



**ARMENIAN BAR ASSOCIATION  
IP /IT COMMITTEE FOR ARMENIA**

**REPORT  
WITH ANALYSIS OF THE INTELLECTUAL PROPERTY-RELATED ISSUES IN ARMENIA,  
EXPERT CONCLUSIONS AND RECOMMENDATIONS**

**ON**

**INTELLECTUAL PROPERTY PROTECTION & CORPORATE LAW TRANSFORMATION**

**FOR ARMENIAN INNOVATION AND GROWTH**

**OCTOBER 12, 2019\***

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\* REVISIONS HAVE BEEN MADE TO THE REPORT "IP ISSUE: CAPACITY BUILDING AT AIPA" SECTION ON OCTOBER 28, 2019  
BASED ON THE FEEDBACK PROVIDED DURING OCTOBER 12, 2019 SUMMIT.



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## IMPORTANCE OF IP PROTECTION & CORPORATE LAW FOR TRANSFORMATION

In 2019, the Government of the Republic of Armenia declared high tech to be a strategic area of focus for the country's growth. It intends to enhance its efforts in promoting smart, sustainable and inclusive economic growth by triggering high-tech innovative startup ecosystems and creating favorable conditions for local and foreign direct investments in the high-tech sector.

For more than a decade, the technology sector in Armenia has shown high-paced growth averaging 25% annually. This sector has even bigger growth potential and can become a regional hub serving as a gateway to many leading European and American tech hubs, as well as to deep-tech centers surrounding Armenia such as southern Russia, Belarus, Ukraine, and Iran. The supporting preconditions exist for this further development in Armenia, including an existing intellectual property ("IP") and corporate legal framework.

The Armenian government receives strong support in the enhancement of this framework from high-level experts in the Diaspora who are committed to facilitate the development of a robust and modern legislative and regulatory framework governing IP and corporate law. These changes are prerequisites for boosting research, development and innovation in Armenia and for promoting sustainable technological development and economic growth. This framework, if implemented, will establish Armenia as a regional leader in IP protection and advanced technologies.

Currently, there are significant deficiencies in the laws, regulations, and customs of the Republic of Armenia relating to the protection and enforcement of IP and investor rights. Local representatives of the startup and high-tech communities identified the following key deficiencies as major factors hindering innovation and the translation of innovation into viable business enterprises in Armenia:

- The lack of statutory damages and administrative sanctions under Armenian law for IP violations
- The impossibility of patenting or otherwise protecting software innovation
- The limited capacity of the Armenian patent office (AIPA)
- The poor suitability of Armenian corporate law for VC/angel investment
- Insufficient protection of minority shareholders under Armenian corporate law
- Insufficient protection of IP in educational and scientific institutions

The Armenian Bar Association of the United States formed an IP/IT Committee in November 2018 with the objective of facilitating the development of recommendations and solutions to address these key deficiencies.

The target audience includes government officials, including members of the National Assembly (the "Parliament"); legal professionals; professionals in public and private businesses, including startups and investors; academies of the sciences and universities; and other constituencies engaged with research, development and innovation.

The specific objectives of the summit held on October 12, 2019, are to engage all interested parties in discussions about these vital topics, to propose recommendations and solutions in the above-noted areas, and to discuss the myriad of implementation approaches suitable for each.

**IP ISSUE: ESTABLISHING EFFECTIVE REMEDIES & SANCTIONS**

This issue addresses the lack of statutory damages and administrative sanctions for IP violations which has two sub-issues:

1. Outlining methods of assessing, proving, and claiming actual damages of IP violations.
2. Requesting criminal prosecution in both cases of largescale and small-scale IP violations

**1.0 SUB-ISSUE NO. 1 – Outlining METHODS OF ASSESSING, PROVING, AND CLAIMING ACTUAL DAMAGES OF IP VIOLATIONS**

Current existing Armenian legislation is convoluted and inefficient when identifying and assessing the extent of IP infringement and violations. As a result, it is difficult for the Armenian government to determine the correct course of action regarding monetary remedies and legal punishment.

There are concepts under current existing Armenian laws that allow victims of IP infringement or violations to claim remedies based on the profits which the infringer is making.

Current existing drafts of Armenian legislation, which partially attempt to amend laws regarding IP infringement and violations, are said to be replicating existing Armenian legislations, which itself does not systematically address the assessment of IP infringement and violation and the calculation of set awards and remedies. However, the proposed legislation falls short of having a positive impact in this area due to lack of strong remedy provisions.

**1.1 PROPOSED SOLUTION**

Provide the availability of statutory damages (by analogy to U.S. copyright laws in the U.S. Code). As a result, IP owners will be more proactive in filing claims against infringers, which will have the effect of reducing IP infringement and violations.

**● 17 U.S. Code § 1203 Civil Remedies - C(1) - Award of Damages**

In general - Except as otherwise provided in this title, a person committing a copyright violation is liable for (A) the actual damages and any additional profits of the violator, as provided in paragraph C(2), or (B) statutory damages, as provided in paragraph C(3).

**● 17 U.S. Code § 1203 Civil Remedies - C(2) - Actual Damages**

The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not considered in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

An alternate range of damages (proposed by Ara Khzmalyan) is as follows:

1. In the event of an unlawful use of an object of copyright or related rights, the right holder is entitled to claim one of the following:
  - a) Compensation of damages (including lost profits); or
  - b) Payment of the double amount of royalties or remuneration which the right holder would have received if the infringer had received permission for the use of the object of copyright or related rights.

2. The size of the compensation payable in accordance with clause (c) of part 1 of this Article shall be:
  - a) in the size of 10- to 20-fold the amount of the minimal salary, when the use is performed for personal or otherwise non-commercial purposes;
  - b) in the size of 20- to 50-fold the amount of the minimal salary, when the use is performed for commercial purposes or otherwise evidently not for personal or non-commercial purposes;
  - c) in the size of 50- to 100-fold the amount of the minimal salary, when the use involves public performance, broadcasting, re-broadcasting or transmission via cable of the object of copyright or related rights, or involves offering for sale of the infringing products;
  - d) in the size of 100- to 500-fold amount of the minimal salary, when the use involves multiple (two or more) instances of public performance, broadcasting, re-broadcasting or transmission via cable of the object of copyright or related rights or involves offering for sale of multiple (two or more) copies of infringing products.

- **17 U.S. Code § 1203 Civil Remedies - C(3) - Statutory Damages**

At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation in the sum of not less than \$2,500 or more than \$25,000.

- **17 U.S. Code § 1203 Civil Remedies - C(4) - Repeated Violation**

In any case in which the injured party sustains the burden of proving, and the court finds, that a person has committed a copyright violation within 3 years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

- **17 U.S. Code § 1203 Civil Remedies - C(5) - Innocent Violation**

(A) In general —The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation.

(B) Nonprofit library, archives, educational institutions, or public broadcasting entities. In the case of a nonprofit library, archives, educational institution, or public broadcasting entity, the court shall remit damages in any case in which the library, archives, educational institution, or public broadcasting entity sustains the burden of proving, and the court finds, that the library, archives, educational institution, or public broadcasting entity was not aware and had no reason to believe that its acts constituted a violation.

## **2.0 SUB-ISSUE NO. 2 - REQUESTING CRIMINAL PROSECUTION IN BOTH CASES OF LARGESCALE AND SMALL-SCALE VIOLATIONS**

The IP/IT Committee proposes creating the ability of right holders to request criminal prosecution of IP infringers, which can be initiated only when the violation exceeds certain thresholds.

The difficulty of proving the scope of a violation prevents criminal charges in most cases. As a result, IP owners often are reluctant to initiate legal action beyond sending cease & desist letters, since they are not sure they will be able to recover any sensible compensation at the end.

There are existing Armenian laws that address the criminal liabilities of those who commit IP infringement or violations. However, there is a minimum threshold that needs to be satisfied to trigger criminal penalties. Most cases of IP infringement and violations in Armenia are below the set threshold. Therefore, existing Armenian laws are unable to fully serve smaller-scale IP infringement or violations of below the set threshold.

## 2.1 PROPOSED SOLUTION

Create the opportunity for criminal liabilities by analogy to U.S. copyright laws (18 U.S Code § 2319) and criminal infringement of copyright and U.S. trademark laws (18 U.S. Code § 2320) for trafficking in counterfeit goods or services. As a result, IP infringement and violations protection laws or changes to existing laws would be more enforceable.

- **18 U.S Code § 2319 - Criminal Infringement of a copyright**  
Any person who willfully violates a copyright for purposes of commercial advantage or private financial gains shall be imprisoned not more than 5 years, or fined.
- **18 U.S Code § 2320 – Trafficking in counterfeit goods or services**  
Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services shall, if an individual, be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both.

**IP ISSUE: PROTECTING SOFTWARE**

Under Armenian law, software is automatically (without the need for registration) protected by copyright. Both the current and draft patent laws stipulate that computer algorithms and software are not patentable as such. Moreover, the more detailed regulations of patentability criteria under delegated legislation substantially limits potential patentability of software-related innovations, even when protection is sought for the process, and not the software as such.

As a result, Armenian tech startups with potentially patentable (as per U.S. standards) innovations have limited ability to patent locally and are left with the option either to seek patent registration in the United States (with the costs most often being prohibitively expensive for them) or to limit themselves to copyright protection (which is problematic as potential investors value patent protection).

Effective software IP protection encourages innovation through legal application and protection – impacting government, corporate, and community stakeholders. By developing an attractive legal and market environment for investments, incentives in the private sector can encourage corporations to invest in research and development. Small businesses and technology startups are able to protect their innovations and launch their products in international markets. Strong IP protection improves consumer confidence and prevents counterfeits. Therefore, software IP rights protection has positive social, economic, and political impacts by encouraging healthy competition. For the Armenian government, media coverage and software patent applications can attract foreign investments, supporting new jobs and driving exports. Overall, enhanced software IP protection can positively influence many stakeholders and improve Armenia's innovation growth and output.

Key questions are addressed below:

- Why is software patenting important?
- What software will be patentable?
- How will software patenting in Armenia differ from software patenting in other countries?

Pursuant to the current and draft Armenian laws on patents, a patent can be issued for a novel technical solution in any field which relates to a product (device, substance, biotechnological product), use, or process (process affecting a material object using material means). For such an invention to be patentable, the solution (invention) shall be new, shall have an inventive level (step), and shall be industrially applicable.

- An invention shall be deemed new if it does not constitute a separate part of the state of the art. State of the art includes any information on the given field of technical solutions (separate parts) made available all over the world by means of verbal or written disclosure or by any other means before the priority date of the invention.
- An invention shall be deemed having an inventive level (step) if, in regard to the state of the art, it is not obvious to a person skilled in the given area.
- An invention shall be deemed industrially applicable if it can be used in industry, agriculture, healthcare, or other fields.

**PROPOSED SOLUTION**

U.S. law requires that the invention shall relate to a process, machine, manufacture, or composition. This appears to be similar to that of the Armenian law criteria for an invention being usable in industry, agriculture, healthcare, or other areas. So, it does not appear necessary to alter this requirement because software-related inventions are usable in the listed and other areas.

Regarding the exclusion relating to laws of nature, natural phenomena, and abstract ideas, Armenian law contains exclusions which, along with the usefulness requirement, have a similar effect. Namely, in addition to the existing exclusion for computer algorithms and software, the main exclusions are as follows:

- Scientific discoveries;
- Scientific theories, mathematical methods, usual provision of information;
- Methods for organizing and managing economics;
- Methods of performing intellectual activities.

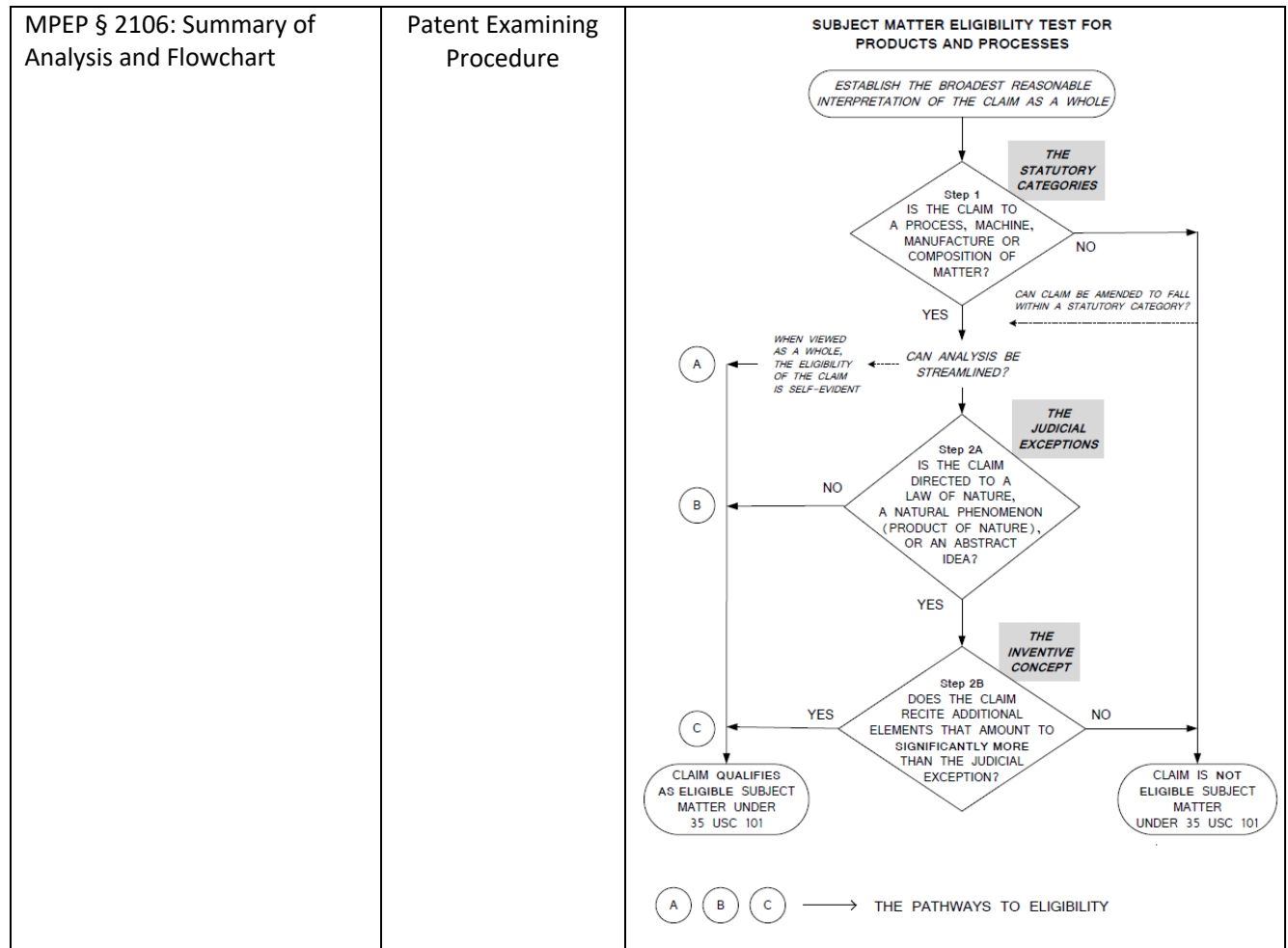
The “mathematical methods” and “methods of performing intellectual activities” seem to closely resonate with the “abstract idea” exception, but because the exclusion specifically mentions “intellectual activity,” it seems likely that under Armenian law the fact that the operation is performed via software could exempt software from the relevant exception. However, such interpretation might be too far-reaching, as it would potentially allow patenting very broad technological approaches.

As a possible solution, we propose the following clarification:

A computer algorithm or a software-related invention shall be patentable subject matter if the given invention relates to a method and complies with the other patenting requirements.

Model Jurisdictions & Frame works Name	Type (Laws, Regulations, Customs)	Description
35 U.S.C. 101 Inventions Patentable	Patent Laws	Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
MPEP § 2106: Two Criteria For Subject Matter Eligibility	Patent Examining Procedure	(1) The claimed invention must be of the four statutory categories defined in 35 U.S.C. 101. (2) The claimed invention must qualify as patent-eligible subject matter.
MPEP § 2106: Establish Broadest Reasonable Interpretation of Claim as a Whole	Patent Examining Procedure	It is essential that the broadest reasonable interpretation (“BRI”) of the claim be established prior to examining a claim for eligibility. The BRI sets the boundaries of the coverage sought by the claim and will influence whether the claim seeks to cover subject matter that is beyond the four statutory categories or encompasses subject matter that falls within the exceptions. Claim interpretation affects the evaluation of both criteria for eligibility.





**Statutes/regulations to be amended & proposed amendments**

Statute/Regulation Citation	Current Text	Proposed Amended Text <sup>1</sup>	Description of Amendment
<p>Laws on Inventions, Utility Models, and Industrial Designs: Article 10(2)</p>	<p>“(1) Within the meaning of Article 9 of this Law the following items shall not be subject to legal protection if as such they are the immediate subject of the application or patent:</p> <ol style="list-style-type: none"> <li>1. scientific discoveries;</li> <li>2. scientific theories, mathematical methods, provision of common information;</li> </ol>	<p>“(1) Within the meaning of Article 9 of this Law the following items shall not be subject to legal protection if as such they are the immediate subject of the application or patent:</p> <ol style="list-style-type: none"> <li>1. scientific discoveries;</li> <li>2. scientific theories, mathematical methods,</li> </ol>	<p>Ensuring the Law is not interpreted to exclude the patenting software-related inventions.</p>

<sup>1</sup> Based on initial research, the proposals herein do not appear to contradict Patent Regulations under the Eurasian Patent Convention, to which Armenia is a contracting state.

	<p>3. methods of organization and management of economy;</p> <p>4. conventional signs, schedules and rules;</p> <p>5. processes for performing mental acts;</p> <p>6. algorithms and programs for computers;</p> <p>7. schemes and projects for constructions, buildings and site developing;</p> <p>8. solutions concerning the outward appearance of the product having exclusively aesthetic value;</p> <p>9. topographies of integrated microcircuits....”</p>	<p>provision of common information;</p> <p>3. methods of organization and management of economy;</p> <p>4. conventional signs, schedules and rules;</p> <p>5. processes for performing mental acts;</p> <p><del>6. algorithms and programs for computers;</del></p> <p>7. schemes and projects for constructions, buildings and site developing;</p> <p>8. solutions concerning the outward appearance of the product having exclusively aesthetic value;</p> <p>9. topographies of integrated microcircuits...”</p>	
<p>Laws on Inventions, Utility Models, and Industrial Designs: Article 9. Conditions for Patentability of Invention</p>	<p>Chapter 2: Legal Protection of Invention and Utility Model</p> <p>Article 9. Conditions for Patentability of Invention</p> <p>(1) Within the meaning of this Law a technical solution in any field, relating to the use a product (in particular, a device, substance, biotechnological product) or process (process of affecting a material subject matter using material means), shall be protected as an invention. An invention shall be granted legal protection if it is new,</p>	<p>Chapter 2: Legal Protection of Invention and Utility Model</p> <p>Article 9. Conditions for Patentability of Invention</p> <p>(1) Within the meaning of this Law a technical solution in any field, relating to the use a product (in particular, a device, substance, biotechnological product) or process (process of affecting a material subject matter using material</p>	<p>Ensuring the Law includes explicit protection for computer algorithm inventions and software-related inventions when the invention relates to a method. A “method” covers all types of computer algorithm and software-related inventions.</p>

	<p>has an inventive step and is industrially applicable (conditions for patentability of invention) even if it refers to a product containing biological material or consisting of it or a process through which biological material is produced, derived or used.</p> <p>(2) The biological material which is separated from its natural environment or is produced through a technical process may be a subject matter of an invention even if it has previously existed in the nature.</p> <p>(3) Within the meaning of this Law "biological material" is any material containing genetic information and capable of reproducing itself or being reproduced in a biological system and 'microbiological process` means any process involving or performed upon or resulting in microbiological material.</p>	<p>means), shall be protected as an invention. An invention shall be granted legal protection if it is new, has an inventive step and is industrially applicable (conditions for patentability of invention) even if it refers to a product containing biological material or consisting of it or a process through which biological material is produced, derived or used.</p> <p>(2) The biological material which is separated from its natural environment or is produced through a technical process may be a subject matter of an invention even if it has previously existed in the nature.</p> <p>(3) Within the meaning of this Law "biological material" is any material containing genetic information and capable of reproducing itself or being reproduced in a biological system and 'microbiological process` means any process involving or</p>	
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	<p>Any process for the production of plants or animals is essentially biological if it consists entirely of natural phenomena such as crossing or selection.</p>	<p>performed upon or resulting in microbiological material. Any process for the production of plants or animals is essentially biological if it consists entirely of natural phenomena such as crossing or selection.</p> <p><b><u>(4) Within the meaning of this Law, computer algorithm inventions and software-related inventions shall be protected if the given invention relates to a method and complies with the requirements of section (1) of this Article 9.</u></b></p>	
<p>Decree of the Minister of Economy of Armenia No. 206-N dated 25.03.2009 “On Approving the Order of Forming, Filing and Discussing Applications for Inventions, Utility Models and Industrial designs”, Annex: “Order of Forming, Filing and Discussing Applications for Inventions, Utility Models and Industrial designs”</p>	<p>Chapter 3 “Examination of the Application”, Section (14), clauses 5 and 6:</p> <p>5) The achieved technical result is not considered to have a technical character, if it, particularly:</p> <p>...</p> <p>b. comprises solely of receiving certain information and is achieved solely by applying a mathematical method, electronic computation machine program [computer software] or an algorithm used in the program [software];</p> <p>...</p> <p>6) If an invention related to an information [recording]</p>	<p>Reword sub-clause b of clause 5 and clause 6 of Section 14 of Chapter 3 of Annex to the Decree of the Minister of Economy of Armenia No. 206-N dated 25.03.2009 to ensure that:</p> <p>A. sub-clause b of clause 5 of Section 14 of Chapter 3 provides that the fact that the technical result of the invention is achieved solely through applying electronic computation machine program [computer software] or an algorithm used in the program [software] does not per se imply that the</p>	<p>Ensuring a broader framework for patenting software-related inventions.</p>

	<p>medium, particularly a machine-readable [one], or the method of receiving [producing] such a medium and is described by involving characteristics of the content of information recorded on the medium, particularly: an electronic computation machine program [computer software] or an algorithm used in the program [software], then the technical result is considered to be related to the mean embodying such invention, if it is manifested solely due to the possibility to implement the instructions included in such information (except for cases when the invention relates to a machine-readable medium, including a replaceable one, which is designed for immediate participation in the work of the technical mean by the management of the program [software] ensuring the achievement of the said result).</p> <p>N.B. this provision relates to the underlying provisions of the Patent Law on patentability requirements, namely:</p> <p>Article 9. Conditions for Patentability of Invention</p> <p>(1) Within the meaning of this Law a technical solution in any field, relating to the use of a product (in particular a device, substance, biotechnological product) or process (process of affecting a material subject matter using material means), shall be protected as an invention. An invention shall</p>	<p>technical result is not considered to have a technical character.</p> <p>B. sub-clause b of clause 5 of Section 14 of Chapter 3 provides that</p> <p>i. If an invention is related to a process, and is described by involving characteristics of the program [software] implementing such process, then the achieved technical result is considered to have a technical character if the result is manifested through an impact on objects of the material world, provided such impact occurs as a part of the process in question (including when such impact comprises of an improvement of performance of a computer system on which such program operates), and</p> <p>ii. If an invention is related to a process and is described by involving characteristics of the program [software] implementing such process, then the achieved technical result is considered to have a technical character even if the result is manifested within the digital domain (to ensure patentability of software-related innovations such as google translate and fine reader).</p>	
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	be granted legal protection if it is new, has an inventive step and is industrially applicable (conditions for patentability of invention) even if it refers to a product containing biological material or consisting of it or a process through which biological material is produced, derived or used.		
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**DISCUSSION OF IMPLEMENTATION**

The IP/IT Committee suggests planning the implementation of the proposed rules from examples of what should and should not be patentable (*e.g.*, Google translate would be patentable, as opposed to broad claims that would preempt a particular industry).

The IP/IT Committee will prepare a more detailed report than the provisions of U.S. statutes, since the Armenian legal framework and courts do not accommodate well vague or ambiguous wording in the laws.

Armenia is hardwired to statutory law. We recommend writing a one-paragraph provision and developing sufficiently precise wording to address software patenting. The draft law’s wording must strike a balance between (a) allowing software patenting through precise wording and (b) avoiding the potential to block the development of new industries by restricting the patentability of whole ideas and concepts.

The chart below identifies additional specific statutory and regulatory provisions of Armenian law that need to be amended or changed consist with the above recommendations.

Statute/Regulation Citation	Current Text	Proposed Amended Text
Law on Inventions, Utility Models and Industrial designs: Article 46(5)	“... (b) the Armenian translation of the documents of application, which has been filed by foreign applicants in a foreign language in accordance with Article 48(2); ...”	“... (b) the <del>Armenian translation</del> of the documents of application, which has been filed by foreign applicants in a foreign language in accordance with Article 48(2); ...”
Law on Inventions, Utility Models and Industrial designs: Article 48(5)	“... (1) Applications shall be filed in Armenian. (2) The applicants of the Republic of Armenia are obliged to submit the attached documents to the application in Armenian, foreign applicants may submit them in another language. In this case they are obliged to submit their Armenian translations to the State Authorized Body within three months from the day the application is filed. ...”	“... (1) Applications shall be filed in Armenian. (2) The applicants of the Republic of Armenia are obliged to submit the attached documents to the <del>application in Armenian</del> , foreign applicants may submit them in another language. In this case they are <del>obliged to submit their Armenian translations</del> to the State Authorized Body within three months from the day the application is filed. ...”

## IP ISSUE: CAPACITY BUILDING AT AIPA

Currently, the patent examination capacity of the Armenian Intellectual Property Agency (“AIPA”) ([www.aipa.am](http://www.aipa.am)) is extremely limited. In order for practically any invention to be patented in Armenia, it must undergo preliminary examinations by foreign patent offices who act as International Preliminary Examining Authorities under the Patent Cooperation Treaty.

There are limited options for challenging and enforcing patent and other IP rights whether at AIPA or through the courts. This section of this Report will address the following sub-issues:

1. Establish specialized administrative review boards (*i.e.*, TTAB/PTAB)
2. Establish specialized judicial courts (*i.e.*, Court of Appeals)
3. Full substantive examination by examiners
4. Comparatively low filing fees
5. Provide English and Russian translation of AIPA documents and processes online
6. Allow AIPA to set its own rules and procedures and have an internal/external policy-forming committee
7. Develop and maintain a Public Outreach Program to raise awareness about IP
8. Establish reciprocity between countries for practitioners to file in their respective IP offices.

### 1.0 SUB-ISSUE NO. 1 – ESTABLISH SPECIALIZED ADMINISTRATIVE REVIEW BOARDS (*i.e.*, TTAB/PTAB)

#### 1.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE

Challenging issued patents and registered trademarks through the regular Armenian court system may not be the best option given the unfamiliarity of current judicial officers with those areas of law – especially patent law, which is highly esoteric and usually requires an in-depth understanding of how technological innovations are protected under the umbrella of legal and regulatory schemes. Providing a specialized review board within the AIPA will inculcate a better enforcement atmosphere, at least with regards to the validity of patents and trademark rights. That is because handling and outcome of infringement cases, through the judicial system, would be more uniform after establishing of the validity of the IP right is determined by the review board. Thus, the judicial officers have to contend only with the infringement aspect of the dispute rather than both the validity and infringement aspects.

#### 1.2 EXISTING RULES & LAWS AND BASIS OF ISSUE

Current practice relies only on *ex-parte* (*i.e.*, proceeding between applicant and the IP agency) challenges pre-grant of the IP rights, while post-grant rights are handled through judicial review. Under the present system, trademark rights are better adjudicated through the court system than are patent rights, if at all. The taking of private property rights (such as granted patents and trademarks) is protected by the European Convention on Human Rights (the “EHRC”) to which Armenia is a party. Because of that structure, it may be difficult for Armenia to implement the invalidation of such rights through administrative bodies. Those matters have to be



adjudicated through the courts systems in order to be compliant with Armenia’s treaty obligations with the European Community. However, even the European Patent Office (the “EPO”) has implemented a post-grant procedure to invalidate patent rights. Also, just recently, France has proposed changes to its patent laws to allow for invalidation of patents through its national IP office. Presumably, the EPO and France are also subscribers to the EHRC. In which case, if these jurisdictions have post-grant proceedings in place or are contemplating incorporating them, then so can Armenia emulate those countries and still be in compliance with its treaty obligations. In any case, invalidating IP rights through administrative bodies still can be subject to review by courts after the administrative proceedings have reached finality. Therefore, at each step, full due process rights of the IP holder will be observed.

**1.3 PROPOSED SOLUTION**

Create two specialized review boards within the AIPA to adjudicate validity issues pertaining to patent rights and trademarks rights much like what the United States Patent and Trademark Office (the “USPTO”) has created. The USPTO has a specialized review board called the Trademark Trial and Appeal Board (“TTAB”) which has its set of rules to handle disputes between holders of registered trademark rights and challengers. On the patent side, the Patent Trial and Appeal Board (PTAB) can hear disputes between patent holders and challengers. Note, however, both of those bodies are unable to enforce those rights and ultimately the rights holder has to get a court decree to stop the alleged infringer from infringing on its rights. Nonetheless, finality of the validity of IP rights should be left to an institution better equipped in making those decisions – leaving for its focus the questions of fact and law, dealing solely with the potential infringement, and all within the purview of the judicial system. That would cut down on time and resources allocated to judicial officers in hearing both validity challenges of the IP rights as well as infringement allegations logged against the alleged infringer. Determining validity of the IP right is the denser issue to resolve anyway and is better left with subject matter experts (usually persons with technical and legal training) within the AIPA.

**1.4 MODEL JURISDICTIONS & FRAMEWORKS**

It is necessary for a specialized body to determine whether, for example, a patent was meritoriously granted to the applicant or not. After a first level of scrutiny through which an application is processed and thereafter approved, the granted right is considered presumptively valid. However, the right may have been procured by error, whether that was due to a technical misinterpretation or a legal one. In either case, post-grant validity challenges should be an avenue a third party can seek as a way of redress before running to the halls of justice.

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description	Model Selection Reasoning
United States	Federal laws, Agency policies and regulations (USPTO). <i>Inter Partes</i> Reviews, Post-Grant Review (PGR) and Covered Business Methods (CBM).	Patent validity can be opposed any time before the right is unenforceable.	<a href="http://www.postgrantproceedings.com/aia-uspto-links/pgr-chart/">http://www.postgrantproceedings.com/aia-uspto-links/pgr-chart/</a>

European Patent Office (EPO)	Article 99 (1) of the European Patent Convention	Patent validity can be opposed within a nine-month window following grant.	The agency tasked with granting patent rights is in a better position to determine validity/invalidity of a patent even after granting it to the applicant.
France	French law No. 2019-486 of May 22, 2019 ('PACTE Law')	The patent thus can be revoked or modified.	Same as above.

### 1.5 STATUTES/REGULATIONS TO BE AMENDED & PROPOSED AMENDMENTS

The current draft law sections need to be correlated with the law passed in 2008 for congruency.

Statute/Regulation Citation	Current Text	Proposed Amended Text
<a href="https://wipolex.wipo.int/en/text/435870">https://wipolex.wipo.int/en/text/435870</a> Article 5, paragraph 4, relating to intellectual property dispute resolution in accordance with the procedure established by the Board of Appeal, under Chapter 1 of the Law of the Republic of Armenia of June 10, 2008, on Inventions, Utility Models and Industrial Designs		
Chapter 4, Article 43.1. Revocation of Patent or Certificate June 10, 2008 adopted, went into force January 1, 2009. <a href="https://www.aipa.am/en/PatentLaw/">https://www.aipa.am/en/PatentLaw/</a>	During the whole period of its validity, the patent may be declared invalid in full or in part by a court decision on the basis of an application of any interested party, if: ...	During the whole period of its validity, the patent may be declared invalid in full or in part by a court decision or by the State Authorized Body on the basis of an application of any interested party, if: ...
Article 44. TERMINATION OF RIGHTS (Title Amended 21.03.12 HO-98-N)		

### 1.6 DISCUSSION OF IMPLEMENTATION

Armenia initially had a process of invalidating a right of private property through means other than a judicial proceeding. Thus, that can be implemented with ease assuming Armenia is not that concerned with parting ways from the EHRCC.

## 2.0 SUB-ISSUE NO. 2 – ESTABLISH SPECIALIZED JUDICIAL COURT (*I.E.*, COURT OF APPEALS)

### 2.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE

Establish specialized judicial court (*i.e.*, Court of Appeals)

### 2.2 EXISTING RULES & LAWS AND BASIS OF ISSUE

The current system of adjudicating IP-related cases is handled through first and second instance courts which are the equivalent of trial courts in the United States. These first and second instance courts are not specialized courts and hear all types of disputes. Furthermore, the judiciary is unfamiliar with the intricacies involved in hearing esoteric areas of laws such as patent, trademark or copyright law. Even in the United States, this is a prevalent problem especially when dealing with patent disputes. Most judges are not trained in the sciences, technology, engineering or mathematical fields (“STEM”) and they lack the necessary experience and expertise in hearing such cases. However, to counteract that deficiency, the United States has created a specialized appeals court called the Court of Appeals for the Federal Circuit which hears appellate level cases arising out of patent disputes. The judges sitting at the Court of Appeals are much more versed in the nuances of patent law and most have some type of STEM background.

### 2.3 PROPOSED SOLUTION

Create a pilot program where select judges from select divisions of courts of first instance and second instance that are trained to hear disputes covering IP rights, especially those dealing with patent law. Preferably, these judges would have training in some STEM fields, although initially, this is not necessary. Identifying this panel and equipping them to hear IP disputes will provide a much more efficient way of enforcing these rights, as these types of cases would have a more uniform body of law for precedential purposes. Any such dispute that arises in Armenia would eventually be funneled to be heard by one or more of these judges. A panel can be created to assign these cases on a random basis or based on the technology most familiar to a particular judge.

Secondarily, as an alternate or in parallel to the first proposal, a specialized appeals court can be created to hear IP rights related cases that flow up from courts of first and second instance. Currently, Armenia has an administrative appeals court which can take over that role if a new body cannot be created.

### 2.4 MODEL JURISDICTIONS & FRAMEWORKS

See <https://www.cacd.uscourts.gov/judges-requirements/court-programs/patent-pilot-program>

and <https://www.fjc.gov/content/316142/patent-pilot-program-five-year-report>

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description
U.S. Federal District Courts	28 USC § 1331, 28 U.S.C. § 1338 and 15 U.S.C. § 1121	Has jurisdiction to hear patent and trademark cases. Federal courts have exclusive jurisdiction over patent law cases.
Court of Appeals	28 USC 1292, 28 USC 1291, 28 USC 1295	Has exclusive jurisdiction to hear patent cases appealed from federal courts. Has concurrent

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description
		jurisdiction, with other circuit courts, to hear trademark cases appealed from federal district courts or from the TTAB.
Appeals Courts (all circuits that can hear trademark cases)		Has jurisdiction to hear trademark cases appealed from the federal district courts.

### 3.0 SUB-ISSUE NO. 3 – FULL SUBSTANTIVE EXAMINATION BY EXAMINERS

#### 3.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE

Full substantive examination by examiners.

#### 3.2 EXISTING RULES & LAWS AND BASIS OF ISSUE

The current practice of AIPA is inadequate to perform a meaningful examination of patent applications. Due to various organizational limitations within the government and budgetary constraints, AIPA is relegated to performing mostly non-substantive review and examination of patent applications. It is reported that in order for someone to obtain patent rights in Armenia, the applicant first must apply to another jurisdiction to do a proper vetting of the application and the prior art, and then provide a written opinion of the patent application's merits to AIPA before AIPA can grant a patent to the applicant. A variant of a patent, dubbed "baby patent" which in other jurisdictions is called a Utility Model, is also available in Armenia. The baby patent is also not reviewed for prior art and only vetted to meet formalities per procedures at AIPA. Once AIPA conducts this review and issues its seal of approval, the applicant receives a baby patent which is good for 10 years. When the applicant goes to enforce that patent, however, the patent has to be examined for validity. Presumably the examination is conducted by AIPA or a compatible IP office. This mechanism is not all clear to the authors of this report.

However, some practitioners within the AIPA report that actual and substantive examination does take place which is mostly limited to patent-related publications available through the ROSPATENT (Russian IP Office). At first review, an applicant's invention is searched in the ROSPATENT database for relevant art (technical references that are published). Because ROSPATENT documents house only Russian filed patent applications, the art searched is limited only to Russian publications. Furthermore, because AIPA employees are more familiar with the Russian language rather than the English language, a panoply of English material is overlooked. The English language is the *de facto* language used which covers the compendium of the technical art available to practitioners. Once the ROSPATENT database is searched and no relevant art is found, then other databases, such as ESPACENET (EPO) or Google patents is searched. Nevertheless, because only about 200 patent applications are filed at AIPA, current examination process is not robust or uniform.

#### 3.3 PROPOSED SOLUTION

The trajectory of the AIPA should be to become a regional or an International Receiving Office in order to become an International Searching Authority ("ISA") for PCT applicants as well as to conduct a more robust examination so that it can be accepted as a regional Examination Authority ("EA") issuing International Search

Reports/Opinions as well as International Patentability Examinations. With that aim, the AIPA should provide proper training to its examiners so a meaningful examination can take place for all applicants (domestic or foreign). That requires hiring either full-time employees or contracted technical subject matter experts (“SMEs”) that have the technical and legal know-how to vet the applications.

In order to attract such candidates, AIPA must be equipped to provide for competitive salaries that are higher in pay scale than other government employees. This invariably may require changing relevant compensation laws within the Republic of Armenia. With increased pay, AIPA can demand from those personnel, high-quality examinations and work product. The progress of pre-examination and the overall patent prosecution process could also be made available to the public. The rules and procedures of this process would become transparent to applicants and other interested parties. The actual production work, from receipt of application to end of review of the application, will be tracked and quantified. The examiners would also be subject to quotas as well as having their work product randomly audited for quality control purposes. That said, AIPA should seek to hire new university graduates who can be “trained up” and who are likely to speak English as well as Russian. Because most technical literature is available in English, it behooves AIPA to start using English available databases in doing searching and examination. Furthermore, a preliminary level search can be conducted with the use of automated systems by using artificial intelligence or machine learning (AI/ML) platforms. Currently, some IP offices around the world have implemented such systems or are seriously considering doing so. For example, Austria and Finland are using a pre-search AI platform to conduct an initial search of the prior art.<sup>2</sup> Nevertheless, a final review still would be necessary by an actual human being in order to verify the work produced by the chosen algorithm.

As an intermediate step, suggested by the current AIPA advisors/staff/examiners, prior to having a fully trained examiner corps is to have current examiners collaborate with technology and science specialists on a case-by-case basis to analyze submitted applications. As yet another alternative, a select group of examiners can be maintained on staff as full-time employees in order to review patent applications that are heavily represented by one or more technical fields, such as IT, AI, robotics, etc.

### 3.4 MODEL JURISDICTIONS & FRAMEWORKS

These are just some jurisdictions with which we are familiar. There are no restrictions for picking these and other possible jurisdictions such as Singapore, Israel or Estonia.

- USPTO
- EPO
- Singapore Intellectual Property Office

### 3.5 DISCUSSION OF IMPLEMENTATION

Armenia’s Ministry of Economy (MTCIT) and its Parliament have to seriously undertake efforts in modernizing the AIPA. A genuine sense of ownership and political will is crucial in revamping AIPA and putting Armenia on the regional map for IP filers.

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<sup>2</sup> See [https://www.wipo.int/about-ip/en/artificial\\_intelligence/search.jsp](https://www.wipo.int/about-ip/en/artificial_intelligence/search.jsp)

#### 4.0 SUB-ISSUE NO. 4 – COMPARATIVELY LOW FILING FEES

##### 4.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE

Relatively low filing fees limit the sources of income for AIPA and impact its capacity for expanding and training staff.

##### 4.2 EXISTING RULES & LAWS AND BASIS OF ISSUE

Although a tiered pricing framework exists (*e.g.*, for small, medium and large entities), the pricing in general is low even in relative terms for the Armenian market when compared to pricing in other countries. In relative terms, it is 2.63 to 3.32 times cheaper to file in Armenia for an Armenian than it is for an American to file in the United States.

	ARMENIA	United States
Lowest Filing Cost	(5,000 AMD) <b>\$10.49</b>	<b>\$430</b>
GDP Per Capita	<b>\$3,936.80</b>	<b>\$59,531.66</b>
Median Income	<b>\$4,680.00</b>	<b>\$59,039.00</b>
Cost % of GDPPC	<b>~0.27%</b>	<b>~0.72%</b>
Cost % of Median Income	<b>~0.22%</b>	<b>~0.73%</b>

##### 4.3 PROPOSED SOLUTION

Increase fees but keep the tiered structure. Perhaps make it still cheaper than the most developed jurisdictions/countries, but still substantially increase them compared to what they are now.

##### 4.4 MODEL JURISDICTIONS & FRAMEWORKS

So far only the U.S. jurisdiction's pricing model has been analyzed for comparison, although it may be useful to compare Armenia to other countries of similar size and development level in order to fine tune the specific price points for the fees.

In the United States, the lowest price is almost 1% of income (see above). Other countries to compare the pricing are Germany, Israel, Singapore and Korea.

##### 4.5 STATUTES/REGULATIONS TO BE AMENDED & PROPOSED AMENDMENTS

The fees listed other than the AIPA website calculator/Հաշվիչ are on this site:

<https://my.aipa.am/calculator>

#### **4.6 DISCUSSION OF IMPLEMENTATION**

If the fees are set by legislation, it will necessitate a change in the legislation.

If the fees are set by AIPA, then only an administrative change would be necessary in accordance with policy changes of the agency (presumably with the approval of the head of AIPA).

The change in fee structure and collection is directly related to or even dependent on Sub-Issue No. 7 discussing the potential semi-independent status of AIPA to set its own rules and procedures (which would include fee setting/collecting).

#### **5.0 SUB-ISSUE NO. 5 – MAJOR FOREIGN LANGUAGE TRANSLATIONS OF AIPA DOCUMENTS**

##### **AND PROCESS/PROCEDURE EXPLANATIONS**

##### **5.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

A majority of potential filers, major international businesses, and innovators operate in the dominant/major languages of the world (*e.g.*, English, French, German, Russian, Chinese) or the dominant regional languages (*e.g.*, English for EU, Russian for EAEU). Lack of complete, comprehensive and accurate translations of all AIPA information into at least English and Russian hinders understanding and engagement with Armenia's IP system for individuals/entities that are not proficient in Armenian.

##### **5.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

The official language of the Republic of Armenia is Armenian (including for the purposes of any official business conducted therein). Accordingly, any and all government correspondences, filings, applications, etc. are required to be in Armenian.

This, however, may pose an obstacle to foreign entities/individuals, or even Armenians without a sufficient knowledge of Armenian. While the use of the official language of a sovereign nation may be mandated for official government submissions, making translations of informational resources regarding the applicable laws, policies and procedures would significantly improve the accessibility for potential IP filers (*e.g.*, entrepreneurs and businesses).

##### **5.3 PROPOSED SOLUTION**

Provide comprehensive translations of all publicly available information on the AIPA website in at least English and Russian so that whatever is available in Armenian is also available in those languages (including laws, regulations, policies, procedures, etc.).

Have a dedicated section for additional information/assistance for foreign entities.

Consider allowing initial filings to be made in a major/dominant foreign language (*e.g.*, English) with automatic translation into Armenian occurring immediately subsequent to the filing (for an additional fee) to remain in compliance with official language laws. The translations may be performed by machine translation in bulk that is supplemented by human verification for context and appropriate syntax. This approach should

prove to be less time-consuming, require fewer human resources, and likely be more cost efficient than having comprehensive translation being performed in its entirety by professional translators.

#### **5.4 DISCUSSION OF IMPLEMENTATION**

With respect to the AIPA website and publicly available information, the implementation would require the engagement of translators to translate the information which is unavailable in the target languages. Maintaining and updating information also would be required as the Armenian information gets edited or updated.

With respect to government filings/submissions, the implementation would require either a dedicated translation staff or a combination of machine translation with human-assisted proofreading/verification.

### **6.0 SUB-ISSUE NO. 6 – ALLOWING AIPA TO SET OWN RULES AND PROCEDURES AND HAVE INTERNAL/EXTERNAL POLICY FORMING INDEPENDENCE**

#### **6.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

Currently, AIPA operates under the Ministry of Economy and is dependent on it for setting fees, hiring staff (or contractors), and setting policies. It is further dependent on the Ministry and Parliament with respect to budgetary issues and allocation of funds. This lack of control over its own operations limits the AIPA's ability to freely adjust to market demands, adopt flexible hiring practices, adjust fee schedules, and manage its own budget.

#### **6.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

Under the current framework, the AIPA operates under the Ministry of the Economy, and AIPA employee's salaries and AIPA's fees set by Parliament. All of AIPA's staff are full-time employees and the law currently does not allow the possibility of hiring independent contractors. There is very limited autonomy permitted to AIPA with respect to internal procedures regarding patent and trademark examination and registration, but almost no autonomy with respect to hiring/employment practices or setting fees and allocating its budget. Any budgetary surplus/income is automatically appropriated by the government and redistributed to more "important" sectors (*e.g.*, medical, defense, education etc.).

#### **6.3 PROPOSED SOLUTION**

Have the AIPA become an independent or semi-independent government agency that is not necessarily under the ministerial hierarchy. Additionally, or alternatively, permit AIPA to periodically update its fees (*e.g.*, fee amounts and structure), including having some fee categorization be dependent on whether or not the fees are considered to be "service fees" or "surcharges". Have at least some fee updates to be enacted by a "decree" initiated by the director of the AIPA. Permit AIPA to have independent hiring and employment decision-making, including setting salaries, hiring specialists and hiring independent contractors. Allow AIPA to use and distribute all or at least a significant portion of any income/budgetary surplus as it sees fit for AIPA purposes without any government appropriation and redistribution.



6.4 MODEL JURISDICTIONS & FRAMEWORKS

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description	Model Selection Reasoning
Moldova Georgia Kazakhstan		Presumably the IP Offices/Agencies of these countries are either independent or semi-independent from their respective ministerial hierarchies.	
United States		Fee setting rights are set by statute but the USPTO has the right to (and frequently does) update them periodically (usually to increase them). Some fees are statutorily tied to income or other financial/economic indicators. UPSTO has rights to freely hire and fire employees and contractors. Budget Surplus/Income is allowed to in a large part be collected in a separate account solely dedicated for USPTO use.	This set-up permits the USPTO to have some independence in hiring/employment decisions. Allows for fee setting and updates to not be dependent on (slow) legislative action. Allows income to be fairly allocated for IP agency needs.

## 7.0 SUB-ISSUE NO. 7 – DEVELOP AND MAINTAIN A PUBLIC OUTREACH PROGRAM TO RAISE

### AWARENESS ABOUT IP

#### 7.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE

A serious outreach and educational policy and approach will ensure continued awareness of IP in the public's mind and among the interested parties in the technology, business and academic fields.

#### 7.2 EXISTING RULES & LAWS AND BASIS OF ISSUE

Currently, AIPA has a limited program of support for unrepresented filers and occasional trainings/events dedicated to IP education. Nevertheless, public awareness of IP, its purpose and benefits remain unknown by the majority of the population and especially the entities/parties most affected by it (and, consequently, who have the most to gain from it). This issue, however, primarily is one of budget and not of capacity. Although free resources are available to AIPA, the Ministry of Education and like bodies in implementing programs to elevate the public's consciousness regarding IP rights.

#### 7.3 PROPOSED SOLUTION

Have a *pro se* (individual inventor applicants) filer assistance program where unrepresented filers are provided additional help and a certain amount of leniency with respect to strictly adhering to certain formalities when filing/responding to official AIPA documentation.

Have AIPA host "open-house" events to educate members of the public, business community, or academia about IP rights and what the AIPA does. Explain the benefits and drawbacks of different types of IP.

Engage and implement partnerships with NGOs/non-profits in the technology fields such as TUMO, Armath, COAF Smart Centers, BANA (Business Angel Network of Armenia), EPIC (Entrepreneurship & Product Innovation Center at American University of Armenia), Armenia Impact Hub, Enterprise Incubator Foundation (EIF), HIVE Ventures, Smartgate VC and HeroHouse. Consider a travelling AIPA roadshow at TUMO, UWC Dilijan, Armath (28 locations) and Teach for Armenia (15,000 students 12-17 ages) that could spread the knowledge/awareness of IP to a large portion of the population without requiring people to come to AIPA (because AIPA will come to them!). Can also implement low-cost to free educational resources to be taught at K-12 levels in all public schools across Armenia.<sup>3</sup> Just like chess is taught at school as a required activity, so shall an IP curriculum be taught to school grades across Armenia.

Designate an official IP day to showcase what AIPA does and its impact on the overall economy and the labor force. The United States has a comprehensive pro-se filer assistance program to balance the ability of those who can afford legal representation with those who cannot. Also have an annual IP day that draws industry leaders and government agency representatives.

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<sup>3</sup> See <https://www.prnewswire.com/news-releases/georgia-takes-aim-at-becoming-a-global-intellectual-property-leader-300915752.html> and <https://michelsonip.com/free-course/>

## **8.0 SUB-ISSUE NO. 8 – ESTABLISH RECIPROCIITY BETWEEN COUNTRIES FOR PRACTITIONERS TO FILE IN THEIR RESPECTIVE IP OFFICES**

### **8.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

Some countries give IP practitioners of other countries reciprocal rights to file and conduct business in front of their respective IP agencies on the same basis as domestic practitioners.

### **8.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

Currently, only domestic attorneys/representatives have a right to represent filers in Armenia. In that regard, Armenian attorneys/representatives do not have the right to represent Armenian filers in foreign jurisdictions' IP offices/agencies. Armenian attorneys and representative are not currently allowed to represent entities and make filings at the USPTO.

### **8.3 PROPOSED SOLUTION**

Enact legislation that would permit foreign attorneys/agents/representatives to represent individuals/entities at AIPA on the same basis that domestic attorneys/representatives are provided as long as they meet all of the requirements that are required of the locals (*e.g.*, education requirements, examination requirements, registration requirements, etc.). Additionally, provide training and propose an international agreement that will permit Armenian attorneys and patent agents/representatives to represent Armenian entities and make filings at the USPTO.

### **8.4 MODEL JURISDICTIONS & FRAMEWORKS**

Limited reciprocity is given between Canadian and U.S. patent practitioners.

37 CFR 11.6 Registration of attorneys and agents –

(c) Foreigners. Any foreigner not a resident of the United States who shall file proof to the satisfaction of the Director that he or she is registered and in good standing before the patent office of the country in which he or she resides and practices and who is possessed of the qualifications stated in § 10.7, may be registered as a patent agent to practice before the Office for the limited purpose of presenting and prosecuting patent applications of applicants located in such country, provided: The patent office of such country allows substantially reciprocal privileges to those admitted to practice before the United States Patent and Trademark Office. Registration as a patent agent under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain...

...Upon ceasing to reside in such country, the patent agent registered under this section is no longer qualified to be registered under this section, and the OED Director shall promptly remove the name of the patent agent from the register and publish the fact of removal. Limited reciprocity with respect to trademarks has been recently cancelled!!

### **Changes to the USPTO trademark rules of practice for foreign-domiciled trademark applicants and registrants beginning August 2019**

On July 2, 2019, the USPTO published new regulations regarding the practice of trademark law before the USPTO that became effective on August 3, 2019. The regulations require applicants, registrants or parties to a trademark proceeding whose domicile is not located within the United States or its territories to be

represented by an attorney who is an active member in good standing of the bar of the highest court of one of the 50 states (or the District of Columbia or any commonwealth or territory of the United States). The new rules also remove the authorization for reciprocal recognition to practice in trademark matters before the USPTO based solely on a foreign attorney’s or agent’s authorization to practice before a foreign IP office in patent matters.

The final rule and information about it is available on the [new trademark rule page](#).

**HOWEVER, Armenia may consider it useful to have similar reciprocal arrangements in place with some countries. Alternatively, unilateral permission to file and conduct business with AIPA by foreign attorneys may spur engagement and increase filings (which, in turn, likely will generate more revenue for AIPA).**

**Take advantage of the existing U.S. legislation to create a process that allows Armenian attorneys to represent Armenian entities at the USPTO and make filings in the United States. Additionally, train and prepare Armenian legal professionals (attorneys, agents and representatives) to make filings at and practice before the USPTO (including legal, technical and language training).**

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description
United States and Canada		Limited reciprocity in representing foreign domiciled filers in front of a given country’s IP office

**IP ISSUE: PROTECTING UNIVERSITIES & RESEARCH INSTITUTIONS**

Insufficient protection of the IP rights of universities and research institutions from infringement and misappropriation by students and employees is a major disincentive to investment by the institutions, and an impediment to innovation.

The section of the report will address the following sub-issues:

1. Lack of recognition and compensation for universities providing the facilities and equipment for researchers once IP is developed.
2. Lack of sincerity, collaboration, trust and mentorship between researchers to management to and vis-a-vis for collective outcome.
3. Lack of knowledge among the researchers or innovators on IP protection rights.

**1.0 SUB-ISSUE NO. 1 – LACK OF RECOGNITION AND COMPENSATION FOR UNIVERSITIES****PROVIDING THE FACILITIES AND EQUIPMENT FOR RESEARCHERS ONCE IPs ARE DEVELOPED.****1.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

There is a lack of cultural awareness within Armenian universities and research institutions of the need for internal IP management policies, agreements and best practices. When inventors, researchers and knowledge workers complete their research with the support of their employers, they often walk away with all the IP leaving their employers with little or no compensation, royalties or recognition. As a result, this norm discourages Armenian universities to fund research projects, thereby hindering Armenia's innovative and technological growth.

**1.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

There are no existing Armenian laws or any contractual agreements within universities or government research institutions that resolve the proposed issues.

A revised law on higher education is presently being drafted. It is unclear whether the present issues will be addressed.

**1.3 PROPOSED SOLUTION**

To address this problem, Armenian academic and research institutions are encouraged to adopt standard employment agreements governing the relationship between themselves and their researchers and knowledge workers (modeled upon existing U.S university employment contracts) that equitably apportion IP and other rights. Greater certainty in the disposition of these rights would create a more conducive environment for the funding of research and the commercialization of innovation in the future. The IP/IT Committee will continue to review the relevant provisions of Armenian law to identify other areas of potential improvement in this area.

1.4 MODEL JURISDICTIONS & FRAMEWORKS

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description
University of Missouri, USA	Contractual	<p>With respect to Employees, these patent and plant variety regulations form a part of the employment contract. These regulations constitute a condition of employment of all Employees of the University and shall be effective as to all Inventions and Plant Varieties made during any period of employment from and after the date of their adoption.</p> <p>If a patent or Plant Variety Protection application is filed upon an Invention or Plant Variety which has been made by an Employee of the University within the general scope of her/his duties, but which has not been reported to the Patent Committee pursuant to these regulations, title to such Invention or Plant Variety shall immediately vest in the University and the contract of employment shall be considered as an assignment of such rights, and each Employee as a condition of employment agrees to execute any assignments requested by the University.</p> <p><b>Definitions</b></p> <ol style="list-style-type: none"> <li>1. <b>“Employee”</b> as used herein shall be deemed to mean 1) any person receiving compensation from the University for services rendered, regardless of whether the Employee be full-time or part-time, 2) any person receiving compensation paid through the University from any funds placed in its hands for distribution, or 3) any person that has voluntarily elected to enter into a written agreement with the University in exchange for the University’s agreement to treat such person as an Employee for purposes of this policy. For purposes of the definition of Employee and for the avoidance of doubt, student financial aid including, but not limited to, scholarships, grants, loans, tuition waivers and educational fee reductions, generally available to University students and unrelated to any provision of services by the student to the University shall not be interpreted as compensation. Also, for purposes of this policy, full-time students receiving compensation for services rendered to the University which services are unrelated to research or investigation and are unrelated to the creation of computer software shall not be considered to fit within the foregoing definition of Employee.</li> <li>2. <b>“Supervisor”</b> shall mean any Employee of the University in charge of a project under the supervision of the head of a department or some superior officer.</li> </ol>

		<p>3. <b>“Head of the Department”</b> shall mean the person having charge of the department of the Employee reporting the Invention, and in case there be no such head of the department, the Dean, or on campuses with no schools and colleges, the Provost shall perform the duties herein provided for the head of the department.</p> <p>4. <b>“Dean”</b> shall mean the Dean of the college or school having jurisdiction over the Employee, and in case of those Employees not under jurisdiction of any Dean, the business manager shall receive the reports and perform the duties herein prescribed for the Dean.</p> <p>5. <b>“Patent Committee”</b> shall mean the committee herein.</p> <p>6. <b>“Invention”</b> is comprised of:              Conception of the idea (mental element); and              Reduction to practice of the inventive concept.</p> <p>As used in these regulations, the term “Invention” means existence of either the completed mental element or both the mental and physical elements, whichever situation first occurs.</p> <p>7. <b>“Plant Variety”</b> shall mean seed varieties that can be protected under a Certificate of Plant Variety Protection. Such varieties are self-pollinated plant varieties.</p> <p>8. <b>“President”</b> as used herein shall be deemed to mean the President of the University or her/his designee and shall include, when applicable, the Interim President or Acting President.</p> <p><b>Rights of University and of Employees</b></p> <p>a. The University, as the employer, shall have the ownership and control of any Invention or Plant Variety developed in the course of the Employee’s service to the University. Each Employee of the University is required and shall upon request assign to the University all domestic and foreign rights to any Invention or Plant Variety made by the Employee within the general scope of her/his duties as Employee of the University, unless such requirement is waived in writing by the University. Remuneration to the Employee for such assignment is detailed below.</p> <p>b. An Invention or Plant Variety shall be considered as having been made within the general scope of the Employee’s duties for the University if either of the following conditions are met:              (1) Whenever the Employee’s duties include research or investigation, and the Invention or Plant Variety arose in</p>
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		<p>the course of such research or investigation and is relevant to the general field of an inquiry to which the Employee was assigned; or</p> <p>(2) Whenever the Invention or Plant Variety was in a substantial degree made or developed through the use of University facilities or financing, or on University time, or through the aid of University information not available to the public.</p> <p><b>Use Of Funds Received By University Relating To Inventions, Patents And Plant Varieties</b> – Whenever the University receives money from any source for the sale, waiver, assignment or licensing of University-owned patents, Inventions, discoveries, or Plant Varieties, the entire amount of such money (except that money received for reimbursement of Patent and Trademark Office Fees, foreign patent and trademark office fees, external attorneys’ fees or other external expenses incurred by the University in connection with reexamination of the patent, patent infringement, other defense of the patent or the enforcement or defense of a license agreement, that portion which is for the negotiated indirect cost rate associated with the research project from which the patent, Plant Varieties, Invention, or discovery resulted, and except that portion of money received by the University and paid by the University to the co-owner of a joint invention) shall be divided, distributed and allocated as follows:</p> <ol style="list-style-type: none"> <li>1. For Inventions and Discoveries             <ol style="list-style-type: none"> <li>a. Thirty-three and one-third (33 1/3) percent shall go to the inventor.</li> <li>b. After reimbursement of the University or research sponsor for reasonable costs of procuring and defending the patent rights and reducing the Invention to practice and payment of the inventor’s share, all monies derived by the University shall be allocated as follows:                 <ol style="list-style-type: none"> <li>(1) 66.7 percent to the campus from which the patent, Invention or discovery originated, half of which the campus must allocate to the originating department.</li> <li>(2) 33.3 percent shall go to the University.</li> </ol> </li> <li>c. Funds allocated to the departments, campuses and the University are restricted to the support of research, development and other scholarly activities.</li> </ol> </li> <li>2. For Plant Varieties             <ol style="list-style-type: none"> <li>a. Ten (10) percent shall go to the inventor.</li> <li>b. After reimbursement of the University or research sponsor for reasonable costs of procuring and defending Plant Variety rights and payment of the inventor’s share, all monies derived by University shall be allocated as follows:                 <ol style="list-style-type: none"> <li>(1) Ninety-five (95) percent to the breeding</li> </ol> </li> </ol> </li> </ol>
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		<p>program from which the Plant Variety originated. (2) Five (5) percent to the University.</p>
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## **2.0 SUB-ISSUE NO. 2 – LACK OF SINCERITY, COLLABORATION, TRUST, MENTORSHIP**

**BETWEEN RESEARCHERS TO MANAGEMENT TO SENIOR MANAGEMENT AND VIS-A-VIS  
FOR COLLECTIVE OUTCOME.**

### **2.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

There is a lack of contractual agreement and internal IP system that governs the relationship between researchers and the university/research institutions.

As a result, this gap has allowed misappropriation by students and employees and has become a major disincentive to investment by universities and institutions, and an impediment to innovation.

### **2.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

There are no existing Armenian laws or any contractual agreements within universities or government research institutions that resolve the proposed issues.

### **2.3 PROPOSED SOLUTION**

To solve the above-identified problem, the IP/IT Committee proposes creating the opportunity for employees' contractual agreements between researchers and universities and research institutions (by analogy to existing U.S. university employees' contracts). The universities and research institutions will own the IP rights, while the employee inventors will be compensated. As a result, researchers who have contractual agreements with set universities and research institutes will have well-defined logistics and administrative guidelines.

## **3.0 SUB-ISSUE NO. 3 – LACK OF KNOWLEDGE AMONG THE RESEARCHERS OR INNOVATORS**

**ON IP PROTECTION RIGHTS**

### **3.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

There is a lack of contractual agreement and internal IP system that informs the researchers or employees of universities or research institutes regarding IP protection rights and obligations.

### **3.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

There are no existing Armenian laws or any contractual agreements within universities or research institutions that resolve these proposed issues.

**3.3 PROPOSED SOLUTION**

Create the opportunity for employees' contractual agreements between researchers and universities and research institutions (by analogy to existing U.S. university employees' contracts). As a result, researchers who have contractual agreements with set universities or institutes will not violate IP rights and agreements.

3.4 MODEL JURISDICTIONS & FRAMEWORKS

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description
University of Missouri Patent Regulation - Inventions by Employees of the University	Rights of the University and Employees	If the University finds that an Invention or Plant Variety made by an Employee of the University outside of the general scope of his/her University duties is used or liable to be used in the public interest and executes a certificate of that effect, the Employee may, if he/she wishes to do so, request that an application for a patent or Certificate of Plant Variety Protections be filed and prosecuted at the expense of the University. Under such circumstances the Invention or Plant Variety may be manufactured and used by or for the University, State of Missouri, or the government of the United States for governmental purposes without the payment of any royalty
University of Missouri Patent Regulation - Inventions by Employees of the University	Inventor Requests for Waiver of University Rights	<p>If the inventor believes that the invention of Plant Variety was made outside the general scope of his/her University duties, and if he/she is unwilling to assign the rights in the Invention or Plant Variety to the University, he/she shall, in his/her Invention or Plant variety report, request that the Patent Committee determine the respective rights of the University and the inventor in the Invention or Plant Variety, and shall also include in his/her Invention or Plant Variety report information on the following points:</p> <p>(A) The circumstances under which the Invention or Plant Variety was made and developed.</p> <p>(B) The Employee’s official duties at the time of making of the Invention or developing the Plant Variety</p>
University of Missouri Patent Regulation - Inventions by Employees of the University	Rights of University and Students	In general, students of the University of Missouri will be entitled to own any Invention or Plant Variety made during their enrollment as a student of the University and will generally not be required to assign his or her ownership to the University; provided, however, the foregoing general rule does not apply and the student will be required to assign his or her ownership interest to the University in any circumstance in which the student meets the definition of Employee, as defined in Section100.020C.2. hereof provided such Invention or Plant Variety was developed in the course of the student-Employee’s service to the University.

## Corporate Law Issue: Promoting VC/Angel Investment

The IT sector has become a critical strategic component for development of innovation and the economic growth of Armenia. In order to spur greater development of startups in this sector, the Republic must look beyond its borders towards capital investments from foreign investors. While Armenia previously implemented other foreign investment promotion policies with other sectors in mind, issues and challenges remain in connection with access to meaningful investment incentives for venture capitalists from foreign jurisdictions.

Although Armenia has a foreign investment protection statute in effect, the failure to offer dispute resolution thereunder in a neutral, international forum and other recognized international protections creates uncertainty about the effectiveness of the offered protections. This section of this report will address the following sub-issues:

1. Substantive Foreign Investment Protections
2. Procedural Foreign Investment Protections

### 1.0 SUB-ISSUE NO. 1 - SUBSTANTIVE FOREIGN INVESTMENT PROTECTIONS

#### 1.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE

A Foreign Investment Law (“FIL”) serves to protect against expropriation and purports to provide for compensation for illegal State measures. The FIL with recognizable protections can boost foreign venture capital and angel investment in Armenia by improving investor confidence.

#### 1.2 EXISTING RULES & LAWS AND BASIS OF ISSUE

Armenia has a Foreign Investments Law on the books since 1994. Aside from an express reference to the State’s IP laws, there are no other IT sector-specific protections or incentives offered thereunder. A proposed updated law was shelved last year because of opposition to arbitration by foreign investors (unfamiliarity/lack of trust in Armenian courts), so the 1994 law without arbitration rights remains in force. Moreover, the old age of the statute means that it lacks many of the specialized standards of protection developed internationally over the past two decades. For example, Armenia’s FIL does not include important international standards such as Fair and Equitable Treatment or Full Protection and Security, which are intended to protect investments from changes in regulatory framework and harm from third parties respectively. In practice, this means that it is hard to predict specific protective measures from the State and to improve investor expectations about the investment climate and investment risk. One potential exception is Article 22, which purports to uphold the “exercise and protection of foreign investor’s intellectual property rights” and has been in tandem with the standstill provision to extend duration of protections under a retired IP legal framework.

Moreover, the language of the FIL’s qualification provisions do not extend to (passive) investment in shares in a non-Armenian enterprise.

For the above reasons, the statute also leaves unanswered several preliminary questions: What types of IP are covered? Does it cover protection of IP from piracy? Is it a best-efforts commitment or a guarantee? – The

wording of this Article in essence just referred to Armenian IP laws, so it does not create any specific guarantees for foreign investors.

### 1.3 PROPOSED SOLUTION

In order to modernize the standards offered under international law, the 1994 FIL should be reformed to make express reference to two of the most widely known and recognized protection standards under international investment law: Fair and Equitable Treatment and Full Protection and Security. The Fair and Equitable Treatment standard is one that strengthens investors' faith in the reliability of regulatory frameworks, State commitments, and due process. This, in turn, helps reduce the long-term risk of foreign investment into Armenia. The Full Protection and Security standard, in turn, is a commitment by the State to exercise due diligence in offering and administering protection to investments within its territory. The modalities of this protection can be further clarified by statute.

### 1.4 MODEL JURISDICTIONS & FRAMEWORKS

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description	Model Selection Reasoning
Estonia	Foreign Investment Laws	<p>Repealed its FIL in 2001, focusing instead on domestic law principles of non-discrimination and national treatment for all foreign players.</p> <p>(Note, separate from its FIL, Estonia has a 0% corporate income tax on retained or reinvested profits, and a reduced tax rate for dividends paid to legal persons in order to reduce effects of double taxation. This policy incentivizes long-term investment by investors and reinvestment by businesses.)</p>	Estonia is similar to Armenia in its size and history, yet its economy and particularly the IT sector has been booming more than Armenia the past few years.
<p>Israel:</p> <p>Law for the Encouragement of Capital Investments and the Law (1959)</p> <p>Statute:</p> <p>Summary:</p> <p><a href="https://investinIsrael.gov.il/BusinessInIsrael/Pages/InvestmentIncentives.aspx">https://investinIsrael.gov.il/BusinessInIsrael/Pages/InvestmentIncentives.aspx</a></p> <p><a href="https://taxinsights.ey.com/archive/news/israel-tax-incentives-to-promote-capital-">https://taxinsights.ey.com/archive/news/israel-tax-incentives-to-promote-capital-</a></p>	Foreign Investment Law	<p>Since its creation, Israel's FIL has emphasized tax- and grant-based benefits rather than any legal or investor-State arbitration protections as its investment incentives.</p> <p>Although the FIL already lowered corporate tax rates, in 2016, Israel amended its FIL to offer even lower tax rates for high-tech companies to prevent the shifting of their profits abroad to tax shelter jurisdictions. Qualifying</p>	Like Armenia, Israel is a geopolitically isolated economy that seeks to generally invite new foreign capital investment and in particular accelerate growth in its high-tech sector.

<a href="#">investment-in-hi-tech-industry-introduced.aspx</a>		companies' income tax rates were reduced from 16% to 12% and, in "priority regions" from 9% to 7.5%, and dividend withholding tax was reduced from 16% to 4%.  (Note, tax rates were further reduced across the board in 2018, but this was not limited to FIL-covered companies.)	
Albania: Law No. 7764 for Foreign Investments (1993), as amended since  Statute (translated), available at: <a href="https://www.italaw.com/sites/default/files/laws/italaw6298.pdf">https://www.italaw.com/sites/default/files/laws/italaw6298.pdf</a>	Foreign Investment Law	Albania's foreign investment law, first enacted in November 1993, provides for numerous substantive protections. These include the prohibition on uncompensated expropriation (Arts. 4-5), non-discrimination (Art. 2(2)), complete protection and security (Art. 2(2)), and the international minimum standard of treatment (Art. 2(3)).	Like Armenia, Albania is a smaller economy that historically has struggled to encourage investor confidence in its legal system.

### 1.5 STATUTES/REGULATIONS TO BE AMENDED & PROPOSED AMENDMENTS

Statute/Regulation Citation	Current Text	Proposed Amended Text	Description of Amendment (e.g., legislative, regulatory, guidance)
Armenian Law on Foreign Investments (1994)	N/A	<b><u>New Article 12. Minimum Standard of Treatment</u></b>  <u>Foreign investments established in the Republic of Armenia shall at all times be accorded treatment in accordance with international law, including fair and equitable treatment and full protection and security.</u>	Legislative amendment to add a new Article in Chapter II of the FIL, extending rights to treatment in accordance with the customary minimum standard of treatment for foreign investments.

## **1.6 DISCUSSION OF IMPLEMENTATION**

The proposed implementation involves reforming the 1994 FIL to include the aforementioned additional substantive protections recognized and expected by foreign investors under international law. Their adoption would place Armenian law in greater conformity with international investment law and with the expectations of experienced foreign investors, such as actively managed investment funds and other venture capital institutions.

## **2.0 SUB-ISSUE NO. 2 - PROCEDURAL FOREIGN INVESTMENT INCENTIVES**

### **2.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

Foreign investment law (FIL) protects against expropriation and purports to provide for compensation for illegal State measures. FIL, if implemented meaningfully, can boost foreign venture capital and angel investment in Armenia.

### **2.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

Armenia has a Foreign Investments Law on the books since 1994. Aside from an express reference to the State's IP laws, there are no other IT sector-specific protections or incentives offered thereunder. A proposed updated law was shelved last year because of opposition to arbitration by foreign investors (unfamiliarity/lack of trust in Armenian courts), so the 1994 law without arbitration rights remains in force. As such, foreign investors have no recourse to an international forum that would help guarantee impartial resolution of investment disputes (in accordance with international law where applicable). In practice, this means that it is hard to predict specific protective measures from the State and to improve investor expectations about the investment climate and investment risk.

Moreover, foreign investors would enjoy greater confidence in the finality and enforceability of an international arbitration award than a decision of the Armenian courts, which would be subject to appeal and might have limited enforceability outside of Armenia.

### **2.3 PROPOSED SOLUTION**

With respect to predictability of protections and visibility of incentives, and as described above, the FIL should be reformed to include modern international investment law protections such as FET and FPS. Access to international arbitration of such protections would help ensure that these principles are properly applied to foreign investments in Armenia. These reforms can be enacted either through broad FIL reform or through a special tech-specific legal regime, as Israel has done.

## 2.4 MODEL JURISDICTIONS &amp; FRAMEWORKS

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description	Model Selection Reasoning
Estonia	Foreign Investment Laws	<p>Repealed its FIL in 2001, focusing instead on domestic law principles of non-discrimination and national treatment for all foreign players.</p> <p>(Note, separate from its FIL, Estonia has a 0% corporate income tax on retained or reinvested profits, and a reduced tax rate for dividends paid to legal persons in order to reduce effects of double taxation. This policy incentivizes long-term investment by investors and reinvestment by businesses.)</p>	Estonia is similar to Armenia in its size and history, yet its economy and particularly the IT sector has been booming more than Armenia the past few years.
<p>Israel:</p> <p>Law for the Encouragement of Capital Investments and the Law (1959)</p> <p>Statute:</p> <p>Summary:  <a href="https://investinIsrael.gov.il/BusinessInIsrael/Pages/Investment_incentives.aspx">https://investinIsrael.gov.il/BusinessInIsrael/Pages/Investment_incentives.aspx</a>  <a href="https://taxinsights.ey.com/archive/archive-news/israel--tax-incentives-to-promote-capital-investment-in-hi-tech-industry-introduced.aspx">https://taxinsights.ey.com/archive/archive-news/israel--tax-incentives-to-promote-capital-investment-in-hi-tech-industry-introduced.aspx</a></p>	Foreign Investment Law	<p>Since its creation, Israel's FIL has emphasized tax- and grant-based benefits rather than any legal or investor-State arbitration protections as its investment incentives.</p> <p>Although the FIL already lowered corporate tax rates, in 2016, Israel amended its FIL to offer even lower tax rates for high-tech companies to prevent the shifting of their profits abroad to tax shelter jurisdictions. Qualifying companies' income tax rates were reduced from 16% to 12% and, in "priority regions" from 9% to 7.5%, and dividend withholding tax was reduced from 16% to 4%.</p> <p>(Note, tax rates were further reduced across the board in 2018, but this was not limited to FIL-covered companies.)</p>	Like Armenia, Israel is a geopolitically isolated economy that seeks to generally invite new foreign capital investment and in particular accelerate growth in its high-tech sector.
Albania:	Foreign Investment Law	Albania's foreign investment law, first enacted in November	Like Armenia, Albania is a smaller



<p>Law No. 7764 for Foreign Investments (1993), as amended since</p> <p>Statute (translated), available at:</p> <p><a href="https://www.italaw.com/sites/default/files/laws/italaw6298.pdf">https://www.italaw.com/sites/default/files/laws/italaw6298.pdf</a></p>		<p>1993, provides for numerous substantive protections. Moreover, the FIL permits foreign investors to submit investor-State disputes concerning discrimination, expropriation, and capital transfers to international arbitration under the ICSID Convention.</p>	<p>economy that historically has struggled to encourage investor confidence in its legal system.</p>
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**2.5 STATUTES/REGULATIONS TO BE AMENDED & PROPOSED AMENDMENTS**

Statute/Regulation Citation	Current Text	Proposed Amended Text	Description of Amendment (e.g., legislative, regulatory, guidance)
<p>Armenian Law on Foreign Investments (1994)</p>	<p><b>Article 24 (Procedure for resolution of disputes)</b></p> <p>Disputes arising between foreign investors and the Republic of Armenia in respect to foreign investments shall be considered by the courts of the Republic of Armenia, in a manner established by the legislation of the Republic of Armenia.</p> <p>...</p>	<p><b>Article 24 (Procedure for resolution of disputes)</b></p> <p>Disputes arising under this Law between foreign investors and the Republic of Armenia in respect to foreign investments shall be considered by the courts of the Republic of Armenia, in a manner established by the legislation of the Republic of Armenia. <u>Notwithstanding the above, if a dispute between a foreign investor and the Republic of Armenia in respect of Article 8 of this Law has not been resolved within six months from the date on which the dispute arose, the foreign investor may submit such a dispute for resolution to the International Centre for Settlement of Investment Disputes (“Centre”), established by the Convention for the Settlement of Investment Disputes between States and Citizens of Other States, done at Washington on 18 March 1965; or to the Additional Facility of the</u></p>	<p>Legislative amendment to add investor-State dispute settlement by (regional) arbitration as a means of asserting rights under the foreign investments law.</p>

		<u>Centre, if the Centre is not available.</u> ...	
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## 2.6 DISCUSSION OF IMPLEMENTATION

The present proposal consists of a reform of the Foreign Investment Law to allow for ICSID arbitration<sup>4</sup> of only expropriation-related disputes, thereby excluding many of the unique provisions in the FIL from ICSID jurisdiction. This can be advisable to the extent the State wishes to leave it to the courts of Armenia to define the protections available under the FIL provisions that do not originate from international law. However, it is recommended that, if the Republic of Armenia adopts the international law standards described in Sub-Issue 1 above consider expanding the scope of the arbitration clause in Article 24 to include disputes related to such provisions as well.

One general observation in comparing the investment incentive programs of the Republic of Armenia as against some of its most successful comparable competitors for FDI, Estonia and Israel. In each competitor's case, the principal incentives are tax-based rather than conferring any heightened legal protection. Moreover, in each case, the host jurisdiction has strived to improve both the capacity of its judiciary and the foreign investors' familiarity with its legal system. This would be a prerequisite to scaling back investor-State dispute resolution provisions, as has been done in many other jurisdictions which used to offer foreign investors investor-State arbitration protection.

However, more importantly, the comparison of investment incentive programs reveals that the strongest incremental incentive in each jurisdiction is preferential taxation (*see* Section 2 above). While the ongoing simplification and reversal of progressive taxation in Armenia are positive and business-friendly developments in taxation policy in Armenia, it is understood from discussions with stakeholders that broad-based tax reform conflicts with State budget policy metrics. In this regard, the authors stress that such initiatives are not a zero-sum game. For example, greater investment spurs more job creation and thereby expands the State's personal income tax base. Estonia, for example, also justifies its 0% tax rate on reinvested corporate profits by emphasizing that the resulting reinvestment business decisions generate capital gains, which are in turn taxed by the State when shares are transferred, and gains are realized. Further, as demonstrated by Israel, sector-specific tax benefits tied to minimum levels of investment and job creation can be means of controlling their cost or even ensure their own budget neutrality.

In any event, as a necessary but not sufficient measure, the Armenian government authorities should signal its confidence in its legal framework and institutions to foreign investors by enabling access to direct investor-State arbitration under its foreign investment law regime. These were among the steps taken by Albania in late 1993 in the face of wide distrust of its legal system as it began to tackle judicial reform.

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<sup>4</sup> ICSID arbitration was chosen as an example here because the ICSID Convention places greater limitations on what is considered a qualified "investment". On the other hand, if the Republic of Armenia would be open to arbitrating expropriation claims with foreign-resident Armenian nationals who are otherwise protected by the 1994 FIL, the authors recommend offering UNCITRAL Rules or SCC Rules arbitration instead, because the ICSID Convention prohibits a national of one State to arbitrate an investment dispute against that State.

## **Corporate Law Issue: Improving the Corporate Legal Framework**

Armenian corporate law does not sufficiently protect minority shareholders (especially in joint-stock companies), including because of a lack of clear rules on the fiduciary duties owed by company management toward minority shareholders, especially when their interests collide with those of the majority shareholders.

This section of this report will address the following sub-issues:

1. Stock Options
2. Flexibility
3. Currency Issues.

### **1.0 SUB-ISSUE NO. 1 - STOCK OPTIONS, RSUs AND OTHER SIMILAR INSTRUMENTS**

#### **1.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE**

Although the Law on Joint-Stock Companies provides the opportunity for employees to receive shares of a joint-stock company, the company is still prohibited from remunerating the employee via company stock under the labor legislation of the Republic of Armenia. Such regulation limits the use of stock awards, RSUs and similar instruments by domestic joint-stock companies and limits the employers of the possibility to design incentive mechanisms for its employees.

Moreover, if a company tries to issue RSUs, stock awards, options and other similar instruments, doing so in a form other than employment remuneration leads to potential tax issues (both in terms of PIT and CIT).

#### **1.2 EXISTING RULES & LAWS AND BASIS OF ISSUE**

According to Article 192 of the Labor Code of the Republic of Armenia, the payment of the salary by securities and commitments is prohibited, except for the cases established by the law. Hence, employers cannot design compensation mechanisms for their employees involving the direct grant of stock options, RSUs or stock awards.

In contrast to this, Article 41(1) of the Law on Joint-Stock Companies provides a possibility to issue staff shares, which can be ordinary (common) or preferred shares. Such shares cannot constitute more than 25% of the charter capital of the company. It is worth highlighting that such shares can be issued to employees only from shares repurchased by the company from its shareholders.

Furthermore, the company may restrict the transfer of shares issued to employees for a period established under the charter, but not for longer than three years. These shares are subject to be repurchase by the company by exercising its first refusal right, unless the employee retires.

#### **1.3 PROPOSED SOLUTION**

The proposed amendments aim to allow application and enforcement of stock awards, RSUs and other similar instruments in the Republic of Armenia, as well as the payment of compensation through securities, which will bring more flexibility to stock (equity) structuring of join-stock companies, as well as will ensure engagement of more professional and motivated staff.

## 1.4 STATUTES/REGULATIONS TO BE AMENDED &amp; PROPOSED AMENDMENTS

Statute/Regulation Citation	Current Text	Proposed Amended Text	Description of Amendment
Law on Joint-Stock Companies	<p>Article 41. Shares Issued to Staff</p> <p>“1. In the manner stipulated by the Charter, be ordinary (common) or preferred shares may be provided to the Company staff. Staff shares are distributed amongst the Company employees from the shares re-purchased by the Company from its and at the cost of a special fund destined for staff shareholding. The number of shares issued to staff shall not exceed 25 percent of Company equity.”</p>	<p>Reword point 1 as follows:</p> <p>“1. In the manner stipulated by the Charter, be ordinary (common) or preferred shares may be provided to the Company staff. Staff shares are distributed amongst the Company employees at the cost of a special fund destined for staff shareholding. The number of shares issued to staff shall not exceed 25 percent of Company equity.”</p> <p>Add a new point 1.1 as follows:</p> <p>“1.1 The Company may, as per procedure and in the manner provided under the Charter, issue restricted stock units to its employees as a compensation for the performed work as per key performance indicators of the Company or for the long-term employment or any other reason provided under the Charter. The Restricted Stock Units as provided under this Article shall be issued to employees through a vesting plan approved by the decision of General Assembly.</p> <p>The decision to exercise right of first refusal of the Company to repurchase the Restricted Stock Units, as well as the decision on issuance, payment and succession thereof shall be adopted by the General Assembly, unless</p>	<p>Amendment is aimed at deleting the restriction of issuance of staff stock only from the amount of re-purchased stock of the Company from its Shareholders.</p> <p>Amendment is proposed in order to introduce the mechanism of compensation of staff through issuance of stock, more specifically by using the restricted stock units and vesting plans.</p>

		such power is vested with the Board under the Charter.”	
Labor Code	Article 192. Terms and procedure of salary payment “2. The payment of salary by securities and commitments is prohibited, except for the cases provided under the law.”	Remove the word “securities” from 1st sentence of point 2 of Article 192.	Amendment is aimed at allowing a payment of compensation to employees by securities, more specifically targeting the compensation through issued stock.

## 2.0 SUB-ISSUE NO. 2 – FLEXIBILITY

### 2.1 SUMMARY OF SUB-ISSUE & RELATIONSHIP TO PROGRAM ISSUE

Currently, the corporate legislation even for joint-stock companies greatly restricts the flexibility of allocating management and supervision powers between the shareholders, the board of directors and the CEO (most of their powers are exclusively reserved to the given organ and cannot be delegated), prohibits creation of differentiated common shares (as per voting powers and entitlement to dividends), and prohibits conversion of debt into equity (with the limited exception of convertible bonds).

Moreover, the law restricts the ability of a joint-stock company to award shares to the employees, and to buy back shares (limiting the volume of the buy-back if shares are to be resold and not immediately redeemed), and first refusal rights are also too strictly regulated, effectively preventing waivers and limitations even based on shareholders agreements.

The essence of the proposals is to amend the law on joint-stock companies so as to:

1. Allow introducing, under the company charter, differentiated classes of common shares with differentiated voting rights and entitlements to dividends;
2. Allow maximum flexibility in delegating powers from the general meeting of shareholders to the board of directors or the CEO, with the exception of powers to reorganize or liquidate the company, appoint and prematurely terminate the powers of members of the Board, decide on consolidation and fragmentation of shares, and powers to make changes in the equity, including decision to decrease the charter capital or charter of the company which can negatively affect the rights of shareholders or create new obligations for them.
3. Allow maximum flexibility in delegating the powers of the board of directors to the CEO;
4. Allow maximum flexibility in reserving powers ordinarily reserved to the CEO to the board of directors or the shareholders;
5. Removing the prohibition against converting debt into equity.

Moreover, it is desirable to consider the following amendments that will:

1. Remove the restrictions on the ability of a joint-stock company to award shares to the employees,
2. Remove the restrictions on a company's ability to buy back shares (limits on the volume of the buy-back if shares are to be resold and not immediately redeemed),
3. Specifically allow for waivers and/or limitations on the right of first refusal to be established under a shareholder agreement.

## 2.2. MODEL JURISDICTIONS & FRAMEWORKS

Model Jurisdictions & Frameworks Name	Type (Laws, Regulations, Customs)	Description
<p>Germany</p> <p>German Stock Corporation Act of 1965</p> <p>Statute (in English):</p> <p><a href="https://www.nortonrosfulbright.com/-/media/files/nrf/nrfweb/imported/german-stock-corporation-act.pdf?la=en&amp;revision=5ed8a77d-c173-4acc-befd-297d6314891f">https://www.nortonrosfulbright.com/-/media/files/nrf/nrfweb/imported/german-stock-corporation-act.pdf?la=en&amp;revision=5ed8a77d-c173-4acc-befd-297d6314891f</a></p>	Laws	<p>A corporation may issue different classes of common and preferred shares entitled to different rights to distributions of profit, but multiple voting rights are not allowed. (§§ 11-12) Voting rights shall be exercised in proportion to the par value of shares. (§ 134(1))</p> <p>Share capital may fall below the 50,000 Euro minimum par value if it is resolved that capital will be increased back up to 50,000 or more at the time of the reduction. (§ 228(1))</p> <p>The German corporation's founders shall establish the corporation's articles of association. (§§ 2, 23) The articles may derogate from the provisions of the company law statute where it so permits and may contain additional provisions except where "conclusively dealt with" in the company law. (§ 23(5)) The founders appoint the supervisory board of the company. (§ 30(1)) The supervisory board shall appoint the first management board. (§ 30(4)) The management board may issue by-laws unless the articles of association confer such authority to the supervisory board or the supervisory board does so in the management board's place. (§ 77(2)) The management board has full authority to represent the company. (§ 82(1)) German corporate law prescribes a statutory duty of care and responsibility on members of the management board. (§ 93)</p>
<p>France</p> <p>French Commercial Code</p> <p>Statute (in English):</p> <p><a href="file:///C:/Users/Igolendukhin/Downloads/code_commerce_part_L_EN_20130701.pdf">file:///C:/Users/Igolendukhin/Downloads/code_commerce_part_L_EN_20130701.pdf</a></p>	Laws	<p>Analyze what's the best analog -- a Sarl or joint-stock company or SA?] (see Arts. L. 222-225)</p>

<p>Israel</p> <p>Companies Law 5759-1999</p> <p>Statute (in English): Companies Law 5759-1999</p> <p>Summary of LLC provisions (in English): <a href="http://www.israelbar.org.il/uploadFiles/guide_and_overview_of_israeli_companies_law.pdf">http://www.israelbar.org.il/uploadFiles/guide_and_overview_of_israeli_companies_law.pdf</a></p>	<p>Laws</p>	<p>Every Israeli company must have articles of association, which are treated as a contract between the company and its shareholders. (§§ 15, 17)</p> <p>The articles of association can provide for different classes of shares, with differing voting rights. (§§ 33, 82(a)) Only a general meeting of shareholders can alter the articles. (§ 19(3)(a))</p> <p>The general meeting appoints the directors to the board of directors, unless the articles of association provide otherwise. (§ 59) The board of directors holds residual power to exercise any power of the company not granted to any other organ by law or by the articles of association. (§ 49)</p> <p>The Israeli Companies Law codifies directors’ and officers’ duties in Chapter 3.</p>
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**2.3 STATUTES/REGULATIONS TO BE AMENDED & PROPOSED AMENDMENTS**

The table provides the existing wording of applicable articles from the law on “joint-stock companies” and the Civil Code that are targeted in this report. The aim of each proposed amendment, as well as its description is provided in the fourth column of the table. Some of the proposed amendments are aimed at ensuring harmonization of the text of the law with the principle amendments.

Statute/Regulation Citation	Current Text	Proposed Amended Text	Description of Amendment
<p>Republic of Armenia law on Closed Joint-Stock Companies</p>	<p><b>Article 5. Company Branches and Representative Offices</b></p> <p>“2. Decisions on founding Company branches and representative offices shall be adopted by the Company’s Board of Directors (hereinafter, the Board).”</p> <p style="text-align: center;">***</p>	<p>Reword the 1st sentence of point 2 as follows:</p> <p>“2. Decision on founding Company branches and representative offices shall be adopted by the Company’s Board of Directors (hereinafter, the Board), unless such power is vested with the General Assembly of Shareholders or other management organ of the Company under the Charter of the Company.”</p> <p style="text-align: center;">***</p>	<p>Currently if the BoD is formed in the Company, the shareholders have no power in establishing separate sub-divisions. The amendment is aimed at providing more flexibility to the shareholders and balancing BoD functions, if necessary.</p> <p style="text-align: center;">***</p>

	<p><b>Article 6. Company Institutions</b></p> <p>“2. Decisions on founding Company institutions shall be adopted by the Company’s Board.”</p> <p style="text-align: center;">***</p> <p><b>Article 14. Company Charter</b></p> <p>“2. The Charter contains: ... d) Types of shares allocated by the Company (ordinary, preferred), the volume, nominal price, and classes of preferred shares;</p> <p style="text-align: center;">***</p> <p><b>Article 15. Charter Amendments and Modifications. Approval of Edited Charter</b></p> <p>“1. Charter amendments and modifications, as well as the approval of a new edition of the Charter shall be carried out by a decision of the General Assembly, ..., and if charter capital is being increased, then .... or by a</p>	<p>Reword 1st sentence of point 2 as follows: “2. Decisions on founding Company institutions shall be adopted by the Company’s Board, unless such power is vested with the General Assembly of Shareholders or other management organ of the Company under the Charter of the Company.</p> <p style="text-align: center;">***</p> <p>Reword sub-paragraph “d” of point 2 as follows: “2. The Charter contains: ... d) Types of shares allocated by the Company (ordinary, preferred), the volume, nominal price, and classes of preferred and/or ordinary (common) shares;</p> <p style="text-align: center;">***</p> <p style="text-align: center;">-</p>	<p>Currently if the BoD is formed in the Company, the shareholders have no power in establishing institutions. The amendment is aimed at providing more flexibility to the shareholders and balancing BoD functions, if necessary.</p> <p style="text-align: center;">***</p> <p>Amendment is aimed at providing more flexibility to the shareholders, in order to define different classes for ordinary (common) shares as well. This would allow to differentiate several classes of ordinary (common) shares and define different terms of dividend payments, as well as voting rights (in conjunction with other amendments).</p> <p style="text-align: center;">***</p> <p>As Article 15 already provides a power for BoD to approve the charter amendment if the charter capital is being increased, this should be included in the Article 67 as well (delegated powers of GM to BoD). Currently, the BoD has a power to increase the charter capital, if authorized by GM, and has a power to approve the Charter in such case as per article</p>
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	<p>unanimous decision of the Board.”</p> <p style="text-align: center;">***</p> <p><b>Article 31. Company Securities</b></p> <p>“2. .... All ordinary (common) shares issued by a Company shall have an identical nominal value.</p> <p>All the preferred shares of a certain type shall have an identical nominal value.”</p> <p style="text-align: center;">***</p> <p><b>Article 32. Company Shares</b></p> <p>“1. A company may issue ordinary (common), as well as one or several types of preferred shares...”</p> <p style="text-align: center;">***</p> <p><b>Article 37. Rights and Responsibilities of Shareholders holding Ordinary (Common) Shares</b></p> <p>“1. All the shareholders of ordinary (common) shares of a Company shall enjoy identical rights.”</p>	<p style="text-align: center;">***</p> <p>Reword 2nd and 3rd paragraphs of point 2 as follows and combine in one paragraph:</p> <p>“2. ... All ordinary (common) or preferred shares of a certain type (class) shall have an identical nominal value.”</p> <p style="text-align: center;">***</p> <p>Reword 1st sentence of 1st point as follows:</p> <p>“1. A company may issue one or several types of ordinary (common) or preferred shares...”</p> <p style="text-align: center;">***</p> <p>Reword 1st sentence of point 1 as follows:</p> <p>“1. All the shareholders of a certain type (class) of ordinary (common) shares of a Company shall enjoy identical rights.”</p>	<p>15, however Article 67 (on exclusive powers of GM) does not provide for such delegations, hence making the execution of the powers provided under this article impossible for the BoD.</p> <p style="text-align: center;">***</p> <p>Amendment is aimed at envisaging a possibility for a joint-stock company to issue also common shares that are differentiated as per types (classes), which will provide more flexibility and would allow to design specific types of shares with variety of voting rights.</p> <p style="text-align: center;">***</p> <p>Amendment is aimed at providing more flexibility to a joint-stock company and its shareholders to design specific types (classes) of common shares. This would allow to provide a variety of voting rights for shareholders of common shares.</p> <p style="text-align: center;">***</p> <p>Amendment is provided to ensure harmonization of the text as a result of general proposal to envisage different types (classes) of common shares.</p>
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	<p>“2. The holder of ordinary (common) shares may not be granted an additional voting right that is inconsistent with the nominal value and quantity of ordinary (common) shares owned by him/her.”</p> <p style="text-align: center;">***</p> <p><b>Article 38. Rights and Responsibilities of Shareholders of Preferred Shares</b></p> <p>“1. The shareholders of preferred shares do not have a voting right in the General Assembly, unless otherwise provided under this Law and the Charter for certain classes of preferred shares.”</p> <p style="text-align: center;">***</p> <p><b>Article 42.</b></p> <p>...</p> <p>5. Exemption of a Company shareholder from the duty to pay for Company shares, including by offsetting of claims on</p>	<p>Reword 1st sentence of point 2 as follows:</p> <p>“2. The holder of ordinary (common) shares may not be granted an additional voting right that is inconsistent with the nominal value and quantity of ordinary (common) shares owned by him/her, unless otherwise provided under the Charter of the Company.”</p> <p style="text-align: center;">***</p> <p>Reword 1st sentence of point 1 as follows:</p> <p>“1. The shareholders of preferred shares do not have a voting right in the General Assembly, unless otherwise provided under this Law or the Charter for certain classes of preferred shares.”</p> <p style="text-align: center;">***</p> <p>Reword part 5 of Article 42 as follows:</p> <p>“5. Exemption of a Company shareholder from the duty to pay for Company shares shall be prohibited. At that, the offsetting of debt owed</p>	<p>Amendment is aimed at allowing a joint-stock company more flexibility in distributing the voting rights between the shareholders of common shares.</p> <p style="text-align: center;">***</p> <p>The amendment is aimed at providing more flexibility to a joint-stock company regarding the rights of shareholders of preferred shares. More specifically, current draft of the Law allows shareholders of preferred shares to vote only if such shares are convertible to ordinary shares of the Company. Upon the proposed amendment the Charter of the Company may provide other instances of granting voting right to shareholders of preferred shares as well.</p> <p style="text-align: center;">***</p> <p>Amendment aimed at removing the prohibition against converting debt into equity.</p>
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	<p>the Company, shall be prohibited.</p> <p style="text-align: center;">***</p> <p><b>Article 67. Powers of a General Assembly</b></p> <p>“1. The General Assembly has the right to: ...”</p> <p style="text-align: center;">***</p> <p>“...Authorities of the General Assembly specified in subparagraphs (v)-(y) above shall be exercised, if they are not delegated to the Board by the Charter or the General Assembly decision.”</p> <p>“2. Adoption of decisions referred to in paragraph 1 of this Article shall be the exclusive right of the General Assembly, which may not be transferred to the board of directors or the executive board, except for the matters specified in the paragraph to follow. Based on a General Assembly decision, the executive board of the Company may be authorized to adopt decisions on</p>	<p>by the company to the shareholder against amounts payable for the shares shall not be deemed as an exemption of a Company shareholder from the duty to pay for Company shares” .</p> <p style="text-align: center;">***</p> <p>Reword the first paragraph of point 1 as follows: “1. Unless otherwise provided for in the Charter of the Company, the General Assembly has the right to: ...”</p> <p>Add a new paragraph “zii” to the point 1 as follows: “zii) adopt decision on founding separate subdivisions and institutions of the Company, if authorized so under the Charter.”</p> <p>Reword the last paragraph of point 1 as follows: ***</p> <p>“... Authorities of the General Assembly may be delegated to the Board by the Charter or the General Assembly decision, with the exception of powers to reorganize or liquidate the Company, appoint and prematurely terminate the powers of members of the Board,</p>	<p style="text-align: center;">***</p> <p>Amendment aimed at allowing joint-stock companies to flexibly distribute powers between corporate governance bodies. The decision which might negatively affect the rights of shareholders, including the minority shareholders (both common and preferred stockholders) will remain within the exclusive powers of General Assembly.</p>
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	<p>matters specified under subparagraphs (w) and (y) above, and the board of directors may be authorized similarly for subparagraphs (g), (i), (t), and (v-y).</p> <p style="text-align: center;">***</p> <p><b>Article 68. General Assembly Decisions</b></p> <p>“... a) owners of ordinary (common) shares of the company; ...”</p> <p style="text-align: center;">***</p> <p><b>Article 70. Right to Participate in the General Assembly</b></p> <p>“...a) owners of ordinary (common) shares of the company, with a vote that is equivalent to the quantity and nominal value of the shares they own;</p> <p>b) owners of preferred shares of the Company, in cases stipulated by this Law and the Charter, with</p>	<p>decide on consolidation and fragmentation of shares, and powers to make changes in the equity, including decision to decrease the charter capital or charter of the company which can negatively affect the rights of shareholders or create new obligations for them.”</p> <p style="text-align: center;">***</p> <p>Add a new paragraph as follows:</p> <p>“Issues reserved by law to the competence of the General Assembly of shareholders may be transferred to the competence of the executive bodies of the company under the charter of the company.”</p> <p>Remove 2nd point of Article 67.</p> <p style="text-align: center;">***</p> <p>Reword paragraph “a” of point 1 as follows:</p> <p>“... a) owners of the ordinary (common) shares of the company in the amount of voting rights provided under this Law, Charter of the Company or the Shareholding agreement; ...”</p>	<p>Amendment is proposed to ensure the possibility of structuring differentiated voting system among the shareholders of common shares, which will be a derogation from an existing principle of “one voting share-one vote”.</p> <p style="text-align: center;">***</p> <p>Amendment is proposed to ensure the possibility</p>
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	<p>a vote that is equivalent to the quantity and nominal value of the shares they own;</p> <p style="text-align: center;">***</p> <p><b>Article 78. Voting in the General Assembly</b></p> <p>“During the General Assembly voting is carried out on the basis of a “one voting share-one vote” principle, except for the election of Board members and other cases stipulated by this Law, when a cumulative vote principle shall be applied.”</p> <p style="text-align: center;">***</p>	<p>Reword paragraphs a) and b) of point 1 as follows:</p> <p>“... a) owners of ordinary (common) shares of the company, with a vote that is equivalent to the number of votes prescribed to such owner under this Law, unless otherwise is provided under the Charter of Company;</p> <p>b) owners of preferred shares of the Company, in cases stipulated by this Law or the Charter, with a vote that is equivalent to the number of votes prescribed under this Law, unless otherwise is provided under the Charter of Company;”</p> <p style="text-align: center;">***</p> <p>Reword Article 78 as follows:</p> <p>“Article 78. Voting in General Assembly</p> <p>“During the General Assembly voting is carried out on the basis of a “one voting share-one vote” principle, except for when otherwise provided for by this Law, the Charter of the Company, and except for the election of Board members and other cases stipulated by this Law, when a cumulative vote principle shall be applied.”</p> <p style="text-align: center;">***</p>	<p>of structuring differentiated voting system among the shareholders of common shares, which will be a derogation from an existing principle of “one voting share-one vote”.</p> <p>Amendment is aimed at ensuring a flexibility in voting structure and possibility to derogate from “one voting share-one vote” principle that is currently applicable. Furthermore, the newly adopted Article 38.1 on Shareholding Agreement allows the shareholders (both the owners of common and preferred shares), to agree on voting structure and procedure. Such amendment is currently inapplicable for owners of common shares because of absolute “one voting share-one vote” principle. The fact that the legislator did not limit the capacity of owners of common shares to conclude Shareholding agreement manifests its intention to grant them with such possibility. Hence, a conjunctive and</p>
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	<p>Article 84. Powers of the Board</p> <p>“1. The Board shall have the exclusive right to: ...”</p> <p>“2. Matters pertaining to the exclusive authority of the Board may not be transferred to and resolved by the executive body.”</p> <p>“3. In the event foreseen by the second part of paragraph 1 of Article 83 hereof [when no board if formed], the matters that belong to the exclusive authority of the Board shall be subject to the authority of the General Assembly, except for matters specified in subparagraphs “f”, “i”, “m”, and “v-x”, which may be transferred to and resolved by the Company’s executive body under the Charter or a General Assembly decision.”</p> <p style="text-align: center;">***</p> <p><b>Article 88. Company Executive Body. Company Chief Executive Officer</b></p> <p>“... 2. The executive body of the Company is authorized to decide on all the Company management issues, except for cases that, under this Law and the</p>	<p>Reword 1st paragraph of part 1 of Article 84 as follows:</p> <p>“1. Unless otherwise provided for by the Charter, the Board shall have the right to: ...”</p> <p>Remove part 2 of Article 84.</p> <p>Reword part 3 of Article 84 as follows:</p> <p>“3. In the event foreseen by the second part of paragraph 1 of Article 83 hereof, the matters that belong to the exclusive authority of the Board shall be subject to the authority of the General Assembly, unless otherwise provided by the Charter or a General Assembly decision and considering the limitations provided under the paragraph 2 of point 1 of Article 67 of this Law.”</p> <p style="text-align: center;">***</p> <p>Reword 1st sentence of point 2 as follows:</p> <p>“... 2. The executive body of the Company is authorized to decide on all the Company management issues, except where resolution of certain issues is vested with the General</p>	<p>more harmonized approach is necessary.</p> <p>Amendment is aimed at allowing more flexibility in delegating powers between the governing bodies (CEO, BoD) of the joint-stock company.</p> <p style="text-align: center;">***</p> <p>Amendment is provided to ensure harmonization of text as to the proposed amendments and removal of word “exclusive” as to the powers of GM or BoD.</p>
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	Charter, may be resolved exclusively by the General Assembly and the Board.”	Assembly or the Board under the Charter of the Company.”	
Civil Code of Republic of Armenia, article 115-(1)	<p><b>Article 115. Management of a joint-stock company</b></p> <p>1. The highest body of management of a joint-stock company shall be the general Assembly of shareholders.</p> <p>The following shall be in the exclusive competence of the general Assembly of shareholders:</p> <p>(1) amending the charter of the company and the size of the statutory capital thereof;</p> <p>(2) election of members of the board of directors (observer board) and the audit commission (auditor) of the company and early termination of the powers thereof;</p> <p>(3) formation of the executive bodies of the company and early termination of the powers thereof, unless the settlement of these issues is reserved by the charter of the company to the competence of the board of directors (observer board);</p> <p>(4) approval of the annual reports, accounting balance sheets, accounts of profits and losses of the company and distribution of its profit and losses;</p> <p>(5) taking a decision on the reorganization or</p>	<p>Remove the word “exclusive” from the second paragraph of point 1.</p> <p>Amend the last paragraph as follows:</p> <p>Issues reserved by law to the competence of the general assembly of shareholders may be transferred to the competence of the executive bodies of the company under the charter of the company, with the exception of powers to reorganize or liquidate the Company, appoint and prematurely terminate the powers of members of the Board, decide on consolidation and fragmentation of shares, and powers to make changes in the equity, including decision to decrease the charter capital or charter of the company which can negatively affect the rights of shareholders or create new obligations for them.”</p>	Amendment aimed at allowing joint-stock companies to flexibly distribute powers between corporate governance bodies.

	<p>liquidation of the company.</p> <p>Settlement of other issues may also be reserved to the exclusive competence of the general assembly of shareholders by the Law of the Republic of Armenia “On joint-stock companies”.</p> <p>Issues reserved by law to the exclusive competence of the general assembly of shareholders may not be transferred thereby to the competence of the executive bodies of the company.</p>		
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### 3.0 SUB-ISSUE No. 3 - CURRENCY ISSUES

#### 3.1 MODEL JURISDICTIONS & FRAMEWORKS

Model Jurisdictions & Frameworks Name	Type	Description
<p>Germany</p> <p>German Stock Corporation Act of 1965</p> <p>Statute (in English):  <a href="https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/imported/german-stock-corporation-act.pdf?la=en&amp;revision=5ed8a77d-c173-4acc-befd-297d6314891f">https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/imported/german-stock-corporation-act.pdf?la=en&amp;revision=5ed8a77d-c173-4acc-befd-297d6314891f</a></p>	Laws	Share capital must be denominated in euros, and minimum par value of share capital must be 50,000 euros, but non-par shares are also permitted. (§§ 6-8)
<p>France</p> <p>French Commercial Code</p> <p>Statute (in English):  <a href="file:///C:/Users/Igolendukhin/Downloads/code_commerce_part_L_EN_20130701.pdf">file:///C:/Users/Igolendukhin/Downloads/code_commerce_part_L_EN_20130701.pdf</a></p>	Laws	Analyze what’s the best analog -- a Sarl or joint-stock company or SA?] (see Arts. L. 222-225)



<p>Israel Companies Law 5759-1999 Statute (in English): Companies Law 5759-1999 Summary of LLC provisions (in English): <a href="http://www.israelbar.org.il/uploadFiles/guide_and_overview_of_israeli_companies_law.pdf">http://www.israelbar.org.il/uploadFiles/guide_and_overview_of_israeli_companies_law.pdf</a></p>	<p>Laws</p>	<p>For corporations with multiple classes of shares, dividends shall be distributed relative to the nominal value of each share, unless the articles of association provide otherwise. (§ 306(b)) Dividends can be paid as any type of asset, whether cash or other manner (§ 1)</p> <p>Israeli companies listed on non-Israeli stock exchanges may be exempted from the requirements of the Israeli Companies Law, subject to government approval. (§ 364)</p>
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**KEY STAKEHOLDERS AND CONTRIBUTORS**

The IP/IT Committee has identified individuals, groups or constituencies who were consulted or who contributed to developing the issues and sub-issues summarized in this Report as well as the proposed solutions. The combined efforts of law firms, the Armenian government, and technology, business, and other stakeholders guided the development of these recommendation.

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\*Authorship of this Report. Deliberated in identifying sub-issues and recommending solutions.

The implementation phase of these recommendations requires the cooperation of all stakeholders who operate in the IP and corporate law arenas, including practitioners, academics, business and technology leaders, and legislators. Also needed is the engagement of patent practitioners, members of the bar, and representatives of IP associations both in Armenia and internationally.

#### DISCLAIMER

**All contributions presented herein are the personal opinions and recommendations of the authors and in no case do they represent the opinions or positions of their respective organizations and employers.**