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Armenia: Law & Practice

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Concern Dialog Law Firm

ARMENIA

Law and Practice

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Contents

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Concern Dialog Law Firm is a Yerevan-based full-service law firm established in 1998. The firm provides services in litigation, representation and legal advisory. Since its establishment, the firm has offered services both to individuals and corporate clients. The firm has 63 employees, of whom 17 are licensed attorneys. Concern Dialog has been a member of the TAGLaw Alliance of Independent Law Firms since 2010 and the Nextlaw referral network (by Dentons) since 2017, which allows it to provide services practically worldwide. The firm is also a member of the American Chamber of Commerce in Armenia, the German Business Association in Armenia, the Armenian British Business Chamber and the ICC Armenian National Committee.

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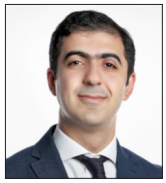
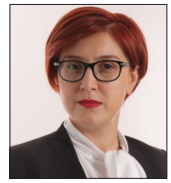


Aram Orbelyan is the managing partner of Concern Dialog Law Firm, heading its litigation and arbitration practice. Aram initially joined the firm in 2009 as a senior associate. From 2011 to 2014 he acted as the Deputy Minister of Justice of the Republic of Armenia, responsible for a number of e-government reforms as well as reforms of civil procedure and legislation related to the Agency for State Register of Legal Entities, the Civil Status Acts Registry Office, the notary system, advocacy, civil procedural and civil legislation. After a four-year break, he returned as a senior partner. Additionally, he is a co-founder and chairperson of the Arbitrators' Association of the Republic of Armenia.



Narine Beglaryan is a partner of Concern Dialog Law Firm who joined the firm as a senior associate in 2013 and was promoted to the position of partner in 2016. Currently, Narine heads the firm's corporate law and banking and compliance practices. She represents clients within judicial proceedings, as well as advising clients on major M&A transactions. Prior to joining Concern Dialog, Narine was a legal adviser at Armentel CJSC and held the position of chief lawyer at BTA Bank CJSC.

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Shushanik Stepanyan is a senior associate at Concern Dialog Law Firm. Before joining the firm, she was an assistant to the Civil Court of Appeal judge. She has been a member of the Chamber of Advocates (Bar) of Armenia since 2020. Shushanik is responsible for the labour law and employment area of practice, both consultancy and disputes. In addition, she is representing clients in judicial cases in a wide range of labour and civil law-related disputes.

Lilit Karapetyan is a junior partner of Concern Dialog Law Firm who joined the firm in 2017 as a junior associate and was promoted to the position of junior partner in June 2021. Lilit provides consultancy to the firm's clients on mining and energy law-related issues, supports major M&A transactions and advises clients on various corporate and contract law-related issues. Prior to joining the Concern Dialog team, Lilit worked at the Financial System Mediator's Office as a lawyer (2013–14). Currently she is also the chairperson of the ADR Commission of ICC Armenia chapter.

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1. Legal System

1.1 Legal System and Judicial Order

Armenia is a unitary parliamentary republic (based on the Constitution, as amended in 2015). Armenia belongs to the (continental) civil law system. The Civil Code is based on the Napoleonic Code, while administrative law was developed based on the German model.

In Armenia, only courts are authorised to administer justice. The following courts operate in Armenia:

- the Constitutional Court (responsible for constitutional justice);
- the Court of Cassation (the highest court outside of constitutional justice; it ensures the uniform application of legislation and eliminates the fundamental violations of human rights and freedoms);
- the Criminal, Civil, Administrative and Anti-corruption Courts of Appeal (these are responsible for reviewing the judicial acts of the courts of the first instance; they mostly act as courts of law, with a limited capacity to act as courts of fact – mostly in administrative and criminal proceedings);
- the courts of the first instance of general jurisdiction;
- the Administrative Court;
- the Court of Bankruptcy (with jurisdiction to manage bankruptcy cases); and
- the Anti-corruption Court.

The Administrative Court has jurisdiction over all cases arising from public relations (both those between public bodies and those between public bodies and individuals), including disputes relating to public or alternative service, and disputes between administrative bodies that are not subject to settlement by order of precedence. The Administrative Court is the body empowered with the review of fines and other administrative acts.

The Court of Bankruptcy is responsible for managing bankruptcy cases.

The Anti-corruption Court has criminal and civil jurisdiction. The criminal jurisdiction covers criminal cases with corruption-related charges. Within the civil jurisdiction, the court deals with civil forfeiture cases and recovery of damages to state and other public entities caused by crimes.

The courts of the first instance of general jurisdiction have jurisdiction over all other cases which are not subject to other courts.

2. Restrictions on Foreign Investments

2.1 Approval of Foreign Investments

The Law on Foreign Investments defines a foreign investor as a foreign state, a foreign legal entity, a foreign citizen, a stateless person, a citizen of Armenia permanently residing outside of Armenia, or any international organisation that engages in investment in Armenia according to the legislation in force. Foreign investment is further defined as any property, including financial resources and intellectual values, directly invested by a foreign investor as defined above in commercial or other activities in Armenia to gain profit, revenue or any other benefit.

According to court practice, only those assets which are invested in the company's equity (via relevant corporate decisions) are considered to be investments.

As a general remark, Armenian law in this area does not determine requirements for pre-approval or approval of such foreign investment by any state body. Accordingly, besides the generally applicable processes for carrying out business in Armenia, the law does not determine any such pre-approval requirements.

That being said, in certain areas and specific sectors, approval of the investment plan assures incentives and other benefits to the investor.

For example, according to the Land Code of the Republic of Armenia (RA), property owned by the state or community can be donated for social or charitable purposes or for implementing investment plans approved by the government of the RA. Such a decision of the government and the donation agreement indicate the sole purposes for which the donated land can be used.

Furthermore, investors can be entitled to specific tax or customs incentives in specific cases if the government approves the granting of incentives as per a submitted investment plan under the particular degree of government specifying the incentives. For instance, it is possible to submit for exemption from customs duties for five years of implementation of an investment plan.

Also, in the case of investment in the public service sectors, the investment plan can be of the Public Services Regulatory Commission's (PSRC) consideration in the context of determination of tariffs for public services; the permission for operation in this sector is not mandatorily linked to the investment plan.

In general, the stated cases concern benefits to and incentives for the investor, rather than a pre-approval process to protect the investment or for the investment to be qualified as a foreign investment.

2.2 Procedure and Sanctions in the Event of Non-compliance

As described in **2.1 Approval of Foreign Investments**, there is no mandatory regulation of pre-approval mechanisms for investment plans, ie, no requirement to invest with prior approval of state bodies. As a matter of general rule, there is no procedure or sanction regarding the supervision or fulfilment of an investment plan as well. However, once incentives are granted under a government-approved investment plan, the investment plan will be subject to reporting to the government, and failure in fulfilment thereof may cause or will cause liabilities depending on the type of incentive granted and the conditions of the government decree on approval of the investment plan under which the incentives are granted. For instance, in the case of incentives for land purchase, the consequence may be the judicial cessation of ownership rights over the land plot should the land plot be used for purposes other than those granted.

2.3 Commitments Required From Foreign Investors

The applicable legislation indicates no such specific commitments. However, under the law on public-private partnerships, the government may agree with the investor on specific commitments on a case-by-case basis. As a matter of practice, such commitments can be imposed under the government decree on approval of the investment plan.

2.4 Right to Appeal

There is no specific process applicable to the appeal of decisions of the government or PSRC concerning failure to approve the investment plan of an investor. Theoretically, however, the

generally applicable administrative litigation processes concerning the appeal of administrative bodies' decisions would apply. The recipient of a decision not to grant consent to the investment plan can bring a claim to challenge the decision before the Administrative Court.

Such a claim must be brought within two months upon receipt of the decision.

That being said, it must be noted that the grounds and scope of possible arguments are limited: the government and PSRC have a rather large scope of discretion when approving investment plans (to the point that no specific list of grounds of rejection is identified) and thus the scope of discretion is extensive. Technically, the appeal can be brought either for procedural breaches or in the case of breach of equality requirements (the administrative bodies are required by law to act similarly in similar cases).

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entity

The most common business vehicles are the limited liability company (LLC) and the joint-stock company (JSC).

In both cases, the liability of shareholders (or in the case of LLCs, participants) is limited. Furthermore, no requirements for the minimum share capital or a minimum number of shareholders is determined. However, minimum capital requirements are envisaged in several sectors (mainly for financial institutions).

Both LLCs and JSCs are governed by the meeting of shareholders (participants), which is the highest governing body. The sole director – in the case of LLCs, a sole director (CEO); in the case of JSCs, a collegial executive board (directorate) can be appointed – carries out the company's ongoing management. The establishment of a board (board of directors) is possible in either type, with the Law on JSCs regulating specific requirements and the scope of authorities of such a board. In contrast, the Law on LLCs is silent on most of these issues, allowing the companies to determine the scope at their discretion.

The main differences between the two types of entities are as follows.

LLCs are preferred when the shareholding and management structures are straightforward and less complex. For JSCs, it is possible to have multi-layered, complex management structures (including the collegial executive body) and regulate the relationships between the shareholders, including through shareholders' agreements, etc.

Furthermore, in LLCs, the participant has a right to exit from the company without the consent of the other participants and request the company to pay the market value of its share. The majority of participants also have a right to remove a minority participant from the company without its consent through bringing a claim against the minority participant before the court if the minority participant hinders the company's activities.

Finally, a significant difference to consider is that the information on the participants of LLCs is open to the public; however, in the case of JSCs, the information on shareholders is maintained by private registry keepers and is not provided to third persons without the company's consent. At the same time, since 2023 all the companies are obliged to disclose their UBOs, and that information on UBOs is publicly and freely available

on the webpage of the State Registry of Legal Entities.

3.2 Incorporation Process

The process of incorporation of both LLCs and JSCs is fairly straightforward and simple. The registration of both types of entities before the Agency for State Register of Legal Entities of the Republic of Armenia (Agency) is free of charge. The process itself takes no more than two working days after submitting the necessary package of documents. Below are certain peculiarities of the process to be considered by foreign investors.

Template (Pre-approved) Package-Based Registration of LLCs

Suppose the founder(s) of an LLC is an individual, and both the director and the founder(s) are in Armenia. In that case, they can quickly establish an LLC at the Agency by simply visiting it with their passports (verified translation) and answering the simple questions of the Agency employee. The Agency employee shall create and provide a standard (pre-approved) template package (only in Armenian) to the applicants. The company is registered in less than half an hour without any costs.

The Standard Process of Establishment and Registration of LLCs

As an alternative, the founding and governing documents of the LLC (founding decision, charter) can be drafted to meet the specific needs and requirements of the founders, including preparing multilingual versions (the Armenian version shall still prevail), establishing specific governing mechanisms, and thus not following pre-approved standard documents.

It must be noted that although the founding package (founding decision, charter) does not need any verification by a notary under Armenian law, the documents or copies thereof related to a foreign founder (in the case of a legal entity – charter and excerpt from the register or equivalent; in the case of an individual – passport) and a foreign director (passport) must be verified by a notary and legalised (consular or by an apostille) and subsequently translated into Armenian with the verification of an Armenian notary.

Establishment of a JSC

The process of establishment of a JSC consists of two stages. The first stage is the preparation of the founding documents and submission thereof to the Agency (similar to the registration of an LLC). The second stage is the registration of the company's shares with the Central Depository through one of the account operators (to ensure the quality of services and competition the Central Depository does not provide services to the public directly, only through the account operators who are acting based on the agreement signed with the Central Depository).

In either case, within 40 days upon registration, the companies shall submit declarations on their ultimate beneficial owners (UBOs) disclosing the full ownership structure up to the beneficial owner. Such declaration shall also include the notarially verified translations of the passports of the UBOs.

3.3 Ongoing Reporting and Disclosure Obligations

Changes of Management

According to the general rules of Armenian legislation, only the head of the executive body is subject to registration with the Agency. Hence, the company needs to disclose a change of the executive body (CEO, general manager, general director, etc).

Depending on the company's business activity, there may be exceptions to the general rules described above. For example, the executive body of a bank, including the chief accountant, deputy directors, chief compliance officers and compliance officers, chief auditor and auditors, as well as the board of directors, is subject to certification and registration by the regulator, in this case the Central Bank of Armenia. Thus, practically any change of the bank's management needs to be filed to and approved by the regulator.

Amendments to Articles of Incorporation (Charter)

In case of amendment of articles of incorporation in part or in whole (new edition of articles of incorporation/charter), the amendments must be filed for registration to the Agency. The company needs to change its articles of incorporation when, for instance, it changes its firm name, address, charter capital or corporate governance.

The process and requirement for registration of amendments to the articles of incorporation/charter may have some peculiarities depending on the reasons for and the content of such amendments. For example, in the case of amendments to the articles of incorporation/charter due to investment into the company (ie, an increase of the company's charter capital), the company needs to submit proof of payment of the investment for registration. There may be some differences, depending on the company's business activity, when the Central Bank instead of the Agency is responsible for registration (mostly typical for legal entities that provide financial, insurance and investment services, and investment funds).

Change of Shareholder

Participation in the share capital of an LLC needs to be registered with the Agency (open to the public). In contrast, participation in a JSC is recorded in the centralised securities register which is managed by the Central Depository of Armenia (the information is not available to the wider public). Information on the participation of commercial co-operatives is not recorded by the Agency or in any outsourced registers.

While changing the participation in an LLC, the articles of incorporation must be changed as far as it is mandatory to include that data in the articles of incorporation and keep them up to date. Hence, a change of shareholder of an LLC is performed together with a change of the articles of incorporation.

It is not required to include information about shareholders of a JSC in its articles of incorporation except at the stage of incorporation of the company (ie, the initial registration of the articles of incorporation). Thus, a change of shareholder must only be recorded in the company's register of shareholders.

UBO

There is an obligation to submit a declaration to the Agency in the case of a change of UBO.

The legal entity shall submit the following report/information to the Agency by 20 February of each year:

- confirmation that the information on the UBOs submitted to the Agency in the last declaration was still accurate as of 31 December of the previous year; or
- changes in the information on the UBOs of the legal entity.

In the case of a change of data regarding real beneficiaries, the change must be declared immediately after the disclosure to the legal entity, but not later than 40 days after the change.

The declaration on the UBOs and further changes in the declaration are submitted to the Agency through the website e-register.am (see the procedure for filling out the application below). In this case the declaration shall be signed via electronic signature accepted by the government. Completion of the declaration is possible through an authorised person, in which case a relevant power of attorney is required.

The liability for the failure to submit a declaration on UBOs within the period prescribed by law by an entity obliged to submit such a declaration, as well as for presenting it in violation of the law or inadvertently presenting incorrect or incomplete data in the declaration, according to the RA Law on Administrative Offences, can be a warning or a fine of up to AMD100,000. In addition, if the declaration on the UBOs contains false information or lacks information which should have been included, and the person submitted the false information wilfully, they can be held criminally liable.

In addition, if the obligation to submit confirmation or amended information on UBOs is violated each year for three years in a row, as well as in cases of repeated or gross violation of the rules regarding submitting a declaration, the Agency may apply to the court to dissolve the legal entity.

Since 2023, all companies are obliged to submit UBO declarations, and the latter are publicly available on the webpage of the Agency.

Approval of Financial Statements

Companies need to submit financial statements to the State Revenue Service:

- annually for profit taxes;
- monthly for VAT and taxes on the income of individuals (if income is reported by an individual themselves, then the reporting is done annually);
- quarterly for turnover tax (if the company is a turnover taxpayer instead of a VAT and income tax payer); and
- annually for micro-taxes (if the company pays taxes under this special regime).

As a matter of general rule, there is no requirement for companies to disclose their financial statements. Depending on the type of business activity, the law may specifically mandate companies to publish financial statements and financial audit reports. For instance, banks, insurance companies and managers of investment funds must perform this requirement.

Starting from year 2024, resident individuals of Armenia (in the beginning only certain groups of individuals, and from year 2026 all resident individuals) will be obliged to submit a simplified income tax calculation to the State Revenue Service.

3.4 Management Structures

General Notes on Management Structure

The highest governing body of the company is its general meeting of shareholders (participants). All companies need to have at least one executive body.

There are specific cases defined in the law when the company must have a board of directors. Open JSCs or companies with activities in specific areas such as banking and insurance must

have a board of directors. The board of directors of an open JSC must have under it an audit committee.

Under its articles of incorporation, the company may declare and set forth the collective executive body.

The Powers of the General Meeting

The general meeting approves the amendments of the articles of incorporation; decides on reorganisation and liquidation of the company; approves final, interim and liquidation balance sheets; and appoints the liquidation committee. The general meeting approves the number of board members, elects board members, terminates their powers, and appoints and dismisses the executive body (unless these authorities are delegated to the board of directors). Increasing and reducing charter capital, approval of the company's annual report, distribution of dividends, and approval of significant transactions and transactions with conflict of interests are powers of the general meeting as well.

The Board of Directors

The Law on LLCs does not specify the powers of the board of directors (ie, the board of directors may exercise powers given under the articles of incorporation/charter), which cannot include the exclusive powers of the general meeting or executive body. The Law on JSCs lists exclusive powers of the board of directors. It stipulates that if a company has no board of directors, the general meeting exercises those powers.

The board of directors of a JSC determines and approves the strategy of the company, decides on using the reserve fund and other funds of the company, and approves (i) internal documents regulating the activities of the company's governance bodies; (ii) the administrative and organisational structure of the company; and (iii) a list of the company's staff positions. It also establishes branches and representative offices as well as exercising the powers related to convening of the general meeting and other powers defined in the law.

The Executive Body

The single-person executive body or head of the collegial executive body is responsible for the company's day-to-day activities and represents the company by the capacity to act without a letter of authorisation. The director is entitled to issue letters of authorisation; conclude agreements and contracts; perform banking operations; issue orders, directives and binding instructions as well as supervise their implementation; decide on employment and dismissal; apply incentives; and impose disciplinary action on employees.

3.5 Directors', Officers' and Shareholders' Liability

Liability of Board Members and Executive Body

Both the Law on LLCs and the Law on JSCs (the latter consists of more detailed regulation on the matter) determine the liability of board members and the executive body.

The rules are the following: the board members and executive body must act for the benefit (in the interest) of a company, in good faith and reasonable manner, and avoid actual and possible conflicts of interest while exercising their rights and performing their obligations (fiduciary duty). The Law on JSCs also forbids a person who may, by virtue of participation in the charter capital of the company or other circumstances, have a material impact on the decisions of the company, from inducing board members or the executive body to take decisions that contradict

the interests of the company or the legitimate interests of shareholders who cannot have a material impact on the decisions of the board.

The board members and executive body may be released from liability if (i) there is no damage caused by their fault (applicable only to LLCs), (ii) they voted against the decision, (iii) they did not participate in the meeting, or (iv) they acted in good faith – ie, did not know or could not have known that the company would incur losses as a result of their actions or omissions (applicable only to JSCs). The resignation, recall or dismissal of a board member or the executive body does not exempt them from liability for the damage caused to the company.

If the damage was caused to the LLC by one of its board members or the executive body, any shareholder (participant) of the company and the company may apply to court on behalf of the company against that board member or executive body and claim damages. If the damage was caused to the JSC by one if its board members or the executive body, the claim for compensation of damages against that board member or executive body may be brought against the company or its shareholder(s) (jointly) owning 1% or more of the placed common (ordinary) stocks of the company. The breach of fiduciary duty might cause criminal liability of a board member or executive body if their actions or omissions caused essential damages.

Shareholders' Liability

Under Armenian law, the separation of liability of a legal entity from its shareholders' liability is determined.

That being said, Armenian legislation allows for the "piercing of the corporate veil" in specific cases of activities between parent and daughter or dependent companies (subsidiaries). The daughter company must not be liable for the obligations of the parent company, but the parent company must bear joint and several liability with the daughter company if the parent company (i) has the right to give binding instructions to the daughter company, and (ii) transactions are concluded in pursuance of that instruction.

Other shareholders of a daughter company also have a right to claim from the parent company compensation for any damages caused to the daughter company by fault of the parent company – ie, when the damage is caused by the execution of binding instructions given by the parent company.

The parent company must bear subsidiary liability for the debt of the daughter company in the case of bankruptcy of the latter if the bankruptcy is caused by the fault of the parent company – ie, when the damage is caused as the result of execution of binding instructions given by the parent company.

4. Employment Law

4.1 Nature of Applicable Regulations

The primary sources regulating labour relations in Armenia are the Labour Code and relevant international treaties. Specific regulations of the Civil Code and legislation regulating different types of state service (civil service, military and diplomatic service, etc) regulate particular types of labour relations. Finally, specific aspects of labour relations are regulated by the Law on Foreigners, the Law on Labour and Collective Agreements, and internal and individual legal acts of the employer.

4.2 Characteristics of Employment Contracts

The Labour Code mandates that employment contracts should be concluded or issued in writing and should contain specific terms, such as:

1. The date, month, year and location of adopting an individual legal act or concluding an employment contract.

2. The employee's first and last name, and optionally, their patronymic name upon request.

3. The name of the organisation or, if applicable, the first and last name of the employer as an individual, and optionally, their patronymic name upon request.

4. The organisational unit within the company, if applicable.

5. The date, month and year when the employment begins.

6. The job title and/or job responsibilities.

7. The base salary amount and/or the method used to determine it.

8. Additional allowances, bonuses, subsidies, etc, provided to employees according to established procedures.

9. The duration of validity for the individual legal act or employment contract if required.

10. If a probationary period is established, the duration and conditions of the probationary period.

11. The normal working hours, part-time arrangement, reduced working hours, or the overall method for calculating working hours.

12. The type and duration of annual leave, including minimum, additional or extended vacation.

13. The position, first name and last name of the person signing the legal act on behalf of the organisation.

Parties to the contract can agree to include additional conditions in the employment contract or individual legal act, but these conditions must be no less favourable than what is established by law.

It should be noted that the Labour Code has undergone amendments (effective from 31 July 2023, hereinafter referred to as the Amendments), which now require the employment contract to include specific details regarding the employee's place of work, as well as the employer's structural or separate subdivision, office or institution (if applicable) in which the employee will work. Additionally, the contract should outline the methods for mutual notification between the employer and employee in relation to their employment relationship.

Fixed-Term Contracts

Generally, an employment contract is intended to be of indefinite duration. However, it is also possible to conclude an employment contract with a fixed term if labour relations cannot be defined for an indefinite period, considering the conditions or the nature of the work to be done. The Labour Code specifies certain circumstances in which an employment contract may be concluded for a fixed term. These include the following cases:

- With employees holding elected positions for the specified term;
- With employees appointed for a duration prescribed by law;
- With employees performing seasonal work;
- With individuals engaged in temporary work lasting up to two months;
- With an employee who is filling in for a temporarily absent employee;
- With foreigners for the duration of validity of a work permit, in cases when a work permit is required for employment by RA legislation; and
- With individuals who are eligible for an old-age pension and have reached the age of 63, or individuals who are not eligible for an old-age pension and have reached the age of 65, based on an assessment of their professional capabilities for a position or job offered by an employer.

The Amendments stipulate that employers are no longer allowed to terminate an employment contract solely based on an individual reaching retirement age. Additionally, the Amendments provide employers with the right to offer retirees indefinite employment contracts.

4.3 Working Time

Under Armenian legislation the regular working hours must not exceed 40 hours per week and eight hours per day, unless exceptions are specified by the Labour Code, other laws or legal acts.

Certain categories of employees, such as those working in healthcare organisations with continuous duty, guardianship organisations, children's educational institutions, specialised energy, gas and heat supply organisations, specialised communication and emergency response services, etc, may have 24-hour continuous work shifts. The specific list of such occupations is determined by the Government of the Republic of Armenia.

Any work performed beyond the specified limits shall be classified as overtime work and must be compensated according to the following rate: for each hour of overtime, in addition to the regular hourly rate, a supplement of no less than 50% of the hourly rate must be provided.

The total working hours, including overtime, must not exceed 12 hours per day (including breaks for rest and meals) and 48 hours per week.

4.4 Termination of Employment Contracts

An employment contract can be terminated through various means. The most common cases are:

- Termination at the employee's initiative.
- Mutual agreement.
- Expiration of the contract.
- Termination at the employer's initiative.

The Amendments provide that the employment contract can be terminated by the force of law. For example, when the employer fails to notify the employee of the termination of an employment contract that was originally agreed upon for a specific period, and the parties also do not sign the appropriate individual legal act to terminate such a contract, and the employment relationship does not continue in practice, then in such cases, the law can intervene to legally terminate the contract.

The Labour Code provides an exhaustive list of reasons that entitle an employer to terminate an employment contract. This implies that an employee cannot be dismissed by the employer

for any arbitrary reason. The grounds for termination specified in the Labour Code are as follows:

- in the case of:
  - (a) the liquidation of a company (termination of the activity of an individual entrepreneur);
  - (b) non-compliance of the employee with the position held or the work performed;
  - (c) reinstatement of the employee at their previous job;
  - (d) periodic non-fulfilment by an employee (without a valid reason) of the duties assigned to them by an employment contract or internal regulations;
  - (e) loss of trust in the employee;
  - (f) an employee's refusal or evasion of mandatory medical examinations; and
  - (g) the residence status of a foreign worker being recognised as invalid;
- if the employee:
  - (a) is in the workplace under the influence of alcohol, narcotic drugs or psychotropic substances;
  - (b) fails to show up for work for no valid reason during the entire working day;
  - (c) is entitled to a pension and reaches the age of 63;
  - (d) is not entitled to a pension and reaches the age of 65 if the relevant basis is provided in the employment contract; and
  - (e) is excluded from work for more than ten consecutive working days or more than 20 working days during the previous three months because of their failure to submit the necessary documents required to attend work during isolation declared in relation to the COVID-19 pandemic;
- when the number of employees is reduced, which is preconditioned by changes in the volume of production, economic and technological conditions, and conditions of organisation of work as well as production needs; and
- due to the long-term disability of the employee.

According to the Labour Code, the employer is obliged to give notification prior to dismissal to employees in cases specified by the Labour Code. For example, when the employment contract is terminated due to the liquidation of the company or a reduction in the staff, the employer must provide employees with two months of prior notice.

According to the Labour Code, it is possible for an employer to provide pay in lieu of notice, which is calculated by multiplying the employee's average daily salary by each day of notice.

4.5 Employee Representations

The Labour Code allows the establishment of employees' representatives, such as a trade union or works council elected by the assembly (conference) of workers. Apart from that, the Law on Trade Unions regulates and guarantees the activities of trade unions.

Moreover, a works council is elected if the organisation does not have a trade union (or any trade unions), or if any existing trade unions do not unite more than half of the organisation's employees. At the same time, the presence in the organisation of works councils elected by employees should not interfere with the exercise of the trade unions' functions.

Employees' representatives have the power to develop charters, conduct negotiations, propose organisational improvements and participate in decision-making processes. They also oversee labour law implementation, have access to

employee information, and can propose measures for better working conditions and fair compensation. They can organise lawful strikes and appeal to the court against violations. Employees' representatives play a crucial role in protecting workers' rights and promoting collaboration between employees and employers.

If an employees' representative violates the rights of the employer, or breaches legislation or agreement norms, the employer has the option to seek legal action through the appropriate procedures defined by the legislation, requesting the cessation of the representative's unlawful activities.

Employee representation is not a widespread practice in Armenia. There are some single cases of the practice, and it is expected to develop in the future.

5. Tax Law

5.1 Taxes Applicable to Employees/ Employers

Employees pay income tax on their employment remuneration.

Employers act as tax agent for their employees. They calculate their employees' income tax due every month and pay it by the 20th day of the following month.

According to the Tax Code of Armenia, the income tax rate for employees is 20% from 1 January 2023.

Besides income tax, employees must also pay a mandatory social security (pension) payment with the following rates:

- 5% on salary up to AMD500,000; and
- AMD25,000 plus 10% on salary above AMD500,000, but not more than AMD87,500 (total cap).

5.2 Taxes Applicable to Businesses

The following tax regimes apply in the RA.

- General taxation – in this case, taxpayers generally calculate and pay VAT and/or profit tax.
- Special taxation:
  - (a) turnover tax – taxpayers calculate and pay turnover tax, which replaces VAT and/or profit tax; and
  - (b) micro-enterprise taxation system – the taxpayer, by carrying out the relevant activities defined by law, is exempt from all types of state taxes related to the enterprise.
- Profit tax – the object of taxation is the taxable profit, which is the gross income less expenses, and the profit tax rate is:
  - (a) 18% for residents and non-residents that have a permanent establishment in Armenia (including a branch); and
  - (b) 20% for non-residents that do not have a permanent establishment in Armenia.
- VAT – the VAT (value-added tax charged on the value added to goods and services) rate in Armenia is 20%.
- Turnover tax – only resident entities and individual entrepreneurs can pay turnover tax, which is 5% from income received from trade activities or rendering services; the entity can become a turnover taxpayer only if its turnover last year did not exceed AMD115 million.
- Micro-Enterprise – resident entities and individual entrepreneurs whose sales turnover for all types of activities without VAT during the previous calendar year did not exceed

AMD24 million can be considered micro-enterprises, which do not pay any taxes.
- Dividends – dividends received by natural persons are taxable at 5%; dividends received by entities are added to the tax base of a taxpayer.
- Interest paid – interest paid to shareholders is taxed at 10%.
- IP royalties – royalties paid to shareholders are taxed at 10%.

5.3 Available Tax Credits/Incentives

All taxpayers involved in agricultural production are exempt from income tax until the end of the year 2024.

Taxpayers who are dealing with hand-made carpet production are also exempt from paying income tax.

Armenian resident companies may deduct annual salaries from their income if the government approves their business plan. The deduction may be not greater than 30% of the actual calculated corporate income tax. This incentive is applicable for not more than five fiscal years besides the year of the start of the business.

5.4 Tax Consolidation

There is no tax consolidation prescribed in Armenian tax legislation.

5.5 Thin Capitalisation Rules and Other Limitations

There are no thin capitalisation rules in Armenia. At the same time, there are some limitations on deductibility of interest expenses. The following are not deductible from gross income.

- Interest on loans and credit exceeding the amount of twice the settlement rate set by the Central Bank of Armenia (currently the deductible interest rate is capped at 24%).
- Yearly interest on loans received from non-bank and non-credit entities that, according to fiscal year results, is above:
  (a) the two-fold positive amount of the equity of the taxpayer (excluding banks and credit organisations) on the last day of the fiscal year; and
  (b) the nine-fold positive amount of the equity of a taxpayer that is a bank or credit organisation, on the last day of the fiscal year.

5.6 Transfer Pricing

Under the Tax Code, transfer pricing rules are applicable for a taxpayer if the amount of all supervised transactions of the taxpayer exceeds AMD200 million for the current year.

According to the Tax Code, there are several transfer pricing methods allowed:

- the comparable uncontrolled price method – where the price of the object of a controlled transaction is compared with the price of the object of a comparable uncontrolled transaction;
- the resale price method – where the mark-up derived from the resale of an object of a controlled transaction is compared with the mark-up derived from the resale of an object of a comparable uncontrolled transaction;
- the cost-plus method – where the mark-up on the direct and indirect costs incurred during the supply of an object of a controlled transaction is compared with the mark-up on the direct and indirect costs incurred during the supply of an object of a comparable uncontrolled transaction;
- the transactional net margin method – where the net profit realised from a controlled trans-

action relative to an appropriate base – in particular, costs, sales and assets – is compared with the net profit realised from a comparable uncontrolled transaction relative to the same base; and
- the profit split method – where each of the related taxpayers participating in a controlled transaction receives the share of the profit generated or loss incurred from the transaction in question which a person not considered as related would anticipate when participating in a comparable uncontrolled transaction (within the meaning of this point, the profit generated from the transaction shall mean the positive difference between the income generated and the costs incurred within the scope of the transaction in question).

5.7 Anti-evasion Rules

Armenian legislation envisages administrative liability for the responsible employee of the taxpayer for tax evasion, and if the amount of unpaid taxes is more than approximately USD26,000, according to new Penal Code of Armenia which entered into force on 1 July 2022, then criminal liability is also envisaged in the form of a fine or even imprisonment for up to ten years. At the same time, the Tax Code provides for tax liability in the form of fines, penalties and interest for taxpayers who fail to pay taxes properly.

6. Competition Law

6.1 Merger Control Notification

Concentrations

Mergers and acquisitions are subject to notification to the Competition Protection Commission (the Commission) if they are notifiable concentrations under the Law on the Protection of Economic Competition. According to the Law, the following actions are considered concentrations:

- consolidation (acquisition) and merger of business entities;
- acquisition of assets of an economic entity registered in the RA if the value of those assets solely or together with the assets already acquired from that economic entity during the last three years equals 20% or more of the value of the total assets of the selling economic entity at the moment of submitting the declaration of concentration;
- acquisition of shares of an economic entity registered in the RA by another business entity, if the amount of those shares solely or together with the shares already owned by that economic entity equals 20% or more of the total shares of the first economic entity;
- unification of economic entities enabling one economic entity to influence, directly or indirectly, the decisions or competitiveness of another economic entity;
- acquisition of the right to use an object of intellectual property, including the means of individualisation, as a result of which the economic entity can gain influence on the competitive situation in any product market in the RA;
- any transaction, action, reorganisation or behaviour of economic entities through which an economic entity can directly or indirectly influence the decision-making or competitiveness of another economic entity, or can directly or indirectly influence the decision-making or competitiveness of another person, or can influence the competitive situation in any product market in the RA; and
- establishment of a legal entity in the RA by more than one economic entity, which will act as an independent economic entity.

Notification

A concentration is subject to notification if:

- the total value of the assets of the participants of the concentration, or the value of the assets of at least one of the participants, at the time of filing the declaration of concentration or in the last financial year preceding it exceeds the value of the assets defined by the decision of the Commission;
- the total amount of income of the participants of the concentration, or the amount of income of at least one of the participants, during the last financial year preceding the moment of submission of the declaration of concentration exceeded the amount of income defined by the decision of the Commission;
- the total amount of income of the participants of the concentration not active in the financial year preceding the year of submitting the declaration of concentration or having been active for less than 12 months, or the amount of income of at least one of the participants, exceeded the amount established by the decision of the Commission; and/or
- one of the participants of the concentration has a dominant position in the relevant market.

The thresholds established by the applicable decision of the Commission are set out below.

- Income test (previous financial year):
  (a) the combined income of the parties was at least AMD3 billion; or
  (b) the income of one party was at least AMD2 billion.
- Asset test (previous financial year):
  (a) the combined asset value of the parties was at least AMD1.5 billion; or
  (b) the asset value of one party was at least AMD1 billion.

6.2 Merger Control Procedure

The concentration of economic entities is subject to notification before it takes effect. For the assessment of a concentration, the participants submit an application and declaration. The declaration should contain the following information: (i) the purpose of the concentration; and (ii) information about the participants (name, address, annual financial statements of the activity, volumes of goods sold during the previous year, etc).

Duration of Assessment

The concentration assessment process by the Commission lasts three months. By the reasoned decision of the Commission, the three-month period may be extended up to another three months.

In addition, there is a simplified assessment procedure in cases of mixed concentration and concentration within a group of persons. In this case the assessment procedure lasts one month.

Liability

Failure to declare the concentration as stipulated by the Law on the Protection of Economic Competition shall lead to imposition of a fine up to AMD5 million.

The amount of the fine imposed for enacting a prohibited concentration shall be up to 10% of the turnover of the preceding financial year.

Also, enacted prohibited concentrations shall be subject to liquidation (annulment, cessation) according to the procedure defined by the legislation.

6.3 Cartels

The Law on the Protection of Economic Competition prohibits restrictive agreements and prac-

tices. According to this Law, anti-competitive agreements are those transactions concluded between economic entities; their oral or written agreements; direct or indirectly agreed actions or behaviour; and decisions made by business associations that lead to or may lead to restriction, prevention or prohibition of competition.

Restrictive agreements and practices can be:

- between economic entities that are potential or actual competitors operating in the same product market if the agreement relates to the given product market (horizontal agreement);
- between economic entities that are not competitors and act as acquirers and sellers in the same product market if the agreement relates to the given commodity market (vertical agreement); and/or
- between economic entities operating in related or different product markets, which directly or indirectly lead to or may lead to the prevention, restriction or prohibition of competition (other agreement).

Restrictive agreements and practices, among other things, relate to the following:

- distribution or division of markets or supply sources;
- setting unfair prices; and
- restricting other economic entities from entering the market.

The actions or behaviour of economic entities in foreign countries, when such actions or behaviour may prevent, restrict or prohibit economic competition or harm the interests of consumers in the RA, may also be considered as restrictive agreements within the meaning of the Law.

6.4 Abuse of Dominant Position

The Law on the Protection of Economic Competition prohibits the abuse of a dominant or monopoly position, including:

- charging unreasonably high or low prices;
- obstructing competitors in the market;
- refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company;
- not authorising the use of transmission networks, other distribution networks or other infrastructure for a reasonable fee or condition; and
- imposing conditions for membership or participation in professional or other unions.

7. Intellectual Property

7.1 Patents

Patents can be granted for technical solutions that concern a product or a method, including the use of a product or a method for a certain purpose. There are three conditions for the patentability of an invention:

- novelty;
- inventive value; and
- industrial usefulness.

Patents are registered by the Intellectual Property Agency of Armenia. The Agency website has guidance on the procedure and samples of the necessary forms.

If the object of the protection is a product, the right-holder has an exclusive right to prohibit any third party from manufacturing the product, using it, introducing it to the market or offering it for sale, or importing or obtaining the product

for any of those purposes. Similar prohibitions can be imposed if the object is a method. The infringement of a patent can result in civil and criminal liability.

Patents are protected for 20 years from the application, or ten years in the case of short-term certification.

7.2 Trade Marks

A trade mark is a mark that is used to distinguish the products and/or services of one person from the products and/or services of another. There are very detailed regulations on the circumstances where the registration of a trade mark can or must be rejected, such as the mark being:

- non-distinctive;
- descriptive or generic;
- representative only of the form of the product itself; or
- against public order or morals.

Trade marks are registered by the Intellectual Property Agency of Armenia. The Agency website has guidance on the procedure and samples of the necessary forms. For an unregistered trade mark, the only protection available is the refusal by the Agency to register any mark that is confusingly similar to the unregistered trade mark being used in Armenia or outside of its territory, where the applicant is not acting in good faith.

The right-holder of a registered trade mark has a right to prohibit:

- any use of a mark that is identical to its trade mark for the same products and/or services;
- any use of an identical or similar mark for identical or similar products and/or services, if there is a possibility of confusion for the public; and
- any use of an identical or similar mark for different products and/or services, if the trade mark is well known in Armenia and the use of the mark would unfairly benefit the infringing party.

The length of protection is ten years from the application and can be renewed indefinitely for ten years at a time.

7.3 Industrial Design

An industrial design is a solution in connection with the appearance of an object that is new and unique.

In the RA, the following are given protection by the law:

- a licensed (registered) industrial design, the right to which is approved by a patent;
- an industrial design with international registration in accordance with the Hague Convention; and
- an unregistered industrial design if it has become public.

Designs are registered with the Intellectual Property Agency of Armenia. The Agency website has guidance on the procedure and samples of the necessary forms.

A right-holder has the right to prohibit any use of the design without its permission. Infringement can result in civil liability.

The length of protection is five years from the application. It can be renewed further for five years at a time but for no more than 25 years in total.

7.4 Copyright

Copyright protects the unique results of creative work that are both:

- executed by the author, alone or together with other authors, in the fields of literature, science and art; and
- expressed in oral, written or other objective form, regardless of the form of creation, its value or the purpose of its creation.

Copyright does not require registration.

The author has the exclusive right to use their creation as they wish and to prohibit or authorise its use by a third party. The infringement of copyright can result in civil and criminal liability.

The tangible rights of the author are protected during the author's lifetime and for 70 years after their death. The intangible (personal) rights do not have any time limit for protection.

7.5 Others

There are no specific regulations for the protection of software; the same rules apply as for copyright (the software is the subject of copyright).

According to the Law on Copyright and Related Rights, a "database" means a collection of works, data or other independent materials arranged in a systematic or methodical way the individual elements of which shall be separately accessible by electronic or other means, and the acquisition, verification or presentation thereof shall require a substantial qualitative and/or quantitative contribution.

The maker of a database shall be deemed any person by whose initiative and on whose own responsibility a substantial qualitative and/or quantitative contribution is made for the acquisition, verification or presentation of the content of the database.

The rights of a developer of databases shall arise from the moment of completing the development of the database and shall have effect for 15 years.

The same regulations apply as for copyright.

Trade Secrets

With respect to trade secrets, it should be mentioned that according to Article 141 of the Civil Code, information is a trade secret when it has an actual or potential commercial value by virtue of it being unknown to third persons, when there is no free access thereto on a legal basis, and when the holder of the information takes measures for the protection of its confidentiality.

Persons having illegally obtained information that constitutes a trade secret shall be obliged to compensate the damages caused. This obligation shall also be imposed on parties to a contract that have disclosed and/or used a trade secret in violation of a civil law or employment contract.

8. Data Protection

8.1 Applicable Regulations

The Regulation of Data Protection

Under the Armenian Constitution, the right to the inviolability of private and family life and the right to protection of personal data are declared as basic human rights, which may only be legally suspended or restricted during a state of emergency or under martial law.

Armenia has ratified the Convention for the Protection of Human Rights and Fundamental Free-

doms 1950. This means that Armenia applies personal data protection in its jurisdiction as it is stipulated under Article 8 of this Convention. Armenia has also ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 28 January 1981), including the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 10 October 2018).

The main internal legal act related to data protection in Armenia is the Law on Protection of Personal Data, which was adopted in 2015 (Data Protection Law). The Data Protection Law stipulates that the following separate laws indicate specific rules for processing the defined particular personal data:

- bank secrecy regulated by the Law on Banking Secrecy;
- notarial secrecy regulated by the Law on the Notarial System;
- insurance secrecy regulated by the Law on Insurance and Insurance Activities;
- legal professional privilege regulated by the Law on the Profession of Advocate;
- personal data use during operations concerning national security and defence regulated by a number of legal acts relating to the national security service and military forces;
- personal data use in preventing and detecting money laundering and terrorism financing regulated by the Law on Combating Money Laundering and Terrorism Financing;
- operational intelligence activities regulated by the Law on Operational Intelligence; and
- proceedings regulated by the Criminal Procedural Code of Armenia, the Civil Procedural Code of Armenia and the Administrative Procedural Code of Armenia as well as the Law on Compulsory Enforcement.

There are some other laws which regulate personal data protection in specific areas, for instance the Labour Code.

Principles of Data Protection

The Data Protection Law specifies the principles of personal data protection, which are as follows:

- principle of lawfulness;
- principle of proportionality;
- principle of reliability; and
- principle of minimum engagement of data subject.

The principle of lawfulness requires the processing of personal data to be in compliance with the law as well as with the data subject's consent. Under the principle of proportionality, the law mandates that:

- the processing must pursue a legitimate purpose, and the measures to achieve it must be suitable, necessary and moderate;
- the volume of personal data processed needs to be the minimum necessary for achieving a legitimate purpose;
- processing needs to comply with its purpose or be compatible with it; and
- processing should be depersonalised if the purpose of processing may be achieved without personalisation of the data subject.

Compliance with the principle of reliability means that personal data being processed needs to be complete, accurate, simple and, where necessary, kept up to date. The principle of minimum engagement of a data subject is mostly applicable to the public authorities when the latter must collect data necessary for exercising their powers from the official sources available rather than

request that a data subject regularly provide the same information.

Data Processing Framework

Data processing should be performed with the data subject's consent unless the law allows the processing without it – eg, in the case of a court order to disclose personal data. The data subject has basic rights such as right of access to personal data, right to erasure, right to rectification and right to object.

The data processor should notify the data subject prior to the processing of their personal data by indicating the purpose of processing, the list of data processing, the category of processors and other information defined under the law. There is no mandatory requirement to have a privacy policy approved.

The transfer of personal data to third parties needs to be performed with the data subject's consent, as well as the transfer of personal data abroad. The transfer of personal data abroad is subject to the preliminary approval of the Personal Data Protection Agency of the Republic of Armenia if the data needs to be transferred to a state without a sufficient level of data protection.

8.2 Geographical Scope

The Data Protection Law and the powers of the Personal Data Protection Agency of the Republic of Armenia are limited to the territory of Armenia.

If the personal data is collected (stored) by a legal entity – or a branch or representative office of a legal entity – established in Armenia, the collection and further processing will have to be performed under the Data Protection Law, and the Personal Data Protection Agency of the Republic of Armenia will be entitled to enforce its powers over this data processing.

8.3 Role and Authority of the Data Protection Agency

The Personal Data Protection Agency of the Republic of Armenia is part of the Ministry of Justice of Armenia. However, the Data Protection Law declares that the Agency operates independently.

Among other authorities listed under the law, the Agency is entitled to do the following:

- apply administrative sanctions prescribed by law in the case of violation of the requirements of the Data Protection Law;
- require the blocking, suspension or termination of the processing of personal data violating the requirements of the Data Protection Law;
- require the rectification, modification, blocking or destruction of personal data;
- prohibit completely or partially the processing of personal data;
- recognise electronic systems for processing of personal data of legal persons as having an adequate level of protection and include them in the register;
- ensure the protection of rights of the data subject; and
- consider applications of natural persons regarding the processing of personal data and deliver decisions within the scope of its powers.

9. Looking Forward

9.1 Upcoming Legal Reforms

Adoption of the New Criminal Code

Within the next year or two, the practice of interpretation of the civil foreclosure legislation will be clarified, which will allow the due diligence of assets before purchase and the evaluation and

mitigation of related business risks to be carried out with higher certainty. The legislation has been in force since 2020 and the first cases are being heard in the courts since 2021. No case has been concluded by a court judgment on merits yet. We expect first judgments to appear in the end of 2023 to early 2024. In addition, the Constitutional Court is due to deal with the constitutionality of the law before the end of the year.

In addition, the articles of the Criminal Code foreseeing criminal liability of corporations are coming into force, and after several initial cases have been heard by the courts, the main approaches to their interpretation will be clarified, allowing businesses to have a better understanding of the need for internal regulations and controls.

Another major change will be simplification of the process of collection of small debt (up to AMD5 million). According to the draft legislation now under public discussion, those debts would be able to be collected via notaries without applying to the court.

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