

# **Advisory Study on the Municipal Solid Waste Management in Yerevan**



## **Task 6 Report on Recommendations for Enabling Legislation and Regulations**

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## List of Abbreviations and Acronyms

AMD	Armenian Drams
ArmSSR	Armenian Soviet Socialist Republic
ASS	Armenian Statistical Service
CC	Community Council
CoC	Chief of Community
C&D	Construction and Demolition (waste)
CIL	Change in Law
CJSC	Closed Joint Stock Company
GDP	Gross Domestic Product
GoA	Government of Armenia
HAD	Head of administrative District
IA	International Agreements
JSC	Joint Stock Company
LLDF	Law on Local Duties and Fees
LOP	Law on Procurement
LOSG	Law on Local Self-Government
LOW	Law on Waste
LOY	Law on Yerevan (2008)
MAB	Multi-Apartment Building
MinNP	Ministry of Nature Protection
MSW	Municipal Solid Waste
MSWM	Municipal Solid Waste Management
NA	National Assembly
Nos	Number
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public Private Partnership
RCV	Refuse Collection Vehicle
RA	Republic of Armenia
SWM	Solid Waste Management
UGR	Unit Generation Rate (in kg/cap/day or kg/cap/year of MSW)
UNDP	United Nations Development Program
USAID	United States Agency for International Development
ToR	Terms of Reference

### Measures

Cap	Capita = person
L	Liter
M <sup>3</sup>	Cubic-meter
t/a	tons (Mg) per year (annum)

Exchange Rates (as of 9 September 2008)

1 US\$ = 320 ADM

1 Euro = 400 ADM

# 1. Executive Summary

## 1.1 The Assignment

The current Municipal Solid Waste Management (MSWM) System in Yerevan provides poor MSW collection as well as disposal services. Due to a variety of reasons not least a lack of resources committed, the system has deteriorated in 11 of 12 district communities in Yerevan. The situation has now reached a point where urgent action for improvements and modernization is required.

The Yerevan City Government is attempting to improve the present situation by involving the private sector. The Government of Armenia represented by the Ministry of Economy requested the World Bank's advice and assistance in supporting the process. The World Bank responded by tendering a Study funded by a grant from the Public-Private Infrastructure Advisory Facility (PPIAF) and Fichtner GmbH & Co. KG was selected as the Consultant for the

### **Advisory Study on the Development of the Solid Waste Management System in the City of Yerevan through Private Sector Participation.**

This report covers Task 6 of 9 interrelated tasks of this advisory study. It aims at providing assistance to the government and municipal authorities with respect to legislation and regulations.

## 1.2 The Anticipated PPP Scenario

This task 6 requires the design of a viable PPP option for the MSW sector in Yerevan. It requires the full effectiveness of the Law of Self Governing in the City of Yerevan. Otherwise, Yerevan will not have the status of one municipality. As an outcome of the review of applicable laws and regulations, several rounds of public consultation and interviews carried out with high level public stakeholders<sup>1</sup>, the following preliminary PPP scenario has been identified as most viable and has been used as the basis for testing the legal issues:

1. The entire City of Yerevan, being "one" municipality according to the Law on Yerevan, will be split into two approximately equally attractive waste collection service areas and the landfill at Nubareshen;
2. For each one of these service waste collection areas, "one" permit will be granted by the Mayor of Yerevan together with one permit for (parts of) the landfill;

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<sup>1</sup> The interviews and meetings conducted for this task 6 are shown in Annex A.

3. The “waste collection service” consists of the collection, transportation (storage) and disposal of waste for the two Yerevan service areas, including (but still needing further review) the sanitary cleaning services<sup>2</sup>, these being the street cleaning and snow removal;
4. The landfill service consists of the construction and operation of (parts of) the landfill at Nubareshen;
5. The duration of the waste collection service contracts will be 10 years each, allowing for full amortization of the respective investments and for an attractive profit margin;
6. Each one of the waste collection service providers (Operator) enjoys a period of full (first five years) and a period of partial exclusivity (second five years), where each Operator can contract with commercial customers in the other service area;
7. The billing and collection is done by the municipality and the municipality has a political choice to either recover all costs or to subsidize certain customer groups;
8. The Operator receives a service fee from the municipality of Yerevan. The Service fee is for the provision of waste collection (and sanitary cleaning) services and will be determined by the financial bid (incentive to keep the burden low, since the lowest service fee will score highest) and by the performance of the Operator. The achievement of the level of service will impact the periodic service fee payment to the Operator.

This is the first phase of a more comprehensive overhaul of the MSW sector in Yerevan and in Armenia. In the medium and long term, sector specifically, a further approximation to the applicable EU *acquis communautaire* should be initiated, with the introduction of modern principles and requirements (polluter pays, after care, etc) and a dedicated regulatory regime should be established.

If and to the extent Armenia embarks on a wider PPP policy, a PPP Agency and a dedicated PPP law could accommodate any further market liberalization in the waste sector. Alternatively, the contractual and sector specific regulation efforts could be furthered and with the respective services contracts regulating the relationship between the parties involved.

### 1.3 Main Shortcomings

Currently, the applicable legal and regulatory regime does not allow for the PPP scenario described above. There are severe shortcomings, with the most important ones concerning:

- (a) **Payment of bills:** If the municipality decides to outsource waste collection services, then the waste collection services provider has to conclude individual contracts with each and every customer. As a

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<sup>2</sup> Clear instructions were received to include sanitary services (street cleaning / washing and snow removal) from Ministry of Economy and Mayor of Yerevan.

- consequence, the service provider can invoice for its services only based on these contracts and enforce payment through the (private jurisdiction) courts.
- (b) **Permitting:** currently, there is no coherent permitting or licensing system in place, at least not to the extent that all the value chain activities of MSW are concerned. Whilst it might not be necessary to subject all activities to “licensing”, some type of permitting or registration is required. This is necessary to ensure coverage of service, quality of service and appropriate returns for the investors.
  - (c) **Waste Definition:** at this moment, there is no coherent definition of MSW and it is not clearly set apart from dangerous (hazardous) waste categories. For reasons of tariff determination and the application of different regimes, MSW should be split into household refuse and commercial / industrial waste.

At this given moment, a potential investor would face an environment, where the remuneration would be the collected fees, which have to be based on civil law contracts with each and every customer. There is also no guaranteed (exclusive) service area and any income derived from big commercial customer is thus not secure. And, in the absence of a clear definition and (in- or) exclusion of certain waste categories in MSW, a potential investor from abroad cannot ring-fence the service provision as such.

If the Yerevan MSW sector wants to appear on the radar screen of potential investors, the above scenario will need to be changed dramatically.

## 1.4 Recommendations

In order to change this investor and PPP unfriendly environment, two changes in law are required. These concern changes in the Law on Local Duties and Fees and in the Law on Waste.

The Law on Local Duties and Fees needs to be amended to introduce a payment obligation for waste collection services. Individual contracts are therefore no longer required.

The other change in law concerns the Law on Waste, in particular a clearer definition of household refuse and industrial (commercial) waste. This is necessary for the different regimes to address the correct recipients (regarding tariffs and waste stream specific obligations). Also, the permitting system in the Law on Waste needs to be reviewed to allow for clear definition of the anticipated waste collection (and sanitary cleaning) services provision.

On a policy level, the City of Yerevan will need to provide clarity on the monitoring and supervision competencies, details of which will be regulated (for now) in the service contracts. A clear policy statement demonstrating Yerevan’s commitment to private sector participation and an outline of the cornerstone of the envisaged future PPP environment would be helpful for

the private sector having to assess the entire ten year period in their calculations.

The tariff determination and collection remains with the City of Yerevan. Any surcharges for the condominium management's efforts in the participation of the waste collection (on their side) can either be factored into the tariff, a discount for condominiums can apply or the condominiums receive an extra remuneration under a different title.

## **1.5 Next Steps and Road Map**

Given the ambitious goal of the public administration to launch the tender in August or September 2009 and to conclude the (first) contracts before the end of this year, the road map to achieve this goal is in question.

Any time schedule made would be based on a number of variables. These concern the duration of the changes in law required. This, according to information received from the Government, could take anything between two and five months.

Then, there are multiple decision making points along this process which would have to be issued in a timely manner.

Finally, there is a need for ongoing technical assistance, in the detailed design of the PPP, the drafting of the tender documents and the service agreements, tender and negotiation assistance.

Any serious delay in any one of these activities will have a knock-on effect on the timing of the others.

Therefore under the current circumstances it is not considered useful to present a time schedule for implementation at this time.

## 2. Background and Subject of the Report

### 2.1 Project Rationale

The current Municipal Solid Waste Management (MSWM) System in Yerevan provides poor MSW collection and disposal services. Due to a variety of reasons not least the lack of resources being committed, the system has deteriorated in 11 of 12 district communities in Yerevan. Except for Kentron, almost no investments have been made during the past 10 years, resulting in a vehicle fleet, where 64% of vehicles (except Kentron) is older than 17 years. The situation has now reached a point where urgent action for improvements and modernization is required.

The Yerevan City Government is attempting to improve the present situation by involving the private sector. The Government of Armenia represented by the Ministry of Economy requested the World Bank's advice and assistance in supporting the process. The World Bank responded by tendering a Study funded by a grant from the Public-Private Infrastructure Advisory Facility (PPIAF) and Fichtner GmbH & Co. KG was selected as the Consultant for the

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This report covers Task 6 of 9 interrelated tasks of this advisory study. It aims at providing assistance to the government and municipal authorities with respect to the development of new and/or amended legislation that would support appropriate improvements in the SWM system and which may facilitate the use of public private partnerships in implementing these improvements to the maximum benefit of the city and its population.

### 2.2 Overall and Specific Objectives

The overall objective of the project is to:

- improve the MSW management of Yerevan City and
- evaluate private sector involvement to achieve this goal.

The specific project objectives are to:

- Evaluate the current situation respecting MSWM in Yerevan based on existing study work, and updated information as required;
- Develop a performance based specification defining an acceptable level of Municipal Solid Waste (MSW) collection service meeting reasonable standards of environmental and hygienic protection, affordability, capacity and local requirements, and identify incremental service enhancements over this basic level of collection service that may be considered;

- Determine the most beneficial development approach for future MSW disposal facilities, including the feasibility of upgrading the existing landfill to acceptable environmental and operating standards;
- Assess tariff levels and mechanisms for periodic change and collection, inclusive of recommendations related to appropriate reforms necessary to support the basic MSWM system performance levels, provision of environmentally sound disposal capacity; and incremental potential refinements to the MSWM system;
- Document and justify an overall configuration plan for Yerevan's MSWM system as it is developed;
- Advise on draft enabling legislation that would facilitate tariff reforms, appropriate assignment of responsibilities within the municipal structure, and provision for public-private partnerships in MSWM system financing and operation;
- Develop a commercial strategy for tendering MSWM services in the city of Yerevan that will optimize financing of required improvements, maximize cost benefit to the city and its population, and ensure a fair and transparent process, all agreed with municipal stakeholders;
- Provide advice and assistance as may be required in preparing for public private partnership implementation.

## **2.3 Project Tasks**

The Study is divided into a number of tasks as follows:

- Task 1: Evaluation of the current solid waste management system;
- Task 2: Development of the basic MSWM Collection System Performance Requirements;
- Task 3: Assessment of near and longer term waste disposal options;
- Task 4: Assessment of and improvement in the financial means to support the MSWM System;
- Task 5: Documentation of the recommended MSWM system configuration plan in the city of Yerevan;
- Task 6: Advice and assistance with respect to legislation and regulations;
- Task 7: Identification of the options for private sector participation in the financing and operation of the MSWM System and develop a business strategy for the delivery and financing of basic MSWM services;
- Task 8: Assistance for implementation of PPP arrangements;
- Task 9: Public and stakeholder consultation.

## **2.4 Subject of this Report**

This report aims at providing assistance to the government and municipal authorities with respect to reviewing the existing related legal framework and developing new and/or amended legislation that would support appropriate improvements in the MSWM system in the context of the proposed configuration plan (Task 5) and which may also facilitate the use of public

private partnerships in implementing this plan to the maximum benefit of the city and its population.

## **2.5 Activities Performed**

Specific activities and results performed under this task include:

- Review of relevant existing legislation and any proposed amendments thereto related to waste management, the authority of municipal government, the delivery of municipal services, the permitting and licensing of waste management facilities and operators, and the setting of charges and tariffs for these services; and
- Making recommendations on the above, particularly in respect to enabling the option of competitively determined private sector delivery of MSWM services and public private partnership arrangements that may be beneficial in financing these.

### **3. Critical Analysis of the Applicable Legal and Regulatory Framework**

In the following chapters, if the term Article or Paragraph is used, then these references relate directly to the relevant law or regulation under discussion in this chapter, unless otherwise quoted.

#### **3.1 Envisaged PPP Option for the MSW Sector in Yerevan**

The envisaged PPP environment for the municipal solid waste sector in Yerevan is an outcome of the preliminary findings of this task 6, discussions with the key public stakeholders, including the Ministry of Economy, the Ministry of Nature Protection, the Ministry of Urban Development, the Mayor and top executives of the municipality of Yerevan and the public stakeholder discussion which took place on the 11<sup>th</sup> March 2009 in Yerevan.

The ideal PPP scenario must be tangible, otherwise a critical analysis of the applicable legal and regulatory situation could not focus on the issues that really matter and could thus not result in a meaningful proposal for enabling legislation.

Therefore, the (preliminarily agreed) and high-level PPP scenario entails a split of the city of Yerevan into two (exclusive) waste collection service areas and the construction and operation of the landfill in Nubarehen, meaning three consortia will be identified (two waste collection service providers and one landfill operator).

A potential investor consortium must be able to recover their investment. As an outcome of the critical analysis, the following (simple) questions should be answered:

- A. Does the MSW sector in Yerevan allow for PPP / private sector operations?
- B. Overall, is the currently applicable legal and regulatory framework in the MSW sector in Yerevan investor-friendly?
- C. Are there any guarantees or securing mechanisms in place (other than sovereign guarantees) for the private sector to recover their investment?

All answers should be a clear “yes” if private sector investment and involvement under a PPP regime is desired in the MSW sector in Yerevan in a meaningful manner. The Critical Analysis will answer these questions and allow for the identification of shortfalls and bottlenecks.

#### **3.2 The Legislative Hierarchy**

The legislative hierarchy in the Republic of Armenia (RA) follows the central European “pyramid model”. This is regulated in Article 6 of the Constitution in principle and specified in the Law on Legal Acts (Section 2

“Type and Hierarchy of Legal Acts”). A graphic depiction of the model of the “Pyramid on Legislative Hierarchy” in Armenia is shown in Annex B.

According to Article 6, the Constitution enjoys supreme legal force and its norms apply directly. Laws are passed (and amended) by the RA National Assembly (NA), or by referendum.

The President of the RA can issue “Edicts and Orders”. “Decrees” of the Government can be adopted within the Government’s given authority as directly envisaged by the Constitution and Laws. The Government may also adopt legal acts within the scope of and as so-stipulated by the constitution or an enabling law. The Government may also adopt “Decisions” to regulate any relationship (legal issue) that is not regulated by a law and is not subject to regulation by another legal act. All the above can be adopted as individual or normative legal acts and must comply with superior legislation.

“Decrees” of Prime Minister may be adopted within the authority of the office of the Prime Minister, as directly envisaged by the Constitution and the Laws. The Regulatory Commission may adopt “Decisions” where directly so-envisaged by Laws. “Orders” of Ministries (as well as Decisions and Orders of the Yerevan Council and Mayor/Head of the Marz<sup>3</sup>) may be adopted within their scope of authority. Finally, “Decision” of the *Council of Aldermen* of the Community (CC) and of the Chief of the Community (CoC) may be adopted within the scope their competencies. All the above can be adopted as individual or normative legal acts and must comply with superior legislation.<sup>4</sup>

Other State Organizations are entitled to adopt “Individual” and “Local” legal acts, within their given (and legally assumed) scope of competencies, as provided by their charter and / or legislation; again, in line with superior legislation.

There are more normative instruments. Those are of limited relevance for this report and are, for the sake of completeness, reproduced in Annex C.

### **3.3 Enactment, Repeal and Amendment of Laws and Regulations**

The general legislative power is vested with the National Assembly (NA) (Constitution, Article 62; Law on Rules of Procedure of the National Assembly, Article 47). The right to initiate Legislative proceedings resides

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<sup>3</sup> Marz in Armenia is a territorial entity of administration with an appointed Head of the Marz ).

<sup>4</sup> Court Decisions may be issued only in cases envisaged by and within the scope of the Constitution. Court Decisions shall not conflict with existing legislation, departmental legal acts and International Agreements.

both with the Government and individual Deputies (members of NA) who can submit draft laws to the National Assembly for approval.

The period of time of a potential enactment, change or amendment of a law ranges (on average) between two and five months from initiation to the promulgation.<sup>5</sup> More on the law enacting and amendment process is in Annex C.

### 3.4 Legislation

The following chapter introduces relevant parts of the constitution and all laws and regulations that have a direct or indirect impact, or carry potential for having an impact on the MSW sector and the envisaged PPP scenario.

#### 3.4.1 The Constitution of the Republic of Armenia

The norms of the Constitution apply directly and laws must be in conformity with the Constitution. Therefore the following Articles and provisions are relevant to the MSW sector in the Republic of Armenia and establish mandatory boundaries for any comprehensive future regulatory framework for MSW in Armenia.

There is no direct reference to “waste” in the Constitution, but there are provisions relevant to waste management, namely those concerning environmental protection and human health.

The Table 1 below identifies the here relevant Articles and provisions of the Constitution.

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<sup>5</sup> Statements of representatives of the Ministry of Economy, Ministry of Justice and the municipality of Yerevan.

**Table 1: Analysis and Interpretation of the Constitution**

<b>Constitution</b>	<b>Interpretation</b>
Article 10 ensures the <i>protection and reproduction</i> of the environment and the reasonable utilization of natural resources.	(Allowing) illegal dumping is unconstitutional since it violates the protection of the environment. Pro-active approach encouraged for the protection of the environment
Article 33.2 ensures the protection of the right of everyone to live in an environment favorable to his/her health and well-being.	This stipulates a basic right for all RA citizens and bears potential for a challenge, if unresolved waste issues adversely affect the health and well-being of RA citizens.
Article 33.2 further ensures that everyone (personally or jointly with others) shall be obliged to protect and improve the environment.	This provision obliges all natural and legal persons (and also all public institutions) to protect the environment. Illegal dumping must thus be effectively outlawed (introduction and enforcement of a law).
Article 48 ensures that an environmental security (meant is safety) policy for present and future generations will be implemented as one of the basic tasks of the state in all spheres of life (economic, social, cultural etc).	This is a general environmental policy statement and a generation contract; today's generation is obliged to enact sustainable measures for environmental protection; meaning no "quick fixes" are permitted.
Article 48 further stipulates that the state shall, within the scope of its powers (and abilities), be obliged to undertake necessary measures for the fulfillment of the environmental security (safety) policy for present and future generations.	This provision introduces to some extent a limitation of the obligation mentioned directly above, ("within the scope of its powers (and abilities)"). But, it cannot be used to excuse inactivity.
Article 89 ensures that the Government implement state policies in the areas of science, education, [...] health, [...] and environmental protection.	This is another positive normative entitlement for policy makers of the RA to act and to implement sustainable and effective environmental policy systems.

The implementation of above-mentioned provisions and guarantees on the environment and human health (and as such, inter alia, waste management) is realized through a number of measures form various institutions.

The Constitution requires the coordinated participation of multiple parties (RA Government, local self-governing bodies and legal entities (as well as individuals) to protect and promote the environment and human health.

Chapter 7 of the Constitution guarantees local self-governance. The constitution is, however, silent on specific local competencies. In addition and in

particular, the Constitution requires that the State, local self-government bodies and public officials are competent to perform the acts authorized by Constitution or laws (Article 5). This means that local self governments must be capable of managing their “agenda” of competencies.

Article 106 stipulates that the self-governing bodies are empowered to establish “local taxes and duties” and “fees” for their services. If and to what extent MSWM is one of the “services” of local self-governing bodies and to what extent such a service can be delegated to the private sector will be analyzed below.

Article 45 obliges everyone to pay taxes, duties and other compulsory fees in conformity with the procedure prescribed by the law. This means, that “compulsory fees” must be paid.

### 3.4.2 Law on Waste

The Law on Waste (LOW) 2004, attached in Annex D, has been enacted to regulate, amongst others, waste collection, transportation, storage, processing, recycling, removal and volume reduction, with the following main objectives and principles (Article 5):

- (a) establishment of a unified state policy in the area of waste management;
- (b) establishment of conditions and requirements for an environmentally friendly waste management policy, providing economic incentives for resource-saving activities;
- (c) to avoid the generation of excessive waste, to promote waste utilization and to mitigate the adverse effects of waste on human health and the environment;
- d) the legal basis for the regulation of waste management.

To realize these objectives and principles, the LOW allows for the adoption of sub-normative legal acts. A number of those have been enacted. These are listed in Annex E.

A key Article in the LOW is Article 4. It defines “waste” as both “industrial” and “consumption” waste,<sup>6</sup> which are the remains of materials, raw materials, output, other products or organic waste derived from industrial activities and consumption, as well as goods (products) that lost their original consumer attributes. The types of waste are further dealt with by two Government Decrees and three Orders of the MinNP, a summary of which is included in Annex E.

The concept of MSW is mentioned in the Government Decree # 1161-N on “Defining the Obligatory Norms for Maintaining Common Share Property of Multi-Apartment Buildings”, but does not provide any guidance on the nature of MSW.

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<sup>6</sup> The unofficial translation in the Annex reads “household refuse”.

Waste management, according to Article 4 means: prevention, collection, transportation, disposal, processing, reprocessing, recycling, removal, disinfection and landfilling (as a disposal option).

This means, that any reference to “waste management” in this or other legislation will include all the above mentioned activities, in other words, waste management for both, household and industrial / commercial waste.

Waste collection includes the removal, sorting and waste disposal. Transportation is defined as transportation as such and storage (on sorting, recycling and disposal sites).

Waste disposal is defined for dangerous substances as “special treatment methods” and “landfilling” is defined as the disposal option for other wastes.

“Specially Provided Areas” are sites where waste can be placed and disposed of (landfilled). For landfills a permit is required. Landfills are specifically mentioned as “licensed landfills”, which means a “permit” has been issued as established by law, but no license since licenses to be issued are enumerated in the Law on Licensing.

Wastes (again in the defined sense) are further defined by a “waste classification system” and can be tracked via a waste passport.

Article 6 defines the “main approaches” of state regulation for waste management, being the protection of human health and the environment (see also constitutional obligations) and to balance environmental, economic and social interests in the area of waste management. This balance could be the basis for any waste tariff determination.

Article 7 sets out an obligation for the GOA, to develop a national policy for waste management, ensuring its implementation and to coordinate the activities of state authorized bodies.

Article 8 (addresses the MinNP) obliges the authorities of the environmental state authorized body, inter alia, to participate in the policy development, to approve sites and locations of waste management objects (that is any structure needed for waste management), to carry out a waste inventory, to provide a list of dangerous wastes, to coordinate waste passports and to keep a registry and to draft legal acts for regulation of the waste management sector and to approve normative acts within its jurisdiction.

Article 24 establishes supervision over waste management by a state authorized body, which is the Ministry of Nature Protection (MinNP) clarified by the Government Decree dated 19.05.2005 on “Designating Authorized Body in the Area of Waste Management”.

Article 9 (addresses the Ministry of Health) requires that any waste management objects are approved and to enact and update relevant health relevant standards and norms.

Article 10 outlines the duties of the territorial administration bodies (i.e. Marzes), which are, inter alia, to prepare, develop and “oversee” the implementation of programs in the waste management sector and to issue permits for the disposal of waste within their geographical area (Article 10.d). They also prepare sanitary cleaning schedules, “oversee” waste collection, maintain records on waste related activities they can liquidate (close) not licensed (certified) landfills and organize public participation in the collection of waste. These are typical regulatory functions that might need to be delegated at some stage to a regulator.

Article 11 describes the authorities of local self government too “oversee” waste collection, prepare sanitary cleaning schemes (street cleaning, snow removal) and liquidate non-licensed (non-certified) landfills and organize public participation. The LOSG may establish additional duties.

Articles 12 and 13 mention private and foreign companies in the waste management sector. This is a positive (normative) mentioning of Private Sector Participation in the waste management sector, meaning that in all the waste management activities PPP is possible. Article 13 makes reference to the waste passport system (developed by the Government). This is further regulated in Articles 14, 15 and 16.

Article 17 establishes a periodic monitoring obligation for “state authorized bodies” of waste removal sites. This term is not defined, but presumably refers to landfills. This means that the monitoring of landfills is with the state authorized body, MinNP.

Article 19(c) states that legal entities (operating) in the waste management sector are eligible for privileges (and presumably meant are those in the Investment Law, see below). Article 20 establishes a most general obligation for everybody to place waste only in the “specifically provided areas”.

Article 20 establishes the general obligations of legal and physical persons in the area of waste management, inter alia, to “place” waste only in the areas specially provided.

Article 21 sets out an “environmental fee” scheme aimed at recycling and reduction of waste production.

### 3.4.3 Law on Local Self-Governing

The Law on Local Self-Government (LOSG) was adopted on 7 May 2002 and establishes the structure and authorities of Local Self-Governing Bodies. Article 10 LOSG sets out the powers and competencies of the local self-government bodies and distinguishes between generic competencies

and competencies delegated by the State. Generic competencies can be mandatory and voluntary competencies. The mandatory competencies and the ones delegated by the State enjoy priority implementation over voluntary competencies.

The implementation of mandatory and delegated competencies is mandatory. Voluntary competencies are exercised in conformity with the regulations defined by the Community Council and in accordance with the financing provided for by the community budget. The communities may implement the competencies attributed to the local government bodies by other laws solely as voluntary ones. Each article of LOSG granting specific power to the self-governing body also indicates the type of the power.

“Voluntary competencies” must be exercised in conformity with the stipulations defined by the Community Council and in accordance with the financing provided by the community budget. The list of possible voluntary competencies in the LOSG is not exhaustive and additional competencies can be assumed.

The Chief of a Community can exercise its competencies by using administrative staff, budgetary organizations, community-owned commercial and the non-commercial organizations (Article 28 of Law on Self-Governing). Private and / or commercial organizations are not mentioned in this provision.

As far as MSW is concerned, the following powers of Self-Governing Bodies merit attention:

Table: Law on Self Governing Competencies

Chief of Community	Community Council (Article 16)
Organizes the construction and exploitation of sanitary cleaning stations (Voluntary, Article 37).	Approves Community Budget.
Organizes waste collection (Mandatory, Article 37).	
Submits proposals to the Community Council regarding <u>rates for the services</u> to be delivered by the community (Mandatory, Article 34).	Defines and approves the rates for services delivered by the Community.
Submits to the Community Council for approval proposals in the form of draft CC decisions on creation, restructuring and/or liquidation of budgetary and non-commercial agencies and “organizations of community subordination” (Mandatory, Article 32).	Takes decisions on this in accordance with the applicable legislation.

Article 49 states that the mandatory competencies of the communities are to be exercised through the staff of the Chief of Community, budgetary institutions, commercial and non-commercial organizations. Budgetary institutions are internal departments with an allocated budget for the exercise of their specific given functions and as non commercial organizations classify as state/community owned public bodies on a non-profit basis.

The community can also engage in business activities. To this end, it can establish commercial organizations and hold shares in these commercial organizations.

Since “*waste collection*” as such (as opposed to the “organization of waste collection”) is not a mandatory competency of the Community, it may also opt to actually render waste collection as a basic service. Thus, the service of “waste collection” can be rendered by budgetary institutions of the community (LOSG, Article 60).

If the services of waste collection are to be rendered by a private company, or by any (even if publicly-owned) commercial organizations, then the Community must organize tendering subject to the applicable procurement law. In accordance with Article 60.3, one of the tender conditions (meant are financial variables) must be the “maximum rate of the service payments set by the community”. This cryptic wording must mean that one of the financial variables must aim at keeping the public burden low.

Article 60.4 stipulates that if the successful bidder is a commercial organization of community subordination, the payments shall be collected by that organization” and subsection 5 stipulates that if the successful bidder is an organization, which is not a property of the community, the community shall conclude an agreement with such organization stipulating the terms and conditions for rendering the services, “rates of payments to be collected by the successful bidder”.

Further, the LOSG regulates in Article 60 that the Community defines payments for waste removal. Waste removal is defined by the LOW as “waste management activities that do not result in recycling of waste”. That means, waste removal can be everything under the umbrella of waste management, apart from recycling. For these “waste removal” activities, the Community Council approves the fees (for the service provision).

**Table 2: Fee collection overview**

<b>Waste (collection) service providing entity</b>	<b>The Origin of the Right to Collect Fees is article 60 of LOSG</b>	<b>Legal basis</b>
Budgetary institution of community sub-ordination.	60 §2	Direct contract with waste generators.
Organisation of community sub-ordination.	60 §4	Direct contract with waste generators.
Private entity.	60 §5	Contract with the Community concluded through procurement law and direct contract with waste generators.

It should be noted that the LOSG is supplementary to the Law on Yerevan (LOY) and that the LOY enjoys superiority for any overlaps or discrepancies between those two laws.

Article 82 regulates that the Mayor of Yerevan submits to the Council a cost estimate of expenses generated by sources defined by the law (such as the Law on Local Duties and Fees) and proposes the procedure to issue permits for the (activities) relating to the payment of local duties (and fees) as regulated by law (such as the Law on Local Duties and Fees). The Council adopts these proposals.

### 3.4.4 Law on the Self-Governing in the City of Yerevan

The Law on Local Self-Governing in the City of Yerevan (LOY) was adopted, ratified and promulgated on 26.12.2008. The law will enter into full legal effect after election of the Community Counsel of Yerevan (hereinafter referred to as the “Council”)<sup>7</sup> after the 01 April 2009 and not

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<sup>7</sup> The provisions already in force are:

1. Paragraph 1 of Article 29 on holding of the first Sessions of the new electing Counsel;
2. Article 108 on fulfillment of the authorities of the current Heads of the Local Communities and Council of Yerevan;
3. Article 109 on the date of the first Council Election and
4. Article 110 on financing of Yerevan and ownership property transferring to Yerevan.

later than 06 December 2009. Once the LOY is in full force, the city of Yerevan will be one single community.

According to Article 6 LOY the competencies of the local self-governing bodies in Yerevan are stipulated in the LOY; only if and to the extent that any competencies are not regulated in the LOY, the LOSG will fill such a gap (LOSG, Article 9).

The Council is the highest self-governing body in the city of Yerevan. It carries out effective supervision and monitoring over certain parts of the activities of the Mayor of Yerevan, including the organization of the waste management in Yerevan (Articles 11 and 55.1.11).

The Council adopts local taxes and duties as well as fees for services that are provided by the community (Yerevan); these can be different in the various administrative zones of Yerevan (Article 12.6.1). The Community Council sets the fees (except for the rates fixed by the Public Services Regulatory Commission) to “*satisfy needs of population for the services to be rendered by Yerevan*”. The fees are collected and transferred to the city budget (Paragraphs 1 and 2 of Article 85).

The actual provision of the waste management services (“organization of waste collection”) is the responsibility of the Mayor of Yerevan, who may chose to organize such provision of MSW management services through:

- Organizations governed by the Yerevan Municipality;
- Third parties, chosen via competitive tender based on the Law on Procurement and the Law on Local Self-Governing Bodies<sup>8</sup>.

The Council can “recognize” agreements for waste management services to be “essential issues”. If the Council chooses to do so, then any such agreement on waste management will be subject to its formal approval (Article 24.1).

The Council also sets the terms and procedures for the mandatory provision of the “*necessary facilities of common use areas*”. This means, that the places, procedures as well as standards of hardware are decided by the Council (Article 12.1.8).

The LOY stipulates that the Council (regarding waste management) may:

- provide additional norms on urban development (Article 12.1.13), which includes waste management in urban development legislation (this could concern the issue of garbage chutes and the potential financing gap for repair and maintenance);
- may provide additional regulations and additional implementation terms of regulations in public service provision areas (Article 12.1.24); and
- establish additional terms and rules for organizations.

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<sup>8</sup> Specific features on tariff settings and collection provision are provided in sections 2.2.4 (Civil Code), 2.2.5 (Law on Local Self-Governing) and 2.6.3 (Tariff Settings and Collection).

The Council may attain waste management targets by exercising its authority over the activities of community owned organizations/companies (if any) that are involved in waste management or may be involved in waste management (Article 12.1.10)<sup>9</sup>.

Finally, the Council may regulate waste management by including it into the one year, four year or long term development projects of Yerevan (Article 12.11.1). These development plans / projects are submitted to the Mayor of Yerevan (Article 53.1.3). Thus, the framework for waste management could be placed within the development plans and projects for Yerevan City itself.

Article 83 on the “Development Projects of Yerevan” describes the scope and timeline of such projects and the relevant development responsibilities of the Yerevan Mayor.

Development plans and projects are approved by the Council and implemented by an executive body and followed up by the regional units (administrative districts) of the executive bodies, under the supervision of the Council (as the highest self-governing body in Yerevan).

The Mayor of Yerevan, as an executive body, *inter alia*:

- supervises the activities of the Heads of Administrative Districts (Article 52.1.11);
- organizes and supervises the collection of local taxes and duties as well as fees against services provided by Yerevan Municipality (Article 54.1.4),
- submits to the Counsel the rates and fees proposed to cover maintenance of multi-apartment buildings under the management of the Head of the Administrative District (Article 55.1.3);
- provides supervision over the use and protection of buildings and constructions (Article 55.1.7), which includes waste management; and
- organizes waste collection and street cleaning (Article 55.1.11).

For an efficient implementation of local self-governance and territorial administration, the city of Yerevan will be divided into 12 administrative districts<sup>10</sup>. Each district is managed by a Head of Administrative District (HAD), appointed by the Mayor. The HAD elaborates the planned development projects for their district and submits proposals to the Yerevan Mayor for consideration (Article 91.1.1). Any such development project must be approved by the Council and promulgated (Article 83).

The Council is empowered to adopt rules of the activities for the HAD and the Administrative District activities (Article 91.2). The HAD is supported

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<sup>9</sup> The Council can also regulate waste management indirectly through the establishment and protection of green areas (Article 12.1.30), which is not only an environmental issue, but also a waste management issue.

<sup>10</sup> The districts are: Ajapnyak, Avana, Arabkir, Davtashen, Erebuni, Kentron, Malatya-Sebastya, Nor-Nork, Nork-Marash, Nubarashen, Shengavit, and Kanaqer-Zeytun

by an elected Council and governs (as the head of the administration) the Administrative District with the following competencies relevant to MSWM:

- adoption of Decrees and Orders within its authority (Article 91.1.8);
- involvement in the districts' budget planning; and
- organization (meaning) management or administration for all MAB for which no Condominium has been established (Article 94.1.8).

### 3.4.5 Law on Local Duties and Fees

The Law on Local Duties and Fees (LLDF) was adopted on 26 December 1997. Article 1 states and defines:

- (a) the concept of local duties and fees;
- (b) the payment of local duties and fees;
- (c) Terms and procedures for setting and charging local duties and fees.

This law stipulates the types of local duties and fees that are mandatory payments and are charged to (paid into) the local municipal budget (Articles 2 and 3). In addition, it stipulates that the fees that are not stipulated by LLDF are charged according to the civil law contracts of the Self-Governing bodies and (or) their subordinate organizations (Article 1, part 2).

Article 8, which is of exhaustive nature, lists the “fees” classified as mandatory. These are the fees conveying a payment obligation to the “fee” payer, in other words, these fees must be paid. Waste services are not mentioned. For the collection of any other “fees” a civil law contract is required, as is the case for the provision of waste collection services.

### 3.4.6 Law on Government Multi-Apartment Buildings

The Law on Government Multi-Apartment Buildings was adopted on 7 May 2002 and regulates the types of management of a common property, the authorities and rules of formation of governing bodies and defines the management procedure for such a common property (Article 1). With regard to MSW the relevant common property is the waste chute and the waste chamber at ground level (integrated in a large share of the MAB) as well as possibly associated bins and containers either to operate the waste collection from the waste chamber (later) or otherwise placed to be used by the building residents (but not the pre-collection points).

The highest governing body of the common property is the “*Meeting of the Owners of the Building*”. One of the competencies of this “Meeting of Owners” is to conclude contracts with utility service providers, including those relating to the waste collection (Article 11).

According to the Article 17, the management of the “common property” can be carried out in the following ways:

- a) the establishment of a legal person, called “condominium”, by the owners;
- b) appointment of an authorized representative; or
- c) through appointment of an entrusted manager (Trust) organization.

In exercising their competencies, the above bodies conclude contracts according to the procedures stipulated by the Civil Code (Articles 18, 19 and 20).

One of the main functions of the above management bodies is to ensure the implementation of “Obligatory Norms” set by the Government (Government Decree 1161-N on “*Defining the Obligatory Norms for Maintaining Common Property of Multi-Apartment Buildings*”). This Decree regulates, inter alia, that the removal of MSW must be carried out (at least) once every 3-days. Concluding, the organization of MSW removal is under the responsibility of the governing bodies of Multi-Apartment buildings.

### 3.4.7 Law on Condominiums

The Law on Condominiums was adopted on 7 May 2002. The law regulates the legal status, the establishment and the liquidation of condominiums.

A Condominium is one of the agencies defined in the Law on Government Multi-Apartment Buildings through which the governing of buildings is realized. It is a non-commercial cooperative, having legal status, established by its members through unification of property shares (Article 3). Article 5 states the main objectives of a condominium. These are:

- a) management of multi-apartment building common properties according to the procedures prescribed by the law;
- b) active and passive representation of the common property owners of multi-apartment buildings;
- c) to achieve other objectives, including the conclusion of contracts with utility service providers.

Since the Government Decree 1161-N on “Defining the Obligatory Norms for Maintaining Common Share Property of Multi-Apartment Buildings” is also binding for condominiums, the MSW removal (at least every three days) has to be ensured through the conclusion of a respective service contract with a waste removal services provider.

### 3.4.8 Law on Licensing

The Law on Licensing (adopted on 30 May 2001) regulates the licensing regimes (simple and compound) for certain activities. Chapter VII provides (exhaustively) the activities that are subject to a license. Radioactive and dangerous wastes are listed (Article 43).

The construction and operation of landfill and MSW are not mentioned, meaning, these activities are not subject to a license.

### 3.4.9 Law on Environmental Impact Assessment

The Law on Environmental Impact Assessment (LEIA) was enacted on 20 November 1995. It sets out the basic duty to conduct an environmental impact assessment (EIA) (Article 2) if certain “activities” are planned, such as in the “waste utilization sector”, listing dangerous waste and waste disposal (activities). Unless the result of the EIA is positive, the “implementation of the intended activity” is prohibited.

This means that any landfill related “activity” is subject to a mandatory EIA assessment, while MSW collection and transportation activities are not covered by the LEIA.

### 3.4.10 Law on Public Procurement

The Law on Procurement (LOP) covers the procurements of services and goods by the state, state-authorized bodies, local self-governing bodies, state and community owned organizations and institutions (including organizations with 50% public ownership) and the Central Bank.

There is no negative covenant in the LOP limiting the scope of application, such as the exclusion of any PPP or Concession type transactions (as there is in many other jurisdictions). Hence, any PPP in the waste management sector would need to be tendered under the LOP. The types of procurement are:

- a. open tender;
- b. restricted tender;
- c. bidding request;
- d. competitive negotiation (resembling the EU competitive dialogue); and
- e. negotiations with a single entity (under narrowly defined circumstances).

Despite the institutionalization of a national procurement agency, practice shows that municipalities and authorities of self administration organize their own procurement under the supervision (i.e. control) or the Community Council.

Information was received<sup>11</sup> that other infrastructure sectors, such as the electricity and the railway sector have their own procurement provisions and, applying the *lex specialis* rule, therefore enjoy superiority over the public procurement law.

There is, however, no such disclaiming provision and own procurement regime in the Law on Waste, which means the procurement of the PPP options, strictly legally speaking, must be conducted applying the LOP.

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<sup>11</sup> Information received from World Bank under cover of the comments to the first and revised final report.

### 3.4.11 Civil Code

The Civil Code was adopted in 1998 and in general regulates the relationships relating to proprietary rights. This is relevant because this also affects the relationship amongst natural persons, legal entities and State and Local Self-Governing Bodies (Civil Code, Part Two, Articles 20, 50, 128 and 129).

The Law on Local Self-Governing Bodies lists the mandatory tasks of the communities, one of which is the “organization of waste collection”. Waste collection, according to Article 4 of the LOW includes: removal, sorting and disposal. This waste collection can be based on “Service Contracts”, as regulated by Chapter 39, Section 5 of the Civil Code.

Accordingly, under the “*contract of compensated provision of services*”, the “service provider” provides the service against the request (order) of the customer to provide this services (or to take specific actions or to conduct a specific activity), while the recipient of the service has the duty to pay for these provided services. This “*contract of compensated provision of services*” must be concluded in writing. The relevant articles are 289, 290, 294, 295 298 and 777 Civil Code.

### 3.4.12 Investment Promotion Law

Any Investment Promotion Law (IPL) should function like a business card to potential investors. It should be short, precise, unencumbered from bureaucratic hurdles, protective of prospective investors & their investments and providing an outline listing the advantages of investing in the respective jurisdiction.

The English version of the Law should be professionally worded and should, if this is possible, outweigh any discrepancies with the local language version. In other words, a potential investor must like “what they see” and be able to rely on it. Investment decisions are taken at executive board level (abroad) and board members tend to look into these regimes.

One example of unclear wording is Article 18, which stipulates an application criterion “*to receive privileges*” (incentives), this being a 30% paid up foreign investment at the moment of “foundation”. This requires clarification, since it is not clear if capitalization of the company is meant or 30% of the (project related) funding required.

By large the IPL provides for privileges benefiting an investor and carries many elements an effective IPL regime should provide. It could be improved and a more detailed analysis is in Annex F.

## 3.5 Waste Sector Specifics

### 3.5.1 Permitting and Licensing

The English translation of the LOW indicates the existence of a licensing regime. Article 4 defines “licensed landfills” for which a permit is issued. The correct translation of “licensed landfills” is “certified landfills”. The certification or permit procedure for a landfill is not defined in the LOW.

Also, Article 4 regulates that for “specially provided areas”, these are sites for the placement of waste (such as landfills), and “removal of waste” a permit is required. This is the only hint that for waste collection services a permit is required. In due course, the LOW only mentions landfills and dangerous waste in connection with permits (licenses).

Article 7 (e) LOW requires the GOA to establish a licensing regime for dangerous waste.

Articles 8 (h) and 9 (c) subject any waste management area to the “approval” of the Ministry of Nature Protection and the Ministry of Health.

Article 10 (d) stipulates that the authorities of territorial administration issue a permit for the “allocation of waste”. The “allocation of waste” is the “final placement of waste in the specially provided areas” (Article 4).

Article 10 (h) and 11 (c) LOW empower the territorial administration and the authorities of local self government respectively, to close “non-licensed” landfills.<sup>12</sup>

Self-governing bodies are authorized to carry out functions of oversight and enforcement. Article 11 (a) LOW empowers Bodies of Local Self-Government to oversee waste collection and to close non-controlled and non-licensed (non-certified) landfills.

The MinNP has supervisory competencies (Article 24 LOW); these concern mainly the hazardous waste activities.<sup>13</sup> Additionally, the MinNP has the “approval” competency in Article 8(h) LOW, which could be used to enforce the (future) national waste management plan.

The Councils have, according to the LOSG supervisory functions over the organization of “waste collection” and can establish tariffs for “waste removal”.

Article 37.12 LOSG vests the competency to “organize waste collection” with the Chief of the Community. Article 82 LOSG allows for the Mayor of

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<sup>12</sup> The correct translation would be non-certified landfills.

<sup>13</sup> So-stated by officials of the Ministry of Nature Protection, interview on 09 March 2009.

Yerevan to propose to the Council the “cost estimates” for services provided and to propose a permitting procedure for these services.

These are the executive competencies regulating the MSW sector.

### 3.5.2 Tariff Setting and Collection

Given that MSW services are not, at this moment, covered by the law on local duties and fees, a proposal for tariff determination can be put forward by:

- the Chief of Community (LOSG, Article 60);
- natural or legal persons upon the assignment of this competency by the Self-Governing Bodies (Law on Legal Acts, Article 7.9, Article 27.3 and 4);
- natural or legal persons on their own initiative (Law on Legal Acts, Article 7.9, Article 27.5);

All proposals on tariff determination are submitted as “draft decision” to Community Council for approval, accompanied by justifications such as cost estimates, statistical data, others as may be necessary (Law on Legal Acts Article 28, p.2, LOSG, Article 12).

Tariffs are set by Community Council in the form of Decision (LOSG, Articles 16 (p. 19) and 60). The draft decisions on the tariffs may be published by the mass media and may be put forward for public discussion (Law on Legal Acts, Article 29, p.3)

In accordance with Article 60 LOSG, Tariff collection is done by:

- Budgetary institutions (organizations) of community (LOSG, Article 60);
- Community subordinate commercial organizations” (LOSG, Article 60);
- Private commercial organizations (LOSG, Article 60).

As far as private entities and community subordinate organizations are concerned, and as it currently stands, the Collection of tariffs is carried out based on individual service contracts between the entity providing the waste services and natural or legal persons (Law on Local Duties and Fees, Article 1, part 2; LOSG, Article 60; Civil Code, Article 777). The contracts concluded through tendering are renewable annually. The contract can be enforced by judicial mediation and according to the rules stipulated in Chapter 39 of the Civil Code.

## 3.6 Conclusions Critical Analysis

The Constitution of the Republic of Armenia obliges the Government (to the extent possible) to enact efficient and sustainable policy (and laws) to protect the environment and to ensure everybody’s health and well-being.

Autonomy for local self governments is constitutionally guaranteed for an unspecified set of functional competencies.

The authorities of local self government have to ensure the (local) protection of the environment and to ensure human well-being. In doing so, the local self governments provide services to the community for which they are entitled to charge a “fee”, all aimed at this (constitutional) environmental (security) protection and human well being.

Details of this are to be regulated by “law”. To this end the Law on Waste, the Law on Self Governing, the Law on Yerevan, the Law on Local Duties and Fees (and others) have been enacted. If and to the extent “services” are provided by self governing bodies, fees can (must) be charged (Constitution Article 106) and these fees could be “compulsory fees” (Constitution Article 45).

The LOW defines waste as “industrial and consumption waste”. It sets “waste” apart from some but not all dangerous waste categories. This can be improved. First, there are waste streams missing from the exclusion (negative definition of waste) provisions, such as contaminated soil, animal carcasses, etc. Secondly, industrial and consumption (household) waste should be kept apart to allow for the application of specific regimes. For example, due to the definition both industrial (commercial) waste and consumption waste are subject to the “passport” system; for household (waste generators), this does not make sense. MSW should be defined as waste, other than the dangerous waste streams and be split into commercial and household wastes. Based on these, regimes for tariff determination and recording of waste streams should apply.

The LOW does not regulate (in principle) tariff or fee determination. There are only vague references to charges for landfill and a principle on balanced objectives (environment, economy and social interests).

The LOW refers to a licensing regime for hazardous waste. Other than that, there are references to a permit (certification) system for landfills (which exists in Yerevan for the Nubareshen landfill) and for waste removal. All in all, the permitting system is based on actual practice more than the written law.

According to the LOY, the Council (of Yerevan) being the highest self-governing body supervises activities, including those regarding organization of the waste management (which is primarily the responsibility of the Mayor of Yerevan) and may declare that waste management / collection is an essential issue and thus subject any service agreements to its approval.

The Mayor of Yerevan, as an executive body, organizes and supervises the collection of fees for services provided by Yerevan Municipality and organizes waste collection and street cleaning.

The LOW uses the terminology “supervision” and “overseeing” and allocates those to various bodies. The LOY too establishes competencies using the terminology “supervision”. No definition exists as to what exactly “overseeing” and “supervision” means. Also, according to the LOW, the MinNP has a supervisory role. Since waste management includes collection, transport and disposal, there would be three “supervising” bodies involved.

The LOSG is an attempt to devolve powers and competencies to the local level as provided for in the Constitution of the RA. The “organization of waste collection” is a mandatory competency of the Chief of Community (in the case of Yerevan the Mayor).

The Law on Multi Apartment Law and the Law on Condominiums regulate that waste collection must be carried out at least every three days. There are appointed bodies representing and contracting on behalf of the owners / tenants.

The Law on Local Duties and Fees specifies in Article 8 which “local fees” are mandatory. If a fee is mandatory, then the public has a public law duty to pay for the services, meaning that civil code contracts are not required and non-payment would trigger an administrative fine. MSWM is not listed under Article 8. Therefore, the payment obligation for the provision of waste collection services has to revert to the Civil Code.

The Civil Code regulates the contractual relationship between any private waste services provider and the customers. This means that written contracts are required between the entity providing the (waste collection) service and the entity (legal or natural persons) receiving the (waste collection) service. Non-payment of waste service provision bills are subject to the private law jurisdiction.

In the absence of specific law regulating PPPs and in the absence of a positive covenant in the Law on Waste (and a respective procurement regime), the Law on Procurement (LOP) applies to any potential private sector / PPP transactions in the waste sector. International best practice shows that the tender of a PPP requires a different kind of expertise than the traditional public procurement and thus, many jurisdictions have opted to regulate PPP tender in a special law.

Apparently, existing PPP type projects have been tendered under sector specific laws (railways and electricity). Whilst this has not been fully investigated (because it is not part of the TOR of this project), it would indicate a certain policy direction the Republic of Armenia is embarking on. In other words, it would appear that Armenia favors sector specific PPP policies (procurement and regulation) as opposed to a more comprehensive and centralized system.

Both of these options have their specific merits, but also disadvantages. The procurement of a PPP (BOT, etc) requires specific skills and capacities must be built up over time. If the procurement of PPPs is done within several ministries and within the entitlement of a sectoral law, then efforts for the

capacities to design a PPP, to ensure value for money, to effectively procure a PPP must be multiplied by as many sectors as there are. Given the size of Armenia, there is an argument for concentration efforts.

But, on the other side, exactly because of the relative size and potential of Armenia, a full-fledged procurement and regulatory agency might not be financially viable and be *over the top* for the relative potential and attractiveness. Sector specific procurement and regulation (by contract) are legally speaking, weak options, because there will always be overlaps and thus conflicts with other laws and regulations. Any change in a cross sector law (for example the company law, investment promotion law, the law on environmental protection, etc) will thus always bear potential for knock on effects in a diversified environment and will lead to a multiplication of (law and contract aligning) efforts. (See also Section 4.1 on this issue).

The IPL is short, but, at least in the English version, it is not precise and not clear. Expatriation of profits is probably possible and import duties for goods will be waived. The extent of which tax exemptions (and other benefits) would apply is not clear. Arbitration might be possible abroad. In the event of nationalization compensation will be full, but be subjected to the courts in Armenia and might as such not be *prompt and adequate*. The application criteria regarding the 30% capitalization are unclear.

A potential PPP in the MSW sector in Yerevan, as it stands, is legally possible, because the Mayor “organizes” waste collection and the actual services can be carried out by a private company. But, any such PPP is not viable, because there is no definition of service areas, no clear definition of the service provision (as such), there is no public payment obligation for the recipients of the MSW services and private contracts must be concluded between the service provider and each and every customer. Non-payment is a breach of contract and a matter for the (private law) courts.

Given the PPP and investor unfriendly environment as established by the LOW, the Law on Local Duties and Fees and the Civil Code, the answer to the high level initial questions is: Yes, PPP is possible in the MSW sector in Yerevan. But, the applicable legal regime is not investor friendly and, as it stands, there are no meaningful guarantees or securing mechanisms in place for the private sector to recover their investments.

It is thus highly unlikely, under the given environment and under the difficulties of today’s global financial environment that the Armenian and / or Yerevan MSW sector would appear on the radar screen of any serious international investor who conduct PPPs.

## 4. Gap Analysis and Identification of Bottlenecks

### 4.1 Policy Aim

The objectives and principles of the Armenian waste policy are reflected in the Law on Waste, Article 5 and Article 6.

On the policy level, the organization of integrated municipal solid waste management is envisaged, where a limited number of waste services providers collect (sort, recycle) and properly dispose waste, in a satisfactory manner, thereby improving the living conditions of the population concerned. This is the long-term vision. Taking a more immediate and medium term view, the policy should follow the “cleaning”, followed by “environmental” approach, as introduced and discussed in the public hearing on March 11 in Yerevan.

The current system waste collection and the organization of MSW is insufficient to support the policy set out by the Armenian Government. This should be changed and an environment should be established, where the private and public sector can enter into partnerships (so-called Public Private Partnerships). Through a transparent and objective tender process, the private sector can invest and assume most of the financial, technical and operational risks, and in turn enjoy (limited) geographic exclusivity and receive the benefits by charging the waste service recipient or the public for the provision of satisfactory services.

In order to create and “enable” this environment, a gap analysis will match the currently valid legal environment against an “ideal” scenario, thereby identifying any (legal) shortfalls to this envisaged scenario. These identified bottlenecks are then analyzed and subjected to an options analysis. This options analysis will highlight advantages and disadvantages of any of the available options to close the gaps to the ideal situation, followed by a recommendation of the most suitable option and way forward.

### 4.2 Gap Analysis and Identification of Bottlenecks

#### 4.2.1 Refined Envisaged PPP Option

As an outcome of the above critical analysis, first results of the other tasks under this assignment, reverting to best international practice and as an outcome of various discussions with key public stakeholders, the following “ideal” PPP option has been identified.

Yerevan will be split into two approximately equal waste collection and removal service areas (including sanitary services). For each one of these areas, there will be one waste collection service provider, consisting of a

Joint Venture Company made up of at least one international and one local company from the waste sector (Operator). The construction and operation of the landfill will be allocated to another company (which cannot be the same as one of the Operators in Yerevan). Also, the two consortia conducting the waste collection services in Yerevan cannot be the same and any company being part of one consortium cannot be part of the other.

The Landfill operator cannot be related to either one of the Operators, since this could lead to abuses and a favorable regime for one of the Operators. Otherwise the horizontal unbundling makes no sense.

In the bidding process, it is suggested to begin with one part of Yerevan (the more important one) and commence with the second part as soon as the shortlist of the first tender is published. Then, any participating companies / or consortia for the second bid can be excluded per se. Or, if this leads to an undesirable situation, for example, there is not sufficient interest or bidders in the second bid, these companies or consortia must sign a statement that, in case they are part of a consortium which wins and signs the other (earlier tendered) bid, they will withdraw from the tender, or are otherwise disqualified.

To be clear on this, companies can participate in all tenders, but, must withdraw or be disqualified from a tender if the same company or consortium or a single member of the consortium has won an earlier procured tender.

This is necessary to reach the ideal and envisaged PPP environment, where:

1. The two waste operators can be exposed to effective competition, regarding (large) commercial customers in the second phase (years 5 to 10) of the service agreement period;
2. Data received and evaluated from the two different operators can be measured against each other and benchmarked against best international practice (performance evaluation and, to an extent, remuneration determination);
3. The Landfill Operator must engage with both Waste Collection Operators in an objective and transparent manner, offering landfill services at the same conditions to both Waste Collection Operators. If the Landfill Operator is related to one of the Waste Collection Operators, then this cannot be guaranteed without additional efforts (to, for example, publicly monitor and regulate the relationship between these parties).

Each one of the Operators will get a “permit” to collect, transport and dispose waste, awarded through competitive tendering. The permit will guarantee full exclusivity in the respective service areas for a period of five years and limited exclusivity for the second period of five years. In the second period, each one of the operators can target and contract with commercial customers in the other service area. This is to stimulate competition and the improvement of services.

The Operator will enter into a service contract with the City of Yerevan. The Service contract will regulate and define the service provision, which will be the collection, transportation (storage if required) and disposal of waste and sanitary services, such as street cleaning and snow removal. For this, the Operator (consortium) will invest and bring a suitable vehicle fleet and containers to Yerevan.

The sanitary cleaning is an important service provision, since it takes care of the waste “not” being in the containers and other undesirable material on the roads (sand, dust, etc). This is particularly important, since the private waste collection starts at the road side curb. Experience shows, that only if and to the extent street cleaning and waste collection are in the same hands, will a good overall service standard be achieved. Otherwise, the two operators can blame each other for poor service levels. However, the final decision on this issue can wait for completion of the market sounding, which should be carried out by the transaction advisor during the tender preparation phase.

The waste collection will begin at the roadside curb and end at the disposal site (Nubareshen landfill). Meaning, the Operator makes available suitable garbage containers to the customers. The customers, as the service provision recipients, will put the containers to the roadside curb on collection days. This entails that the condominiums are responsible that waste is placed in the containers and that the containers are ready for collection. For this service, the condominium management may wish some compensation. This could be a discount or other cross-financing from the municipality.

Target levels of service will be set and the achievement of which will partially determine the service fee remuneration the Operator gets for its services from the city of Yerevan. The city of Yerevan will bill and collect for the provision of the waste collection services. The Service Fee, which the Operator charges to the city of Yerevan will be the financial variable in the competitive tender, with the lowest offered service fee scoring highest thereby providing an incentive to keep the burden for the public (City of Yerevan) low.

The duration of the contracts for the waste collection services will be seven to ten years allowing for amortization and recovery of the investments and for a decent profit margin (once the investments have been recovered). The contract period is a result of the financial analysis and reference is made to the respective deliverable to this end (Task 4)<sup>14</sup>. The City of Yerevan will have public legal monitoring powers, based on law and the ones through the

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<sup>14</sup> In order to facilitate investment into the sector and therefore improve the quality of the services provided, the contract terms will be prolonged up to 7 to 10 years (from currently 1 year). The contract term should take a number of issues into consideration. The final contract term can be decided during preparation of the tender. One of these is the amortization of the investment in equipment. A longer term will tend to reduce costs by distributing the investment costs over more “tons of waste”. At the same time, it tends to hinder further improvement of the entire system, which can sensibly be upgraded when the services are re-tendered.

permit and enforcement powers vis-à-vis the Operators through the service contract.

The landfill operator will construct and operate parts of the landfill, also subject to a permit.

#### 4.2.2 GAP Analysis

The above described envisaged PPP scenario will now be matched against the applicable legal and regulatory situation in Yerevan. Gaps and the severity of these Gaps will be assessed.

Table\_\_ Gap Analysis:

No.	Ideal Situation	GAP Ind.*	Current Situation
1	Legal basis for MSW management is clear.	4	There is a legal basis for MSW management, but it is not clearly defined and not set apart from other waste categories.
2	Anticipated waste collection service (and sanitary cleaning) provision is based on law.	1	The “organization of waste collection” is based in the LOW. A variety of organization (public and private) are eligible to conduct the waste collection services. Because those are not mandatory competencies, they can be delegated and subjected to a services contract with the private sector.
3	Provided by limited amount of waste service providers.	3	There is no legal limitation of the amount of waste services providers. Existing contracts with waste service providers will need to be terminated, or not renewed after expiry.
4	Each enjoying exclusivity in their service area.	4	There is no legally stipulated exclusivity; but the permit can regulate this and it can be contractually guaranteed.
5	Service contracts are awarded on the basis of a tender.	4	Common practice shows that not all waste service contracts have been tendered.
6	These waste (collection) activities and the landfill are subject to a permit.	5	There is no formalized permitting system. Landfills are “certified” and thus permitted through a council decision (in Yerevan).
7	Service quality is monitored.	4	The quality of the performance of the waste services providers is loosely monitored and not subject of an institutionalized review. There are undefined terms in use: supervision, oversight and enforcement.
8	Remuneration for Operator is clear and allows for a reasonably secure return on investment.	5	This is not the case. The remuneration would depend on the conclusion of contracts.
9	Tariff determination and remuneration of waste service provider	4	There is no indication that waste services providers are subjected to

No.	Ideal Situation	GAP Ind.*	Current Situation
	is based on performance.		a performance review with monetary consequences at this moment. Tariffs are determined by political consensus.
10	Mandatory payment obligation for service recipients is based on law.	5	There is no payment obligation for the service recipients in the waste collection sector.
11	Public assumes collection risk, meaning the public collects.	5	The public <b>only assumes the collection risk</b> , if waste services are provided by <b>budgetary institutions</b> and / or <b>100% owned companies of community sub-ordinance</b> .
12	Service provision contract and tender are based on coherent and sound legal basis.	4	There is a general procurement law and an investment promotion law. No specific regime for PPP.
13	Service provider can freely expatriate profits and enjoys favorite regime for direct investments.	1	The investment promotion law guarantees free expatriation of profits and establishes an incentive regime for investors. But, the English text of this law and regime is not very clear.

\* the GAP indicator is a scale from 1 to 5, with 1 indicating a minor and 5 a major gap.

Not all of the gaps identified in the table above are necessarily a bottleneck for smooth and efficient implementation of a PPP regime in the waste collection sector. Chapter 3 identifies the most serious ones.

### 4.2.3 Identification of Bottlenecks

Following the Gap Analysis, the following main bottlenecks are present:

#### 1. Waste Definition (Ref. No: 1 and 2 above):

If a meaningful regime for (eventually integrated) MSW is to be established, then waste (streams) should be defined and classified in accordance with best international practice. In order to arrive at a meaningful classification of waste, waste management could be defined similar to Article 9 of the EU Waste Framework Directive<sup>15</sup>: “[...] *collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, [and including actions taken as a dealer or broker]*”. To this end, the LOW (Article 4) follows, by large, the EU doctrine, omitting however the after-care principle.

MSW management may include all those waste hierarchy principles. This depends on the availability of suitable local disposal options. If there is no suitable disposal option, the municipal responsibility is to transport the waste across municipal boundaries and to dispose of the waste where possible and appropriate in line with a national waste management plan.

<sup>15</sup> Directive 2008/98

The LOW defines waste as both industrial and consumption (household) waste. There are some negative covenants regarding dangerous waste, but this is not enough. The LOW should cover all waste streams that are not “ordinary” waste, such as waste oils, animal (bi-)products, faecal matters, explosives, etc. A potential investor from abroad is quite possibly image conscious and clarification to this end, even if only on paper, would help to define the scope of waste services required.

In addition, different regimes should apply depending on the waste “generator”. Normal household waste should not share the same regime as commercial and industrial waste. This concerns the waste passports, the tariffs and the recovery and recycling obligations that might be introduced for one, but not at the same time and in the same manner for the other.

There should be, for future use, a provision enabling sub-normative regulation concerned about a separation of dry and wet waste streams allowing for efficient sorting and recycling.

#### 2. Payment Obligation (Ref No 8, 9, 10 above):

The fact that the collection and thus the payment risk is currently fully with the waste services provider is counter to best international practice. Under the currently applicable regime, the waste services provider has to satisfy itself with the payments collected from the customers (the recipients of the waste collection and transport service), based on individual civil law contracts; meaning, there is no public obligation to pay for the provision of the services. If this remains unchanged, then it will constitute a serious deterrent to a potential (private) investor.

#### 3. Monitoring (Ref No 7 above):

The monitoring (oversight, supervision, approval, etc) competencies and powers should be defined, so that the private sector engaging in MSW services can assess “who” is entitled to monitor “what” at any give time. At the moment this is not clear.

There are some vital competencies that should be regulated. These are:

- (a) Tariff setting, review and adjustment;
- (b) Tariff collection and the ability to enforce payment or penalize non-payers;
- (c) Performance monitoring (supervision, oversight, approval);
- (d) Permitting for waste collection, transport and placement/disposal/recycling;

Where (a) and (b) are issues to be solved for the medium term, (c) and (d) should be solved immediately.

#### 4. Tariff Determination (Ref No 9 above):

Tariff setting and determination will most certainly remain as a public competency. Given the envisaged PPP scenario, the public (City of Yerevan) will remain to determine tariffs, to invoice and collect these tariffs.

Tariff determination as such is not directly relevant to the PPP service provision in the MSW sector, since the Operator/s will be remunerated by the municipality of Yerevan, independently of the tariffs and the collection rate. The municipality has the (political) choice to determine tariffs on a cost-covering basis and to recover all (or more) of the costs occurred (the service payments to the Operator/s), or to keep the tariff low and to cross-subsidize the tariff levels. To this end, no changes are needed.

The municipality may also opt to include or allow for a portion of the tariff to be re-allocated to the Condominium management, in compensation for their efforts in the waste collection services (these are: ensure the garbage is placed in containers, put containers on road side curb on collection days, etc). But, this would mean that private households (not condominiums) subsidize the condominiums. If this is not desired, a discount could be granted to the Condominium and they can keep the difference (collecting the full tariff from the households).

But, since it is planned to partially lift the exclusivity regarding the commercial sector and allow competition in the second period of the Service Contract period, the commercial tariff determination should be reconsidered at some stage prior to the beginning of this phase.

For one, the encroaching Operator must be able to contract with the commercial customer directly and to offer either better service (more frequent collection), or a lower tariff. The latter can only be done, if the tariff is set on a maximum level, meaning, lower tariffs should be possible. Secondly, the commercial tariff should therefore be excluded, or be excludable from the (to be introduced) public payment obligation (see below). Only then can the (encroaching) Operator contract and collect the (lower) tariff directly from the new commercial customer. Consequently, the service fee the Operator losing this commercial customer must be adjusted too.

##### 5. Tariff Collection (Ref No 10, 11 above):

The collection of tariffs for the provision of waste collection (and related) services, if conducted by a private entity, is done based on civil law contracts with each and every customer. This is very unpractical. The analogy to other utility sectors, such as the electricity, water and gas suppliers, is not legitimate. These suppliers have a powerful deterrent against non-payment in their hands, being the disconnection of supplies / services. Non-collection of waste is hardly a measure of a similar category.

Moreover, if the electricity supplies are discontinued, the electricity supplier will not “endanger the environment” and arguably also not “endanger human well being”. The same cannot be said if waste is not collected, in fact the collection of waste is a measure by itself to ensure the protection of the environment and of human health. An unpaid waste collection service provider, discontinuing the waste collection service for non-payment, could find itself in violation of a number of administrative and legal provisions. The waste services provision contract with the community would outline the

frequency of collection and a special regime would need to be introduced, determining the services providers' and the community's obligations if non-payment occurs.

If tariff collection and thus the collection and payment risk is solely with the private sector, without any back-to-back guarantees from the community, then it constitutes a serious deterrent to private sector involvement.

Therefore, any PPP will aim to shift the collection risk (burden) to the public hands, who have much better leverage to collect the tariffs than has the private sector. In fact it would appear safe to say, that if the private sector had to collect and satisfy the investment from the (collected) proceeds, any PPP, without additional guarantees would not be financially viable (the legal costs alone would outgrow the recoverable).

#### 6. Permitting Regime (Ref No 4, 6 above):

The permitting regime, as a basis, needs to cover the activities envisaged by the tender, which in the case of Yerevan would be collection, transportation and disposal and another one for the landfill. This follows the LOW stipulating the right for the authorities of local self governing bodies to close unlicensed landfills. For the "*allocation / placement of waste in specified areas*<sup>16</sup>" a permit is necessary. This seems to concern the "permitting" of areas where waste can be placed. It does not, *per se*, concern the right to collect the waste (apart from the hint in the definition in Article 4 of LOW on the "specifically provided areas").

A permitting regime for the collection and transportation of waste serves four main purposes. One is to ensure that the services provider has the required qualifications (and hardware) for the provision of the services; two, to establish periodic reviews where the quality of the services provision is a main condition of renewing the license and three, to regulate the market and limit free market access. Finally, it gives the public another tool to "negotiate" with the Operator. There should be only one service provider per any one service provision area. This means the waste collection services providers will enjoy exclusivity in their respective area (and limited exclusivity in the second half of the contract duration). The existing permit regime does not cover this.

In the absence of other legislative instruments regulating the above, a permit for the "allocation / placement of waste in special areas" and a permit for operating landfills is insufficient and would be a deterrent for private sector investors.

#### 7. Absence of a performance monitoring / regulatory regime (Ref No 7, 9 above):

Whilst there are supervisory powers vested with the CC and with the MinNP, the extent to which those supervisory powers and competencies are

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<sup>16</sup> Different words are used in the English translation of legal texts.

coordinated and coherently exercised is questionable. And, it is not clear which supervisory powers are meant. It could, for arguments sake, be the mere supervision of the CC over the Chief of Council and to assess if and to which extent the CoC organizes waste collection.

There is no provision linking the actual performance of a waste services operator back to the tariff or some other kind of remuneration. True, private sector remuneration is traditionally a matter of a respective services contract. But, the principle of performance monitoring should be legally established, similar to the monitoring of “waste removal sites” (Article 17 LOW).

8. Absence of a coherent PPP environment (Ref No 5, 8, 12, 13 above): Many jurisdictions have established a special procurement regime for PPPs. This requires the traditional public procurement regime to step back and for the new regime to step in. Positive and negative covenants are required in both pieces of legislation (exclusion from the application of the procurement law and specific assumption of coverage by the “PPP” law). This approach has proven useful, since a different set of skills is desired, by the public officers and executives in designing and tendering a PPP, than is required for the procurement of (e.g. office) supplies. At the moment, a PPP is just a “tender” amongst all others (supply, works, services).

A dedicated PPP law is usually assisted by an investment promotion law. Both establish a modern and efficient tender and a favorable environment after the tender, with the PPP law designing and selecting a company and the Investment Law taking over and treating this selected company favorably. Therefore, both laws must be coherently applied, because there are knock-on effects both ways. The PPP design must fit into the Investment Law environment and the Investment Law must be able to accommodate the “outcome” of the PPP law, a selected bidder implementing the PPP project.

At the moment, there is no dedicated PPP law, nor is there a specific procurement regime established in the LOW. The Investment Law is, at least in English, not entirely clear.

This means, any due diligence carried out by a potential investor, could not but highlight these facts back to the executive boards abroad (if the target group for PPP is foreign direct investors). Consequently, a positive “go ahead” investment decision of a board is less likely. The absence of a coherent regime and legal basis for PPP is therefore a deterrent for private sector participation.

### **4.3 Options Analysis / Overcoming Bottlenecks**

In this chapter, the bottlenecks identified above will be summarized and combined where possible and subjected to an options analysis, followed by a conclusion of the most suitable option per bottleneck.

The bottlenecks identified above were:

1. Waste classification;
2. Payment Obligation;
3. Monitoring;
4. Tariff Determination;
5. Tariff Collection;
6. Permitting Regime;
7. Absence of a performance monitoring / regulatory regime;
8. Absence of a coherent PPP environment;

These can be combined into “umbrella” bottlenecks as follows:

- A. Waste Classification;
- B. Payment Obligation;
- C. Competencies;
- D. PPP Environment.

As an underlying prerogative, changes in law (CIL) should be the resort of last choice because of its potential knock-on effects on other applicable laws. A CIL should be recommended with caution only.

#### 4.3.1 Options for Bottleneck A: “Waste Classification”

The definition of waste is important to ring-fence the services definition the private (or public) sector is expected to provide. Industrial and household wastes are dealt with under one and the same umbrella and not clearly enough set apart from dangerous wastes.

Whilst the classification of wastes into waste streams is traditionally a matter for sub-normative legislation, the definition of wastes should be regulated in umbrella type legislation (similar to the EU WFD). Waste definition is a vital legal principle, which must be set in cast and stone. Else sub-normative legal acts could be changed and amended too easily.

The LOW requires therefore an amendment to this end. Industrial / commercial waste should be set apart from household refuse. This is necessary to allow different regimes to apply, such as the waste passport system for industrial / commercial waste, the tariff determination and potential exclusion of industrial / commercial waste from the payment obligation. Both should be clearly set apart from dangerous wastes.

The LOW should be amended to this end.

#### 4.3.2 Options for Bottleneck B: “Payment Obligation”

As analyzed above, the current regime regarding the tariff payment obligation and tariff collection in MSW management shifts the collection risk firmly to the (private) waste service provider. This situation is unsatisfactory as it presents a deterrent to foreign investors and potential participants to a PPP transaction in MSW management.

Three options would appear suitable to rectify this.

One is the change in law in the Law on Local Duties and Fees, concretely Article 8 and to list waste collection services under the mandatory payment.

Two, is to add the waste collection tariff onto the electricity tariff and to collect both the electricity (having the powerful deterrent of disconnection for non payment). But, discussions with the electricity service providers are not promising and so far any such attempts have been rejected. There is no other suitable utility (or similar) invoicing stream available, since the collection rate for waste services is second highest (after the electricity collection rate).

Three, is the provision of financial guarantees to the Operators. This could be designed in a way that the Operator has a certain minimum income guarantee. This could be the financial bid variable. The Operator, having billed and collected and done “everything in its power” and as per the services contract and still having a shortfall vis-à-vis the minimum income, would be entitled to a subsidy from the City of Yerevan up to the minimum income guarantee.

Because option two would appear not to be possible, only option one and three are realistic. Option three would be an ongoing contingent liability to the City of Yerevan, since this guarantee would likely have to be a relatively abstract guarantee, conditioned only by the Operator having actually billed the customers and attempted to collect. Option one is not necessarily a financial liability, because it gives the City of Yerevan the chance to recover the service fee from the customers. The change in law option is therefore recommended. The efforts to this end are justifiable because this would significantly help to establish a more investor friendly environment and it would not be a quick fix solution.

The argumentation for a change in law starts in the Constitution. The Constitution requires that the environment be protected and the human well being be ensured. For this, the public administration (national and local level) must provide services and can charge a fee for the provision of these services.

Clearly not every public service supports those two main objectives of the Constitution. The question thus is, which services are to be provided. These must be at least the ones that impact (positively or adversely) the environment and human health. Waste services do impact the environment and human health directly, since the absence of waste services (waste is dumped and not collected) would pollute the environment and has the potential of spreading illnesses and diseases. Electricity supply services, on the other hand, do not directly impact environment and human well being in the same manner. If the electricity supply is discontinued, then this event on itself has little impact on these objectives. Only the indirect impacts would endanger the environment and human well being, if, for example, hospitals are

without electricity. So, there is not a direct link between the event to the impact. For waste there is a direct link, hence the assumption that the provision of waste management services is a constitutional obligation.

Article 45 of the Constitution requires “payment of fees” in accordance with the law. Since waste management services are very likely to be directly covered by the constitutional service provision, it would appear that there is a constitutional payment obligation for somebody. This “somebody” can only be the service recipient or somebody paying on behalf of the service recipient.

Since the constitution mentions “payment of fees in accordance with the law” and given the absence of a “law” regulating payment of waste management services and since the main addressee of the Constitution is the public administration, either a law is introduced regulating this, or an existing laws are amended to this end. Since the organization of waste collection is a mandatory competency of the local self government bodies, the Law on Local Duties and Fees would be the obvious place to regulate this.<sup>17</sup>

The Law on Local Duties and Fees should be amended, so that waste collection fees become a mandatory public payment (and no civil law contracts are required).

#### 4.3.3 Options for Bottleneck C: “Competencies”

There are some competencies which are not defined and are as such not clear. This concerns mainly the monitoring and controlling type of competencies of “oversight”, “supervision” and “approval” in the LOW and the LOSG. For these competencies, sub-normative legal acts, or even a policy declaration would suffice at this moment to establish clarity for a potential investor in the MSW sector. In the medium term, these competencies could be used to establish a sector specific MSW regulator.

##### **Permitting:**

The competencies regarding permitting in the LOW are a different matter. It is evident that the current permitting regime regarding MSW management is in effect failing to a large extend to provide comprehensive regulation of a vitally important activity directly linked to the environment and human health (both constitutional requirements).

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<sup>17</sup> The argument that the civil code regulates the payment for waste services and that therefore no new public law is required cannot be endorsed. If this is possible, then all other constitutional obligations could also “escape” to the private law environment and be subjected to “agreements” as typical in private law environment. This is why there are public laws, to regulate what must be regulated. Payment of taxes and public revenues would drop significantly if individual “agreement” between the state and the tax payers are needed to actually pay taxes.

This absence of an effective permitting regime needs to be rectified. A comprehensive permitting regime needs to be established, outlining the cornerstones of any anticipated PPP regime in the MSW sector in the permit. This could be duration, exclusivity, a reference to the level of service standards, an extension regime for good performance and a termination regime for poor performance. The basis of which should be regulated in the LOW.

There should be one type of permit for the collection, transportation (storage) and disposal of waste and another permit for the landfill. The EU WFD provides guidance on this and the LOW should be amended.

**Tariffs:**

There should be different regimes for tariff determination for commercial / industrial waste and household refuse (consumption waste). This is because the anticipated mandatory payment collection for waste collection services would cover both, household and industrial/commercial waste.

This means that commercial waste collection could not be exposed to competition in the second period of the waste service contracts. Commercial tariffs should therefore be established as “maximum” tariffs, at least after the first five years of the service contracts duration, so that the Operators can effectively compete for commercial customers. Commercial tariffs would therefore be capped (as maximum tariffs) in the second phase of the contract. Under the envisaged PPP option, there is no need to change the currently applicable commercial tariff regime in the first 5 years, because competition will not be possible (in other words, the City of Yerevan can, if it wishes, continue current practices).

The anticipated CIL in the LOW and in the Law on Local Duties and Fees will cater for this. The administration of the City of Yerevan should follow this approach and prepare guidelines for this environment applicable five years from the moment of effectiveness of the service contracts.

**Monitoring:**

The powers vested with the CoC, the CC and authorities of state level or “supervision”, “oversight” and “approval” should be specified. This, for the time being is recommended to be done on an informal level, a note for example, outlining to a potential investor what exactly those monitoring (and controlling) powers mean, under which circumstances those would be applied and when.

Another option would be a sub-normative legal act dealing with these matters, but, this might pre-empt or otherwise compromise the medium term goal of further adjusting the MSW sector and to introduce a more comprehensive regulatory framework.

Therefore, the “policy” type of explanatory note, for example, from the Mayor of Yerevan to potential bidders is deemed sufficient. The service

contract would incorporate this and subject any changes to the detriment of the Operator to a standardized contractual change in law regime.

#### 4.3.4 Options for Bottleneck D: “PPP Environment”

The absence of a coherent PPP environment is detrimental to the attracting of any private sector investors in the MSW sector. In the immediate future (the cleaning phase), some key changes in law will rectify the most obvious shortfalls.

At the moment, certain infrastructure sectors have created their own legal and contractual PPP environment (rail and electricity), which indicates Armenia’s PPP policy, being a diversified environment.

Potential investors might prefer a uniform to a diversified investment environment, because changes to diversified environments are more likely over the duration of a PPP. After all, PPPs are long term ventures and a uniform environment conveys stability.

But, there are several options how the wider PPP environment can be regulated, concerning the initiation of a PPP, the procurement and the ultimate implementation of a PPP. A PPP Agency could assume all or only parts of these functions. There are examples where a PPP Agency initiates, procures and monitors (performance) PPPs. There are other examples where Ministries initiate PPPs, the procurement is carried out by a PPP Agency and the implementation / monitoring is then contractually returned to the Ministry, or is passed on to a sector specific or cross sector regulator.

The (high level) options are:

<b>Option</b>	<b>Initiation</b>	<b>Procurement</b>	<b>Impl. / Regulation</b>
1	Ministry / GOA	Procurement Agency (LOP)	Ministry (Contract and Law)
2	Ministry / GOA	PPP Agency (PPP Law)	Ministry (Contract and Law)
3	Ministry / GOA	PPP Agency (PPP Law)	Sector Regulator (Contract)
4	Ministry / GOA (PPP Agency)	PPP Agency (PPP Law)	PPP Agency (PPP Law and Contract)
5	Ministry / GOA	Procurement Agency (LOP)	Sector Regulator (Contract and law)
6	Ministry / GOA	Specific procurement body (sector law)	Ministry / sector Regulator (contract and law)

Since the Republic of Armenia has already applied one of these options, being sector specific procurement and (public) regulation by contract, perhaps the envisaged PPP options in the MSW sector in Yerevan should follow this path. A policy statement from the GOA addressing and clarifying this would be beneficial.

For the medium term future, the Government of Armenia might wish to embark on a wider PPP reform and attempt to realize synergies in various

components of a PPP. For example, the determination of value of money of a potential PPP is crucial to determine if and to which extent a project has PPP potential. If and to the extent it has, the PPP should be designed allowing for flexibility (initially) to counter any undesirable effects (project is too attractive, or not attractive enough).<sup>18</sup>

This competency should be centralized either with a Ministry and dedicated (well trained) human resources, or be allocated with a dedicated semi-governmental body (for example a PPP Agency).

The procurement can be added to this semi governmental body (PPP Agency), or left within the existing structures or sectoral procurement regimes can be established (in line with the main procurement principles, following best international practice).

The implementation, monitoring and regulation competencies and functions can be partly assumed by the same semi governmental body (retrieving and pooling of data, benchmarking, etc), or be allocated with a sector or cross-sector regulatory agency. Alternatively, these functions can be carried out by the public, based on the services (or similar) contract (regulation by contract).

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<sup>18</sup> The recommendations of the Concept Note “Public-Private Partnership in Armenia” UNDP 2008, are shared.

## 5. Recommendations for Enabling Legislation

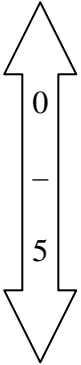
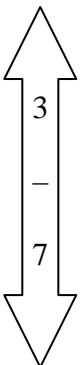
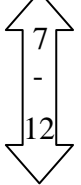
### 5.1 Phased Reform Concept

The reform of the MSW sector in Armenia and in particular in Yerevan should follow a phased approach. This was introduced and discussed in various public stakeholder and steering group meetings in Yerevan, most recently on the 11th of March 2009. The reform concept is split into the immediate, medium term and long term approaches:

1. Cleaning approach;
2. Environmental approach;
3. Integrated MSW.

The following table allocates certain functions and characteristics to each one of these approaches.

**Figure 1 Phased Reform Concept**

Approach	Time (yrs)	Details
Cleaning		<ul style="list-style-type: none"> <li>- enabling legislation for MSW PPP in Yerevan;</li> <li>- permitting regime for waste collection and disposal;</li> <li>- exclusivity in service area and contractual monitoring of service provision quality;</li> <li>- preparation of lifting of exclusivity for commercial waste generators;</li> <li>- sanitary services provided as per service contract;</li> <li>- permitting system is an enforcement tool;</li> <li>- draft national waste management plan.</li> </ul>
Environment		<ul style="list-style-type: none"> <li>- lifting of exclusivity for commercial customers;</li> <li>- further integration of Waste Framework Directive principles (after care, life cycle, sorting and recycling, etc);</li> <li>- reconsideration of tariff determination and enforcement of polluter pays principle;</li> <li>- establishment of a waste sector regulator;</li> <li>- enact national waste management plan;</li> <li>- updating of applicable laws and regulations;</li> <li>- PPP environment established.</li> </ul>
Integrated MSWM		<ul style="list-style-type: none"> <li>- modern integrated MSW system;</li> <li>- automatic incorporation of relevant standards and norms;</li> <li>- Armenian waste laws are fully in line with the applicable UE <i>acquis communautaire</i>;</li> <li>- somewhat mature PPP environment.</li> </ul>

The TOR require enabling legislation for PPP in the MSW sector in Yerevan. As already mentioned, the knock-on effects of any changes in law

should be limited and, moreover, any recommended changes in law cannot take an isolated view on Yerevan, but must consider the effects on all of Armenia.

The medium term goal of embarking on a wider PPP framework can be done sector specific or with a dedicated cross sector PPP Agency and the enactment of a legal PPP framework (laws and bye laws). This is a policy decision and will depend on the general direction Armenia wishes to take. This concerns all PPP eligible infrastructure sectors, not only waste.

Both options are possible. Given the relative size of Armenia and thus the limitations for PPP, a sectoral approach might appear more viable and has so far been employed.

Sector regulation can be based on contracts and the enforcement thereof. Whilst contracts are the most accurate option to regulate a PPP relationship, they are, at the same time, the weakest option, since contracts can be (re)negotiated and new laws might change contractual regimes. This option also leads to a multiplication of efforts and Armenia will have to identify a variety of sector experts, who are capable and trained to monitor performance. But, given the relative size of Armenia, it might well be the most suitable and cost effective option.

There are also arguments for the cross sector PPP Agency. One argument for a (semi) governmental body is the synergetic effects that can be realized in the initiation (determination of value for money, PPP design, etc), procurement (drafting of tender documents and tender execution) and monitoring (data pooling, performance monitoring), which get otherwise lost in a diversified system. Capacity building efforts could concentrate on one and not multiple institutions and the law making / changing efforts could be conducted under the umbrella of a comprehensive PPP law.

Any option the Government of Armenia wishes or decides to pursue must be initiated and accompanied by strong policy statements, to convey political commitment to the private sector.

For the immediate future, contractual regulation is the only option available, in the medium term future a (whichever) homogenic PPP environment should leave little to interpretation. If and to the extent the City of Yerevan, who is immediately concerned about these envisaged PPP projects, wishes to use the Public Services Regulatory Agency in support or in charge of the monitoring and regulatory efforts vis-à-vis the Operators will depend on the precise nature of the services agreements to be drafted, where any regulatory functions not otherwise regulated by law will be allocated to suitable public bodies. This could be a dedicated waste sector management unit within the administration of the city of Yerevan or a central body, lending its expertise to regional / local administration.

Reverting to the recommended changes in law, these are limited to two laws, the Law on Waste and the Law on Local Duties and Fees. The re-

quired changes would benefit not only the situation in Yerevan, but also any other municipality across Armenia. The recommended changes in law focus on PPP enabling legislation and not on a comprehensive overhaul of the waste sector laws.

## 5.2 Recommendations for Tariff and Charges Setting for Municipal Services in the Waste Sector

The changes in the tariff regime concern the payment obligation. Since billing and collection will remain a public task (other than for commercial customers in the second half of the anticipated project duration, the tariff determination as such will remain a public policy decision. In the medium term (the environmental phase) this should be reconsidered, for the “cleaning phase” it is of little relevance.

Therefore the following change in law in the **Law on Local Duties and Fees** is recommended:

**Insert** new Article 8 (d) with the following wording: *“for the ensuring and oversight of waste collection”*.

**Reasoning:** this is necessary to enable collection of the waste collection fee without a private law contract, since the service provision as such is conducted by a private company.

**Potential knock-on effects:** other infrastructure or public service provision sectors might wish to do the same. However, the argumentation here is that the waste collection is directly covered by the constitutional obligation (for everybody) to protect the environment and to ensure human well being. The Constitution further establishes a “fee regime” for services provided. Hence, there is a direct link from the Constitution to the incorporation of this particular provision and to make the payment for this type of services mandatory.

Article 11 (3) becomes Article 11 (4). Insert new Article 11 (3) with the following wording: *“in the case of 8(d) different fees can apply for legal persons and for different types of waste on a fair basis”*.

**Reasoning:** This is necessary because Article 11 stipulates that uniform fees have to be applied. In the case of waste collection this is not possible, since household refuse is subjected to one type of tariff and industrial / commercial waste to other tariffs. Also, dangerous waste should be treated differently.

**Potential knock-on effects:** the equal treatment principle might be watered down, but there is an objective justification to this, being the polluter pays principle, which, to an extent has yet to be incorporated into the Armenian legislation.

Existing Article 12 becomes Article 12 (1) and a new Article 12 (2) is **inserted** with the following wording: “*the right to collect fees established under Article 8 (d) can be delegated to other legal persons as provided for by the Law of the Republic of Armenia*”.

**Reasoning:** This is required so that the fee collection itself can be outsourced if this is desired and that the waste service fee collection for commercial / industrial customers can be conducted by the waste services provider once the exclusivity is lifted.

**Potential knock-on effects:** None, but in the reasoning it must be made clear that this provision is not counter to the new Article 8(d), but complements it and allows for the municipality to outsource collection and to foster competition in the MSW sector.

A mirror provision should be introduced in the **Law on Waste**:

**Insert** new Article 11.1.e with the following wording: “*collect or organize the collection of fees for the provision of waste collection services*”.

**Reasoning:** This is required to establish in the Law on Waste the collection competency for the municipality (as per the new Articles 8(d) and 11(2) Law on Local Duties and Fees) and the possibility for the municipality to delegate this competency if certain conditions are met. These conditions could be: the encroaching Operator provides a contract to the municipality, signed by the encroaching Operator and the commercial customer, conditional only on municipal approval, showing either a lower tariff or better service provision at the same tariff. In this case, the municipality shall approve the contract and at the same time, the service fee for the Operator who loses the customer shall be adjusted.

### **5.3 Recommendations for Re/allocation of Competencies in the Waste Sector**

This section introduces the required changes in law on the Law on Waste, focused on PPP enabling environment. It should be noted, at this stage, that the Law on Waste could benefit from a more comprehensive revision, introducing modern EU waste principles, standards and regimes. This should be done for the environmental phase. Amendments in the Law on Waste will have limited or no knock-on effects, because it is a sector specific law and utmost attention has been applied (in choosing the wording and locations of the amendments) to avoid nevertheless potential conflicts with other laws (for example the Law on Licensing, the LOSG and the LOY).

The **Law on Waste** should be changed and amended as follows:

Define MSW as Household / Consumption waste and industrial / commercial waste, but keep those two waste categories apart. This can be done in

Article 4, by including a sub-definition to the definition of Industrial waste and household refuse.

The definition could be **restructured**: *Municipal Solid Waste is Industrial waste and household refuse (hereafter referred to as “waste”) which are remains of materials, raw materials, output, products and production derived from industrial activities and consumption, as well as goods (products) that lost their initial consumer attributes. “Household Waste is waste collected from natural persons, generated in households and Industrial Waste is waste collected from legal persons and is not dangerous or otherwise specifically regulated waste”.*

**Reasoning:** This is required so that the tariff regimes fit. Also, there are stricter conditions for commercial / industrial waste than there is for household waste (such as the passport, separation of wastes may kick in for commercial waste first, etc). MSW should be set apart from dangerous wastes.

Then, the definition of waste producers should be **amended** as follows. Waste producers - legal or physical entities or private entrepreneurs, whose activities lead to production of waste, “*other than household waste*”.

**Reasoning:** This is required to allow for the reporting and passport regimes to target the waste industrial / commercial producers.

The negative covenants of the EU WFD should be introduced, to the extent not already covered in the LOW and categorize certain wastes as non-household/consumption and non-commercial/industrial. These could be waste oils, gases, contaminated soil, radioactive waste, carcasses, etc.

The definition of dangerous waste should be amended as follows: Dangerous waste- waste having physical, chemical and biological characteristics that are or might be dangerous to human health and environment and require special treatment methods, modes and means. “*Dangerous waste includes the substances listed in Annex 1.*

**Insert** a new Annex 1, listing and describing at least the following: *Explosives substances, Oxidising substances, highly flammable substances, flammable liquids, irritants, harmful substances, toxic substances, carcinogenic substances, corrosive substances, infectious substances, toxic for reproduction substances, mutagenic substances, waste releasing toxic or very toxic gases in contact with water, air or an acid, sensitizing substances, ecotoxic substances, waste yielding, after disposal, another substance with possesses any characteristic of the above.”*

**Reasoning:** Whilst some mixing of waste streams might be acceptable (being the going practice) in the cleaning phase, in the environmental phase, these (other) waste categories should be dealt with separately. Some waste categories should not be mixed with MSW all together.

Regarding the permitting system, there is a basis for permitting in the LOW. This requires elaboration.

Permit should be added to the definitions of Article 4. *“Permits are issued by the authorities of local self government for the collection, transportation and disposal of waste and for the construction and operation of waste disposal sites”*.

Then, a new Article 11(f) should be **added** with the following wording: *“issue permits for*

*(1) the collection, transportation and disposal of waste, any such permit shall contain as a minimum the service level standards the waste collection service provider must achieve, specify the technology applied and the duration, termination and renewal conditions for the permit;*

*(2) the construction, operation and maintenance of waste disposal sites, any such permit shall contain as a minimum the types and quantities of wastes treated, the permitted methods and types of operation, safety and precautionary measures, closure and after care provisions and duration, termination and renewal conditions”*.

**Reasoning:** This follows the minimum requirements of the EU WFD. Whilst some of these mentioned issues are traditionally also regulated in the service agreements, incorporation of the most important issues into a permit regime has proven practicable. The municipality will have two tools to monitor and regulate the MSW sector. The service agreement as a private law instrument and the permit as a sovereign public law instrument.

#### **5.4 Review of Current Provisions and Draft Recommendation for Improving Conditions for PPP**

There are two remaining issues. The actual issuing of a “Permit” from the municipality to the winning bidder should be an automated process. The contents of the permit should be pre-defined and the permit should, in principle, be pre-issued to all bidders, subject only to the signature of the respective service contract or agreement. This will be required by any diligent bidder consortium and is good for establishing a level playing field.

The other issue is the phasing in of the lifting of the exclusivity together with the introduction of the environmental approach in or around the year five. A meaningful environmental approach should firmly introduce and execute the polluter pays principle, the after care obligations, etc. This will require a comprehensive overhaul of the LOW. This should or could be done in parallel to a further introduction and manifestation of market liberalization.

## 5.5 Stakeholder Analysis

Any public sector reform process requires the commitment and respect of the key stakeholders. Identifying the main stakeholders and their role in the reform process is important. Focusing on the MSW sector the stakeholders need to be identified, their main objectives and the extent of which their main objectives support or does not support the MSW sector reform process as such, as well as their relative importance to the reform process together with their ability to stop and / or hinder progress.

The table below outlines buy-in measures, which may encourage potentially critical stakeholders to support the reform. This is a delicate undertaking, as it requires sensitive analysis and a close dialogue with the main stakeholders.

The following main stakeholders have been identified.

Stakeholder	Main objectives related waste sector reform	Commitment level	Buy-in measures
Policy makers at central level (the relevant ministries).	Improvement of living conditions; compliance with the set policy; income and job creation; constitutional environmental and human health obligations.	Pro: high	Early involvement in strategic decisions and open dialogue (Options analysis); any (medium and long term) actions should serve their specific short term needs.
Local public authorities.	Improve the living conditions locally, and that includes MSW.	Pro: high (if convinced)	These authorities are directly responsible to the people for the waste situation. The reform process and its advantages should be accompanied by a comprehensive and easily understandable information campaign, which outlines the advantages of the waste sector reform.
Local waste departments (companies).	Affordable waste services to customers in a financial and economically balanced manner.	Pro: low to medium	There is, traditionally, an element of resistance to change. For these departments, it must be explained that the existing human resources will be (re)trained and be key for modern and efficient waste services.

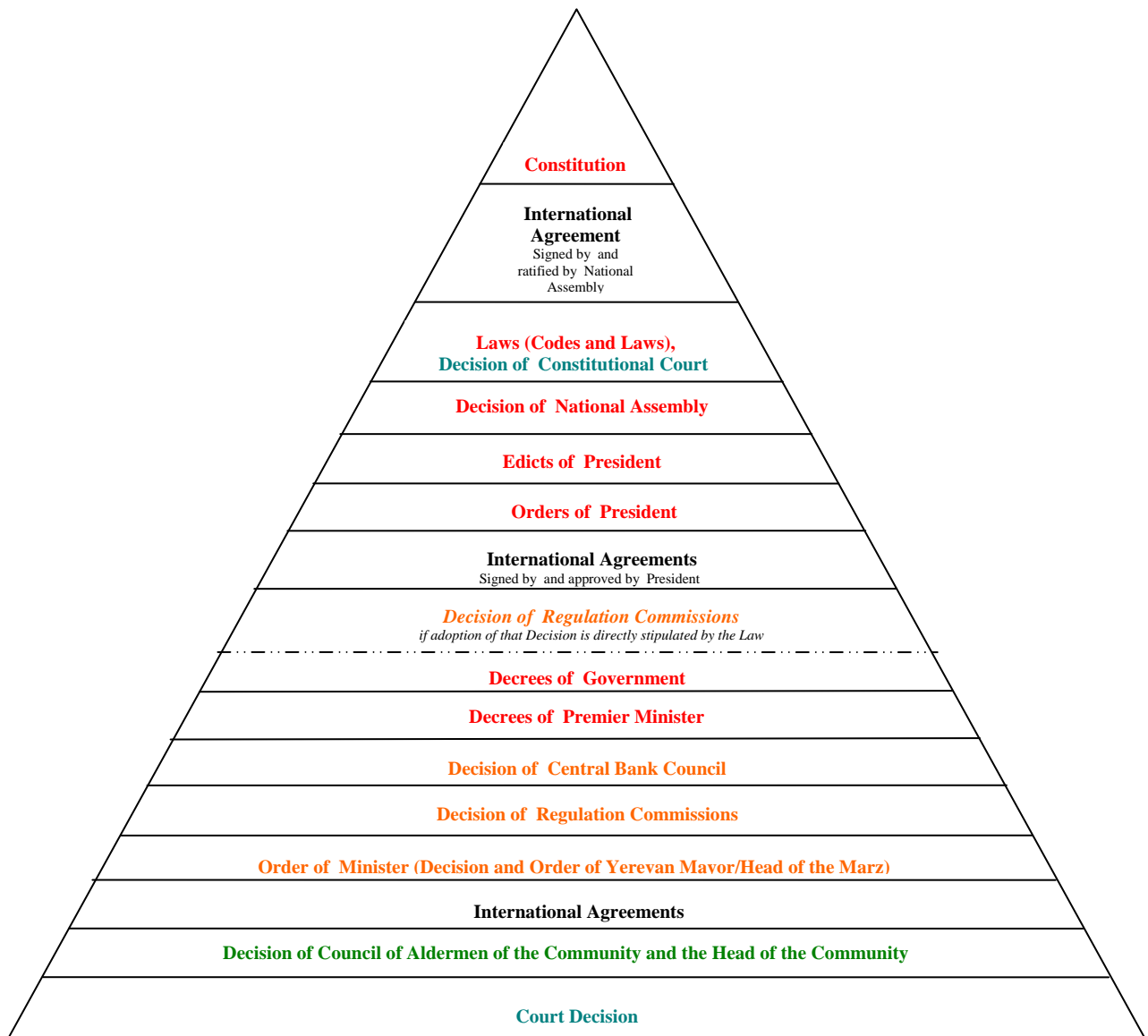
<b>Stakeholder</b>	<b>Main objectives related waste sector reform</b>	<b>Commitment level</b>	<b>Buy-in measures</b>
Local small and medium enterprises.	Generate profits.	Pro: medium	Local businesses will understand the need for improvement of infrastructure services. Even if this comes at a price (higher charges). The improvement of the living conditions in the waste sector will also create new opportunities and benefit the business sector in a sustainable manner.
Existing Waste Services Provider.	Operates in the waste sector and generates profits.	Con: medium	Existing private companies providing waste services might take a more reluctant view to change, since this might mean change of circumstances for them, in the worst case, loss of business. At the same time, this provides an opportunity for them, to shift their business on more solid grounds and make it thus more viable.

## **Annexes**

## Annex A: Meetings and Interviews conducted

Overview Meetings and Interviews Task 6		J Johnson	FJ Sellner	A Poghosyan	S Yedigaryan	A Kharazyan	Comment
08-Mar-09	Internal Meeting	x	x	x	x		Consolidation and finalisation of critical analysis. Definition of Service Provision.
09-Mar-09	Ministry of Environment: Mr Dr Aram Gabielyan, Head of Environmental Protection Department	x	x			x	Assessment of involvement of MinNP in the permitting of MSW and landfilling.
09-Mar-09	Ministry of Urban Development: Mr Samvel Srappyan, Head of Communal Division	x	x			x	Assessment of involvement of MinUD in the permitting of MSW and landfilling.
09-Mar-09	Municipality of Yerevan: Mr Gagik Khachatzyan, Head of Communal Division	x	x		x		Discussion of envisaged reform concept. Assessment of commitment of Yerevan municipality.
10-Mar-09	Ministry of Justice: Mr Yezrand Dallakyan, Advisor to Minister						Discussion of envisaged reform concept and change in law mechanisms.
10-Mar-09	Ministry of Economy: Mr Armen Mirzoyan	x	x			x	Discussion of reform concept.
11-Mar-09	Round Table (Mr Petrosian, Deputy Minister for Economy, Mr Armen Mirzoyan)	x	x	x	x	x	Discussion of reform concept and required legal changes.
11-Mar-09	World Bank: Mrs Ani Blabanyan, Mr A Kochnakyan	x	x				Discussion of reform concept and required legal changes.
11-Mar-09	Ministry of Economy: HE Mr Neres Yeritsyan, Minister of Economy, Mr A Mirzoyan, Mr H Mirzoyan, Ministry of Economy	x	x			x	Discussion of reform concept and required legal changes.
12-Mar-09	Internal Meeting	x	x	x	x		finalisation of reform concept and finalisation of report structure.
12-Mar-09	Dr D Tumanyan, Community Finance Officers Association	x	x		x		Discussion of available capacities and other changes in laws under way (e.g. they prepared an amendment of the LOLDFs)
12-Mar-09	Mayor of Yerevan: HE Mr Gagik Beglaryan; Mr H Mirzoyan, Ministry of Economy	x	x	x		x	Discussion of reform concept and required legal changes. Mayor recommends a complete legal overhaul.
12-Mar-09	Ministry of Economy: HE Mr Neres Yeritsyan, Minister of Economy	x				x	Briefing on the meeting with the Mayor of Yerevan and reflection.

## Annex B: The Legislative Hierarchy in Armenia



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**Legislative Legal Acts (Article 4, Paragraph 1 of Law on Legal Acts)**

**Departmental Legal Acts (Article 4, Paragraph 2 of Law on Legal Acts)**

**Legal Acts of the Local Self-Governing Bodies (Article 4, Paragraph 3 of Law on Legal Acts)**

**International Agreement (Article 4, Paragraph 4 of Law on Legal Acts)**

- *may be signed by , Government, Ministries, State Governmental Bodies)*

**Court Legal Acts (Article 4, Paragraph 5 of Law on Legal Acts)**

## Annex C: Law Making Procedure

### **Enactment, Repeal and Amendment of Laws**

The general legislative power is vested with the National Assembly (NA) (Constitution, Article 62; Law on Rules of Procedure of the National Assembly, Article 47). The right to initiate Legislative proceedings resides both with the Government and individual Deputies (members of NA) who can submit draft laws to the National Assembly for approval.

Laws may also be adopted through referendum. Referendums can be called by the President upon the request or agreement of the National Assembly (Constitution, Articles 75, 111; Law on Referendum, Article 4).

Planned law drafting is subject to a formalized procedure: the so-called “running programs”. For urgent matters, laws can be drafted outside the scope of these running programs. The Ministry of Justice approves drafts as constitutional and in compliance with other legislation. The Government approves drafts based on the “Edict PE-174-N of the President on Organizing the Activities of the Government and other State Governing Bodies under the Government”.

Laws are then passed through the National Assembly (or submitted and approved through a referendum) and are signed and promulgated by the President of the Republic of Armenia (Constitution, Article 55, Clause 2; Law on Referendum, Article 48). The laws come into force after their official publication in the Official Bulletin (Constitution, Article 6).

According to Article 70 of Law on Legal Acts, a law can be amended by the same body that adopted it in the first place. Amendments of the laws are made by laws; thus, the procedure for amending laws is identical to the procedure for enacting laws.

A law can be “repealed” if the matter regulated by that law becomes irrelevant. A law repealing the law in question must have retroactive effect. Laws are repealed by the decision of the National Assembly (Law on Legal Acts, Article 72).

### **Enactment, Repeal and Amendment of Regulations**

Regulations are normative legal acts and may be enacted by a number of state bodies according to the legal hierarchy (Law on Legal Acts, Articles 12-19, 22, 22.1). Normative legal acts are adopted on the basis of the Constitution and/or existing laws. The purpose of regulations is to support proper implementation of the law or of the constitutional provision in question (Constitution, Article 6) allowing for the enactment of sub-normative legislation.

Regulations may take the nature of “legislative legal acts” or “administrative legal acts” depending on the adopting body’s position in the legal hierarchy and its commensurate legislative power.

- Legislative legal acts, except the Constitution and Laws, are adopted by the National Assembly (Decisions), the President (Edicts and Directives), the Government (Decisions) and Prime Minister (Decisions).
- Departmental legal acts are adopted by the Council of the Central Bank (Decisions), various regulatory commissions and councils (Decisions and Instructions), the Head of the National Assembly (Orders), Ministers (Orders), Heads of State

Governing Bodies<sup>19</sup> at the Government (Orders), Heads of Marzes (Decisions or Directives) and the Mayor of Yerevan (Directives) (Law on Legal Acts, Article 4).

Legislative Legal acts are submitted to the government for consideration and circulated among the relevant Ministries (Edict PE-174-N of the President, Clauses 31, 40). Legislative acts must be officially published (Law on Legal Acts, Articles 48, 49, 51, 52 and 53) and enter into legal force on the date specified in the legislative act. Before adoption, the drafts of Legislative acts must undergo a mandatory legal check at the Ministry of Justice, ensuring conformity with the Constitution, existing legislation and IAs and the rules (see above remark) of legislation. This process takes 15 days and may be prolonged by the Minister of Justice for additional 10 days.

Departmental Legal acts are delivered to the Ministry of Justice for their mandatory “state legal expertise” and state registration within seven days following their adoption. Departmental legal acts enter into legal force after ten days following their official promulgation (Law on Legal Acts, Article 55).<sup>20</sup>

Legislative and Departmental legal acts can only be amended by the bodies that adopted them or their legal successors. Amendments to the legal acts setting up regulations may be made by the same type of legal act. Regulations may be repealed by the (first) adopting bodies or their legal successors.

### **Enactment, Repeal and Amendment of Decrees and Acts of Local Self-Government Bodies**

The local self-governing bodies are the Community Council (CC) and the Chief of Community (CoC) (Law on Self-Governing, Article 7).

#### ***Community Council decisions:***

The CC discusses any matter related to the interests of the community and can pass decisions (and messages) (LOSG, Article 11). Any proposal for a decision is circulated by a member of the CC to the other CC members, containing the justification for the necessity to adopt this decision together with a ***financial cost estimate*** for the ***implementation of the draft decision***. The CC decides on the decisions (and messages) by a majority vote. The Law on Self-Governing (LOSG) defines the scope of competencies within which the CC can adopt decisions (LOSG, Article 16).

#### ***Directives:***

The Chief of Community (CoC) can issue directives within the scope of its competencies (more to this in chapter 2.3.5) as defined in Article 32 LOSG.

#### ***Referenda:***

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<sup>19</sup> A Governmental Body of the State Executive Body that develops and provides state policy within authorized sphere, governs and supervise the activity within the system of that very sphere. For instance, the General Department of the Civil Aviation at the Government of RA is the Governmental Body of the State Executive Body that develops and provides state policy within aviation sphere as well governs and supervise activity within system of the civil aviation.

<sup>20</sup> The state body adopting a Regulation may publish the drafts of the regulation through the mass media and allow for a public discussion before its adoption (Law on Legal Acts, Article 29).

Acts of Local Self-Governing Bodies can also be adopted by referendum (Law on Legal Acts, Articles 20). Local referenda can be initiated and called upon as specified by the Constitution, relevant laws and may refer to matters within the competencies of Local Self-Governing bodies (Law on Local Referendum, Article 5). There are, however, some matters within the exclusive competencies of the Community Council, which cannot be subjected to referenda.

Following adoption of the draft legal acts of the Local Self-Governing bodies (Decisions, Directives), the Ministry of Justice (Law on Legal Acts, Articles 34) must approve any such adopted act as constitutional.

Acts of Local Self-Governing bodies enter into legal force ten days following official promulgation. Acts adopted through local referendum enter into legal force five days following the publication of the results of the referendum. These legal acts may only be amended by referendum (Law on Legal Acts, Articles 36).

Amendments to the acts of Local Self-Governing bodies are subjected to the same procedure as is the adoption process.

## Annex D: THE LAW ON WASTE

*Unofficial translation***THE LAW OF THE REPUBLIC OF ARMENIA ON WASTE****(Adopted on November 24, 2004)***Chapter 1. General provisions**Article 1. Subject of law*

This law shall regulate the relations on waste collection, transportation, storage, processing, recycling, removal, volume reduction and other relations regarding the before mentioned activities, as well as legal and economical bases for prevention of adverse effects of waste on human health and environment.

*Article 2. Sphere of regulation and exceptions*

1. This law shall regulate management of waste derived from production activities and consumption.
2. The law shall not regulate <the relations on>:
  - a) Radioactive waste;
  - b) Substances discharged into natural water streams and mixed with waterfowls;
  - c) Substances emanating together with gas mixtures from emission sources into the atmosphere;
  - d) Capping layer rocks (stratum) extracted by mining companies.

Relations on waste management mentioned in Item 2 of this Article shall be regulated by other laws and legal acts of the RoA.

*Article 3. Legal regulation of waste management*

Relations on management of production and consumption waste are regulated by the RoA Constitution, this law, the RoA international treaties and other legal acts.

If by the RoA international treaties other norms are provided than those set forth by this law, the provisions of the international treaties shall be implemented.

*Article 4. Basic definitions used in the law*

The basic definitions used in this law are as follows:

**Industrial waste and household refuse** (hereafter referred to as “waste”) remains of materials, raw materials, output, products and production derived from industrial activities and consumption, as well as goods (products) that lost their initial consumer attributes.

**Waste producers** - legal or physical entities or private entrepreneurs, whose activities lead to production of waste.

**Waste management** -activities aimed at prevention of waste production, waste collection, transportation, disposal, processing, reprocessing, recycling, removal, disinfection and landfill (*Note: landfill as an action not a noun*).

**Dangerous waste**- waste having physical, chemical and biological characteristics that are or might be dangerous to human health and environment and require special treatment methods, modes and means.

**Waste collection**- an activity aimed at removal of waste and its disposal in the specially provided areas and structures, which also includes sorting of waste for further recycling or removal.

**Waste storage**– temporary placement of waste in the specially provided areas and structures for its further recycling or removal.

**Waste utilization**- use of waste for production of goods, generation of energy or other purposes.

**Waste processing, reprocessing**- implementation of technological operations related to change of physical, chemical or biological characteristics of waste.

**Waste recycling**- use of waste as a secondary material or energy resource.

**Waste removal-** waste management activities which do not result in recycling of waste.

**Waste disinfection-** decrease or elimination of dangerous characteristics of waste through mechanical, physical- chemical, biological processing.

**Waste disposal -** isolation of waste, which eliminates its further utilization and is aimed at its neutralization and prevention of dangerous substances' emissions into environment.

**Landfill of waste -** final placement of waste in the specially provided areas and structures to eliminate its impact on human health and environment.

**Waste management objects-** areas and structures for waste collection, storage, processing, reprocessing, recycling, removal, disinfection and landfill.

**Specially provided areas-** sites for placement of waste, polygons, waste receiving points, landfills, complexes, buildings and structures, Earth interior's zones, for use of which in the procedure provided by law a permit for removal of waste and other activities has been issued.

**Waste transportation-** transportation of waste from places of its production and its storage on sites or structures for processing, recycling or removal.

**Trans-boundary transportation of waste –** transportation of waste from the territory of one state to another or through the territory that is not under the jurisdiction of a certain state conditioned upon the fact that such a transportation is related to both states.

**Waste state register-** a systematized list of codes and names of waste to be used in the state or administrative statistics for provision of comprehensive and valid data on waste production, collection, processing, reprocessing, disinfection and removal.

**Licensed landfills-** landfills for operation of which a permit is issued in the procedure established by law.

**Waste disposal quota-** marginal allowable quantity of a particular type of waste, which depending on the environmental situation of the specific territory can be placed in the waste disposal structures for a defined period of time in the procedure established by law.

**Waste production normative-** quota of a particular type of waste, originated from production of a particular unit of output.

**Passport of waste-** a document verifying type and risk level of waste, which provides information about waste composition.

**Type of waste-** a group of waste having similar characteristics, defined in accordance with the waste classification system.

**Issuance of waste passports -** activities aimed at identification of waste, carried out based on passport data of waste to ensure resource-saving and safe management of waste.

**Restricted waste-** waste a restriction on further management of which shall be made by the RoA Governmental Decree.

**Waste state cadastre-** a database comprising waste indicators, lists of waste production, reprocessing, recycling structures and removal areas, as well as information about waste recycling and disinfection technologies. [

#### **Article 5. Objectives of the law**

The main objectives of this law are:

- a) Provision of main principles of the state unified policy in the area of waste management;
- b) Provision of main conditions, requirements and rules of environmentally safe management of waste, as well as economic incentive measures for recourse-saving (*activities*);
- c) Assurance of conditions for generation of minimal quantity of waste, promotion of waste utilization in the economical activity, mitigation of adverse effects of waste on human health and environment; and,
- d) Legal regulation of relations in the area of waste management.

#### **Article 6. Principles and the main approaches of the state regulation in the area of waste management**

1. The main principles of state regulation in the area of waste management are as follows:

- a) Protection of human health and environment from adverse effects of waste;

- b) Assurance of reasonable use of raw material and energy resources;
  - c) Balancing of environmental, economical and social interests of public in the area of waste management.
2. The main approaches of the state policy in the area of waste management are reduction of waste production and risk level through:
- a) Use of modern scientific and technological achievements for implementation of non-waste or low-waste technologies;
  - b) Complex utilization of raw material resources for reduction of waste quantity (volumes);
  - c) Maximal consumption of waste which has a raw material value, through its direct, double and alternative utilization;
  - d) Assurance of safe removal of non-recyclable waste through development of waste disinfection and elimination technologies, environmentally safe methods and means;
  - e) Assurance of information accessibility in the area of waste management.
  - f) Provision of economical incentives' system,

***Chapter 2. Authorities of the state government and local self- government bodies in the area of waste management***

***Article 7. Authorities of the RoA Government in the area of waste management***

In the area of waste management the RoA Government shall:

- a) Develop the state policy for the sector and ensure its implementation;
- b) Coordinate activities of the state authorized bodies in the area of waste management;
- c) Ensure system of economical incentives for implementation of less- wasteful technologies, waste collection and recycling;
- d) Provide a waste inventory, generation, removal (elimination, disinfection, disposal) and recycling procedure;
- e) Provide a procedure on licensing of activities in the area of dangerous waste reprocessing, disinfection, storage, transportation and disposal, as well as carry out licensing of those activities;
- f) Provide lists of dangerous and restricted waste;
- g) Provide a procedure on trans- boundary transportation and removal of waste;
- h) Ensure establishment of structures for placement of disinfected and non-recyclable waste;
- i) Carry out international cooperation in the area of waste management;
- j) Carry out other authorities provided by law.

***Article 8. Authorities of the environmental sector state authorized body in the area of waste management***

In the area of waste management the environmental sector state authorized body shall:

- a) Participate in development of the state policy in this area;
- b) Prepare target programs for the waste management sector;
- c) Carry out inventory of waste;
- d) Approve waste disposal quotas for legal entities and private entrepreneurs;
- e) Develop lists of dangerous and restricted waste;
- f) Provide a list of waste classified by risk level;
- g) Submit proposals on issuance of permits for trans- boundary transportation of dangerous waste;
- h) Approve sites for location of waste management objects;

- i) Coordinate (*harmonize*) waste passports, prepared by the waste producers;
- j) Establish a database on quantity of waste generation volumes;
- k) In the procedure set by law carry out state environmental impact assessment for construction and remodeling of polygons, complexes, buildings and other specially provided areas and structures, as well as environmental impact assessment of operation's design documents and complex programs for waste production, processing, recycling, disposal and removal;
- l) Carry out state waste cadastre;
- m) Share information about non- or less-wasteful technologies with other governmental agencies;
- n) Develop and update registry of objects designed for waste production, reprocessing and recycling, waste removal areas, as well as carry out monitoring <over those places>;
- o) Draft legal acts for regulation of the waste management sector and approve normative acts within the limits of its jurisdiction;
- p) Carry out international cooperation in the area of waste management and sign intergovernmental contracts on trans- boundary transportation of waste;
- q) Exchange information on waste management with international organizations and foreign countries;
- r) Carry out other authorities provided by law.

***Article 9. Authorities of the public health sector state authorized body in the area of waste management***

In the area of waste management the public health sector state authorized body shall:

- a) Develop public health safety requirements to be incorporated into the normative- technical documents on waste management; elaborate sanitary and epidemic rules, norms and hygienic standards aimed at prevention of dangerous and adverse effects of waste on human health in the process of waste production, collection, transportation, storage, processing, recycling, removal, disinfection and landfill; oversee implementation of these requirements;
- b) Develop main directions for measures aimed at protection of human health from adverse effects of waste and submit those to the RoA Government;
- c) Approve location sites for the waste management objects;
- d) Provide sanitary-hygienic requirements of output produced from waste and issue hygienic expert opinion;
- e) Participate in development of a risk level classification list of waste;
- f) Carry out other authorities provided by law.

***Article 10. Authorities of the territorial administration bodies in the area of waste management***

The territorial administration bodies in the area of waste management shall:

- a) Participate in development of the state policy in the area of waste management;
- b) Participate in preparation of state programs in the area of waste management;
- c) Develop local waste management programs and oversee their implementation within the boundaries of an administrative- territorial division;
- d) In collaboration with authorized body in the area of waste management issue permits for allocation of waste within the boundaries of an administrative-territorial division;
- e) Prepare sanitary cleaning schedules and oversee waste collection within the boundaries of an administrative- territorial division;
- f) Prepare and update entries to register of waste production, processing and recycling structures and waste removal areas;
- g) Carry out an inventory of waste production, processing, disinfection, recycling and removal and organize waste passports issuance;
- h) Liquidate not-controlled and not licensed landfills within the boundaries of an administrative- territorial division;

- i) Within the boundaries of an administrative- territorial division organize public participation in collection of not dangerous waste, which has a resource value;
- j) Carry out other authorities provided by law.

***Article 11. Authorities of the local self-government bodies in the area of waste management***

1. Local self- government bodies in the area of waste management shall:

- a) Oversee waste collection;
- b) Prepare sanitary cleaning schemes of territories;
- c) Eliminate (liquidate) not-controlled and not licensed landfills;
- d) Organize public participation in collection of not dangerous waste, which was a resource value.

2. Local self- government bodies in the area of waste management carry out other authorities set forth by the Law on local self- government bodies.

***Chapter 3. State normatization, issuance of waste passports, statistical reporting and standardization in the area of waste management***

***Article 12. State normatization in the area of waste management***

- 1. To protect human health and environment and to reduce the waste volumes, waste disposal quotas shall be set for legal entities and private entrepreneurs involved in the waste management.
- 2. Quotas for disposal of waste shall be set by the state authorized body in the area of waste management in accordance with the approved norms of marginal allowable level of impact.
- 3. Legal entities and private entrepreneurs involved in the waste management shall submit drafts of proposed norms of waste production and disposal to the state authorized body in the area of environmental protection for approval in the procedure provided by the RoA Government.

***Article 13 State inventory of waste, passportization, submission of statistical report***

- 1. Waste state inventory and passportization shall be carried out in accordance with the procedure established by the RoA Government.
- 2. Legal entities involved in the waste management (including foreign and private entrepreneurs) are obliged to carry out initial inventory of produced, utilized, disinfected, transferred to or received from other entities and disposed waste.
- 3. Legal entities (including foreign and private entrepreneurs) producing and transporting dangerous waste are obliged to submit administrative statistical reports to the state authorize body of the sector in the procedure established by law and other legal acts.
- 4. The state authorized body in the environmental protection area shall develop a sample of an administrative statistical report, as well as an instruction on its completion based on the state waste classification <system>.

***Article 14. State waste cadastre***

- 1. State waste cadastre comprises waste classification <system>, lists of waste production, reprocessing and recycling structures, as well as a database on waste utilization and disinfection technologies.
- 2. The state authorized body in the environmental protection sector shall carry out waste cadastre in accordance with the procedure established by law.

***Article 15. Register of the waste production, reprocessing and recycling objects***

- 1. For receiving, processing, storage and analysis of information on waste production, reprocessing and recycling structures a register, providing information on waste index names, production quantities, qualitative and quantitative characteristics, waste treatment, reduction of waste volumes and risk level shall be kept. Information kept in the registry shall be verified annually.
- 2. Recording of information in the register of waste production, reprocessing and recycling objects shall be carried out by the state authorized body in the area of environmental protection based on reports of the waste producers.
- 3. The procedure of the waste production, reprocessing and recycling register record keeping shall be provided by the RoA Government.

**Article 16. Register of waste removal sites**

1. Based on waste passports and the waste producers' reports the register of waste removal sites (active, closed or conserved) for their inventory and description shall be kept. Information of the waste removal sites' register shall be verified annually.
2. Recording of information in the waste removal register shall be carried out by the state authorized body in the environmental protection area in accordance with the procedure established by the RoA Government.

**Article 17. Monitoring of the waste removal sites**

To evaluate and forecast impact of waste on environment, as well as to discover and prevent negative results of such impact on time, the waste producers and managers, as well as the state authorized body in the environmental protection area shall carry out periodical monitoring.

Monitoring of waste removal areas is an integral part of the state system of environmental monitoring.

**Chapter 4. Rights and responsibilities of entities in the area of waste management****Article 18. Rights of physical entities in the area of waste management**

In the area of waste management the physical entities have the following rights:

- a) To have safe health and life conditions while implementing activities related to waste management;
- b) To receive information about safety of operating waste management structures, as well as those under construction or to be constructed;
- c) In the procedure established by law to receive compensation for injuries and damages to the property caused by violation of legislation on waste.

**Article 19. Rights of the legal entities and private entrepreneurs in the area of waste management**

Legal entities and private entrepreneurs in the area of waste management have the following rights:

- a) In the procedures established by the law and other legal acts to receive information about waste recycling technologies, waste management objects construction and operation from the relevant state government bodies;
- b) To submit proposals on location, design, construction and operation of waste management objects to the state government bodies;
- c) On cases and in the procedure established by the RoA laws and other legal acts to receive privileges, while establishing waste management facilities;
- d) To participate in development of the local, regional and state programs in the area of waste management.

**Article 20. Responsibilities of the legal and physical entities and private entrepreneurs in the area of waste management**

Legal and physical entities and private entrepreneurs in the area of waste management shall:

- a) Follow the requirements of this law and other legal acts in the area of waste management;
- b) Place waste only in the areas specially provided for that by this law;
- c) Notify about emergency situations for human health and environment that occur during waste management <activities> and take measures to eliminate negative results of such situations.

**Chapter 5. Insurance of economical incentives for waste recycling and reduction of waste production volumes****Article 21. Organizational and economical measures aimed at waste recycling and reduction of production volumes**

The measures aimed at waste recycling and reduction of production volumes include:

- a) Provision of waste production and disposal quotas;
- b) Setting of environmental fees for allocation of waste based on payment rates, determined depending on the waste risk level and cadastral price of land given for the waste disposal structure;

- c) On cases and in the procedure established by law provision of privileges to the enterprises and organizations reducing waste generation volumes and introducing low- waste technologies in the production process, as well as to those involved in the collection, storage and delivery of the secondary resource waste;
- d) Preparation of a list of waste having value of a secondary resource for which a special regime shall be established to promote its collection, storing and utilization.
- e) Target financing of scientific research of waste recycling and reduction of waste production volumes in the procedure established by law;
- f) Target use of waste disposal fees set by law to finance activities aimed at utilization of waste and reduction of waste production;
- g) Establishment of funds for financing of waste recycling activities using financial sources of waste producers and waste owners as well as Armenian and foreign legal entities' voluntary contributions and other sources allowed by the RoA legislation.

***Article 22. Environmental fees for disposal of waste***

Environmental fees for disposal of waste shall be set in accordance with the provisions of the RoA Law on nature protection and utilization payments.

***Article 23. Promotion of activities aimed at waste recycling and waste production volumes reduction***

To promote activities aimed at recycling of waste and reduction of waste volumes, legal entities introducing waste volume reduction technologies during collecting, storing of waste and putting up the waste management structures while producing goods (implementing works and rendering services), as well as those producing waste volume reduction equipment/installations, having share participation in waste recycling or financing activities to reduce waste production volumes may be granted privileges in the procedure established by law.

***Chapter 6. Supervision in the area of waste management***

***Article 24. Supervision in the area of waste management***

Supervision over waste management shall be exercised by the state government authorized body in the procedure established by law.

***Chapter 7. Liability for violations in the area of state management***

***Article 25. Violations in the area of state management***

In the procedure defined by law legal and physical entities bear responsibility for violations of provisions set forth by this law.

***Chapter 8. Final Provision***

***Article 28. Final provisions***

1. The law shall become effective on the tenth day after its publication.
2. Prior to approval of legal acts to be adopted based on this law the legal acts having equal legal force shall be effective.

***The RoA President R. Kocharyan  
21.12.2004  
HL (AL)- 159***

## Annex E: List of Sub-normative Legal Acts

- a. Procedure of waste disposal norms' assessment was adopted by the Decree No-2291-N (dated 09.12.2005) of Government, which provides:
  1. Regulation of legal relationships of the legal entities (and persons) involved in the waste production in regard to assessment of the waste disposal norms as well as approval of those norms.
  2. Designation of Ministry of the Nature Protection (MoNP) as the State Authorized Body.
  3. Main purpose of the norms' assessment.
  4. Requirements of the application and supporting documents.
  5. Times and conditions for application approval.
  
- b. The procedure on passportization of the waste was adopted by the Decree No-47-N (dated on 19.01.2006) of Government, which provides:
  1. Cover (title) page of the waste passport.
  2. Regulation of the legal relationship of the legal entities (and entrepreneurs) involved in the waste production in regard to development, coordination of the waste passport as well as approval of it.
  3. Designation of MoNP as the State Authorized Body.
  4. Main purpose of the passport development.
  5. Requirements of the application and supporting documents.
  6. Terms and conditions for application approval.
  
- c. The procedure of the waste production, reprocessing and recycling register record keeping was adopted by the Decree No-500-N (dated on 20.04.2006) of Government, which provides:
  1. Regulation of the relationship on waste production, reprocessing and recycling register record keeping.
  2. Designation of MoNP as the State Authorized Body
  3. Main purpose of the register record keeping.
  4. Content of the registering information on waste.
  5. Requirements of the application and supporting documents.
  6. Procedure of the register record keeping.
  
- d. The procedure of recording of information in the waste removal sites register record keeping was adopted by the Decree No-1180-N (dated on 13.07.2006) of Government, which provides:
  1. Regulation of the relationship on waste removal sites register record keeping.
  2. Designation of MoNP as the State Authorized Body.
  3. Main purpose of the waste removal sites register record keeping.
  4. Criteria for classification of the waste removal site as the subject for register record keeping.
  5. Content of the registering information.
  6. Requirements of the application and supporting documents.
  7. Procedure of the register record keeping.

- e. The procedure of the waste inventory, generation, removal (elimination, disinfection, disposal) and recycling was adopted by the Decree No-1343-N (dated on 25.12.2006) of Government, which provides:
  - 1. Regulation of the relationship within waste inventory, generation, removal (elimination, disinfection, disposal) and recycling.
  - 2. The scope and the subjects of the regulation.
  - 3. Main purpose and the frame of the inventory.
  - 4. Procedure of the waste inventory and nomination of the responsible official.
  - 5. Content of the registering information on the waste inventory.
  
- f. The Lists of the waste that is classified as hazardous was adopted by the Order No-430-N (dated on 25.12.2006) of the Ministry of the Nature Protection, which provides:
  - 1. Different types of waste that is classified as hazardous waste.
  - 2. Name, description of the physical form and origination of the mentioned waste.
  
- g. The procedure of the waste state inventory was adopted by the Decree No-1739-N (dated on 07.12.2006) of Government, which provides:
  - 1. Regulation of the relationship within State inventory of the waste.
  - 2. Main purpose of the State inventory.
  - 3. The scope of the inventory.
  - 4. Designation of MoNP as the State Authorized Body.
  - 5. Procedure and deadline of the information submission to the State Authorized Body
  
- h. The procedure of the waste state cadastre was adopted by the Decree No-144-N (dated on 18.01.2007) of Government, which provides:
  - 1. Regulation of the relationship within provision of the waste state cadastre.
  - 2. Content of the registering information.
  - 3. Main purpose of the waste state cadastre.
  - 4. Rule of using information from the cadastre.
  
- i. Governmental Decree No-599-N (dated on 19.05.2005) on Nomination Ministry of the Nature Protection as the Authorized Body within Waste Activity Domain.
  
- j. Governmental Decree No-670-N (dated on 19.05.2005) on Establishment of Waste Study Center State Non Commercial Organization.
  
- k. Governmental Decree No-387-N (dated on 24.11.2006) on Approval of the Journal (Book) and the Registering Paper of the Waste Removal Sites Records.
  
- l. Order No-19-N (dated on 02.02.2006) of the Ministry of the Nature Protection on Approval of the Waste Passport Pattern.

- m. Order No-359-N (dated on 07.11.2006) of the Ministry of the Nature Protection on Approval of the Journal (Book) and Report Forms of Waste Production, Re-processing and Recycling Register Record Keeping.
- n. Order No-387-N (dated on 24.11.2006) of the Ministry of the Nature Protection on Approval of the Journal (Book) and Report Paper of the Waste Removal Sites Register Record Keeping.
- o. Order No-97-N (dated on 27.04.2007) of the Ministry of the Nature Protection on Approval of the Pattern of Evaluation of the Waste Disposal Norms.
- p. Government Decree 97 on “*Regulating the Import, Export and Transboundary Movement of Hazardous and Other Types of Waste in the Territory of the Republic of Armenia*” dated 08.12.1995, contains a definition of waste that is similar to that of defined by the EU Waste Framework Directive (2008/98/EC): “‘waste’ means any substance or object which is discarded or intended or is required to discard”. The Decree separates waste in two types - “*hazardous waste*” and “*other waste*”. The hazardous waste is defined as “waste that threatens human health and the environment” and other waste is “waste collected from residential areas and residue resulting from combustion utility waste”.
- q. Based on the above Government Decree, the Ministry of Nature Protection issued Order 96 dated 10.08.1999, providing a list of waste classified as hazardous waste.
- r. The Government Decree 874-N “*On Approving the List of Hazardous Wastes of the Republic of Armenia*” dated 20.05.2004<sup>21</sup> has been adopted to ensure Armenia’s compliance under the UN Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The Decree re-issues the list of *hazardous waste* and assigns the Ministry of Nature Protection to approve the list of *industrial and consumption wastes*; this was approved by the MinNP Order 342-N<sup>22</sup> dated 26.10.2006.
- s. The Order 430-N of the MinNP dated 20.12.2006 is the only legal act providing a list of waste that has been issued based on the LOW (Article 8). As the law prescribes, the Order only provides the list of hazardous waste.

#### Anticipated legal acts (sub-norms) based on the Law on Waste

- Adoption by Government of the procedure on licensing of activities in the area of hazardous waste reprocessing, disinfection, storage, transportation and disposal, as well as carry out licensing of those activities.
- Adoption by Government of the lists of hazardous and restricted waste.

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<sup>21</sup> This Decree has been not been adopted on the basis of the Law on Waste.

<sup>22</sup> This provides the code for municipal solid waste, but does not define it any further.

- Adoption by Government of the procedure on trans-boundary transportation and removal of waste.

## Annex F: Analysis of the Investment Promotion Law

The Armenian Investment Promotion Law (IPL) was enacted in 1994 and is 7 pages long. The English translation reads “unofficial translation”. The length of the law is in line with international expectations. There is no or little information about any amendments and it sounds incredible that there is no official translation easily available. This should be changed and an official version of the IPL should be published on the official governmental websites.

Article 1 defines the investor, foreign investment and somewhat unluckily, the right of the investor to establish an SPV (single purpose vehicle) if this is meant.

Article 3 regulates the forms that investments can take. These are, inter alia, reimbursement for the provision of contractual services (Article 3, d, e, g). A catch all phrase stipulates that a foreign investor may invest in any kind of activity, unless specifically prohibited.

The wording of Article 3 is a little cryptic and this should be tidied up. However, it would appear that, unless there is an explicit provision to the contrary, foreign investors may participate in the waste sector. Article 4 supports this assumption. It states that investors may engage in Joint Ventures, establish SPVs, use land and acquire property rights.

Hence, foreign investment is quite likely possible in the MSW sector, unless otherwise stated in the applicable legislation.

Article 5 stipulates the free conversion of currencies at a rate determined by the central bank. It does not stipulate free expatriation of profits, but unless there is a provision to the contrary in another applicable law, expatriation will be possible. Expatriation (of revenues and profits) is only briefly mentioned in Article 10 and 11 and one would need to seek local legal & accounting advice on this issue.

Article 6 guarantees equal rights for the foreign investor and possibly extra benefits in most significant fields of social and economic development. This extra regime would require legislation. Article 7 guarantees the application of the legal regime entered into at the time of the investment for a period of 5 years. This is a decent period and given that investment contracts usually foresee a regime for changes in law (while and after the 5 years), it would appear quite attractive.

Article 8 restricts nationalization to emergencies and guarantees full compensation. To the extent that this is not due to translation, it is a flaw, because internationally one can expect full, prompt and adequate compensation. Similar, the damages regime in Article 9 does not relate to prompt and adequate compensation.

Custom and excise duties are globally waived for materials and works and services (including private goods). So, any material needed for the waste sector (such as vehicles) would be exempt from customs duties.

Article 17 is crucial. It stipulates that foreign enterprises have to pay taxes and enjoy privileges only in line with the applicable legislation. Usually, investment promotion laws

would set out periods of no or reduced tax burden for the investor. This is not the case in the IPL.

Article 18 stipulates an application criterion “*to receive privileges*” (incentives), this being a 30% paid up foreign investment at the moment of “foundation”. This requires clarification, since it is not clear if capitalization of the company is meant or 30% of the funding required.

It is also not clear if arbitration abroad is acceptable under the IPL (Article 24).