to participate in the Meeting;

- agenda of the Meeting;
 - procedures which allow shareholders to obtain information from the Company related to the organization and the agenda of the Meeting;
 - other appropriate information.
4. The date indicated by the postal mark on the envelope is the date of notification.
 5. The Board of Directors must approve the procedures which allow shareholders to obtain information from the Company related to the organization and the agenda of the Meeting.

Article 8.

1. A shareholder or a group of shareholders owning at least 2 percent of shares of the Company with voting rights have the right to submit a maximum of 2 proposals for the agenda of the Meeting. The proposals must be submitted in writing to the Board of Directors of the Company within ___ days (at least 30 days) after the end of the fiscal year and must contain the following information:
 - grounds for the proposal;
 - first and last name of the shareholder(s) submitting the proposal;
 - mailing address of the shareholder(s) submitting the proposal;
 - number, types, and classes of shares of the Company owned by the shareholder(s) submitting the proposal;
 - copy of the Shareholder Register of the Company that verifies that the shareholder(s) submitting the proposal owns at least 2 percent of shares of the Company with voting rights as of the date of submitting the proposal;
 - signature of the shareholder(s) submitting the proposal.
2. Shareholders or a group of shareholders owning at least 2 percent of shares of the Company with voting rights have the right to propose candidates for the Control Committee and the Board of Directors within ___ days (at least 30 days) after the end of the fiscal year. The number of candidates that can be proposed by shareholders is limited to the number of members specified for these bodies by the Charter of the Company. The proposal(s) must be submitted in writing to the Board of Directors of the Company within ___ days (at least 30 days) after the end of the fiscal year and must contain the following information:
 - grounds for the proposal;
 - first and last name of the shareholder(s) submitting the proposal;
 - mailing address and passport number of the shareholder(s) submitting the proposal;
 - number, types and classes of shares of the Company owned by the shareholders who propose candidate(s) to the Board of Directors and the Control Committee;

- a statement that a candidate(s) is a shareholder of the Company;
 - name of the candidate(s);
 - number, types and classes of shares of the Company owned by the candidate(s);
 - signature of the shareholder(s) submitting the proposal.
3. Within 3 days after the Board of Directors has made the decision to approve or to reject proposals, the Board of Directors must notify shareholders whose proposal has been approved or rejected. This must be done through a written notice. Shareholders whose proposals have been rejected by the Board of Directors have the right to appeal the decision to the Court.

Article 9.

1. Shareholders can participate in the Meeting in person or with a power of attorney. A power of attorney gives its authorized holder the right to act on behalf of the shareholder. The representative of the shareholder can participate in the Meeting only with a power of attorney. Regardless of the powers of attorney granted to his representatives, the shareholder reserves the primary right of participation in the Meeting.
2. The shareholders can vote and make decisions by written consent during Extraordinary Meetings.
3. Only the person in whose name the shares are registered in the Shareholder Register has the right to participate in the Meeting.
4. The Executive Director, members of the Management Team and the external independent auditor of the Company (or his representative) can participate in the Meeting without the right to vote when they do not own shares of the Company with voting rights.
5. The Board of Directors can invite guests to be present during the Meeting even if they do not own shares of the Company with voting rights. The Meeting must approve the presence of guests.

Article 10.

1. In order to participate in the Meeting, shareholders must register with the Counting Commission. Registration takes place based on the list of shareholders eligible to participate in the Meeting.
2. In order to be registered for the Meeting, a shareholder must present a document for identification as specified in the notification of the Meeting.
3. The registration of shareholders eligible to participate in the Meeting starts ____ hour and ____ minutes and ends ____ minutes before the commencement of the Meeting.
4. If the Company has more than 500 shareholders with voting rights, the ballots must be submitted to shareholders according to the procedures and timetables specified by Article 7 of these by-laws.

5. If the Company has 500 or fewer shareholders with voting rights, shareholders and their representatives receive ballots and cards necessary for voting after they have been registered as specified by Article 10.1 of these by-laws.
6. The form and content of ballots are specified by the decision of the Board of Directors.
7. The seal of the Company must be placed on ballots before these are distributed among shareholders.
8. The Counting Commission verifies the quorum of the Meeting after the registration of participants of the Meeting has been completed.
9. A separate registration list of participants must be prepared for each day the Meeting is held.

Article 11.

1. The Meeting is valid (has a quorum) if shareholders owning more than 50 percent of shares of the Company with voting rights have been registered to participate in the Meeting.
2. In case a quorum is not present, a new date for holding the new Meeting must be announced. No amendments can be made to the agenda of the new Meeting.
3. The new Meeting is valid if shareholders owning more than 30 percent of the shares of the Company with voting rights have been registered to participate in the Meeting.
4. A Meeting that is held by written consent is valid when the owners of 50 percent of the shares of the Company with voting rights have participated in the voting.

Article 12.

1. The Chairman of the Board of Directors opens the Meeting if the Counting Commission verifies that a quorum of the Meeting is present.
2. The Chairman of the Board of Directors informs shareholders present at the Meeting about invited guests from State agencies, media, and others.

Article 13.

1. The Meeting approves the Counting Commission upon the proposal of the Board of Directors.
2. The number of members of the Counting Commission is _____ (at least three).
3. The following individuals cannot be members of the Counting Commission:
 - members of the Board of Directors;
 - the Executive Director;
 - members of the Management Team;
 - members of the Control Committee.

Article 14.

1. The Meeting elects the Chairman and the Secretary of the Meeting.
2. The Chairman of the Meeting:
 - presides over the Meeting;
 - presents the agenda and rules of order of the Meeting;
 - opens the discussion on agenda items and gives the floor to shareholders and others;
 - gives explanations on issues relating to the procedure on holding the Meeting;
 - announces the voting results.
3. If the Chairman of the Board of Directors is also the Executive Director of the Company, another member of the Board of Directors presides over the Meeting.
4. The Secretary makes sure that issues discussed or raised at the Meeting, together with any decisions made, are recorded in the minutes of the Meeting.

Article 15.

1. Voting is conducted on the principle of “one share – one vote” or by the use of cumulative voting as required by Armenian legislation. Preferred shares can give shareholders more than one (1) vote per share as specified by the Charter of the Company.
2. Voting for members of the Board of Directors is based on:
 - the “one share – one vote” principle if the Company has 500 or fewer shareholders with voting rights;
 - cumulative voting if the Company has more than 500 shareholders with voting rights.
3. Voting at the Meeting is conducted with ballots.

Article 16.

1. Decisions on the following issues are made by a three-fourths (3/4) majority vote of shareholders present at the Meeting:
 - approval of the Charter of the Company;
 - amendments to the Charter of the Company;
 - appointment of the Executive Director;
 - approval of intermediary and final liquidation balances of the Company;
 - reorganization of the Company and;
 - decreasing the charter capital of the Company.

2. Decisions on the following issues are made by a two-thirds (2/3) majority vote of the total number of shareholders of the Company:
 - liquidation of the Company;
 - appointment of the Liquidation Commission.
3. Shareholders with voting rights who are present at the Meeting and who are not an interested party in the following transactions can approve the following interested transactions with a simple majority vote:
 - transactions with a market value of more than 2 percent of the assets of the Company;
 - transactions that are carried out with the purpose of issuing shares and other securities convertible to shares with voting rights when the number of shares is more than 2 percent of previously issued shares of the Company;
 - transactions in which all members of the Board of Directors are interested parties.
4. Decisions on all other issues that fall within the authority of the Meeting are made by a simple majority vote of all shareholders with voting rights present at the Meeting.
5. The decisions of the Annual Meeting are binding for all shareholders, whether or not they were present during the Meeting, and working bodies and employees of the Company.

Article 17.

1. The Secretary of the Meeting prepares the minutes of the Meeting within 15 days after the Meeting.
2. The minutes of the Meeting must include the following information:
 - place and time of the Meeting;
 - total number of shares of the Company with voting rights that were present during the Meeting;
 - name of the Chairman and the Secretary of the Meeting;
 - name of members of the Counting Commission;
 - agenda of the Meeting;
 - summary of speeches delivered and the discussions that took place at the Meeting;
 - items that were voted on and the voting results;
 - decisions made at the Meeting;
 - signature of the Chairman and the Secretary of the Meeting.
3. The minutes of the Meeting are prepared on the basis of the minutes of the Counting Commission containing the voting results.

4. All members of the Counting Commission sign the minutes of the Counting Commission. Immediately after the preparation of the minutes of the Counting Commission, all ballots must be packed and sealed by the Counting Commission and transferred to the archives of Company together with the minutes of the Meeting and other documents related to the Meeting.
5. If the minutes of the Counting Commission on voting results are prepared after the end of the Meeting, shareholders must be notified of the results of the Meeting in a manner as provided by Article 18 of these by-laws.
6. Each shareholder of the Company has the right to inspect the minutes of the Counting Commission on voting results.
7. Each shareholder of the Company has the right to inspect the minutes of the Meeting.

Article 18.

1. Shareholders must be provided with information regarding the decisions of the Meeting within 45 days after the Meeting.
2. The Company must provide shareholders with details of all decisions through the publication in a newspaper with a circulation of at least 1,000 copies in the Republic of Armenia.

Article 19.

1. These by-laws shall be approved by the Meeting and may be amended or repealed only by the Meeting.

APPROVED

by the Board of Directors of Open Joint Stock Company (name):

Decision #: _____

Minute #: _____

As of _____ 20____

The Chairman of the Board of Directors:

Signature of the Chairman of the Board of Directors:

**BY-LAWS
ON THE RULES OF ORDER
OF THE EXECUTIVE DIRECTOR AND
THE MANAGEMENT TEAM
OF OPEN JOINT STOCK COMPANY**

" _____ "

CITY _____ 20____.

Important Note: *The Law on Joint Stock Companies requires Companies to have by-laws on the rules of order of the Executive Director and the Management Team. See also Chapter 5 of this Manual for more information on the by-laws of a Joint Stock Company.*

Remember that only the Charter needs to be registered. By-laws and other internal documents do not need to be registered.

Disclaimer: The contents of these by-laws and the accompanying Charter are not intended to be and may not be viewed as legal advice.

Article 1.

1. These by-laws have been developed on the basis of Armenian legislation and the Charter of Open Joint Stock Company " _____ " (hereinafter referred to as the Company) and determine the status, the composition and the authority of the Executive Director and the Management Team of the Company (hereinafter referred to as the Management) and the order of work of the Management.
2. Any issues regarding the status, the composition and the authority of the Management and the order of work of the Management not regulated by these by-laws are governed by provisions of Armenian legislation and the Charter of the Company. The provisions in Armenian legislative acts prevail if provisions of these by-laws contradict the relevant provisions of Armenian legislation.

Article 2.

1. The Management Team consists of _____ members.
2. The Management Team is comprised of:
 - the Executive Director;
 - the Deputy Executive Director;
 - the Chief Accountant;
 - the Secretary;
 - _____ heads of representative offices and branches of the Company (if any);
 - _____.
3. The Executive Director is the Chairman of the Management Team.

Article 3.

1. The Management of the Company has the authority to decide all issues regarding the daily management of the Company which do not fall within the authority of the General Meeting of Shareholders and the Board of Directors as specified by Armenian legislation, the Charter and the by-laws of the Company.
2. The Management implements decisions made by the General Meeting of Shareholders and the Board of Directors.

Article 4.

1. The Executive Director has the authority to:
 - use the Company's property and funds under the authority vested in him by the Charter and the by-laws of the Company and by decision of the General Meeting of Shareholders and the Board of Directors;
 - enter into transactions on behalf of the Company;

- represent the Company in the Republic of Armenia and abroad;
 - act on behalf of the Company without a power of attorney;
 - open bank accounts;
 - organize the work of the Management Team;
 - call and preside over the meetings of the Management Team;
 - organize the keeping of minutes of meetings of the Management Team;
 - assign and delegate duties to members of the Management Team and other employees of the Company and determine the scope of their authority;
 - monitor the actions of members of the Management Team and other employees of the Company;
 - hire and dismiss employees except for those elected or appointed by the General Meeting of Shareholders and the Board of Directors;
 - make motivational and disciplinary decisions regarding employees;
 - implement decisions of the General Meeting of Shareholders and the Board of Directors and report back to these bodies;
 - exercise other authority specified by Armenian legislation, the Charter of the Company, the by-laws of the Company and the contract the Company has signed with the Executive Director.
2. In case of a temporary absence of the Executive Director, the Deputy Executive Director performs his responsibilities.
 3. The Executive Director remains responsible for activities that have been delegated to other members of the Management Team and employees of the Company.
 4. All members of the Management Team and employees of the Company must follow instructions and orders issued by the Executive Director that fall within the authority of the Executive Director.

Article 5.

1. The Management Team has the authority to:
 - approve current plans for Company's operations and specific actions required for their implementation;
 - develop business plans and other financial and economic activities of the Company;
 - exercise other authority specified by Armenian legislation, the Charter and the by-laws of the Company.
2. The Management Team has the authority to prepare and submit for approval of the Board of Directors:
 - employment regulations of the Company;
 - annual statements of the Company;

- profit and loss statement of the Company;
 - profit and loss distribution of the Company;
 - annual performance results of representative offices and branches of the Company;
 - Charters and regulations of representative offices and branches of the Company;
 - payment schedule and amount of annual dividends;
 - administrative and organizational structure of the Company;
 - proposals on the establishment of representative offices and branches of the Company;
 - the amount and payment procedure of intermediary and annual dividends for shares of the Company;
 - annual budget estimates.
3. Decisions of the Management Team that fall within the authority of the Management Team must be implemented by all members of the Management Team and other employees of the Company.

Article 6.

1. A natural person or a legal entity may serve as a member of the Management Team.
2. Natural persons (or legal entities) that are not shareholders of the Company can be appointed to the Management Team.
3. Members of the Management Team must perform their duties in their personal capacity and may not delegate their powers to other members of the Management Team or to third parties.

Article 7.

1. Upon the recommendation of the Board of Directors, the appointment of the Executive Director is approved by the General Meeting of Shareholders with a _____ (three-fourths) majority vote of shareholders with voting rights present at the General Meeting of Shareholders.
2. The Executive Director may be dismissed at any time from his office with a _____ (three-fourths) majority vote of shareholders with voting rights present at the General Meeting of Shareholders.
3. Members of the Management Team are appointed by the Board of Directors with a _____ (two-thirds) majority vote of members of the Board of Directors present at the meeting of the Board of Directors.
4. Members of the Management Team may be dismissed at any time from the office with a _____ (two-thirds) majority vote of members of the Board of Directors present at the meeting of the Board of Directors.

Article 8.

1. The work of the Management Team is organized in the form of meetings. The meetings of the Management Team are held when required but not less than once every ___ days.
2. Meetings of the Management Team may be held in the following manner:
 - by gathering members of the Management Team in one place;
 - by conference call or other means of communication which enables members of the Management Team to hear each other.
3. The Management Team meets upon the request of one of the following parties:
 - the Executive Director;
 - the Board of Directors;
 - the Control Committee;
 - the independent external auditor;
 - any member of the Management Team.
4. The request to hold a meeting of the Management Team is submitted to the Executive Director. The Executive Director must make a decision to accept or reject the request within ___ days. The party who submitted the request receives a written notification regarding the decision of the Executive Director within ___ days.
5. Members of the Management Team and invited guests are given no less than ___ days written notice of meetings of the Management Team. Such notice must specify the date, time and place of the meeting, the name of the requesting party, as well as the agenda and procedures of the meeting.
6. Any member of the Management Team is entitled to propose amendments to the agenda of the meeting no later than ___ days before the date of a meeting of the Management Team. The agenda is approved by a simple majority vote of members of the Management Team present at the meeting of the Management Team.
7. During its meetings, the Management Team has the right to decide issues not included in the agenda if agreed upon by all members of the Management Team present at the meeting of the Management Team.

Article 9.

1. The quorum for meetings of the Management Team is _____ (75) percent of the total number of members of the Management Team as specified by Article 2.1 of these by-laws.
2. Decisions of the Management Team are made by a _____ (a unanimous) vote of members of the Management Team present at the meeting of the Management Team on the following issues:
 - employment regulations of the Company;
 - Charters of representative offices and branches of the Company;

- administrative and organizational structures of the Company;
 - annual budget estimates;
 - _____.
3. Other decisions are made by a _____ (3/4) vote of members of the Management Team present at the meeting of the Management Team.
 4. Each member of the Management Team has one (1) vote.

Article 10.

1. The Management Team must keep minutes of its meetings. The minutes must be prepared by the Secretary of the Management Team within _____ days after the meeting and must be kept in the archives of the Company.
2. The minutes must contain the following information:
 - location and time of the meeting;
 - names of members of the Management Team and invited guests present at the meeting;
 - agenda of the meeting;
 - voting results and decisions made by the Management Team.
3. The minutes of meetings of the Management Team must be signed by the Executive Director. The Executive Director is responsible for the accuracy of the minutes.
4. Immediately after signing the minutes of the meeting of the Management Team, the minutes, all materials and documents connected to the meeting must be archived in the Company's archives.
5. Members of the Board of Directors, the Executive Director, members of the Management Team and the Control Committee have access to the minute book of the Company and have the right to receive a copy of the minutes of the meetings of the Management Team.

Article 11.

1. The Executive Director and members of the Management Team are compensated for the performance of their duties and reimbursed for expenses connected to the performance of their duties.
2. The General Meeting of Shareholders determines the amounts and the procedures for the compensation and reimbursement of the Executive Director.
3. The Board of Directors determines the amounts and the procedures for the compensation and reimbursement of the members of the Management Team.
4. The amounts and the procedures for the compensation of the Executive Director and members of the Management Team must be specified by contracts signed by the Company with the Executive Director and members of the Management Team.

Article 12.

1. The Executive Director and members of the Management Team must perform their duties honestly, in good faith and in the best interests of the Company.
2. The Executive Director and members of the Management Team can be held liable for losses caused to the Company according to the procedures specified by Armenian legislation.

Article 13.

1. Members of the Management Team are required to provide information to the Board of Directors and the Control Committee on:
 - legal entities (name and address) in which they, independently or together with other persons cooperating with interested parties, own at least 20 percent of the shares with voting rights;
 - legal entities (name and address) in which they hold managerial or governance positions;
 - transactions (completed or pending) in which they act as interested parties.

Article 14.

1. These by-laws must be approved by the Board of Directors and may be amended or repealed only by the Board of Directors.
2. Amendments to these by-laws must be approved by a____(3/4) majority vote of members of the Board of Directors present at the meeting of the Board of Directors.
3. Amendments to these by-laws become effective from the moment of their approval by the Board of Directors.
4. Shareholders must be notified of amendments to these by-laws at the first General Meeting of Shareholders after the amendments have become effective.

**Approved
by the Board of Directors
of Open Joint Stock Company**

« _____ »

Decision #: _____

Minutes #: _____

as of _____ **20**__

**The Chairman of the Board
of Directors** _____

**AGENDA
of the Annual Meeting of Shareholders
of Open Joint-Stock Company**

« _____ »

_____ **20**__

1. Approval of the Company's annual report.
2. Approval of the Company's balance sheet.
3. Approval of the Company's profit and loss statement.
4. Approval of the Company's profit distribution.
5. Approval of the annual results of branches and representative offices of the Company (when required).
6. Election of the Board of Directors.
7. Approval of the appointment of the Executive Director (when required).
8. Election of the Control Committee (when required).
9. Approval of amendments to the Charter of the Company (when required).
10. Determination of the amount and the procedures for the payment of annual dividends.
11. Approval of the appointment of the independent external auditor and the approval of the terms of compensation for his services (when required).

**NOTICE
OF THE CONVENING OF THE ANNUAL MEETING OF
SHAREHOLDERS
OF OPEN JOINT-STOCK COMPANY**

« _____ »

Dear Shareholder:

We hereby inform you that in compliance with decision #: _____ of Board of Directors (Minute # _____ as of _____ 20__), the Annual Meeting of Shareholders of Open Joint Stock Company « _____ » will be held on _____ 20__ at _____ hour at the following address: _____.

AGENDA

1. _____;
2. _____;
3. _____.

In order to be entitled to participate in and to vote at the Meeting, you or your fiduciary must be registered. You or your fiduciary must present identification (your fiduciary must also present the power of attorney). The registration of participants of the Meeting will be held at the site of the Meeting. The registration will start at _____ on _____ 20__ and finish at _____ (10 minutes before the opening of the Meeting).

In order to receive documents and other materials related to the Meeting, you or your fiduciary must come to _____ (address) from _____ (time) to _____ (time) on _____ (dates). You or your fiduciary must present identification (your fiduciary must also present a power of attorney).

For additional information please contact:

Tel: _____

Fax: _____

Yours truly,

The Chairman of the Board of Directors _____

_____ 20__

PROXY # 1

City (village) _____

(day, month and year in words)

I, _____,
(surname, first name and patronymic)

resident of _____,
(passport series _____ # _____ issued on _____ 20____
by _____),
(name of issuing authority)

hereby authorize _____,
(surname, first name and patronymic)

resident of _____,
(passport series _____ # _____ issued on _____
by _____),
(name of issuing authority)

to be my representative in all Companies, institutions and organizations irrespective of their form of ownership, including government bodies, on issues relating to the management of a block of _____ (number) _____ (type and class) shares in Joint Stock Company « _____ » belonging to me by the right of ownership.

In connection therewith I vest him with the following rights:

1. To participate in the General Meeting of Shareholders of the above mentioned Joint Stock Company.
2. To submit on my behalf, letters, statements, petitions and other documents.
3. To sign on my behalf, letters, statements, demands, petitions, protocols, appeals and other documents.
4. To obtain information, documents and explanations from governance and other bodies of the Company, shareholders, enterprises, institutions and organizations irrespective of their form of ownership.
5. To vote on my behalf at his own discretion on all the issues on the agenda of the General Meeting of Shareholders, as well as on other issues put to a vote.
6. To take all other steps relating to the management of my corporate rights.

This proxy is issued with the right of reassignment and shall be valid for _____ years, i.e., until _____.

20____
(Signature + date)

PROXY # 2

City (village) _____

(day, month and year in words)

I, _____,
(surname, first name and patronymic)

resident of _____,

(passport series _____ # _____ issued on _____

by _____)
(name of issuing authority)

hereby authorize _____,
(surname, first name and patronymic)

resident of _____,

(passport series _____ # _____ issued on _____

by _____)
(name of issuing authority)

to be my representative at the General Meeting of Shareholders of the Joint Stock Com-
pany _____ which is scheduled
for _____ 20_.

In connection therewith I vest him with the following rights:

1. To submit on my behalf, letters, statements, petitions and other documents.
2. To sign on my behalf, letters, statements, demands, petitions, protocols, appeals and other documents.
3. To obtain information, documents and explanations from governance and other bodies of the Company and its shareholders.
4. To vote on my behalf on all the issues included in the agenda of the General Meeting of Shareholders, as well as on other issues put to a vote.
5. To take all other steps relating to the representation of my interests at the General Meeting of Shareholders.

This proxy is issued with the right of reassignment and shall be valid for the duration of the Meeting and any adjournments, but not longer than three months, i.e., until _____.

_____ 20_

(Signature + date)

PROXY # 3

City (village) _____

(day, month and year in words)

I, _____,
(surname, first name and patronymic)

resident of _____,
(passport series _____ # _____ issued on _____
by _____),
(name of issuing authority)

hereby authorize _____,
(surname, first name and patronymic)

resident of _____,
(passport series _____ # _____ issued on _____
by _____),
(name of issuing authority)

to be my representative at the General Meeting of Shareholders of the Joint Stock Company _____ which is scheduled for _____ 20_.

In connection therewith I vest him with the following rights:

1. To submit on my behalf, letters, statements, petitions and other documents.
2. To sign on my behalf, letters, statements, demands, petitions, protocols, appeals and other documents.
3. To obtain information, documents and explanations from governance and other bodies of the Company and its shareholders.
4. To vote on my behalf on all the issues included in the agenda of the General Meeting of Shareholders, as well as other issues put to a vote in the following way:
 - 4.1. On issue #1 " _____ ": _____;
 - 4.2. On issue #2 " _____ ": _____;
 - 4.3. On issue #3 " _____ ": _____.
5. To take all other steps relating to the representation of my interests at the General Meeting of Shareholders.

This proxy is issued with the right of reassignment and shall be valid for the duration of the Meeting and any adjournments, but not longer than three months, i.e., until _____.

20_____
(Signature + date)

MINUTES #_____

OF THE MEETING OF THE BOARD OF DIRECTORS
OF JOINT-STOCK COMPANY

“_____” 20__

Members of the Board of Directors Present:

1. _____, Chairman;
2. _____, Secretary;
3. _____;
4. _____;
5. _____.

Members of the Board of Directors Absent:

1. _____;
2. _____.

Invited:

1. _____, Executive Director;
2. _____, Chief Accountant;
3. _____;
4. _____.

In accordance with the Charter, a quorum for holding the meeting is present.

Agenda:

1. _____,
2. _____,
3. _____,

On issue #1 of the agenda, the meeting listened to:

1. _____;
2. _____;
3. _____.

The Chairman of the meeting put the issue to a vote.

Voting results: yes _____; no _____.

The resolution is passed/ not passed.

On issue #2 of the agenda, the meeting listened to:

1. _____;
2. _____;
3. _____.

The Chairman of the meeting put the issue to a vote.

Voting results: yes _____; no _____.

The resolution is passed/ not passed.

Decisions:

1. _____;
2. _____;
3. _____.

Chairman of the Board of Directors: _____ (_____)

Secretary of the Board of Directors: _____ (_____)

(It is recommended to include in the minutes a section entitled "Signatures of persons present" wherein signatures of all the persons present at the meeting may be written including the Chairman and the Secretary of the Board of Directors. The availability of the signatures of the persons present: 1) confirms their presence at the meeting; 2) confirms their acceptance of the contents of the minutes.

Signatures of the persons present at the meeting:

Ballot Card for the General Meeting of Shareholders of Open JSC " _____ ", City _____, 20__		
Agenda issue	Appointment of the Executive Director	
#__	_____ votes	First name, middle name, last name of a shareholder _____
First name, middle name, last name of candidate		
		For Against Abstain
<i>Leave blank the decision of your choice and cross the two other boxes with "X"</i>		
<i>Stamp</i>		

Ballot Card for the General Meeting of Shareholders of Open JSC " _____ ", City _____, 20__		
Agenda issue	Election of the Control Committee	
#__	_____ votes	First name, middle name, last name of a shareholder _____
First name, middle name, last name of candidate		
1)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
2)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
3)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
4)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
5)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
<i>Leave blank the decision of your choice and cross the two other boxes with "X"</i>		
<i>Stamp</i>		

Ballot Card for the General Meeting of Shareholders of Open JSC " _____ ", City _____, 20__		
Agenda issue #__	Election of the Board of Directors	
	_____ votes	First name, middle name, last name of a shareholder _____
First name, middle name, last name of candidate		
1)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
2)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
3)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
4)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
5)		For <input type="checkbox"/> Against <input type="checkbox"/> Abstain <input type="checkbox"/>
<i>Leave blank the decision of your choice and cross the two other boxes with "X"</i>		
Stamp		

This Manual focuses on the laws and practices applicable to Joint Stock Companies in the Republic of Armenia. Since many of Armenia's privatized enterprises are organized as Open and Closed Joint Stock Companies, this Manual has been developed to introduce essential concepts of corporate governance to shareholders, directors and managers of privatized enterprises and enterprises that will be privatized in the near future.

The Manual has also been written to help government officials, lawyers, judges and others.

The Manual takes into account applicable laws and regulations in the Republic of Armenia.

The Manual also makes reference to the principles of corporate governance generally accepted by the international business community.

Published by the International Finance Corporation

Printed by AREG Publishers

Design by DAR LTD