

DRAFT UNOFFICIAL TRANSLATION

Administrative case VD/3361/05/10

**VERDICT
FOR THE REPUBLIC OF ARMENIA**

July 29, 2011

Yerevan

The Administrative Court of the Republic of Armenia
presided by Judge Ruzanna Hakobyan

Secretary: Zaruhi Makaryan, Liana Khostikyan
Participated by:
Claimant: Armenian branch of "Global Gold Mining" LLC /TIN
01548682, state registration certificate No. 01B001358,
Representatives: Ashot Boghosyan, Hrayr Ghoukasyan/
Third party: "Marjan Mining Company" LLC /State registration
certificate No. 03A087443, Representative: Tigran
Khurshudyan/
Third party: "Marjan-Caldera Mining" LLC
/Representative: Vardan Safaryan/

Investigating in the open court session dated July 27, 2011 the administrative case based on the claim of the Armenian branch of "Global Gold Mining" LLC against the Agency of State Register of Legal Entities of the RA Ministry of Justice, third parties "Marjan Mining Company" LLC, "Marjan-Caldera Mining" LLC, for invalidating the registration of the changes of the sole shareholder of "Marjan Mining Company" LLC in the shareholders' register of the company made by Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice on August 11, 2010, as well as the amendments to the Charter of "Marjan Mining Company" LLC made on August 26, 2010,

ESTABLISHED

By the decision of the RA Administrative Court /presided by Judge Christine Mkoyan/ dated September 30, 2010, proceedings were adopted on the claim of the Armenian branch of "Global Gold Mining" LLC against the Agency of State Register of Legal Entities of the RA Ministry of Justice, on entirely invalidating the registration of the changes of the sole shareholder of "Marjan Mining Company" LLC in the shareholders' register of the company made by Nork-Marash territorial division of the Agency of State Register of

Legal Entities of the RA Ministry of Justice on August 11, 2010, as well as the amendments to the Charter of "Marjan Mining Company" LLC made on August 26, 2010. By the decision of the RA Administrative Court /judge Ch. Mkoyan/ dated October 25, 2010, the company "Marjan Mining Company" LLC, and by the decision dated December 24, 2010 the company "Marjan-Caldera Mining" LLC were involved as third parties in the proceedings of the administrative case.

Granting the petition of the representative of the third parties "Marjan Mining Company" LLC and "Marjan-Caldera Mining" LLC, judge Ch. Mkoyan announced self-rejection on May 18, 2011.

In order to process the above case accordance with the procedure established by the law, on May 19, 2005 the Chairman of the RA Administrative Court handed over the case to judge R. Hakobyan, who adopted the proceedings on May 23, 2011 and appointed court examination.

The court examination over this case was announced completed on June 15, 2011. Based on part 2 of Article 113 of the Code on Administrative Proceedings of the Republic of Armenia, the proceedings of the case resumed on June 29, 2011 and were announced completed on July 27, 2011.

The facts and bases submitted by the claimant

"Global Gold Mining" (GGM) is an international company, a foreign investor in the Republic of Armenia, specializing in mineral mining in Armenia and Chile. GGM has already invested about 10 million USD in Armenia. GGM carries out its activity in Armenia being as a participant, shareholder and investor of companies licensed by the Ministry of Environmental Protection of the Republic of Armenia. The company has four exploration areas in Armenia: Toukhmanuk (Aragatsotn region), Getik (Gegharkunik region), Hankavan (Kotayk region) and Marjan (Syunik region).

The Special Mining License for mining at Marjan deposit belongs to "Marjan Mining Company" LLC, and 100% of its shares are owned by "Global Gold Mining" LLC.

In 2009, within the framework of making investments for Marjan deposit exploration and further mining, the company "Global Gold Mining" LLC agreed to enter into a joint venture agreement with the Canadian company "Caldera Resources Inc". As a result, on March 24, 2010 the parties signed a joint venture agreement (hereinafter "the Agreement") in the USA, establish and registered in the state of Delaware the joint venture named "Marjan-Caldera Mining Company" LLC.

The parties reached a number of agreements with regard to their further economic activity, including written ones, and exchanged documents.

On August 11, 2010 Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice made an amendment in the register of the company shareholders, registered "Marjan-Caldera Mining" LLC as the only shareholder of "Marjan Mining Company" LLC, and issued ownership certificate No. 038281 for the shares.

On August 26, 2010 Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice made state registration also of the amendments to the Charter of "Marjan Mining Company" LLC, according to which one hundred percent of the shares of "Marjan Mining Company" LLC belong to "Marjan-Caldera Mining" LLC and the company's Director is Azat Vartanyan.

It is challenged that the registration of amendments in the register of the company's shareholders, made by Nork-Marash territorial division of the Agency of State Register of

Legal Entities of the RA Ministry of Justice, as well as the state registration of the amendments to the Charter of the legal entity, were done with violation of the law, these are not lawful administrative acts and should be invalidated for the below-stated reasons.

1. Registration of amendments in the register of the company's shareholders was made with violations of the requirements of the RA Law "On Limited Liability Companies" and Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company". Thus:

a) According to sub-clause "a" of clause 9 of the above-mentioned Government resolution, for registration of amendments in the register of a company's shareholders in case of alienating shares, the basis for alienation of the share or a part thereof (agreement, court verdict, etc.) should be submitted.

According to part 1 of Article 15 of the RA Law "On Limited Liability Companies", alienation of a share should be effected through an agreement concluded in a clear written manner, unless notary verification of it is required by the Civil Code of the Republic of Armenia or by the company's Charter. Part 2 of the same Article says that "failure to keep to the form of the agreement of alienation of shares, as defined by this Article or the company's Charter, shall result in invalidation of the agreement".

That means that the above-mentioned Article of the Law declares and accepts the share transfer agreement as the only legal basis for alienation of shares of a limited liability company. Consequently, the agreement mentioned in sub-clause "a" of clause 9 of the Government resolution shall only be the share transfer agreement, especially considering the fact that the preamble of the said Government resolution states that it has been adopted in accordance with the requirements of the Law of the Republic of Armenia "On Limited Liability Companies".

b) Meanwhile, in reply to the inquiry of the claimant's representative dated September 10, 2010, the Head of the Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice stated in his letter No. 760 dated September 14, 2010 that the joint venture agreement, the LLC agreement and the decision of the shareholders of "Marjan-Caldera Mining" LLC were taken as the bases for alienation of shares in order to register the amendments in the register of the company's shareholders.

It should be noted that the joint venture agreement predefines the principal directions of organization and implementation of further economic activity between the parties of it.

The agreement of "Marjan-Caldera Mining" LLC defines the purpose and nature of the company's activity, its management, allocation of profit and loss, liquidation and termination, the obligations and responsibilities of the shareholders.

Still, the share transfer agreement should directly specify the willingness of the parties to sell and purchase the shares, and the agreement shall cover also other significant terms and conditions specified by the law for agreements of this type (agreement price, its subject, terms, the rights and obligations of the parties, etc.).

Therefore, neither the joint venture agreement, nor the agreement of "Marjan-Caldera Mining" LLC, can be considered as the share transfer agreement defined by the legislation of RA and cannot be interpreted as such, and the decision of the shareholders of "Marjan-Caldera Mining" LLC cannot be a basis for alienation of shares.

The two agreements presented to Nork-Marash territorial division were prepared and signed in the USA, in compliance with the US legislation, and in accordance with Article 18 of the joint venture agreement, this Agreement is regulated and interpreted according to the legislation of the state of New-York, irrespective of contradictions between legal norms.

Thus, registration of amendments in the register of the company's shareholders and issuance of a certificate on the basis of it had no legal basis, therefore, cannot be considered as lawful.

2. The state registration of amendments to the Charter of the legal entity was made with violation of the requirements of the RA Law "On State Registration of Legal Entities".

Namely, according to clause "b" of part 1 of Article 5 of the mentioned law, "the state registration of amendments to the Charter of a legal entity is a state registration of amendments and supplements to the Charter of a legal entity, a restated Charter (hereinafter "amendments to the Charter"), as well as state registration of the information and the amendments thereto (hereinafter "amendments") specified in sub-clauses "k" and "l" of Article 20 of the same law". According to Article 22 of the same law, the subjects applying for state registration of amendments should present the following to the territorial division of the state register: a) the application of the legal entity; b) the amendments and supplements to the Charter, as well as the decision of the authorized body regarding the amendments and supplements to the Charter and approval of the restated Charter.

In the context of the grounds specified in the first clause of this claim, the decisions on making amendments and supplements to the Charter of "Marjan Mining Company" LLC, on termination of the authorities of the former registered head of the executive body, and on appointment of a new manager, could be taken only by "Global Gold Mining" LLC, the sole shareholder of Marjan Mining Company" LLC. Since none of the above-mentioned decisions was taken by the mentioned company, any decision of any other body, including "Marjan-Caldera Mining" LLC, with regard to the specified issues, should be considered as a decision taken by a non-authorized body.

Besides, letter No. 760 of the head of Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice dated September 14, 2009 states that the decision on making amendments and supplements to the Charter of "Marjan Mining Company" LLC, on termination of the authorities of the former registered head of the executive body, and on appointment of a new head of the executive body, were taken by its only shareholder, while both the joint venture agreement and the agreement of "Marjan-Caldera Mining" LLC, available in the office of the territorial division, clearly and definitely state that the share of "Global Gold Mining" LLC is 45%, and the share of "Caldera Resources Inc." is 55%. Thus, Marjan-Caldera Mining" LLC has two, and not one, shareholders.

Consequently, the state registration of the amendments to the Charter of "Marjan Mining Company" LLC was made without the respective decision of the authorized body - "Global Gold Mining" LLC; therefore, it is not lawful.

3. According to part 1 of Article 63 of the RA Law "On Administrative Principles and Administrative Cases", an unlawful administrative act is null and void, if it has been adopted: a) with violation of a law, including wrong application or wrong interpretation of a law; b) on the basis of fake documents or false information, or if it

is clear from the submitted documents that some other decision should have been taken.

The above-mentioned facts and the evidencing proofs definitely show that the disputed administrative acts (registration of amendments in the register of the company's shareholders, as well as state registration of amendments to the Charter of the legal entity) have been adopted with violation of the RA Law "On Limited Liability Companies", the RA Law on "State Registration of Legal Entities", and the RA Government Resolution "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company", and the documents submitted to Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice evidence that other decisions should have been taken, that is – decision on rejecting the respective registrations.

The above-mentioned violations naturally resulted also in violation of one of the basic principles of administration – the legitimacy of administration, since according to part 1 of Article 5 of the RA Law "On Administrative Principles and Administrative Cases", the administrative bodies have to observe the law requirements.

The above-mentioned shows that the disputed acts have violated the rights and freedoms of "Global Gold Mining" LLC set in the Constitution of RA, the international agreement, laws and other legal acts; "Global Gold Mining" LLC was unlawfully deprived of its property – one hundred percent of the shares of "Marjan Mining Company" LLC and the right to manage the company, though, in accordance with part 2 of Article 31 of the Constitution of RA, no one can be deprived of property, except for doing this in court order, in the cases envisaged by the law.

Referring to part 2 of Article 31 of the Constitution of RA, Articles 63, 64, 69 and 70 of the RA Law "On Administrative Principles and Administrative Cases", and Articles 3, 65, 71 and 72 of the RA Code on Administrative Proceedings, the claimant has requested to invalidate completely the registration of the sole shareholder of "Marjan Mining Company" LLC made on August 11, 2010 in the register of the company's shareholders by Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice, and state registration of amendments to the Charter of "Marjan Mining Company" LLC made on August 26, 2010 by Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice.

During the court proceedings, fully insisting on the above-mentioned facts, the representatives of the Armenian branch of "Global Gold Mining" LLC requested to satisfy the claim fully.

The representative of the respondent did not appear at the court session scheduled for July 27, 2011, though he was properly notified about the time and place of the session. By the application submitted to the Administrative Court of RA on July 27, 2011 the respondent's representative requested to consider the case in his absence.

Guided by part 2 of Article 95 of the Code of RA on Administrative Proceedings, the court decided to consider the case in the absence of the respondent's representative.

The facts and bases submitted in the response to the claim by the representative of the claimant, the Agency of State Register of Legal Entities of the RA Ministry of Justice

The representative of the Agency of State Register of Legal Entities of the RA Ministry of Justice objected to the claim, stated that the claim was completely ungrounded and requested the court to reject the claim for the below-mentioned reasons.

The claim of the Armenian branch of "Global Gold Mining" LLC refers to invalidity of state registrations, but the subject of the dispute is the joint venture agreement concluded between Global Gold Mining" LLC and "Caldera Resources Inc." on March 24, 2010 and the "title" of this agreement, which has nothing to do with the state registrations made by the Agency of State Register of Legal Entities of the RA, since, according to part 1 of Article 304 of the Civil Code of RA, an invalid transaction does not result in legal consequences, and, according to part 2 of the same Article, in case of invalidity of the transaction each of the parties has to reimburse to the other party the whole amount received within the scopes of the transaction. Thus, the claimant has submitted a claim to apply a legal consequence, without proving invalidity of the transaction (it is not proved that the concluded agreement is not a share transfer agreement).

According to sub-clause "a" of clause 9 of Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company", for registration of amendments in the register of a company's shareholders in case of alienating shares, the basis for alienation of the share or a part thereof (agreement, court verdict, etc.) should be submitted. The companies have signed a mixed agreement, envisaged by part 3 of Article 437 of the Civil Code of RA.

The relations between the parties to a mixed agreement, in the respective parts, are regulated by the rules on those agreements, the elements of which are present in the mixed agreement, unless otherwise agreed between the parties or implied by the nature of the mixed agreement. The mixed agreement disputed by the claimant contains a share transfer agreement, where the rules of share transfer agreement are applied, and which comprises clear conditions regarding the expression of willingness by the parties to sell and purchase the share, the subject of the agreement, its terms, the rights and obligations of the parties.

As to the claimant's statement that "the registrations have been made with violations of the law requirements", then the state registrations related to the change of the shareholder explained by purchase and alienation of the share, as well as to the amendments to the Charter, have been made in compliance with the procedure specified by the RA Law on "State Registration of Legal Entities", the RA Law "On Limited Liability Companies, and Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company" and on the basis of the required documents (namely, the joint venture agreement, the LLC agreement and the decision of "Marjan-Caldera Mining" LLC), while the State Register of Legal Entities of RA is not authorized to check the authenticity of these documents. The responsibility for the authenticity of the data stated in the documents lies with the person submitting the documents, according to part 1 of Article 25 of the RA Law on "State Registration of Legal Entities".

The Agency of the State Register of Legal Entities of RA has adopted lawful administrative acts, since, according to Article 66 of the On Administrative Principles and Administrative Cases", the acts have been adopted in compliance with the requirements of the laws and there are no grounds for invalidation.

Besides, the claimant is the Armenian branch of "Global Gold Mining" LLC, which is a separate unit of a legal entity and does not have the status of a legal entity, while, according to Article 11 of the RA Code on Administrative Proceedings, the claimant is the individual

of the legal entity, the administrative body or the public official, who has applied to the Administrative Court, therefore, according to clause 4 of part 1 of Article 79 of the RA Code on Administrative Proceedings, a decision should have been made to reject the claim, since it was submitted by an entity that had no right to do so.

**The facts and bases submitted by the representative of the third entity in the case,
“Marjan Mining Company” LLC**

The representative of the third entity fully objected to the claim, for the below-mentioned reasons.

The third entity does not accept that:

1. On August 11, 2010 registration of amendments in the register of the company's shareholders was made with violations of the requirements of the RA Law “On Limited Liability Companies” and Resolution No. 1396-N, dated August 14, 2003, of the Government of RA “On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company”;
2. No written agreement was submitted to Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice as the basis for alienation of the share;
3. The joint venture agreement concluded on March 24, 2010 between the claimant and “Caldera Resources Inc.” does not contain any provision regarding transfer of all the shares of “Marjan Mining Company” LLC to “Marjan-Caldera Mining Company” LLC;
4. On August 26, 2010 state registration of amendments to the Charter of the legal entity has been made with violation of the RA Law “On State Registration of Legal Entities”.

Referring to part 1 of Article 3 and to Article 12 of the RA Code on Administrative Proceedings, the representative of the third entity stated that only individuals or **legal entities** have the right to apply to the Administrative Court of RA.

According to part 3 of Article 61 of the Civil Code of RA, representative offices and branches are not legal entities and act on the basis of the approved Charter of the respective legal entity.

The managers of representative offices and branches are appointed by the legal entity and act on the basis of the power of attorney issued by the legal entity.

The above-mentioned shows that the Armenian branch of “Global Gold Mining” LLC could not be a claimant within the scopes of this case, since the RA Code on Administrative Proceedings clearly specified that legal entities have the right to apply to the court, and according to Article 12 of the same Code, only legal entities can be claimants. Thus, under the given situation, the Armenian branch of “Global Gold Mining” LLC, which is not a legal entity, is not entitled to apply to the Administrative Court.

Besides, in order to submit a claim, the Armenian branch of “Global Gold Mining” LLC should act on the basis of the Charter “Global Gold Mining” LLC by approved, within the scopes of the authorities specified in it. On the other side, the head of the Armenian branch of “Global Gold Mining” LLC should be specifically authorized by “Global Gold Mining” LLC to submit a claim to the court or to issue a power of attorney for this. It should comprise the authority to apply to the court for protection of the interests of “Global Gold Mining” LLC.

According to the available information, the validity period of the power of attorney provided to the Director of the Armenian branch of "Global Gold Mining" LLC has expired, consequently, the Director of "Global Gold Mining" LLC cannot authorize Mr. H. Ghoukasyan to represent the interests of "Global Gold Mining" LLC in the Administrative Court of RA.

Even if the power of attorney of the Director of the branch had been valid, the Director could reauthorize Mr. H. Ghoukasyan only by a notarized power of attorney. This is evidenced by the requirement of part 3 of Article 323 of the Civil Code of RA, according to which the power of attorney issued by means of reauthorization should be verified by a notary.

Referring to clause 1 of part 1 of Article 90 of the RA Code on Administrative Proceedings, it is stated that the case should be terminated, since a dispute between a branch of a legal entity and an administrative body cannot be examined in the Administrative Court.

According to Article 15 of the RA Law "On Limited Liability Companies", alienation of a share should be effected through an agreement concluded in a clear written manner, unless notary verification of it is required by the Civil Code of the Republic of Armenia or by the company's Charter. Failure to keep to the form of the agreement of transfer of shares, as defined by this Article or the company's Charter, shall result in invalidation of the agreement. According to clauses 9, 14, and 16 of Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company", the following should be submitted for registration of amendments in the register of the company's shareholders: a) in case of alienation of a share (shares) or a part thereof – an application, the basis for alienation of the share or a part thereof (agreement, court verdict, etc.), the certificates of the parties to the transaction (the certificate of the party purchasing the share or a part thereof is submitted only in case if the party has acquired a certificate according to this procedure), and the copy of the state registration certificate (if the party is a legal entity) or the passport (if the party is an individual).

On the day, when all the required documents are submitted to the State Register, a record is made in the document acceptance register, and not later than within 5 days the territorial division of the State Register should make the registration. In case of making the registrations envisaged by sub-clauses "de" and "ee" of clause 9 of the same procedure, the respective record should be made on the ownership right certificate for the share.

Registration can be rejected, if the submitted documents are incomplete or contain information contradicting the requirements of the law or the company's Charter.

The above-mentioned articles evidence that alienation of a share should be effected through an agreement, which is not necessarily required to be titled an alienation agreement, since the legislation does not specify such a mandatory requirement. Within the scopes of this case, the same agreement can contain provisions regarding alienation of shares, which are undoubtedly the bases for alienation.

In the context of the above-mentioned legislative norms, the documents submitted for registration should comprise a document specifying alienation of shares; the legislation does not set a requirement to sign a specifically share transfer agreement.

They consider as ungrounded the claimant's statement that Article 15 of the RA Law "On Limited Liability Companies" declares and accepts the share transfer agreement as the only legal basis of alienation of shares of a limited liability company, as well as that the agreement mentioned in sub-clause "a" of clause 9 of the Government resolution shall only be the share transfer agreement.

Under this case, the basis for making records of the amendments by the respondent in the register of the company's shareholders regarding alienation of shares were: the joint venture agreement, the LLC agreement and the decision of the shareholders of "Marjan-Caldera Mining" LLC.

The claimant is of the opinion that the above-mentioned agreements define the principal directions of organization and implementation of further economic activity between the parties, as well as defines the purpose and nature of "Marjan-Caldera Mining" LLC's activity, its management, allocation of profit and loss, liquidation and termination, the obligations and responsibilities of the shareholders.

Still, the above-mentioned agreements directly specify the expression of the parties' willingness to transfer the shares of the Company to "Marjan-Caldera Mining" LLC.

According to part 1 of Article 448 of the Civil Code of RA, the agreement is considered as concluded if the parties have agreed in the required manner regarding all significant conditions. The significant conditions are: the conditions concerning the subject of the agreement, the conditions defined as significant by the law or other legal acts or those necessary for the given type of agreements, as well as all those conditions, which, by statement of one of the parties, need to be agreed on.

A significant condition of a share transfer agreement is the quantity of shares.

Namely, according to the joint venture agreement, the agreement was concluded on March 24, 2010 between "Global Gold Mining" LLC on the one part and "Caldera Resources Inc." on the other part, taking into account that all shares of the Company should be transferred to "Marjan-Caldera Mining" LLC, the shareholders of which would be Caldera and Golder, with the participation shares specified in the same agreement. According to clause 1 of the same agreement, the joint venture would be established on the day of enforcement of the agreement, with the following purpose: "1.1.1. to establish "Marjan-Caldera Mining" LLC in compliance with the legislation of Delaware state of the USA and all shares of the Company will be transferred to it according to the operating agreement (the LLC agreement), which Caldera and Golder sign by the same document, and a copy of which is given as Attachment 3 to this agreement." According to clause 4.4 of the agreement, "Caldera purchases the ownership right towards the Property /Marjan Mining Property located in Armenia/ and 100 percent of its shares, as well as the shares of "Marjan-Caldera Mining Company" LLC, making the following payments...".

The agreement was signed by the authorized representatives of "Global Gold Mining" LLC and "Caldera Resources Inc.". By the confirmation letter comprising a part of the same agreement, the authorized representatives of the Company verified that he realized and was ready to observe the conditions of the joint venture agreement and the rights given to "Marjan-Caldera Mining" LLC.

The above-mentioned directly evidences that the joint venture agreement concluded in the USA contained provisions regarding transfer of the Company shares. The parties observed by the agreement the conditions deemed by the claimant as significant for the share transfer agreement, namely: the conditions concerning the subject and price of the agreement and the quantity of the shares.

The above-mentioned is sufficient to state that the will of the parties was expressed properly and the Agreement is considered as concluded.

According to Article 437 of the Civil Code of RA, individuals and legal entities are free to sign agreements. The parties can sign an agreement comprising elements of several agreements specified by the law or other legal acts (mixed agreement). The relations between the parties to a mixed agreement, in the respective parts, are regulated by the rules

on those agreements, the elements of which are present in the mixed agreement, unless otherwise agreed between the parties or implied by the nature of the mixed agreement.

In this case, the above-mentioned agreement is a transfer agreement in the respective part, therefore it is definitely a basis for registration of changes of the shareholders.

As to the claimant's statement that the joint venture agreement and the agreement of "Marjan-Caldera Mining" LLC define the principal directions of organization and implementation of further economic activity between the parties, as well as the purpose and nature of "Marjan-Caldera Mining" LLC's activity, its management, allocation of profit and loss, liquidation and termination, the obligations and responsibilities of the shareholders, these refer to the joint activity transaction, which is a part of the mixed agreement, and cannot detract to the least extent the nature of the share transfer transaction.

The claimant cannot dispute the agreements, and this is not subject to examination at the courts of RA, since, by the above-mentioned agreements the parties have specified that:

1. According to clause 7 of the joint venture agreement, any controversy, disagreement or dispute arising between the parties within the scopes of the joint venture agreement or during its preparation will be settled by a sole arbitrator appointed by the parties;
2. According to clause 16.14 of the agreement of "Marjan-Caldera Mining" LLC, any agreement arising from this agreement will be settled a sole arbitrator in the city of New-York, in compliance with the Commercial Arbitration Rules of the American Arbitration Association.

Thus, any dispute with regard to the above-mentioned agreements must be settled by an arbitrator. Consequently, the claimant cannot make the mentioned agreements the subject of dispute within the scopes of this case.

At the same time, it was stated that presenting this response to the court examining the administrative case cannot be qualified as refusal from settlement of the dispute through arbitration, as defined by the above-mentioned agreements.

Consideration of the joint venture agreement shows that this agreement clearly defines that the Company's share is to be transferred to "Marjan-Caldera Mining" LLC and Caldera company undertakes to make investments based on the respective time-schedule and, as a result, to purchase fully the remaining 45 percent of the shares of "Marjan-Caldera Mining" LLC. Thus, the mentioned agreement clearly defines the obligations of "Global Gold Mining" LLC – to transfer the Company's share to "Marjan-Caldera Mining" LLC, and the respective payment obligations of "Caldera Resources Inc." have been set. Consequently, the agreement specifies the relevant obligations of the parties, the subject of the agreement in the part of the shares is clearly defined, and the price is included in the payments to be made by "Caldera Resources Inc.". It shows that even the claimant's arguments do not justify the claim; on the contrary, the analysis of the claimant's arguments and the comparison with the joint venture agreement available in this case make unobjectable the circumstance that the agreement contains all significant conditions, which can serve as a basis to consider it as a share transfer agreement.

Besides, alienation of the Company's shares was effected on the basis of the above-mentioned agreements, and the claimant was also a party to them. According to Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company", for registration of changes of the shareholders, along with the application and the agreement, the certificates of the parties to the agreement should also be submitted. It means that no registration could have been made

without submission of the claimant's certificate and the consent of the latter. Thus, by its concludent action of certificate submission, the claimant also accepted the agreements as a alienation transaction. This is evidenced also by the resolution dated June 18, 2010 adopted by written consent of the representative of "Global Gold Mining" LLC, by which the below-mentioned decisions were made and, instead of holding a meeting, the following actions were taken through written agreement: "DECIDED that, taking into account establishment of Marjan JV, all shares of "Marjan Mining Company" LLC acting in Armenia, which belong to the Company, are transferred to Joint Venture "Marjan-Caldera Mining" LLC established in the state of Delaware, taking as a basis the conditions of Marjan JV agreement dated June 18, 2010."

Under these circumstances, they are of the opinion that the claimant's argument, according to which registration of amendments in the register of the company's shareholders and issuance of a certificate on the basis of it had no legal basis, therefore, cannot be considered as lawful, is ungrounded, since the respective documents evidencing the alienation have been submitted to the Register, and the facts available in this case clearly evidence that even on behalf of the claimant company a decision was made, which also verified the fact of alienation.

The respective records made in the Register are disputed under this case.

The Register is a body that makes the relevant registration. The authorities of this body are limited to making the respective record in case of submission of the required documents. Being a state body that registers the arisen rights, the Register, according to Article 42 of the Constitution of RA, cannot define for entities any obligations, not set by Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company" and other laws, namely, demanding that the parties submit exactly a share alienation agreement in case, when the parties have clearly expressed their intentions by the submitted agreements and have presented them to the Register for the purpose of making the registration. Among such documents, there is also the basis for alienation of the share, i.e. the agreement submitted to the Register. The Register could refuse to make the registration if the submitted documents had been incomplete or contained information contradicting the requirements of the law or the company's Charter. The claimant under this case does not claim that the submitted documents were incomplete or contained information contradicting the requirements of the law or the company's Charter. The submitted documents are not incomplete, and the information contained in them does not only comply with the requirements of the law and the company's Charter, but it even ensues from the legislation of RA and is fully sufficient for making the relevant registration.

Thus, the above-mentioned legal norms, their analysis and consideration of the facts under this case, evidence that the Register could not refuse to make the registration.

Consequently, the administrative act adopted by the Register, i.e. the record made, is in compliance with the legislative requirements; otherwise, the Register would have gone beyond the scopes of its authorities and violate the requirements of the Constitution of RA and the RA Law "On Administrative Principles and Administrative Cases", which would definitely make the refusal for registration unlawful.

As to the 2nd claim of the claimant, it should be first of all noted that by the 2nd claim the claimant demanded to invalidate the state registration of amendments to the Charter made on August 26, 2010, according to which 100 percent of the shares of "Marjan Mining Company" LLC belong to "Marjan-Caldera Mining Company" LLC, and the company Director is also substituted.

The above-mentioned demands are connected with the first claim. And the claimant's argument that termination of the authorities of the former head of the executive body and on appointment of a new manager could be taken only by "Global Gold Mining" LLC, the sole shareholder of Marjan Mining Company" LLC, is ungrounded, since after making the changes with regard to the shareholder in the Register, "Global Gold Mining" LLC was no longer the sole shareholder of the company, as the rights towards its shares were transferred to "Marjan-Caldera Mining" LLC, which was authorized to make the respective decision. Besides, the claimant substantiated this claim with the arguments of two representatives of a company, which has nothing to do with the claim, i.e. "Marjan-Caldera Mining Company" LLC. The representatives of this company have nothing to do with substantiation of the claim submitted by the claimant. The claimant has quoted the information about the representatives of this company in the part of substantiation of the second part of the claim, which makes no sense.

According to Article 63 of the RA Law "On Administrative Principles and Administrative Cases", the administrative acts related to this case can be invalidated, if they have been adopted with violation of the law, including wrong application or wrong interpretation of the law.

The above-mentioned arguments show that the administrative acts related to this case were not adopted with violation of the law, since the Register has observed the registration requirements specified in the RA Law "On Administrative Principles and Administrative Cases" and Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company". Moreover, the above-mentioned analyses definitely show that the Register has properly applied the laws and other legal acts regulating administration.

An administrative act can be invalidated also if it has been adopted on the basis of fake documents or false information.

Under this case, no fake documents or false information was submitted to the Register, consequently the administrative acts cannot be invalidated for this reason either.

According to the claimant's statement, the documents submitted under this case evidence that another decision should have been made.

The claimant has misinterpreted the above-mentioned norm, since it is applicable only in case if such documents have been submitted, which evidence that another decision should have been made by the given administrative act. The fact of invalidating an act as unlawful shall be acknowledged both by the administrative body adopting the act or a higher body, and in court order (see verdict No. VD1/0073/05/09 dated July 25, 2010 on the claim of Jupiter LLC against Gyumri territorial division of Tax Inspection of the State Revenue Committee of the Government of RA (hereinafter the "Tax Inspection") to partially invalidate the inspection act No. 1000041 dated May 20, 2009). The analysis of the above-mentioned verdict shows that this information should be submitted after adoption of the act, when it becomes evident that another act should have been adopted. Meanwhile, under this clause the claimant has not submitted any document evidencing that the administrative act is not lawful, since another act should have been adopted.

In addition to the reply to the submitted claim, the representative of the third entity submitted the blow-mentioned arguments on December 23, 2010.

The following was omitted on page 2 of the reply to the claim: according to clause 16.8 of the agreement of "Marjan Caldera Mining" LLC, interpretation, construing, verification or application of any provision of the agreement shall be in accordance with the local legislation of the USA state of New-York, without the opportunity to choose any other

right. According to Article 18 of the joint venture agreement, the Agreement is regulated and interpreted in compliance with the legislation of the USA state of New-York, irrespective of contradictions between legal norms.

Availability of the above-mentioned facts serves as a basis to conclude that the agreements serving as basis for making the amendment in the shares' register were not concluded in Armenia and the parties had chosen the laws of the USA.

For the above reason, "Caldera Resources Company" LLC submitted a claim to the American Arbitration Association of New-York against "Global Gold Mining" LLC for reimbursement of losses and other demands, which was adopted for court proceedings. Case No. 50 180 00674 10 was compiled and the claim was sent to the respondent with a court notification on November 19, 2010, for the purpose of presenting a response.

Considering part 1 of Article 1284 and Article 1287 of the Civil Code of RA, it is evident that under this case the parties to the agreement have chosen the law applicable towards the agreement, which comprises its interpretation, the rights and obligations of the parties.

Consequently, from the viewpoint of the legislation of RA, the laws of RA are not applicable with regard to invalidation or interpretation of the mentioned agreements, since it is directly stated in the agreement.

The last paragraph on page 5 of the response to the claim should read as follows: "By its concludent and definite action of certificate submission, the claimant also accepted the agreements as a alienation transaction."

In clause 2 of Article 2 of the UNO Convention "On Recognition and Enforcement of Foreign Arbitral Awards" (the Republic of Armenia joined it on December 29, 1997 and it was enforced on March 29, 2008), it is specified that each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any disputes which have arisen or which may arise between them in respect to an agreement or a defined legal relationship, concerning a subject matter capable of settlement by arbitration.

Clause 3 of the same Article specifies that the courts of the Contracting States, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration.

Based on the above-mentioned substantiation, the representative of the third entity requested to reject the claim of the Armenian branch of "Global Gold Mining" LLC against the Agency of State Register of Legal Entities of the RA Ministry of Justice, with the demand to invalidate the registration of amendments made in the shareholders' register and the state registration of the amendments to the Charter of the legal entity.

**The facts and bases submitted by the representative of the third entity in the case,
"Marjan-Caldera Mining" LLC**

The representative of the third entity stated that they fully agreed with the substantiation submitted by the representative of "Marjan Mining Company" LLC and requested to reject the claim.

**The objections of the claimant's representative to the third entity's response to the claim
and the supplements to it**

The claimant's representative is of the opinion that the "arguments" stated in the response and the supplement to it are groundless, mutually incompatible and do not ensue from the requirement of the legislation of RA.

Thus, in the first clause of the response it was stated that that the Armenian branch of "Global Gold Mining" LLC could not be a claimant, since it was not a legal entity, and "Global Gold Mining" LLC, which is not a legal entity, is not entitled to apply to the Administrative Court.

The Armenian branch of "Global Gold Mining" LLC was registered in accordance with the procedure specified by the legislation of RA, and the registration was made by the respondent under this case - the Agency of State Register of Legal Entities of the RA Ministry of Justice. This fact itself proves that "Global Gold Mining" has the status of LLC, i.e. the status of a legal entity and this circumstance is not longer subject to dispute or discussion.

Besides, it is clearly stated in the claim that the disputed administrative acts have violated the rights and freedoms of "Global Gold Mining" LLC set in the Constitution of RA, the international agreement, laws and other legal acts, namely, the ownership right towards one hundred percent of the shares of "Marjan Mining Company" LLC and the right to manage the company, and the Armenian branch of "Global Gold Mining" LLC, based on Article 61 of the Civil Code of RA, has represented the interests of a legal entity in court order.

It is evident that the claim is submitted to the benefit of "Global Gold Mining" LLC and for the purpose of protecting its rights. Therefore, any speculation with respect to this is absurd and senseless.

Finally, both the Constitution of RA and numerous international legal acts definitely and clearly specify that any one is entitled for court protection of its violated rights, which was properly done by "Global Gold Mining" LLC.

As to propriety of the authorities of the Director and representative of the Armenian branch of "Global Gold Mining" LLC, they have already been recognized by the fact of adopting the claim for proceeding, and the Company is ready to present any proof evidencing legitimacy of the actions of its representatives.

In the second clause of the response, in spite of the requirements of RA legislation, the third entity states that availability of a share alienation agreement is not mandatory for registration of the ownership right towards shares.

In order to prove this statement, which is wrong both legislatively and logically, the author of the response refers to some articles of the Civil Code of RA mentioned in the second clause of the response, by which it tries to interpret the joint venture agreement.

Still, the above-mentioned statements of the third entity are refuted by the argument of the supplement, pursuant to which, according to Article 18 of the joint venture agreement, the Agreement is regulated and interpreted in compliance with the legislation of the USA state of New-York, irrespective of contradictions between legal norms.

This provision of the Agreement evidences that it cannot be interpreted as a mixed agreement by force of Article 437 of the Civil Code of RA, which is also stated by the claimant.

The Agreement can be interpreted only in compliance with the laws of New-York, therefore, the respective employee of the Register was not authorized to interpret the Agreement and adopt an administrative acts, causing legal consequences for the claimant.

It is evident that either the meaning, or the nature, or the purpose of the claim submitted by "Global Gold Mining" LLC against the Register has nothing to do with the JV agreement or any dispute concerning it. The claimant has never disputed the JV agreement in this

court. It should be noted that either the third entity or its representative, or the respondent is not a party to the agreement.

It is stated in clause four of the response that the claimant does not claim that the submitted documents were incomplete or contained information contradicting the requirements of the law or the company's Charter.

The claimant has initially stated that the documents submitted for registration were incomplete and inadequate, namely, that there was no share alienation agreement required by the law and the Government resolution, i.e. the main document needed for making registration of amendments in the register of the company's shareholders.

According to part 2 of Article 172 of the Civil Code of RA, if the property has an owner, another entity can acquire the ownership right towards it on the basis of an agreement of purchase and alienation, exchange, donation, or some other transaction of property alienation. Thus, there has been no alienation of property (in this case, shares), consequently, the other entity ("Marjan-Caldera Mining" LLC) has not acquired the ownership right towards it. Therefore, the state legislation of the ownership right towards the shares is illegitimate.

Besides, consideration of the materials submitted by the respondent after three months' delay made it clear that the application for registration was submitted by an improper person, Azat Vartanyan, who is not related to "Marjan-Caldera Mining" LLC, claiming the ownership right towards the share.

The materials submitted to the court contain only a piece of paper titled "power of attorney", which is not an original, is issued by a person having no authority to do so, is not approved or verified in any manner. By the way, the same Azat Vartanyan submitted an application for state registration of amendments to the Charter of "Marjan Mining Company" LLC as its Director, while he had not received state registration in this position. The above-mentioned also evidences that the documents required for registration were incomplete and improper.

Thus, the submitted response and the supplement to it cannot be interpreted to refute the arguments and demands stated in the claim, and in their certain parts they even confirm the claim, proving the illegitimacy of the state registration made by the respondent.

The facts and bases submitted by the representative of the respondent Agency of State Register of Legal Entities of the RA Ministry of Justice with regard to the claim and the objections of the claimant's representative

According to sub-clause "a" of clause 9 and clause 11 of Resolution No. 1396-N, dated August 14, 2003, of the Government of RA "On Approving the Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company", the following documents should be submitted for registration of amendments in the register of the company's shareholders:

- a) in case of alienation of share (shares) or a part thereof:
 - application;
 - the basis for alienation of the share or a part thereof (agreement, court verdict, etc.);
 - the certificates of the parties to the transaction (the certificate of the party purchasing the share or a part thereof is submitted only in case if the party has acquired a certificate according to this procedure);
 - the copy of the state registration certificate (if the party is a legal entity) or the passport (if the party is an individual).

According to clause 11 of the procedure, for registration of an amendment in the register of the company's shareholders, caused by purchase of shares by a foreign legal entity, besides the documents specified above, an extract should also be submitted from the commercial register of the given foreign country or another document of equal legal force, evidencing the legal status of the investor, verified and translated into Armenian.

According to clause 16 of the procedure, registration can be rejected, if the submitted documents are incomplete or contain information contradicting the requirements of the law or the company's Charter.

It is clearly stated in clause 9 of the procedure that in case of alienation of shares the basis for alienation (agreement, court verdict, etc.) should be submitted. It evidences that alienation of shares can be effected through an agreement, which is not mandatory to be titled a alienation agreement, and which is fixed also in part 1 of Article 15 of the RA Law "On Limited Liability Companies" (share alienation agreement): "alienation of a share should be effected through an agreement concluded in a clear written manner".

In the context of the above-mentioned legislative norms, in case of alienation of shares through an agreement, the package of documents submitted for registration should contain an agreement evidencing the alienation of shares, which should comprise provisions concerning the alienation of shares, serving as the basis for the alienation, and it is not mandatory for the agreement to be titled a "share alienation agreement".

Consequently, the claimant's statement that the RA Law "On Limited Liability Companies" declares and accepts the share alienation agreement as the only legal basis of alienation of shares and that the agreement specified in sub-clause "a" of clause 9 of the Government Resolution should be only the share alienation agreement, is groundless.

The following documents were submitted to the territorial division of the Agency of State Register for registration of amendments in the shareholders' register of "Marjan Mining Company" LLC: an application, share ownership certificate (of "Global Gold Mining" LLC, the party alienating the shares), the receipt for payment of the state duty, a power of attorney (the submitted power of attorney is properly prepared and complies with the requirements of clause 5 and 6 of Article 321 and Article 1282 of the Civil Code of the Republic of Armenia), the verified copy of the passport of the authorized person (verification was made by presentation of a representative of "Global Gold Mining" LLC), a package of documents aimed at purchasing the shares of "Marjan Mining Company" LLC by the joint venture established by "Global Gold Mining" LLC and Caldera Resources, which contains the joint venture agreement, the limited liability company's agreement of "Marjan-Caldera Mining Company" LLC, the decisions adopted by the written consent of the shareholders of "Marjan-Caldera Mining" LLC to amend the organizational meeting, and the certificate on establishment of "Marjan-Caldera Mining" LLC.

The verified documents contained in the above-mentioned package are translated into Armenian in notary order and have been submitted as one comprehensive package.

According to the joint venture agreement, all shares of "Marjan Mining Company" LLC should be transferred to "Marjan-Caldera Mining" LLC, the shareholders of which will be Caldera (Caldera Resources Inc.) and GGM ("Global Gold Mining" LLC), with the participation shares specified in the agreement.

According to clause 1 of the Agreement, the joint venture would be established on the day of enforcement of the agreement, with the following purpose:

"1.1.1. To establish "Marjan-Caldera Mining" LLC in compliance with the legislation of Delaware state of the USA and all shares of Marjan ("Marjan Mining Company" LLC) will be transferred to it, according to the operating agreement (the LLC agreement), which Caldera and GGM sign by this agreement."

According to clause 3 of the agreement:

“Starting from the date of enforcement, the share of each party in “Marjan-Caldera Mining” LLC and the ownership right towards the property (belonging to “Marjan Mining Company” LLC) will be equal to:

Caldera – 55%

GGM – 45%.”

In the context of the agreement, the “date of enforcement” is the date of making the payments defined by clauses 4.2 and 4.3 of the agreement.

Thus, according to the joint venture agreement, the parties agreed in particular about the following:

- Caldera should make the respective payments (defined by clauses 4.2 and 4.3);
- GGM should invest the shares of “Marjan Mining Company” LLC into “Marjan-Caldera Mining” LLC, in the result of which the parties will have the following shares in “Marjan-Caldera Mining” LLC:

Caldera – 55%

GGM – 45% of the shares.

At the same time, it is stated in sub-clause 1.1.1 that all shares of “Marjan Mining Company” LLC will be transferred to “Marjan-Caldera Mining” LLC in compliance with the operating agreement (the LLC agreement). There is no other condition for transfer of the shares, than the LLC agreement. And clause 1.1 of the LLC agreement states that the shareholders agree that the company is to be regulated by the joint venture agreement concluded between them. There is a reference in clause 1.5 of the LLC agreement to Table “A”, which defines precisely the sizes of participation.

The above-mentioned directly evidences that the joint venture agreement, together with the LLC agreement, contains provisions on the subject of the agreement, its price, and the quantity of shares, necessary for an agreement evidencing the alienation of shares.

According to Article 437 of the Civil Code of RA, individuals and legal entities are free to sign agreements. The parties can sign an agreement comprising elements of several agreements (mixed agreement). The relations between the parties to a mixed agreement, in the respective parts, are regulated by the rules on those agreements, the elements of which are present in the mixed agreement. Thus, the above-mentioned agreement is a alienation agreement in the respective part, therefore, it is a basis for registration of changes of the shareholders (a basis for alienation of shares).

In addition to the agreements and in support to the fact that the shares have already been transferred to “Marjan-Caldera Mining” LLC, the decisions adopted by written consent of the shareholders of “Marjan-Caldera Mining” LLC, replacing the organizational meeting (signed by the representatives of the 2 shareholder’s, including the claimant’s representative) specify that: “It is decided that the form, conditions and provisions of the joint venture agreement and the operating agreement (the LLC agreement) have been verified and approved in the way presented to the undersigned and are enforced upon signing by the above-mentioned representatives, on June 18, 2010”.

“It is decided that Vasilios Mavridis is hereby appointed as the company representative, and the company is the only shareholder of “Marjan Mining” LLC located in Armenia, belonging to it (the company) through the ownership right.”

These decisions obviously evidence that the agreements have been enforced and as of June 18, 2010 all shares of “Marjan Mining Company” LLC have been transferred to “Marjan-Caldera Mining” LLC and its shareholders authorize Vasilios Mavridis as the authorized representative of 100% shares of “Marjan Mining Company” LLC.

The following documents were submitted to Nork-Marash territorial division of the State Register for the purpose of registration of the restated Charter of "Marjan Mining Company" LLC and replacement of the head of its executive body: the application of the legal entity, as required by Article 22 of the RA Law "On State Registration of Legal Entities", the decision of the authorized body regarding the amendments and supplements to the Charter and approval of the restated Charter with incorporated amendments and supplements, the receipt against payment of the state duty, the decision of the legal entity's authorized body regarding termination of the authorities of the former head of the executive body and appointment of a new person to this position, the restated Charter.

The claimant's statement that "Marjan-Caldera Mining" LLC has two, and not one, shareholders, is true, but it has nothing to do with the fact that "Marjan Mining Company" LLC has a sole shareholder. The sole shareholder of "Marjan Mining Company" LLC is "Marjan-Caldera Mining" LLC, which in its turn has two shareholders – "Global Gold Mining" LLC with a share of 45% and "Caldera Resources Inc." with a share of 55%.

Since a restated Charter of "Marjan Mining Company" LLC and replacement of the head of the executive body have been registered, the decisions of the authorized body of "Marjan Mining Company" LLC had to be and were actually submitted to the State Register, and "Marjan-Caldera Mining" LLC, being the sole shareholder of "Marjan Mining Company" LLC, by its decision dated June 18, 2010 appointed Vasilios Mavridis as the company's representative, with the authorities of the shareholder of "Marjan Mining Company" LLC.

The State Register has the right to refuse registrations, if the submitted documents are incomplete or contradict the requirements of the law or the company's Charter.

Since the submitted documents are not incomplete and comply with the law and the company's Charter, therefore, the State Register has made the respective records.

Thus, they are of the opinion that the claim should be fully rejected.

Guided by the principle of clarifying the facts ex officio, as defined by Article 6 of the RA Code on Administrative Proceedings, having considered the explanations provided by the representatives of the parties, inspecting the written evidence available in the case, and assessing each of them with inner conviction based on comprehensive, full and impartial inspection, the court concluded that the claim is subject to satisfaction for the following reasons.

Circumstances clarified during the trial

- According to the Limited Liability Company agreement dated August 18, 2003, the shareholder established a company named "Global Gold Mining" LLC, in compliance with the law on Limited Liability Companies of the state of Delaware, according to Article 1.4 of which the managers can establish at any time other offices of the company, in Delaware or outside it. The managers can establish offices of the company and authorize the company's activity outside the United States /volume 1, 178179/.
- On January 27, 2004 the Armenian branch of "Global Gold Mining" LLC was registered in the State Register of Legal Entities, as a separate unit of a legal entity, registration certificate No. 01B001358, registration number 273.060.03699 /volume 1, 14/.
- According to the above-mentioned certificate, "Global Gold Mining" LLC is the founder of the Armenian branch of "Global Gold Mining" LLC.

- According to clause 4.1 of the Charter of “Marjan Mining Company” LLC, “Global Gold Mining Company” LLC is the only shareholder of the company /volume 1, 20/.
- A joint venture agreement was concluded between “Global Gold Mining” LLC and “Caldera Resources Inc.” on March 24, 2010 and according to clause 1.1.1 of this agreement, it was decided: “To establish “Marjan-Caldera Mining” LLC in compliance with the legislation of Delaware state of the USA and all shares of Marjan company will be transferred to it according to the operating agreement /volume 1, 32/.
- Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice made an amendment in the register of the company’s shareholders and on August 11, 2010 it registered “Marjan-Caldera Mining” LLC as the sole shareholder of “Marjan Mining Company” LLC and issued the ownership right certificate No. 038281 for the shares /volume 1, 16/.
- On August 28, 2010 Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice made state registration of amendments to the Charter of “Marjan Mining Company” LLC , according to which 100 percent of the company’s shares belong to “Marjan-Caldera Mining” LLC, and the company’s director is Azat Vartanyan /volume 2, 132-133/.

Issues subject to clarification, which are important for settlement of this dispute

- Is the registration disputed under this case legitimate?
- Is there any legal basis for invalidation of the mentioned records?

Argumentation and conclusions of the Administrative Court of RA

The relations between administrative bodies and individuals or legal entities, arising in connection with adoption of administrative acts, disputing the administrative acts and the actions or inaction of administrative bodies, execution of an administrative act, reimbursement of administrative costs and the loss inflicted through administration, are regulated and the principles of administration are defined by the RA Law “On Administrative Principles and Administrative Cases” (RA Law “On Administrative Principles and Administrative Cases”, Article 1).

The concepts of the administrative bodies and administrative cases are defined in Article 3 of RA Law “On Administrative Principles and Administrative Cases”. In particular:

- 1) Administrative bodies are the following bodies involved in the republican and territorial management of the executive power of the Republic of Armenia, as well as local self-government bodies:
 - a) republican bodies of the executive power of the Republic of Armenia: ministries of the Republic of Armenia and other state bodies, executing administration on the whole territory of the Republic;
 - b) territorial management bodies - regional governors;
 - c) local self-government bodies: community aldermen and head of community – town mayor in an urban community, and headman in a rural community.

If, besides the above-mentioned bodies, administration is executed by other state bodies, then, in the context of this law, they are also considered to be administrative bodies.

- 2) Administration is the activity of administrative bodies with an external influence, which is limited to adoption of administrative or normative acts, as well as activity or inaction, which causes actual consequences for entities.

And the concept of an administrative case in its turn is defined by Article 19 of the same law, according to which it is the activity of an administrative body, aimed at adoption of an administrative act.

An administrative case, among other grounds, is accepted for proceeding also on the basis of the application of an individual, in which case the administrative case is considered to be proceeded starting from the date of receiving of the respective application at the administrative body (RA Law "On Administrative Principles and Administrative Cases", Article 30, parts 1 and 2).

The concept of an administrative act is defined in part 1 of Article 53 of the RA Law "On Administrative Principles and Administrative Cases", according to which: "An administrative act is such a decision, instruction, order or some other individual legal act having an external influence, which is adopted by an administrative body for the purpose of settlement of a definite case in the field of the public right and is aimed at defining, amending, eliminating or recognizing rights and obligations of entities."

Consideration of the above-mentioned legal norms and actual circumstances leads to the following conclusion:

- The Agency of State Register of Legal Entities of the RA Ministry of Justice, being a republican body of the executive power of the Republic of Armenia, is considered to be an administrative body;
- The activity of the Agency of State Register of Legal Entities of the RA Ministry of Justice, aimed at registration of amendments regarding the company shareholders and Charter, is administration, since it results in actual consequences for entities;
- An administrative case has been accepted for proceeding based on the entity's application for making registration of amendments in the shareholders' register with regard to the shareholder and the Charter;
- The disputed records are administrative acts, since they have been adopted for the purpose of settlement of a definite case, namely, for registration of amendments in the shareholders' register with regard to the shareholder and the Charter, and are aimed at defining rights for "Marjan-Caldera Mining" LLC.

The relations connected with assessment of evidences and actual circumstances during an administrative case are regulated by the rules specified in Chapter 6 of the RA Law "On Administrative Principles and Administrative Cases". Namely, according to part 1 of Article 37 of the Law, the administrative body must ensure comprehensive, full and impartial consideration of the actual circumstances, clarifying all circumstances of the case, including those in favour of the parties to the case.

In these legal provisions, the legislator has set the principle of execution of comprehensive, full and impartial consideration of the actual circumstances by the administrative body, which implies that, within the scopes of this case, the administrative body has to ensure comprehensive, full and impartial consideration of all actual circumstances related to the case, also for the purpose of clarifying of all circumstances available in favour of the parties to the case. Comprehensive consideration of the case is the clarification of all issues related to the case. Each issue should be clarified to the full extent, without omission of any circumstance, considering all the aspects of the case, since, actually, clarification of each issue reveals the importance of comprehensive consideration of the case. Besides, the case should be considered with the goal of clear settlement of all issues, in compliance with the

requirements of the law. The comprehensive consideration of the case is the responsibility of the administrative body.

According to part 1 of Article 42 of the same law, within the scopes of an administrative case, the administrative body assesses as evidence the provided explanations, testimonies, expert opinions, documents, materials, things, as well as those circumstances, which the body, at its own discretion, considers relevant and necessary for clarification and assessment of the actual circumstances of the case.

The above-mentioned legal provision defines the discretionary authority of the administrative body to assess as evidence the provided explanations, testimonies, expert opinions, documents, materials, things, etc., for the purpose of clarification and assessment of the actual circumstances.

At the same time, the RA Law "On Administrative Principles and Administrative Cases" contains general provisions, while the specifics of administrative cases of certain types are defined by separate laws and international agreements of the Republic of Armenia (RA Law "On Administrative Principles and Administrative Cases", Article 2, part 3).

The relations arising in the field of state registration of legal entities and state registration of sole entrepreneurs are regulated by the RA Law "On State Registration of Legal Entities" (RA Law "On State Registration of Legal Entities", Article 1, part 1).

The procedure of state registration of amendments is defined by Article 12 of the RA Law "On State Registration of Legal Entities"; according to part 2 thereof, the territorial division of the State Register checks the submitted documents for completeness and compliance with law requirements.

The procedure of registration of the ownership right towards the shares in the statutory capital of a limited liability company is defined by the "Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company" approved by Resolution No. 1396, dated August 14, 2003, of the Government of RA. According to sub-clause "a" of clause 9 of this procedure, the following documents should be submitted for registration of amendments in the register of the company's shareholders:

- a) in case of alienation of share (shares) or a part thereof...
 - the basis for alienation of the share or a part thereof (agreement, court verdict, etc.)".

In this case, Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice assessed the following documents as the basis for state registration of the ownership right of Caldera Mining towards the shares of "Marjan Mining Company" LLC: the joint venture agreement signed in the USA on March 24, 2010 between "Global Gold Mining" LLC and "Caldera Resources Inc.", and the agreement of "Marjan Mining Company" LLC, translated into Armenian, by which the parties agreed to establish "Marjan-Caldera Mining" LLC, to which all shares of "Marjan Mining Company" LLC were to be transferred, and considered it as a mixed agreement, including a share alienation agreement.

According to part 2 of Article 1277 of the Civil Code of RA, origination and cessation of the ownership right towards property and other property rights are determined by the law of the country, which is applicable towards the given transaction, unless otherwise agreed between the parties.

According to part 1 of Article 1281 of the Civil Code of RA, the form of a transaction is determined by the law of the country, where the transaction is concluded.

The analysis of the above-mentioned legal norms shows that, in order to determine the form of a transaction, it is necessary to clarify and apply the law of the country, on which the parties have agreed, as well as where the transaction was concluded.

Section 18 /regulating legislation/ of the joint venture agreement signed between GGM and Caldera says: "This agreement is regulated and interpreted according to the legislation of the state of New-York, irrespective of contradictions between legal norms."

Consequently, the agreement submitted for the purpose of registration of the ownership rights towards shares, which the Register considered as a mixed agreement specifying alienation of shares and assessed as principal or primary agreement, should have been interpreted in compliance with the legislation of the state of New-York.

Meanwhile, within the scopes of this case, Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice considered the joint venture agreement signed on March 24, 2010 between "Global Gold Mining" LLC and "Caldera Resources Inc." as the basis for alienation of the shares of "Marjan Mining Company" LLC and applied the law of the Republic of Armenia, considering it to be a mixed agreement specified by part 3 of Article 437 of the Civil Code of RA, concluding that it contained provisions of a share alienation agreement.

Actually, Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice did not properly fulfil its obligations of assessing the evidences under an administrative case and did not ensure comprehensive, full and impartial consideration of the actual circumstances.

According to Article 1282 of the Civil Code of RA, the form and validity period of a power of attorney are determined by the law of the country, where the power of attorney is issued. According to clause i) of part 2 of Article 15 of the RA Law "On State Registration of Legal Entities", the document submitted to the State Register should comply with the following requirements:

- i) a copy of the document submitted by a legal entity should meet the requirements defined by clause 2 of this article and should be verified by the head of the legal entity's executive body, unless otherwise specified by the Civil Code of the Republic of Armenia, this law and other laws. The copy should specify the year, month and day of verification, be signed by the head of the executive body and sealed with the seal of the legal entity.

According to part 6 of Article 321 of the Civil Code of RA, a power of attorney sent by a telegram, as well as other means of communication, if delivered by an employee of the communication service, should be verified by the communication office.

In this case, the application for making amendments in the shareholders' register was submitted to Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice by Azat Vartanyan, on behalf of "Marjan-Caldera Mining" LLC. As evidence of the authorities to act on behalf of the company, Azat Vartanyan presented the power of attorney issued in the USA by the Board Chairman of "Marjan-Caldera Mining" LLC, in Armenian language, which had been sent by fax and sealed by the postal delivery service of the Republic of Armenia.

Meanwhile, it is clear from the logic of 6 of Article 321 of the Civil Code of RA that the disputed power of attorney should have been verified by an employee of the communication service in the USA, which would prove the authenticity of the power of attorney.

According to clause "a" of part 1 of Article 21 of the RA Law "On State Registration of Legal Entities", for the purpose of state registration legal entities should submit the

application of the legal entity's founder(s), the head of the executive body, or the authorized person of the founder(s).

Actually, the application for state registration of the ownership right of "Marjan-Caldera Mining" LLC towards the shares of "Marjan Mining Company" LLC was submitted by a person, having no such authority.

The bases for invalidation of an administrative act are specified in part 1 of Article 63 of the RA Law "On Administrative Principles and Administrative Cases", among which clause "a" defines the circumstance of having adopted the act with violation of the law, including wrong application or wrong interpretation of a law.

In this case, Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice made state registration of the ownership right of "Marjan-Caldera Mining" LLC towards the shares of "Marjan Mining Company" LLC with violation of Articles 37 and 42 of the RA Law "On Administrative Principles and Administrative Cases", Articles 15 and 21 of the RA Law "On State Registration of Legal Entities", clause 9 of the "Procedure of Registration of the Ownership and Pledge Rights towards Shares in the Statutory Capital of a Limited Liability Company" approved by Resolution No. 1396, dated August 14, 2003, of the Government of RA, consequently, it is an invalid administrative act.

Under such conditions, when state registration of the ownership right of "Marjan-Caldera Mining" LLC towards the shares of "Marjan Mining Company" LLC is not valid, it invalidates also the state registration of the amendments to the Charter of "Marjan Mining Company" LLC made on August 26, 2010 by Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice, according to which 100 percent of the shares of "Marjan Mining Company" LLC belong to "Marjan-Caldera Mining" LLC and the company's Director is Azat Vartanyan.

Article 3 of the RA Code on Administrative Proceedings specifies the right to apply to the Administrative Court, and according to part 1 of this Article every individual or legal entity has the right to apply to the Administrative Court in accordance with the procedure defined by this Code, if it is believed that through administrative acts, actions or inaction of state or local self-government bodies or their official:

- 1) the person's or entity's rights and freedoms specified by the Constitution of the Republic of Armenia, international agreements, laws and other legal acts have been or can be violated, including if:
 - a) obstacles have been created that prevent execution of such rights and freedoms;
 - b) the conditions required for execution of such rights have not been created, though they should have been created by force of the Constitution of the Republic of Armenia, international agreements, laws and other legal acts;
- 2) an obligation has been unlawfully imposed on the individual/legal entity;
- 3) the individual/legal entity has been unlawfully called to administrative liability.

In this case, the administrative acts of Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice have violated the ownership right of "Global Gold Mining" LLC towards the shares of "Marjan Mining Company" LLC.

As to the issue raised during inspection of the case, that the application to the court was submitted by the Armenian branch of "Global Gold Mining" LLC, the Administrative Court would like to state the following:

Within the scopes of an administrative case, the claimant is the individual, legal entity, administrative body, or official, who has applied to the Administrative Court (RA Code on Administrative Proceedings, Article 12).

“Global Gold Mining” LLC is the interested party within the scopes of this case, on behalf of which its Armenian branch has acted respectively in the Administrative Court. The authorities of the branch to act on behalf of the company in the Armenian courts are evidenced by the power of attorney in the name of the Director of the Armenian branch, issued on December 11, 2010 by the head of “Global Gold Mining” LLC, as well as the letter addressed to the judge.

Therefore, the Administrative Court states the fact that under this case the Armenian branch of “Global Gold Mining” LLC is fully authorized to represent the company’s interests in the Administrative Court, therefore, the Armenian branch of “Global Gold Mining” LLC is the claimant under the case.

Having considered the issue of allocating the court expenses between the parties, the Administrative Court of RA concluded that the amount of AMD 8000 should be charged from the respondent, Agency of State Register of Legal Entities of the RA Ministry of Justice, in favour of the claimant, for the following reasons.

According to part 1 of Article 59 of the RA Code on Administrative Proceedings, the party, against which the verdict has been made, or whose claim has been rejected, bears **full responsibility for reimbursement of the court expenses of the other party to the extent that was necessary for efficient execution of the court protection right.** The costs related to the means of court protection, which did not serve to their purpose, should be covered by the party which used such means, even if the verdict is made in favour of this party.

Since the claimant has paid the amount of AMD 8000 for two non-property claims, the court concluded that this amount should be charged Agency of State Register of Legal Entities of the RA Ministry of Justice, in favour of the claimant, as reimbursement of the court expenses paid by the latter, since such expenses were necessary for efficient execution of the court protection right.

Based on the above-mentioned, guided by Articles 59, 112-115 of the of the RA Code on Administrative Proceedings, Articles 130-132 of the Civil Code of RA, clause 2 of Article 35 of the Judicial Code of RA, the court:

RESOLVED

To satisfy the claim of the Armenian branch of “Global Gold Mining” LLC: entirely invalidate the registration of the changes of the sole shareholder of “Marjan Mining Company” LLC in the shareholders’ register of the company made by Nork-Marash territorial division of the Agency of State Register of Legal Entities of the RA Ministry of Justice on August 11, 2010, as well as the amendments to the Charter of “Marjan Mining Company” LLC made on August 26, 2010.

Charge the amount of AMD 8000 from the Agency of State Register of Legal Entities of the RA Ministry of Justice, in favour of the Armenian branch of “Global Gold Mining” LLC, as reimbursement of the court expenses.

The verdict acquires legal force one month after its publication and can be appealed to the Administrative Appeal Court of the Republic of Armenia.

If the verdict is not voluntarily executed after its enforcement, it will be executed with the help of the Service for Compulsory Execution of Judicial Acts, at the expense of the debtor.

PRESIDING JUDGE

R. HAKOBYAN

The verdict acquired legal force on _____.

PRESIDING JUDGE

R. HAKOBYAN