

# CORPORATE GOVERNANCE AND SECURITIES MARKET REGULATION

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

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

## 1. Purpose of the LRSM and Definitions

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

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

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

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

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<sup>1</sup> LRSM, Chapter 1, Article 1, Clause 1, Section B.

<sup>2</sup> LRSM, Chapter 1, Article 2, Clause 1, Sections A and B.

<sup>3</sup> LRSM, Chapter 1, Article 4, Clause 1.

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

<sup>5</sup> LRSM, Chapter 3, Article 23, Clause 1.

<sup>6</sup> LRSM, Chapter 3, Article 24, Clause 1.

## 2. Disclosure of Information by the Company

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

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

### 2.1 Prospectus

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

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

### 2.2 Registration Statement

The LRSM specifies that a securities registration statement must include information on:<sup>11</sup>

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

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

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<sup>7</sup> See LRSM, Chapter 2, Articles 5, 8 – 11.

<sup>8</sup> See LRSM, Chapter 4, Articles 31 – 32.

<sup>9</sup> LRSM, Chapter 2, Article 10, Clause 1.

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

<sup>11</sup> LRSM, Chapter 3, Article 20, Clause 2.

<sup>12</sup> See the Law of the Republic of Armenia on Minimum Monthly Wage, Article 3.

<sup>13</sup> LRSM, Chapter 1, Article 4, Clause 1.

<sup>14</sup> LRSM, Chapter 2, Article 10, Clause 4; LRSM, Chapter 2, Article 11, Clause 3.

## 2.3 Periodic Reports

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

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

## 2.4 Publication of Information

The LRSM specifies how a company must disclose information to:

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

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

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

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

## 3. Disclosure of Information by Management and Shareholders

The LRSM sets disclosure requirements for the management and “owners of a large number of securities” of a company.<sup>19</sup> The following persons must file a statement with the Commission.<sup>20</sup>

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

The statement must include:<sup>21</sup>

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

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<sup>15</sup> LRSM, Chapter 4, Article 31, Clauses 1 and 2.

<sup>16</sup> LRSM, Chapter 4, Article 31, Clause 3.

<sup>17</sup> LRSM, Chapter 4, Article 31, Clause 4.

<sup>18</sup> LRSM, Chapter 4, Article 31, Clause 2.

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

<sup>20</sup> LRSM, Chapter 4, Article 36, Clause 1.

<sup>21</sup> LRSM, Chapter 4, Article 36, Clause 1.

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

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

## **4. Duties and Liabilities of the Management of the Company**

### **4.1 Duties of Managers**

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

### **4.2 Administrative Liability**

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

### **4.3 Civil Liability**

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

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

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<sup>22</sup> LRSM, Chapter 4, Article 36, Clause 2.

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

<sup>24</sup> LRSM, Chapter 4, Article 40.

<sup>25</sup> LRSM, Chapter 14, Articles 137 and 138.

<sup>26</sup> LRSM, Chapter 14, Article 142, Clause 1.

<sup>27</sup> LRSM, Chapter 14, Article 143, Clause 1.

<sup>28</sup> LRSM, Chapter 14, Article 146, Clause 1.

<sup>29</sup> LRSM, Chapter 14, Article 143, Clause 1.