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CORPORATE GOVERNANCE AND RESOLUTION OF CORPORATE DISPUTES IN THE REPUBLIC OF ARMENIA

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The "governance" category is a subject of research in philosophy, economics, psychology, cybernetics, and other sciences. It was also studied by lawyers, mostly in terms of legal regulation of legal relations (constitutional, administrative, etc.) [2]. Each science and researcher, taking into account the peculiarities of the subject matter of the study and the goals set, define the "manage" category in its own way, and within this study, we have to identify the nature of the "corporate governance" category and the issues related to corporate disputes.

It can definitely be argued that there is no universal definition for corporate governance. For example, under the corporate governance V.V. Dolinskaya understands a system of legal and regulatory relations with which the corporation carries out, represents and protects investors' interests[3]. N.N. Pakhomova considers corporate governance as a form of implementation of corporate property relationships from its functional point of view.[4] S.D. Mogilevsky describes the corporate governance of an economic company as a kind of social management that is constantly and purposefully impacting the behavior of individuals involved in

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[2]See Корпоративное право, под ред. И.С. Шиткина, М., 2007 (Corporate law, I.S. Shitkin eds., Moscow, 2007) P. 281.

[3]See Долинская В.В. Акционерное право: основные положения и тенденции. М., 2006 (Dolinskaya V.V. Shareholder Law. basic trends and tendencies. M., 2006), pp. 420-421.

[4]See Пахамова Н.Н. Основы теории корпоративных отношений. Правовой аспект, Екатеринбург, 2004 (Pakhamova N.N. Fundamentals of the theory of corporate relations. Legal aspect, Yekaterinburg, 2004), pp. 420-421.

corporate activities or employment contracts. [1] According to the definition given by the World Bank, corporate governance is a combination of laws, other legal acts and voluntary private sector voluntary activities that enable enterprises to engage in financial and human capital, to operate effectively and thus to survive, creating a long-term economic value for their shareholders will be combined with the respect towards all interested parties and, in general, the interests of society. [2]

In fact, the definition of corporate governance given by the World Bank is much broader and emphasizes the importance of corporate governance in the development of the global economy.

One of the simplest and most accurate definitions beside the above-mentioned definitions is given in the UK Cadbury Regulations, according to which: "Corporate governance is a system with which companies are managed and led".[3]

Corporate Governance under the universally recognized standards of OECD is an important element of improving economic efficiency and growth, as well as enhancing investors' trust. It is viewed as a complex of existing relationships between management, board, shareholders and other stakeholders. Corporate governance also sets out the mechanisms through which the goals of the company are shaped, are determined by their adoption, as well as the means of management. Good corporate governance should be stimulated so

[1]See Могилевский С.Д. Органы управления хозяйственными обществами. (Правовой аспект), дис.… д-ра юрид. наук, М., 2001 (Mogilevsky S.D. Management bodies of economic societies. (Legal aspect), dis. ... Docotr of legal. Sciences, Moscow, 2001), p. 166.

[2]See Maassen G.F. An International Comparison of Corporate Governance Models, Elst, the Netherlands, 2000, p. 1:

[3] See “Կորպորատիվ կառավարման կանոնագրքին հավանություն տալու մասին” ՀՀ կառավարության 30.12.2010 թվականի թիվ 1769-Ա որոշումը (ՀՀՊՏ 2011/6 (809) 02.02.11) (RA Government Decree No. 1769-A of 30.12.2010 on Approving the Corporate Governance Code)

that the management and the board seek to meet the objectives of the company and its shareholders, as well as to the goal of effective management. [1] In any case, there are essentially different practical approaches to corporate governance in different legal systems. [2]

Proper corporate governance enables companies to increase their competitiveness, increase productivity and growth in business activities, engage in financial growth, and also promote the protection and co-operation of beneficiaries with legally beneficial ownership.

Corporate governance is perceived in the narrow aspect of our study, which does not include the management of the corporation's production process, or the so-called "management". [3]

The definition of the composition of entities involved in corporate governance is crucial in the study of the corporate governance problem.

Among them can be classified as:

- corporation as such,
- Founders (participants) of the corporation
- Governance bodies.

In certain situations, such entities may include those who may have an impact on the state of the corporation and its development outside the corporation (state, securities custody, corporation lenders, etc.).

Such diversity of corporate management involves the existence of different interests, the conflict often leads to corporate conflicts.

The word "conflict" in E.B. Aghayan explanatory dictionary is

[1] See OECD Principles of Corporate Governance, Paris, 2004, pp. 3-4.

[2] For more details see Alen Calder, Corporate Governance: A Practical Guide to the Legal Frameworks and International Codes of Practice, London and Philadelfia, 2008, P. 2.

[3] For details see Beasley M.S. An Empirical Analysis of the Relation Between Corporate Governance and Management Fraud, doctoral dissertation, Michigan State University, 1994, Boch F.A.J. van den and Maljers F.A. Strategic Management and Corporate Governance, a Comperativr Approach, Project Description Ph.D. Program, ERASM, Erasmus Rotterdam School of Management, Rotterdam, 1994.

interpreted as a conflict of interests, aspirations, attitudes, conflict, dispute, disagreement[1]. There are numerous works devoted to the "Conflict" category in the theory. [2] According to A.A. Danielian's more comprehensive definition, corporate conflict is a dispute between corporation members or corporation members and corporation, whose object is corporate legal relationships and other legal relationships with the requirements of the corporation's business or corporation interests. Including the dispute between the corporation or the corporation members on the one hand and other persons (corporation executive bodies, registrar, investors), on the other hand, if it touches or may affect relationships within the corporation that are caused by the conflict purposes and interests. [3]

The composition of entities involved in corporate conflicts is much wider. In particular, U. Y. Pashkova admits that in determining the subject matter of corporate conflicts, it is necessary to assess the presence of a person in the corporation. This will also enable to involve entities who lost of the right to participate in the corporation as a result of actions (inaction) of others and appeal against such actions. It is also necessary to include among the subjects of corporate disputes pending judicial settlement persons who are vested with the authority of the corporation or its members. For example, the company registrar can be included in the list of such subjects. These entities are actually exercising the rights or obligations of the corporation or its members, and their exclusion from the range of

[1]See Աղայան Է.Բ. Արդի հայերենի բացատրական բառարան, Երևան, Ա-Ձ,1976 (Aghayan EB An Explanatory Dictionary of Modern Armenian, Yerevan, A-D, 1976), p. 757.

[2]See Габов А.В. Сделки с заинтересованностью. Практика акционерных обществ, М., 2004 (Gabov A.V. Transactions with interest. Practice of joint-stock companies, M., 2004) pp.16-20.

[3]See Даниельян А. А., Корпорация и корпоративные конфликты: Автореф. дис. … канд. юрид. наук, М., 2006 (A. A. Danielian, Corporation and Corporate Conflicts: Author. Dissertation of Cand. legal Sciences, Moscow 2006) pp. 3, 9.

corporate dispute subjects may lead to a series of conflicts related to removal of securities from the jurisdiction of courts.[1]

The conflict can be both constructive and destructive in the development of the corporation's economic activities.

At the request of the corporation participant, the corporation, which has a commitment to do certain actions, does so not only to ensure that they have compulsory enforcement and compensation for damages, but also under the threat of application of administrative sanctions against the company and its bodies.

An important prerequisite for entering into corporate legal relationships is the availability of strict legislative safeguards for such relationships, as well as providing effective mechanisms for the protection of the rights and interests of the participants, both judicial and non-judicial. The absence or ineffectiveness of such a warranty and protection system would mean that a participant acting as a weaker party in corporate legal relations replaces his property with insufficiently guaranteed rights to the corporation. The corporation participant should be provided with the necessary protection, which is related to the peculiarity of the relations between him and the corporation.[2]

The subjective right of a member of the corporation is the means by which the person is allowed to behave in the sphere of power of a competent person recognized as such by objective law. Therefore,

[1]See Пашкова Е.Ю.Подведомственность арбитражным судам споров, возникающих из корпоративных правоотношений, М., 2006 (Pashkova E.Yu.Judging disputes arising from corporate relations to arbitration courts. Moscow 2006) pp. 9-10.

[2]See Гололобов Д.В. Акционерное общество против акционера: противодействие корпоративному шантажу, М., 2004 (Gololobov D.V. Joint stock company versus shareholder: counteraction to corporate blackmail, M., 2004), pp. 33-35.

when defining subjective rights in corporate legal relationships, it is necessary to emphasize the importance of legal remedies that enable the competent person to exercise his or her rights by requesting appropriate behavior from others. For example, a limited liability company's participant's subjective right to participate in a general meeting of participants can not be implemented without other persons, in particular the relevant actions of the management bodies of the company, and the possibility of imposing other participant to take appropriate action.

Provision of effective remedies to protect the rights and legitimate interests of corporate legal relations participants is an important prerequisite for achieving such public interest, such as attracting private investment in the economy and ensuring the stability of public relations in the civil relations.

The peculiarities of corporate legal relationships are the necessity of applying different forms of self-defense of the corporation and its members from the abuse of their rights by both the judicial, the corporation and the corporation members. In essence, when protection of corporate rights takes place sectoral means and methods of protection and defense of human rights are combined.

Article 16 of the Civil Code of the Republic of Armenia grants participants of civil-legal relations the right of self-defense of their civil rights in all ways not prohibited by law, the methods of their implementation shall be proportionate to the violation and shall not go beyond the limits of the actions necessary to counter the wrongdoing.

Self-defense of rights is one of the effective remedies for preventing and, why not, resolving corporate conflicts. It presupposes the application of lawful, recognized or not prohibited actions by a person seeking legal action without applying to competent state authorities, aimed at the prevention of offenses as well as the

protection of infringed subjective rights, freedoms and legitimate interests. The methods of self-defense are specific actions, a system of actions that are taken to prevent a person from infringing or to restore the situation before the offense. The use of self-defense does not rule out the possibility of defending rights by appealing to the competent authorities in the future.

In corporate legal relationships, one can distinguish the following characteristics of self-defense typical for the protection of civil rights:

- Protection of rights through self-defense can be applied in case of infringement of rights or actual threat of their violation. In corporate legal relations, as a rule, the right to self-defense originates in the case of offenses of, so-called, "continuing" nature. For example, in the event of a single request for a large number of documents from the joint-stock company, the use of self-defense measures and provision of information will not be adequate, even though such a request may be made to have a negative impact on the corporate and financial-economic activities of the joint-stock company. At the same time, if the same information is requested again, in such a situation the company may apply for self-defense and not repeat the same action again. It is worth mentioning that corporate blackmail is exercised by participants in the exercise of the rights reserved by law
- Self-defense of civil rights is implemented unilaterally, and in the field of corporate legal relations, this feature is not always manifested since the counteraction to corporate blackmail, and can be carried out not only by the company, but also by the company's participants or their group.
- The self-defense of civil rights is exercised only through action. It would not be very accurate to apply the mentioned statement to corporate legal relationships, as in this case it may also be realized through inactivity, for example, avoiding submitting the

requested documents.

- It is inherent to the self-defense of civil rights that the possibility of using a particular unit should be prescribed by law or by contract. This is partly reflected in corporate relations. For example, the actions of the greenmail[1] (corporate blackmail) are in line with the legal requirements. If a corporate blackmailer takes any unlawful action, the corporation may, in the manner prescribed by law, refuse its requests of the blackmailer or file a suit against him in the court. However, as the greenmailing is an act that, in some ways, is associated with the abuse of the corporate blackmailer's rights, the counteraction under certain conditions sometimes comes beyond the formal requirements of the law. However, as a rule, counteraction actions go beyond the law, to the extent the actions of a conscientious member of the corporation become corporate blackmail.
- During the self-defense of civil rights, the actions are aimed at the immunity of the rights, disclosure of offenses and the elimination of their consequences. The actions of the corporation or participants of corporations who defend their rights in the corporate legal relationship are more often targeted at ensuring the inviolability of rights, disclosure of offenses, rather than the elimination of their consequences. The actions of the corporation aimed at elimination of consequences, as a rule, are complex and aim at keeping the corporation's financial-economic and corporate activities at a steady level and not affiliated with the actions of the corporate blackmailer.
- For self-defense, it is also characteristic that actions aimed at self-defense may be appealed to the court or other competent authorities. This feature can definitely come up in corporate legal

[1] See more details in Keene A.M. Greenmail, New York, 1986, Governance, Directors and Boards, Edited by M. Ezzamel, Edward Elgar Publishing, 2005, էջ 293, Kester Carl W., Japanese Takeovers: The Global Contest for Control, Washington, 2003, p. 246 and etc.

relationships.[1]

Corporate oversight, as part of corporate governance and a means to influence corporation activities, is based on the integrity of the corporation member's rights conditioned by the opportunity governed by the corporation's activity.

A person possessing the ability to exercise corporate control may transfer the controlling right to another person through a voluntary transaction or otherwise. As a result, the new shareholder who acquired the controlling stake in the company is loading the company's business through numerous claims. This issue is currently very urgent, as hundreds of conflicts arise constantly, in which the parties are trying to gain control over the corporation.

Corporate conflicts, which have received the name "Corporate Wars" in the mass media, lead to the termination of major corporations' activity or to their major losses to their owners. In this regard, the literature has expressed the view that it is necessary for the stockholder to deprive the newly acquired shareholder of the right to dispute the decisions or actions of the management company of the joint-stock company that has been accepted or executed prior to the acquisition of shares. [2] We believe that such an approach is not justified and may result in undue limitation of the shareholder's rights. The existing legislation already provides for the possibility of depriving a person of the opportunity of defending the right in case of abuse of rights.

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[1] We share the viewpoint expressed in literature that self-defense in corporate legal relationships acquires special forms of implementation. The use of alternative dispute resolution tools provides grounds for claiming that self-defense in corporate legal relationships is a form of protection of rights and legitimate interests, not the means, see Залялова Т.О. Права и обязанности акционера по законодательству Российской Федерации, Иркутск, 2007 (Zalyalova T.O. Rights and obligations of a shareholder under the laws of the Russian Federation, Irkutsk, 2007), p. 26.

[2] See Гуреев В. А., Проблемы защиты прав и интересов акционеров в РФ, М., 2007 (Gureev V. A., Problems of protection of the rights and interests of shareholders in the Russian Federation, M., 2007), p. 11.

A party to a corporate conflict can choose one or more of the means listed under Article 14 of the Civil Code above to solve the corporate conflict at the same time. However, the protection of corporate rights and interests will be the most effective measure that will be acceptable to the other party. In such a situation it can be argued that the concept provided by the court in the Republic of Armenia for the corporate conflict resolution is somewhat utopian. The investigation of cases that have been going on for years creates a situation when the corporate conflict, whether small or big, remains unsettled for years, and loses its relevance after it has been resolved years after. From this point of view, we believe that the introduction of alternative ways of settlement of corporate conflicts is urgent at present, which will allow to ensure real protection of corporate rights and interests.

Principles of corporate governance are key for corporate governance. By referring to corporate governance principles, we understand the baseline provisions that describe the corporate governance process. The principles that express the organizational bases of the management system at all levels of the management system, the nature of the relationships between the respective management entities and the management object.[1]

As in other countries, the principles of corporate governance in the Republic of Armenia are not directly envisaged by law, however they are expressed in non-binding documents. For example, in the Republic of Armenia it is the "Corporate Governance Code" approved by the Government of the Republic of Armenia. [2] And in

[1] See Козлов Ю.М., Фролов Е.С. Научная организация управления и право, М., 1986 (Kozlov Yu.M., Frolov E.S. Scientific organization of management and law, Moscow 1986), p. 82.

[2] The Code sets out specific provisions on certain issues that are not regulated or arbitrarily settled in the Republic of Armenia, which are derived from the best practices of corporate governance.

the professional literature these principles are subject to different classifications. [1] However, it is acceptable for us that Corporate Governance Principles developed by the OECD, which have been published since 1999 and are considered as an international guideline for corporate governance, are the basis of the principles of corporate governance at the national level. [2] Taking into consideration that developments that took place after 1999, the governments of the OECD member states approved in April 2004 the following six new principles:

- ensuring effective corporate governance foundations;
- Shareholders' rights and main functions of owners;
- Equal attitudes towards shareholders;
- Interesting personality in corporate governance,
- Information disclosure and transparency;
- Council's (Board's) powers.[3]

The document also contains explanatory summaries on each principle with a note of measures that are considered useful for the application of new principles.

OECD principles are built on four core values.

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[1] For more detilas see Maassen G.F. An International Comparison of Corporate Governance Models, Elst, the Netherlands, 2000, p. 79, Могилевский С.Д. Правовые основы деятельности акционерных обществ, М., 2004 (Mogilevsky S.D. The legal framework of joint stock companies, M., 2004), pp. 167-180.

[2] In addition to the OECD principles, the following documents and guidelines may be considered as a source of corporate governance practices. Recommendation of the European Union to Non-executive or Supervisory Board Members and Board Committees of listed companies adopted in February 2005 by the Basel Committee on Banking Supervision, "Guidelines for Improving Corporate Governance in Banking Organizations" (2006), "OECD Guidelines on Corporative Management of Companies listed in Emerging Markets" 2006), OECD Guidelines on Corporate Governance in Government Companies (2005), Corporate Governance of EBRD-OECD European Banks nm Collection of Proposals (2008), see: http://www.ebrd.com/pages/sector/legal/corporate/standards.shtml, Collection of European Directives (Acquis Communautaire) see http://ec.europa.eu/internal_market/company/index_en.htm

[3] See OECD Principles of Corporate Governance, Paris, 2004, p. 7.

- Justice. corporate governance system should protect shareholders' rights and ensure fair treatment for all shareholders, including minority and foreign shareholders. All shareholders should be able to effectively recover their violated rights.
- Responsibility: the corporate governance system should recognize the rights and interests of beneficiaries as established by law and encourage companies and stakeholders to address the growth of welfare, job creation and sustainability of financial institutions.
- Transparency. the corporate governance system should ensure that all significant and timely disclosure is relevant to the company, including its financial status, business results, structure and governance.
- Accountability. The corporate governance system should be a strategic guide to the company's management by the Board, effective supervision of the executive body, as well as the Board's accountability before the company and its shareholders.

Considering the fact that corporate legal entities are legal entities, the notion of "body of a legal person of a corporate type" is inextricably linked to the notion of "body of legal person"[1]. As we have already mentioned, a legal person is an artificial subject of law, in order to achieve certain goals[2] and by virtue of its abstention, it cannot fulfill its legal capacity or functionality. [3] It will be impossible to achieve these goals if the company's management bodies are not created, which will be able to maximize the efficiency of the legal

[1] We consider it necessary to point out that the notion "body of a legal person" is not applicable to English law. See more about it Дубовицкая Е.А. Европейское корпоративное право, М., 2004 (Dubovitskaya E.A. European corporate law, Moscow 2004), p. 94.

[2] See Шершеневич Г.Ф. Учебник русского гражданского права, М., 1907, (Shershenevich G.F. The textbook of Russian civil law, Moscow 1907) pp. 89-91.

[3] See Могилевский С.Д. Правовые основы деятельности акционерных обществ, М., 2004, (Mogilevsky S.D. The legal framework of joint stock companies, M., 2004) p. 145.

person. Under such circumstances it can be argued that one of the most important principles of corporate governance is the management of the corporation through its bodies and not through its participants.

Based on this logic the Article 57(1) of the Civil Code states that a legal entity acquires civil rights and assumes civil responsibilities through its bodies acting in accordance with the law, other legal acts and its statutes.

In the professional literature the body of the legal person is always considered in the prism of the legal person and its competence. [1]

The bodies of the legal entity that form and express the will of the subject of the law, as a result of which his actions are viewed as acts of a legal person.

It is worth mentioning that the body of a legal entity does not act as a autonomous subject of civil legal relations, but as a legal entity is the main subject of all types of legal relationships, [2], while its managerial bodies, as already mentioned, may be only subject of corporate governance.

In such a situation, it is necessary to come to the conclusion that if a body of the legal entity is not an independent subject of law, rather it is a constituent of a legal entity or a separate structural unit, them it cannot be considered a representative. This problem has both important theoretical and practical significance.

There is no common opinion in the literature on the issue of classifying the bodies of legal entities as its representatives. Some authors view the sole executive body of a legal entity as part of the

[1]See Мейер Д.И. Русское гражданское право, ч 2, М., 1997 (Meyer D.I. Russian civil law, Part 2, M., 1997), p. 126; Трубецкой Е.Н. Энциклотедия права, СПб., 1998 (Trubetskoy E.N. Encyclotedia of Law, St. Petersburg., 1998), p 145.

[2]See Черепахин Б.Б. Волеобразование и волеизъявление юридеческого лица, Труды по гражданскому праву, М., 2001 (Cherepakhin B.B. Volition and the will of a legal person, Works on Civil Law, M., 2001) p. 36.

company, and another group of authors assumes that, for example, the sole executive body is its representative

Back in the 1950's and 1960's, there was an active debate in legal literature on the possibility of recognizing the body of a legal entity as its representative. [1] Thus, some authors find that the for a body of a legal entity acting on behalf of the legal entity essentially differs from the representative's activities.[2] According to another point of view, the body of a legal entity is it's legal representative. The so-called "statutory" representation of a legal entity "is a variety of a legal representation: when the legal entity based on the statute or a senior official occupying a certain position has the power to act on behalf of a legal person or a citizen."[3]

B.B. Krereakin believes that "in any case we cannot say that the body is representing on behalf of the legal person. Representatives of the legal entity are persons (citizens or legal entities) authorized by the body of the legal entity (voluntary representation) or legally authorized (mandatory representation) persons (individuals or legal entities)" [4]

The same opinion was made by V.P. Gribanov and S.M. Korneev.[5] And, for example, O.A. Krassavchikov was of the opinion

[1]See Иоффе О.С. Советское гражданское право. Л., 1958 (Ioffe O.S. Soviet civil law. L., 1958), p. 160, Новицкий И.Б. Советское гражданское право. В 2 т., 1 т., М., 1959 (Novitsky I.B. Soviet civil law. in 2 parts. Part 1, Moscow 1959), p.189.

[2]See Черепахин Б.Б. Волеобразование и волеизъявление юридеческого лица, Труды по гражданскому праву, М., 2001 (Cherepakhin B.B. Volition and the will of a legal person, Works on Civil Law, M., 2001) p. 479, Грибанов В.П., Корнеев С.М. Советское гражданское право. М., 1961 (Gribanov V.P., Korneev S.M. Soviet civil law. Moscow 1961) p. 209:

[3] Советское гражданское право. В 2 ч. /под ред. В. А. Рясенцева. М., 1986.1 ч. (Soviet civil law. In 2 parts / Ed. V.A. Ryasentseva. M., 1986, part 1) P. 232:

[4] Черепахин Б.Б. Волеобразование и волеизъявление юридеческого лица, Труды по гражданскому праву, М., 2001 (Cherepakhin B.B. The will and the will of a legal person, Works on civil law, M., 2001) p. 134.

[5]See Грибанов В.П. Корнеев С.М. ,Советское гражданское право, М., 1961 (Gribanov V.P. Korneev S.M. , Soviet civil law, M., 1961), p. 209.

that since the legal consequences of the transactions concluded by the representative arise directly for the represented person, it is not possible to consider it as representation when the body concludes a transaction by a legal entity's body (director, board chairman). The body of a legal entity is not a representative, but it exercises its rights and obligations as it is provided for by the charter. The actions of the body are the actions of a legal person. [1]

However, there is also the opposite view in the literature. For example, I.V. Shereshevsky considered the body of a legal entity to be his legal representative. [2] This opinion was also shared by S.N. Bratus, who viewed the bodies of legal entities as statutory representatives. [3] Later on, Bratus acknowledged that the actions of the body are the actions of a legal entity because the formation and implementation of its will is reflected in the powers envisaged by the charter or regulation of the body.[4]

S.A. Landskof considers that the act of the body on behalf of the legal person is a statutory representation. [5] This point of view was developed by D.M. Cechot, who considered the bodies legitimate representatives of the legal entity, did not consider it wrong and unreasonable to match the body of the legal person represented by it's head with a legal entity itself. [6]

It should be noted that the question whether the director of the

[1]See Красавчиков О.А.,Советское гражданское право М., 1968 (Krasavchikov OA, Soviet civil law M., 1968) p. 275-276.
[2]See Шерешевский И.В. Представительство (Поручение и доверенность). М.,1925 (Shereshevsky I.V. Representation (commission and power of attorney). M., 1925), p.165.
[3]See Гражданское право: Учебник.В 2 т., 1т М., 1944 (Civil law: Textbook. In 2 parts, part 1, M., 1944) p. 201.
[4]See Братусь С.Н. Субъекты гражданского права. М., 1950 (Bratus S.N. Subjects of civil law. M., 1950) p. 98.
[5]See Ландкоф С.Н. Основы цивильного права. Киев, 1948 (Landkof S.N. Basics of civil law. Kiev, 1948,) p. 132.
[6]See Чечот Д.М. Участники гражданского процесса. М., 1960 (Chechot D.M. Participants in the civil process. M., 1960) p. 157.

company is its representative is currently problematic not only for the framework of private-legal regulation, but also in the framework of public legal regulation.

Paragraph 2 of Article 23 of the RA Law on " Fundamentals of Administration and Administrative Proceedings" states that persons authorized by the Civil Code of the Republic of Armenia can act as representatives of the parties in administrative proceedings. Taking into consideration the fact that the sole executive body acts on behalf of the company without a power of attorney, the head of the organization cannot be recognized as its authorized representative in the administrative proceedings. Consequently, the sole executive body, pursuant to the RA Law on Fundamentals of Administration and Administrative Proceedings, is the legal representative of the organization.

The court practice on this issue does not give a definitive answer. For example, the Court of Cassation of the Republic of Armenia, in civil case No. 3-192, the agreement on conciliation of the liquidated company concluded by the Chairman of the Liquidation Commission of the "Hydromasnadzor" CJSC H. Simonyan's with himself was invalidated by the fact that the head of the legal entity's governing body is a representative, hence according to Article 318 (3) of the Civil Code, the representative cannot conclude transactions in person on behalf of the represented person, he may not conclude a deal with another person, whose representative he is at the same time. Based on the analysis of the above-mentioned case, one can argue that the Court of Cassation considers the legal entity's body as its representative and applies the provision of the representation to that relationship, which is unacceptable to us. In such a situation, for example, in the case of acquisition of shares, how the head of the executive body of the seller or purchaser of shares must sign the contract.

The Article 88 (3) (b) of the RA Law on Joint-Stock Companies also provides opportunity for such different interpretations, according

to which the Company's Director represents the Company in the Republic of Armenia and abroad, and paragraph 3 (a) of Article 43 of the RA Law "On Limited Liability Companies" provides: company's executive body acts on behalf of the company without a power of attorney, represents the company's interests and concludes transactions.

We believe that the executive body of a legal entity is a management body, which, by virtue of the law, expresses the will of the legal person, has the power to represent it on its behalf, and consequently, the head of the executive body cannot be regarded as a representative of a legal person and the rules of the representation are not entirely applicable. We propose amendments and additions to the Civil Code of the Republic of Armenia, the RA Law on Joint-Stock Companies and the Law of the Republic of Armenia on Limited Liability Companies for specifying the legal nature of the company's sole executive body, which will enable to align the interest of the corporation and persons working in the above-mentioned situations, set new procedures and rules for making deals in such scenarios.

Particularly, paragraph 3 of Article 318 of the Civil Code of the Republic of Armenia should be supplemented with the following new sentence: "The rules concerning transactions concluded by the representative are not applicable to transactions concluded by the sole executive body behalf of a legal entity ". Additionally, within the scope of this proposal, make appropriate changes to the laws governing the various organizational forms of corporations.

Thus, the bodies of corporate legal entities are the constituent parts of a legal person represented by one or more persons, which form and express the will of a legal person within the powers vested in them by the law and/or the statute, thus ensuring its legal personality. And the formation and expression of the will of the corporation is carried out by the relevant bodies with the adoption of special acts.