



“BearingPoint”
USAID/Armenia Commercial Law
And Economic Regulation Program

"ԱՀԱՐՈՆ ՊԱՐԱԴԻԳՄԱ"

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Մտտեցումների ոլորտի համակարգ

“Aharon Pradigma”
Consulting Research Company

REPORT – ANALYSIS

OF THE SURVEY CONDUCTED ON THE LEGISLATIVE AND ADMINISTRATIVE PROBLEMS RELATED TO ESTABLISHMENT, REGISTRATION AND LICENSING OF COMPANIES IN THE REPUBLIC OF ARMENIA

September – November, 2004.

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INTRODUCTION

The objective of this Survey is to clarify, through opinion polling conducted among the representatives of businesses, the problems they encounter with respect to the legislation on companies and individual entrepreneurs, as well as the legislative or administrative obstacles they encounter when starting a business and particularly in relation to establishment, registration, licensing of companies. This is accounted for by the fact that five laws were adopted in 2001, regulating the mentioned area, including the law “On Limited Liability Companies”, the law “On Joint-Stock Companies”, the law “On the Individual Entrepreneur”, the law “On Licensing” and the law “On State Registration of Legal Entities”. In the recent three years several problems have occurred in terms of application of the mentioned laws, which need to be analyzed and assessed.

Importance of the Survey was stressed also by the business associations, the proof of which is the data on the members thereof provided by RA Chamber of Commerce and Industry, the Union of Manufacturers and Businessmen of Armenia and “Merchants of Armenia” NGO.

The Survey has been ordered by “BearingPoint” implementing the USAID Commercial Law and Economic Regulation Program and conducted by “Aharon Pradigma” Consulting Research Company. In Lori Marz the Survey was conducted in cooperation with the “Business Development and Support Center” and in Shirak and Kotayk Marzes in cooperation with the National Center of SME Development in Armenia.

PART 1. ISSUE AND SUBJECTS OF THE SURVEY

1. Issue of the Survey

Goals of the Survey were as follows:

1. Discover, analyze and assess the enforcement and administrative problems encountered by the representatives of businesses with respect to the RA law “On Limited Liability Companies”, the law “On Joint-Stock Companies”, the law “On the Individual Entrepreneur”, the law “On Licensing” and the law “On State Registration of Legal Entities” and application of other legal acts relating to starting business activities.
2. Discover, clarify and assess:
 - a) the problems relating to establishment, registration and licensing of companies;
 - b) shortcomings with respect to the legislation and enforcement of legislation;
 - c) need for legislative or administrative reforms;
 - d) risks in relation to starting business activities and making investments.
3. Assist the relevant state authorities to assess the efficiency of activities thereof and when required develop a new policy.

2. Subjects of the Survey and its Organization

According to the preconditions defined by the Customer, the Survey was planned to be held among 420 business entities, taking into consideration the following factors:

- territorial factor - in Yerevan - 210 and three marzes – 210;

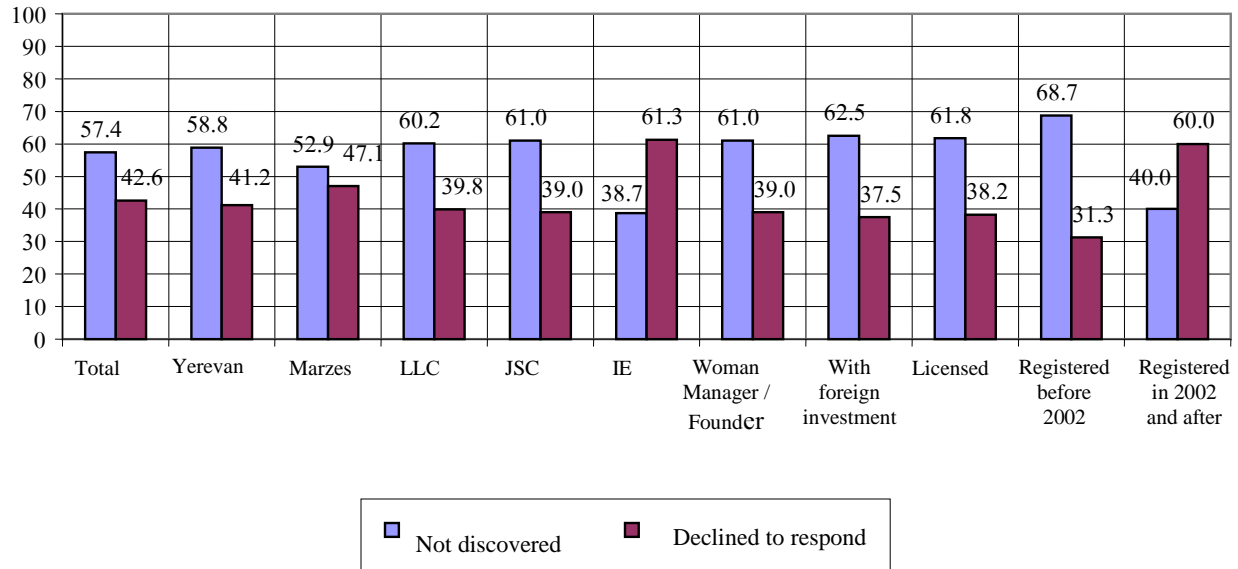
- organizational legal form - 50% of the total number was planned to include Limited Liability Companies, 40% - Joint-Stock Companies and the remaining 10% - individual entrepreneurs.
- gender - 15% were to be companies with a woman manager or a woman founder;
- sector of economy - all the areas of the real sector were to be involved, including production, services and trade;
- participation in the charter capital - 15% were to be companies with foreign investment;
- date of establishment - 50% were to be companies established in the recent year;
- type of activities - 30% were to carry out activities subject to licensing.

Survey has been conducted and the results are provided below. Below is provided also the methodology and limitations that “Aharon Paradigma” encountered and which shall be taken into consideration when reviewing the results of the Survey. The questionnaire has been developed in cooperation with USAID Commercial Law and Economic Regulation Program Team. Name of the respondents are not stated in the questionnaire, to encourage frank answers.

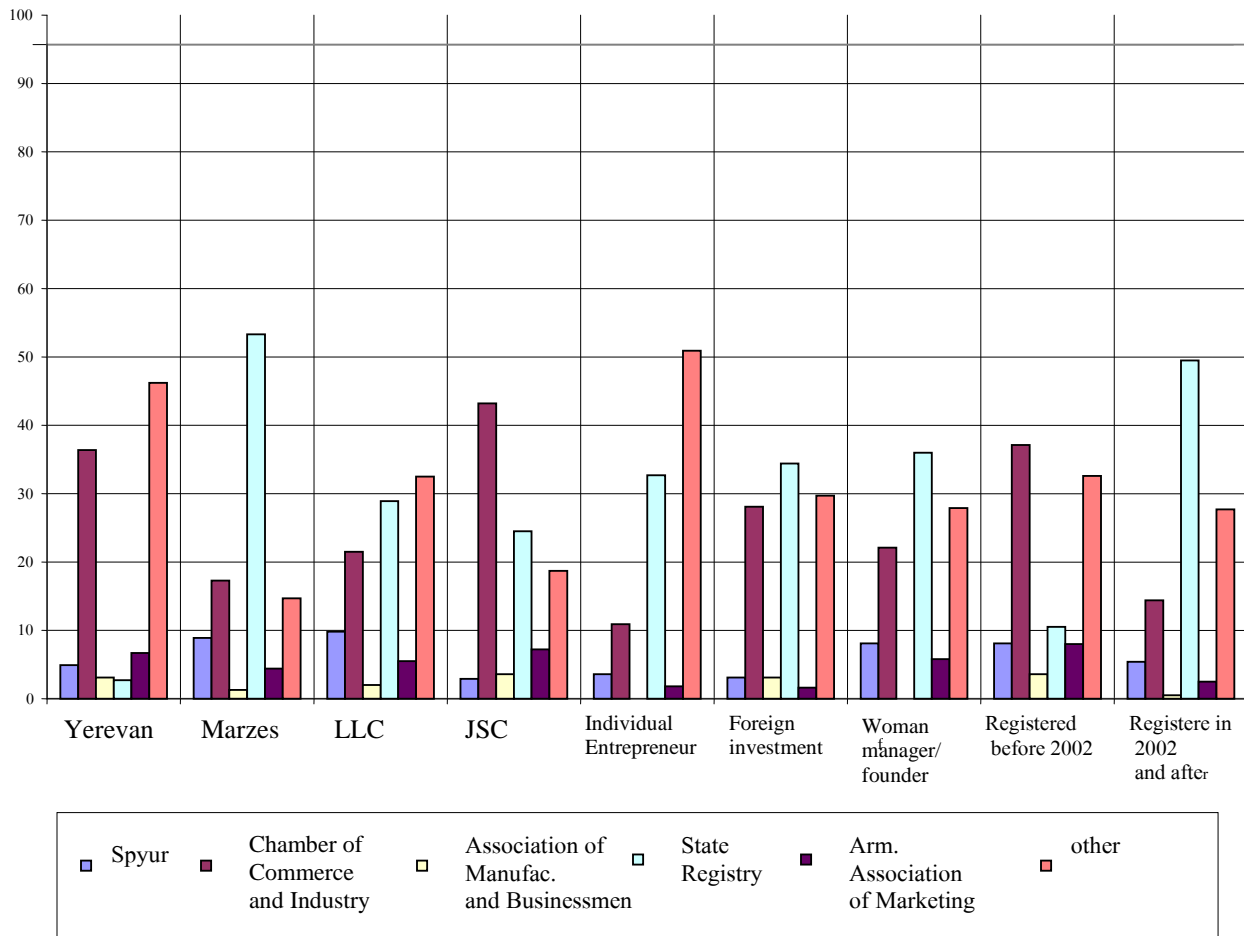
Most difficult task was the sampling, as the factors of samples were numerous and we were to work simultaneously on different virtual levels. The sampling methodology applied for the survey enabled us to receive information from 450 respondents, for that purposes paying visits to 665 organizations and individual entrepreneurs (Appendix 1, table 3). All the efforts were directed at correctly maintaining the predetermined proportions. This goal is mainly achieved with only minor deviations, which, in our opinion, are non-essential (Appendix 1, table 4). The lack of a uniform similar basis of main sample cluster in Armenia, as well as refusals, incorrect addresses and other inconsistent data shall account for deviations (Appendix 1, charts 5 and 6), as well as the practical difficulties in unifying several factors (pictures 1 and 2).

In case of absence of a uniform similar basis some steps have been taken to collect data from partner organizations, as well as from the RA State Registry of Legal Entities (hereinafter, State Registry) and the commercial business registries (Appendix 1, graphs 1 and 2). Another example, data about all the organizations registered during the recent year have been taken from the RA State Registry. Thus, efforts have been directed to have 100% incorporation of the official sample. However, even in such case we could not obtain 50% figure of those established during the recent year, as provided in the preconditions. To resolve the problem, the year 2002 has been targeted, particularly bearing in mind that majority of the stated five commercial laws have been enforced in the end of 2001 and beginning of 2002.

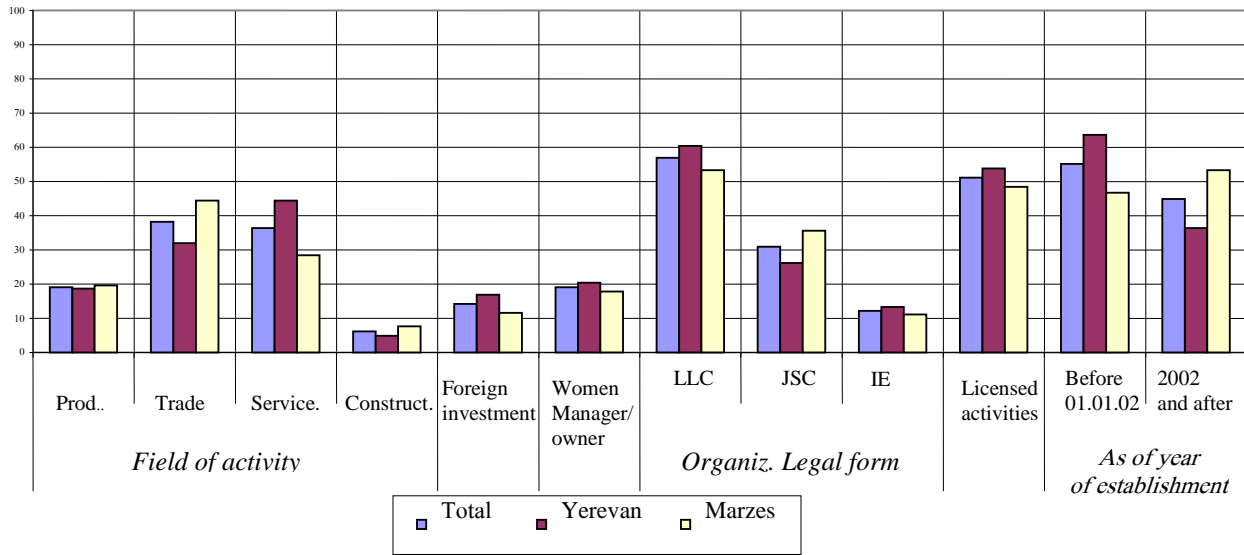
**Graph 1. Categorization Structure Of The Surveyed Persons
As To Respondents, Persons Declined To Answer
And Those Not Discovered**



**Graph 2. Sample Categorization Structure
As To The Formation Sources**



Graph 3. Structure Of The Sample Cluster



Taking into consideration the specifics and characteristics of the Survey, as well as the fact that for the purposes of the Survey, random selection principle was mainly applied among certain groups (otherwise, conducting of a similar Survey is impossible, due to existing technical and financial limitations), the results gained may not be classified as representative in the meaning of classical statistics in terms of the results reflecting the whole economy of Armenia, but they rather aim at studying the tendencies, as well as certain qualitative and quantitative proportions.

The fact of “small” clusters of respondents in terms of collection of information in Marzes shall be taken into consideration, as a result of which the figures received from Marzes are unified in one line. We shall be mindful of the fact that the figures reflect the data of three Marzes, including Lori Marz, Shirak Marz and Kotayk Marz. When selecting the mentioned Marzes both the categorization of representatives of economic sectors stated in the preconditions of the Survey and break down of economic figures in the country in general, were taken into consideration, in accordance with the state statistics reports. In implementing a break down in Marzes other factors of sampling were considered in the second stage. Emphasis was placed on securing the required number of companies with foreign investments and the factor of being established during the course of the recent years (for that reason Kotayk Marz has almost half of the total figure of Marzes).

The following plan is selected for securing sampling as to factors:

- In the first stage we initiated cooperation with the respective professional and business associations, by asking for their assistance in providing the list of their members and other relevant data. The presumption has been built on the thesis that the given business circle should attempt to cooperate with the interviewees and be interested in reforms in the economic legislation in Armenia. In this sense, we would like to express our gratitude to the Union of Manufacturers and Businessmen of Armenia, “Merchants of Armenia” NGO, the Trade-Industrial Chambers of Yerevan and Kotayk Marz.
- In the second stage we turned to “National Center of SME Development in Armenia” Foundation. The cooperation has been conducted both through provision of the list of interested persons and free distribution of a brochure to each respondent (“How to Start Business Activities in Armenia” Yerevan, 2003). Implementation of field works within unified methodical coordination and cooperation of “Aharon Paradigma” in Kotayk and Shirak Marzes promoted the strengthening of the structure of “National Center of SME Development in Armenia”. In this stage we cooperated and collected relevant data from “Armenian Association of Marketing” NGO, which was particularly useful for completing the required number of organizations carrying out licensed activities.
- In the third stage we started to work with other officially administered databases, by obtaining the missing information from “Spyur” Information Service and the RA State Register of Legal Entities.

In this manner we succeeded in obtaining 420 addresses. In addition, considering the fact that we were going to have cases of refusals and non discoveries (Appendix 1, Graph 3), as well as that the questionnaires might contain incorrect, misleading or non-complete answers, 210 reserve addresses were prepared. Inclusion of such a number was aimed at enlarging the selection in order for us to have overall representative picture of the country.

Later the whole reserve of addresses was used and we were even obliged to take additional steps aimed at positively tuning the respondents to provide additional addresses. As a result we had 450 responses subject to processing.

Simultaneously, efforts were being directed on designing the questionnaire, the basis of which was the one developed by the “BearingPoint”. The final approved version was printed in the publishing house, and the whole process of information collection through a questionnaire was conducted by the interviewers through interviews.

In Lori Marz we have cooperated, as was approved by the Customer, with a local organization aimed at business development, “Business Development and Support Center” NGO, with the purposes of strengthening the potential in the given Marz for conducting similar surveys in that region. In Yerevan and in all the Marzes the survey was conducted by “Aharon Paradigma”, by applying a unified methodology. Relevant methodical instructions for the interviewers, as well as for the other stages of the technological chain and a timeline of activities were developed.

Before starting the field activities, recruitment and instruction of interviewers was carried out for the purposes of preparation and conducting of the Survey, the latter were provided with the questionnaires necessary for the Survey, the regional survey group and other necessary items. Totally 30 interviewers were recruited and number of questionnaires to be filled out by each interviewer comprised 15 items¹.

For the purposes of securing collection of high quality information, as well as for orienting (encouraging) the respondents for open responses and establishing interactive and trust based environment, relevant calendars (with the heading “First Steps of Business”), a brochure named “How to Start Business Activities in Armenia”, as well as the press release on the basic economic figures of the period covering from January through September, issued by the RA National Statistics Service on the starting date of field activities were provided to respondents. It is worth mentioning that the respondents positively reacted to receiving of the brochure. All the respondents were provided also with a letter², which briefly stated the purposes of the Survey, its potential use for the economic community and the society (packaged formed from one copy of each document).

Given the sector direction of the questionnaire, its complexity and importance of appropriate preparedness of interviewers, brochures, comprising the texts of five economic laws concerned, were prepared and provided to all of them³.

In the interviewers’ instruction stage⁴ the respective articles and provisions of the mentioned laws relating to the questionnaire were considered.

¹ Actually the number of visits done by each interviewer exceeds that number, as in order to have 450 responses both the completely formed reserve and other additional organizations collected in an operative manner were used. In several instances “Aharon Paradigma” requested to repeat or amend the questionnaire, given the requirement of meeting the list of objectives and claims of the Survey.

² The letter was signed by the representatives of USAID Commercial Law and Economic Regulation Program and “Aharon Pardigma” Consulting-Research Company.

³ The brochure is prepared by “Irtek” legal-information system and for the purposes of making use of that system the author entered into a contract on “Copyright Use” with “Aharon Paradigme” for publishing 40 copies of the brochure in the printing house.

⁴ Again, taking into consideration the characteristics of the Survey, particularly in Yerevan law school students in the upper grades were recruited as interviewers. The outcome came to prove efficiency of such a selection.

Collection of data was carried out from October 21 through October 27, 2004. The questionnaires filled out by the interviewers, were subject to arithmetical and logical checking and coding, after which they were inputted in the system (on the basis of inputting software). After inputting the relevant data were also subject to mechanical checking aimed at excluding incorrect, misleading and incomplete questionnaires.

In general the total number of questionnaires that were regarded useful from the point of view of analysis comprised 450. It is worth mentioning that major portion of refusals goes to organizations with foreign investment and individual entrepreneurs, and the main part of non-discoveries goes to addresses obtained from the databases of the RA State Registry of Enterprises. This is accounted for by the structure of normative requirements of administration of the databases. In our opinion, that registry might be useful from the point of view of names, list and establishment date of organizations and individual entrepreneurs that were registered, however it might not be useful for similar specific researches, in case of which it is important to learn the exact address of enterprise, its address, type of activities and other updated information. This point shall be supported by the fact that information obtained from “Spyur” proved to be most useful, although there were certain issues that needed clarification from the classification point of view.

In summary it shall be stated that for conducting of the Survey standard statistics tools were applied, including classifiers organization of sampling, software and etc. 160 graphs were developed. Separately, about 230 recommendations, opinions, remarks made by the interviewers were inputted and were provided to the team of analysts in charge of developing this Report. Expressing of such opinions and remarks was encouraged by the interviewers, which were carefully recorded in the respective section of the questionnaire. The interviewers of Lori Marz, as well as one of the interviewers in Yerevan presented their personal impressions and opinion on the outcome of the Survey.

3. Text of the Report-Analysis and Recommendations on its Using

During the course of putting together the text of this Report-Analysis the team of specialists, including Tigran Karapetyan (team leader), Argam Nazanyan, Narine Melikyan, Aharon Chilingaryan, have analyzed the rich material included in graphs (main materials are attached to this Report as Appendices), as well as familiarized themselves with the recommendations, comments and remarks made by enterprises (as well as by interviewers), studied the related legislative framework and enforcement practice. Each of the above-mentioned persons has personally coordinated the work of the certain group of interviewers, as well as collaborated with the other experts and specialists. We would like to express our gratitude to Arsen Nazaryan, “BearingPoint” legal adviser and responsible for this Survey, for his recommendations and opinions presented still from the very initial stage of drafting the Project.

To make use of this Report it is necessary to take into consideration the following meaning of the terms:

- ***Enterprise, foundation of an enterprise*** – means foundation of a Limited Liability Company or a Joint Stock Company, as well as decision of an individual entrepreneur on starting entrepreneurial activities. In the wider sense, it is “starting activities”, the decision on starting business activities.
- ***Inaccessibility (lack of knowledge) on the law*** – means difficulties in obtaining, finding out the text of the law, including from the material point of view. This may lead to lack of knowledge.

- ***Service and professionalism level*** – manifestation of wish and skills to provide services, which alone or in combination with the knowledge, forms the level of professionalism (professional capabilities) of the person working with state authorities. In this document it has been mainly used to imply low level of service and professionalism.
- ***Contradictions and ambiguities of the law*** – means content of the legal act, such a wording of a text, article or a provision, which may lead to ambiguous interpretations, various meanings and other problems in terms of application. In this respect, in the meaning of this Survey the expression “clear wording of law” refers to accurate information, causing no issues/questions.
- ***Waste of time*** – waste of time of the entrepreneur, which may lead to material losses.
- ***Complication and gaps in terms of enforcement of the law*** – existence of provisions in a legal act or in the contents thereof, resulting in non applicability of the legal act.
- ***Procedural complexities of appeals*** – low level of opportunities granted to an entrepreneur to appeal, complain of the actions or omission of a state authority or an official, in terms of time and cost efficiency of recovering the violated rights.
- ***Lack of personal contacts*** – disrespectful or non proper attitude of an official towards the entrepreneur, which may be mainly conditioned by absence of friendly or other interpersonal relationships, or lack of expertise or prestige.
- ***Cost of application of the law*** – expenses incurred by the entrepreneur in observation of requirements of the legal act, dealing with starting and implementation of entrepreneurial activities (state duties, expenses related to certain mandatory activities).
- ***Reorganization of the organization*** – is merger, accession, division, spin-off, transformation of a legal entity.
- ***“One window (one stop shop) principle”*** – a mechanism supporting the entrepreneur for the purposes of establishment, registration or licensing of an enterprise, which particularly presupposes consolidation of the mentioned processes and related activities to be handled by one authority.

For the purposes of developing the document (in the same manner as in the questionnaire), the specialists have done the following conditional grouping of eh administrative and enforcement issues relating to the above-mentioned five laws. By administrative issues we mean: problems occurring in the process of practical application and/or in the field of administrative-legal relationships (accounted for by the actions of the respective state official) occurring during the course of enforcement of the law, having nothing to do with shortcomings of the norms and provisions of the law. By application issues we mean the group of legislative problems.

The following conditional marks have been applied for the tables:

√ “0.0” mark means that the phenomenon is not applicable;

√ graphs are presented in an appropriate structure, particularly according to the physical structure and subjects structure (unit of measurement is - percent).

“Aharon Pradigma” Consulting Research Company has proposed the following comments and recommendations with respect to application of the results of this Survey, which are as follows:

- during the Survey we succeeded in securing open and cooperative attitude of the respondents. This comes to prove the fact that besides the 36 questions of the questionnaire, the respondents generously made also other recommendations;
- we have received rich source information and we attempted to present it both for informative and analytical purposes;

- we have prepared also a number of synthetic, virtual tables relating to gender, investment, “old” and “new” performer issues and etc.;
- the recommendations and conclusions brought in the conclusion of this Report reflect the approach of “Aharon Paradigma”, to the extent of comprehension of the received information;
- we have obtained a potentially good basis of respondents prepared and experienced to respond to polls to be implemented in future by the Commercial Law and Economic Regulation Program.

In our opinion the benchmark of the recommendations is that hundreds of respondents in Armenia came to deal with a serious academic approach, as well as they received information, impulses, and were “inspired” with the idea of tolerance towards the business researches. This is a security of trust, which is important to maintain and develop. In this respect it would be reasonable (naturally it should be within the framework of the business plans and capacities of the Customer) and “Aharon Paradigma” expresses its persistent readiness to cooperate with “BearingPoint” with the aim of implementing the following:

- provide the outcome of the report to the interested Ministries, other governmental and non governmental structures concerned in the process of establishing, registering and licensing in Armenia. We are far from the idea that the only reason of the enumerated problems is “the unfair bureaucrat” or the drawbacks in the law. Actually there exist numerous traditional, social-psychological and other factors, which shall be taken into consideration and we hope that the outcome of this Survey provides additional relevant opportunities for that,
- send feedback letters to all respondents (450 addresses), by reconfirming that the participation thereof was important and, most importantly, their voice was heard and summary information and recommendations have been submitted to the attention of the respective authorities. This shall remedy the concerns of the respondents that this was a regular activity, leading to nothing and that this way of resolving issues was not reliable. This will also make us keep our promise, that we announced to each respondent in writing before holding the interviews;
- it would also be advisable to inform about the relevant website covering materials on the outcome of the survey, including the summary of this Report and several important graphs;
- it would be advisable to send letters to business associations having cooperated with us, accompanied with a copy of the Report, or its summary, as a sign of gratitude for their support and the important work that they are carrying out for the sake of the Armenian economic and public development. The USAID Commercial Law and Economic Regulation Program also aims at achieving this goal.

PART 2. IMPLEMENTATION OF THE LAW ON COMPANIES AND INDIVIDUAL ENTREPRENEURS

1. Legislation on Companies and Individual Entrepreneurs

The RA Civil Code enacted in 1999 defined the types of legal entities and classified the companies as commercial organizations. The commercial organizations in their turn were classified as economic partnerships and companies. The latter include the Limited Liability Companies, Companies with Supplementary Liabilities⁵ and the Joint Stock Companies. The RA Civil Code has also in two separate sections defined the main legal rules of the Limited Liability Companies and the Joint Stock Companies, by stressing the necessity of separate laws. In October 24, 2001 the National Assembly of the Republic of Armenia adopted the law “On Limited Liability Companies”, which entered into force on December 7, 2001.⁶ The law “On Joint Stock Companies” was adopted by the RA National Assembly on September 25, 2001, which entered into force on December 6, 2001.⁷

The mentioned two laws on the companies essentially improved the level of regulation of activities of the given two types of legal entities, most frequently occurring in the business environment of Armenia. And what are the main characteristic features of activities of the Limited Liability Companies and Joint Stock Companies in Armenia? The comparative table below briefly outlines those characteristic features.

Limited Liability Company	Joint Stock Companies
Number of the stakeholders (participants) may not be more than 49 persons	May be incorporated as an “open” company (the shares of which may be sold publicly ⁸) or a “closed” company, the shareholders of which may not be more than 50 persons
All the participants have the same rights depending on the size of participation thereof.	More than one class of shares may be issued, which provide the possessors thereof with different rights
The registry of participants is being administered in the State Registry of Legal Entities	A “closed” company shall administer the registry of its stockholders independently, while an “open” company shall be obligated to pass it to the Central Depository of the Republic of Armenia.
The highest body is considered to be the General Meeting (may be called also Meeting of Participants). May be composed of one participant	The highest body is the General Meeting of Shareholders

⁵ Companies with Supplementary Liabilities are not covered in our Survey.

⁶ Before adoption of the law, the activities of the Limited Liability Companies was being regulated by the respective RA Government Decision of 1991.

⁷ Before adoption of the law, the activities of the Joint Stock Companies were being regulated by the relevant law adopted in 1996.

⁸ With the exceptions as defined by RA Law “On Regulation of the Securities Market”.

The number of votes complies with the share of the stakeholder stated in founding capital	The owners of all the ordinary shares are entitled to vote (with one share one vote principle). In a number of cases the shares not empowering for voting (for instance, privileged shares) may give a shareholder with a right to vote (for instance, when the decision may affect the rights of owners of privileged shares)
Establishment of the Board of Directors is determined independently	The Board of Directors is compulsory in case the number of owners of ordinary shares is or more than 50 persons.
In case of operation of a Board of Directors, the scope of activities thereof shall be established and approved by the Charter of the Company	In case of operation of a Board of Directors, this body shall be entitled with exclusive authorities established by the Law on Joint Stock Companies. In case of establishment of the Board of Directors it should be composed of at least three members.
The executive body is compulsory. The executive body may be composed of one person (executive director, chairman and etc) or collegial body (managing board, board and etc.)	Establishment of the executive body is compulsory. The number of participants of this body shall be defined by the Company Charter.
The executive body shall be appointed by the General Meeting	The executive body shall be appointed by the General Meeting of Shareholders, unless the Board of Directors is empowered with that authority
The only founder may be considered also as the executive director	The only founder of the Joint Stock Company may also be as the executive director
Functioning of the oversight committee of the Company is compulsory, provided the Company has more than 20 participants	Functioning of the oversight committee or oversight authority of the Company is compulsory. The objective of the decision of the company shareholders is to have one of the above mentioned. Number of members of the oversight committee may not be less than three persons
Auditing of the company may be conducted upon the request of one of the participants	Auditing of the company may be conducted upon the request of shareholders possessing at least 5% of ordinary shares
The company stakeholders have their shares in the statutory capital of the company. The shares of the participants shall not be registered with the Securities Commission	The Company stakeholders are considered owners of shares. The shares shall be subject to compulsory registration with the Securities Commission, provided the company is considered an accountable issuer.
All the participants have rights complying with the shares thereof and have relevant obligations	The shares may be subdivided into several types (for instance, ordinary and privileged shares). The ordinary shares mainly have a right to vote in the General Meeting of Shareholders, while the

	privileged shares have no right to vote, with the exception of cases when the right is ensured by the law on Joint Stock Companies.
The statutory capital comprises 50 fold of minimum salary (AMD 50,000)	The statutory capital of a Closed Joint Stock Company comprises 100 fold of the minimum salary (AMD100,000), while in case of an Open Joint Stock Company, it shall comprise one thousand fold of the minimum salary (AMD 1 million).
Increase of the statutory capital may be authorized by the consent of two third of participants	The statutory capital may be increased either through increase of the nominal value of the issued shares or through issuing of additional shares. Additional shares may be issued provided the shares are declared in the Company Charter (declared shares). The decision on increasing the statutory capital of the company may be taken by simple majority of votes of shareholders or by the Board by unanimous vote of its members
The creditors shall be notified of the reduction of the statutory capital. In such case the the creditors may demand early repayment of debts	The creditors shall be notified of the reduction of the statutory capital. In such case the creditors may demand early repayment of debts
In case of transfer of ownership rights of stocks the stakeholders of the company enjoy the preferential rights	The shareholders of a Joint Stock Company may freely transfer the shares thereof to a third person. The shareholders of a Closed Joint Stock Company enjoy the priority rights
In case of need for external funding the shares of the company may be pledged. However, the priority rights may be viewed as not attractive by the creditor.	In case of need for external funding the shares of the company may be pledged.

The basic legislative act concerning an individual entrepreneur is the RA law “On Individual Entrepreneur”, which is adopted on April 3, 2001. The law defines the rights, obligations and responsibilities of an individual entrepreneurs, as well as the guarantees of activiteis and the terms of termination of activities of the latter.

2. Administrative and Implementation Issues

What kind of problems of administrative and implementation nature faces a businessman in applying laws on companies or on an individual entrepreneur?

In establishing a company or when commencing activities as an individual entrepreneur, 35.9% of problems occurring in the business environment are resolved independently, by studying the legal acts

covering that process. However, 21.9% of problems are resolved through the so-called “assistance” of the representatives of the relevant state authorities and 17.6% through professional consulting companies. It is worth mentioning that the individual entrepreneurs, in comparison with companies, more frequently rely on the mentioned two means and resolve their problems through them. However, contrary to the LLCs⁹, the JSCs¹⁰ less frequently rely on the professional consultants and state authorities. This picture is true for both Yerevan and the Marzes, with only one difference that in Marzes the latter rely twice as much on the assistance of the state authorities (in Marzes, the individual entrepreneurs in 38.9% of cases). It shall be stated that the business entities¹¹ with foreign investment give preference to professional consultants, while in case of the companies with a woman founder or manager, the preference is given to the state authorities. By the way, this more frequently occurs in Marzes, where in each of the third case the problems are resolved through the assistance of the state authorities. The business entities, which have been established before and after 2002, also attempt to resolve their problems independently. However the newly established business entities as compared to the “old” ones, rely mostly on the professional consultants and representatives of the state authorities (19.5% and 25.7% respectively). When 44.9% of the “old” business entities resolve their problems through the mentioned entities, this figure reaches 55.1% in case of “newly” established business. It is also worth to mention the fact of low level of implementation of Article 87¹² of the RA law “On Legal Acts” (it varies within the limit of 1%)¹³.

⁹ Here and throughout the whole text “LLC” is used to mean a Limited Liability Company.

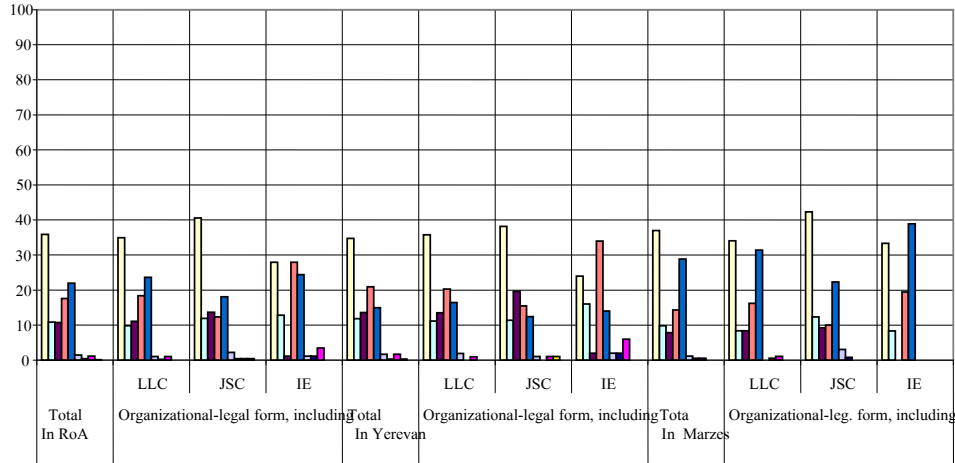
¹⁰ Here and throughout the whole text “JSC” is used to mean a Joint-Stock Company.

¹¹ Here and throughout the whole text the word “businesses” or “business entities” is used to mean a company and/or an individual entrepreneur. In some cases the word “company” is used instead of “businesses”.

¹² This norm enables the businesses to apply to a state authority for official clarification concerning any rule of the legal act.

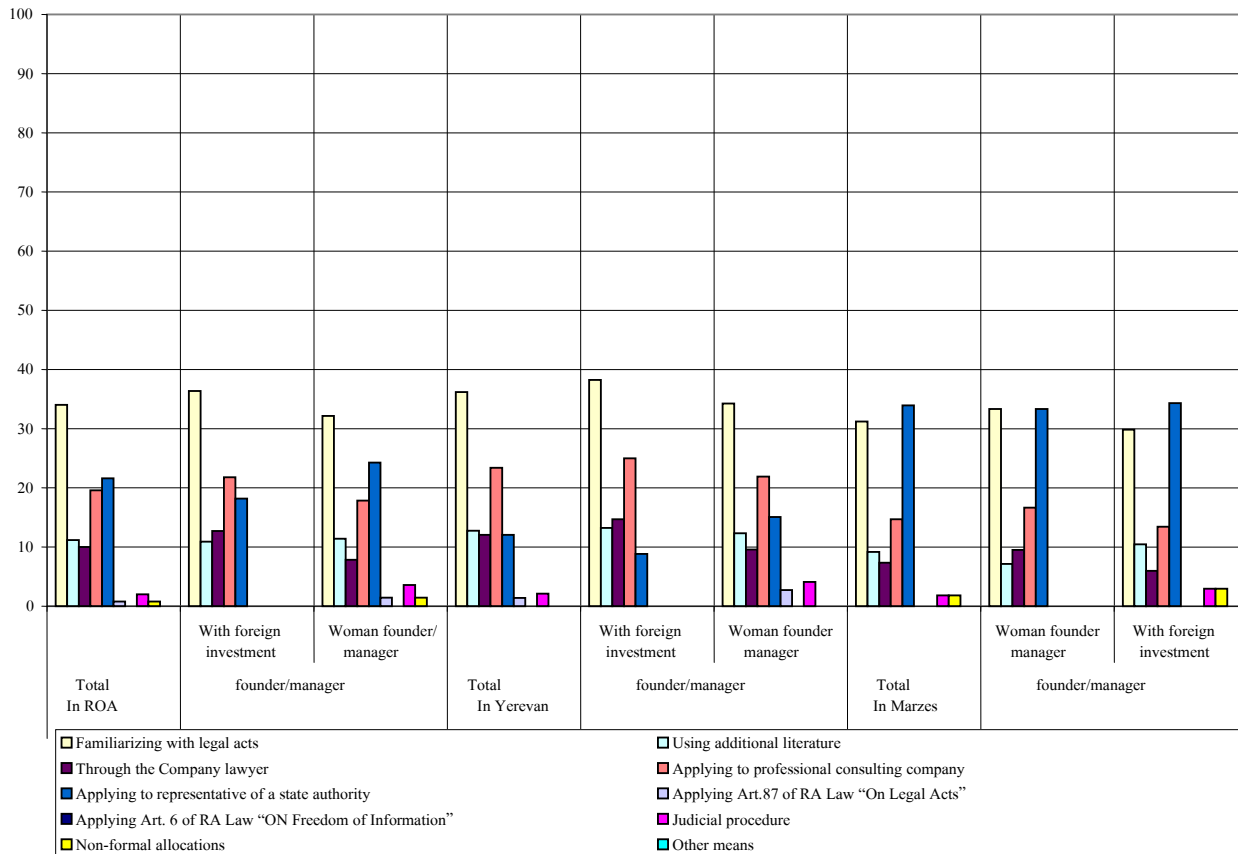
¹³ In this paragraph the data covered in tables 7-10 are used.

Graph 4 Subject Matter Structure

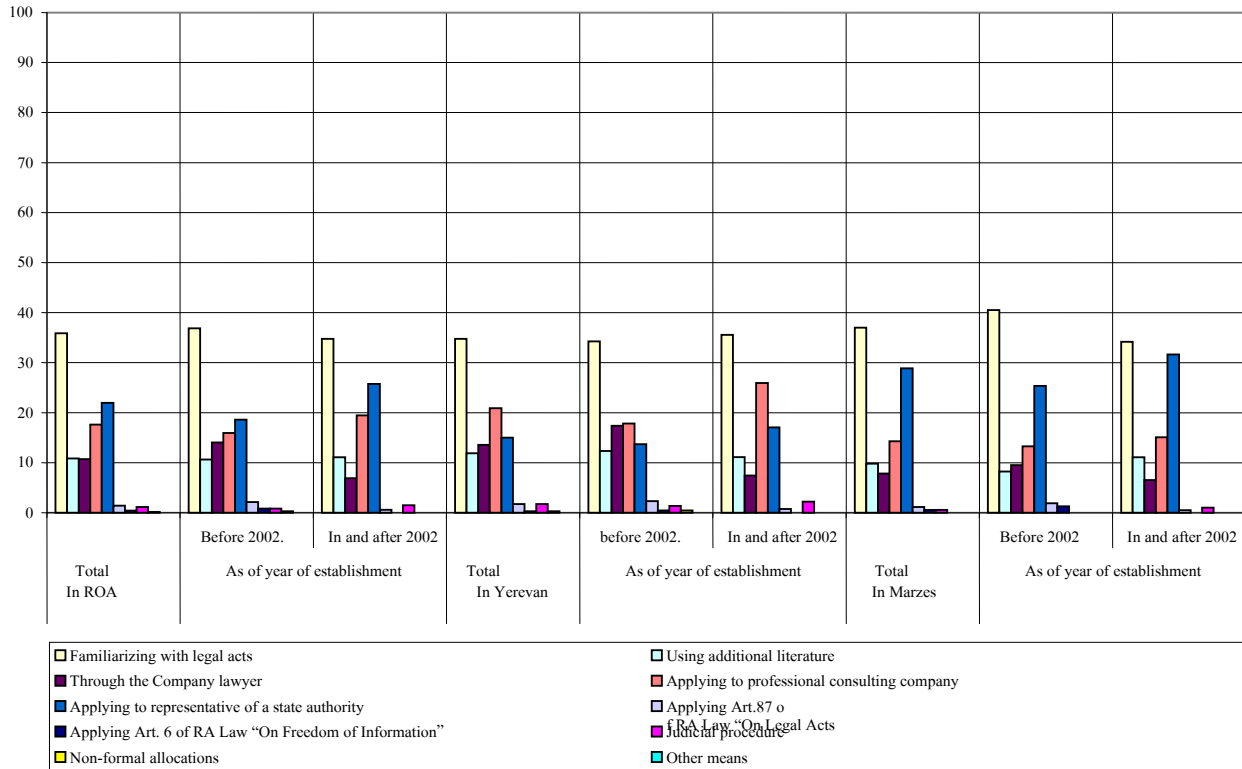


- Familiarizing with legal acts
- Through the Company lawyer
- Applying to representative of a state authority
- Applying Art. 6 of RA Law "On Freedom of Information"
- Non-formal allocations
- Using additional literature
- Applying to professional consulting company
- Applying Art.87 of RA Law "On Legal Acts"
- Judicial procedure
- Other means

Graph 5. Subject Matter Structure



Graph 6. Subject Matter Structure

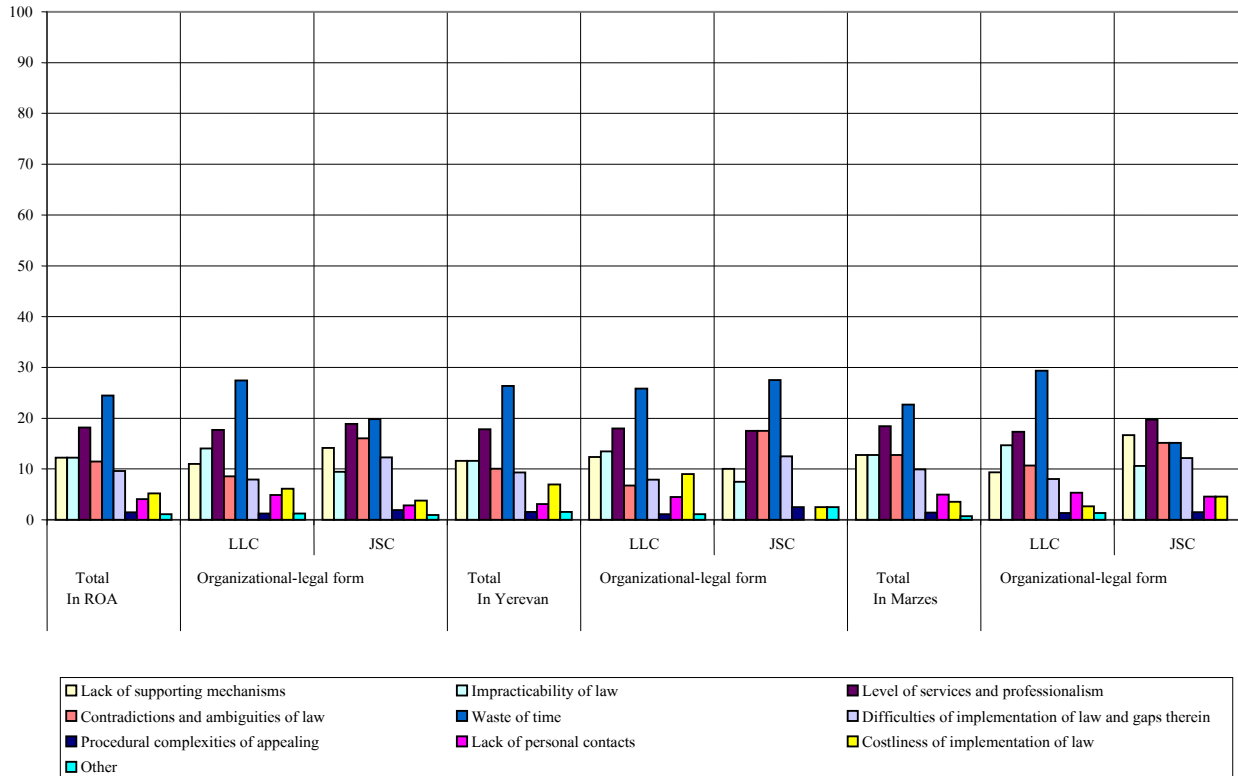


In establishing a company the founders deal with a number of corporate documents and processes. It becomes clear that the major administrative and application related problem that the business entities are facing with respect to the founding contract, the charter and the founding document, is the fact of waste of time (24.4%), 60% of this kind of problems are of administrative nature. In the second place is the level of provision of services and professionalism of the state authorities. 59.2% of the “displeased” companies are the LLCs and 40.8% are the JSCs. The companies consider that 12.2% of the arising problems are due to lack of supporting mechanisms by the state, and 12.2 are due to impracticability of the law. Moreover, the JSCs “wish” more to have supporting state mechanisms in place. However, 72.7% of LLCs and 27.3% of the JSCs facing problems resolve them through “personal contacts”. The picture is nearly the same with respect to Yerevan and the Marzes. It shall be emphasized that companies with a foreign investment are more “displeased” with the level of services and professionalism of the state authorities. In the given situation they link 23.6% of problems with that factor. The “foreigners” also place much importance on the personal contacts. Contrary to the latter, companies with a woman manager or founder, exclude the possibility of resolving problems through personal contacts. Moreover, contrary to Yerevan, in Marzes women mostly need the support of the state (16.7%) and are relatively pleased with the work of the state authorities. The companies which have been established before 2002 and after 2002 also consider that the most concerning problem is the waste of time. However in the view of “old” companies this problem comprises 23.8%, while in case of “newly established” companies it comprises 25.5%. The newly established companies are more displeased with the work of the state authorities than the “old” ones (20.8% and 16.5% of the problems respectively), however they have less expectation from the state supporting mechanisms¹⁴.

¹⁴ In this paragraph data of tables 11-15 are used.

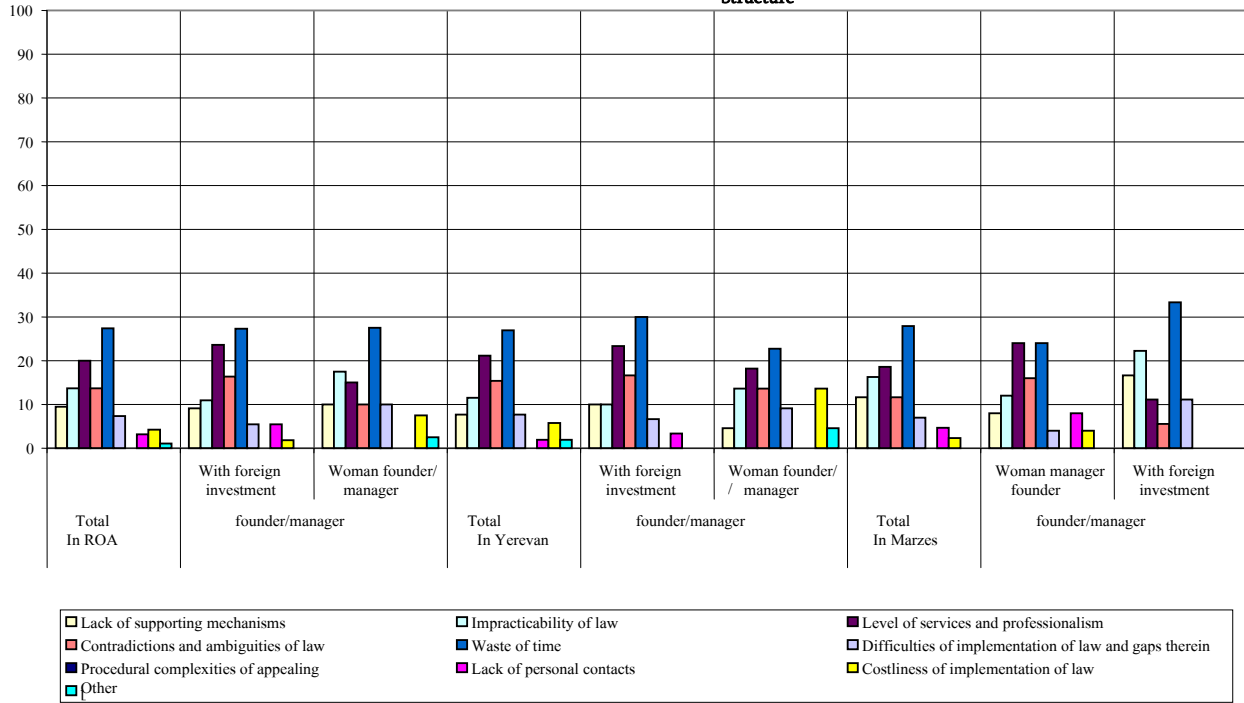
The problems in relation with this issue are classified as to the level of their seriousness¹⁵. Among the arising problems a businessman particularly mentions the fact of waste of time. By the way, in the structure of problems this one occupies a central position both in Yerevan and in Marzes, with the exception of JSCs and companies with foreign investment functioning in Marzes, for which the central issue has remained the level of services and professionalism of the state authorities. It shall be stated that in classifying the problems as to the level of their seriousness, “consolidation” of opinions of persons included in the cluster of sampling has been observed, which comes to speak of the appropriateness of assessing the phenomena (tables I-III).

Graph 7. Subject Matter structure

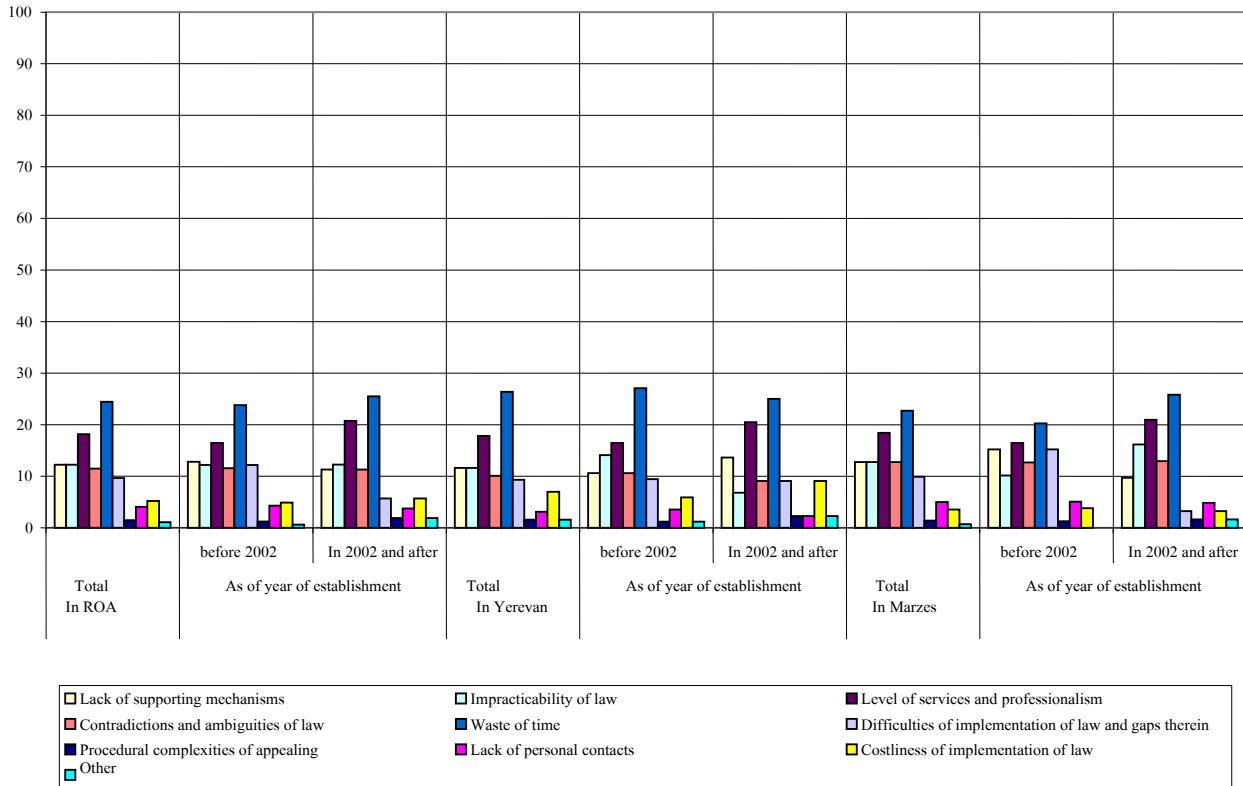


¹⁵ “The level of seriousness of a problem” has been used in this Survey as a method of comparison of the arising problems. It is presented in the Survey through tables numbered in Roman figures I-XVIII, in which the “level of seriousness” of the problem is reduced from 1 to 9.

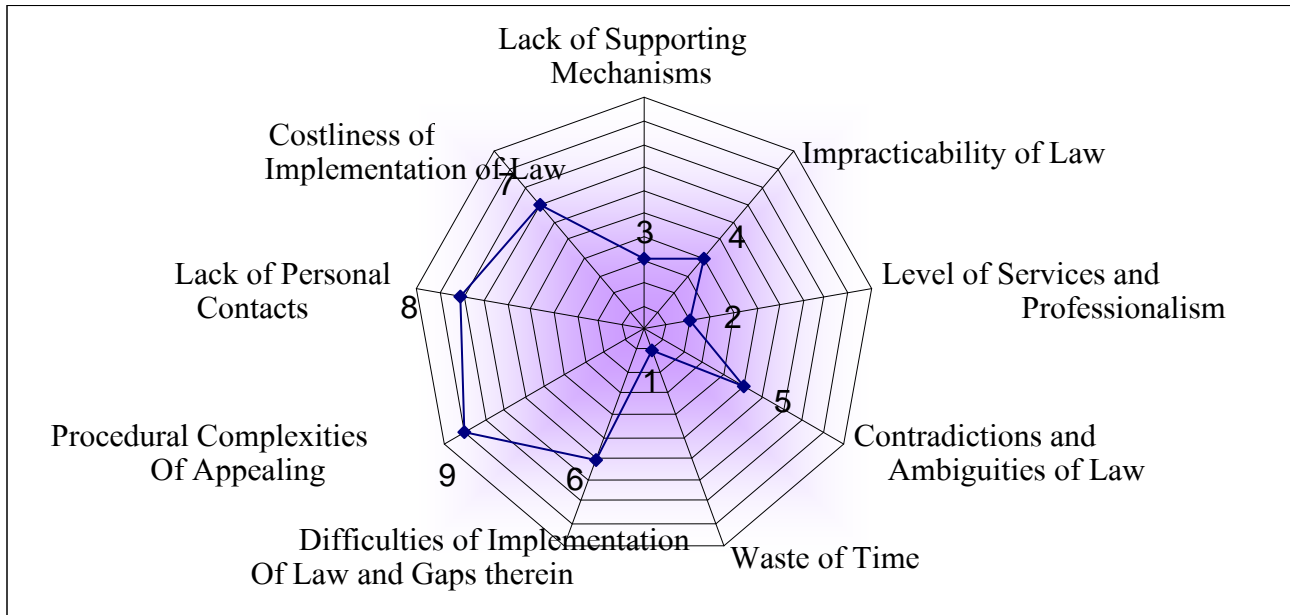
Graph 8. Subject Matter Structure



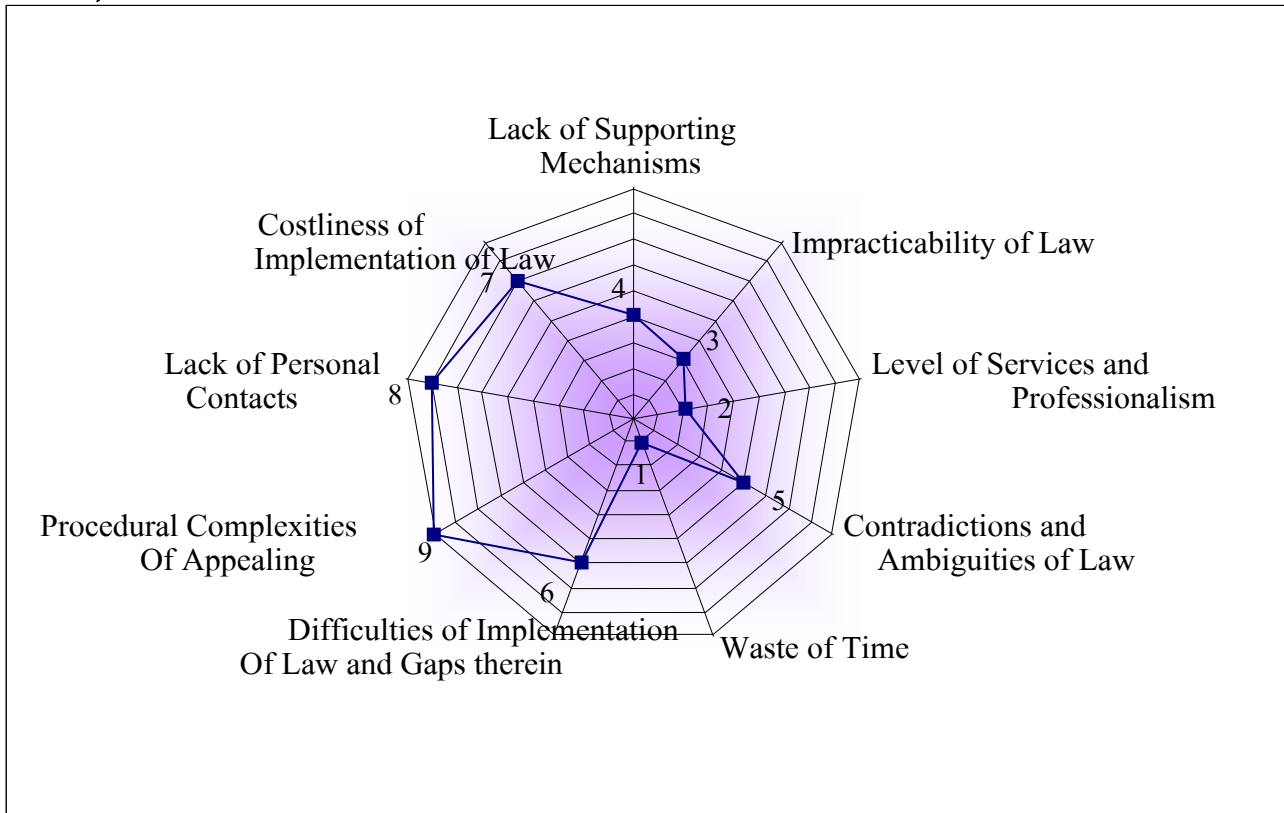
Graph 9. Subject matter structure



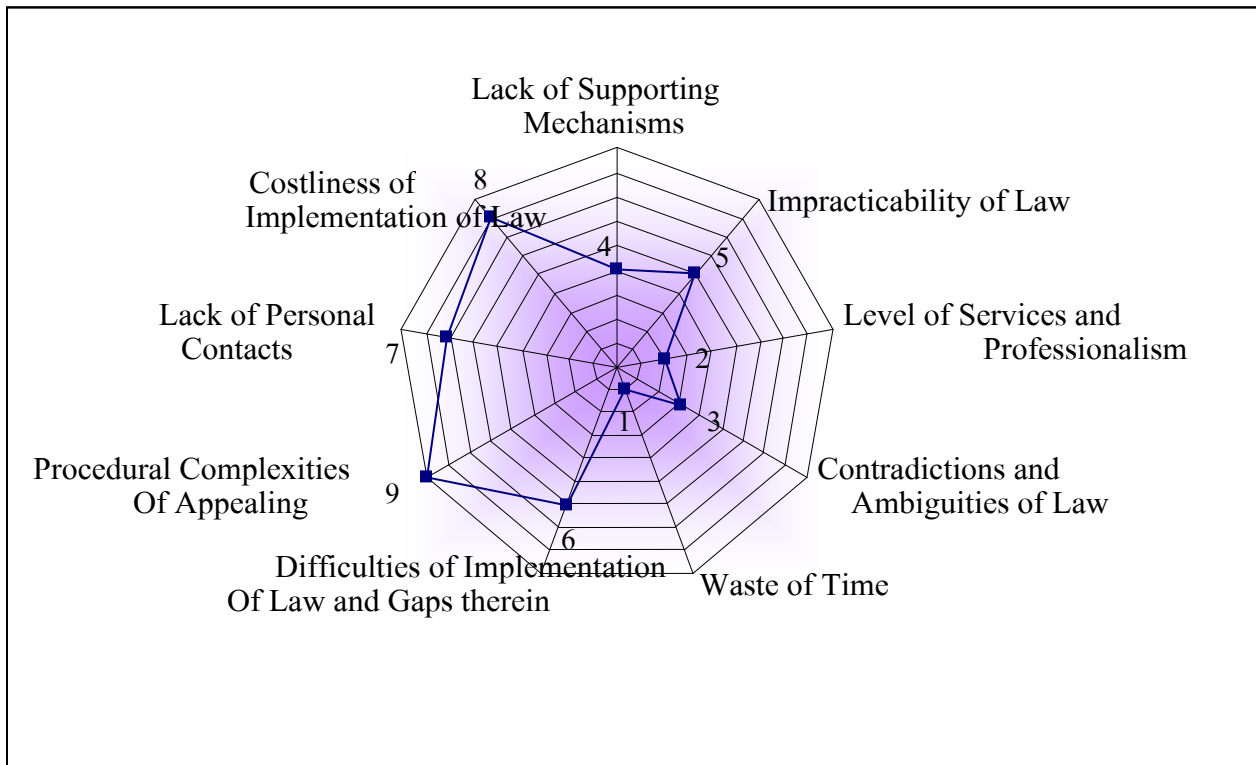
Graph I. Problems Related to Founding Agreement and Charter, as well as Conducting of the Founding Meeting in RA, as of the level of thier Seriousness



Graph II. Problems Related to Founding Agreement and Charter, as well as Conducting of the Founding Meeting in Yerevan, as of the level of their Seriousness



Graph III. Problems Related to Founding Agreement and Charter, as well as Conducting of the Founding Meeting in Marzes, as of the level of thier Seriousness



In establishing a company and later during the course of its functioning one of the major problem faced by a businessman is the formation of the statutory capital. Among the problems of administrative and implementation nature the level of services and professionalism of the state authorities has been considered as the most concerning one (16.9%). However, it shall be stated that the administrative and enforcement issues arising during the course of formation of the statutory capital are on the equal level. The picture in Yerevan is slightly different as compared to Marzes. Thus when in Yerevan respondents are mostly displeased with the level of services and professionalism of the state authorities (21.7%), than in Marzes people are displeased with the impracticability of the law (16.7%). A similar opinion has been expressed by companies with a woman founder or manager and the companies with foreign investment have stressed the difficulties in implementation of the laws and existing gaps therein, as well as the waste of time. The companies having been established before 2002 and after 2002 also consider that the major problems in relation to this issue are the level of services and professionalism of the state authorities (16.9%). However, in Yerevan each third of the newly established companies wastes time in the process of formation of the statutory capital, while in Marzes people are again displeased with the work of the state authorities¹⁶.

The opinion of the business community with respect to the rights and obligations of the company shareholder and individual entrepreneur is expressed in that according to their opinion these issues are defined in a clear, but not complete manner (33.8%). However the individual entrepreneurs, the companies with a woman founder or manager, as well as companies established after 2002, had difficulties in answering to that question (30.3%, 40.5% and 16.7% respectively). The picture in Yerevan

¹⁶ In this paragraph data of tables 16-18 have been used.

and in Marzes is similar, with one exception only that in Yerevan the LLCs, “women” and “newly” registered companies consider that the rights and obligations are defined in a clear and complete manner¹⁷.

The most concerning issue relating to issuing of securities by the companies have been considered difficulties in terms of implementation of the law and the gaps in the laws (26.1%). In general, the business community faces problems in relation to application of the law, which comprise 60.9% of problems in general. However, in Yerevan the representatives of companies consider that they waste time in the process of issuing securities. This opinion is shared mainly by the JSCs (37.5%). In Marzes people think that the state should enforce also some supporting mechanisms in regard to this issue. The companies which have been established before 2002 and after 2002 also regard the issues in relation to application of laws and gaps in the laws as the number one problem, however the “old” companies stress the costliness of implementation of the law¹⁸.

In case of alienation of shares and stocks, including sale, donation, inheritance thereof and other similar transactions, the business community views the inconsistencies and ambiguities of the law as the problem number one (19.4% of the occurring problems). Despite of that fact, they highly stress the problems of administrative nature. Particularly, the companies with a foreign investment mention the level of service and professionalism of the state authorities (40.0%). The companies which are established after 2002 mostly feel the necessity of supporting mechanisms by the state, particularly in Yerevan. While in Marzes people are displeased with the work of the state authorities¹⁹.

When the companies obtain the shares and stocks they issue, again they face problems of application nature. 33.3% of problems relating to this issue are connected with inconsistencies and ambiguities of the law. This opinion is mostly supported by the JSCs (37.05%). Companies established before 2002 stress also inconsistencies and ambiguities of the law²⁰.

Implementation problems dominate also in the process of buy-back of shares by the companies (82.3% of problems). By the way, both in Yerevan and Marzes the concerning remain the issues relating to difficulties of implementation of laws and gaps therein (33.3% and 40.0% respectively). By the way, the figure is more evident in terms of the companies, which are established after 2002 (50.0%)²¹.

¹⁷ In this paragraph data of table 19 have been used.

¹⁸ In this paragraph data of tables 20 and 21 have been used.

¹⁹ In this paragraph data of table 22-24 have been used.

²⁰ In this paragraph data of table 25 and 26 have been used.

²¹ In this paragraph data of table 27 and 28 have been used.

In case of discharging a LLC member from the company, the issues connected with implementation of law are dominating in the structure of arising problems. Despite of that fact, 23.5% of problems are being related to the waste of time. In Yerevan this is considered to be the most concerning, while in Marzes the fact of importance of personal contracts is more stressed (33.3%). The companies which have been created before 2002, link 22.2% of problems with the difficulties in terms of implementation of laws and gaps therein²².

Administrative problems comprise 53.2% in the structure of problems related to company shares and pledging of shares or levying execution thereon. The business community particularly emphasizes the level of service and professionalism of the state authorities, which comprises 16.7% in the overall structure of problems. In Yerevan the lack of state supporting mechanisms is a more concerning issue, while in Marzes these are the problems related to existing contradictions and ambiguities in the law. The companies with a foreign investment link 42.9% of problems related to the mentioned issue to the latter. For the companies which are established after 2002 of more concerning is the waste of time (21.1%), while the “old” companies see also difficulties in relation to implementation of laws and gaps therein (12.1%)²³.

In the structure of problems related to distribution of profits and payment of dividends the business community observes problems related to contradictions and ambiguities of the law, as well as difficulties connected with implementation of laws and gaps therein (32.8%). However, companies with a women manager face much problems with the first one (50.0%), while the companies with a foreign investment see problems with the second issue (57.1%). It is worth mentioning, that the companies which are established after 2002 mostly complain from the costliness of application of the law (33.3%), particularly in the Marzes. While the “old” companies mention contradictions and ambiguities of law (36.5%)²⁴.

Among the problems relating to corporate governance of companies, the difficulties related to application and gaps therein, as well as costliness of application thereof are being highlighted. If in case of LLCs the first issue is dominating (41.9%), then the JSCs stress the second issue (36.0%). The picture is similar in Yerevan and in Marzes. While in cases of companies with a woman founder or manager, each second problem is related to the contradictions of laws and gaps therein. It shall be stated, that if companies established before 2002 stress difficulties in relation to application of laws and gaps therein in the structure of management related issues (43.8%), then the “newly” established companies consider that arising problems are mainly related to contradictions and ambiguities existing in the laws (29.2%)²⁵.

Among the administrative and application problems arising in relation to restructuring of companies, the waste of time has been regarded as the major problem (19.8%). It is worth mentioning that in the structure of problems arising in that process, the problems of administrative nature are dominating (56.4%). In Yerevan and in Marzes the level of services and professionalism of the state authorities is stressed as a problem, by separately mentioning also the non-official remunerations. The companies with foreign investment stress also the difficulties in terms of implementation of the law and the gaps therein (21.7%). However, the companies with a woman founder or manager have stressed again the problems of the waste of time and the level of service and professionalism. The companies, which have been established before 2002 and after 2002 also regard the waste of time as the problem number one in regard to this issue (19.8%). However, in Yerevan in case of restructuring of the “newly” established companies, the factor of

²² In this paragraph data of tables 29 and 30 have been used.

²³ In this paragraph data of tables 31-33 have been used.

²⁴ In this paragraph data of tables 34-36 have been used.

²⁵ In this paragraph data of tables 37-39 have been used.

waste of time is regarded as a problem in each of the four cases, while in Marzes respondents are again displeased with the work of the state authorities²⁶.

For the purposes of resolving problems in relation to disagreements and disputes among the participants of the companies, the business community relies mainly on the off-judicial proceedings. It is worth to mention that in 92.3% of cases the problems are resolved through off-judicial proceedings. The companies with a foreign participation functioning in Yerevan, more often rely on judicial proceedings when resolving their problems. The picture is the same also in case of the companies with a woman founder or manager. The companies which are established before 2002 and after 2002 regard the off-judicial proceedings as the primary means of resolving problems. However, the newly established companies more frequently rely on resolving of problems through judicial proceedings²⁷.

The most concerning problems of administrative and application nature faced by the business entities during the liquidation of the company are considered to be the lack of supporting mechanisms in place (14.6%). By the way, it is worth to mention that the administrative problems have comprised about 60% in the structure of the total problems. The second and the third places are occupied respectively by the difficulties in implementation of the law and the waste of time. The first issue causes much displeasure in Marzes (21.2%), and the second issue is more concerning in Yerevan (14.4%). It is worth to mention that companies with a woman founder or manager, link the arising problems mostly to the level of services and professionalism of the state authorities (13.5%). And contrary to Marzes, women more often face procedural difficulties in terms of activities of the state authorities in Yerevan. The companies which have been established before 2002 and after 2002 also regard the lack of supporting mechanisms as the problem number one in relation to this issue. However, in case of the “old” companies the waste of time, as well as the difficulties in relation to implementation of the law and the gaps therein are regarded as a primary issue, the newly established companies stress the lack of support mechanisms. The newly established companies express more displeasure over the work of the state authorities²⁸.

In assessing the level of express contradictions in the legislation regulating the activities of the companies, majority of representatives of the business community had difficulties in responding. In this regard the JSCs are relatively more active, the 2.1% of which observe express contradictions in the legislation, as well as the companies with a foreign investment, the 5% of which have expressed such an opinion²⁹.

At the same time, it is worth to concentrate the attention on the structure of a number of specific graphs, in which the survey results are characterized from the point of view of certain characteristic features – woman and man, foreign and local investor, “newly” and “old” established companies and etc. (graphs 150 - 155).

3. Main Results of the Survey

When establishing a company or starting entrepreneurial activities the problems arising in the business community are mainly resolved through the “advisors”. By the way, it shall be stated that, with respect to this issue the business community relies more on the state authorities. This fact is more expressly observed in case of newly established companies. In contrast to the “old” companies the newly established

²⁶ In this paragraph data of tables 40-42 have been used.

²⁷ In this paragraph data of table 43 have been used.

²⁸ In this paragraph data of tables 44-46 have been used.

²⁹ In this paragraph data of table 47 have been used.

companies mostly resolve their problems through professional advisors and representatives of state authorities.

The major problem for the business community of administrative and implementation nature connected with the founding contract, charter and conducting of the founding meeting is considered to be the waste of time. It closely relates to problems of administrative nature, which comprise about 60% in the general structure of problems. And here a businessman is displeased with the level of services and professionalism of the state authorities.

In this respect, there arise the following three issues:

- waste of time;
- level of services and professionalism;
- lack of state support mechanisms.

However, a central issue for the JSCs and companies with foreign investment functioning in Marzes has been the level of services and professionalism of the state authorities.

The issue concerning the level of services and professionalism of the state authorities has been considered a major problem among possible issues of administrative and implementation nature arising in relation to formation of the charter capital.

The opinion of the business community regarding the rights and obligations of the company stakeholder and individual entrepreneur is reflected in that according to the latter these issues are defined in a clear, but not complete manner.

When issuing securities by companies the most concerning problem has been considered to be the difficulties in terms of implementation of the law and the gaps therein. In case of alienation of shares and stocks, including selling, donation, inheriting thereof and other similar activities, the business community considers the contradictions and ambiguities of the law as the number one problem. In removing a LLC member from the company, the factor of the waste of time dominates in the structure of problems.

The problems of administrative nature comprise 53.2% in the structure of problems related to pledging of company shares and stocks or levying execution thereon. The business community particularly emphasizes the level of services and professionalism of the state authorities.

In the structure of problems connected with distribution of property and payment of dividends, the business community particularly observes problems related to contradictions and ambiguities of the law, as well as difficulties entailed with the implementation of the law and gaps therein.

In the structure of problems relating to the corporate governance the difficulties of implementation of the law and gaps therein, as well as costliness of its implementation is mostly stressed. The waste of time has been considered the most concerning issue in the structure of possible problems of administrative and implementation nature arising in relation to restructuring of a company.

In resolving disputes and disagreements between the company stakeholders the business community relies mainly on off-judicial proceedings.

For the business community the most concerning problem of administrative and application nature in the course of liquidation of a company is considered the lack of supporting mechanisms. By the way, it shall

be stated that the problems of administrative nature have comprised about 60% in the general structure of problems. The companies consider that in the mentioned sector the arising problems are more concerning than in the registration process, particularly in relationships with the tax authorities.

PART 3. REGISTRATION OF ENTERPRISES AND INDIVIDUAL ENTREPRENEURS

1. Legal procedure of registration.

This part of the Survey is dedicated to the general legal pattern of the procedure of state registration of enterprises in Armenia, problems (both implementation and administrative) resulting from the latter, as well as the main outcomes of the survey.

Legislation on State registration of enterprises in Armenia incorporates the RA Civil Code, RA Laws “On State Registration of Legal Persons”, “On Joint Stock Companies”, “On Limited Liability Companies”, “On Individual Entrepreneur”, other laws and legal acts. It should be mentioned that Legislation on State registration of enterprises in Armenia has undergone continuous amendments, edits and updates in the course of more than 10 years. Hence, when addressing issues re state registration, the schedule of legislative changes may be presented as follows:

Legal Acts	Validity Date	Invalid/In Force	Brief Description
Article 12 of the Law of the RA on Enterprises and Entrepreneurial Activities (State Registration of Enterprises)	March 1992	Considered invalid since January 1999	Enterprises, as well as divisions, branches and representative offices functioning in the territory of the Republic of Armenia must be registered with the state authorized body of the RA by the procedure set by the legislation of the RA. The business of unregistered enterprises is prohibited and responsibilities are applied according to the legislation of the RA.
Article 3 of the Law of the RA on the State Registry of Enterprises (The notion of State Registration of Enterprises)	September 1993	Considered invalid since August 2001	The state registration of enterprises is the acknowledging of the legal capacity of individuals carrying out entrepreneurial activities, enterprises having and not having the status of legal entities by the state. The legal capacity, as well as the rights of individual entrepreneurs emerge from the moment of their state registration. The enterprise or an individual entrepreneur is considered registered from the moment of receiving a certificate of state registration.
Article 4 of the Law of the RA on Private Entrepreneurs	December 1993	Considered invalid since April 2001	A private entrepreneur is registered with a corresponding body.
Article 3 of the Law of the RA on Joint Stock Companies	April 1996	Considered invalid since December 2001	The company is considered established and can function as a legal entity from the moment of its state registration according to the procedure defined by the Law and other legal acts.
Article 56 of the Criminal Code of the RA (State Registration of Legal Entities), Article 26 of the Criminal	January 1999	In force	The legal entity is subject to registration according to the procedure defined by the Law. The data for the state registration including the firm name of commercial organizations, are registered in the state

Code of the RA (The Entrepreneurial Activities of Citizens)			registry book of legal entities which is open for common introduction. The legal entity is considered established from the moment of its state registration. The individual has the right to carry out entrepreneurial activities from the moment of his/her registration as a private entrepreneur without being formulated as a legal entity.
Article 3 of the Law of the RA on Private Entrepreneurs	April 2001	In force	The legal and working capacity of an individual as a private entrepreneur emerge from the moment of his/her state registration and they cease from the moment of termination of individual's legal and working capacity, as well as from the moment when the registration has expired or considered invalid in cases specified in the Law.
Article 3 of the Law of the RA on the State Registration of Legal Entities	April 2001	In force	The state registration is the acknowledgement of legal entity's legal capacity by the state. The legal entity is considered established from the moment of its state registration and its activity is considered terminated from the moment of the termination of its state registration. The legal entity is considered registered in the state registry book of registered legal entities from the moment of registering the appropriate information defined by this Law. The state registration of legal entities or private entrepreneurs is verified by the local state registry office of the registration body of legal entities with a certificate.
The Law of the RA on Joint Stock Companies	December 2001	In force	A Joint Stock Company is considered established from the moment of its state registration.
The Law of the RA on Limited Liabilities Companies	December 2001	In force	A Company is considered established according to the procedure set by the Law from the moment of its state registration.

As proceeded from the principles of market economy that are substantiated in the legislation, an organization (individual entrepreneur) is created by request of its founders (physical person). After establishment and registration, the organization acquires legal capacity and participates in property circulation. A question is raised: how could one interpret the requirement of compulsory state registration of an organization, if they are created by request of their founders. Such a requirement is attributable to the need of protection of interests of other participants of property circulation. Given the interests of those participants and the public, the state controls, through registration, the legitimacy of establishment of legal persons, which accounts for the requirement of compulsory state registration

of legal entities. Since a legal person acquires legal capacity from the moment of state registration, the procedure of establishment of legal persons is called “mode of registration”, under which the state does not authorize, but rather performs state registration of a legal person.

The process of registration of a trade organization can be presented by the following sequential steps:

1. Registration of the firm name
 - Payment of state duty for registration of the firm name;
 - Filling out a request on registration of the firm name and filing it with a regional division of the State Registry.
2. State registration
 - Preparation of necessary documents for state registration and their approval in the founding meeting;
 - Payment of state duty for State registration;
 - Filling out a request on State registration and filing necessary documents with the regional division of the State Registry.
 - State registration and obtaining of the state registration certificate and copies of the charter from regional divisions of the State Registry.
3. Registration in the regional tax inspectorate and obtaining TIN within one month after state registration.
4. Registration in the Regional body of Social Security within one month following the State registration.
5. Permission and obtaining of seal
 - Payment of state duty to obtain permission of seal;
 - Submission of documents necessary to get a permission of seal to the RA Police;
 - Obtaining of a permission of seal;
 - Formulation of an order for preparation of the seal (the timeframe for preparation is 1-30 days in accordance with tariffs);
 - Obtaining of the seal.
6. Confirmation of the head officials’ signatures³⁰.
7. Opening of bank accounts.
8. Obtaining of a license (if necessary);
9. Beginning of the activity.

As noted before, problems resulting in relation to the abovementioned processes will be discussed in the presented part, and while taking into account legal concepts in use, we find it expedient to provide explanations of legislative definitions thereof.

Firm Name. Legal trade entity shall have a firm name. Firm name is the name under which the legal entity performs its activity and is distinguished from other legal entities. In the RA, legal maintenance of the firm name is performed under the procedure defined by the RA law “On Firm Names” based on the registration of the firm name, and without registration based on international agreements. The exclusive right to use the firm name becomes effective from the date of state registration of the legal person or from the date of record in the registry book of legal persons on making a change in the firm name and is effective during the entire period of their activity. The legal person with a registered firm name has an

³⁰ Hereunder they mean taking samples of signatures of the heads of enterprises on a special form in banks (and tax bodies).

exclusive right to use it. The fact of state registration of the firm name, as well as the exclusive right to use it by the legal person is approved by the Certificate of registration of the firm name.

Duties. By the procedure and rates as prescribed in RA Law “On State Duty”, duty shall be collected for state registration of legal entities and individual entrepreneurs, state registration of amendments in charters of legal entities, issuance of a new state registration certificate for a lost one, registration of separated subdivisions of legal entities and institutions, as well as for making use of information embedded in the unified State Registry.

Subsidiaries (Representations). Very often a legal person conducts transactions outside its location or the location of its permanent activity. Should those transactions be periodic, the legal person may establish for that purpose representations and subsidiaries in other places. By virtue of the RA legislation, representation means any separated subdivision thereof as located outside the location of the legal person, which represents interest of the legal person and exercises their interest protection. Subsidiary is considered to be any separated subdivision located outside the location of the legal person, which carries out all its functions or part thereof, including the functions of the representation. Representations and subsidiaries are not legal persons and operate under the charter approved by the legal person. Hence, representations and subsidiaries participate in property circulation on behalf of the legal person’s name vs. its own name and in favor of the legal person.

Availability of the information on legal persons. In the event of registration of legal persons, information for state registration, including the firm name of trade organizations, shall be recorded in the state registry of legal entities, which is publicly available.

2. Administrative and implementation problems of Registration.

Lets present the problems (both administrative and implementation) as referred to the results of the survey questionnaires that the persons initiating own businesses in Armenia face in different stages of state registration.

The very first group of the problems appears in the stage of state registration. When categorizing these problems by their either administrative or implementation nature, **time loss** as an administrative problem is of more significance. When examining this from different standpoints, such as organizational-legal forms of enterprises, foreign investors, woman founder/head, time span of establishment, one can indicate the following common pattern – time retains its problematic nature in all cases. At the same time, it manifests different levels of complication by examined standpoints. For example, the problem of the time loss is more complicated during registration of JSC, which is specific both for Yerevan and marzes. The problem for JSC in marzes is of less importance (34.1%), as compared with Yerevan (40%). However, this does not change the general pattern. The situation is almost the same from the perspective of the founder/head (27.5%). However, in marzes, the problems is of less importance (28.3%) as compared with the importance of the problem for organizations with woman founders/heads that function in marzes (33.3%). In fact, both in Yerevan and in marzes women spend more time for the registration process as compared to men. As to the significance of the problem in relation to the year of establishment of the organization (individual entrepreneur), it is higher for those organizations that are established after 2002;

here marzes account (28.4%), because the importance of the problem has diminished by 1.1% in Yerevan³¹.

The next in the category of administrative problems is the level of **services and professionalism**. In the view of the impact of this problem, JSCs have given the pass to LLCs both in Yerevan and marzes. A bigger share of this problem is recorded in respect to organizations with foreign investment, particularly those in Yerevan (20.0%), and in marzes the situation is changed to the prejudice of women heads/founders (21.4%). The problem in question as related to the year of establishment is exacerbated for those businesses that are established in Yerevan after 2002 (23.4% vs. 18.8% of those that are established before 2002), since the problem has maintained its stable significance in marzes³².

Availability of the problem re the level of services and professionalism should have apparently increased the significance of the **lack of supporting mechanisms**, which has been proved by the survey results. Hence, the second most important problem among administrative problems is lack of supporting mechanisms. Note, that the above-stated problem is striking in respect to women heads/founders in Yerevan - 15.1% (in the RA it totals 12.6%). In respect to organizational-legal forms, lack of supporting mechanisms is worsened for IEs both in Yerevan and in marzes³³. As to the problems re implementation, the following rating could be envisioned: 1. costs of law implementation; 2. complications and gaps in terms of implementation of law; 3. inaccessibility of the law; 2. contradictions and ambiguities of the law.

At the same time, when making analysis, given various standpoints, problems indicated in the presented rating change their places. For example, costs of implementation of law and inaccessibility of the law for IE both in Yerevan and marzes are almost of the same significance. For enterprises with both foreign investment and woman head/founder in marzes, the significance re inaccessibility of the law goes up, whereas enterprises with foreign investments in Yerevan do not face such a problem. At the same time, in respect to enterprises with foreign investments, the problem of complications and gaps re implementation of law is of a special significance (14.3%)³⁴.

As to the complexity level of the problems raised in the course of registration of the interviewees, time loss is in its constants first place in the RA. Graphs IV and VI evidence that this problem is in the focus of all interviewees, except for enterprises with foreign investment in marzes, for which the biggest problem is services of state entities and the level of professionalism. Given the complexity level, the latter is the second “centripetal” problem. The third stable pace is “reserved” by the lack of supporting mechanisms by the state³⁵.

Drawing IV. Distribution of Problems of Registering Enterprises (as Individual Entrepreneurs) in the RA According to Their Intensity

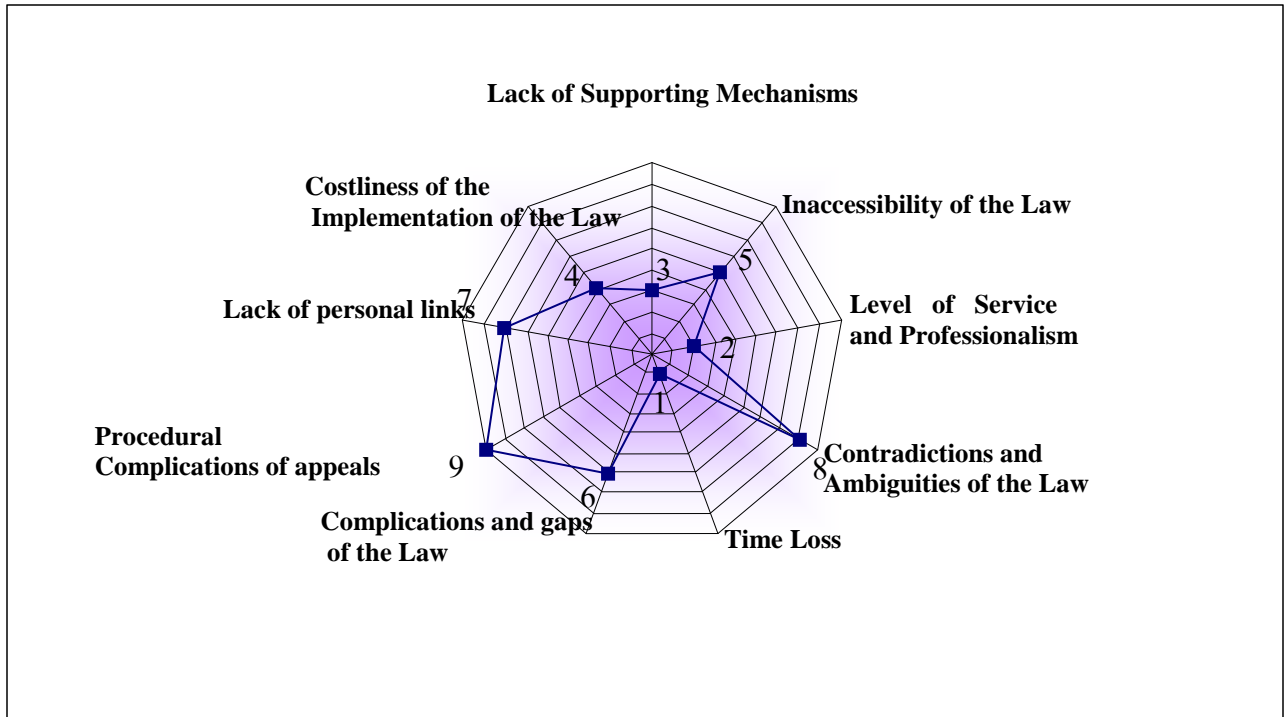
³¹ Data of tables 48, 50 and 52 are used in this paragraph.

³² Data of tables 48, 50 and 52 are used in this paragraph.

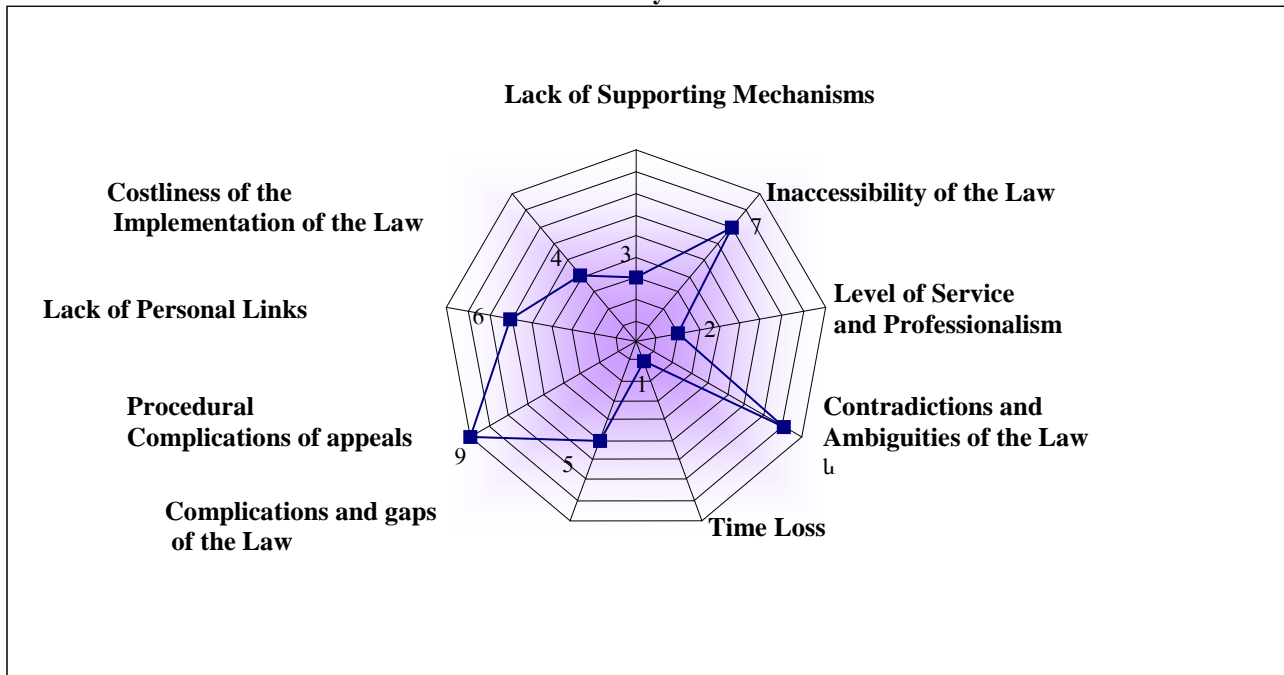
³³ Data of tables 48, 50 and 52 are used in this paragraph.

³⁴ Data of tables 48, 50 and 52 are used in this paragraph.

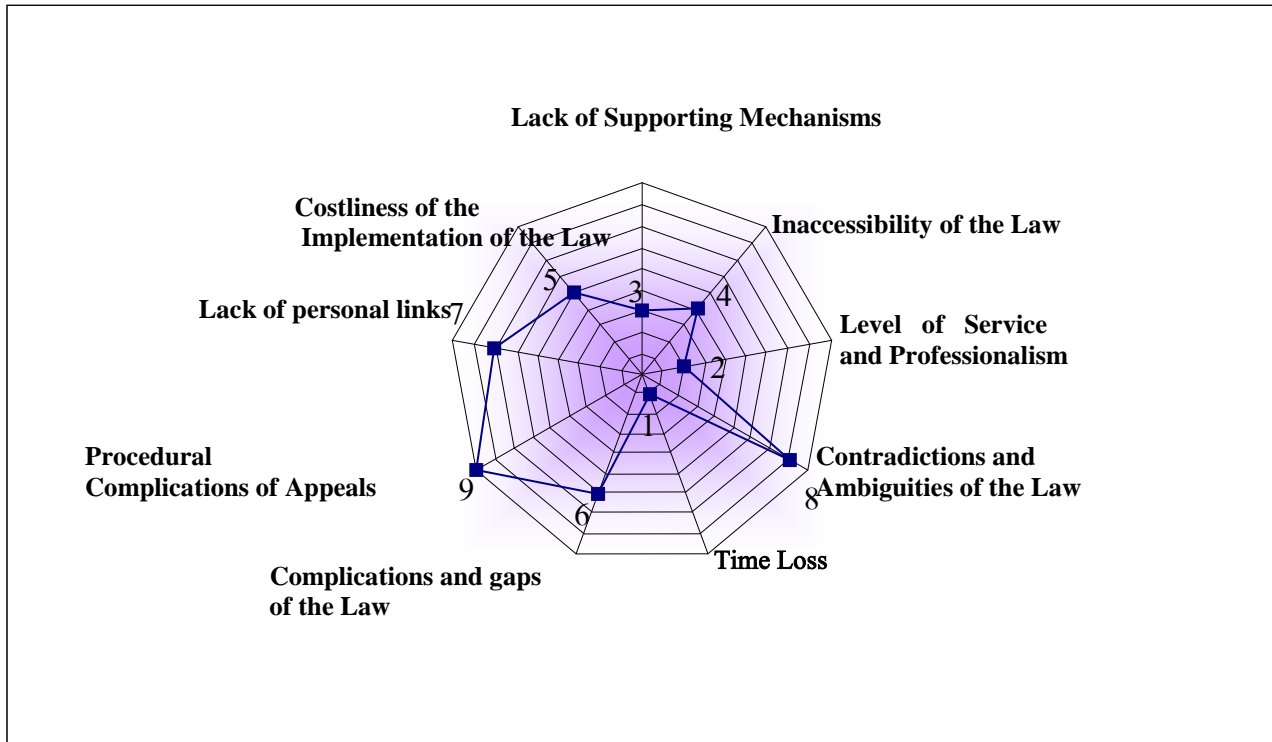
³⁵ Data of Table 97 are used in this paragraph.



Drawing V. Distribution of Problems in Registering Enterprises (as Individual Entrepreneurs) According to Their Intensity in Yerevan



Drawing VI. Distribution of Problems in Registering Enterprises (as Individual Entrepreneurs) According to Their Intensity in Marzes



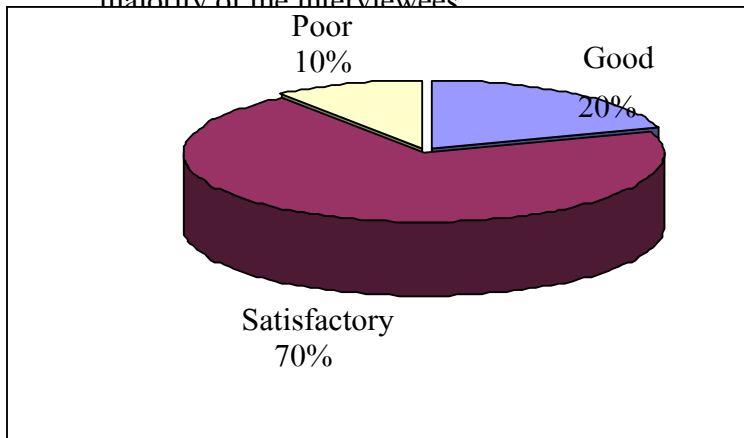
There is no doubt that problems arise, when registering an organization (registration as an individual entrepreneur). Another question is how the organizations or individual entrepreneurs do resolve these problems; whether they are inclined to apply for consulting services/lawyer's assistance, or if they think that the problems related to registration may be settled independently. As the results of interviews evidence, the general pattern is that organizations (individual entrepreneurs) think that their problems of state registrations might be resolved independently. Some deviations in percentage are observed due to the specific organizational/legal type, founder, date of establishment. While an IE in the process of state registration in Yerevan thinks that it may manifest a high level of independency (63.3%), expectations in respect to participation of a consultant is significant in marzes (52%); this indicator is the highest one in terms of potential participation of consultants, given all viewpoints. Interestingly, the organizations with a woman head/founder, particularly in Yerevan show a "tendency" of a quite higher level of independency (73.9%). Perhaps, it is influenced by the fact that the problems of registration in those very organizations such as time loss or lack of supporting mechanisms were more tangible. As to the data on those enterprises by the date of establishment, their examination also suggests that the patterns of independency of these organizations (individual entrepreneurs) is strengthened. For example, while 44% of those registered before 2002 "have an intention" to apply to a consultant, 40.6% of those registered in 2002 and later have already such an intention³⁶. However, it is assumed that when conducting the registration process of an enterprise independently, the entrepreneur does not exclude the possibility of getting assistance by other persons, thus significantly diminishing the level of the entrepreneur's independency.

The fact of acting without consultants evidences that organizations (individual entrepreneurs) should have a certain level of knowledge, that is should be aware of the registration process. Hence, evaluation of own knowledge of the interviewed organizations is of interest.

Drawing 10. The Degree of Awareness of the Procedure Set for Registering Organizations (Individual Entrepreneurs)

Data of Table 34 are used in this paragraph.

In fact, a predominant majority of the interviewees

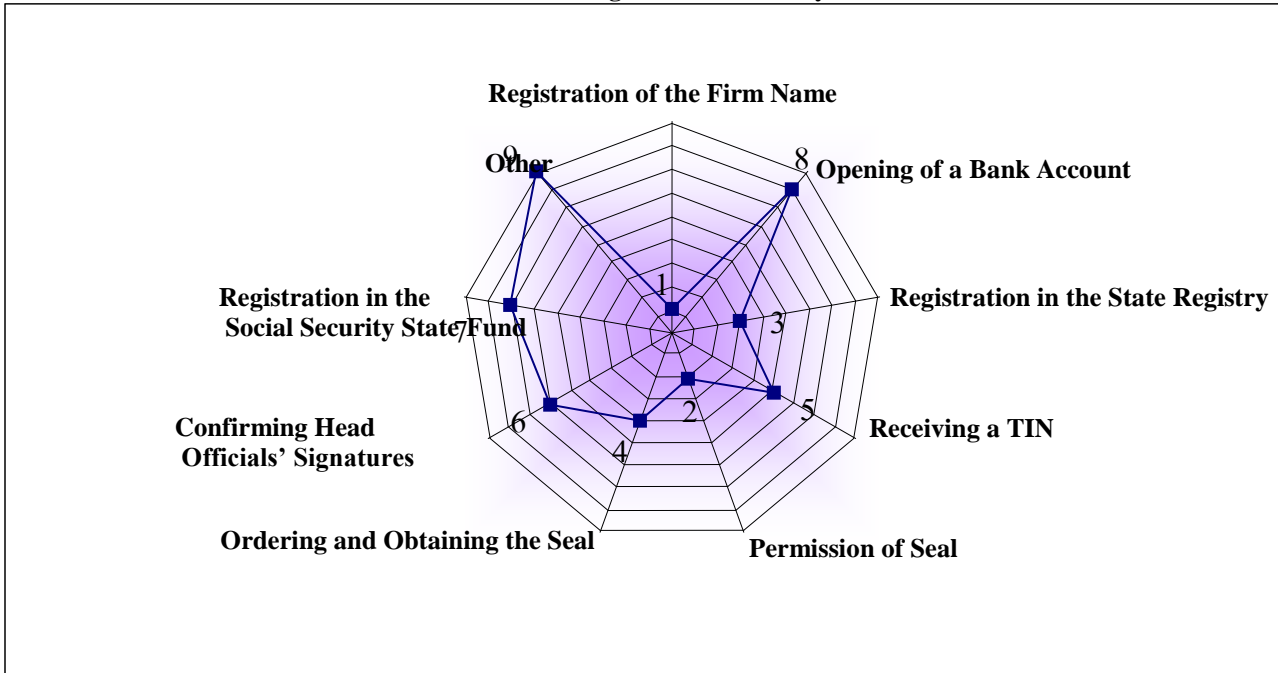


According to the data of interviews, registration of the well . . . (25.5%), and registration in the State Registry for JSCs and IEs (22.3% and 18.8%, respectively) has been problematic steps; in Marzes the situation is changed for JSCs and they are more unhappy in respect to the issue re obtaining a permission of seal. Note that the above problem is of a higher significance for LLCs and IEs registered in marzes; in the list of problems they are on the second place and comprise 17.5% and 14.5%, respectively. As to organizations with foreign investments and women founder/head, in terms of the complexity level, registration of the firm name is specific, notwithstanding that women heads have highly evaluated the process of ordering and acquiring of seals (16.2%). At the same time, for organizations with foreign investments and women founders/heads in marzes, all steps of registrations have had a significant complexity level. For women, obtaining a permission for seals, order of seal, registration of the firm name, acquisition of TIN are above the 10 marginal (conditional) units (19.2%, 18.4%, 16.0% and 10.4%, respectively); as to foreign investors, concerning issues were registration of the firm name (26.7%), obtaining of TIN (18.3%), permission of seal (16.7%), registration in the State Registry (13.3%). Analysis by the establishment date suggests that organizations established in 2002 and later have more frequently mentioned the problematic nature of the firm name registration as compared to those established before 2002. This difference is more striking in Yerevan. For organizations that are established in 2002 and later, the significance of problems of permission of seal and order and obtaining of seal have increased³⁷.

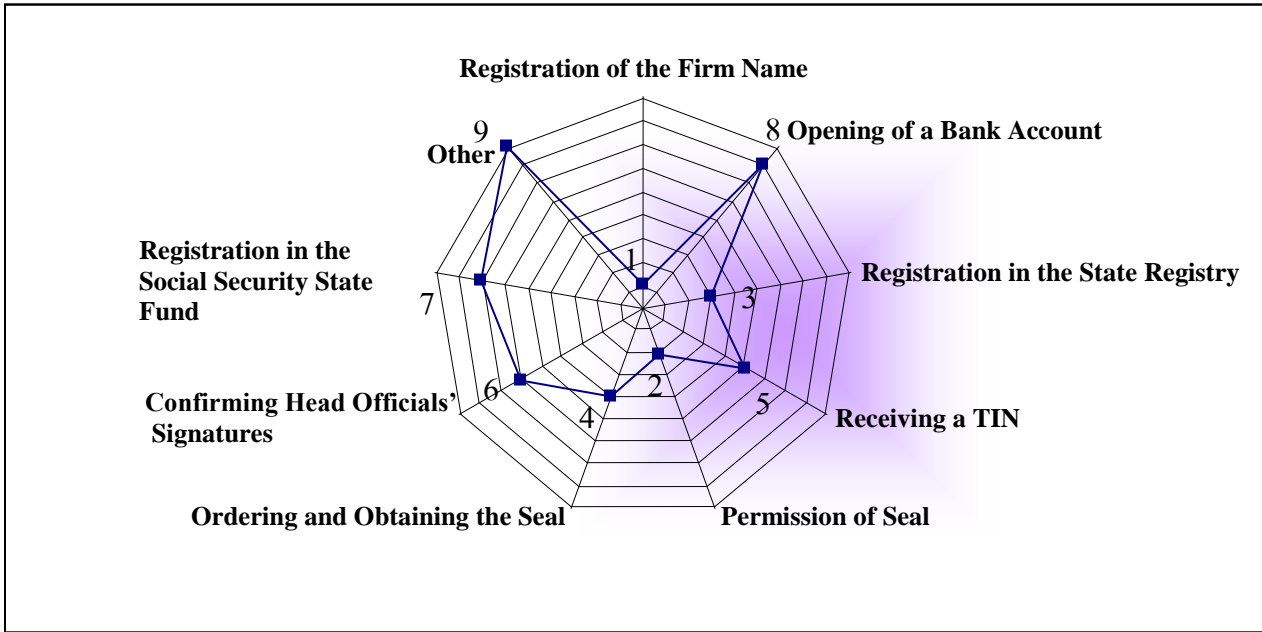
If we categorize the steps of registration by descending order and look at Graphs VII and IX, more problematic are registration of the firm name, obtaining of the permission of seal and further registration at the State Registry in the RA. In Yerevan registration of the firm name, registration at State Registry and ordering and obtaining of the seal, and in marzes, obtaining permission of seal, registration of the firm name and then, ordering and obtaining of the seal have been problematic.

³⁷ Data of Tables 58, 60 and 62 are used in this paragraph.

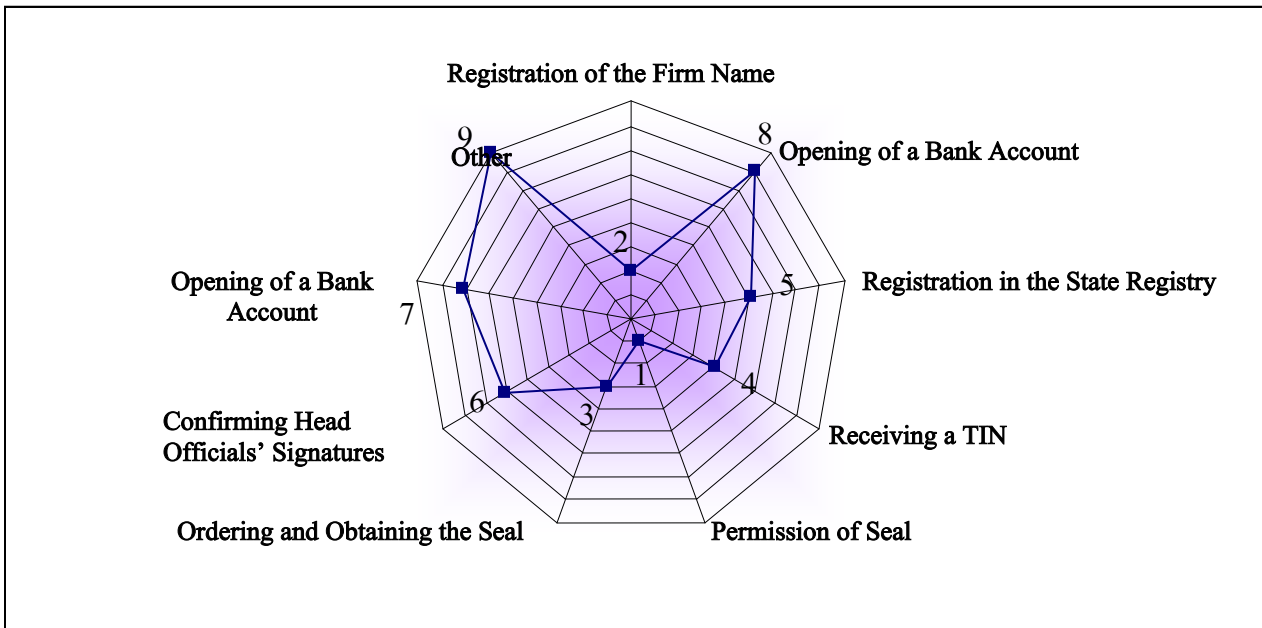
Drawing VII. Distribution of Problematic Actions Among the Important Steps for Registering Enterprises in the RA According to Their Intensity



Drawing VIII. Distribution of Problematic Actions Among the Important Steps for Registering Enterprises in Yerevan According to Their Intensity



Drawing IX. Distribution of Problematic Actions Among the Important Steps for Registering Enterprises in Marzes According to Their Intensity



In fact, variety of steps of state registration and their location within different bodies for business entities causes some problems with different complexity levels. Hence, as a possible option of the problem resolution, it has been proposed to the participants of interview the principle of “one stop shop” and possibility of combination with any proportionality of the above steps therein. As a result of interviewing, both in Yerevan and marzes by the specificity of organizational-legal form, founder/head, year of establishment, the structure of the principle of “one stop shop”, the interviewees envisioned the structure

in combination of the following processes: registration of the firm name, registration in the State Registry, obtaining TIN, permission of seal, registration in the Social Security Fund³⁸.

Hence, a question is raised: which structure should carry the burden of “one stop shop”, i.e. where should “one stop shop” be located. There is a certain answer to this question. Both in Yerevan (54.5%) and marzes (57.6%) the interviewees have given preference to the State Registry. In Yerevan, the State Registry has “received” more votes from JSCs (72.2%) and organizations with foreign investment (67.7%), and in marzes from IEs (61.9%) and organizations with foreign investments (60.9%). As a potential structure for location of “one stop shop”, Chamber of Commerce and Industry and tax bodies are on the second and third grading, respectively. Interestingly, organizations with foreign investment do not consider tax bodies in both Yerevan and marzes as a location for “one stop shop”. Adoption of the concept of business-registry by the interviewees (5.2%), as

well as a recommendation on establishment of a different structure for that purpose (4.7%) is also interesting³⁹.

Reasons for problems that are raised in the course of the choice of the firm name are mainly categorized into two groups: 1. problems resulting from non-availability of the lists of registered firm names; 2. problems resulting from the confusing similarity of the firm names. The “lion’s share” of the above reasons relates to the 1st group, that is enterprises mainly complain for the fact that when choosing a firm name they are not able to look at the names of registered firms, which in turn results in impertinent time loss connected with rejection of the chosen firm name for reason that such a name is already registered. While the reason of the confusing similarity of the firm names is on the second place, in some cases this last reason leaves behind the first one. For example, IEs (66.7%) and organizations with women head/founder (58.3%) in Yerevan prioritize the reason of the confusing similarity⁴⁰.

Choice of the firm name, as well as its registration and use are causing problems. The nature of these problems is both administrative and implementation. If we make an attempt of rating the problems of registration and use of the firm name, then on the first place is time loss in respect to organizational-legal forms of enterprises, founder/head, registration dates, and on the second places is the level of services and professionalism (in the meaning of this survey, both above problems are administrative), and in the third place is complications and gaps re to implementation of the law, i.e. business entities are more concerned and unhappy with relations with the staff of the registering body, whose knowledge and low servicing level resulting in time loss becomes a priority problem for business entities⁴¹.

³⁸ Data of Tables 64, 66 and 68 are used in this paragraph.

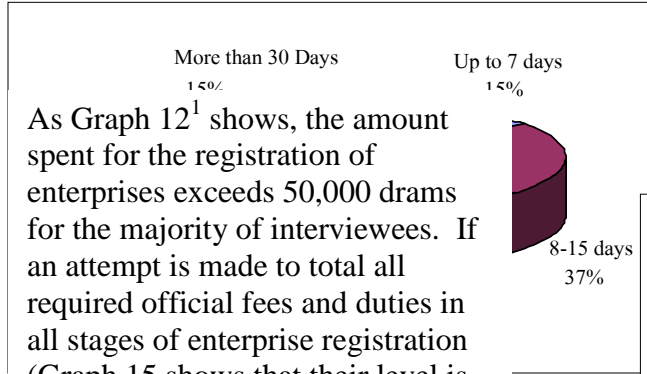
³⁹ Data of Table 72 are used in this paragraph.

⁴⁰ Data of Table 70 are used in this paragraph.

⁴¹ Data of Tables 74, 76 and 78 are used in this paragraph.

Within the frameworks of this survey, an attempt is made to evaluate the time and amount consumed for registration⁴² of an enterprise by rough calculations⁴³ of the interviewees. As a result, we have the following pattern (Graphs 11-15).

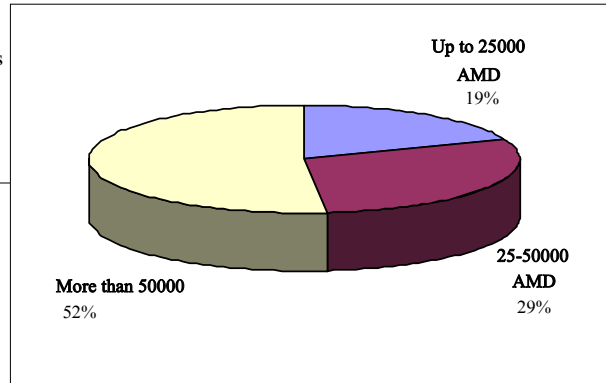
Drawing 11. Time Consumed for Registering Enterprises in the RA



As Graph 12¹ shows, the amount spent for the registration of enterprises exceeds 50,000 drams for the majority of interviewees. If an attempt is made to total all required official fees and duties in all stages of enterprise registration (Graph 15 shows that their level is reasonable for 56% of the interviewees¹), the amount will not exceed 50,000 drams. Hence, as a rule, in addition to state duties and other compulsory fees, businessmen make some other extra expenses. Perhaps, this may be related to amounts given to the consultants.

It is evident from the Graph that only 15% of the interviewees have registered their enterprises

Drawing 12. Money Consumed for Registering Enterprises in the RA



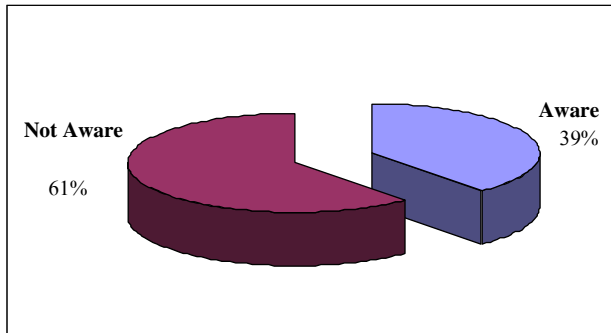
As it is mentioned, a legal entity may establish a subsidiary (representation), which is subject to state registration pursuant to the procedure established by law. State registration of a subsidiary (representation) also encounters some problems. It should be mentioned that the problems re time loss and professionalism in providing services that the enterprises face are on the same level (16.3%). The situation for JSCs in marzes is the same (the significance of the above-stated two problems makes up 25%), and the problems re services and professionalism level when registering a subsidiary for LLC is on a very low level. The pattern according to which administrative problems in the process of registration exceed the implementation problems by the significance is altered, when the registration of subsidiary is viewed from the standpoint of a foreign investor. It is common, since mainly foreign organizations are used to register subsidiaries in Armenia, and when taking into account the level of legislative regulation of the problem, complications and gaps related with implementation of law in organizations with foreign investments are on the first place (30% in RA, 25% in Yerevan and 50% in marzes). The above examined pattern of the problems is maintained, when they are examined by the year of company's establishment. It should be added that for organizations established in Yerevan in 2002 and later, significance of the problems of time loss and lack of supporting mechanisms has increased (25% and 16.7%, respectively, as compared to 8.3% and 12.5% for organizations registered before 2002). At the same time, a trend of decrease in the significance is observed in the problems re implementation of law⁴⁴.

⁴² Within the framework of the Report, the term of "Registration of an Enterprise" entails the processes of registration of the firm name, registration in the State Registry, obtaining TIN, obtaining a permission of seal and obtaining the seal, registration in Social Security Fund.

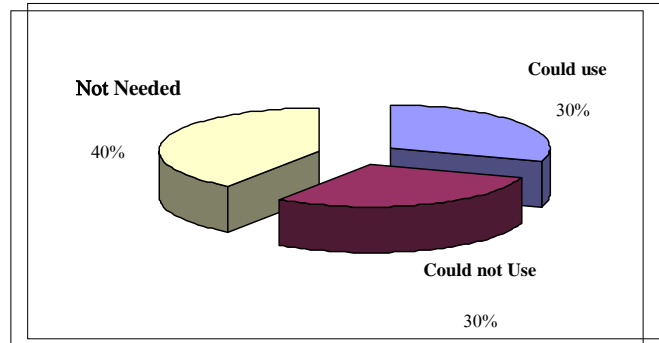
⁴³ Data of Table 81 are used in this paragraph.

⁴⁴ Data of Tables 88, 90 and 92 are used in this paragraph.

Drawing 13: Awareness of the State Registry Book of Legal Entities in the RA

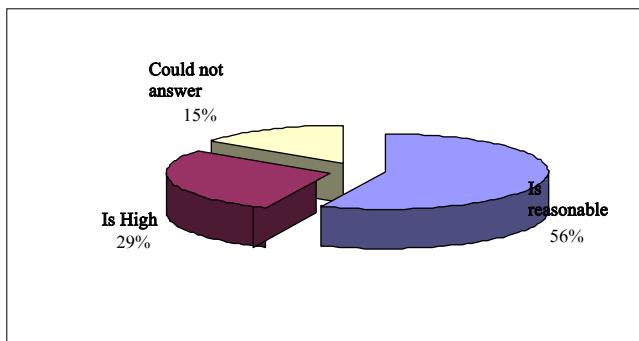


Drawing 14: The Structure of the Degree of Using the State Registry Book of Legal Entities in the RA



When comparing the graphs⁴⁵, it should be noted that those legal persons that were informed about the State Registry were either able to use the Registry or did not need to use it; this means that here the problem is not related to the fact whether the Registries are “open” or “closed”, but rather to an opportunity of being informed⁴⁶.

Drawing 15: Interviewees’ Reaction to the Collected Duties during Registration



In respect to the question whether the businessmen see any apparent contradiction in the RA legislation, more active participation was manifested by JSCs (77.8%) and those registered before 2002 in Yerevan (72.2%);

however, they had some difficulties, when answering to the question re the specific contradiction that had complicated their activity; this assumes that the interviewees feel by intuition that some contradiction exists; however, specification of those contradictions is problematic for Armenian businessmen¹.

⁴⁵ Data of Tables 85 are used in this paragraph.

⁴⁶ Data of Tables 87 are used in this paragraph.

3. Main outcomes of the Survey

Administrative problems, including time loss, level of services and professionalism, lack of supporting mechanisms, are of more significance in the stage of state registration of enterprises. Notwithstanding that problems re implementation have less significance as compared with the administrative ones, they may be grouped as follows by their impact:

1. costliness of implementation of law;
2. complications and gaps in terms of implementation of law;
3. inaccessibility of law,
4. contradictions and ambiguities of law.

As to the complexity level of the problems raised by the interviewees during registration, time loss is on its steady first place in the RA; the level of services and professionalism of state bodies is on the second place and lack of supporting mechanisms by the state “holds” the third stable place.

As a result of categorization of the steps of registrations in the descending order, registration of the firm name, obtaining of a permission of seal and then registration in the State Registry are more problematic in Armenia. Note that:

- registration of the firm name, registration in the State Registry and then, ordering and obtaining of the seal in the City of Yerevan are more problematic;
- in marzes number one problem is obtaining of the permission of seal, and then registration of the firm name and ordering and obtaining of the seal.

In respect to formation of such a standpoint in terms of permission, ordering and obtaining of seal, it is apparent that the factor of centralization of those processes in the capital has played an essential role.

While observing the similar outcome in terms of registration of the firm name, perhaps it should be taken into account the fact that over the last years, the processes of applying for registration of the firm name and obtaining a certificate are carried out jointly in the State Registry. Such an implementation of “one stop shop” for the first time may cause some complications. This means that various recommendations on “one stop shop” within the frameworks of this survey need thorough examination, and the methodology of combination of functions should be processed thoroughly.

The common pattern of state registration of enterprises is attributable to the fact that organizations (individual entrepreneurs) believe that their problems re state registration can be settled independently.

The predominant majority of the interviewees (70%) considers that the level of their awareness about the procedure defined for registration is satisfactory for registration of own business.

Both in Yerevan and marzes by specifications organization-legal form, founder/head and year of establishment, the structure of the principle of “one-stop-shop” (with slight differences) from the standpoint of the interviewees was in combination of the following processes: registration of the firm name, registration in the State Registry, obtaining TIN, permission of seal, registration in the Social Security Fund.

According to the interviewees, potential structures to be allocated for “one stop shop” has been classified by the following order: 1. State Registry; 2. Chamber of Commerce and Industry; 2. Tax Body. Adoption of the concept of business registry, as well as formation of a separate structure for this purpose, by the interviewees is also interesting.

The reasons behind the problems that are raised in the course of selecting a firm name are mainly categorized into two groups: 1. problems that result from inaccessibility of the list of registered firm names; 2. problems resulting from confusing similarity of the firm names. Given the survey outcomes, problems resulting in the course of registration and use of the firm name have the following sequence: 1. time loss; 2. level of services and professionalism, 3. complications and gaps in terms of implementation of law.

Only 15% of the interviewees has registered the enterprise in less than 7 days. Percentages for those registered within 8-15 days and 16-30 days are very close and comprise 70% of the interviewees. It should be noted that for 15% of interviewees, registration of enterprises lasted for more than one month.

The amount spent for the registration of enterprise exceeds 50,000 drams for the majority of interviewees. Hence, as a rule, in addition to state duties and other compulsory fees, businessmen make some other extra expenses. One may assume that this may be related to amounts paid to the consultants.

In general, the interviewees have welcome the implementation of the principle of “one stop shop” as a factor diminishing the timeframe of registration and a mechanism eliminating excessive bureaucracy. The idea of ongoing improvement of legislation is set forward. Necessity to increase the level of professionalism of the staff of state bodies, transparency of their activity, as well as the level of awareness of business entities has been emphasized. As a tool ensuring the latter, business entities focus on preparation and dissemination of special manuals, organization of trainings and free of charge consultation. There have been some recommendations on placing the list of the registered firm names in the website.

PART 4. BUSINESS LICENSING

1. Legal Process of Licensing

Before the RA Law “On Licensing” was adopted, relations connected with licensing in the Republic of Armenia were regulated by Decree No. 161 “On the Procedure of Involvement in Economic Activities in the Republic of Armenia” with various amendments and additions, until it became invalid (it was recognized as invalid by the RA Government’s Decree No. 895, dated 24.03.2001). It should be mentioned that since 1998 the scope of Decree No. 161 was only accounted for by the fact that there was not an appropriate law available, it was not legally substantiated and was not derived from the principles of RA legislations, since according to Article 3 of the RA Civil Code “civil rights can be restricted only by law”, and application of the licensing institution unequivocally assumes a certain limitation in the freedom of being engaged in economic activity.

The current RA Law⁴⁷ “On Licensing” is adopted in 30.05.2001. The new Law filled the above-stated “legislative gap”, and besides, adoption of the new law introduced clarification in relation to the licensing process. However, as it was in the former decision, the newly adopted law is characterized by a non-

⁴⁷ Herein, the Law

desirable specificity, which might be also qualified as a deficiency; this refers to a number of amendments and additions made after its adoption, which mainly relate to this or that type of activity to be considered as a subject to licensing, and/or vice versa. Perhaps, the above stated may be explained by changes in the field of economic development in the Republic of Armenia, as well as by the policy directed at providing of consistency of the Republic's economic development process with international norms. In any respect, as mentioned above, frequent changes in the law is not considered to be a desirable phenomenon.

Implementation of the Licensing institution, legislative regulation of relations raised in that field is not at all an end in itself. Licensing of some types of economic activity is considered as one of the directions of economic policy of the state and pursues concrete goals as prescribed in the Law (Article 5). The goals are:

- a) protect consumer rights,
- b) promote the regulation of developing market relations,
- c) improve the quality of goods and services,
- d) administer control over persons engaged in types of activities that risk human lives, health and property of persons, state and public interests, the environment, cultural heritage.

The license represents an official permission that approves the rights on engagement in a specific type of activity subject to licensing and at the same time, an official document confirming that right.

The law defines simple and compound procedures for granting a license, connected to the level of the risk that this or that type of business may cause to human lives, health and property, state and public interest, and in general its impact in the process of performance of goals that are stated in Article 5 of the Law. This split is encouraging unequivocally and is a progressive step, since during obtaining of licenses by simple procedures it enables to avoid the heavy burden of documentation to be filed as it is envisaged in the compound procedure, as well as to avoid impertinent time loss (simple license is granted in three days after appropriate documents are submitted, whereas for the licenses granted by compound procedure 30-day period is defined). It should be specified that relations in the scope of licenses granted by simple procedure are governed only by the RA Law "On Licensing".

Note that setting simple and compound procedures for granting licenses is not the only thing in respect to procedural breakdowns. For example, the compound procedure of granting licenses is also differentiated and envisions such types of activities, for which a license is granted only through tender. Moreover, for some types of businesses requiring professional knowledge, requirements of professional qualification are set.

To give conclusions on granting a license, suspending or terminating licenses, the licensing body establishes commissions, except for cases, when the above actions are carried out by decisions of collegial licensing bodies. Business entities seeking license should know the following specificities:

- Licensing specifications in the field of energy and stock markets are defined by RA Laws "On Energy" and "Regulation of the Stock Market" not contradicting the RA Law "On Licensing" and by licensing procedures as adopted in accordance thereof;
- Procedures and requirements of licensing pursuant to RA Law "On Licensing", including granting licenses, their renewal, redrawing, suspension and termination of their activity do not apply on licenses that are granted by the Central Bank;
- Specifications of licensing in the field of insurance shall be also defined by the RA Law "On Insurance", by licensing procedure adopted by virtue of the latter, and in case of compulsory insurance types, also by appropriate laws on compulsory insurance and licensing procedure adopted according to the latter.

- Legal relations connected with licensing in the field of TV-radio airing are governed by RA Law “On Licensing” to the extent it does not contradict the RA Laws “On Television and Radio” and “National Charter of TV and Radio” that govern this field and respective procedures adopted by TV and Radio Commission based on the latter.

For the purpose of maintaining the principle of publication of licensing, the licensing bodies are administering registries for licenses, preparing an individual file for each licensee and providing with appropriate information upon request of the state government and local self governments, as well as based on an application by physical and legal persons.

By terms of activity, the licenses are divided into those issued for a certain period and non-term licenses. Licenses granted by simple procedure are non-term ones. Unless otherwise provided by law, before the end of the term of activity of a license that is granted for a certain period, the licensee has a right to file a request with a licensing body for extending the term of the license.

Under certain changes in circumstances, Licensees are obliged to file a request with a licensing body on making appropriate changes in the license. Such circumstances are in particular, reorganization of the legal person, cases of changes in the name of location (this relates to any change in the name and place of residence of an individual entrepreneur or physical person in general). Changes in the place of activity performance or involvement in the same activity subject to licensing in other places also should be stated in the license.

By defining the condition of availability of a license for involvement in any type of activity, the law envisions also consequences of non compliance with the licensing rules and violation. Given the nature of violation, different methods of sanctions are applied. Among those sanctions, suspension and termination of the action of the license are applicable. If under suspension of the license, the person is only temporarily deprived of an activity subject to licensing or different function of that activity or a right to perform different activities under the license, the action of the license shall be terminated through invalidation of the license. Note that in the event of both termination and suspension of the license, if it is carried out upon a request of the person, connected with expiration of the term of validity of the license, insolvency of a legal person, termination of activity of an individual entrepreneur or death of a physical person, those are not considered as sanctions. Engagement in an activity subject to licensing without a license causes administrative or criminal liability connected with the size of damage caused to other persons, organizations or the state as a result of such an activity (Article 169 of the RA Administrative Violations Code and Article 188 of the RA Criminal Code).

When talking about liabilities, provisions of Articles 44 and 45 of the RA Law “On Licensing” should be mentioned:

- Article 44. If the licensing body has granted the license in violation of the requirements of legislation as a result of which the licensed person has caused harm to physical or legal persons, then the Republic of Armenia bears joint liability together with the licensed person.
- Article 45. The State is obligated to compensate the applicant or the licensed person the damages caused as a result of receiving a license, prolonging period of validity of licenses, redrawing up licenses, changing the location of performing the activities or engaging in the same activities subject to licensing in another place as well, illegal rejection of applications on giving a copy of the license or the transcript or illegal suspension of the effectiveness of a license.

Both provisions of the two above articles deserve attention for the reason that under availability of efficient and simplified mechanisms of implementation of the Law, it will be possible to avoid to the maximum various administrative and implementation problems identified in the field of licensing that businessmen face in the process of licensing.

2. Administrative and legal problems of licensing

As mentioned above, the RA Law “On Licensing” has provided enough clarification in the regulation of relations emerging in the licensing process. The law as such may be considered a success, if not to take into account various changes that were made in it (note that until now, 42 types of activities subject to licensing have been added to 79 activities that were embedded in the Law of 2001). However, it should be mentioned that the Law represents only one component of RA legislation and any good or bad rating of the law shall be given not only formally, as a separate document, but rather it should be viewed in the whole system of legislation, and in this case legal rating of the law will already be dependent on the efficiency of its implementation consistent to other legal acts. Such a systemized approach enables to identify a set of administrative and implementation problems, which as the survey outcomes suggest, are still available in the society. In particular, here are some of such problems:

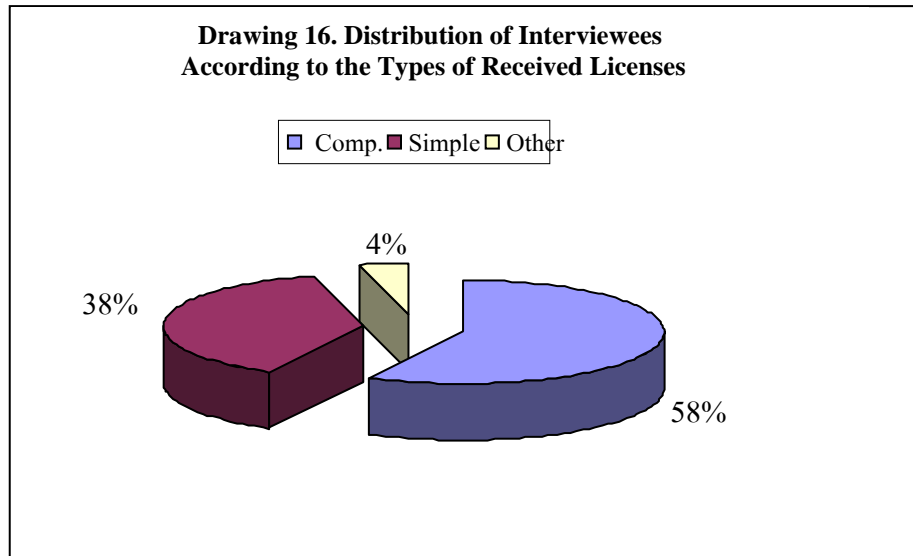
- Inefficient application of supporting mechanisms by the State;
- Inaccessibility of the Law, leading to lack of knowledge;
- Insufficient level of services by and professionalism of some employees of state bodies;
- Impertinent time loss;
- Complications and gaps in terms of implementation of law;
- Procedural complications in appealing of actions/inactions of the state body and its staff;
- Significant impact of personal relations among the staff of the state body on the level of servicing a particular person.

All above problems are also examined in one general system, are interconnected and interrelated with one another and availability of one problem inevitably represents the logical continuation and consequence of previous one.

Among the companies engaged in licensed activity, 57.8% have obtained the license of their activity by simple procedure, and 38.3% by compound procedure (other answers comprise only 3.9%). When addressing the organizational-legal form of companies, one can see that the predominant part, 58.3%, of companies engaged in the licensed activity is LLCs⁴⁸.

⁴⁸ Data from tables 99, 100 and 101 are used in this paragraph.

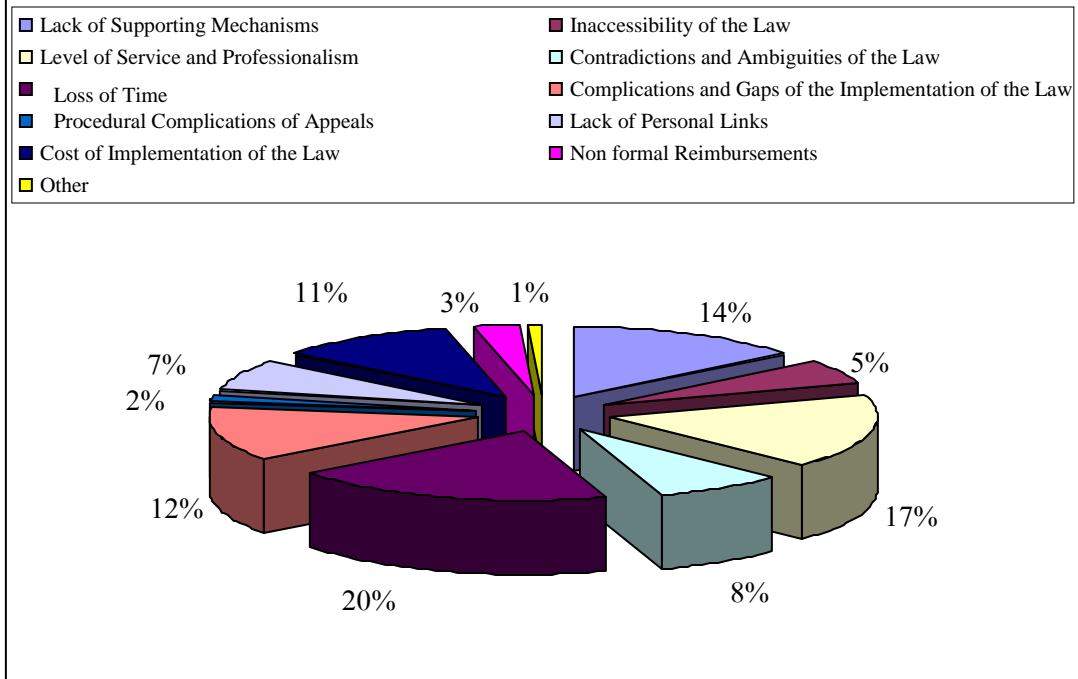
Drawing 16. Distribution of Interviewees According to the Types of Received Licenses



In connection with obtaining licenses, companies mainly have problems related to time loss (19.6%) and insufficient level of services and professionalism of state bodies (17.4%). Indicators on “discontent” re the problems are 20.7% and 17.2%, 18.4% and 19.4%, 17.6% and 11.8% for LLCs, JSCs and IEs, respectively. The above two problems are interconnected: insufficient level of services and professionalism automatically result in impertinent time loss. However, other problems that are not considered as of less significance should be added in the above stated. The problems re the lack of supporting mechanisms and complications and gaps in terms of implementation of law are prioritized by 14.5% and 12.2% of businesses, respectively. Almost the same pattern is observed for companies with women founders/heads; this means that in such a company , among current problems impertinent time loss (26.4%), insufficient level of services and professionalism of state bodies (13.9%), as well costliness of implementation (13.9%) are predominant among other current problems. When analyzing the outcomes of the survey, one may come to conclusion that in general there have been more problems re granting licenses before 2002 as compared to the period following 2002. One can see that the problems re impertinent time loss and insufficient level of services and professionalism of state bodies have a diminishing trend, and one may say with a confidence that it is essential, since other problems have a trend to grow. However, the pattern is different when approaching the analysis from the standpoint of Yerevan and marzes. In the City of Yerevan, after 2002 problems have contracted twice, whereas in marzes they have grown by about 50%. And the progress observed in relation to the abovementioned two problems shows a dropping trend in the capital vs. the growing trend in marzes (here problems re impertinent time loss and insufficient level of services and professionalism of state bodies have gradually increased). It should be also noted that no change in respect to non-formal allocations has been detected, although it comprises only 2.6% of the abovementioned problems⁴⁹.

⁴⁹ Data from tables 102-110 are used in this paragraph.

Drawing 17. Problems of Receiving Licenses by Their Nature



When obtaining licenses for different types of activity, 54.8% of companies have resolved this issue independently, and 36.5% think that they need to apply to a consultant for help. The picture is almost the same for LLCs and IEs. As to JSCs that participated in the interviews, the pattern is as follows: 50% and 41.9%, respectively. Note that 67.4% of companies with women heads/founders in Yerevan think that they can obtain a license independently vs. companies with women heads/founders in marzes, where this indicator is only 59%. For organizations with foreign investment, the ratio is as follows: 60.9% independently and 32.8% with assistance of consultant. When examining this problem in terms of time, one may say that after 2002 many companies think that license may be obtained independently - 59.7% of those participated in interviews as compared to 50.8%⁵⁰.

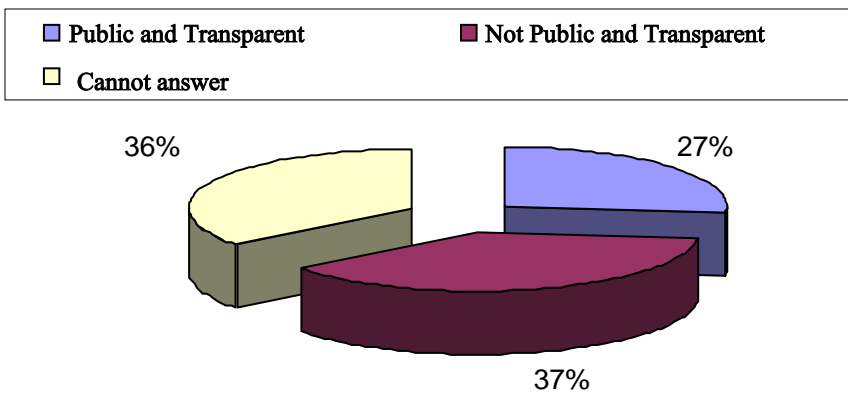
About 72% of the interviewed companies had difficulties in answering to the question whether there are types of activities that currently are subject to licensing, whereas might work without licensing or vice versa. Answers “yes, there are” and “no, there aren’t” comprised 17.6% and 10.5%, respectively. It is noteworthy, that there is an essential difference between the answers “Yes, there are” for organizations registered before 2002 (21.9%) and after 2002 (12.2%). This fluctuation is more evident for organizations registered in Yerevan – 30.7% and 15.6%, respectively. It is also interesting that unlike marzes where the answer “Yes, there are” makes 9.7% and “No, there isn’t” is 11.1%, the picture is quite different in Yerevan: “Yes, there are” – 25.2% and “No, there isn’t” – 9.8%. Organizations functioning in marzes, and those with foreign investments think that there is no need at all to make changes in licenses for any type of activity⁵¹.

⁵⁰ Data from tables 111-113 are used in this paragraph.

⁵¹ Data from tables 114-116 are used in this paragraph.

When analyzing the activities of state bodies in connection with the licensing procedure, we see that only 26.9% of businessmen participated in the survey think that it is public and transparent, and 37.5% think that state bodies function non-publicly and non-transparently. “Difficult to answer” option has a big share of 35.6%. We also have the same pattern when analyzing the issue by the form of companies/organizations, except for only IEs, where 34.6% think that the process is public and transparent vs. 30.8% with and opposite standpoint. In Yerevan this difference is higher and comprises 20.9% and 44.1%, respectively. Companies in marzes have another standpoint; here the ratio is 33% and 30.7%, respectively. Note that, this result is mainly accountable for by the ratio of answers by IEs, 45.5% of which think that activity of state bodies in respect to the licensing activity is transparent and public and only 4.5% insist on the contrary. In general, almost the simple majority of all types of interviewees in marzes evaluate publication of the process as positive⁵².

Drawing 18. Distribution of Interviewees’ Opinions on the Transparency of the Licensing Process



By dividing the types of activity into production, services, trade, etc. we see that 51.8% of the plants participating in the survey have given up their intention to be engaged in production, 28.6% have given up provision of some services. The “trade” group has received 0%. About 19.6% has refused the activities of the “Other” group. The reason behind this is the need of license to be engaged in that type of activity. It should be mentioned that this same pattern is observed for all types of companies participating in

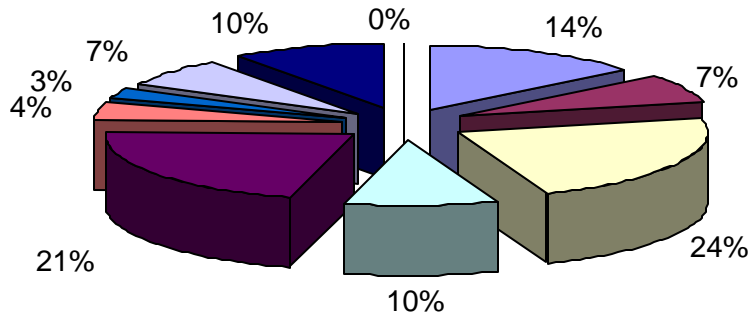
the survey⁵³.

⁵² Data from tables 117-119 are used in this paragraph.

⁵³ Data from tables 120-122 are used in this paragraph.

Drawing 19. Structure of Issues Regarding the Extension of License Term or Its Reformulation

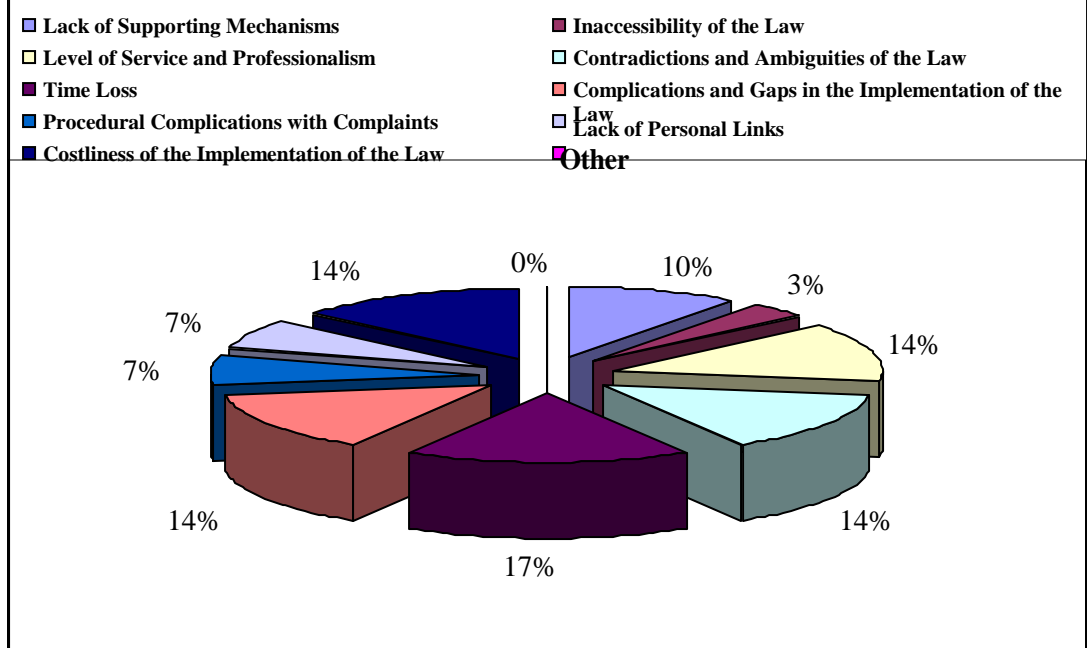
- | | |
|---|---|
| ■ Lack of Supporting Mechanisms | ■ Inaccessibility of the Law |
| ■ Level of Service and Professionalism | ■ Contradictions and Ambiguities of the Law |
| ■ Time Loss | ■ Complications and Gaps in the Implementation of the Law |
| ■ Procedural Complications with Complaints | ■ Lack of Personal Links |
| ■ Costliness of the implementation of the Law | ■ Other |



Connected with renewal and redrawing of the license, companies face some problems. The most significant problem for the business environment is insufficient level of services and professionalism of state bodies (22.9%). On the second place among the answers is time loss (21.4%). Respectively, 15.8%, 25% and 50% of LLCs, JSCs and IEs that have problems are dissatisfied. The companies think that 14.3% of current problems is due to the lack of supporting mechanisms by the state. This pattern is almost the same both for Yerevan and marzes⁵⁴.

⁵⁴ Data from Tables 123-131 are used in this paragraph.

Drawing 20. Structure of Issues Regarding the Suspension and Termination of the Action of License



In respect to suspension and termination of license, Companies mainly have problems re time loss (17.2%). This problem is a subject of “dissatisfaction” for 21.4% of LLCs and 13.3% of JSCs. The businessmen have the same standpoint (13.8%) in respect to other current problems, such as insufficient level of services and professionalism of state bodies, contradictions and ambiguity of the law, complications and gaps in terms of implementation of law and costliness of implementation of law. While analyzing the outcomes of the survey, one may come to a conclusion that problems re suspension or termination of the license before 2002 were more, as compared with the period following 2002 (86.2% and 13.8%, respectively). This pattern is the same for both Yerevan and marzes⁵⁵.

While analyzing the results of appealing of the actions or decisions of the state bodies re licensing, it could be concluded that 60% of appealing organizations have settled this problems in full or part in their favor. However, 40% are turned down. The answers are as follows by the type of companies: LLCs – 60% and 40%, respectively; JSCs 56.3% and 43.8%, IEs 75% and 25%, companies with foreign investment 54.5% and 45.5%, companies with women head/founder – 62.5% and 37.5%⁵⁶.

The issue re the obvious contradictions in the legislation on licensing is also of great interest. About 99.8% of companies participated in the survey think that there are obvious contradictions in the legislation; however, they had some difficulties while mentioning those contradictions⁵⁷.

If we try to set a certain sequence of current problems in the licensing process, we should start from the lack of knowledge in terms of law, since unawareness of own rights and obligations of a person deprives the latter of the opportunity to protect his/her rights appropriately, as a result the opportunity for creation a ground for abuse is enhanced. At first sight it seems that all preconditions are ensured in respect to

⁵⁵ Data from Tables 132-140 are used in this paragraph.

⁵⁶ Data from Tables 141-143 are used in this paragraph.

⁵⁷ Data from Tables 144-146 are used in this paragraph.

excluding the problem of lack of knowledge on law; there is no problem in obtaining any legal act related to the area; within a three-day period a person may receive any information in question from the license registry; a number of specialized consulting companies are functioning. However, taking into account the vitality and legal level of population, as well as the traditional methods of resolving problems, one can note that information representing a precondition for activity is not accessible for everybody. Given the above stated, it becomes evident that application of supporting mechanisms by the state is not on a proper level. The results of the survey show that in some cases a person finds a company, gets ready to be engaged in a certain type of activity, however, being unaware of the fact that this activity is subject to licensing with all its side-effects – state duties, time loss, procedure of issuing a license, etc. Perhaps it will not be true to say that a three-day period for simple licenses and a thirty-day period for compound licenses is an impertinent time loss; however, these timeframes are justified only in cases, when the person from the very beginning has been informed about them and has not faced actual problems in the half way, as it is in our example. That is why the majority of the interviewees has suggested that a consultative, informative “room” be created in the Registry.

While addressing the problem of costliness, when the subject matter relates to state duties levied for licensing, perhaps it will be a mistake to express a unanimous opinion on their impertinently high amount, without an in-depth analysis of the criteria serving as a basis for determining the state duty collected for a certain type of activity. However, the fact that the amount of the state duty creates an unjustified difficulty for entry of small and medium businesses into a certain business environment is striking. Taking into account the above stated, it can be concluded that impertinent costliness is available mainly in the procedures of getting consultation, information, obtaining other necessary documents, procedure of excluding the possible refusal of the license.

Perhaps, impertinent time loss and costliness of implementation of law may be connected with procedural difficulties re appealing action/inaction of the state body and/or its employee, since this very procedure represents a rather cost - consuming and time-consuming and sometimes an ineffectual process. A number of interviewees have mentioned about this. Not many of them do apply to this appealing institution, just being sure that they will be able to resolve this problem not in that entity, but rather in the court.

To recap, when subjecting a person to an administrative liability, the state body is given a three month period for expropriation of an administrative fine, and the person that is subject to administrative liability has only a 10-day period to appeal the administrative decision (this timeframe is being mainly missed because of unawareness). As one can see from Table 147, in the last place (the lowest percentage) in the set of problems is “procedural complications of appealing”. Perhaps this rating is explained not only by the lack of above-mentioned actual complications, but by the fact that the interviewees are far from having any positioning re appealing procedure (given specifications of the currently formulated business environment). The phenomenon is especially visible in marzes – 0%, which perhaps is accountable for by the fact that the number of population in marzes is low and they know each other in their everyday activity.

As thw reason for costliness and impertinent time loss is prioritized the fact that the significant part of functions connected with licensing is performed only in the Capital; hence, some complications raise in marzes for entities, thus resulting in another type of the problem – improper level of control implemented in terms of activities subject to licensing.

3. Main Survey Outcomes

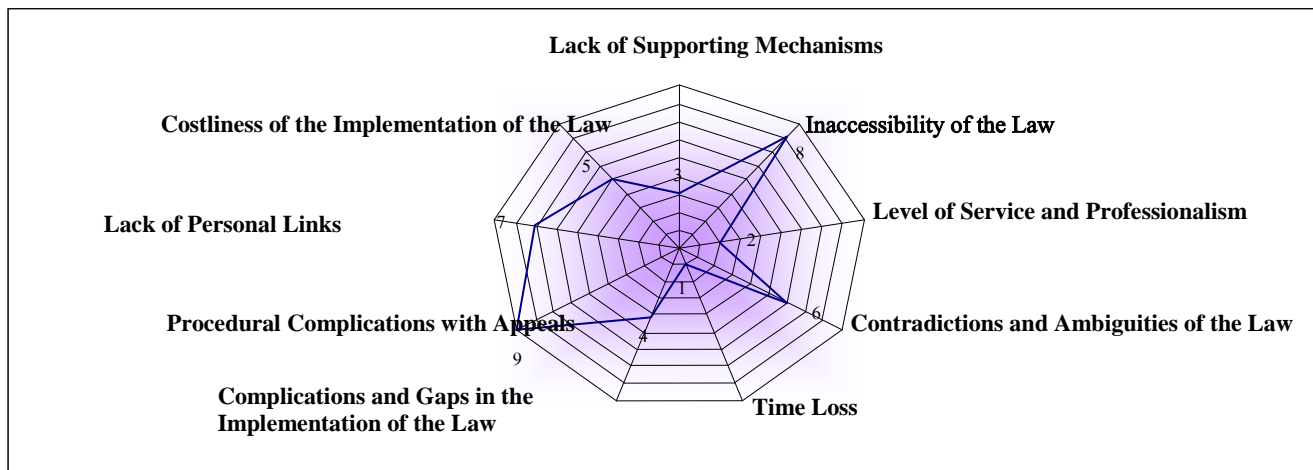
The analysis of survey outcomes enables to arrive at a conclusion that the legislation governing the relations connected with the licensing in the Republic of Armenia results in a set of problems in the process of implementation. Some businessmen/interviewees indicate that there are no evident contradictions in the Law, while some of them are sure that there are such contradictions; however, for various reasons (do not remember, short of time, etc.) they had not indicated these differences, at the same time noting a number of problems that they have faced in the process of obtaining license, such as time loss, costliness, informal compensations, etc. This problem is particularly available in marzes, and this is perhaps accounted for by the fact that the licensing process is centralized in Yerevan. Table 103 plotted as a result of the survey shows lack of supporting mechanisms by State, non-proper level of services and professionalism, complications and gaps in terms of implementation of law, impertinent time loss, making up 69.4% as problems related to obtaining of licenses of companies registered in marzes and participated in the interviews.

Note that, from the standpoint of severity, these problems are categorized by the following sequence (Graphs X-XVIII):

- time loss;
- insufficient level of services and professionalism;
- lack of supporting mechanisms by the State;
- complications and gaps in terms of implementation of the Law.

As it is already mentioned procedural complications of appealing is at the last place⁵⁸.

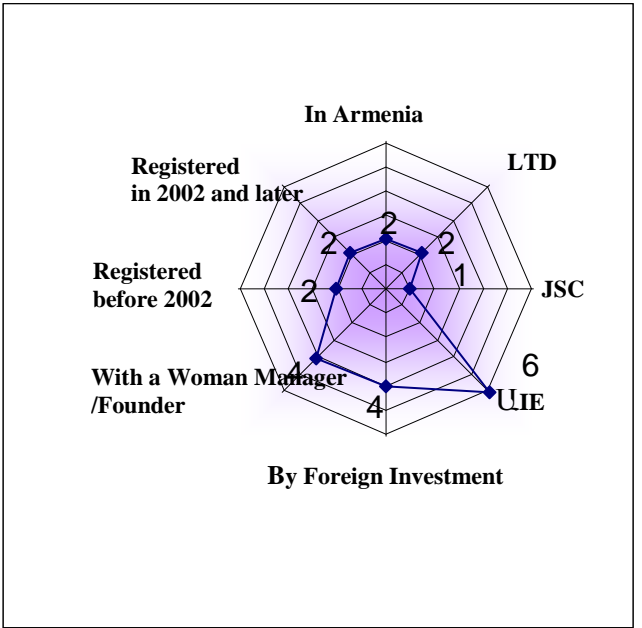
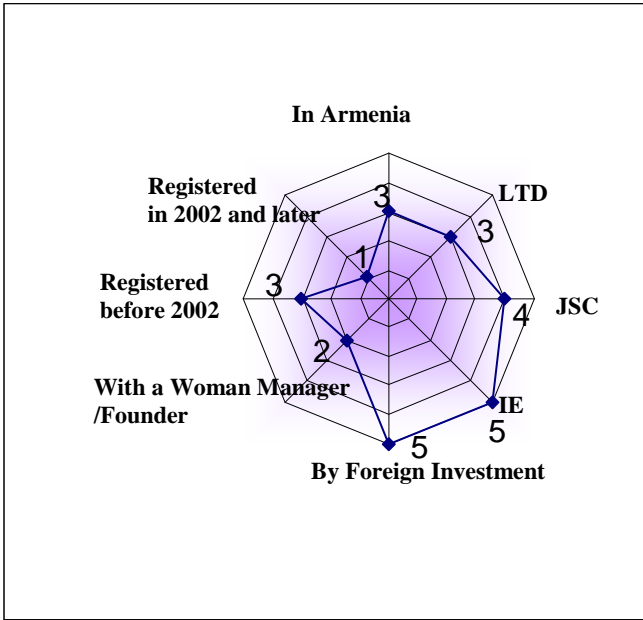
Drawing X. Distribution of Issues of Receiving Licenses According to Their Intensity in the RA



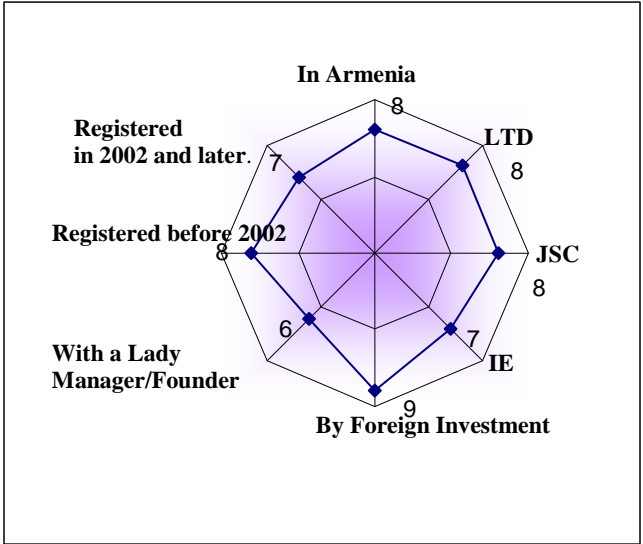
Drawing XI. Lack of Supporting Mechanisms

Drawing XIII. Level of Service and Professionalism

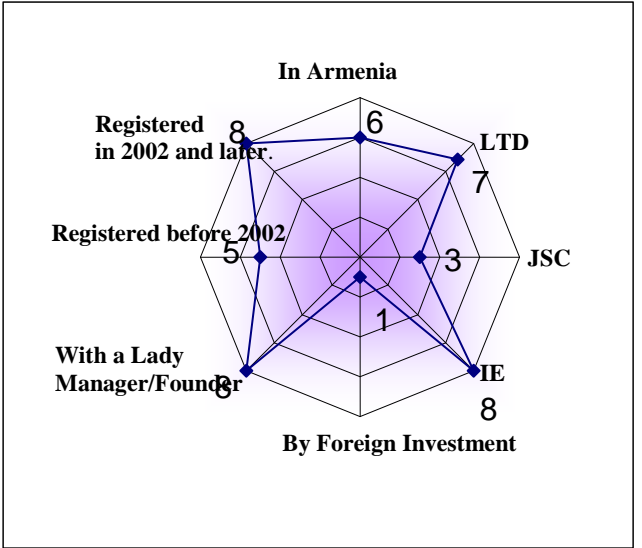
⁵⁸ Data from Table 147 are used in this paragraph.



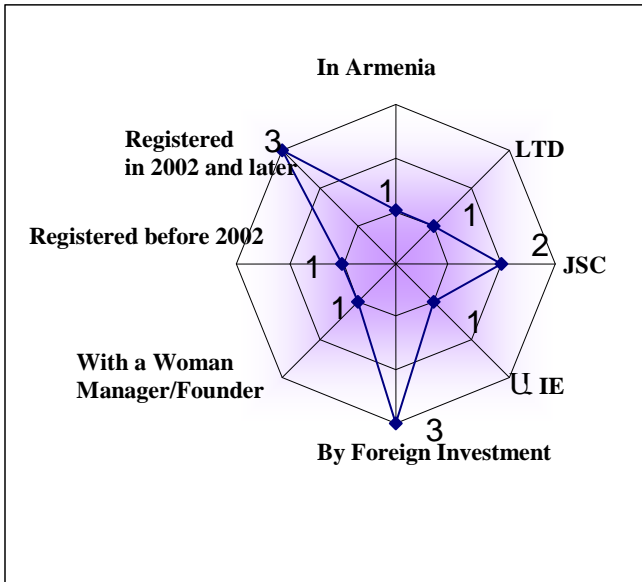
Drawing XII. Inaccessibility of the Law



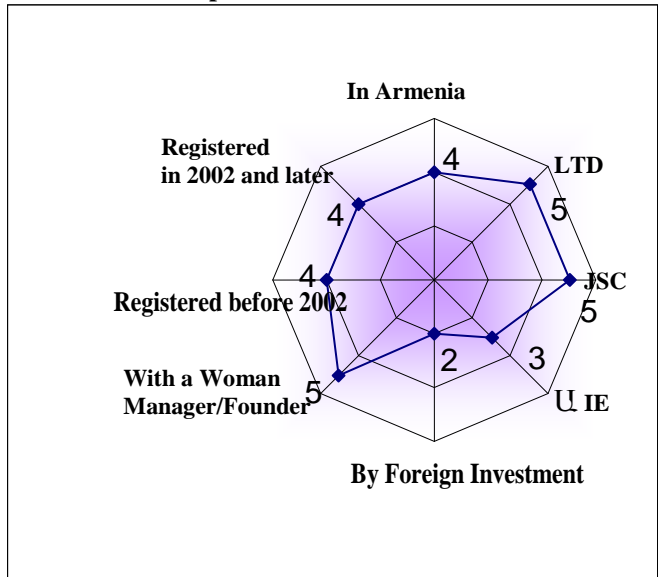
Drawing XIV. Contradictions and Ambiguities of the Law



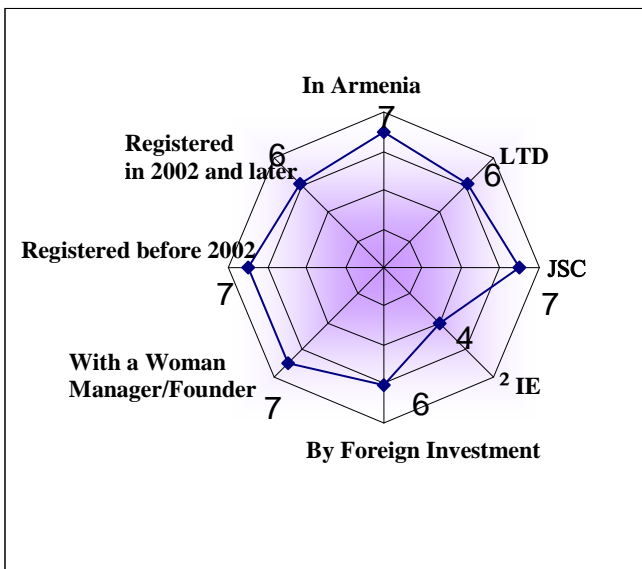
Drawing XV. Time Loss



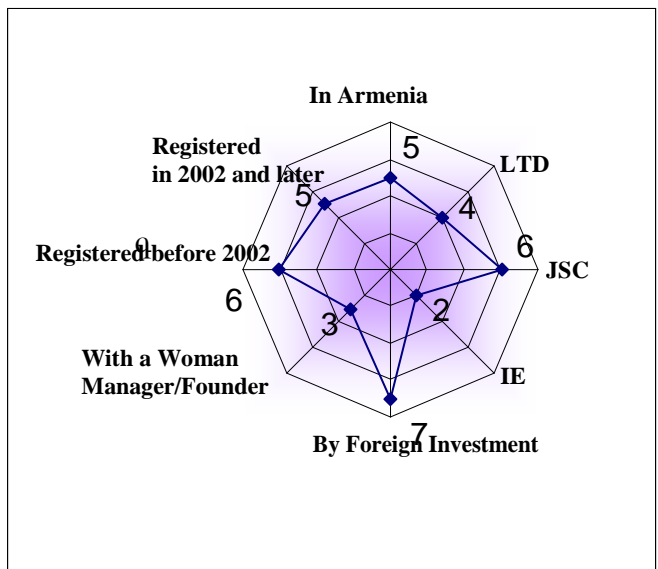
Drawing XVI. Complications and Gaps in the Implementation of the Law



Drawing XVII. Lack of Personal Links



Drawing XVIII. Costliness of the Implementation of the Law



It should be mentioned that answers presented by the interviewees are sometimes characterized by some subjectivity. Particularly, well-founded business entities very often suggest that the field of their activity becomes a licensed activity (the contrary position is observed for those that are making their first steps in

the business environment). We think that the above-stated recommendation is connected only with an intention of impeding the entry of other potential competitors into that field. On the other hand, the argument that activities subject to licensing are not controlled properly sounds enough objectively and deserves attention. Perhaps one can understand the attitude of a businessman, who has obtained a license with difficulty vs. its competitor, another business entity, performing the same activity without a license.

According to the interviewed businessmen, part of them had a willingness to be engaged in the fields of construction, medicine, alcohol drinks, but being unable to overcome procedural complications necessary for that area, have given up that goal.

Since we have already talked about manifestation of a coordinated approach in respect to the questions of the survey, it is appropriate to focus on the recommendation (perhaps, also “a complaint”) brought up by the businessmen that have participated in the survey, notwithstanding that this has not been a subject matter of the survey (conditionally this may be viewed as a lack of supporting mechanisms by the State) and has not been handled as a question. Here we are talking about increasing the level of crediting of the businessmen that have just begun their activity in the country and release of the tax burden that they have to carry from the very first moment of their activity.

PART 5. CONCLUSIONS AND RECOMMENDATIONS

The questions that are found and examined in this paper enable to arrive at certain conclusions on legislative and administrative issues connected with establishment and registration of enterprises, and obtaining of licenses.

Among the main outcomes of the analysis of the process, one may specify one according to which administrative problems generating in businesses prevail over the problems re implementation of legislation. Hence, businesses are not much “pleased” with the work of state bodies and their representatives. Notwithstanding that this phenomenon is specific for the “newly” created enterprises, it has its objective reason connected with the low level of “appropriation” of legal acts that govern the field in the initial stage of their implementation. This accounts for the fact that there are relatively more cases, when problems are resolved through specialized advisors and representatives of state bodies.

In the stage of state registration of enterprises, administrative problems, including time loss, level of services and professionalism, lack of supporting mechanisms are of more significance. Notwithstanding this fact, the predominant majority of the interviewees considers that his/her level of awareness about the procedure defined for registration is sufficient in order to register own business. When categorizing steps of registration by descending order, registration of the firm name and registration in the State registry are considered as more problematic ones. It is typical that, 70% of interviewees think that 8-30 days are required for registration of an enterprise in Armenia. The amount spent for state registration exceeds 50,000 drams for the predominant majority of the interviewees. Actually, such high indicators for the time-consuming and cost-consuming nature are characteristic from the standpoint of prevalence of administrative problems. Perhaps this is the reason accounting for the fact that the predominant majority of the interviewees are for the principle of “one stop shop” and think that it should incorporate registration of the firm name, registration in the State Registry, obtaining of TIN, obtaining permission of seal and registration in the Social Security Fund. Here is the pointed remark of one of the interviewees:

“Today there is a need for the principle of “one stop shop” in Armenia, since much time and amount is consumed for foundation of a company. If the principle of “one stop shop” is implemented, it will be a significant progress and will facilitate the work of the beginner businessmen. It will be better, if the whole process connected with registration of a company be concentrated in one place, where from we might be also able to get both legal and economic consultation. I am sure that introduction of the mechanism of “one stop shop” will promote establishment of more legal persons, since introduction of such a mechanism will enable the businessman to save sufficient amount and time. All this process will be coordinated by one body and all excessive bureaucratism will be eliminated.”

It should be also mentioned, that over the course of its activity, the RA State Registry of legal persons has already established some positive attitude and it is quite understandable that businessmen would like to see “one stop shop” in that structure.

Among problems connected with the corporative management of enterprises, the time consuming nature of the processes, costliness of implementation of laws and complications and gaps available in the laws are predominant. JSCs especially severely face this problem, notwithstanding that those are objective problems both theoretically and practically. Together with this, businessmen are not pleased with the services of state bodies and do not have confidence in the professional qualification of the representatives of those structures. Hence, an atmosphere of mistrust is created on this level, and in

order to overcome this mistrust, businessmen seek and use their personal relations and justify the need for this. Perhaps this is the reason for having corporative misunderstanding as a common phenomenon and application of off-court means in the dispute settlement process.

The most significant administrative and implementation problem that rises in the course of liquidation of an enterprise for businesses is the lack of supporting mechanisms. Enterprises think that here bigger problems emerge as compared with the process of registration, especially those that are related to tax authorities.

Among the problems connected with obtaining of licenses by enterprises, lack of supporting mechanisms by the State, improper level of services and professionalism, complications and gaps in law implementation, impertinent time loss have been qualified as main obstacles. Note that problems connected with the licensing process are perceived more painfully by companies registered in marzes, who have to undergo this process in the Capital and not in marzes. Another typical feature is the fact that for the majority of interviewed businessmen a significant obstacle in some fields, such as construction, medical and production of alcohol drinks, is connected with the procedural complications of licensing in the mentioned fields. In general, the level of publicity and transparency of licensing is assessed as non-satisfactory.

It should be also mentioned, that during the interviews, the interviewees very often mentioned about issues associated with the problems of survey that mainly are related to the increase of the level of crediting for the beginner businessmen and facilitation of the tax burden that is too high to be carried by a new businessmen from the very beginning of his/her activity.

Summing up the main outcomes of the survey, one may come to a conclusion that it provided enough material for potential use by the structures and specialists related to that area. As a result, the users of this information may come to their own conclusions, develop measures for legislative and administrative improvements.

See below some recommendations. We are hoping that they also will be incorporated in similar discussions and will promote resolution of the problems that are identified in the businesses of Armenia. Thus:

Activities directed at administrative improvements

- It is expedient to take measures re application of the principle of “one stop shop”. It is desirable to introduce this principle gradually based on initial development of the methodology of functions embedded in it. It will significantly release the burden of beginner businessmen, resulting in decrease in the time loss and costs.
- Consider the possibility of applied IT in the licensing process of enterprises for the purpose of organizing the functions of granting the licenses electronically. Recently, the RA State Registry informed about commencement of such functions.
- Take appropriate measures directed at increase of the service quality. Particularly, use the tools of cooperation of private and public sectors widely implemented in the international practice.
- Take measures aimed at increase of the professional qualification of the civil servants, since administration of law implementation is accompanied by non-standard interpretations. In this respect, educational and practical trainings directed at staff training might be applied. For

concrete questions re implementation of legislation, it is more expedient to organize discussions or seminars/workshops by incorporating representatives of businesses.

Functions directed at introduction of the state supporting mechanisms

When starting entrepreneurial activity, the Armenian business environment expects an increasing support by the state, especially in the initial stages of the activity. In this respect, the following is appropriate:

- Activation of structures like SME DNC for “encouraging” the beginners through different supporting mechanisms, as well as for putting together the first “package” of documents (reports, etc.).
- Assist in education, qualification and training of the staff beginning from the stage, when there is an intention to start an entrepreneurial activity and foundation.
- Provide free of charge business and marketing consulting to the beginners for a certain period of time.
- Consider the issue re introduction of the institution of “tax loan” type.

Improvement of legislative acts

It is expedient to create a workgroup comprised of relevant specialists (with a clear working timetable, approved member staff and authorities). This group will carry out a complex study of the legislative environment (appropriate laws, sub-legislative acts) that governs foundation, registration and licensing processes of enterprises with a purpose of identifying all possible contradictions and gaps in laws and legal acts regulating different business sectors. The working group should be assigned to submit a comprehensive package as a result of study, with recommendations on general clarification of the environment (as well as those directed at reduction of risks of corruption), as well as the contraction connected with costliness of law implementation for small and medium businesses.