

# **Business in the Kyrgyz Republic: Legal Aspects**

(information and reference guide)

**2009**

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## FOREWORD

Dear Reader,

This information and reference guide (updated yearly) covers legal aspects of doing business in Kyrgyzstan. Its creation was inspired by our customers who, having entered the market of this country, frequently faced issues related to starting and running their business in Kyrgyzstan, like for instance, investor protection, tax and licensing requirements, and many other regulation areas. This document represents an attempt to answer many of these questions, but, more importantly, it is an attempt to create a useful guide for those who are interested in doing business in Kyrgyzstan.

This guide was prepared by our entire team of lawyers practicing in corporate law, mineral resources exploration and mining law, banking and finance, energy law, real estate and construction law, telecommunications, tax law, certification and in many other areas of law. This publication is an evidence of our continuous search for new possibilities of professional growth.

We express our special gratitude and appreciation to our reviewers, readers and partners for their comments and suggestions with respect to this publication, as well as for assistance in translating this guide into foreign languages (at the moment, our publication has been or is being translated into English, Chinese, German and Turkish). We have tried to incorporate all comments received, and are positive that they have significantly enhanced the quality of this document. However, as there is always room for perfection, we would appreciate any further recommendations on improving the content of the materials presented.

To make the publication broadly accessible, we have placed it on our website at [www.k-a.kg](http://www.k-a.kg).

We thank our readers and want to emphasize that our collective efforts have originated not only from our eagerness for professional growth, but also from our desire to make this country more open to businesses. We sincerely wish Kyrgyzstan to prosper, and hope that this publication will become a small yet earnest contribution of our company's professional team towards a better future for Kyrgyzstan.

Respectfully,

Kalikova & Associates

## 1. KYRGYZSTAN: OVERVIEW

### 1.1 Geography

The Kyrgyz Republic is located in Central Asia and has an area of 199 thousand square kilometers, or 77,540 square miles, placing it 85<sup>th</sup> worldwide.<sup>1</sup> This landlocked nation stretches 900 km east to west and 410 km north to south.

The Kyrgyz Republic is a mountainous country with 94.2% of its territory located 1,000 meters and 40.8% located 3,000 meters above sea. The average height above sea level is 2,750 meters, the highest point is 7,439 meters, and the lowest point is 401 meters.<sup>2</sup> The Kyrgyz Republic borders Kazakhstan to the north, Uzbekistan to the south-west, Tajikistan to the south, and China to the east and south-east.<sup>3</sup>

The climate is continental; air temperature varies from -40°C in the winter to +40°C in the summer. The landscape includes all natural zones common for the northern hemisphere, except the tropics. The republic is one of the 20 countries richest in water resources in the world.

By its administrative and territorial system the Kyrgyz Republic belongs to unitary states and consists of 7 oblasts (Chui, Issyk-Kul, Talas, Naryn, Jalal-Abad, Osh and Batken) and 2 cities of national status (Bishkek and Osh cities). The capital of the Kyrgyz Republic is Bishkek.

### 1.2 History

The first states appeared within the territory of the present-day Kyrgyz Republic in the 2<sup>nd</sup> century B.C. The most ancient historical documents on Kyrgyz statehood were written by a well-known Chinese historian and chronicler Sim Xian that dates back to 201 B.C.<sup>4</sup>

By the late 7<sup>th</sup> to early 8<sup>th</sup> century A.D. the Kyrgyz people had become a significant force respected by powerful nations of Central Asia, and by the fourth decade of the 9<sup>th</sup> century they founded a vast nomadic empire known as the Kyrgyz Kaganate. The traditional and cultural background of the Kyrgyz people and the ethnonym “Kyrgyz”, which is interpreted by the Kyrgyz people themselves as “forty maidens”, each a traditional ancestress of a family line, support the assumption that the Kyrgyz Kaganate consisted of 40 tribes.

Between 1870 and 1880 the territory of Kyrgyzstan became part of the Russian Empire. In 1918, Kyrgyzstan became part of the Turkestan Autonomous Soviet Socialist Republic of the Russian Soviet Federative Socialist Republic. Subject to the State Division of Soviet Central Asian Republics, in 1924, the Kara Kyrgyz (since 1925 – Kyrgyz) Autonomous Region was established within the Russian Soviet Federative Socialist Republic; in 1926, the territory was transformed into the Kyrgyz Autonomous Soviet Socialist Republic within the Russian Soviet Federative Socialist Republic, and in 1936 – into the Kyrgyz Soviet Socialist Republic within the Union of Soviet Socialist Republics.<sup>5</sup>

In 1991, Kyrgyzstan proclaimed itself an independent and sovereign state known as the Republic of Kyrgyzstan, and since May 5, 1993, it is officially named as the Kyrgyz Republic.

### 1.3 Population and Language

The Kyrgyz Republic has a permanent population of a little over 5.309 million people. The density of population in the Kyrgyz Republic is 26 people per square kilometer. About 90 nationalities live in the

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<sup>1</sup> <http://www.regions.gov.kg>

<sup>2</sup> <http://www.welcome.kg/ru/news/443.html>,

[http://kyrgyzstan-tourism.com/index.php?option=com\\_content&task=view&id=80&Itemid=90](http://kyrgyzstan-tourism.com/index.php?option=com_content&task=view&id=80&Itemid=90)

<sup>3</sup> [http://kyrgyzstan-tourism.com/index.php?option=com\\_content&task=view&id=80&Itemid=90](http://kyrgyzstan-tourism.com/index.php?option=com_content&task=view&id=80&Itemid=90)

<sup>4</sup> [http://mfa.kg/common/about-kyrgyzstan\\_ru.html](http://mfa.kg/common/about-kyrgyzstan_ru.html)

<sup>5</sup> Kyrgyz Statehood. Century Statistics. Bishkek, 2003.

country. The indigenous people, the Kyrgyz people, represent 69%, the Uzbeks 15%, and the Russians 9% of the population.

- Urbanization:
  - Urban population: 35%
  - Rural population: 65%
- Annual population growth: 0.7% (2007)
- Age distribution (2008):<sup>6</sup>
  - 0 to 14 years of age – 30.3%
  - 5 to 64 years of age – 64.4%
  - over 65 years of age – 5.3%

The national language of the Kyrgyz Republic is Kyrgyz, while the official language is Russian. Both languages are being used on equal terms and are employed for administrative purposes; however, under the legislation of the Kyrgyz Republic,<sup>7</sup> the Kyrgyz version of a document is considered to be its original version. In its official relations with foreign nations (receptions, meetings, development and ratification of documents) the Kyrgyz Republic uses the national language, while in relations with the CIS countries it also uses the official language.

#### 1.4 Links to Other Countries

The relatively small size of the country makes travel within it easy. A flight from the north to the south of the country lasts about one hour.

Unlike railroad transportation, automobile road infrastructure of the Kyrgyz Republic is adequately developed. This is explained by the mountainous relief of the country. At the same time, the country has a reasonably good transit capacity.

##### Transit Possibilities:

- Cities of the Kyrgyz Republic are connected by direct air flights to the following countries and cities: Russia (Moscow, Saint Petersburg, Yekaterinburg, Krasnoyarsk, Novosibirsk, Omsk), Tajikistan (Dushanbe, Hudjent), Uzbekistan (Tashkent), Kazakhstan (Astana, Almaty), Armenia (Yerevan), Turkey (Istanbul), Iran (Teheran, Meshed), Pakistan, China (Beijing, Urumqi), India (Delhi), the United Arab Emirates (Dubai), South Korea (Seoul, Incheon), and Great Britain (London).
- Roads provide access to all neighboring countries (Uzbekistan, Tajikistan, Kazakhstan, and China).
- There is no developed railroad system within the territory of the Kyrgyz Republic. Thus, there is no railroad line between the north and south of the country. Nevertheless, the Kyrgyz Republic does have a railroad connection to Uzbekistan and Kazakhstan.

##### Mail and Cargo Delivery

Both state-owned and private providers of these services are active in the market of the Kyrgyz Republic – 7 mail companies are currently operating<sup>8</sup>. Thus, *Kyrgyzpochtasy* (Kyrgyz Post) state enterprise provides services of regular and express mail, including delivery of parcels and packages by land and by air, international express mail services, and services of postal money orders within the country and around

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<sup>6</sup> National Statistics Committee of the Kyrgyz Republic.

<sup>7</sup> The Law of the Kyrgyz Republic “On National Language of Kyrgyz Republic” of April 2, 2004.

<sup>8</sup> [http://www.mtk.gov.kg/index.php?option=com\\_content&view=article&id=77&Itemid=75](http://www.mtk.gov.kg/index.php?option=com_content&view=article&id=77&Itemid=75)

the world. Representation offices and licensees of international companies *DHL*, *FedEx*, *UPS*, *TNT Express*, and local companies *Interpost*, *Kyrgyz Courier*, and a number of others, provide express mail services.

### **The Internet**

There are a broad variety of options for Internet access; they range from dial-up to wired broadband and Wi-Fi access and satellite-based Internet. Leading service providers include *ElCat*, *AsiaInfo*, *Kyrgyztelecom*, *Aknet*, *Saima Telecom*, *WinLine*, and a number of others.

### **Mobile Telecom Services**

At the moment, mobile services in the local market are provided by:

- D-AMPS standard mobile services network operated under *Katel* brand and offering roaming services in 121 countries;
- GSM standard mobile services network operated under *Bitel* and *Mobi* brands and offering roaming services in 182 countries;
- CDMA20001X standard mobile services network operated under *Fonex* trademark and offering roaming services in 2 countries;
- GSM standard mobile services network operated under *MegaCom* brand and offering roaming services in 196 countries;
- CDMA20001X EV-DO standard mobile services network operated *Nexi* trademark;
- GSM standard mobile services network operated under *O!* trademark.

## **1.5 Political System**

The political system of the Kyrgyz Republic is defined in the Constitution<sup>9</sup>. According to separation of powers principle set forth in the Constitution, the state power of the Kyrgyz Republic is represented by legislative, executive, and judicial branches cooperating under the rule of the President of the Kyrgyz Republic.

- The President is the head of state and the top official of the Kyrgyz Republic elected for the period of 5 years.
- The Jogorku Kenesh – Parliament of the Kyrgyz Republic – is a representative body in charge of legislature. The Jogorku Kenesh of the Kyrgyz Republic consists of 90 Parliamentarians elected for the term of 5 years on the basis of political party slates.
- The executive power of the Kyrgyz Republic is represented by the Government of the Kyrgyz Republic, line ministries, state committees, other executive authorities and bodies of local state administration subordinate to the Government.
- In the Kyrgyz Republic judicial power may only be administered by the courts. In the cases and pursuant to the procedure provided by law, all citizens of the Kyrgyz Republic have the right to participate in the implementation of justice.

## **1.6 Judicial System**

The judicial system of the Kyrgyz Republic is represented by the Constitutional Court, the Supreme Court, and local courts. Judicial power is executed through constitutional, civil, criminal, administrative, and other forms of proceeding.

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<sup>9</sup> Adopted on May 5, 1993, as amended by the Law of the Kyrgyz Republic “On the New Version of the Constitution of the Kyrgyz Republic” of October 23, 2007.

Within the territory of the Kyrgyz Republic courts of arbitration may be established (for more detail on courts of arbitration see Section 2.3 below).

**General jurisdiction courts** have the following system:

- Courts of primary jurisdiction are district level courts and courts of the equal status (district courts of Bishkek city, city courts, military courts of garrisons, inter-district administrative and commercial courts). All of them consider and decide *per se* on the cases falling into their jurisdiction.
- Courts of appellate jurisdiction are region (Oblast) level courts and courts of the equal status (courts of Bishkek City and the Court Martial of the Kyrgyz Republic). Each of these courts consists of three judicial divisions: division for criminal cases and cases of administrative violations, division for civil cases, and division for administrative and commercial cases. Judicial divisions of appellate jurisdiction courts revise judicial acts that have not come into legal force. These divisions also act as a cassation instance revising judicial acts that have come into legal force.
- The supervisory level is the Supreme Court consisting of the Plenary Assembly and 3 respective divisions within which benches of 3 judges are formed to consider cases at law.

### **Enforcement of Judgment**

Under legislation of the Kyrgyz Republic<sup>10</sup> the power to enforce decisions, rulings, and resolutions on civil, commercial, administrative cases, as well as sentences, rulings, and resolutions on criminal cases in the part of property claims, rests with the enforcement officer of the court.

In the Kyrgyz Republic, the judicial system includes the Judicial Department of the Kyrgyz Republic, which is the agency tasked to provide material, technical and methodological support to local courts, to ensure the enforcement of judgments and other acts provided by law and to carry out other activities aimed to create favorable conditions for the full and independent administration of justice. The Judicial Department is accountable to the Council of Judges of the Kyrgyz Republic.<sup>11</sup>

The Kyrgyz Republic has joined a number of treaties under which an interested party may address a claim to a court of the Kyrgyz Republic on recognition and enforcement of a decision issued by a court or arbitration court of another country. The principal treaties are:

- UN Convention on Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, joined by the Kyrgyz Republic in 1995;
- Convention on Legal Support and Legal Relations between the CIS Countries on Civil, Matrimonial, and Criminal cases of 22 January 1993, ratified by the Kyrgyz Republic in 1995. In 2004 the Kyrgyz Republic also ratified the Convention on Legal Support and Legal Relations on Civil, Matrimonial and Criminal Cases of 7 October 2002;<sup>12</sup>
- A number of bilateral agreements on mutual legal support with Azerbaijan, Iran, India, China, Latvia, Mongolia, Russia, Kazakhstan, Uzbekistan, and other nations.

Currently, the Kyrgyz Republic recognizes and enforces:

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<sup>10</sup> The Law of the Kyrgyz Republic “On Judicial Enforcement Proceedings and Status of Court Enforcement Officers in Kyrgyz Republic” dated March 18, 2002 (with the latest amendments as of November 20, 2006).

<sup>11</sup> Edict No. 143 of the President of the Kyrgyz Republic dated April 21, 2008.

<sup>12</sup> The 2002 Convention has superseded the 1993 Convention. However, the 1993 Convention continues to apply to the relations between the Kyrgyz Republic and a member state to this Convention, if the 2002 Convention has not been given effect to the latter.



- Decisions of other countries' arbitration courts established under the arbitration rules of the UN Commission for International Trade Law (UNCITRAL);
- Decisions of the courts of Armenia, Belarus, Kazakhstan, Latvia, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan on civil, matrimonial, and criminal cases;
- Decisions of the arbitration, economic and business courts of Azerbaijan, Moldova, Kazakhstan, Russia, and Tajikistan.

## 1.7 Economy

The Kyrgyz Republic is rich in natural resources, has a high level of public education, enjoys a geographically favorable location, and is characterized by a mild climate. The country has a vast potential for development of industrial production, hydro power sector, agriculture, and tourism.

Being a democratic nation, the Kyrgyz Republic promotes a convergent system of economy based upon such key principles as free entrepreneurship, a free pricing system, free competition, and state regulation.

Development of the industrial sector is represented primarily by electricity production, the non-ferrous metal industry, and food processing. Achievements of the agricultural sector have become possible primarily due to the efforts of peasant farms.

The Kyrgyz Republic ranks 90<sup>th</sup> out of 127 countries in the Forbes 'Best Countries For Business' list 2009.<sup>13</sup> It ranks 7<sup>th</sup> in terms of trade freedom, 11<sup>th</sup> in investor protection, 94<sup>th</sup> in personal freedom, 115<sup>th</sup> and 117<sup>th</sup> in innovation and technology, 123<sup>rd</sup> in corruption, 33<sup>rd</sup> in red tape, 107<sup>th</sup> in tax burden, and 93<sup>rd</sup> in monetary freedom.

### Key Macroeconomic Indicators<sup>14</sup>

As preliminarily estimated, in 2008, Kyrgyzstan's GDP has grown by 7.6% as compared to 2007. Disregarding the *Kumtor* gold mining output, GDP growth rate reached 5.4%.

Over 2008, in Kyrgyzstan, capital investment utilization has dropped 5.4% as compared to 2007.

In 2008, the inflow of direct investment has grown 1.5 times compared to 2007. The inflow of investment from CIS countries has grown 1.9 times compared to 2007. The inflow of capital investment from the far abroad has grown 17% compared to 2007.

In 2008, Kyrgyzstan's foreign trade turnover has grown 1.5 times as compared to 2007. The republic has been trading with 113 countries of the world. It has been exporting goods to 68 countries, including Switzerland, Russia, Uzbekistan, Kazakhstan, Turkey, the United Arab Emirates, and has been importing goods mainly from Russia, China, Kazakhstan, Germany, and Japan.

### Privatization

In the Kyrgyz Republic, the legal framework for state property privatization and the legal system for securing property rights of individuals and legal entities were formed between 1991 and 2003.

The first phase (1991-1993) concentrated on privatization of trading, public catering and consumer services enterprises. The second phase (1991-1997) ended up with privatization of large and mid-size industrial production, transport and construction enterprises. The third phase (1998-2003) gave rise to privatization of large strategic enterprises operating in monopolized sectors of the economy and in non-production area.

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<sup>13</sup> [http://www.forbes.com/lists/2009/6/bizcountries09-best-countries-for-business\\_Best-Countries-for-Business\\_Rank\\_4.html](http://www.forbes.com/lists/2009/6/bizcountries09-best-countries-for-business_Best-Countries-for-Business_Rank_4.html)

<sup>14</sup> Social and economic conditions in the Kyrgyz Republic for January-December 2008 – Bishkek: 2009.

These economic reforms resulted in active transformation of state ownership, gave rise to new property relations and led to a significant decrease of the state's ownership stake in all sectors of the economy, except for basic industries. The general level of privatization has made 70%. Many state-owned enterprises have been converted into municipal ownership.<sup>15</sup>

Economic reforms in the country have brought about the following general preconditions for development of trade and market relations:

- Private property and freedom of entrepreneurship;
- Elimination of monopoly of state enterprises and collective farms;
- Significant efforts on promotion of broad competition between individual private enterprises, private joint stock companies, joint ventures, foreign companies, farmer associations, and other forms of business;
- Established two-level system of banking and crediting;
- Liberalized prices.

According to research by Index of Economic Freedom 2009 Heritage Foundation, the Kyrgyz Republic is one of the “moderately free” countries in the world and its general score is higher than the average score in the world. The Kyrgyz Republic ranks 74<sup>th</sup> out of 183 countries of the world and 12<sup>th</sup> out of 41 countries of the Asia Pacific region in terms of freedom of economy and its general score is higher than the average score in the region.<sup>16</sup>

In 2009, the President of the Kyrgyz Republic<sup>17</sup> adopted a decision to conduct the analysis of operations of existing public enterprises in terms of their efficiency and, where necessary, to carry out their reorganization and liquidation, privatization and conversion into joint stock companies. At present, the following publicly owned enterprises are active: Kyrgyzpochtasy PE, Kyrgyzaeronavigatsia PE, Kyrgyzdipservice PE, Kyrgyz Temir Jolu National Company PE, Kyrgyzmarkasy PE, Pravitelstvennaya Svyaz PE, Infocom PE, Kyrgyzstroysservice PE, Kyrgyzzresursy PE, Komur PE, Kyrgyz Experimental Biofactory PE, Karakol Distillery PE, Kara-Balta Distillery PE, Temir PE, and others.

Also, a decision was adopted to carry out privatization of state shareholdings (up to 10% of the total number of outstanding or initially or additionally issued shares in public offerings) in joint-stock companies with state shareholding<sup>18</sup> by having them listed and publicly traded on the stock exchange. In Kyrgyzstan, the state has ownership interests in 51 joint stock companies, in 32 of which the state owns a controlling stake. Based on their size, the state's stakes in joint stock companies are spread as follows: less than 25% (12), from 25% to 51% (6), from 51% to 100% (33). Among them, the following companies have been listed on stock exchanges in 2008: RSK Bank OJSC, Manas International Airport OJSC, Uchkun OJSC, Ayil Bank OJSC, TNK Dastan OJSC, Kyrgyzneftegaz OJSC, Kyrgyztelecom OJSC, Elektricheskies Stantsii OJSC, Severelectro OJSC.

The Kyrgyz Government plans to carry out privatization of the following property in 2008-2012:<sup>19</sup>

- state shareholdings and assets in energy companies (for more information refer to Section 19.1 below);
- state shareholdings in oil and gas, mining and metallurgy companies (for more detail refer to Section 19.2 below);

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<sup>15</sup> [http://www.investment.kg/ru/index.php?option=com\\_content&task=blogcategory&id=21&Itemid=77](http://www.investment.kg/ru/index.php?option=com_content&task=blogcategory&id=21&Itemid=77)

<sup>16</sup> <http://www.heritage.org/index/Country/KyrgyzRepublic>

<sup>17</sup> Edict No. UP No. 96 of the President of the Kyrgyz Republic dated February 10, 2009.

<sup>18</sup> Report on the Kyrgyz Government's performance in 2008 approved by Resolution No. 115 of Government of the Kyrgyz Republic dated February 11, 2009 (<http://www.gov.kg/images/otchet/otchet2008r.doc>).

<sup>19</sup> Kyrgyz State Property Privatization Program for 2008- 2012 approved by Resolution No. 518 of Government of the Kyrgyz Republic dated September 17, 2008 (with the latest amendments as of December 30, 2008); Resolution No. 84 of Government of the Kyrgyz Republic dated March 14, 2008.

- state shareholdings in financial and lending institutions (for more detail refer to Sections 9 and 19.4 below);
- state shareholding in Kyrgyzzayiltechservice Leasing Company OJSC;
- state shareholding in the national electric communications service provider (for more detail refer to Section 19.3);
- national postal service provider Kyrgyzpochtasy PE;
- state shareholding in the national air carrier Kyrgyzstan Air Company OJSC;
- national rail carrier Kyrgyz Temir Jolu National Company PE;
- public enterprises subordinate to the Kyrgyz Ministry of Transport and Communications: Chui Region Enterprise of Bus Terminals and Stations PE and Chygyshvokzaly PE;
- state shareholdings in industrial enterprises: Dastan Transnational Corporation OJSC, Bishkek Machinery Plant OJSC, Bishkek Stamping Machinery Plant PE, Kyrgyzcable OJSC;
- state shareholding in Joint Venture Italkyr CJSC operating Hyatt Regency Bishkek hotel;
- Issyk-Kul hotel and trading complex (entity subordinate to the Department of Presidential Affairs);
- state shareholding in the national tobacco leaf exporter Kyrgyztamekisi State Corporation OJSC (having 5 subsidiaries engaged in tobacco leaf manufacturing and export, tobacco fermenting and tobacco products manufacturing);
- and others.

## **1.8 Foreign Affairs**

### **Diplomatic Relations with Foreign Nations**

Upon declaring its independence in 1991, the Kyrgyz Republic has established diplomatic relations with many countries.

Currently, the Kyrgyz Republic has diplomatic relations with the following nations: Afghanistan, Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Bulgaria, Bosnia and Herzegovina, Brazil, Canada, China, Cuba, Cyprus, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Georgia, Greece, Hungary, India, Indonesia, Iran, Ireland, Island, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Latvia, Lithuania, Macedonia, Malaysia, Mexico, Moldova, Mongolia, Morocco, Nepal, the Netherlands, New Zealand, North Korea, Norway, Oman, Palestine, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Saudi Arabia, Serbia and Montenegro, Slovakia, Slovenia, South Korea, the South African Republic, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tajikistan, Turkmenistan, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the United Arab Emirates, Uzbekistan, Vatican, Vietnam, Yemen, Zambia.

The Kyrgyz Republic has set up diplomatic missions to:

- Russian Federation (also covering the Azerbaijan Republic, the Republic of Georgia, the Republic of Armenia, the Finland Republic);
- Republic of Ukraine (also covering the Republic of Moldova, the Republic of Romania);
- Republic of Belarus (also covering the Republic of Poland, the Latvian Republic, the Lithuanian Republic);
- Turkmenistan;
- Republic of Tajikistan;
- Republic of Uzbekistan;
- Republic of Kazakhstan;
- Islamic Republic of Iran;
- People's Republic of China (also covering the Mongolian People's Republic);
- Kingdom of Saudi Arabia (also covering the State of Kuwait, the Arab Republic of Egypt, the State of Qatar);

- Republic of India (also covering the Democratic Socialist Republic of Sri Lanka, the Kingdom of Nepal, and the People's Republic of Bangladesh);
- United Kingdom of Great Britain and Northern Ireland;
- Malaysia (also covering Singapore, the Republic of Indonesia, the Kingdom of Thailand, the Republic of Philippines);
- Japan;
- United States of America (also covering Canada);
- Swiss Confederation (also covering the Principality of Liechtenstein, the Italian Republic);
- Kingdom of Belgium (also covering the Kingdom of Netherlands, the Grand Duchy of Luxembourg, the French Republic);
- Austrian Republic (also covering the Hungarian Republic, the Slovakian Republic, the Czech Republic, the State of Israel);
- Federative Republic of Germany (also covering the Holy See (Vatican), the Kingdom of Sweden, the Kingdom of Denmark, the Kingdom of Norway);
- Turkish Republic (also covering the Republic of Macedonia);
- Islamic Republic of Pakistan;
- Republic of Korea.

The Kyrgyz Republic also has the following consular offices:

- a general consulate in Yekaterinburg, the Russian Federation;
- a consular office in Saint Petersburg, the Russian Federation;
- a vice consular office in Novosibirsk, the Russian Federation;
- a general consulate in Almaty, the Republic of Kazakhstan;
- a general consulate in Istanbul, the Turkish Republic;
- a general consulate in Dubai, the United Arab Emirates;
- a consular agency in Frankfurt am Main, the Federative Republic of Germany;
- a consular office in Karachi, the Islamic Republic of Pakistan;
- a consular office in Meshed, the Islamic Republic of Iran;
- a visa office in Urumqi, the People's Republic of China.

In addition, the Kyrgyz Republic maintains the following permanent missions to international organizations:

- the permanent mission to the United Nations and other international organizations in New York City, USA;
- the permanent mission to the United Nations and other international organizations in Geneva, Switzerland;
- the permanent mission to the Organization for Security and Cooperation in Europe and other international organizations in Vienna, Austria.

### **Participation of the Kyrgyz Republic in International and Regional Organizations**

Currently, the Kyrgyz Republic belongs to 84 international and regional organizations, including the following regional organizations:<sup>20</sup>

- cooperation organizations: the United Nations Organization, the Organization for Security and Cooperation in Europe, the Economic Cooperation Organization, the Organization of the Islamic Conference, the Collective Security Treaty Organization, the Commonwealth of Independent States, the Eurasian Economic Cooperation, the Shanghai Cooperation Organization, and the Organization for Economic Cooperation and Development;
- financial institutions: the International Currency Fund, the Asian Development Bank, the International Bank for Reconstruction and Development (the World Bank Group), the

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<sup>20</sup> [http://kg.akipress.org/\\_print.php?db=news&id=53619](http://kg.akipress.org/_print.php?db=news&id=53619)

- International Development Association (the World Bank Group), the European Bank for Reconstruction and Development, and the Islamic Development Bank;
- trade organizations: the World Trade Organization and the Agency for International Trade, Information and Cooperation;
  - food and agriculture organizations: the Food and Agriculture Organization, the International Center for Agricultural Research in the Dry Areas, the International Commission on Irrigation and Drainage, the International Water Coordination Commission, the Secretariat of the UN Convention to Combat Desertification, the International Epizootic Bureau, the CIS Intergovernmental Council for Veterinary Cooperation, and the European and Mediterranean Quarantine and Plant Protection Organization;
  - transport and communications organizations: the International Union of Electric Communication, the Universal Postal Union, the International Civil Aviation Organization, and the Coordination Transport Meeting of Railroad Cooperation Organization;
  - labor, social security and migration organizations: the International Labor Organization, the International Social Security Association, the International Association of Pension and Social Funds, and the International Organization for Migration;
  - health care organizations: the International Health Organization, the International Committee of the Red Cross, and the National Red Crescent Society;
  - patent organizations: the World Intellectual Property Organization, the Eurasian Patent Organization, the International Confederation of Societies of Authors and Composers;
  - energy organizations: the Energy Charter Secretariat, and the Energy Regulators Regional Association;
  - environmental and biological safety organizations: the Secretariat of the United Nations Framework Convention on Climate Change and the Kyoto Protocol to the UN Framework Convention on Climate Change, the UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Long-range Transboundary Air Pollution, the Vienna Convention for the Protection of the Ozone Layer, the UN Convention on Biological Diversity, and the UN Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
  - natural disaster prevention organizations: the World Meteorological Organization, the Asian Disaster Reduction Center, the CIS International Council for Natural and Man-made Emergencies, and the CIS International Council for Hydrometeorology.

*The Economic Cooperation Organization (ECO) – since November 1992*

The key goal of the ECO as an inter-governmental regional institution is to identify the common interests of its member countries in various areas of economic cooperation, assure their integrated coordination, make decisions and bring them to the stage of execution. Trade between the Kyrgyz Republic and other ECO member countries represents about 70% of the entire trade volume of the country.

*The Commonwealth of Independent States (CIS) – since September 1993*

At present, the CIS, being one of the traditional forms of multilateral cooperation between post-Soviet nations, supports the maintenance of previously established relations in the post-Soviet period, and continues to play a stabilizing role resolving problems in various fields of cooperation among the CIS countries.

The Kyrgyz Republic, genuinely interested in international cooperation, actively participates in the structures of the CIS and within its framework contributes to the further development of commercial and economic relations between the member countries.

*The Organization of the Islamic Conference (OIC) – since December 1992*

One of the areas of the OIC's activities since the disintegration of the Soviet Union is the resolution of economic problems in Islamic countries through the program developed by the OIC to establish a common market of Islamic countries based on the example of the European Economic Union.

*The EuroAsian Economic Community (EurAsEC) – since June 2001*

The EurAsEC is the legal successor to the Customs Union (CU) – March 1996.

The principal goals of the EurAsEC in the field of foreign trade and customs policy are: the further development of free trade; the establishment of the single customs tariff and a unified system of non-tariff regulation measures; the introduction of a concurrent system of preferences; the development of a harmonized position of member countries towards the WTO and other international economic structures; the introduction of a unified procedure of currency exchange regulation and supervision; the establishment of an efficient payment and settlement mechanism; economic safety at the external borders of the Community, their consolidation and development, and the alleviation of smuggling and other customs violations.

Economic policy activities include: a harmonized structural reorganization; the development and implementation of joint programs for social and economic development; a common payment system and compatibility of monetary and financial systems. They are also aimed at the establishment of equal conditions for production and business activities and equal access to markets for foreign investment, the establishment of a common transportation services market and a common energy market; joint research and development in priority areas of science and technology; the development of a unified system of legal regulation; and the establishment and operation of financial and industrial groups on a bilateral and multilateral basis.

*The Shanghai Cooperation Organization (SCO) – since June 2001*

The principal goals and objectives of the SCO are: to strengthen mutual trust, friendship and neighborliness between the member countries; to develop multi-industry cooperation for the purpose of supporting and strengthening peace, security and stability in the region; to jointly combat any exhibitions of terrorism, separatism and extremism; to combat illegal drug and arms traffic, other types of transnational criminal practices, and illegal migration; to encourage effective regional cooperation in the areas of common interest; to support integrated and balanced economic growth, social and cultural development of the region by joint actions taken on the basis of equal partnership with the purpose of continuous increase in living standards and conditions for the population in the member countries; to coordinate approaches towards integration into the global economy; to help assure fundamental human rights and freedoms in accordance with international obligations of the member countries and their national legislation; to support and develop relations with other countries and international organizations; to take joint action in the prevention of international conflicts and their peaceful reconciliation; and to jointly search for solutions to problems that may arise in the 21<sup>st</sup> century.



## 2. INVESTMENT CLIMATE

### 2.1 Legal Framework for Investment Activities

Since investments are a major prerequisite for economic development in the Kyrgyz Republic, investment legislation of the country is quite liberal.

Thus, under the legislation of the Kyrgyz Republic,<sup>21</sup> foreign investors enjoy the national treatment applied to individuals and legal entities of this country. Legislation provides for a broad scope of rights and guarantees to foreign investors, including guarantees of export and repatriation of investment, property, and information out of the Kyrgyz Republic, guarantees of protection against investment expropriation and coverage of losses incurred by investors, guarantees of income use and freedom of monetary transactions, and others.

According to Doing Business 2009, the World Bank's Report covering 181 countries of the world, the Kyrgyz Republic ranks 68<sup>th</sup> having improved its score by 31 points as compared to its rating in 2008.<sup>22</sup>

The Kyrgyz Republic has entered into a number of bilateral treaties on mutual support, encouragement and protection of investment (capital expenditure). Such treaties have been signed with a number of countries such as<sup>23</sup>:

- the People's Republic of China (1995);
- the Turkish Republic (1996);
- the Republic of Ukraine (signed in 1993, not yet effective);
- the United States of America (1994);
- Malaysia (1995);
- the Islamic Republic of Pakistan (1995);
- the Republic of Armenia (1995);
- the United Kingdom of Great Britain and Northern Ireland (1998);
- the French Republic (1997);
- the Islamic Republic of Iran (2005);
- the Republic of Uzbekistan (1997);
- the Azerbaijan Republic (1997);
- the Federative Republic of Germany (2006);
- the Republic of Georgia (1997);
- the Republic of India (2002);
- the Republic of Indonesia (1997);
- the Republic of Kazakhstan (2005);
- the Republic of Belarus (2001);
- the Mongolian People's Republic (2007, not yet effective);
- the Swiss Confederation (2003);
- the Republic of Tajikistan (2001);
- the Kingdom of Sweden (2003);
- the Republic of Moldova (2004);
- the Finland Republic (2004);
- the Republic of Korea (2008);
- the Latvian Republic (2009);
- the Lithuanian Republic (2008, not yet effective).

The Government of the Kyrgyz Republic has approved draft agreements on mutual support, encouragement and protection of investment with the Czech Republic,<sup>24</sup> and the Kingdom of

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<sup>21</sup> The Law of the Kyrgyz Republic "On Investments in the Kyrgyz Republic" dated March 27, 2003 (with the latest amendments as of July 31, 2006).

<sup>22</sup> <http://www.doingbusiness.org/ExploreTopics/PayingTaxes/Details.aspx?economyid=106>.

<sup>23</sup> In parentheses are the years on which the respective treaties came into effect in the Kyrgyz Republic.

<sup>24</sup> Ordinance No. 125-r of the Government of the Kyrgyz Republic dated April 12, 2000.

Netherlands.<sup>25</sup> Similar agreements with Japan, the Austrian Republic, the Republic of Singapore, the Hungarian Republic, the Republic of Macedonia, Belgium-Luxembourg Economic Union, the Italian Republic, the Slovak Republic, and Canada are currently planned.<sup>26</sup>

The Ministry of Economic Development and Trade of the Kyrgyz Republic is the authorized executive body responsible for development of national investment policy. It drafts and implements a cohesive national macroeconomic, financial, tax and customs policy and policy that covers economic development, foreign trade and economic activities, encouraging investment, technical regulation, support and development of entrepreneurship, and the development of free economic zones.

## 2.2 State Guarantees to Foreign Investors

Subject to its legislation,<sup>27</sup> the Kyrgyz Republic provides the following guarantees to foreign investors:

- National treatment of business activities, equal investment rights of domestic and foreign investors, no intervention into the business activities of investors, protection and restitution of infringed rights of investors in accordance with the legislation of the Kyrgyz Republic and international treaties;
- Export or repatriation of profit gained on investment, proceeds of investment activities in the Kyrgyz Republic, property, and information, out of the Kyrgyz Republic;
- Protection against expropriation (nationalization, requisition, or other equivalent measures, including action or omission on the part of authorized government bodies of the Kyrgyz Republic that has resulted in seizure of investor's funds or investor's deprivation of the possibility to use the results of their investment). In exceptional cases involving public interest, investments may be expropriated with concurrent state guarantees of appropriate coverage of damage incurred by the investor;
- The investor's right to freely use the income derived from their activities in the Kyrgyz Republic;
- The freedom to invest in any form into objects and activities not prohibited by legislation of the Kyrgyz Republic, including the activities subject to licensing;
- Freedom of monetary transactions (free conversion of currency, unbound and unrestricted money transfers; should provisions restricting money transfers in foreign currency be introduced into legislation of the Kyrgyz Republic, these provisions will not apply to foreign investors, with the exception of cases where investors engage in illegitimate activities (such as money laundering);
- Free access to open-source information;
- The right to: establish legal entities of any organizational and legal form provided by legislation of the Kyrgyz Republic; open branches and representative offices within the territory of the Kyrgyz Republic; select any organizational and managerial structure for the business entities, unless a different structure is explicitly required by law for the given organizational and legal form of a business entity; acquire property (with the exception of land plots), shares, other securities, including governmental securities; participate in privatization of state property, establish associations and other unions; hire local and foreign employees subject to legislation of the Kyrgyz Republic; and engage in other investment activities not prohibited by legislation in the Kyrgyz Republic

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<sup>25</sup> Ordinance No. 594-r of the Government of the Kyrgyz Republic dated October 1, 2003.

<sup>26</sup> The Ministry of Economic Development of the Kyrgyz Republic.

<sup>27</sup> Chapter 2 of the Law of the Kyrgyz Republic "On Investments in the Kyrgyz Republic".



- Recognition by public authorities and officials of the Kyrgyz Republic of all intellectual property rights of foreign investors;
- Freedom for the investor to choose within 10 years from the beginning of the investment activity (or within the term provided by the respective investment agreement) conditions most favorable for the investor, should investment, tax, customs legislation of the Kyrgyz Republic (with the exception of the Constitution of the Kyrgyz Republic, laws related to national security, health care, and environment protection) be amended;
- Other guarantees specifically provided in bilateral and multilateral international treaties on the promotion and protection of investment, to which the Kyrgyz Republic is a party.

According to the World Bank's Report Doing Business 2009, the Kyrgyz Republic ranks 11<sup>th</sup> out of 181 countries of the world in terms of investor protection.<sup>28</sup>

### **2.3 Settlement of Investment Disputes**

Under legislation of the Kyrgyz Republic,<sup>29</sup> investment dispute parties may agree on any judicial institution to settle their dispute; these institutions may include third-party courts located within or outside the Kyrgyz Republic, domestic or international arbitration. Should an agreement thereupon not be reached, the dispute is subject to settlement by the judicial bodies of the Kyrgyz Republic.

Wherever possible, investment disputes shall be settled by consultation between the parties. Should the parties fail to amicably settle their dispute within three months of the date of the first written request for such consultation, any investment dispute between an investor and public authorities of the Kyrgyz Republic will be subject to settlement by the judicial bodies of the Kyrgyz Republic.

Any of the parties may initiate a settlement by recourse to:

- The International Centre for Settlement of Investment Disputes under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States or procedures regulating use of additional means for the Centre's Secretariat hearing;<sup>30</sup> or
- Arbitration or a provisional international arbitration tribunal (commercial court) established under the arbitration procedures of the UN Commission for International Trade Law (UNCITRAL).

The International Court of Arbitration (ICA)<sup>31</sup> has been active in the Kyrgyz Republic since its establishment in 2003. The goal of the ICA is to render support to individuals and legal entities interested in out-of-court settlement of their disputes that arise from civil law relations, such as foreign trade and other international business relations, including investment disputes, on condition that a third party agreement (arbitration clause) empowers the ICA for this.

The ICA is represented by 163 experts from 23 countries, including 71 international arbitrators from the United States, Switzerland, France, Kazakhstan, Russia, Ukraine, Uzbekistan, the United Kingdom, Sweden, the Netherlands, Belgium, Finland, Moldova, Turkey, India, Croatia, Romania, Austria, Korea, Poland, Italy, Mongolia and other countries.<sup>32</sup>

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<sup>28</sup> <http://www.doingbusiness.org/ExploreTopics/ProtectingInvestors/Details.aspx?economyid=106>

<sup>29</sup> Article 18 of the Law of the Kyrgyz Republic "On Investments in the Kyrgyz Republic".

<sup>30</sup> The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 was ratified in 1997. However, ratifications have not been deposited.

<sup>31</sup> <http://www.arbitr.kg/>

<sup>32</sup> <http://www.arbitr.kg/index.php>

### 3. LEGAL STATUS OF FOREIGN NATIONALS

#### 3.1 Visa and Registration Requirements

Subject to legislation of the Kyrgyz Republic,<sup>33</sup> foreign nationals and stateless persons may enter the Kyrgyz Republic for temporary or permanent residence on the basis of a visa, temporary or permanent residence permit.

##### Visa Requirements and Visa-Free Travel

Initial issuance of all categories of visas is performed by diplomatic missions and consular offices of the Kyrgyz Republic.

Below is a list of the countries whose nationals are eligible to obtain Kyrgyz entry and exit visas from overseas diplomatic missions and consular offices of the Kyrgyz Republic and from consular offices in the republic at their personal request for a term of 1 month without the need to register with the bodies of the Ministry of Internal Affairs of the Kyrgyz Republic:<sup>34</sup>

- Australia, Austrian Republic, Kingdom of Belgium, Republic of Bulgaria, Bosnia and Herzegovina, Canada, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Estonian Republic, Finland Republic, French Republic, Federative Republic of Germany, Greek Republic, Hungarian Republic, State of Israel, Irish Republic, Republic of Island, Italian Republic, Republic of Korea, Lithuanian Republic, Latvian Republic, Principality of Liechtenstein, Grand Duchy of Luxembourg, Republic of Macedonia, Republic of Malta, Principality of Monaco, Republic of Montenegro, Kingdom of Netherlands, Kingdom of Norway, New Zealand, Republic of Poland, Portuguese Republic, Republic of Romania, Republic of Serbia, Republic of Slovenia, Singapore, Slovak Republic, Kingdom of Sweden, Swiss Confederation, Turkish Republic, United Kingdom of Great Britain and Northern Ireland, United States of America.

**Visa-free travel** possibilities are granted on the basis of international treaties to which the Kyrgyz Republic is a party. Nationals of the following countries may enter the Kyrgyz Republic visa-free:

- visa-free entry for holders of all categories of passports: Republic of Armenia, Azerbaijan Republic, Republic of Belarus, Republic of Cuba, Republic of Georgia, Japan, Republic of Kazakhstan (up to 60 days), Korean People's Democratic Republic, Malaysia (for business purposes or tourism for the period up to 1 month), Republic of Moldova, Mongolian People's Republic (up to 3 months), Russian Federation (up to 90 days), Republic of Tajikistan, Republic of Ukraine (up to 90 days), Republic of Uzbekistan (up to 60 days), Vietnam.
- visa-free entry into the Kyrgyz Republic for the term up to 1 month for nationals holding diplomatic and service passports: Chinese People's Republic, Hungarian Republic, Islamic Republic of Iran, Turkmenistan, and Republic of Uzbekistan.
- visa-free entry for nationals holding diplomatic passports: Austrian Republic, Kingdom of Belgium, Canada, Kingdom of Denmark, Finland Republic, French Republic, Federative Republic of Germany, Greek Republic, Republic of Iceland, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands, Kingdom of Norway, Portuguese Republic, Kingdom of Spain, Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

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<sup>33</sup> The Law of the Kyrgyz Republic "On External Migration" dated 17 July 2000 (with the latest amendments as of February 25, 2009).

<sup>34</sup> Resolution No. 87 of the Government of the Kyrgyz Republic dated February 7, 2009.

## Visa Categories

- Diplomatic (issued to foreign nationals holding diplomatic passports and entering the Kyrgyz Republic for official purposes or for transit travel through its territory);
- Service (issued to foreign nationals holding service passports and entering the Kyrgyz Republic for official purposes or for transit travel through its territory);
- Common (issued to foreign nationals entering the Kyrgyz Republic for business purposes);
- Investment (issued to prospective investors entering the Kyrgyz Republic with the intent to engage in investment activities and providing required supporting documentation that proves their production-related contribution of money and valuables into the economy of the Kyrgyz Republic of \$20,000 or more for one year, over USD 200 thousand for three years and over USD 500 thousand for 5 years);
- Tourist (issued to foreign nationals entering the Kyrgyz Republic as tourists);
- Work (issued to foreign nationals entering the Kyrgyz Republic for work);
- Study (issued to foreign nationals entering the Kyrgyz Republic for study);
- Private (issued to foreign nationals entering the Kyrgyz Republic for private purposes, such as visiting family and friends, undergoing medical treatment); and
- Permanent residence (issued to foreign nationals entering the Kyrgyz Republic for permanent residence).

Visas may be single-entry, double-entry, or multiple. A foreign national receiving a visa shall pay a state duty or a consular fee in the amount set forth in the respective resolution of the Government of the Kyrgyz Republic.<sup>35</sup>

## Residence Permit

Kyrgyz residence permit is a document allowing foreign nationals and stateless persons to temporarily or permanently reside or stay or enter or exit from the Kyrgyz Republic visa free.

Under Kyrgyz legislation<sup>36</sup>, foreign nationals or stateless persons residing in the Kyrgyz Republic for not less than 6 months may file with the bodies of the Kyrgyz Ministry of Internal Affairs closest to the place of location an application for residence permit.

Temporary residence permit is issued to foreign nationals or stateless persons in order to:

- work in the Kyrgyz Republic;
- study in an educational institution at the request of this educational institution and the Kyrgyz Ministry of Education and Science;
- pursue investment activities in the Kyrgyz Republic.

Temporary residence permit is issued to foreign nationals and stateless persons for a term of 1 year with the possibility of subsequent extension for not more than 5 years.

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<sup>35</sup> Resolution No. 521 of the Government of the Kyrgyz Republic dated July 18, 1994 (with the latest amendments as of September 17, 2007), Resolution No. 502 of the Government of the Kyrgyz Republic dated July 29, 2002 (with the latest amendments as of July 1, 2005).

<sup>36</sup> Regulation on procedure for issuing temporary and permanent residence permits to foreign nationals and stateless persons in the Kyrgyz Republic approved by Resolution No. 626 of the Government of the Kyrgyz Republic dated November 13, 2008.

The application for a temporary residence permit is generally reviewed within not more than 1 month.

Temporary residence permits are issued in the passport and visa control departments of the Ministry of Internal Affairs of the Kyrgyz Republic in the regional centers, Bishkek and Osh cities.

Permanent residence permits are issued to:

- those who have duly received Kyrgyz permanent residence permit, including those who returned to the Kyrgyz Republic, whose Kyrgyz citizenship has been terminated in accordance with law;
- those who permanently reside in the Kyrgyz Republic but have not received Kyrgyz citizenship or whose Kyrgyz citizenship has been terminated in accordance with law;
- foreign nationals or stateless persons permanently residing in the Kyrgyz Republic upon the attainment of 18 years of age.

Foreign nationals are issued permanent residence permits for a term of 5 years, but not longer than the foreign passport validity period, and upon the attainment of 45 years of age for the entire validity period of the foreign passport. Stateless persons are issued permanent residence permits for a term of 5 years, and upon the attainment of 45 years of age, for an unlimited term.

The application for a permanent residence permit is reviewed within 1 month from the date of filing the application.

The permanent residence permits are given out in the passport and visa control department of the Kyrgyz Ministry of Internal Affairs.

Upon receipt of the residence permit, foreign nationals or stateless persons must within 5 business days file for registration with the territorial subdivisions of the Kyrgyz Ministry of Internal Affairs that are closest to the place of temporary or permanent residence.

### **Registration Procedure**

Foreign nationals and stateless persons (except foreign nationals exempt from registration) entering the Kyrgyz Republic for the period of more than 5 business days, must register a place of residence with the territorial subdivisions of the Ministry of Foreign Affairs of the Kyrgyz Republic, the territorial subdivisions of the Ministry of Internal Affairs of the Kyrgyz Republic, or with a hotel.<sup>37</sup>

To work in the Kyrgyz Republic, foreign nationals or stateless persons must have a work permit. For more details on work permits for foreign nationals refer to Section 10.2.

### **3.2 Basic Rights, Freedoms, and Obligations of Foreign Nationals**

Foreign nationals within the territory of the Kyrgyz Republic generally enjoy the same rights and bear the same obligations as the nationals of the Kyrgyz Republic.

Foreign nationals are entitled to work when it is compatible with the purpose and timeframe of their visit to the Kyrgyz Republic, or when a respective permit has been issued.

Foreign nationals permanently residing in the Kyrgyz Republic are entitled to social services and healthcare, and may join public associations of non-political purposes on the same grounds as nationals of the Kyrgyz Republic unless otherwise provided in charters (bylaws) of such associations.

Foreign nationals have the same right to leisure as citizens of the Kyrgyz Republic, and have property and personal non-property rights and all other rights equivalent to nationals of the Kyrgyz Republic.

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<sup>37</sup> Article 8 of the Law of the Kyrgyz Republic “On External Migration”.

## **4. FORMS OF BUSINESS**

### **4.1 Branches and Representative Offices of Foreign Legal Entities**

Branches and representative offices of foreign companies do not belong to legal entities of the Kyrgyz Republic. They are endowed with property of legal entities that have founded them, and act on the basis of the approved bylaws. Legislation of the Kyrgyz Republic distinguishes between branches and representative offices. Functions of representative offices are limited to representation of a foreign legal entity and protection of its interests, performance of transactions and other legal actions on its behalf. Branches, on the other hand, are in the position to perform all functions of the foreign legal entity or part of these functions, including the function of representation.

Under the legislation of the Kyrgyz Republic,<sup>38</sup> branches and representative offices have the following rights and obligations:

- To open bank accounts and execute payments in any currency;
- To hire local employees;
- To hire foreign employees and obtain relevant work permits for them;
- To enter into any contractual relations with local and foreign companies and execute/assume liabilities under any agreements providing for payments in local or foreign currency; and
- To have permits for purchase or lease of immovable property.

Legislation of the Kyrgyz Republic provides for a number of restrictions with respect to branches and representative offices. Thus, a branch or a representative office may only exist as long as their parent company exists. A branch or representative office may not be licensed to perform certain types of activities or provide certain types of services.

#### **Registration of Branches and Representative Offices**

Branches and representative offices located within the territory of the Kyrgyz Republic, with the exception of branches and representative offices established within territories of free economic zones, are subject to mandatory registration.

Registration of branches and representative offices of foreign legal entities is carried out by the Ministry of Justice of the Kyrgyz Republic or its subdivisions. For the purposes of registration, a foreign legal entity must submit the following documents:<sup>39</sup>

- (i) Application for registration;
- (ii) Resolution of the authorized body of the foreign legal entity to establish the branch or representative office;
- (iii) Copy of the certificate of state registration (re-registration) of the legal entity;
- (iv) A legalized<sup>40</sup> extract from a registry or another document proving that the foreign legal entity is an operating legal entity under the laws of its country.

A permit of the National Bank of the Kyrgyz Republic is required for the establishment of a branch or representative office of a foreign bank.

#### **Liquidation of Branches and Representative Offices**

To liquidate a branch or representative office, the following documents need to be submitted to the registering authority:<sup>41</sup>

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<sup>38</sup> The Law of the Kyrgyz Republic “On Business Partnerships and Companies” dated November 15, 1996 (with the latest amendments as of January 19, 2009).

<sup>39</sup> Article 10 and 15 of the Law of the Kyrgyz Republic “On State Registration of Legal Entities, Branches (Representative Offices)” dated February 20, 2009.

<sup>40</sup> Document legalization is carried out by Kyrgyz consular offices to respective foreign states or, where no such consular offices exist, by the consular offices of the Republic of Kazakhstan and the Russian Federation.

- (i) Application for registration;
- (ii) Decision of the authorized body or court to liquidate the branch or representative office;
- (iii) Original of the certificate of registration (re-registration) of the branch or representative office;
- (iv) Bank statement(s) of closed account(s);
- (v) Internal affairs agency statement of surrender of seals and stamps of the branch/representative offices;
- (vi) Statement of no debt on tax issued by the subdivision of the Kyrgyz State Committee for Taxes and Charges; and
- (vii) Statement of no debt on insurance payments issued by the Social Fund of the Kyrgyz Republic.

Registration of branches and representative offices, as well as registration of their liquidation, are carried out by the Ministry of Justice of the Kyrgyz Republic and its subdivisions.

## 4.2 Legal Entities

A variety of organizational legal forms of legal entities exist in the Kyrgyz Republic, the most common being:

- ✓ Limited liability companies; and
- ✓ Joint stock companies (open or closed).

The key legal acts regulating activities of legal entities are the Civil Code of the Kyrgyz Republic,<sup>42</sup> the Law of the Kyrgyz Republic “On Business Partnerships and Companies”, and the Law of the Kyrgyz Republic “On Joint Stock Companies”.<sup>43</sup>

### Limited Liability Companies

A limited liability company (LLC) is one of the most widespread types of legal entities in the Kyrgyz Republic, having a number of advantages:

- Participants of an LLC are not liable for its obligations, and their risk of losses that may be incurred as a result of the company performance is limited to the amount of their respective contributions; and
- The structure and powers of management bodies of an LLC are not subject to detailed legislative regulation, therefore, management and decision making in an LLC is more flexible.

The minimum amount of an authorized fund of an LLC must not be lower than 100 soms (which, as of May 2009, is about USD 2.4).

It must be noted that, subject to legislation of the Kyrgyz Republic,<sup>44</sup> if the founding legal entity consists of one shareholder/participant, it may not act as the only founder/participant of an LLC.

The number of participants in an LLC may not exceed 30; otherwise the LLC must be reorganized into a joint stock company within 1 year. Should an LLC fail to comply with this requirement, it will be subject to liquidation by judicial procedure.

### Joint Stock Companies

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<sup>41</sup> Article 17 of the Law “On State Registration of Legal Entities, Branches (Representative Offices)”.

<sup>42</sup> Part I of the Civil Code of the Kyrgyz Republic dated May 8, 1996 (with the latest amendments as of February 20, 2009).

<sup>43</sup> The Law of the Kyrgyz Republic “On Joint Stock Companies” dated 27 March 2003 (with the latest amendments as of January 19, 2009).

<sup>44</sup> Article 128 of the Civil Code of the Kyrgyz Republic.



A joint stock company is another popular form of a legal entity as shareholders are not liable for the obligations of the company. Also, the risk of losses that they may incur as a result of the company performance is limited to the value of shares owned by the shareholders.

A joint stock company must issue shares in the national currency of the Kyrgyz Republic, regardless of the form of original contribution. In addition to shares, joint stock companies may issue other securities (such as debenture bonds) to raise working capital.

According to the legislation of the Kyrgyz Republic,<sup>45</sup> if a founding legal entity consists of one participant/shareholder it may not act as the only founder/participant of a joint stock company.

Authorized capital of a joint stock company may not be lower than 100,000 soms (which, as of March 2009, equals about USD 2,380). As of the date of founding, authorized capital must be completely paid in and distributed among founders.

Joint stock companies established in the Kyrgyz Republic may be either open or closed.

A closed joint stock company is a joint stock company whose shares may only be distributed among its founders or within another predetermined group. A closed joint stock company may not carry out a public/open placement of shares issued or otherwise offer them to an unlimited group of persons. The number of shareholders in a closed joint stock company may not exceed 50; should the number of shareholders in a closed joint stock company exceed 50, the company must be reorganized into an open joint stock company within 1 year. Upon expiry of this period, the company will be subject to liquidation by judicial procedure. Shareholders of a closed joint stock company have preemptive right to purchase shares offered for sale by other shareholders of the same company.

An open joint stock company is a joint stock company participants of which may alienate their shares without the consent of other shareholders. An open joint stock company may carry out open subscription to the shares it issues and may freely sell them on conditions established by law. An open joint stock company that has 500 shareholders or more and has carried out at least one public/open placement of securities must annually publish in the media an annual report on its financial and business performance.

### 4.3 Registration of Legal Entities

According to the World Bank's Report *Doing Business 2009*, the Kyrgyz Republic ranks 31<sup>st</sup> out of 181 countries in terms of the challenges of launching a business.<sup>46</sup> In order to improve the said international ranking, the Kyrgyz Government resolved to introduce a "one-stop-shop" mechanism that is designed to facilitate the procedure for registration of business entities.<sup>47</sup>

In the Kyrgyz Republic legal entities obtain the respective status upon their state registration with the Ministry of Justice of the Kyrgyz Republic or its subdivisions.

Registration of legal entities, branches or representative offices in the Kyrgyz Republic is based on "registration by notification" and "one-stop-shop" principle. State registration of a legal entity is performed within 3 business days from the date of filing necessary documents for a specified fee.

To be registered, a legal entity must submit the following documents:<sup>48</sup>

- (i) Application for registration;
- (ii) Decision of the founder(s) to establish a legal entity;
- (iii) Copy of the certificate of state registration (re-registration) of a legal entity;

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<sup>45</sup> Article 143 of the Civil Code of the Kyrgyz Republic.

<sup>46</sup> <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=106>

<sup>47</sup> Resolution No. 182 of the Government of the Kyrgyz Republic dated 23 April 2008.

<sup>48</sup> Articles 10 and 11 of the Law "On State Registration of Legal Entities, Branches (Representative Offices)".

- (iv) Legalized extract from a state registry or other document confirming that the foreign legal entity is validly existing under the laws of its country.

#### **4.4 Business Re-Organization and Restructuring**

Reorganization of a legal entity (consolidation, merger, division, separation, and transformation) may be performed by the decision of its founders/participants, by the decision of the body of the legal entity duly authorized by founding documents, or, in the case of banks, finance and crediting institutions (or other institutions for which the only permissible activity is the activity provided by their license) by decision of an authorized government body.

To restrict monopoly, legislation may provide for cases and procedures of mandatory restructuring of for-profit organizations subject to judicial procedure.

*A consolidation of legal entities* presupposes that the rights and obligations of each entity participating in the consolidation are transferred to the newly established legal entity according to a transfer deed.

*A merger* of a legal entity with another legal entity presupposes that the acquiring entity obtains the rights and obligations of the entity acquired according to a transfer deed.

*A division* of a legal entity presupposes that its rights and obligations are transferred to the newly established legal entities according to a division balance sheet.

*A separation* of one or more legal entities from the original legal entity presupposes that rights and obligations of the legal entity reorganized are being transferred to each of the entities according to a separation balance sheet.

In the case of transformation of a legal entity of a given type into a legal entity of another type (change in the organizational legal form of the entity), rights and obligations of the restructured legal entity are transferred to the newly established legal entity according to a transfer deed.

A transfer deed and a division/separation balance sheet are required for reorganization of a legal entity. They must contain provisions on legal successorship with respect to all liabilities of the legal entity reorganized. The transfer deed and division/separation balance sheet shall be approved by founders/participants of the legal entity or the authority that has taken the decision to reorganize, and shall be submitted together with the founding documents for state registration of the newly established legal entities or for amendment of the founding documents of existing legal entities.

In the case of restructuring a legal entity, its founders must inform its creditors in writing about the restructuring.

According to the legislation of the Kyrgyz Republic, in the cases of business entity reorganization specified in the anti-monopoly legislation of the Kyrgyz Republic, consent of the anti-monopoly authority of the Kyrgyz Republic is required for reorganization.

#### **4.5 Closure of a Business**

Liquidation of a legal entity entails cessation of its activities without transfer of its rights and obligations to any other persons.

A legal entity may be liquidated:

- ✓ By the decision of its founders/participants or by the decision of the legal entity's body duly authorized for it by founding documents, including cases where such liquidation is caused by expiration of the term for which the entity has been established, the achievement of purposes



for which it has been established, or by a court decision on invalidity of the legal entity's registration due to irremediable violations committed in the course of its establishment; or

- ✓ By a court decision in cases where the entity has acted in the absence of the required permit/license, has engaged in the activities prohibited by law, or has committed other repeated or gross violations of law or continuously engaged in activities that contradict its charter purposes; in cases of revocation of a license of a bank, financial/lending institution, or institution for which the only allowed activity is the activity provided in its license; and in other cases stipulated by law.

A bank or another financial/lending institution licensed by the National Bank of the Kyrgyz Republic may be liquidated in the case of revocation of its banking license, taking into account specific provisions applying to banks and other financial/lending institutions.

A legal entity's body or the court that made a decision to liquidate the legal entity must notify this to the registration authority within 3 business days by sending a written notice together with the copy of the decision directing to liquidate the legal entity and to elect (appoint) the liquidation committee (liquidator).<sup>49</sup> To register its dissolution, the legal entity must submit to the registration authority the following documents:

- (i) Application for deregistration;
- (ii) Legal entity or court decision directing to liquidate the legal entity and to elect (appoint) the liquidation committee (liquidator);
- (iii) Original of the certificate of state registration (re-registration) of a legal entity;
- (iv) Social Fund statement of no debt on insurance payments
- (v) Statement of no debt on tax issued by the subdivision of the Kyrgyz State Committee for Taxes and Charges;
- (vi) Bank statement of closed account(s);
- (vii) Internal affairs agency statement of surrender of seals and stamps;
- (viii) Liquidation balance sheet marked as accepted by the subdivision of the Kyrgyz State Committee for Taxes and Charges;
- (ix) Kyrgyz State Archives Agency statement of repositioning the documents of the liquidated legal entity.

According to the World Bank's Report *Doing Business 2009*, the Kyrgyz Republic ranked 137<sup>th</sup> out of 181 countries in terms of time and cost required to close a business.<sup>50</sup> In order to improve the said ranking, the Kyrgyz Government resolved to develop recommendations regarding facilitation of procedures for company liquidation or bankruptcy.<sup>51</sup>

#### **4.6 Business Activities Without Establishment of a Legal Entity**

Under Kyrgyz law<sup>52</sup>, a business can be organized as a legal entity or its branch, or as a sole proprietorship, which is a non-corporate form of doing business. Nationals of the Kyrgyz Republic, foreign nationals, and stateless persons permanently or temporarily residing within the territory of the Kyrgyz Republic may do business as sole proprietors.

Such form of business organization is not only attractive due to its simplified structure, state registration requirements and accounting procedures, but is also risky in terms of unlimited property liability for business obligations.

Under Kyrgyz law, a business can be operated as a sole proprietorship in two ways:

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<sup>49</sup> Article 13 of the Law "On State Registration of Legal Entities, Branches (Representative Offices)".

<sup>50</sup> <http://www.doingbusiness.org/ExploreEconomies/?economyid=106>

<sup>51</sup> Resolution No. 126 of the Government of the Kyrgyz Republic dated April 4, 2008.

<sup>52</sup> Regulation on procedure of state registration of sole proprietors in the Kyrgyz Republic approved by Government Resolution No. 404 of July 2, 1998.

- based on a certificate of state registration as a sole proprietor;
- based on a patent.

A certificate of state registration as a sole proprietor is issued by the territorial subdivisions of the Kyrgyz National Statistics Committee that are closest to the place of residence of a sole proprietor.

Once registered as a sole proprietor, it is necessary to apply for registration as a taxpayer or social insurance payer with the respective subdivisions of the Kyrgyz State Committee for Taxes and Charges and the Social Fund.

When running his business, a sole proprietor must keep simplified accounting books reflecting income gained and expenses incurred. Income and expenses shall be recorded in a special Income and Expenditure Log that must be numbered, laced, sealed, and registered with the territorial subdivisions of the Kyrgyz State Committee for Taxes and Charges.

Sole proprietors may engage in entrepreneurial activities without the need to register with the territorial offices of the Kyrgyz National Statistics Committee, provided that they operate on the basis of a patent, if the respective business activities are included in the conclusive list of patent-based activities<sup>53</sup> or if such activities are subject to mandatory taxation on a patent basis<sup>54</sup> (for more detail on patenting refer to Section 6.11).

A patent is a document issued by the Kyrgyz State Committee for Taxes and Charges and proving payment of the respective tax by individuals by place of their registration (permanent residence) or business activity. Thus, a sole proprietor operating on the basis of a patent is not required to report to tax authorities and only needs to purchase a patent and then keep extending its validity period. The patent validity period varies from 1 month to 1 year.

A patent holder is not required to keep record of income and expenses in connection with the activities stated in the patent during the patent validity period, nor is he required to pay income tax on this income, nor is he required to include the above income in the aggregate annual income when declaring his income at the end of the year, as is required by law for a sole proprietor operating on the basis of the certificate of state registration.

Thus, the law sets forth both voluntary and mandatory patenting procedures depending on the type of business. However, if a sole proprietor operating on the basis of a patent receives income, which, during a calendar year, exceeds a threshold for VAT registration (for more detail refer to Section 6.3), a tax authority must stop issuing patents and require this sole proprietor to register for VAT and to receive a certificate of registration as a sole proprietor.

A sole proprietor may terminate its operation on the basis of his own application or court decision. In which case, termination is performed in accordance with the company liquidation rules.

#### **4.7 Free Economic Zones**

Free economic zones (the FEZ) are the zones where foreign economic and business activities<sup>55</sup> are subject to preferential legal treatment.

Companies working in free economic zones enjoy the following benefits and preferences:

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<sup>53</sup> Resolution No. 733 of the Government of the Kyrgyz Republic dated December 30, 2008 (with the latest amendments as of March 3, 2009).

<sup>54</sup> Resolution of the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic No. 3 418-II of June 29, 2001 (with the latest amendments as of December 26, 2003).

<sup>55</sup> The Law of the Kyrgyz Republic “On Free Economic Zones in the Kyrgyz Republic” dated 16 December 1992 (with the latest amendments as of October 17, 2008).

- Partial exemption from all taxes, dues, fees, and charges, for the entire period of activities within the free economic zone;
- Allocations in the amount of 0.1 to 2% from the annual proceeds from goods and services to the General Directorate of the free economic zone for the tax and other benefits enjoyed within its territory;<sup>56</sup>
- Complete exemption from customs duties on export of merchandise produced in the free economic zone, on import of merchandise into the free economic zone, and on merchandise for re-export;
- For merchandise produced within the territory of a free economic zone with the purpose of further export - exemption from quotas (with the exception of export into the customs territory of the Kyrgyz Republic, where volume of export may not exceed 30% of the total annual volume of merchandise produced within the free economic zone) and exemption from licensing;
- Simplified entry and exit procedure for foreign employees;
- Simplified and accelerated registration of a business entity;
- Simplified customs procedures; and
- Direct access to major infrastructure objects, including telecommunications, water supply, power supply, and transportation, in the course of activities within the territory of a free economic zone.

Companies registered in free economic zones may not:

- Sell within territories of free economic zones of the Kyrgyz Republic petroleum, oil and lubricant materials, spirits and liqueurs, or tobacco products to individuals or legal entities other than the free economic zone subjects; and
- Sell merchandise produced in a free economic zone in the domestic market of the Kyrgyz Republic in cases where value added within the territory of the free economic zone does not exceed 30% (15% for electronics and household appliances).

Companies interested in operating in a free economic zone must be registered in it. Procedure for registration of business entities with foreign interest is established by the General Directorate of a free economic zone.

Currently, the following 4 free economic zones function within the territory of the Kyrgyz Republic: the *Bishkek* FEZ, the *Maimak* FEZ, the *Naryn* FEZ, and the *Karakol* FEZ.<sup>57</sup>

At present, the Kyrgyz Government considers establishing a working group to consider the efficacy of FEZ and to improve FEZ legislation. The current legislation will be modified to reflect changes in regulating territorial issues, management structure of FEZ, sale of products manufactured in FEZ, etc.

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<sup>56</sup> For more detail on FEZ taxation refer to Section 6.11.

<sup>57</sup> Resolutions of the Government of the Kyrgyz Republic No. 160 dated April 19, 1993 (with the latest amendments as of June 29, 2007), No. 13 dated January 12, 1994 (with the latest amendments as of August 11, 1994), No. 474 dated November 11, 1995 (with the latest amendments as of September 26, 2008), No. 357 dated June 20, 1997.

## 5. LICENSES AND PERMITS

### Legislation

Licensing is regulated by the Law of the Kyrgyz Republic “On Licensing”.<sup>58</sup> Banks, financial/lending institutions, and other institutions regulated by the National Bank of the Kyrgyz Republic are licensed subject to special laws<sup>59</sup> to the extent not inconsistent therewith.

Licenses are issued on equal conditions and grounds to all persons (including stateless persons), regardless of form of property, agency interests, or business location. The exception is activities related to state monopoly.

Licensing is only needed to engage in activities that are subject to licensing under legislation and are not restricted due to reasons of national security, state monopoly, law enforcement, or protection of the environment, property, life and health of citizens. Under the legislation of the Kyrgyz Republic, the following activities are subject to mandatory licensing:

- Search for, exploration and mining of mineral deposits;
- Design, construction (building) and use of hazardous production facilities;
- Construction of dams on rivers and water reservoirs;
- Hunting and capturing of birds included in the list approved by the government of the Kyrgyz Republic;
- Production and sale of drugs, vaccines and serums, medicines and medical equipment (with the exception of cases provided by legislation), perfumery, cosmetics, and chemicals (with the exception of trade companies selling soap, detergents, perfume and cosmetics on the basis of quality certificates of production companies);
- Production of beer, wine, champagne, liquors, vodka, cognac, and ethanol;
- Private medical and veterinary practice;
- Foundation and operation of gambling establishments, organization of gambling;
- All types of aviation work, acceptance and deployment of civil aircrafts, technical maintenance of aircrafts and their equipment within the territory of the Kyrgyz Republic;
- Urban planning, research and design of residential, public and production premises and structures;
- Construction and assembly jobs, with the exception of construction of individual residential houses;
- Private detective and security services;
- Banking operations, cash exchange transactions with foreign currency, services related to the execution of electronic payments, pawn shop activities, credit union activities, activities of legal entities raising money of individuals on conditions of repayment within an established term with interest;
- Professional securities services;
- Insurance activities;
- Activities of non-governmental pension funds;
- TV and radio broadcasting activities, including creation and transmission of programs and broadcasts;
- Activities in the field of postal and electric communication, data transfer, broadcast of television and radio programs, use of radio frequency specter or cable devices, including design, production, construction, and installation of required networks, lines, structures, systems, and facilities (with the exception of communications for use within a production facility), except for TV and radio broadcasting activities;
- Trade in alcoholic beverages;

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<sup>58</sup> The Law of the Kyrgyz Republic “On Licensing” dated March 3, 1997 (with the latest amendments as of November 20, 2008).

<sup>59</sup> For more information on banking refer to Section 9.

- Production, transfer, distribution, sale of electric power and heating energy and natural gas; oil and natural gas processing;
- Construction of electric power stations, substations and electric power lines;
- Auditing;
- Education, regardless of the level of education and form of ownership (with the exception of state education institutions offering pre-school, primary, basic, and secondary education programs);
- Import, development, production and sale of explosive and pyrotechnic materials and substances;
- Production, repair, and trade in weapons and ammunition;
- Design, manufacture and sale of military products and services;
- Mandatory certification works;
- Production and sale of virulent, poisonous, and radioactive substances;
- Utilization, placement, disposal and burial of toxic waste, including radioactive waste
- Transportation (including trans-boundary transportation) of toxic waste;
- Administration of bankruptcy procedures;
- Legal practice (private notary services and advocacy);
- Passenger and cargo transportation (with the exception of taxi cabs) and international cargo transportation by trucks, air, water, and railroad (with the exception of special, service and technology transportation, and transportation required for performance of activities for which a respective license has been issued); operation of bus stations and bus ticket offices;
- Collection and transportation of cash and valuables; and
- Customs-related services (customs transporter, owner of temporary storage facilities, owner of a duty-free shop, customs broker);
- Real estate services.

### **Licensing Authorities**

Licenses are issued by authorized government bodies (licensors) responsible for the supervision of licensed activities. The list of public authorities in charge of licensing is set forth by legislation and by the Government of the Kyrgyz Republic.

Licenses issued in other countries are recognized within the territory of the Kyrgyz Republic when a respective international treaty provides for it.

### **License Issuance**

To obtain a license, an applicant shall submit to the relevant public authority the following documents:

- standard application;
- documents confirming the applicant's compliance with the respective legal requirements;<sup>60</sup>
- documents confirming the payment of application and license processing fees; and
- copy of the certificate of state registration of a legal entity.

A licensor may not demand from the applicant any documents other than those provided by the regulation on licensing of this business.<sup>61</sup> All documents submitted for the purposes of obtaining a license shall be duly registered by the licensing authority.

Licenses shall be issued for a fee within one month from the date of applying. The fee may not exceed 300 soms (about USD 7.1 as of March 2009). The license renewal fee is equivalent to 1 calculation index.

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<sup>60</sup> A specific list of documents for each specific activity.

<sup>61</sup> Regulation on Licensing of Certain Business Activities (with the latest amendments as of October 3, 2008) approved by Resolution No. 260 of the Government of the Kyrgyz Republic dated May 31, 2001 (with the latest amendments as of August 27, 2007).

## 6. TAXES AND CHARGES

Taxation in the Kyrgyz Republic is regulated by the Tax Code of the Kyrgyz Republic<sup>62</sup> and sublaws (resolutions, regulations, instructions, orders). The authorized agency responsible for the supervision over the full and timely payment of taxes is the State Committee on Taxes and Charges of the Kyrgyz Republic.

Mandatory charges include insurance payments to the Social Fund of the Kyrgyz Republic regulated by the Law «On State Social Insurance»,<sup>63</sup> other laws and sublaws, and waste removal fees regulated by the Law “On Non-tax Payments”<sup>64</sup> and sublaws. The authorized agency responsible for control over the payment of waste removal fees is the State Committee on Taxes and Charges of the Kyrgyz Republic.

### Types of Taxes

In October 2008, the new Tax Code was enacted and took effect on January 1, 2009. One of its main distinguishing features is that the number of taxes has been reduced from 16 to 8.

Thus, nowadays, there are following taxes administered in the Kyrgyz Republic.

#### National taxes are:

- Profit tax
- Income tax
- Value added tax
- Excise tax
- Subsoil use tax
- Sales tax

#### Local taxes are:

- Land tax
- Property tax

For taxation purposes, legal entities are divided into domestic and foreign entities.<sup>65</sup> Domestic entities are legal entities organized under the laws of the Kyrgyz Republic, and foreign entities are corporations, companies, firms, foundations, institutions or other formations organized under the laws of a foreign state, or international organizations. Foreign entities, in their turn, are divided into foreign entities operating through a permanent establishment in the Kyrgyz Republic,<sup>66</sup> and foreign entities not operating through a permanent establishment in the Kyrgyz Republic.

#### *Foreign entities operating through a permanent establishment in the Kyrgyz Republic*

A foreign entity operating through a permanent establishment in the Kyrgyz Republic becomes a taxpayer along with domestic entities and, as a rule, operates through a subsidiary or branch or representative office created in the Kyrgyz Republic.

Permanent establishment is a permanent place of business through which a foreign entity operates fully or partially and covers:

- Management headquarters;
- Division;

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<sup>62</sup> The Tax Code of the Kyrgyz Republic dated June 26, 1996 (with the latest amendments as of May 19, 2008).

<sup>63</sup> The Law of the Kyrgyz Republic “On State Social Insurance” of June 17, 1996 (as last amended March 20, 2008).

<sup>64</sup> The Law of the Kyrgyz Republic “On Non-tax Payments” of April 14, 1994 (as last amended October 17, 2008).

<sup>65</sup> Article 22 of the Tax Code of the Kyrgyz Republic.

<sup>66</sup> Article 25 of the Tax Code of the Kyrgyz Republic.



- Office;
- Factory;
- Workshop;
- Mine, oil or gas well, quarry or any other mineral mining sites;
- Land plot;
- Construction site, or building or assemblage facility, or relevant works supervision services (if such site or facility exists for 183 or more calendar days, or if such services are provided for 183 or more calendar days within any 12-month period);
- Installation or structure used in the exploration of mineral resources, or supervision services, or drilling installation or ship used to explore mineral resources (if such use lasts for 183 or more calendar days or if such services are provided for 183 or more calendar days within any 12-month period);
- Rendering of services including consulting services rendered by a non-resident through personnel hired by this non-resident (if such personnel conduct such activities in the territory of the Kyrgyz Republic during 183 or more calendar days within any 12-month period).

*Foreign entities not operating through a permanent establishment in the Kyrgyz Republic*

If a foreign entity is not operating through a permanent establishment in the Kyrgyz Republic, but it derives income from the sources located within the Kyrgyz Republic, for taxation purposes, it is treated as a foreign entity not operating through a permanent establishment in the Kyrgyz Republic. In this case, an individual or legal entity paying income to such foreign entity must assess, withhold, and transfer to the budget the amount of tax on income received from a source in the Kyrgyz Republic by a foreign entity not operating through a permanent establishment in the Kyrgyz Republic<sup>67</sup>, without deductions at the following rates:

- 5% charged on insurance payments under insurance agreements or risk re-insurance agreements (except mandatory insurance agreements), income from international telecommunication or international transportation services between the Kyrgyz Republic and other countries;
- 10% charged on dividends, interests, insurance payments under mandatory insurance or reinsurance agreements, royalties, fees for management, consulting and other services and works.

## **6.1 Profit Tax**

**Payers** of profit tax include domestic entities, foreign entities operating through a permanent establishment in the Kyrgyz Republic, sole proprietors, individuals and legal entities paying income from a source in the Kyrgyz Republic to foreign entities not operating through a permanent establishment in the Kyrgyz Republic.

**Object of taxation** is the income received from business activities by:

- ✓ a domestic entity or sole proprietor from a source within or outside the Kyrgyz Republic;
- ✓ a foreign entity or non-resident physical person operating through a permanent establishment in the Kyrgyz Republic from a source in the Kyrgyz Republic.

**Taxable base** is the profit calculated as a positive difference between a taxpayer's gross annual income and expenses deductible under tax law as assessed for the tax period.

*Gross annual income* includes all types of income identified in accordance with the accounting rules set forth in Kyrgyz law, as well as:

- proceeds from sale of goods, works, or services, except proceeds from sale of fixed assets included in tax group for tax depreciation purposes;

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<sup>67</sup> Tax on the income from a source in the Kyrgyz Republic received by a foreign entity not operating through a permanent establishment in the Kyrgyz Republic is treated as a variety of the profit tax.

- gain from sale of non-depreciable assets, including gain from sale of materials or other property remained after the dismantling or liquidation of non-operating fixed assets;
- gain from the consent to limit or stop business activities;
- value of gratuitously received assets;
- excess of a positive foreign exchange rate over a negative foreign exchange rate;
- interest income;
- dividends;
- royalty;
- income from remunerations and compensations paid as the company management fee;
- income from lease of movable or immovable property;
- income from appreciation of value upon sale of movable or immovable property not used in business activities, except a sole proprietor's property included in standard income tax declaration;
- income from sale of: (a) shares of stock, less the cost of acquisition; (b) derivative securities; (c) debt securities without coupon less the cost of acquisition subject to discount depreciation and/or bonus as of the date of sale; (d) other property law objects treated as securities in accordance with Kyrgyz law less the cost of acquisition;
- subsidies;
- negative values of tax assessment for a group of depreciated assets as of the end of the tax period;
- value of excessive assets revealed as a result of inventory taking;
- income from termination of taxpayer's obligations arising as a result of: (a) writing off of obligations by the creditor; (b) writing off of obligations upon expiration of the period of limitation set forth by Kyrgyz civil law; (c) writing off of obligations by court decision; (d) discharge of an obligation by a taxpayer, including discharge of a tax obligation by a third party;
- income from assignment of claim of debt;
- insurance proceeds (compensations) under insurance agreements except compensation of insurance proceeds under fixed assets insurance agreements;
- excess of income over expenses arising in connection with the operation of social infrastructure facilities.

Gross annual income does not include *non-taxable income* including:

- value of property received as a share input and/or contribution to the charter capital, and income from sale of a participating interest in a company;
- value of facilities (to be used for social, cultural, housing, communal or household purposes, roads, electric networks, substations, boiler rooms, heating networks, water intakes facilities, mining equipment, civil defense facilities) gratuitously transferred to specialized organizations engaged in use and operation of the said facilities for their intended purpose, value of fixed assets gratuitously transferred to enterprises, institutions and organizations and money used as capital investments to develop their own production base by decision of the Kyrgyz Government or local authorities;
- received by non-profit organizations:
  - a) membership and entrance fees;
  - b) humanitarian aid and grants, provided that they are used only for the purposes stated in the charter;
  - c) value of gratuitously received assets provided that they are used only for the purposes stated in the charter;
  - d) fee for technical maintenance of multi-apartment houses and servicing buildings and structures;
  - e) fee for irrigation water supplied by water user associations to their members in the framework of the activity stated in the charter;
- dividends received by taxpayers on income from participation in local companies;
- value of property received by general partnership as contributions of partners;
- value of property in trust management;
- gain in value of treasury shares (excess over par value);
- gain in value of sold treasury shares;



- interest and gain in value of securities listed on the stock exchanges in the highest and following the highest listing categories on the date of sale.

*Expenses deductible from the gross annual income include:*

- expenses incurred in connection with interest paid on credits and loans;
- expenses incurred in the process of scientific research, construction, research and design works;
- fixed asset depreciation amounts;
- expenses incurred in connection with the repair of fixed assets;
- state social insurance payments;
- losses incurred in connection with the sale of securities;
- provision for probable losses and bank allocations to Deposit Insurance Fund;
- expenses of the charity;
- personnel training and re-training expenses;
- business trip expenses;
- representation expenses;
- other income generating expenses.

Tax legislation sets forth a list of *expenses not deductible from the gross annual income*, including:

- tax sanctions, penalties and default interests paid to the national budget and to the Social Fund of the Kyrgyz Republic;
- taxes, except land tax, property tax, subsoil use tax, and value added tax not subject to set off;
- expenses incurred in connection with the purchase, operation or maintenance of any property income from which is not taxable according to the Tax Code of the Kyrgyz Republic;
- any expenses incurred for another person, except those representing payments for the services rendered or dictated by the production necessity as confirmed by a documentary evidence;
- amount of natural losses above standards established by normative legal acts effective in the Kyrgyz Republic;
- expenses that are not capable of being identified by supporting documents except in cases specified by the Tax Code of the Kyrgyz Republic;
- amounts of non-income generating expenses;
- expenses incurred to generate income not subject to profit tax;
- some other types of expenses.

**The rate** of profit tax is 10%.

## 6.2 Income Tax

**Payers** of income tax are physical persons who are Kyrgyz citizens, resident physical persons who are non-Kyrgyz citizens, non-resident physical persons who are non-Kyrgyz citizens and who receive income from a source in the Kyrgyz Republic, and physical or legal persons paying income from a source in the Kyrgyz Republic to physical persons.

**Object** of taxation is economic activity, excluding business activity, resulting in income generated:

- ✓ from a source within and/or outside the Kyrgyz Republic – in respect of Kyrgyz citizens and resident physical persons who are non-Kyrgyz citizens;
- ✓ from a source within the Kyrgyz Republic – in respect of non-resident physical persons who are non-Kyrgyz citizens.

**Tax base** is income estimated as the difference between the gross annual income, received by a taxpayer over the tax period, and deductions required by Kyrgyz tax legislation, but in any case representing not

less than a minimum estimated income for the income tax period annually set by the Kyrgyz State Committee on Taxes and Charges.<sup>68</sup>

**The rate** of income tax is 10%.

### 6.3 Value Added Tax

Value added tax (VAT) is a form of withdrawing to the budget of the part of the value of all VAT-taxable supplies within the territory of the Kyrgyz Republic, including taxable import supplies into the Kyrgyz Republic.

**Payers** of VAT are taxable entities<sup>69</sup> and/or entities performing taxable import operations.

Under Kyrgyz tax legislation, an entity is subject to taxation if it has been or must be registered for VAT. A business entity must register for VAT if, during 12 consecutive months or less, it has been making taxable supplies of goods, works or services in the territory of the Kyrgyz Republic for the amount exceeding 4 million soms (about USD 95.2 as of March 2009).<sup>70</sup> The entity which is not required to register for VAT may register for VAT voluntarily.

**The object** of VAT taxation includes:

- ✓ taxable supplies; and
- ✓ taxable import.

**Taxable supplies.** Under Kyrgyz tax law, taxable supplies include the following supplies except non-taxable supplies made by a taxable entity:

- supplies of goods in the territory of the Kyrgyz Republic;
- supplies of works and services in the Kyrgyz Republic for a fee;
- export of goods from the Kyrgyz Republic.

Taxable supplies are subject to 12% VAT, except VAT taxable supplies subject to a zero rate or 20% or 10% VAT rate.

*Zero VAT* taxable supplies include the following:

- export of goods, except export of gold alloy and refined gold;
- international carriage of passengers, luggage and cargos, except carriage by rail;
- transit flights and related international carriage catering services, except international carriage by rail.

*20% VAT* taxable supplies made by taxable entities from January 1, 2009 include supplies of:

- residues of material resources as of January 1, 2009 acquired and produced during the period starting on the date this entity was registered for VAT and ending December 31, 2008;
- goods brought across the border of the Kyrgyz Republic before January 1, 2009.

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<sup>68</sup> Rates of minimum monthly estimated income used to calculate income tax on salary for the year 2009 are approved by Order 137 of the Kyrgyz State Committee on Taxes and Charges dated December 17, 2008.

<sup>69</sup> According to Article 4 of the Kyrgyz Tax Code, entity means physical person, sole proprietor, organization, isolated subdivision, or permanent establishment, engaged in economic activities irrespective of legal structure, subordination or type of ownership.

<sup>70</sup> Resolution of the Government of the Kyrgyz Republic dated 28 December 2007 № 628. A threshold for business entities engaged in production and sale of flour, bread and bakery products is 5 million soms (about 119 thousand US dollars as of 2009).

10% VAT taxable supplies include supplies of grain and flour made by taxable entities before January 1, 2010.

**Taxable import.** Taxable import means import of goods into the customs territory of the Kyrgyz Republic, except for import of VAT exempt goods.

Supplies of goods brought across the border of the Kyrgyz Republic before January 1, 2009, related to taxable import, are subject to 20% VAT. Import of grain and flour to the Kyrgyz Republic made before January 1, 2010 is subject to 10% VAT. All other supplies of goods treated as taxable import are subject to 12% VAT.

Thus, if an entity is registered or is required to register as VAT payer, such entity must pay tax both on taxable supplies and on taxable import. If an entity is not registered nor is required to register as VAT payer, such entity must pay VAT on taxable import only.

**Exempt supplies** include *exempt* supplies and supplies *outside the scope of VAT*. Kyrgyz tax legislation sets forth a list of exempt supplies, including:

- supply of land, except allocation of trading spaces and parking areas;
- supply of residential buildings and premises, except lease of inns, boarding houses, resort and health centers;
- supply by an agricultural producer of its own agricultural products;
- supply by an entity of goods (except excisable goods), berries, fruits and vegetables, industrially processed by this entity;
- supply of goods, works and services of food and processing enterprises (except excisable goods used in production) processing local agricultural raw products for a term of 3 years according to the list approved by the Kyrgyz Government;
- supply of public utilities to a physical person for household purposes;
- supply of own goods, works, or services by correctional institutions and enterprises of the Kyrgyz penal system;
- supplies of fixed assets under a financial lease agreement;
- supply of prosthetic and orthopedic items, supply of specialized goods for handicapped persons according to the list determined by the Kyrgyz Government and supply of medications;
- supply of financial services (assessing and charging interest on credits and loans, extending credits and loans, issuing sureties and/or guarantees, including bank guaranties envisaging performance in monetary form, loan, credit or credit guaranty management by creditors; deposit operation, opening and maintaining bank accounts of organizations and physical persons including correspondent bank accounts; payment, transfer, debt obligations, cheques and commercial negotiable instruments and encashment operations; opening and maintaining metal accounts of physical persons and organizations reflecting a physical amount of refined precious metals belonging to this person; currency, banknote and legal tender operations, except golden coins and collection samples; stocks, bonds and other securities operations, payment cards and excise stamps operations, except custody services; operations involving participating interests in capital of business partnerships and companies; management of investment funds; clearing operations, including collection, verification, sorting and confirmation of payments, and offsetting of debts and determining clear positions of clearing participants such as banks and organizations performing certain banking operations; opening and maintaining letters of credits);<sup>71</sup>
- supply of insurance, coinsurance and reinsurance services;
- supply of pension processing and payment services, and pension funds property management, except lease of property;
- passenger carriages in the territory of the Kyrgyz Republic, except carriages by car with less than 6 passenger seats;
- international passenger, luggage and cargo carriages by rail;

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<sup>71</sup> Article 243 of the Tax Code of the Kyrgyz Republic.

- supply of roaming services, interconnect services by Kyrgyz providers to customers of foreign providers, and supply of telecommunication services along international transit traffic by Kyrgyz providers to customers of foreign providers;
- supply of text books, reading books, scientific, belletristic literature, magazines, children's literature published in state (Kyrgyz) language;
- supply of services of processing goods imported in the customs territory of the Kyrgyz Republic and subject to customs treatment entitled "Processing of goods in the customs territory" and "Processing of goods under customs control";<sup>72</sup>
- supply of state property through privatization;
- supply of services by charitable organizations for charitable purposes in accordance with Kyrgyz law on sponsorship and charity;<sup>73</sup>
- supplies to social security, child and low-income aged people protection services, and supplies in the sphere of education, medicine, science, culture, and sport made for a fee not exceeding expenses related to such supplies;
- gratuitous transfer of socio-cultural, housing and household utilities facilities, roads, power networks, substations, boiling rooms, heating networks, water intake structures, mining equipment, civil defense facilities, by specialized organizations using and operating said facilities for their intended purpose by decision of the Kyrgyz Government or local self-governance authorities;
- supply by government and municipal authorities of ritual goods and rendering of ritual services to the public related to burial or funeral;
- supply of mineral fertilizers, chemical plant protection means, animal vaccines and medications according to the list established by the Kyrgyz Government;
- supply to a local agricultural producer of agricultural machinery manufactured at Kyrgyz enterprises according to the list approved by the Kyrgyz Government;
- supply and export of golden alloy and refined gold;
- import of securities, standard forms of passports and ID cards of Kyrgyz citizens; specialized goods for handicapped persons according to the list approved by the Kyrgyz Government; textbooks and school stationery, as well as scientific publications according to the list approved by the Kyrgyz Government; goods exempt from VAT within tax treatments defined by Kyrgyz customs legislation (for example: transit, re-export); scientific equipment of geological (geophysical, geodesic) expeditions for seismic acquisition; excise stamps, control (latent) stamps and currency, except those used in numismatics; goods used as aids in rescue efforts following disasters and military conflicts; goods supplied as humanitarian aid and grants in the manner specified by the Kyrgyz Government; goods to be officially used by diplomatic missions and consular offices of foreign states and international organizations, including their family members, in accordance with international treaties; infant food according to the list approved by the Kyrgyz Government; natural gas; medications; pedigree agricultural animals and seed materials, mineral fertilizers and chemical plant protection means, as well as animal vaccines and medications according to the list approved by the Kyrgyz Government;<sup>74</sup>
- import of fixed assets by business entities registered for VAT directly for their own operational purposes;<sup>75</sup>
- export of works and services.

All other supplies not included in the list of taxable supplies, taxable import or exempt supplies are treated as supplies falling outside the scope of VAT. For example, sale of an enterprise or an independently operating part thereof by one VAT payer to another VAT payer or entity becoming a VAT

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<sup>72</sup> Chapter 16 and 17 of the Kyrgyz Republic Customs Code dated July 12, 2004 (with the latest amendments as of October 17, 2008).

<sup>73</sup> The Kyrgyz Republic Law "On Sponsorship and Charity" dated November 6, 1999.

<sup>74</sup> Articles 257-258 of the Tax Code of the Kyrgyz Republic.

<sup>75</sup> In accordance with Article 259 of the Tax Code of the Kyrgyz Republic, exemption from VAT for import of fixed assets extends only to fixed assets classified in certain commodity positions.

payer at the moment of transfer;<sup>76</sup> or transfer of goods from a taxpayer to its agent except when goods are transferred by a taxpayer to an agent as the agent's remuneration.<sup>77</sup>

#### 6.4 Excise Tax

**Payers** of excise tax are entities manufacturing excisable merchandise, including on a give-and-take basis, within the Kyrgyz Republic, and/or importing excisable merchandise to the Kyrgyz Republic such as:<sup>78</sup>

- ethyl alcohol;
- malt beer;
- alcoholic drinks;
- mixtures of alcoholic and non-alcoholic drinks;
- tobacco products;
- jewelry and other items or their parts made of precious metals or metals plated with precious metals;
- oil and oil products.

**The objects of taxation** are:

- ✓ manufacture in the Kyrgyz Republic or import to the Kyrgyz Republic of excisable merchandise;
- ✓ retail sale in the Kyrgyz Republic of jewelry and other items or their parts made of precious metals or metals plated with precious metals.

**Tax base** includes:

- physical volume of excisable merchandise; and/or
- sale price of excisable merchandise, exclusive of VAT; and/or
- customs value of excisable merchandise determined in accordance with the Tax Code of the Kyrgyz Republic; and/or
- merchandise market price exclusive of VAT at the time of transfer by a manufacturer of excisable merchandise as an in-kind payment or gift at the time of transfer of title to pledged merchandise to the pledgee or at the time of exchange operation on a free-of-charge basis.

**Basic rates of excise tax** are approved by the Tax Code of the Kyrgyz Republic.<sup>79</sup> Excise tax rates can be changed by the Kyrgyz Government to the extent such rates do not exceed the basic rate of excise tax.

#### 6.5 Sales Tax

**Payers** of sales tax are domestic entities, foreign entities operating through a permanent establishment in the Kyrgyz Republic and sole proprietors.

**The objects of taxation** are sale of goods, performance of works, rendering of services.

**Tax base** includes the proceeds from sale of goods, works or services, exclusive of VAT and sales tax.

**Rates of sale tax** are:

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<sup>76</sup> Article 231 of the Tax Code of the Kyrgyz Republic.

<sup>77</sup> Article 233 of the Tax Code of the Kyrgyz Republic.

<sup>78</sup> Article 285 of the Tax Code of the Kyrgyz Republic.

<sup>79</sup> The Law of the Kyrgyz Republic "On Basic Rates of Excise Tax on Excisable Merchandise Imported into the Kyrgyz Republic or produced by Individuals and Legal Entities within the Kyrgyz Republic, for the year 2006" dated December 31, 2005 (with the latest amendments as of October 23, 2007).

- in case of sale of goods, works or services by VAT payers and in case of sale of goods, works, or services exempt from VAT:
  - a) 1.5% – for trading business;
  - b) 2.5% – for business other than trade;
- in case of sale of goods, works, or services by non-VAT payers if such sale of goods, works or services is not VAT-exempt supply:
  - a) 2.5% – for trading business;
  - b) 3.5% – for business other than trade.

Kyrgyz tax legislation<sup>80</sup> sets forth that starting from January 1, 2010, sales tax rate will decrease by 0.5%. So, after January 1, 2010, sales tax rate will be: 1% and 2%, and 2% and 3% respectively.

## 6.6 Subsoil use taxes

Subsoil use taxes are:

- ✓ bonuses;
- ✓ royalty.

**Bonuses** are one-time payments for use of subsoil for mineral exploration and mining purposes.

*Payers* of bonuses are domestic entities, foreign entities operating through a permanent establishment in the Kyrgyz Republic and sole proprietors, holding mineral exploration and mining licenses.

*Tax base* is the amount of reserves in mineral deposits, including the amount of augmented reserves in the course of industrial exploration during mineral exploration and mining.

*Rates* of bonuses and procedure for their calculation are approved by the Kyrgyz Government<sup>81</sup> for all types of mineral resources according to the classification table depending on the state of exploration and scale of deposit.

**Royalty** – current payments for use of subsoil for mining purposes.

*Payers* of royalty are domestic entities, foreign entities operating through a permanent establishment in the Kyrgyz Republic and sole proprietors engaged in mining (recovery) of mineral resources.

*Tax base* include:

- proceeds, exclusive of VAT and sales tax, from sale of mineral resources or products resulting from the processing of mineral resources; and/or
- volume of sold products in specie; and/or
- volume of water taken from subsoil according to water gauge – for royalty payers except specialized water supplying entities.

*Rates* of royalty are set forth in the Tax Code of the Kyrgyz Republic<sup>82</sup> as percentage of proceeds or as the amount in soms per unit of volume depending on the type of a mined mineral.

## 6.7 Land tax

**Payers** of land tax are entities treated as land owners or users whose land use rights are certified by standard title documents and actual owners and/or users of land plots.

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<sup>80</sup> Article 6 of the Law “On Enactment of the Tax Code of the Kyrgyz Republic” dated October 17, 2008.

<sup>81</sup> Resolution N. 736 of the Government of the Kyrgyz Republic dated December 30, 2008.

<sup>82</sup> Article 310 of the Tax Code of the Kyrgyz Republic.



**The objects of taxation** are the ownership right and the temporary possession and use right to the agricultural lands and areas subject to land tax.

**Tax base** is the area of the land plot.

**Basic rates** of land tax are set forth in the Tax Code of the Kyrgyz Republic<sup>83</sup> depending on the location and purposes of the land plots.

Land tax is calculated according to the formula set forth in the Tax Code of the Kyrgyz Republic for each of:

- agricultural areas;
- lands of settlements and land not used in agriculture; и
- orchard and garden plots,

by multiplying the area of the land plot by the basic rate of the land plot and applicable coefficients.<sup>84</sup>

## 6.8 Property tax<sup>85</sup>

**Payers** of property tax are entities and physical persons that own taxable property:

- dwelling not used for business purposes (group 1);
- dwelling, boarding houses, rest homes, sanatoria, resorts, production, administration, industrial and other buildings and structures intended or used in business (group 2);
- temporary facilities made of metal and other materials, used in business, such as kiosks, containers, and similar property (group 3);
- transport vehicles (group 4).

**The objects of taxation** are the ownership and use rights to the taxable property.

**Tax base** includes:

- for the property falling under groups 1, 2 and 3 – taxable value of the property determined in the manner specified in the Tax Code of the Kyrgyz Republic;<sup>86</sup>
- for the property falling under group 4:
  - a) for transport vehicle and/or self-propelled machine and mechanism driven by an internal combustion engine, – working volume of engine or book, accounting value;
  - b) for non-self-propelled transport vehicle – tax on basic transport vehicles (bus, car, tractor, tug, etc.).

**Rates** of property tax are:

- 0.35% - with respect to property in group 1;
- 1% - with respect to property in groups 2 and 3;
- with respect to property in group 4:
  - a) fixed amount for each 1cm<sup>3</sup> of the working volume of engine of taxable transport vehicle established by the Tax Code of the Kyrgyz Republic depending on the type of transport

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<sup>83</sup> Articles 337-339 of the Tax Code of the Kyrgyz Republic.

<sup>84</sup> Procedure for calculating land tax and formula used to calculate it are set forth in Article 341 of the Tax Code of the Kyrgyz Republic.

<sup>85</sup> Under Article 3 of the Law “On Enactment of the Tax Code of the Kyrgyz Republic”, the property tax for the property falling under groups 1, 2 and 3 is introduced from January 1, 2010.

<sup>86</sup> Procedure for determining taxable value of property in groups 1, 2 and 3 is set forth in Article 327 of the Tax Code of the Kyrgyz Republic.

- vehicles and/or self-propelled machines and mechanisms driven by an internal combustion engine;<sup>87</sup>
- b) 0.5% of the book, accounting value – for other transport vehicles, self-propelled machines and mechanisms;
  - c) 50% of the amount of property tax assessed with respect to the relevant basic transport vehicle, – for non-self-propelled transport vehicles.

## 6.9 Deductions to the Social Fund of the Kyrgyz Republic

**Payers** of state social insurance payments are:

- ✓ legal entities, regardless of their legal structure or type of ownership, and their individual subdivisions (branches and representative offices);
- ✓ peasant farms and farmers' enterprises;
- ✓ individuals.

**Rates** of deductions to the Social Fund of the Kyrgyz Republic are as follows:<sup>88</sup>

With respect to employers:

- monthly from all payments to hired workers retained to perform permanent or temporary work, work under agreement or contract, covenant, and to perform one-time works/services regardless of the type of ownership of the employer or type of registration with tax authorities of the Kyrgyz Republic, including foreign nationals and stateless persons permanently residing in the Kyrgyz Republic unless otherwise provided by an international treaty creating the employer company:
  - for non-profit cooperatives, public foundations, public associations, partnerships of housing owners, and religious organizations - 15%;
  - for other employers – 19%.
- monthly from all payments to employees with category I and II disability – 17%;
- monthly from all payments to employees who are foreign nationals and stateless persons temporarily residing in the Kyrgyz Republic or residing in another country but employed by a legal entity registered in the Kyrgyz Republic, except organizations and projects created under international treaties – 3%;
- from all payments to employees of embassies, consulates, and other foreign offices of the Ministry of Foreign Affairs of the Kyrgyz Republic – 17%.

With respect to employees:

- hired to perform permanent or temporary work, work under agreement or contract, covenant, and to perform one-time works/services regardless of the type of ownership of the employer or type of registration with tax authorities of the Kyrgyz Republic, including foreign nationals and stateless persons permanently residing in the Kyrgyz Republic – monthly from all types of payments to them, irrespective of the sources of financing – 8%;
- pensioners employed by non-profit cooperatives, public foundations, public associations, partnerships of housing owners and religious organizations, as well as employees with group I and II disability (except World War II invalids and persons of equal status) – monthly from all types of payments to them, irrespective of the sources of financing – 2%;
- employed by embassies, consulates, and other foreign offices of the Ministry of Foreign Affairs of the Kyrgyz Republic – 8%.

With respect to sole proprietors, including those leasing out movable or immovable property – to the extent of the value of an insurance policy.<sup>89</sup>

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<sup>87</sup> Rates of property tax for property in group 4 are set forth in Article 328 of the Tax Code of the Kyrgyz Republic.

<sup>88</sup> Rates of tariffs of insurance payments are set forth in the Law “On Tariffs of State Social Insurance Payments” dated January 24, 2004 (with the latest amendments as of August 10, 2007).



With respect to peasant farms and farmer enterprises:

- operating as corporates – at the rates specified above for employers and employees;
- operating as non-corporates – at the basic rate of land tax for the current year.

## 6.10 Waste removal charge

**Payers** of waste removal charge are legal and physical persons who own buildings.

**Rate** of charge is determined by the local self-governance authorities.<sup>90</sup>

- for legal persons – based on area assigned and number of employees working at the enterprise;
- for physical persons – based on size of building and number of tenants of the house.

## 6.11 Special Tax Treatments

In addition to the general taxation procedure, Kyrgyz legislation provides for special tax treatments for specified categories of taxpayers. These treatments include:

- ✓ single tax based simplified taxation system;
- ✓ mandatory patent based tax;
- ✓ voluntary patent based tax;
- ✓ tax contract based tax;
- ✓ tax treatment in free economic zones;
- ✓ tax on special means.

**Simplified taxation system** allows small business entities to pay single tax instead of profit tax and sales tax in respect of any taxable activity. Single tax rates are as follows: 4% on income from agricultural products processing, production and trade; and 6% on income from other activities. An entity can voluntarily choose to apply a simplified taxation system, but it should be noted that the simplified taxation system cannot be applied by the following persons: VAT payers; excise tax payers; companies and sole proprietors having more than 30 employees working under Kyrgyz labor legislation; entities paying patent based tax; entities providing financial or insurance services; investment funds; and securities market professionals.

**Mandatory patent based tax** is applied instead of profit tax, VAT and sale tax and is paid mandatorily only in respect of the following activities:<sup>91</sup> sauna, bath house, except municipal bath house, services; billiard services; game-playing machine services; casino services; currency exchange office services; discotheque services; 24-hour car parking services. Mandatory patent based tax rates are set forth in the Tax Code of the Kyrgyz Republic.<sup>92</sup>

**Voluntary patent based tax** is paid instead of profit tax and sales tax and can be paid solely by physical persons other than VAT payers, and companies manufacturing and selling garment, knitwear and footwear and only in respect of activities determined by the Government of the Kyrgyz Republic. Basic rates of voluntary patent based tax are also determined by the Government of the Kyrgyz Republic.<sup>93</sup>

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<sup>89</sup> Value of insurance policies and procedure for purchasing them are set forth in the Regulation on the procedure for making insurance payments by acquiring insurance policies approved by Resolution No. 378 of the Government of the Kyrgyz Republic dated June 23, 2003 (with the latest amendments as of January 22, 2008).

<sup>90</sup> Under Article 12-1 of the Law “On non-tax payments” dated April 14, 1994, the rate of waste removal charge may not exceed 1 time the calculation index per 1 person and/or 1 employee per year.

<sup>91</sup> Resolution № 3 № 418-II of the Legislative Assembly of the Jogorku Kenesh of the Kyrgyz Republic dated June 29, 2001 (with the latest amendments as of December 26, 2003).

<sup>92</sup> Article 349 of the Tax Code of the Kyrgyz Republic.

<sup>93</sup> Resolution № 733 of the Government of the Kyrgyz Republic dated December 30, 2008 (with the latest amendments as of March 3, 2009).

**Tax contract based tax** can be paid by companies and sole proprietors engaged in business activities. This special tax treatment is set forth by the Tax Code of the Kyrgyz Republic; it is a novelty and has never been applied in the Kyrgyz Republic before. This tax is paid in accordance with the contract between a taxpayer and a tax authority stating the amount of fixed sums of profit tax, sales tax and VAT to be paid by a taxpayer in the following calendar year. Taxpayers under tax contract do not include the following persons: those paying mandatory patent based tax; those providing credit, finance, or insurance services; investment and pension funds; securities market professionals having tax debts; subsoil use tax payers; excise tax payers; and those operating for not less than 3 years.

**Tax treatment in free economic zones** is applied only to Kyrgyz FEZ entities manufacturing and selling goods (works, services), except excisable goods, in the territory of FEZ. FEZ entities include companies registered with the general directorate of FEZ. FEZ entities are exempt from all taxes, except income tax and property tax, in respect of the activity carried out in the territory of FEZ. In respect of the activity carried out in other territory of the Kyrgyz Republic and abroad, FEZ entities are subject to the general tax treatment.

**Tax on special means** is paid only by state-funded institutions and organizations having special means, instead of profit tax, VAT and sales tax. Special means include proceeds from sale of goods, performance of works, rendering of services, and/or carrying out other activities, except humanitarian or sponsorship air or grants. Rate of tax on special means is 20%.

## 6.12 Double Taxation Treaties

To avoid double taxation and prevent income tax and capital tax dodging, the Kyrgyz Republic has signed a number of bilateral treaties with a number of countries such as:

- the Republic of Kazakhstan (1998);<sup>94</sup>
- the Republic of Belarus (1998);
- the Republic of Ukraine (1999);
- the Republic of Tajikistan (1999);
- the Republic of Uzbekistan (2000);
- the Russian Federation (2000);
- the Mongolian People's Republic (2004);
- the Republic of India (2001);
- Canada (2000);
- the Republic of Poland (2004);
- Malaysia (2006);
- the Turkish Republic (2001);
- the Swiss Confederation (2002);
- the Islamic Republic of Iran (2005);
- the People's Republic of China (2003);
- the Republic of Austria (2003);
- the Finland Republic (2004);
- the Republic of Moldova (2006);
- the Federative Republic of Germany (2006);
- the Islamic Republic of Pakistan (2008);
- the Latvian Republic (2008).

The Government of the Kyrgyz Republic has approved drafts of similar treaties with the Republic of Georgia,<sup>95</sup> the Republic of Armenia,<sup>96</sup> the Kingdom of Netherlands, and the Czech Republic.<sup>97</sup> For the time being, the drafts of the treaties received from the Azerbaijan Republic and the French Republic are

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<sup>94</sup> In parentheses are years of the treaty's signature by the Kyrgyz Republic.

<sup>95</sup> Ordinance No. 818-r of the Government of the Kyrgyz Republic dated December 14, 2004.

<sup>96</sup> Ordinance No. 817-r of the Government of the Kyrgyz Republic dated December 14, 2004.

<sup>97</sup> Ordinance No. 270-r of the Government of the Kyrgyz Republic dated August 13, 2007.

under review, the negotiations with the Lithuanian Republic, the Grand Duchy of Luxemburg,<sup>98</sup> and the Republic of Korea<sup>99</sup> are underway, and the negotiations with the Kingdom of Spain and the South African Republic are planned.<sup>100</sup>

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<sup>98</sup> <http://kg.akipress.org/news/55070>

<sup>99</sup> Ordinance No. 161-r of the Government of the Kyrgyz Republic dated May 16, 1997.

<sup>100</sup> <http://www.minfin.kg/modules/news/article.php?storyid=666>

## 7. ACCOUNTING AND AUDIT

### Financial Reporting

Since 28 September 2001, International Standards of Financial Reporting issued by the International Accounting Standards Committee (London) are accepted as the financial reporting standards of the Kyrgyz Republic.

At the moment, according to experts, Kyrgyz accounting is placed on the forefront in Central Asia and the possibility of introducing Islamic accounting standards is being considered.<sup>101</sup>

### Audit

International Standards of Audit issued by the International Auditing Practices Committee of the International Federation of Accountants (New York City) are approved as the audit standards of the Kyrgyz Republic.<sup>102</sup>

According to the existing legislation of the Kyrgyz Republic,<sup>103</sup> the following entities shall be subject to mandatory external audit: banks and other organizations licensed by the National Bank of the Kyrgyz Republic; insurance organizations; issuers of securities in case of open (public) offering, including open joint stock companies, investment funds, specialized investment funds, and investment companies. Other legal entities may voluntarily undergo annual audit inspection.

As of today, there are 50 licensed audit organizations and 18 licensed individual auditors operating in Kyrgyzstan.

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<sup>101</sup> Report on performance of Financial Market Supervisory Authority of the Kyrgyz Republic for the year 2008.

<sup>102</sup> Resolution No. 470 of the Government of the Kyrgyz Republic dated August 26, 2008.

<sup>103</sup> The Law of the Kyrgyz Republic “On Audit” dated July 30, 2002 (with the latest amendments as of December 15, 2004).

## 8. CURRENCY EXCHANGE CONTROL

### Transactions in Foreign Currency

Legislation of the Kyrgyz Republic<sup>104</sup> provides that a financial liability must be expressed and settled in the national currency. The use of foreign currency and payment documents in foreign currency for settling financial obligations within the territory of the Kyrgyz Republic is allowed in cases and subject to procedures established by legislation.

On 8 May 1992, the Kyrgyz Republic joined the International Monetary Fund (IMF), and in March 1995 assumed obligations under Clause VIII of the IMF Agreement, under which the Kyrgyz Republic has to refrain from imposing restrictions upon currency rate in payments and transfers on current international transactions, as well as from discriminating currency treatments or multiple currency rate practices without consent of the IMF.

Therefore, currency exchange control is virtually absent in the Kyrgyz Republic, as there are no restrictions upon:

- transfer of foreign currency across borders;
- currency import and export (on condition of its declaring at customs points);
- national and foreign currency exchange transactions;
- purchase and sale of foreign currency by residents and non-residents at duly licensed banks and exchange offices;
- one-time cash transactions of exchanging national and foreign currency;
- current payments, operating revenues and cross-border transfer of capital.

Under Kyrgyz legislation<sup>105</sup>, the transfer of currency valuables other than currency, and the recording of necessary data in the customs declaration (lists), are performed in accordance with Kyrgyz customs legislation.

When receiving credits or loans, opening accounts or deposits outside the Kyrgyz Republic, Kyrgyz residents must register them with the National Bank of the Kyrgyz Republic and upon its request provide information on the respective accounts or deposits and other information related to transactions in foreign currency.

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<sup>104</sup> Paragraph 1 of Article 307 of the Civil Code of the Kyrgyz Republic.

<sup>105</sup> The Law of the Kyrgyz Republic “On Foreign Currency Transactions” dated July 5, 1995.

## 9. BANKING SYSTEM

### State Regulation

The banking system of the Kyrgyz Republic consists of the National Bank of the Kyrgyz Republic and commercial banks. Banking activities are regulated by the Law of the Kyrgyz Republic “On the National Bank”<sup>106</sup> and the Law of the Kyrgyz Republic “On Banks and Banking”.<sup>107</sup>

The National Bank is a bank owned by the Kyrgyz Republic. Powers and functions of the National Bank include:

- issuance of licenses for all types of banking operations;
- approval of requirements of minimal authorized capital amount and capital base of banks, capital adequacy standards, currency and interest risks, and other regulation of banking activities binding for all banks;
- application of preventive measures and imposition of sanctions on banks breaching or failing to comply with established requirements.

### Establishment and Licensing

A bank can be established and operate only as a joint-stock company (whether closed or open)<sup>108</sup> and the amount of its charter capital must be not less than KGS 600 million (or approximately USD 14.20 million as of March 2009), and KGS 100 million (or approximately USD 2.3 million) for operating banks.<sup>109</sup>

Banking operations subject to licensing include: deposit-taking operations; investing own or borrowed funds; opening and maintaining accounts of individuals and legal entities; independently establishing correspondent relations; carrying out settlements upon the request of customers and correspondent banks; providing cash services to them; issuing, cashing, accepting, keeping, and confirming payment instruments (cheques, letters of credit, promissory notes, and other instruments), including credit and debit cards; purchasing and selling debt (factoring); promissory note and bill of exchange forfeiting; issuing debt securities (deposit certificates, bonds, promissory notes); performing financial leasing transactions; issuing bank guarantees; providing paid services using electronic money in the form of prepaid cards.

The right to issue respective licenses rests with the National Bank of the Kyrgyz Republic.

Foreign banks can set up their representative offices, subsidiaries and joint ventures in the Kyrgyz Republic with the consent of the National Bank of the Kyrgyz Republic. Branches of foreign banks must obtain the license from the National Bank of the Kyrgyz Republic.

### Standard Requirements for Banks

The National Bank establishes standard requirements including minimum capital and reserve funds requirements. The National Bank also establishes mandatory requirements with respect to commercial bank officers (chair and members of the Board of Directors, chair and deputy chairs and members of the Management Committee, chair of the Audit Committee, head of the Crediting Department, chief accountant, internal auditor) who are appointed with the consent of the National Bank.

All the requirements for domestic banks, including minimum authorized capital and minimum reserve funds and other requirements, also apply to banks with foreign ownership.

### Liquidation and Re-Organization

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<sup>106</sup> The Law of the Kyrgyz Republic “On the National Bank of the Kyrgyz Republic” dated July 29, 1997.

<sup>107</sup> The Law of the Kyrgyz Republic “On Banks and Banking in the Kyrgyz Republic” dated July 29, 1997.

<sup>108</sup> Article 8 of the Law of the Kyrgyz Republic “On Banks and Banking in the Kyrgyz Republic”.

<sup>109</sup> Order No. 6/3 of the Management Board of the National Bank of the Kyrgyz Republic dated February 13, 2008.



A bank may be liquidated or re-organized as a result of revocation of its banking license by the National Bank, as a result of a respective court decision, or by a voluntary decision of the bank.

### **Bank Secrecy**

Disclosure of information representing a bank secret is regulated by the Law of the Kyrgyz Republic “On Bank Secrecy”<sup>110</sup> and the Law of the Kyrgyz Republic “On Banks and Banking”.

The following information is considered to be a bank secret: information on customers’ accounts and deposits; information on transactions/operations performed upon customer’s request or to the customer’s benefit; information about a customer which the bank may have obtained in the course of its relations with the customer.

In addition to the National Bank, banks may provide information to: investigation agencies (with authorization of procurator); courts (on the basis of a court ruling); and representatives of an individual (on the basis of a notarized power of attorney).

All commercial bank operating in the Kyrgyz Republic, including several specialized financial and lending institutions, are required to provide borrower credit history to be included in credit files maintained by the National Bank.<sup>111</sup>

### **Measures Against Financing of Terrorism and Money Laundering**

Under Kyrgyz legislation,<sup>112</sup> control shall be exercised over transactions or operations involving money or other property in the amount equal to or exceeding 1 million soms (or its equivalent in foreign currency: about USD 23.8 thousand as of March 2009) or several related transactions or operations performed within 14 days and treated as:

- internal or external transactions and operations performed by banks and other financial and lending institutions;
- transactions or operations in which at least one party is registered, domiciled or located in offshore jurisdiction;
- other transactions and operations such as:
  - purchase or sale of foreign currency in cash;
  - purchase of securities by an individual for cash;
  - exchange of banknotes of different denomination;
  - contribution by an individual of cash to the authorized capital of an organization;
  - flow of funds of charities, public organizations and institutions, and foundations;
- other movable and immovable property transactions:
  - pawning of securities, precious metals, jewels, or other valuables;
  - payment of insurance contributions by an individual or receipt of a premium of life insurance, another type of contribution-based insurance, and pension benefits;
  - transactions involving immovable property in the amount equal to or exceeding 4.5 million soms;
  - movable property transactions;
  - receiving or giving property under a financial lease agreement;
  - payment of lottery, pari-mutuel, or other gamble-related gains.
- money transfers:
  - performed by organizations other than financial and lending institutions, upon request of a customer;

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<sup>110</sup> The Law of the Kyrgyz Republic “On Bank Secrecy” dated July 23, 2002.

<sup>111</sup> Regulation on Credit Register approved by Order No. 34/3 of the Management Board of the National Bank of the Kyrgyz Republic dated July 11, 2007.

<sup>112</sup> The Law of the Kyrgyz Republic “On Countermeasures against Terrorism Financing and Laundering of Proceeds from Crime” dated July 31, 2006.

- performed through systems not requiring account opening for transfer or receipt of money.

Kyrgyz legislation<sup>113</sup> set forth mandatory control over transactions and operations, if at least one of their parties is known to have participated in terrorist activities (terrorism financing), as well as of transactions and operations that raise suspicion, i.e., have no clear economic or evident legal purpose and are not typical of a given individual or legal entity.

### **Disclosure of Information**

Entities required to disclose information on the above transactions include banks, financial and lending institutions, exchange offices, pawn shops, securities market professionals, commodity exchanges, insurance companies, gambling establishments, entities organizing lotteries, entities registering title to movable and/or immovable property, traffic inspectorate, organizations handling accounts, realtors, and traders in precious metals and jewels.

All information on transactions and operations that raise suspicion shall be provided by the respective entities within 1 business day following the transaction/operation to the financial intelligence service which, in its turn, may share this information with investigation agencies and courts. Legislation precludes liability of the entities for disclosing such information on their customers. Moreover, the entities are prohibited to disclose the fact that information was provided to the Financial Intelligence Service of the Kyrgyz Republic.

### **Deposit Insurance**

Under the Law of the Kyrgyz Republic “On Bank Depositor Protection”<sup>114</sup>, there has been established a Deposit Insurance Fund which is administered by the Deposit Insurance Agency.

When an insurance contingency occurs, each depositor shall be paid a compensation of not more than KGS 20 thousand (about USD 476 as of March 2009) in total, including interests on deposits.

An insurance contingency means a bank’s failure to repay a deposit due to its liquidation or bankruptcy. The Law also provides for a category of deposits not subject to protection, for example, deposits of bank insiders and affiliates, deposits made under the power of attorney issued by a legal entity, deposits used in the financing of terrorism and money-laundering of criminal funds, etc.

### **Banking Services**

In the Kyrgyz Republic, there are registered 22 commercial banks, including banks with foreign and state ownership, and a branch of 1 foreign bank. Besides, there are representative offices of 3 foreign banks.<sup>115</sup>

In 2007, the assets of commercial banks have grown by 48.8% and capital has increased by 77.2%, with the overall banking assets having increased by 48.8%.<sup>116</sup>

Overall bank deposits have grown, with deposits of individuals having grown by 50.8% and deposits of legal entities having grown by 20.3%.

Overall net credit portfolio in the reporting period has grown by 87.5% and reached KGS 21.84 billion.

Fees for settlement and cashing operations (opening accounts, disbursement of funds from accounts, non-cash wire transfers, cash transfers without opening accounts) are set by each bank independently.<sup>117</sup>

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<sup>113</sup> Article 6 of the Law of the Kyrgyz Republic “On Countermeasures against Terrorism Financing and Laundering of Proceeds from Crime” dated July 31, 2006.

<sup>114</sup> The Law of the Kyrgyz Republic “On Bank Depositor Protection” shall become effective from August 13, 2008 subject to exceptions contained therein.

<sup>115</sup> [http://www.nbkr.kg/web/interfeis.builder\\_frame?language=RUS](http://www.nbkr.kg/web/interfeis.builder_frame?language=RUS)

<sup>116</sup> [http://www.nbkr.kg/ubn/tendencia\\_razvitiya.htm](http://www.nbkr.kg/ubn/tendencia_razvitiya.htm)

Non-cash payments sector actively develops.<sup>118</sup> Thus, gross non-cash payments have grown by 31%, while clearing payments have grown by 14%.

Banks in Kyrgyzstan operate with credit cards such as MasterCard, Diners Club, Visa, traveler's cheques American Express, Thomas Cook, CitiCorp and with registered cheques.<sup>119</sup>

Banks take demand deposits and time deposits (for a term of 0 to 12 months) from legal entities and individuals with an interest rate ranging between 0% and 16%.<sup>120</sup>

Banks issue credits on the following conditions: maturity may vary from 5 to 10 years, annual interest rate – from 12% to 38% both in the national currency and in foreign currency.<sup>121</sup>

According to the World Bank's Report Doing Business 2009, the Kyrgyz Republic ranks 28<sup>th</sup> out of 181 countries in the world in terms of legal rights of borrowers and lenders, and the availability and legal framework of credit registries.<sup>122</sup>

### **Principles of Islamic Finance in Kyrgyzstan**

One of the maxims of Islam is “prohibition to participate in any interest-bearing transactions”. Therefore, banks that follow the Islamic principles issue interest-free loans for business development. Under this scheme, a bank obtains a share in the financed or newly established company and participates both in gains and losses of the financed business project.

In May 2006, the Kyrgyz Republic, the Islamic Development Bank, and *EcoBank* Open Joint-Stock Company signed a Memorandum of Understanding related to the introduction of the principles of Islamic banking and finance in the Kyrgyz Republic. Parties to the Memorandum agreed to a phased introduction of the Islamic principles in the Kyrgyz Republic as an alternative to the existing traditional principles of finance.

To date, the leadership of the republic is taking further steps to introduce the principles of Islamic finance in the Kyrgyz Republic.<sup>123</sup> Thus, work has been commenced to develop an Action Plan for 2008-2010 designed to create in Bishkek a Center for the principles of Islamic finance in Central Asian region. The said Action Plan sets forth a number of measures to create favorable conditions for further development of the Islamic banking in the Kyrgyz Republic. One of the measures is to expand a list of entities, including credit unions, licensed to provide services based on the principles of Islamic finance.

By early May 2008, EcoBank OJSC has lent 250 million soms under the principles of Islamic finance.<sup>124</sup>

### **Operations in Offshore Zones**

Under Kyrgyz legislation,<sup>125</sup> Kyrgyz banks are prohibited from establishing direct correspondent relations with banks, their affiliates and envelope banks incorporated in the following offshore zones:

- Anguilla (United Kingdom);

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<sup>117</sup> [http://www.nbkr.kg/ubn/cash\\_oper.htm](http://www.nbkr.kg/ubn/cash_oper.htm)

<sup>118</sup> Resolution No. 916 of the Government of the Kyrgyz Republic and the National Bank of the Kyrgyz Republic dated December 31, 2002.

<sup>119</sup> [http://www.nbkr.kg/ubn/card\\_oper.htm](http://www.nbkr.kg/ubn/card_oper.htm) and <http://www.bankir.kg/ru/home/services/plastik>

<sup>120</sup> [http://www.nbkr.kg/ubn/deposit\\_oper.htm](http://www.nbkr.kg/ubn/deposit_oper.htm)

<sup>121</sup> [www.nbkr.kg](http://www.nbkr.kg)

<sup>122</sup> <http://www.doingbusiness.org/ExploreTopics/GettingCredit/Details.aspx?economyid=106>.

<sup>123</sup> Edict No. 146 of the President of the Kyrgyz Republic dated April 22, 2008.

<sup>124</sup> <http://www.ecobank.kg/ie/ecobank/ipf/11/>

<sup>125</sup> Article 3 of the Law of the Kyrgyz Republic “On Countermeasures against Terrorism Financing and Laundering of Proceeds from Crime”.

- Antigua and Barbuda;
- Aruba;
- Barbados;
- Belize;
- the Bermuda Islands (United Kingdom);
- the British Virgin Islands (United Kingdom);
- Gibraltar (United Kingdom);
- Bahrain;
- Grenada;
- the Dominican Republic;
- Andorra;
- Lichtenstein;
- Lebanon;
- Macao (China);
- the Maldives;
- Monaco;
- Montserrat (United Kingdom);
- Western Samoa;
- the Antilles Islands (Netherlands);
- Niue (New Zealand);
- the Labuan Island (Malaysia)
- the Cayman Islands;
- the Cook Islands (New Zealand);
- the Turks and Caicos Islands (United Kingdom);
- Vanuatu;
- Costa Rica;
- Liberia;
- Mauritius;
- Malta;
- the Marshall Islands;
- Nauru;
- Palau (Belau);
- Panama;
- the Seychelles Islands;
- San Marino;
- Saint Vincent and the Grenadines;
- Saint Lucia;
- the Bahamas Islands;
- Saint Kitts and Nevis;
- Montenegro.

Companies incorporated in the above states and territories may not act as founders or shareholders of resident banks of the Kyrgyz Republic.

### **Development Perspectives**

The Kyrgyz Republic has established a Development Fund of the Kyrgyz Republic, which is a specialized financial and lending institution the main purpose of which is to increase efficiency of the country's financial asset management in order to implement top priority and strategically important projects that can foster a qualitative economic growth.

The Kyrgyz Government plans to carry out privatization of the State's stakes in Aiyl Bank OJSC and RSK Bank OJSC in 2008-2012.<sup>126</sup>

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<sup>126</sup> Kyrgyz State Property Privatization Program for 2008-2012 approved by Resolution No. 518 of the Government of the Kyrgyz Republic dated September 17, 2008 (with the latest amendments as of December 30, 2008); Resolution No. 84 of the Government of the Kyrgyz Republic dated March 14, 2008.

The National Bank and the Kyrgyz Government plan to establish Special Kyrgyz Bank Refinancing Fund to support commercial banks.<sup>127</sup>

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<sup>127</sup> Edict UP No. 5 of the President of the Kyrgyz Republic dated January 8, 2009.

## 10. LABOR AND EMPLOYMENT

### Labor Legislation

The principal legal act regulating labor relations is the Labor Code of the Kyrgyz Republic.<sup>128</sup>

International treaties and other provisions of international law ratified by the Kyrgyz Republic are an integral and acting part of the current legislation of the Kyrgyz Republic. It must be noted that in cases where international treaties ratified by the Kyrgyz Republic provide for more favorable conditions for the employees than laws and other legislation of the Kyrgyz Republic, agreements, or collective agreements do, provisions of international treaties should govern.

### Labor Agreement

A **labor agreement** is an agreement between an employee and an employer under which the employer undertakes to: provide the employee with a job that corresponds to a given employment function; assure labor conditions required by legislation of the Kyrgyz Republic, collective agreement, other agreements, local normative legal acts containing labor provisions; timely and fully compensate the employee; while the employee undertakes to personally perform the job that corresponds to a given professional/employment function, qualification or position according to the internal labor procedures.

A labor agreement is concluded in writing, composed in 2 copies, and signed by both parties. On the basis of a labor agreement, acceptance of an employee for a job is formalized within 3 days by a respective order (resolution, instruction) of the employer.

An improperly executed labor agreement is deemed to be concluded, if an employee has actually started to work with the consent and on the instruction of the employer or its representative. However, notwithstanding the actual permission to start the work given to the employee, the employer is not relieved of the obligation to enter into a written labor agreement with such employee.

Labor agreements may be termless or concluded for a specific term (a fixed-term labor agreement must not exceed the period of 5 years), unless otherwise provided by legislation of the Kyrgyz Republic.

The fixed-term labor agreement is entered into if labor relations cannot be established for an indefinite term given the nature and conditions of the work to be done, unless otherwise provided by Kyrgyz law.

Unless the labor agreement stipulates in writing its term, such agreement is deemed to be entered into for an indefinite term. If neither of the parties demands the fixed-term labor agreement to be terminated due to its expiration, and the employee continues to work after expiration of the labor agreement, such labor agreement is deemed to be entered into for an indefinite term.

It is prohibited to unduly enter into fixed-term labor agreements to evade granting an employee rights and guarantees set forth by legislation of the Kyrgyz Republic.

### Trial Period

A labor agreement may, with consent of the parties, provide for a *trial* to assure the employee's professional competence required for the position. The provision regarding a trial must be included into a labor agreement. The trial period may not exceed 3 months (or 6 months for heads and deputy heads of organizations, chief accountants and their deputies, heads of branches, representation offices and other structural units of an organization), unless otherwise provided by Kyrgyz legislation. The trial period may not be extended even if the employee gives his consent thereto.

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<sup>128</sup> The Labor Code of the Kyrgyz Republic dated 4 August 2004 (with the latest amendments as of July 25, 2008).



If the outcome of the trial period is not satisfactory, the employer has the right to terminate the employment contract by at least 3 days' prior written notice to the employee stating the reasons for considering the employee to have failed to satisfactorily complete the trial period.

If during the trial period the employee finds out that he/she is not happy with the offered job, the employee has the right to terminate the employment contract by 3 days' prior written notice to the employer without the need to state the reasons for such termination.

If by the expiry date of the trial period the employer made no decision to terminate employment, the employee is considered to have satisfactorily completed the trial period and the employment contract can be subsequently terminated on the general grounds.

The trial period does not include temporary disability and other periods when an employee is actually absent from work (e.g. blood donors are permitted 1 day off).

### **Transfer to Another Job**

*Transfer to a permanent job within the same organization* initiated by employer, i.e. change of employment functions or amendment of material provisions of the labor agreement, as well as *transfer to a permanent job in another organization*, or transfer to another location jointly with the organization may only be performed with the written consent of the employee. The transfer of an employee to a job that contravenes that employee's medical/health advice is prohibited.

### **Termination of a Labor Agreement**

Kyrgyz legislation contains a complete list of reasons for which a labor agreement may be terminated.<sup>129</sup> Termination of a labor agreement shall be formalized by a respective order (resolution, instruction) of the employer.

### **Working Hours and Time Off**

Working hours are the time within which an employee, according to the internal labor procedure or work schedule, or according to the respective labor agreement, must perform his/her employment duties.

Duration of working hours is established for a calendar week (business week) and for a day (business day, working shift).

Working hours are subdivided into:

- normal working hours;
- reduced working hours;
- incomplete working hours.

Normal working hours may not exceed 40 hours per week, with the exception of cases provided by the Labor Code of the Kyrgyz Republic. Labor agreements may, with the consent of the parties, provide for fewer working hours.

Reduced working hours are lesser than normal working hours. Reduced working hours are worked by the following categories of employees:

- employees of 14 to 16 years of age – no more than 24 hours per week; for employees 16 to 18 years of age – no more than 36 hours per week;
- employees engaged in arduous physical work, harmful or hazardous work – no more than 36 hours per week;

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<sup>129</sup> Article 79 of the Labor Code of the Kyrgyz Republic.

- employees with category I and II disability – no more than 36 hours a week;

and *are paid same way as for normal working hours*.<sup>130</sup>

Incomplete working hours are set by the agreement of the parties and *are paid in proportion to the hours worked*. The Labor Code of the Kyrgyz Republic sets forth a complete list of persons whom the employer must allow to work incomplete business week or incomplete business day at their request.<sup>131</sup>

A 5-day business week with two days off or a 6-day business week with one day off is established by internal labor regulations or a shift schedule. In the case of a 6-day business week – the duration of a business day/work shift may not exceed: 7 hours with an upper weekly limit of 40 hours, 6 hours with an upper weekly limit of 36 hours, and 4 hours with an upper weekly limit of 24 hours. On days immediately preceding holidays, and for night shifts, working hours are decreased by 1 hour.

### **Labor Compensation**

**Labor compensation** is a system of relations that presupposes the employer establishing and providing to the employees compensation for their work subject to laws, other legislation, collective bargaining agreements, contracts, local normative legal acts, and labor agreements.

Salary includes a sum paid for labor depending on the employee's qualification, complexity, quantity, quality and conditions of the work performed, and sums paid as compensation or incentive (for example, bonuses). From the legal point of view, the term "salary" is more accurate than the term "labor compensation" because it is associated with the employee's category.

Salary is paid in cash in the national currency of the Kyrgyz Republic (som). It is prohibited to pay labor compensation in the form of debenture, receipts, food/ration cards, and other suchlike money substitutes.<sup>132</sup>

### **Minimal Amount of Compensation**

The minimal salary (minimal amount of labor compensation) is a guaranteed amount of monthly salary for labor of unskilled employee who has fully worked normal working hours to do simple work in normal labor conditions.<sup>133</sup>

The minimal amount of labor compensation for unskilled labor is established by Kyrgyz legislation on the entire territory of the Kyrgyz Republic and may not fall below the minimum subsistence level of an employable individual.<sup>134</sup>

Under current Kyrgyz law<sup>135</sup>, from January 1, 2007 the minimal salary in the Kyrgyz Republic is 340 soms (about USD 8 as of March 2009).

A monthly labor compensation of an employee who has worked the normal working time standard for the given period and performed his/her labor duties (labor standards) may not fall below the minimum statutory rate of labor compensation.

The minimal rate of labor compensation does not include surcharges and bonuses, premiums and other incentives, as well as pays for working in abnormal conditions, working in especial climatic conditions and on the territory exposed to radioactive pollution, other compensations and social payments.

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<sup>130</sup> Article 91 of the Labor Code of the Kyrgyz Republic.

<sup>131</sup> Article 93 of the Labor Code of the Kyrgyz Republic.

<sup>132</sup> Article 153 of the Labor Code of the Kyrgyz Republic.

<sup>133</sup> The Law of the Kyrgyz Republic "On Minimal State Social Standards" dated August 7, 2006.

<sup>134</sup> The Law of the "On Minimal State Social Standards" dated August 7, 2006.

<sup>135</sup> Edict UP No. 519 of the President of the Kyrgyz Republic dated October 30, 2006.

## **Procedure and Periodicity of Salary Payment**

Periodicity of salary payment is established by a collective agreement or local normative documents of an organization. Salary must be paid not less than once a month.

When paying salary, the employer must notify each employee in writing about the components of his/her salary, payable thereto for the given period of time, sizes and substantiation of withheld amounts, and of the cash amount to be received.

Salary is paid to the employee as a rule at the place of work performed or is wire transferred to the bank account notified by the employee on the terms and conditions set forth in the collective agreement or labor agreement.

Salary is paid directly to the employee, except where the law or labor agreement requires another method of payment, e.g. under the Power of Attorney.

If a pay day falls on an off day or public holiday, salary is paid on the immediately preceding day. Leave salary must be paid not later than 3 days prior to the leave commencement date.

If the employer breaches the period set for the payment of salary, leave salary, and other sums, the employer must additionally pay 0.15 percent of the outstanding amount as of the day of actual payment for each calendar day of delay.

If the employer breaches the period set for dismissal settlements, the employer must additionally pay 0.5 percent of the outstanding amount as of the day of actual payment for each calendar day of delay.

Allowances for multi-skilling/position overlapping or for exercising functions of a temporarily absent employee shall be established by an employer with consent of an employee, but may not fall below 30% of the salary for the additional position/function.

Every hour of night work shall be compensated no less than 1.5 times higher than the regular hour. Overtime shall be compensated no less than 1.5 times higher than regular hours for the first 2 hours, and no less than 2 times higher than regular for each following hour. Specific amounts of overtime compensation may be provided by a collective agreement or labor agreement.

Work on public holidays and days off must be compensated no less than 2 times higher than regular hours.

Idle time caused by the employer shall, in cases where the employee has informed the employer in writing about the beginning of the idle time, be compensated in the amount of not less than two-thirds of the regular compensation of the employee. Idle time caused by reasons beyond the employee's and employer's control, in cases where the employee has informed the employer in writing about the beginning of the idle time, shall be compensated in the amount of no less than two-thirds of the regular rate (salary). Idle time caused by the fault of the employee shall not be compensated.

## **Settlement of Labor Disputes**

A labor agreement party (employer or employee) that has caused damage to its counterparty shall recover the damage subject to the labor legislation of the Kyrgyz Republic. A labor agreement or written agreements attached to it may provide for specific financial liabilities of the parties. Liabilities of the employer to the employee undertaken under an agreement may not be lower, and liabilities of the employee to the employer may not be higher than provided by the Labor Code or other laws of the Kyrgyz Republic. Termination of a labor agreement upon infliction of damage does not release the party that has inflicted damage from liability for it.

Individual labor disputes, or unsettled disagreements between an employee and an employer, shall be considered by commissions for labor disputes established within the respective organizations, or by courts of the Kyrgyz Republic.

### **Liabilities of the Employer**

An employer is liable for any work-related injury, occupational disease or another injury to the health of an employee if it has been caused by performance of employment duties by the employee within or outside the territory of the employer, or inflicted in the course of the employee's transportation to or from the place of work using transport provided by the employer.

### **Foreign Labor**

Foreign nationals working for organizations within the territory of the Kyrgyz Republic are subject to provisions of the Labor Code of the Kyrgyz Republic, other laws and regulations of the Kyrgyz Republic containing labor provisions, unless otherwise provided by law of the Kyrgyz Republic or international treaty to which the Kyrgyz Republic is a party.

Employees of organizations located within the Kyrgyz Republic, founded and owned or co-owned by foreign individuals or legal entities (including subsidiaries of transnational corporations) are subject to laws and other legislation of the Kyrgyz Republic containing labor provisions, unless otherwise provided by law of the Kyrgyz Republic or international treaty to which the Kyrgyz Republic is a party.

### **Rights of Foreign Employees**

Foreign nationals have the right to freely use their labor capacities, select activities and profession in presence of a relevant document proving their education or work experience and other supporting documentation.

### **Work Permit**

Employers may involve and use foreign labor in the Kyrgyz Republic subject to a work permit for foreign nationals<sup>136</sup> issued by the Kyrgyz State Committee on Migration and Employment.

A foreign national who enters the Kyrgyz Republic for a temporary stay with the purpose of work within its territory obtains a work permit, given that the employer deposits at the special account of the migration authority a guarantee contribution in the amount sufficient for travel of the foreign employee out of the Kyrgyz Republic.

Procedure for depositing contributions guaranteeing travel of foreign employees out of the Kyrgyz Republic and procedure for refunding these contributions to the employer are established by the Government of the Kyrgyz Republic.<sup>137</sup>

A fee is charged for involvement and use of foreign labor to cover expenses incurred by the migration authority in the process of issuance of respective permits. The price of work permits for foreign nationals is established by the Government of the Kyrgyz Republic.<sup>138</sup>

Annually, 4 months prior to the beginning of each calendar year, the Government of the Kyrgyz Republic approves foreign labor quotas taking into account national interests and the situation at the domestic labor market.<sup>139</sup> The Kyrgyz State Committee on Migration and Employment distributes the labor migration quota among entities that employ foreign nationals and stateless persons within the territory of the Kyrgyz

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<sup>136</sup> Resolution No. 639 of the Government of the Kyrgyz Republic dated September 8, 2006.

<sup>137</sup> Resolution No. 639 of the Government of the Kyrgyz Republic dated September 8, 2006.

<sup>138</sup> Resolution No. 754 of the Government of the Kyrgyz Republic dated October 31, 2006.

<sup>139</sup> Resolution of the Jogorku Kenesh of the Kyrgyz Republic dated April 3, 2007.

Republic, taking into account their contribution to the economic development of this country, and priority right of Kyrgyz nationals to vacant jobs.

According to the World Bank's Report *Doing Business 2009*, the Kyrgyz Republic ranks 81<sup>st</sup> out of 181 countries in terms of difficulty of hiring and firing employees.<sup>140</sup> In this regard, the Kyrgyz Government resolved to develop recommendations and action plan for improving this indicator.<sup>141</sup> The Government is currently working on making changes and amendments to labor legislation with a view to balance labor relations between the employee and the employer.<sup>142</sup>

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<sup>140</sup> <http://www.doingbusiness.org/ExploreTopics/EmployingWorkers/Details.aspx?economyid=106>

<sup>141</sup> Resolution No. 126 of the Government of the Kyrgyz Republic dated April 4, 2008.

<sup>142</sup> Resolution No. 46 of the Government of the Kyrgyz Republic dated February 13, 2008.

## 11. REAL ESTATE

### Legislation on Real Estate

According to the Civil Code of the Kyrgyz Republic,<sup>143</sup> real estate includes land plots, subsoil portions, detached water objects, forests, perennials, buildings, structures, and all objects closely linked to land, i.e., all objects that may not be moved without damage incomparable to their purpose.

Real estate rights and encumbrances, as well as real estate transactions, are subject to mandatory state registration. Registration procedure is set forth in the Law of the Kyrgyz Republic “On State Registration of Rights to Immovable Property and Transactions Therewith”.<sup>144</sup> Under Kyrgyz legislation, the following are subject to mandatory state registration:

- Property right
- Right of business use
- Right of operative management
- Right of termless use (use for unspecified term) of a land plot
- Rights arising from mortgage or pledge
- Right of temporary use, lease or sublease for the term of 3 years or more
- Easement
- Restrictions of rights to design, construct and use an individual unit of immovable property, with the exception of restrictions that apply to immovable property under legislation and other normative legal acts of the Kyrgyz Republic
- Rights arising from court decisions
- Rights of natural resource use listed in the legislation of the Kyrgyz Republic
- Rights arising from property legalization
- Other rights subject to registration at present or in the future according to the civil legislation of the Kyrgyz Republic

According to the World Bank’s Report Doing Business 2009, the Kyrgyz Republic ranks 52<sup>nd</sup> among 181 countries of the world in terms of the steps, time, and cost involved in registering property in Kyrgyz Republic.<sup>145</sup>

The following rights and restrictions are valid regardless of their registration or absence thereof, but are not covered by state protection:

- Right of access to electric power lines, telephone and telegraph lines and polls, pipelines, geodesic points existing at the time of establishment of the registration authority, and other rights related to public purposes
- Rights of spouses, children, and other dependents, as set forth by the legislation of the Kyrgyz Republic, including cases where such rights have not been individually registered
- Right of temporary use, lease or sublease for the period of less than 3 years
- Priority right of property use granted to its actual users, as provided by legislation of the Kyrgyz Republic
- Rights of tax authorities established by legislation of the Kyrgyz Republic
- General restrictions and prohibitions (related to health care, public security, environment protection) set forth by the legislation of the Kyrgyz Republic.

### Land Relations

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<sup>143</sup> Article 24 of the Civil Code of the Kyrgyz Republic.

<sup>144</sup> The Law of the Kyrgyz Republic “On State Registration of Rights to Immovable Property and Transactions Therewith” dated December 22, 1998 (with the latest amendments as of August 9, 2007).

<sup>145</sup> <http://www.doingbusiness.org/ExploreTopics/RegisteringProperty/Details.aspx?economyid=106>



The principal normative legal act regulating land relations in the Kyrgyz Republic is the Land Code of the Kyrgyz Republic.<sup>146</sup> Under the Land Code, land of the Kyrgyz Republic is broken down by the following categories:

- Land of agricultural purposes which, in its turn, includes agricultural land and land covered by intra-farm roads, communications, landlocked bodies of water, buildings and structures required for agricultural purposes
- Land of settlements (towns, villages of urban type, and rural settlements)
- Land of industrial, transportation, communication, defense, and other purposes
- Land of specially protected natural territories
- Land of the forestry fund
- Land of the water fund
- Land of the reserve

The transfer (conversion) of lands from one category into another is set forth in the Land Code of the Kyrgyz Republic, and the Regulation on procedure for transfer (conversion) of land plots from one category into another or from one type of land into another.<sup>147</sup>

### **Acquisition of a Right to a Land Plot**

Land legislation provides for the following 2 options for acquisition of a right to a land plot:

- ✓ Transfer of right to a land plot (alienation of the right to a land plot by land owner or land user or its transfer for temporary use to another person through a civil legal transaction);
- ✓ Authorized public agency's allotment of property right or right to use a land plot in state or municipal ownership.

To date, in Bishkek, those who were using a land plot are now permitted to redeem such land plot.<sup>148</sup>

Sale of land plots is carried out by the Mayor's Office of Bishkek city. In order to organize the sale of land plots, the Land Plot Redemption Commission was formed in Bishkek city which act as sale organizer. The commissions, within the scope of their authorities, make the list of land plots, ownership of which can be sold.

The initial preliminary value at which the land plot can be redeemed is determined through negotiations between the land plot redemption commission and the applicant with the account of suggestions made by the latter. The final value of the land plot is assessed by an independent appraiser based on the provided materials related to land plots.

### **Housing Stock**

Buildings and structures located in the Kyrgyz Republic belong either to the housing stock, or to non-residential premises. Under the Housing Code of the Kyrgyz Republic<sup>149</sup> the following belong to the housing stock:

- Residential houses or residential premises in other types of buildings owned by the state (state

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<sup>146</sup> The Land Code of the Kyrgyz Republic dated June 2, 1999 (with the latest amendments as of January 26, 2009).

<sup>147</sup> The Regulation on Procedure for Transfer (Conversion) of Land Plots from One Category into Another or from One Type of Land into Another approved by Resolution No. 19 of the Government of the Kyrgyz Republic dated January 22, 2008.

<sup>148</sup> The Regulation on procedure for redemption of land plots earlier allocated for temporary use, formation of land plot redemption commissions and distribution of proceeds from sale of land plots (with the latest amendments as of January 20, 2009) approved by Order No. 80 of the Mayor's Office of Bishkek city dated February 20, 2008.

<sup>149</sup> The Housing Code of the Kyrgyz Republic dated May 20, 1983 (with the latest amendments as of August 1, 1995).

- housing stock)
- Residential houses or residential premises in other types of buildings owned by other proprietors, cooperative organizations, their unions, trade unions, and other public associations (public housing stock)
- Residential houses owned by residential construction cooperatives (stock of residential construction cooperatives)
- Residential houses and apartments owned by individuals (individual housing stock).

### **Right to Acquire Objects of Housing Stock**

To acquire property right to an object belonging to the housing stock of the Kyrgyz Republic, a foreign individual or legal entity must obtain a permit for the object purchase, exchange, or acceptance as a gift. The permit is issued by an interdepartmental commission.<sup>150</sup>

### **Recreation Area**

Under the legislation of the Kyrgyz Republic,<sup>151</sup> recreational objects (i.e., objects used in recreation, health improvement, and tourism) may be publicly held by the Kyrgyz Republic, or privately held by individuals and legal entities of the Kyrgyz Republic.

### **Restrictions on Immovable Property Ownership by Foreign Nationals**

Legislation of the Kyrgyz Republic does not restrict rights of foreign individuals or legal entities related to acquisition of buildings and structures that belong to non-residential premises.

Objects of recreation, infrastructure and tourism may not be handed over or transferred into ownership of foreign persons. The Government of the Kyrgyz Republic with consent of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic may grant foreign persons the right to use objects of recreation, infrastructure and tourism for a fixed term not exceeding 49 years.

In addition, legislation provides for a number of restrictions on acquisition of rights to land of the Kyrgyz Republic by foreign persons. A foreign person is a person that fits one of the following descriptions:

- A foreign national or a stateless person
- A foreign legal entity, which is a legal entity having one of the following features:
  - an entity established and registered under legislation of a foreign country
  - an entity fully owned by one or more foreign individuals or legal entities
  - an entity controlled or managed by one or more foreign individuals or legal entities on the basis of a written contract, right to sell the majority of voting shares, right to appoint the majority of members in its executive or supervisory body
  - an entity registered within the Kyrgyz Republic and having not less than 20% of its authorized fund owned by foreign nationals, stateless persons, or legal entities described in this paragraph
  - an entity established on the basis of an international agreement or treaty.

Rights of foreign persons to land plots are subject to the following restrictions:

- Rights to own or use agricultural land may not be granted to foreign persons<sup>152</sup>

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<sup>150</sup> Resolution No. 82 of the Government of the Kyrgyz Republic dated February 15, 1999 (with the latest amendments as of June 16, 2004).

<sup>151</sup> The Law of the Kyrgyz Republic “On Sustainable Development of Issyk-Kul Ecological and Economic System” dated August 13, 2004.

<sup>152</sup> Article 7 of the Law of the Kyrgyz Republic “On Management of Land Used in Agriculture” dated January 11, 2001 (with the latest amendments as of January 26, 2009).

- Rights to own land plots of any category may not be granted to foreign persons<sup>153</sup>
- Land located within a settlement (town, village of urban type, rural settlement) may be granted to foreign persons for temporary use (up to 50 years); these land plots may be transferred into ownership of foreign persons in cases where these persons are engaged in mortgage crediting of residential construction subject to the Law of the Kyrgyz Republic “On Pledge”<sup>154</sup>
- Land located outside settlements may be provided to foreign persons for temporary use (up to 50 years) on the basis of a respective decision of the Government of the Kyrgyz Republic, or, in the absence of such decision, on the basis of universal legal succession (inheritance, re-organization) for temporary use up to 50 years
- Should a foreign entity have acquired property rights to a land plot subject to universal legal succession procedure (inheritance, reorganization), the person must alienate the respective land plot in favor of a national or legal entity of the Kyrgyz Republic within 1 year from the date of acquisition of rights to it.

Since 2009, the Kyrgyz Government has outlawed the practice of applying coefficient 4 when calculating the amount paid by foreigners for lease of land of settlement and land not used in agriculture.

Generally, legislation of the Kyrgyz Republic provides that, if a person acquires the right to immovable property that the person may not own under the law, the owner must alienate this property within 1 year from the date the right to it has arisen, unless otherwise provided by law.

Should the owner fail to alienate the property within 1 year, then, based on its character and purpose, according to a court decision taken upon application of a public authority or local self-governance body, the property will be subject to forced sale, with proceeds transferred to the previous owner or to the state/communal ownership, with recovery of the property value to the previous owner in the amount specified by court, with deduction of costs incurred for alienation of the immovable property.

Kyrgyz law does not regulate the procedure for waiver of immovable property rights with simultaneous determination of an owner. The ownership right is terminated upon alienation by the owner of his/her/its property to other persons, or waiver of the ownership right by the owner, or perish or destruction of the property or loss of the ownership right to the property, or in other cases provided by law. An individual or legal entity can waive the ownership right to his/her/its property having declared this waiver or having performed other actions expressly evidencing that he/she/it was deprived of possession, use or disposal of the property without an intention to preserve any rights to this property. However, waiver of the ownership right does not entail termination of the owner’s rights and obligations with respect to the relevant property until the ownership right to this property is acquired by the other person.<sup>155</sup>

The owner voluntarily waiving his/her/its ownership right or other rights to the immovable property can apply to the authority for registration of immovable property rights in person with a written request stating his/her/its waiver of the ownership right and other rights to the immovable property. In this case, the owner’s waiver of the ownership right or other rights must be recorded in the respective files.<sup>156</sup>

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<sup>153</sup> Article 5 of the Land Code of the Kyrgyz Republic.

<sup>154</sup> The Law of the Kyrgyz Republic “On Pledge” dated March 12, 2005 (with the latest amendments as of August 6, 2007).

<sup>155</sup> The Civil Code of the Kyrgyz Republic dated May 8, 1996 (with the latest amendments as of February 20, 2008).

<sup>156</sup> The Practical Guide to state registration of immovable property rights and encumbrances (restrictions) thereon and related transaction (as last amended 6 September 2006), approved by Order No. 107 of the State Agency for Registration of Immovable Property Rights under the Government of the Kyrgyz Republic dated July 27, 2005.

## 12. INTELLECTUAL PROPERTY

### Legal Basis for Intellectual Property Protection

The legal basis for intellectual property protection in the Kyrgyz Republic is provided by relevant national legislation and international treaties to which the Kyrgyz Republic is a party.

The principal legislation regulating intellectual property includes the Civil Code of the Kyrgyz Republic, the Patent Law,<sup>157</sup> the Law of the Kyrgyz Republic “On Trademarks, Service Marks and Merchandise Origin Marks”,<sup>158</sup> Law of the Kyrgyz Republic “On Copyright and Allied Rights”,<sup>159</sup> Law of the Kyrgyz Republic “On Legal Protection of Computer and Data Base Software”,<sup>160</sup> other laws and subordinate legislation.

The Kyrgyz Republic is a party to *international treaties on intellectual property*. The principal treaties are: the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Patent Cooperation Agreement, and the Madrid Agreement on International Registration of Marks. In addition, since December 1998 the Kyrgyz Republic has been a member of the World Trade Organization (the WTO). Developing its intellectual property legislation, the country takes into account provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

### Industrial Property

Legal protection of industrial property (inventions, utility models, industrial designs, brand names, trademarks, service marks and appellations of places of origin of goods) is provided on the basis of registration.

Right to an invention, utility model, and industrial design is protected by a patent that proves priority, authorship, and exclusive right of the patent holder to the given object of industrial property. Upon registration of a trademark, service mark, or appellation of place of origin of good a certificate is issued to prove the trade or service mark owner’s exclusive right to use and dispose of the mark, or owner’s right to use the registered appellation.

The public agency authorized to register these objects in the Kyrgyz Republic is the State Patent Service of the Kyrgyz Republic (Kyrgyzpatent).

### Inventions, Utility Models, and Industrial Designs

*An invention* is subject to protection when it is new, has an inventive level, and is industrially applicable. An invention patent is valid for 20 years from the date of submission of respective application to Kyrgyzpatent. A patent to a pharmaceutical invention may be extended upon request of its holder, but for not more than 5 years.

*A utility model* is subject to protection if it is new and industrially applicable. A patent to a utility model is valid for 5 years from the date of respective application to *Kyrgyzpatent*, and may be extended upon request of the patent holder, but for no more than 3 years.

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<sup>157</sup> The Law of the Kyrgyz Republic “Patent Law” dated January 14, 1998 (with the latest amendments as of December 6, 2006).

<sup>158</sup> The Law of the Kyrgyz Republic “On Trademarks, Service Marks, and Appellations of Places of Origin of Goods” dated January 14, 1998 (with the latest amendments as of February 27, 2003).

<sup>159</sup> The Law of the Kyrgyz Republic “On Copyright and Related Rights” dated January 14, 1998 (with the latest amendments as of August 5, 2008).

<sup>160</sup> The Law of the Kyrgyz Republic “On Legal Protection of Software and Data Bases” dated March 30, 1998 (with the latest amendments as of December 8, 2006).

*An industrial design* is subject to protection if it is new and original. A patent to an industrial prototype is valid for 10 years from the date of respective application to *Kyrgyzpatent*, and may be extended upon request of the patent holder, but for no more than 5 years.

### **Trademarks, Service Marks, and Appellations of Places of Origin of Goods**

*Trademarks and service marks* are symbols that distinguish goods or services of a given individual or legal entity from similar goods or services of other individuals or legal entities. A certificate is issued for a registered trademark. The term of trademark registration validity may be extended 10 years at a time based on the application of the certificate holder submitted within the last year of validity.

*An appellation of place of origin of good* is the name of a geographic object (country, settlement, geographic area) used to mark merchandise with special features that are determined exclusively or predominantly by natural conditions, human factors, or both, of the named geographic area. A certificate is issued to protect the registered merchandise origin mark. Validity of the certificate may be extended 10 years at a time.

### **Copyright**

Legislation of the Kyrgyz Republic protects works of science, literature, and art (copyright), as well as phonograms, performances, broadcasts by broadcasting and cablecasting organizations (related rights). Protection is provided without registration of respective works or any other formalities. Copyright is valid for the life of the author and 50 years after his/her death.

Copyright covers software and data bases, both released and not released, represented in objective form, regardless of their tangible medium, purpose, and value. Legal protection applies to any type of software in any language and in any form, including source code and object code.

### **Protection of Intellectual Property Rights**

Legislation of the Kyrgyz Republic provides for civil, administrative, and criminal liability for violations in the field of intellectual property.

*Administrative Liability Code* provides for administrative fines for intellectual property violations. Consideration of administrative violations in this field pertains to the competence of courts.

*Criminal liability* for violation of intellectual property rights is provided by the Criminal Code of the Kyrgyz Republic. Thus, *custodial sanction* may be imposed for violation of copyright.

According to the general rule, intellectual property is protected subject to judicial procedure on a general claim basis. The respective disputes pertain to the competence of courts.

In some cases the right holder may resort to other public authorities, such as the anti-monopoly or customs authority, in cases where violation of intellectual property right is related to unfair competition or movement of goods containing intellectual property objects across customs borders.

As of today, 27 certified patent attorneys operate in Kyrgyzstan.

### 13. ANTI-MONOPOLY REGULATION

#### Legislation

Anti-monopoly legislation of the Kyrgyz Republic consists of the Law of the Kyrgyz Republic “On Restriction of Monopoly Activities, Development and Protection of Competition”,<sup>161</sup> Law of the Kyrgyz Republic “On Natural and Permitted Monopolies”,<sup>162</sup> Law of the Kyrgyz Republic “On Advertising”,<sup>163</sup> and others.

The anti-monopoly authority and sectoral public authorities within the scope of their respective powers regulate and supervise natural and permitted monopolies. The public authority in charge of implementation of a unified state policy of competition development and protection, state regulation and supervision of natural and permitted monopolies, prevention, restriction and restraint of monopoly activities and bad faith competition, and regulation of fuel and energy sector of the Kyrgyz Republic is the State Agency for Anti-Monopoly Policy and Development of Competition under the Government of the Kyrgyz Republic.

#### Bad Faith Competition

Bad faith competition is any action of a business entity, which is aimed at obtaining an advantage against principles of good faith, reasonability and fairness, and may cause or has caused losses to competing business entities or damage to their reputation.

#### **The following actions are prohibited as bad faith competition practices:**

- The distribution of false or inaccurate information (giving false color to accurate information), so that damage may be caused to the reputation of another business entity;
- Misleading consumers about the character, method, production location, features, applicability, or quality of merchandise;
- Use without proper authorization of a trademark, a company name, or a merchandise mark; to copy without authorization a form, package, or appearance of merchandise produced by other business participants;
- Advertising merchandise that does not meet established quality requirements;
- The use or disclosure without proper authorization of confidential scientific, technological, production, or commercial information;
- The undertaking of any actions that may in any way lead to confusion with respect to the competing company, its goods, or production/commercial activities.

**The following actions are prohibited** to business entities that have a dominant position and may cause restriction of competition and/or infringe interests of other business entities or citizens:

- Withdrawal of merchandise from circulation with the purpose of creating or supporting its deficit at the market or with the purpose of raising prices;
- Forcing unfavorable conditions upon a counterpart that put the counterpart in a position unequal to the position of other business entities;
- Entering into an agreement only on condition of introducing into it provisions on merchandise in which the counterpart (consumer) is not interested;
- Hindering other business entities’ entry to (or exit from) the market;
- Breaching the pricing procedure established by legislation.

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<sup>161</sup> The Law of the Kyrgyz Republic “On Restriction of Monopoly Activities, Development and Protection of Competition” dated April 15, 1994 (with the latest amendments as of August 1, 2003).

<sup>162</sup> The Law of the Kyrgyz Republic “On Natural and Permitted Monopolies in Kyrgyz Republic” dated October 8, 1999 (with the latest amendments as of December 10, 2004).

<sup>163</sup> The Law of the Kyrgyz Republic “On Advertisement” dated December 24, 1998 (with the latest amendments as of August 8, 2006).



### **Liability for Abuse of a Dominant Position**

Should a business entity, public authority, or public official abuse their dominant position and engage in monopoly practices, the following liabilities may be imposed:

- Disaggregation of the business entity;
- Seizure of the unduly gained profit;
- Reparation of the inflicted harm, including lost profit;
- A monetary fine.

### **Powers of the Anti-Monopoly Authority Related to Advertisement**

The anti-monopoly authority and its territorial bodies shall within the scope of their powers exercise state supervision of compliance with legislation of the Kyrgyz Republic on advertising by:

- Preventing and restraining improper advertising by individuals and legal entities;
- Sending to advertisers and entities producing and distributing advertisement materials demands to discontinue violation of legislation of the Kyrgyz Republic on advertisement and decisions on counter-advertisement;
- Sending materials related to violations of the legislation of the Kyrgyz Republic on advertising to the licensing authorities to have the license of the violating entity suspended or revoked;
- Sending to the prosecution bodies and other law enforcement agencies materials required to start criminal action in case of an advertising crime.

### **Methods of Anti-Monopoly Regulation:**

- Price regulation by the establishment of prices/tariffs or their limits;
- The establishment of profitability limits;
- Identification of consumers/subscribers entitled to mandatory servicing, and/or establishment of minimal level of their supply in cases where their needs in goods/services produced/sold by a natural or permitted monopoly may not be fully satisfied, taking into account the protection of citizens' rights and legal interests, national security, the protection of the environment, and the protection of cultural property;
- The imposition of trade markups.



## 14. ENVIRONMENTAL PROTECTION

### Legislation

The protection of the environment and the rational use of natural resources are regulated by the Law of the Kyrgyz Republic “On Environment Protection”<sup>164</sup> and other normative legal acts that establish a legal basis for protection of the environment and its components that constitute property of the Kyrgyz Republic and represent a decisive factor in its sustainable economic and social development.

Currently the public authority in charge of environmental protection in the Kyrgyz Republic is the State Agency for Environment Protection and Forestry under the Government of the Kyrgyz Republic. It is also the national authority in charge of: forestry, carrying out a unified policy of environmental protection, protecting biological diversity, the rational use of natural resources, the development of high altitude areas, forestry and hunting, and the ecological security of the country.

### Environmental Impact Review

Under the legislation of the Kyrgyz Republic, business entities’ projects related to the use of natural resources are subject to environmental impact review.<sup>165</sup> This requirement has been introduced to prevent negative consequences for public health and the environment that may be caused by business and other activities. In addition, the adequacy of planned activities has to be assessed at stages preceding decisions on compliance with legislation on the environmental protection of the Kyrgyz Republic.

The following two types of environmental impact review are being performed in the Kyrgyz Republic: *a state review of environmental impact* and *a public review of environmental impact*. It is prohibited to fund and implement projects related to the use of natural resources if they have not undergone a state review of their environmental impact.

In the course of designing, placing, constructing, reconstructing, re-equipping, and clearing objects and activities that may directly or indirectly influence the environment for operation, steps for protection, rational use, replenishment of natural resources and environmental enhancement have to be taken subject to the environmental norms, and impact of the planned activities upon the environment has to be assessed.

### Environmental Standardization and Certification

Products/processes/services produced within the Kyrgyz Republic or imported into its territory that are potentially threatening to environmental safety, people’s health or lives, or the replenishment and rational use of natural resources, are subject to environmental standardization and certification. A list of such products is approved by the Government of the Kyrgyz Republic.

### Environmental Impact Audit

To prevent and restrain violations of environment legislation and assess the prospective risk of pollution as a result of a company’s previous activities, independent experts may provide an environmental impact audit for the purpose of the company’s self-testing. Legal entities interested in an environmental impact audit perform it using their own funds or funds raised subject to the procedure provided by legislation.

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<sup>164</sup> The Law of the Kyrgyz Republic “On Environment Protection” dated June 16, 1999 (with the latest amendments as of August 6, 2005).

<sup>165</sup> The Law of the Kyrgyz Republic “On Environmental Impact Review” dated June 16, 1999 (with the latest amendments of February 26, 2007).

## 15. CUSTOMS REGULATION

Customs relations in the Kyrgyz Republic are regulated by the Customs Code of the Kyrgyz Republic,<sup>166</sup> specific laws, other legislation of the Kyrgyz Republic, as well as international treaties and other customs provisions of international law.

The authority in charge of customs regulation in the Kyrgyz Republic is the State Customs Committee of the Kyrgyz Republic.

### **Procedures for Moving Goods and Vehicles across Customs Frontiers of the Kyrgyz Republic:**

- Customs inspection
- Personal inspection
- Special marks or identification signs of goods in cases provided by the current legislation of the Kyrgyz Republic
- Audit-based supervision

Goods and vehicles shall be moved across customs frontiers subject to the procedures established by the Customs Code of the Kyrgyz Republic.

The procedure of crossing a customs frontier where it coincides with the national frontier of the Kyrgyz Republic is set forth by the legislation on the national frontier,<sup>167</sup> while the aspects not regulated by it are subject to regulation by customs legislation of the Kyrgyz Republic.

All goods and vehicles moved across customs frontiers, including those moved in the course of international economic activities, shall be subject to customs clearance and customs control according to the procedure and on conditions provided by the Customs Code of the Kyrgyz Republic.

The import of goods into the customs territory of the Kyrgyz Republic and their export from the customs territory of the Kyrgyz Republic entails responsibility of the parties moving the goods to apply one of the customs treatments provided by the Customs Code of the Kyrgyz Republic to the goods, and to follow the requirements of this treatment.

### **Customs Treatments**

The existing customs legislation of the Kyrgyz Republic provides for the following 15 customs treatments:

- Release for free circulation
- Re-import
- Customs warehouse
- Duty-free shop
- Processing within the customs territory
- Processing under customs control
- Processing outside the customs territory
- Temporary imports
  
- Temporary exports
- Export
- Re-export
- Transit
- Disposal
- Abandonment to the state

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<sup>166</sup> The Customs Code of the Kyrgyz Republic dated July 12, 2004 (with the latest amendments as of March 28, 2009).

<sup>167</sup> The Law of the Kyrgyz Republic “On National Frontier of Kyrgyz Republic” dated March 19, 1999.

- Special customs treatments

### **Customs Charges**

In the Kyrgyz Republic customs charges consist of:

- Customs due established subject to the legislation of the Kyrgyz Republic on customs tariffs
- Value added tax on taxable import, collected by customs authorities
- Excise tax on import, collected by customs authorities
- Seasonal dues
- Special types of dues (safety dues, anti-dumping dues, compensation dues) belonging to non-tariff measures of regulation under the legislation of the Kyrgyz Republic on foreign trade
- Customs fees

**The rates of customs dues** are established by legislation of the Kyrgyz Republic on customs tariffs.<sup>168</sup>

During the period from 28 March 2009, **seasonal export dues** are charged on the following goods exported from the Kyrgyz Republic:<sup>169</sup>

- (i) Regenerated paper or cardboard (scrap paper and waste);
- (ii) Barley;
- (iii) Oats;
- (iv) Corn;
- (v) Straw, grain chaff, unprocessed, grinded or non-grinded, milled or non-milled, pressed or granulated.

From November 10, 2007, **export dues** are charged on the following goods:<sup>170</sup>

- (i) coal, briquettes, pellets, and similar types of solid fuel from coal;
- (ii) crude skins of cattle (including buffalo) or horses (double or salted, dried, limed, pickled, or conserved otherwise, but not tanned or parchmented or otherwise treated), with or without pelage, double or non-double;
- (iii) untreated skin of sheep or lamb (double or salted, limed, pickled, or conserved otherwise but not tanned parchmented or otherwise treated), with or without pelage, double or non-double, except skin with wool, untreated, tanned or dressed;
- (iv) other untreated skin (double, salted, dried, limed, pickled, or conserved otherwise but not tanned or parchmented or otherwise treated), with or without pelage, double or non-double, except birds skin or part thereof with feather or down or skin with pelage, untreated, tanned or dressed;
- (v) wool and thin or thick animal hair carded or combed (including combed wool in pieces);
- (vi) wool condenser spinning, not prepacked for retail sale;
- (vii) gold (including gold with galvanic platinum coating) untreated or semi-treated or in the form of powder;
- (xii) lead waste and scrap.

**Customs Control** is a set of measures applied by customs authorities to assure compliance with customs legislation.

**Customs Control Objects.** The following are subject to customs control by customs authorities:

- Goods and vehicles moved across the customs frontiers
- Documents that contain information on the goods and vehicles and are required for submission to tax authorities by the Customs Code

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<sup>168</sup> The Law of the Kyrgyz Republic “On Customs Tariffs of Kyrgyz Republic” dated March 29, 2006 (with the latest amendments as of October 17, 2008).

<sup>169</sup> Resolution No. 157 of the Government of the Kyrgyz Republic dated March 10, 2009.

<sup>170</sup> Resolution No. 503 of the Government of the Kyrgyz Republic dated October 23, 2007.

- Activities of customs brokers, customs transporters, owners of temporary storage warehouses, customs warehouses, and duty-free shops
- Compliance with the established restrictions upon use and disposal of goods
- Calculation and payment of customs charges

**Forms of Customs Control:**

- Inspection of documents and information
- Verbal questioning
- Clarifications
- Inspection of goods and vehicles
- Customs inspection
- Personal inspection
- Special marks or identification signs of goods in cases provided by the current legislation of the Kyrgyz Republic
- Audit-based control

## 16. TECHNICAL REGULATION

The Law of the Kyrgyz Republic “On the Basics of Technical Regulation in the Kyrgyz Republic”<sup>171</sup> sets forth the legal basis for the development, adoption, application and implementation of mandatory requirements to products, processes/methods of production, storage, transportation, sale, use and disposal, and conformity evaluation of products.

The public authority in charge of technical regulation is the Ministry of Economic Development and Trade of the Kyrgyz Republic<sup>172</sup>, which develops and implements a unified state policy of technical regulation. The Ministry of Economic Development and Trade of the Kyrgyz Republic is also responsible for performance of obligations undertaken by the Kyrgyz Republic under the Agreement on Technical Barriers to Trade<sup>173</sup> and Agreement on Application of Sanitary and Phytosanitary Measures.<sup>174</sup>

**Technical regulations** may only be adopted for safety purposes, namely:

- Protection of human life and health
- Environmental protection
- Protection of life and health of animals and plants
- Prevention of actions that may mislead consumers of a product

The Government of the Kyrgyz Republic approved the programs for developing the following technical regulations:

- within 2006-2007<sup>175</sup> the general technical regulations on safety of transport vehicles, on safety of transportation processes, on safety requirements of food products and the processes of their production, storage, transportation, sale, and disposal, on safety of buildings and structures, on safety of construction items, on module approach to procedures for conformity evaluation, on electromagnetic compatibility;
- within 2007-2009:<sup>176</sup>
  - the general technical regulation on safety of food products and the processes of their production, storage, transportation, sale and disposal, the general technical regulation on safety of portable water, the special technical regulation on safety of juices, the special technical regulation on safety of bread, bakery and pasta, the special technical regulation on safety of sugar and confectionary;
  - the special technical regulation on safety of milk, dairy products, their production and turnover, the special technical regulation on safety of flour-and-cereals products, the special technical regulation on safety of bottled natural table and mineral water, the special technical regulation on safety of animal raw materials, their production, storage, transportation, sale and disposal, the special technical regulation on safety of baby food, processes of its production, storage, transportation and sale, the special technical regulation on safety of alcohol drinks, vodka, or extracts, the special technical regulation on safety of tomatoes, products of their processing, processes of their production, storage, transportation, sale and disposal, the special technical regulation on safety of meat and its products, processes of their production, storage, transportation, sale or disposal;

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<sup>171</sup> The Law of the Kyrgyz Republic “On the Basics of Technical Regulation in the Kyrgyz Republic” dated May 22, 2004.

<sup>172</sup> Edict of the President of the Kyrgyz Republic No. 149 dated April 30, 2005.

<sup>173</sup> The Agreement on Technical Barriers to Trade dated April 15, 1994.

<sup>174</sup> The Agreement on Application of Sanitary and Phytosanitary Measures dated April 15, 1994.

<sup>175</sup> The Program for the development of top priority technical regulations for 2006-2007, approved by Resolution No. 11 of the Government of the Kyrgyz Republic dated January 12, 2006.

<sup>176</sup> The Program for the development of technical regulations for 2007-2009 (with the latest amendments as of December 30, 2008), approved by Resolution No. 364 of the Government of the Kyrgyz Republic dated August 24, 2007 (with the latest amendments as of February 5, 2008).

- the general technical regulation on safety of buildings and structures, the special technical regulation on safety of construction of buildings of various purposes made of modern quickly-erected construction patterns and polymeric materials;
- the general technical regulation on electromagnetic compatibility, the special technical regulation on safety of low-voltage equipment, the special technical regulation on safety of information technologies, the special technical regulation on safety of communication means;
- the general technical regulation on safety of transport vehicles, the special technical regulation on safety when designing, building (reconstructing) or developing roads, the general technical regulation on safety of water transport vehicles;
- the general technical regulation on safety of operation and disposal of machines and equipment, the special technical regulation on safety of elevators, the special technical regulation on safety of lifting transport equipment and processes of its operation, the special technical regulation on safety of medical equipment;
- the general technical regulation on environmental safety;
- the general technical regulation on fire safety;
- the general technical regulation on radiation safety;
- the general technical regulation on electricity safety;
- the general technical regulation on industrial safety;
- the general technical regulation on safety of production processes of extraction, transportation and storage of oil and gas.

In 2008, the Kyrgyz Government<sup>177</sup> plans to adopt the general technical regulations on fire safety, on environmental safety, on radiation safety, on safety of food products, on national quality infrastructure, on principles of its financing and optimization of its organizational structures in conformity with the world practice.

The development and application of technical regulations will contribute to the formation and improvement of the legislation on technical regulation in line with the international standards and requirements, and will ensure appropriate safety with the account of interests of industries and areas of practice.

### **Standardization**

Standardization documents of the Kyrgyz Republic are represented by:

- o National standards of the Kyrgyz Republic
- o Standardization rules, norms and recommendations
- o International (regional) standards
- o National standards of other countries
- o Standards of organizations

International (regional) standards and standards of other countries are recognized in the Kyrgyz Republic as national standardization documents in accordance with the methodology developed by the national standardization authority – the National Institute for Standards and Metrology of the Kyrgyz Republic (the *Kyrgyzstandard*)

### **Proof of Conformity and State Supervision of Compliance with Mandatory Requirements**

Measures in this area are closely coordinated with administrative reform, which requires consistent development of respective resolutions of the Government of the Kyrgyz Republic.

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<sup>177</sup> The Program of Actions for 2008 (with the latest amendments as of December 30, 2008), approved by Resolution No. 14 of the Government of the Kyrgyz Republic dated January 19, 2008.

The Government of the Kyrgyz Republic<sup>178</sup> has developed: (i) the general procedure for mandatory certification of products; (ii) the list of products subject to mandatory proof of conformity; (iii) the procedure for approval of the declaration of conformity and its registration; (iv) the nomenclature of the products to be attested as conforming by the declaration of conformity; (v) mandatory technical safety norms that apply to such products.

Thus, only the products to be circulated in the Kyrgyz Republic are subject to the procedure of conformity confirmation. The mandatory certification is carried out in the form of certification and approval of the declaration of conformity. The declaration of conformity and the certificate of conformity have equal legal force throughout the Kyrgyz Republic.

The list of products subject to mandatory proof of conformity has been reduced by more than 70%. The number of conformity indicators is now about 3 times as low as before - as a result the procedure of evaluation of product conformity has become much less time-consuming and costly.

The approval and application of these documents assure transparency of mandatory evaluation of conformity, allow producers (suppliers) to prove conformity of their products by certification or declaration, and support the shift towards internationally accepted module approaches of product conformity evaluation upon technical regulations' coming into effect.

The Government of the Kyrgyz Republic<sup>179</sup> has established a unified procedure for the recognition of results of mandatory conformity certification by relevant authorities of the exporting countries on the basis of multilateral or bilateral agreements, or subject to a unilateral procedure. The Kyrgyz Republic recognizes conformity certificates, conformity declarations and test records obtained in Azerbaijan, Armenia, Belarus, China, Georgia, Kazakhstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine, in cases where requirements to products are equivalent.

The Kyrgyz Republic unilaterally acknowledges the proof of conformity of the following:

- Products of Iran, Slovakia and Turkey – on the basis of inter-agency agreements on mutual recognition of certification authorities, testing laboratories/centers, results of testing and certification, conformity certificates and conformity signs
- Products marked by the sign “SE” of the European Union, irrespective of the country of origin, if the genuineness of the sign “SE” is confirmed by respective documents (the certificate of conformity or the declaration of conformity of the manufacturer).

The Government of the Kyrgyz Republic<sup>180</sup> has approved a list of authorized bodies responsible for state supervision of compliance with mandatory requirements to products, and the scope of their powers. In accordance to the list:

- The Department of State Sanitation and Epidemiological Surveillance of the Ministry of Health of the Kyrgyz Republic is responsible for the supervision of compliance with mandatory requirements concerning the biological and chemical safety of off-the-shelf food products
- The State Veterinary Department of the Ministry of Agriculture, Water Economy and Processing Industry of the Kyrgyz Republic is responsible for the supervision of compliance with mandatory requirements concerning the biological safety of feed and feed supplements
- The State Department for Chemical Treatment, Protection and Quarantine of Plants of the Ministry of Agriculture, Water Economy and Processing Industry of the Kyrgyz Republic is

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<sup>178</sup> Resolution No. 639 of the Government of the Kyrgyz Republic dated December 30, 2005 (with the latest amendments as of October 23, 2007)

<sup>179</sup> Resolution No. 8 of the Government of the Kyrgyz Republic dated January 11, 2006 (with the latest amendments as of October 23, 2007).

<sup>180</sup> Resolution No. 473 of the Government of the Kyrgyz Republic dated June 30, 2006.



- responsible for supervision of compliance with mandatory requirements concerning the ecological safety of chemicals and plant protection substances
- The Department for Medicine and Medical Equipment of the Ministry of Health Care of the Kyrgyz Republic is responsible for supervision of compliance with mandatory requirements concerning the ecological and chemical safety of medicine (except veterinary medicine), and for ensuring safety of medicinal items and biologically active additives;
  - The State Inspectorate for Energy and Gas of the Ministry of Industry, Energy and Fuel Resources of the Kyrgyz Republic is responsible for supervision of compliance with mandatory requirements concerning electricity safety, electromagnetic compatibility of electrotechnical products, equipment and devices;
  - The State Inspectorate for Supervision of Industrial Safety and Mining of the Ministry of Emergency Situation of the Kyrgyz Republic is responsible for supervision of compliance with mandatory requirements concerning safety of fuel and energy sector products, buildings, structures and technical devices at hazardous production facilities, and of circulation of explosive materials of industrial purpose, including oil products;
  - The State Agency for Architecture and Construction of the Government of the Kyrgyz Republic is responsible for supervision of compliance with mandatory requirements concerning safety of buildings and structures, construction materials, items and construction patterns;
  - The Chief State Technical Inspectorate of the Ministry of Agriculture, Water Resources and Processing Industry of the Kyrgyz Republic is responsible for supervision of compliance with mandatory requirements concerning safe operation of machines and equipment such as: stationary technological installations with internal-combustion engines, tractors, self-propelled technological machines, trailers and semitrailers, construction, digging and road machines;
  - The State Fire Prevention Service of the Ministry of Emergency Situations of the Kyrgyz Republic is responsible for supervision of compliance with mandatory requirements concerning fire safety and that of pyrotechnical items;
  - The State Automobile Inspectorate of the Ministry of Internal Affairs of the Kyrgyz Republic is responsible for supervision of compliance with mandatory requirements concerning safe operation of cars and equipment such as: automobile transport vehicles (including trolleybuses), motorcycles (including scooters and sidecars), trailers and semitrailers.

## 17. INSURANCE

### Legislation

Activities of insurance companies are regulated by the Law of the Kyrgyz Republic “On Organization of Insurance in the Kyrgyz Republic”,<sup>181</sup> “On Mandatory Insurance of Employer Civil Liability for Death or Injury of Employee While on Duty”,<sup>182</sup> “On Mandatory Insurance of Carrier Civil Liability to Passengers”,<sup>183</sup> “On Mandatory Insurance of Civil Liability of Carriers of Hazardous Cargoes”,<sup>184</sup> and “On Mandatory Insurance of Civil Liability of Entities Operating Hazardous Facilities”,<sup>185</sup>.

### Establishment and Licensing

Insurance companies may be founded as open or closed joint stock companies with the charter capital being:<sup>186</sup>

- 30 million soms (about 714 thousand US dollars as of March 2009) for newly established insurance companies to engage in voluntary insurance and re-insurance of these risks;
- not less than 25 million soms (about 595 thousand US dollars as of March 2009) for operating insurance companies engaged in voluntary insurance and reinsurance of these risks;
- not less than 60 million soms (about 1 million 428 thousand US dollars as of March 2009) for newly established insurance companies to engage solely in re-insurance;
- not less than 30 million soms (about 714 thousand US dollars as of March 2009) for operating insurance companies engaged solely in re-insurance;
- not less than 50 million soms (about 1 million 190 thousand US dollars as of March 2009) for insurance companies to engage in mandatory insurance and re-insurance of these risks.

Insurance activities are subject to licensing, and an individual license is issued for each insurance activity. A license is termless, unless otherwise provided in it. Insurance may be performed in either national or foreign currency.

For the time being, there are 18 insurance companies operating in Kyrgyzstan.<sup>187</sup> Out of 18 insurance companies 1 is a reinsurance company, and 7 companies have foreign capital.

At present, there is considered a possibility of creating a national publicly held reinsurance company in order to reduce an outflow of funds from local insurance companies to foreign insurance companies for reinsurance purposes.

### Reporting by Insurance Companies

Insurance companies submit to the authorized agency their balance sheets and profit and loss statements on an annual basis, as well as current reports and other documents reflecting their insurance activities.<sup>188</sup>

Financial indicators such as insurance reserves, assets and equity capital are compared as follows:

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<sup>181</sup> The Law of the Kyrgyz Republic “On Organization of Insurance in the Kyrgyz Republic” dated July 23, 1998 (with the latest amendments as of October 17, 2008).

<sup>182</sup> The Law of the Kyrgyz Republic “On Mandatory Insurance of Civil Liability of Employer for Death or Injury of Employee While on Duty” dated August 5, 2008.

<sup>183</sup> The Law of the Kyrgyz Republic “On Mandatory Insurance of Civil Liability of Carrier to Passengers” dated August 4, 2008.

<sup>184</sup> The Law of the Kyrgyz Republic “On Mandatory Insurance of Civil Liability of Carrier of Hazardous Cargoes” dated August 4, 2008.

<sup>185</sup> The of the Kyrgyz Republic “On Mandatory Insurance of Civil Liability of Entities Operating Hazardous Facilities” dated August 15, 2008.

<sup>186</sup> Resolution No. 117 of the Kyrgyz Financial Market Supervisory Authority dated October 23, 2008.

<sup>187</sup> [http://fsa.kg/docs/Strahov\\_SpisokKompani.mht](http://fsa.kg/docs/Strahov_SpisokKompani.mht) and <http://fsa.kg/docs/Finpokaz.htm>

<sup>188</sup> [http://fsa.kg/docs/Strahov\\_viplati.mht](http://fsa.kg/docs/Strahov_viplati.mht)

Financial indicators	As of December 1, 2007 (mln. soms)	As of December 1, 2008 (mln. soms)	Difference (%)
Assets	336.5	426.2	26.6%
Liabilities	94.5	74.0	- 21.7%
Volume of insurance reserves	45.8	43.9	-4.1%
Equity capital	242.0	352.2	45.5%

### Development Perspectives

Mandatory insurance services include mandatory state insurance of life and health of military servicemen and those subject to call-up, called up for training and special musters, and persons with equal status.<sup>189</sup>

In the nearest future, it is planned to introduce the following:

- Mandatory auto liability insurance;
- Mandatory tour operator liability insurance;
- Mandatory notary liability insurance;
- Mandatory insurance of citizens' property against natural disasters;
- Environmental insurance;
- A number of programs for mandatory state insurance (insurance of military servicemen, public servants, municipal servants, insurance of state and municipal property)

For the time being, it is planned to develop the draft Law of the Kyrgyz Republic "On Voluntary Preferential Insurance of Housing against Natural Emergencies in Kyrgyz Republic".<sup>190</sup>

<sup>189</sup> [http://fsa.kg/docs/Monitoring\\_NPF\\_SK\\_%2004.04.2008.mht](http://fsa.kg/docs/Monitoring_NPF_SK_%2004.04.2008.mht)

<sup>190</sup> <http://www.mert.kg/node/75>

## 18. SECURITIES MARKET

### Legislation

Legislation of the Kyrgyz Republic regulating the securities market consists of the Civil Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic “On Securities Market”,<sup>191</sup> Law of the Kyrgyz Republic “On Investment Funds”,<sup>192</sup> Law of the Kyrgyz Republic “On Joint Stock Companies”, Law of the Kyrgyz Republic “On Business Partnerships and Companies”, and subordinate legislation.

The state securities market regulator and the Asian Development Bank experts have developed the drafts of the new Law of the Kyrgyz Republic “On Securities Market”<sup>193</sup> and the Law of the Kyrgyz Republic “On National Financial Market Regulatory and Supervisory Service of Kyrgyz Republic”.<sup>194</sup> Also, the work is underway to create the Single Securities Depository.

In addition, the regulatory framework for mortgage-backed certificates and municipal securities is being developed.<sup>195</sup> The state securities market regulator has prepared the drafts of the laws for the introduction of housing certificates and bonds secured by pledge.<sup>196</sup>

In the framework of the pilot project for issue of municipal securities of the Mayor’s Office of Bishkek city<sup>197</sup>, the interdepartmental working group has developed the draft of the Law of the Kyrgyz Republic “On Municipal Securities”.<sup>198</sup>

### State Regulation

The state securities market regulator is the Financial Market Supervisory and Regulatory Service of the Kyrgyz Republic, which pursues a uniform state policy in the financial market and regulates and oversees the activities of non-banking financial institutions, securities market, audit activities, accounting, financial reporting and audit standards.

The state securities market regulator possesses relevant authorities to carry out inspections of securities market participants and is entitled to impose certain sanction thereon.<sup>199</sup>

### Investment in Securities

Dynamics of corporate securities by sectors of the economy from 2005 till 2007 is as follows (thousand KGS):<sup>200</sup>

	2005	% of total	2006	% of total	2007	% of total	2008	% of total
Industry	3,289,163	75.9	953,539	46.9	199,222	9.4	3,227.2	54.4
Finance and credit	984,620	22.7	1,040,740	51.2	1,659,339	78.4	2,230.1	37.6
Other	62,411	1.4	37,004	1.8	258,639	12.2	475.2	8.0
Total	4,336,194	100	2,031,282	100	2,117,090	100	59,932.5	100

<sup>191</sup> The Law of the Kyrgyz Republic “On Securities Market” dated July 21, 1998 (with the latest amendments as of January 27, 2006).

<sup>192</sup> The Law of the Kyrgyz Republic “On Investment Funds” dated July 26, 1999 (with the latest amendments as of January 27, 2006).

<sup>193</sup> Resolution No. 630 of the Government of the Kyrgyz Republic dated November 13, 2008.

<sup>194</sup> Resolution No. 654 of the Government of the Kyrgyz Republic dated November 28, 2008.

<sup>195</sup> Resolution No. 155 of the Government of the Kyrgyz Republic dated 8 May 2007 (with the latest amendments as of April 21, 2008).

<sup>196</sup> <http://fsa.kg/docs/SecurityMarket1.htm>

<sup>197</sup> Order No. 239 of the Bishkek City Council dated July 9, 2004.

<sup>198</sup> Ordinance No. 516-r of the Government of the Kyrgyz Republic dated December 4, 2007.

<sup>199</sup> Resolution No. 288 of the Government of the Kyrgyz Republic dated July 24, 2007.

<sup>200</sup> [http://fsa.kg/docs/Dinamika\\_ emissii.htm](http://fsa.kg/docs/Dinamika_ emissii.htm)

In 2008, the volume of foreign investment in corporate securities of Kyrgyz companies has reached 3,439 million soms, of which 2,509 million soms were invested by the far abroad states and 930 million soms were invested by the CIS countries.

At the end of the year 2008, according to information of 3 stock exchanges, the volume of trade in securities has made 9.24 billion soms, which is 161% more than the figures for 2007. Also in 2008, there was registered a 2 billion soms worth of transaction, which is the biggest transaction in the history of the Kyrgyz stock market.

Below is information on transactions in the primary and secondary stock markets for the year 2008.<sup>201</sup>

Trade organizers	Total volume (soms)	Primary market (soms)	Secondary market (soms)	Primary market (%)	Secondary market (%)
KSE	4,183,775,942	944,199,194	3,239,576,748	22.7	63.7
BTS	586,361,122	303,207,336	283,153,786	7.3	5.6
CASE	4,476,435,912	2,911,026,273	1,565,409,639	70.0	30.7
Total:	9,246,572,976	4,158,432,803	5,088,140,173	100.0	100.0

In 2008, for the first time in the history of the Kyrgyz stock market, Bishkek Mayor's Office municipal securities were sold for the sum of 200 million soms (about 4.7 million US dollars as of March 2009).

As innovation, in 2008, there were held public sales of state treasury bills at the stock market.<sup>202</sup>

In the nearest future, it is planned to carry out privatization of the state shareholdings in joint stock companies with the state's stake of up to 10% of their outstanding or additional shares offered to the public by having them listed and publicly traded at the stock market<sup>203</sup>.

### Securities Market Professionals

Currently, the following 3 stock exchanges are officially registered in the Kyrgyz Republic:

- ✓ Kyrgyz Stock Exchange CJSC (KSE)
- ✓ Exchange Trade System CJSC (BTS)
- ✓ Central Asian Stock Exchange CJSC (CASE)

In 2007, the Kyrgyz Financial Market Supervisory Authority took measures to foster the development of existing investment funds and registered the rules for *Bai Bulak* and *Altyn Capital* interval unit investment funds, and registered the prospectuses for their investment units.

At present, the Kyrgyz Government makes efforts to relocate all state treasury bills from the trade floor of the National Bank to the licensed trade floors, i.e. stock exchanges.

As of January 1, 2009, in addition to 3 stock exchanges mentioned above, the following securities market professionals are operating in the Kyrgyz stock market:<sup>204</sup>

- Company registrars – 20
- Depositaries – 4

<sup>201</sup> Report of the Kyrgyz Financial Market Supervisory Authority for the year 2008.

<sup>202</sup> Report of the Kyrgyz Financial Market Supervisory Authority for the year 2008.

<sup>203</sup> Report on the Kyrgyz Government's performance in 2008 approved by Resolution No. 115 of the Government of the Kyrgyz Republic dated February 11, 2009 (<http://www.gov.kg/images/otchet/otchet2008r.doc>).

<sup>204</sup> <http://fsa.kg/docs/pf2007.htm>

- Brokers – 34
- Dealers – 31
- Trust managers – 29
- Investment fund managers – 14
- Investment funds – 5
- Investment consultants – 14
- Clearing companies – 1

In the course of stock market establishment, the following professional associations of securities market professionals have been founded to foster the development of the Kyrgyz securities market:

- ✓ *UYUM* Association of Independent Registrars and Depositories;
- ✓ Association of Securities Market Professionals;
- ✓ Investment Funds Association;
- ✓ Shareholder Protection Association; and
- ✓ Institute of Corporate Governance and Development.

## 19. REGULATION OF SPECIFIC INDUSTRIES

### 19.1 ELECTRIC POWER INDUSTRY

#### State Regulation

The Government of the Kyrgyz Republic develops general policy for the electric power industry.

The purpose of state regulation of the electric power industry is to provide electricity and heating on an economically feasible, socially acceptable, and non-discriminatory basis throughout the territory of the Kyrgyz Republic, and to supervise reliability, safety, and continuity of production and consumption of electric and heating power.<sup>205</sup>

The executive authority responsible for the development and implementation of a unified state policy in the field of energy/heating and production is the Ministry of Production, Energy, and Fuel Resources of the Kyrgyz Republic.

In 2008, the Kyrgyz National Energy Program for 2008-2010 and the Fuel and Energy Industry Development Strategy until 2025 were approved.<sup>206</sup>

The Kyrgyz energy strategy prioritizes efforts towards the rational and effective use of natural fuel and energy resources and available technical, scientific and human resources.

The energy policy for 2008-2010 focuses on the following major tasks:

- Ensuring safety and undisturbed supply of electricity, first of all, to local consumers
- Pursuing cardinal reforms in industry management system by creating market-oriented institutional and legal frameworks and finalizing structural reforms in fuel and energy industry
- Pursuing a well-balanced tariff and pricing policy enabling energy companies to cover their actual costs and preventing the cross-subsidizing of consumers;
- Reducing losses and stopping power thefts;
- Developing rules concerning access to power networks and sale of power generated by using alternative energy sources, and mechanisms to subsidize them;
- Improving financial and corporate governance in fuel and energy industry, toughening requirements for commercial or financial discipline and fostering profitability of entities engaged in this industry;
- Developing programs for technical upgrade of the industry;
- Improving investment climate in the fuel and energy industry;
- Making efforts to promote competitive advantage of the Kyrgyz power industry in the regional electricity market;
- Developing energy efficiency and conservation program taking into account the obligations of the Kyrgyz Republic under its treaties with CIS countries;
- Developing program for replacing hydrocarbon fuel by local alternative energy sources to reduce dependence on imported energy resources and to limit the emissions of greenhouse gases;
- Monitoring the financial condition in the electric power industry for the purposes of annually reducing a target indicator of quasi-fiscal deficit by 1-2% of GDP.

Kyrgyz energy policy, in the long-term perspective, is oriented towards protecting legal rights and interests of citizens and business entities, fostering national defense and security capacities, promoting efficient management of state property, achieving cardinal different state of the fuel and energy industry, and rests on consistent efforts made by the state to achieve the most important strategic goals in the area of power industry development and privatization of energy facilities.

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<sup>205</sup> The Law of the Kyrgyz Republic “On Electric Power Industry” dated 28 January 1997 (with the latest amendments as of 10 August 2007).

<sup>206</sup> Resolution No. 346-IV of the Jogorku Kenesh of the Kyrgyz Republic dated April 24, 2008.



In 2008, the Kyrgyz Small and Medium Scale Energy Program until 2012 was approved.<sup>207</sup> The Program focuses on the following tasks:

- Pursuing Kyrgyz energy policy in the area of small and medium scale energy;
- Creating favorable investment climate in small and medium scale energy;
- Making efforts to introduce a specific Clean Development/Joint Implementation Mechanism subject to the requirements of the Kyoto Protocol in the area of small and medium scale renewable energy;
- Staffing and recruitment of personnel qualified to implement the program;
- Demonopolization of energy market, creating competitive environment.

The authority responsible for implementing the tasks stated in the Program is the Directorate for Small and Medium Scale Energy in the Kyrgyz Republic.

### **Licensing**

In the Kyrgyz Republic the following are subject to licensing: the production, transmission, distribution, and sale of electricity, the construction of power stations, substations and power lines, and the import and export of electricity. Foreign individuals and legal entities may obtain licenses to engage in the above activities subject to the same procedures as apply to individuals and legal entities of the Kyrgyz Republic. A license is issued for a specific activity for an unlimited term.

Currently, the State Department for Fuel and Energy Industry Regulation under the Ministry of Production, Energy, and Fuel Resources of the Kyrgyz Republic acts as a licensor.

Upon technical review of the documents submitted by an organization or an entrepreneur in order to obtain a license for production, transmission, distribution and sale of heating energy, the Department of Energy and Gas of the Ministry of Production, Energy, and Fuel Resources of the Kyrgyz Republic<sup>208</sup> and the State Energy and Gas Supervisory Authority of the Ministry of Production, Energy, and Fuel Resources of the Kyrgyz Republic decide whether the applicant can perform activities subject to licensing according to the technical provisions of Kyrgyz legislation regulating power industry.<sup>209</sup>

### **Construction and Reconstruction of Generating Capacities**

Total Kyrgyz hydropower capacity is 142.5 billion kWh (placing Kyrgyzstan on the 3<sup>rd</sup> position among CIS countries after Russia and Tajikistan). Only on the Naryn River, it is feasible to build 7 more cascades consisting of 33 hydropower plants, with summarized installed capacity of 6,450 mw and annual power output of more than 22 billion kWh.<sup>210</sup>

Elektricheskie Stantsii OJSC was set up on the basis of:

- existing cascade of Toktogul hydropower plants (Toktogul hydropower plant (1,200 MW) and Kurpsai hydropower plant (800 MW));
- Atbashy hydropower plant (40 MW);
- Enterprises of hydropower plants under construction (Tashkumyr hydropower plant (450 MW), Shamaldysai hydropower plant (240 MW), Uchkurgan hydropower plant (180 MW), Kambarata 1 hydropower plant (1,900 MW), Kambarata 2 hydropower plant (360 MW));
- Central Heating and Power Plants (CHPP) of Bishkek City (with 666 thousand kW power capacity, and 1,443.9 Gcal/hour heating capacity) and Osh City (with 25 thousand kW power capacity, and 143.515 Gcal/hour heating capacity),

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<sup>207</sup> Decree № 365 of the President of the Kyrgyz Republic dated October 14, 2008.

<sup>208</sup> Order No. 30 of the Ministry of Industry, Energy and Fuel Resources of the Kyrgyz Republic dated May 23, 2007.

<sup>209</sup> Resolution No. 334 of the Government of the Kyrgyz Republic dated August 15, 2007.

<sup>210</sup> [http://www.energo-es.kg/projects/investment\\_projects/](http://www.energo-es.kg/projects/investment_projects/)

in which not less than 93.72% of shares were retained in state ownership. No state shareholding may be sold, or pledged, or credited against external debt of the Kyrgyz Republic, or transferred in trust, and no new shares may be issued without the consent of the Jogorku Kenesh of the Kyrgyz Republic. No property of Electriccheskie Stantsii OJSC may be alienated in any form including indirect ones, except for Kambarata 1 and Kambarata 2 hydropower plants under construction and CHPP of Bishkek City.<sup>211</sup>

In 2007, the Law of the Kyrgyz Republic “On Construction and Operation of *Kambarata 1* and *Kambarata 2* Hydro Power Stations” was adopted. *Kambarata 1* and *Kambarata 2*, the power stations under construction, may be granted as a concession or contributed into the authorized fund of a newly established business entity. No state interest of the Kyrgyz Republic in the authorized fund of the business entity newly established to complete construction of *Kambarata 1* and *Kambarata 2* hydropower stations may be sold, credited against external debt of the Kyrgyz Republic, alienated in any form, or changed. Conditions of a concession agreement or conditions upon which hydropower stations of *Kambarata 1* and *Kambarata 2* may be contributed to the authorized fund of a newly established business entity, shall be coordinated with the Jogorku Kenesh (Parliament) of the Kyrgyz Republic. In the business entity that will be established to construct and operate *Kambarata 1* and *Kambarata 2* hydropower stations, management body representation must be proportionate to shares in the authorized capital.

In 2008, the Government of the Kyrgyz Republic has issued a decision to re-launch the construction of Kambarata 2 hydropower station (360 MW) and to put its first unit into operation by December 2009 using the resources of the Kyrgyz Republic.<sup>212</sup>

In February 2009, the Government of the Russian Federation and the Government of the Kyrgyz Republic signed the agreement on construction of Kambarata 1 hydropower plant, whereby the Russian Federation agreed to provide finance in 2009-2013 to the newly established Kyrgyz Russian joint stock company for the purposes of construction of Kambarata 1 hydropower plant.<sup>213</sup> At the same time, Electriccheskie Stantsii OJSC, Russian company INTERRAO EAS OJSC and Kazakh company KazKuat JSC are jointly financing the preparation of a feasibility study for the construction of Kambarata 1 hydropower plant (1,900 MW).<sup>214</sup>

During the period until 2010, it is anticipated to attract investment in the reconstruction of Atbashy hydropower plant (40 MW) and Uchkurgan hydropower plant (180 MW).<sup>215</sup>

Thus, in August 2008, the Government of the Kyrgyz Republic granted to a South Korean company EPI Co Ltd the right to develop the Markay coal deposit on the condition that it invests in the reconstruction of Uch-Kurgan hydropower plant.<sup>216</sup>

As part of the small and medium scale energy development program, in 2009 it is planned to construct 4 small hydropower plants: Kirov, Orto-Tokoy, Papan, and Karasu (Karakul).<sup>217</sup> The European Bank for Reconstruction and Development is ready to consider its participation in the financing of the construction of small and medium size hydropower stations.<sup>218</sup>

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<sup>211</sup> The Law of the Kyrgyz Republic “On Special Status of Cascade of Toktogul Hydropower Stations and National High Voltage Power Lines” dated January 21, 2002 (as last amended July 30, 2007).

<sup>212</sup> Resolution No. 502 of the Government of the Kyrgyz Republic dated October 23, 2007.

<sup>213</sup> <http://www.president.kg/ru/press/news/3327/>.

<sup>214</sup> <http://www.adb.org/Documents/Translations/Russian/Energy-Sector-Report-ru.pdf>.

<sup>215</sup> Order No. 82 of the Ministry of Industry, Energy and Fuel Resources of the Kyrgyz Republic dated August 29, 2007, [http://www.energo-es.kg/projects/hps\\_reconstruction/](http://www.energo-es.kg/projects/hps_reconstruction/)

<sup>216</sup> Resolution No. 422 of the Government of the Kyrgyz Republic dated August 5, 2008.

<sup>217</sup> Resolution No. 724 of the Government of the Kyrgyz Republic dated December 26, 2008.

<sup>218</sup> <http://ca-news.org/news/102641>.

In 2006, the Government of the Kyrgyz Republic approved a proposal to construct on a stage-by-stage basis on the Karakeche coal deposit a heating condensational power plant as a basic electric energy source.<sup>219</sup>

### **Construction of power lines and substations**

In November 2005, the Government of the United States and the Government of the Kyrgyz Republic signed a grant agreement to finance the preparation of a feasibility study:<sup>220</sup>

- for the construction of 33 km of 220 kW Uzlovaya-Alay high voltage power lines;
- for the connection of 1 km of 500 kW Toktogul hydropower plant-Lochin high voltage power lines to 500 kW Datka substation;
- for the construction of 500 kW Datka substation;
- for the connection of 81 km of 220 kW Kristal-Kurpsai hydropower plant high voltage power lines to 500 kW Datka substation;
- for the connection of 5 km of 220 kW Kurpsai hydropower plant –Oktiabr high voltage power lines to 500 kW Datka substation;
- for the construction of 90 km of 220 kW Kristal-Datka high voltage power lines;
- for the construction of 5 km of 220 kW Datka-Oktiabr high voltage power lines;
- for the construction of 220 kW Kurshab substation;
- for the construction of 46 km of 220 kW Datka-Kurshab high voltage power lines;
- for the construction of 108 km of 220 kW Kurshab-Uzlovaya high voltage power lines

to improve power transmission, new power lines, capacity of Kurpsai hydropower plant, Shamaldysai hydropower plant and Tashkumyr hydropower plant and substations, and to prevent overloads and high cost of power transmission.

In 2007, Kabul, Afghanistan, hosted the 3<sup>rd</sup> CASAREM conference at which the Kyrgyz Republic, the Islamic Republic of Pakistan and the Republic of Tajikistan signed a memorandum of understanding regarding the creation of power structures, lines, and grids between Central Asia and South Asia enabling the export of 1,300 MW power from the Kyrgyz Republic and the Republic of Tajikistan to the Islamic Republic of Pakistan through the territory of Afghanistan.<sup>221</sup>

During the period from 2009 until 2011, the Kyrgyz Republic plans to do the following:<sup>222</sup>

- construct 110 kW Aigultash-Samat high voltage power lines;
- construct 500kW/220kW Datka substation and reconstruct 220 kW high voltage power lines in the south area of the republic;
- construct 500kW/220kW Kemin substation and 500 kW Datka-Kemin power lines<sup>223</sup>

to create its own 500 kW power lines network which will ensure safe power supply to Kyrgyz consumers when operated both parallelly with the neighboring grids of the region and in isolation.

In October 2006, the Government of the Kyrgyz Republic and an American company AES Silk Road, Inc. signed a memorandum of understanding regarding the construction of 500 kW high voltage power lines connecting grids of the Kyrgyz Republic and the Republic of Tajikistan and the grids of the Kyrgyz Republic and the Republic of Kazakhstan.<sup>224</sup>

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<sup>219</sup> Resolution No. 536 of the Government of the Kyrgyz Republic dated July 24, 2006.

<sup>220</sup> The Grant Agreement between the Government of the USA and the Government of the Kyrgyz Republic dated November 22, 2005, ratified by Edict UP № 65 of the President of the Kyrgyz Republic dated February 13, 2006.

<sup>221</sup> <http://www.cawater-info.net/news/08-2008/10.htm>.

<sup>222</sup> Order No. 82 of the Ministry of Industry, Energy and Fuel Resources of the Kyrgyz Republic dated August 29, 2007, National Electric Grids of Kyrgyzstan OJSC ([www.energo.kg/o%20kampanii/perspektiva/perspektiva.htm](http://www.energo.kg/o%20kampanii/perspektiva/perspektiva.htm))

<sup>223</sup> National Grid of Kyrgyzstan OJSC [www.energo.kg/o%20kampanii/perspektiva/perspektiva.htm](http://www.energo.kg/o%20kampanii/perspektiva/perspektiva.htm).

<sup>224</sup> Ordinance No. 610-r of the Government of the Kyrgyz Republic dated October 31, 2006.

In June 2007, the Government of the Kyrgyz Republic approved a draft agreement between the Kyrgyz Republic and the Islamic Development Bank to finance the project of construction of 110 kW Aygultash-Samat high voltage power lines and substation.<sup>225</sup>

In 2008, an investment tender was held to construct 500kW/220kW Datka substation, 220kW/110kW Kurshab substation and power lines in the south area of the republic. In December 2008, a Korean company EPI Co Ltd was announced to win the tender. As compensation for investment made, EPI Co Ltd will receive a license to develop the Sulukta coal deposit with 100 million tons of reserves.<sup>226</sup>

### **Electric Power Market and Setting Tariffs**

To assure a functional system of commercial relations in the process of production, sale and purchase of electric power, rules of electric power market have been developed.<sup>227</sup>

Purchase and sale of electric power performed by producing and distributing organizations, importers, and major production users is based upon contracts of electric power purchase and sale, with the exception of purchase and sale performed at the balance market of electric power. Contracts of electric power purchase and sale are developed and approved by the Ministry of Production, Energy and Fuel Resources of the Kyrgyz Republic.

The Ministry of Production, Energy and Fuel Resources of the Kyrgyz Republic establishes the following economically grounded tariffs and prices:

- End consumer tariffs within the territory of the Kyrgyz Republic
- Production prices specified in the contracts of electric power purchase and sale (between parties at the domestic market)
- Payment for connection to the national electricity network
- Payment for use of the national electricity network
- Payment for additional services

In 2008, the Government of the Kyrgyz Republic<sup>228</sup> approved the Mid-term electricity tariff policy of the Kyrgyz Republic for 2008-2012, which is based on the following main principles:

- Tariffs must cover all costs of energy companies producing, transmitting, distributing and selling electricity;
- Tariffs for each group of consumers, in the long perspective, must reflect all costs of electricity supply to the given category of consumers;
- All subsidies must be addressed to low-income consumers through governmental social security programs.

Costs of production, transmission, distribution and sale of electricity must include:

- Operational costs;
- Maintenance costs;
- Standard electricity losses;
- Marketing costs;
- Debt servicing costs;
- Capital investment costs;
- Profit element.

The purpose of the new tariff policy is to establish the more efficient structure of tariffs and their stage-by-stage accommodation to actual losses of energy companies.

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<sup>225</sup> Ordinance No. 161-r of the Government of the Kyrgyz Republic dated June 7, 2007.

<sup>226</sup> Resolution No. 675 of the Government of the Kyrgyz Republic dated December 5, 2008.

<sup>227</sup> Resolution No. 187 of the Government of the Kyrgyz Republic dated April 6, 2000

<sup>228</sup> Resolution No. 164 of the Government of the Kyrgyz Republic dated April 23, 2008.

The electricity tariffs during the period from 2008-2012 will be increased annually from April 1. With the proposed rates of tariff increase, average tariff in the internal market will reach 1.42 soms/kWh by 2012.

### **Renewable energy sources**

In 2008, the Law of the Kyrgyz Republic “On Renewable Energy Sources” was adopted.<sup>229</sup> The purpose of the law is to provide legal basis for the development and use of renewable energy sources, improvement of energy structure, diversification of energy resources, improvement of social welfare, energy safety of the republic, environmental protection and sustainable economic development. According to the adopted law:

- the regulated activities include the production, consumption and sale of heat, power and fuel using renewable energy sources as well as the production and supply of equipment and technologies in the area of renewable energy sources;
- state regulation in the area of renewable energy sources is carried out by the Government of the Kyrgyz Republic and competent authorities; one of regulation methods is setting tariffs for energy generated in the framework of the projects involving the Kyrgyz Republic with the payback period of up to 8 years;
- construction, purchase and operation of installations using renewable energy sources may be carried out by any legal or physical person subject to the requirements of laws and technical rules effective in the Kyrgyz Republic;
- financing of scientific and technical researches aimed to develop and use renewable energy sources is provided from state budget funds;
- certain preferences are granted to the producers of power and heat generated by using renewable energy sources and to the consumers of such energy;
- tariffs for energy generated by using renewable energy sources and purchased by energy companies are established with the account of compensation of costs of energy companies purchasing it and the amount of compensation is included in the national power tariff established by energy companies;
- import and export of equipment, installations and spare parts used to produce energy using renewable energy sources are exempt from customs fees;
- energy generated by using renewable energy sources must be mandatorily purchased by energy companies.

The Law provides that the activities in the area of renewable energy sources are subject to licensing in accordance with Kyrgyz law, unless the renewable energy sources are used for one’s own consumption.

### **Privatization of Energy Facilities**

In 2008, the Government of the Kyrgyz Republic made a decision to carry out privatization of the following:<sup>230</sup>

- 80.49% share in Sevelelectro OJSC engaged in distribution and sale of electricity;
- Property complex of CHPP 1 of Bishkek City (subdivision of Elektricheskii Stantsii OJSC), producing heat and hot water in Bishkek City;
- 80.49% share in Bishkekteploset OJSC engaged in transportation and sale of heat and hot water in Bishkek City;

The Government of the Kyrgyz Republic has considered 3 forms of privatization:

- Transfer in trust of 80.49% share in Sevelelectro OJSC and Bishkekteploset OJSC (without title transfer to the trustee) on a competitive basis for a term of 5 years;

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<sup>229</sup> Law No. 283 of the Kyrgyz Republic “On Renewable Energy Sources” dated December 31, 2008.

<sup>230</sup> Resolution No. 84 of the Government of the Kyrgyz Republic dated March 14, 2008.



- Transfer of 80.49% share in Severelectro OJSC and Bishkekteploset OJSC, property complex of CHPP 1 of Bishkek City to investor as concession for a term of 5 to 50 years;
- Sale of 80.49% share in Severelectro OJSC and Bishkekteploset OJSC, property complex of CHPP 1 of Bishkek City

and approved the main conditions and requirements for the preparation and holding of the investment tender,<sup>231</sup> according to which:

- Investor has no right to re-sell shares in Severelectro OJSC and Bishkekteploset OJSC, property complex of CHPP 1 of Bishkek City until it fulfills the investment obligations;
- Investor must make capital investment in the amount of 366.1 million US dollars;
- Investor must not change the configuration and mode of operation of these entities;
- Investor must sell its products at tariffs set by the Government of the Kyrgyz Republic or competent energy authority.

Besides, the Government of the Kyrgyz Republic plans to carry out in 2008-2012 privatization of the following.<sup>232</sup>

- State shareholding in other regional energy selling companies – Vostokelectro OJSC, Oshelectro OJSC, Jalalabatelectro OJSC;
- Institutions subordinate to the Ministry of Industry, Energy and Fuel Resources of the Kyrgyz Republic: the Kyrgyz scientific and technical center Energy and Kyrgyz engineering research institute Energoproject.

## 19.2 MINERAL RESOURCES

Within the territory of the Kyrgyz Republic deposits of various mineral resources have been discovered and explored. The country has substantial amount of mineral resources. Among its leading minerals are gold, mercury, antimony, rare earths, tin, wolfram, coal, non-metallic minerals, underground waters. It is anticipated to produce iron, titanium, vanadium, aluminum, copper, molybdenum, beryllium. There is a possibility of industrial production of tantalum, niobates, cobalt, zirconium, lithium, stones.<sup>233</sup>

The Kyrgyz Republic is oriented towards a favorable investment climate for all subsoil users; therefore, it has undertaken to develop a stimulating legislative environment, to optimize the national economic policy with respect to the taxation of subsoil use, to support subsoil users by encouraging direct investments into exploration and development of new deposits of oil and gas.<sup>234</sup>

### State Regulation

The State Agency for Geology and Mineral Resources under the Government of the Kyrgyz Republic is the authorized public agency responsible for the issues of subsoil use and mining industry development.

Among the key objectives of the State Agency for Geology and Mineral Resources are: regulation of subsoil use and improvement of management of the state subsoil fund; development and implementation of the national policy of mining industry promotion; subsoil protection; development of recommendations on mining industry promotion and geological areas; and attraction of direct investments into subsoil use.

The functions of the State Agency for Geology and Mineral Resources include: development of subsoil use programs, deposit reserve calculation and economic value assessment, development and introduction

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<sup>231</sup> Resolution No. 603 of the Government of the Kyrgyz Republic dated October 29, 2008.

<sup>232</sup> Kyrgyz State Property Privatization Program for 2008-2012, approved by Resolution No. 518 of the Government of the Kyrgyz Republic dated September 17, 2008.

<sup>233</sup> [http://www.kgs.bishkek.gov.kg/geology\\_rus.htm#pi](http://www.kgs.bishkek.gov.kg/geology_rus.htm#pi)

<sup>234</sup> The Country Development Strategy for 2007-2010, approved by the Decree No. 249 of the President of the Kyrgyz Republic dated May 16, 2007.

of new methods and technologies, issuance and revocation of licenses to use subsoil and licenses to engage in entrepreneurial activities that include the search for, exploration and development of mineral resource deposits, subject to the Law of the Kyrgyz Republic “On Licensing”, and other functions within the scope of its powers related to subsoil use.

### **Types of Subsoil Use**

The right to use subsoil may be granted by issuance of a *license* to use subsoil, by *concession*, and by an *agreement on production sharing in subsoil use*, based on which a license may be issued. For subsoil mined by individual placer miners rights of subsoil use may be granted by registration with local state administration bodies.

### **License**

In most cases rights to use subsoil are granted to the subsoil users on the basis of a license issuance. The State Agency for Geology and Mineral Resources issues licenses subject to the procedure and on conditions set forth in the Law of the Kyrgyz Republic “On Subsoil”,<sup>235</sup> adopted in accordance with it laws on specific mineral resources, such as coal, oil, and gas,<sup>236</sup> and Regulations on the Procedure for Subsoil Use Licensing.<sup>237</sup>

The Law of the Kyrgyz Republic “On Subsoil” provides for types of subsoil use and procedure for license issuance, rights and responsibilities of subsoil users, powers of public authorities, types of tax payments for subsoil use, and other issues.

A license may be issued to an individual or legal entity of the Kyrgyz Republic or another country on a tender basis if the right to use a deposit of national importance is granted under it; for all other objects, licenses are issued by direct negotiations between the prospective licensee and the State Agency for Geology and Mineral Resources.<sup>238</sup>

There exist the following types of licenses for subsoil use:

- License to use subsoil with the purposes of geological exploration
- License to use subsoil with the purpose of development of mineral resource deposits, including man-made ones
- License for construction and operation of subsurface structures not related to mineral resource mining

*A license for geological exploration of subsoil* gives its holder the prerogative right to carry out geological exploration for 2 years within the boundaries of the license territory; the license may be further extended for 10 years, if the licensee has observed the license agreement conditions.

The Government of the Kyrgyz Republic has established the maximal license territory for geological exploration at 1000 square kilometers; minimal annual amount of investment into geological exploration works is established depending on the licensed object, type of mineral resources, and a number of other factors.<sup>239</sup>

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<sup>235</sup> The Law of the Kyrgyz Republic “On Subsoil” dated 2 July 1997 (with the latest amendments as of December 29, 2006).

<sup>236</sup> The Law of the Kyrgyz Republic “On Coal” dated 3 February 1999 (with the latest amendments as of June 18, 2005), Law of the Kyrgyz Republic “On Oil and Gas” dated 8 June 1998 (with the latest amendments as of March 9, 2004).

<sup>237</sup> The Regulation on the procedure of subsoil use licensing approved by Resolution No. 336 of the Government of the Kyrgyz Republic dated August 15, 2007.

<sup>238</sup> Article 16 of the Law of the Kyrgyz Republic “On Subsoil”.

<sup>239</sup> Resolution No. 499 of the Government of the Kyrgyz Republic dated July 5, 2004.



A licensee who has discovered a deposit shall have the prerogative right to obtain a license for its mining.<sup>240</sup>

The holder of a *license for mineral deposit mining* within the mining allotment has the prerogative right to carry out geological exploration, mine and process mineral stock, utilize mining and production waste products, refine, sale and export all mineral resources mined and all products of mineral stock processing. The license is issued for a period up to 20 years and may be extended till depletion of the mineral resources.

*A License for construction and operation of subsurface structures* not related to mineral resource mining entitles the licensee to construct and operate subsurface structures within the mining allotment subject to the established norms and procedures for the term up to 20 years; it may be further extended for periods that may be required by additional provisions of technical design. Storage of oil, gas, and other substances and materials, burial of hazardous substances, use of geothermal energy, and other activities are only allowed upon obtaining a license for construction and operation of subsurface structures not related to mineral resource mining.

### **Concession**

Rights of subsoil use may be granted on the basis of a concession. Procedure and conditions on which a concession is granted and a concession agreement is concluded are provided by the Law “On Concessions and Concession Enterprises in the Kyrgyz Republic”,<sup>241</sup> the Civil Code, and the Law of the Kyrgyz Republic “On Investments in the Kyrgyz Republic”.<sup>242</sup>

A concession is granted on a tender basis. A list of objects offered for concession, as well as the tender procedure, shall be prepared by authorized agencies according to the scope of their respective powers and approved by the Government of the Kyrgyz Republic.

A concession agreement is concluded between the Government of the Kyrgyz Republic or another authorized or specially established body, and the concessionary. A foreign nation, an individual, a legal entity, or a joint venture registered subject to legislation of the Kyrgyz Republic, may act as a concessionary. A concession agreement may be concluded for a term of 5 to 50 years and may be prolonged with consent of the parties. The agreement must contain provisions on its parties, concession object, types, conditions, amounts and procedures of payments, minimal capital investment amounts, quotas on volume of production, environment protection provisions, legal facts occurrence of which may entail amendment of the Agreement provisions upon demand of its party, terms of the Agreement, and other provisions as set forth in the Law of the Kyrgyz Republic “On Concessions and Concession Enterprises in the Kyrgyz Republic”.

According to the Law of the Kyrgyz Republic “On Concessions and Concession Enterprises in the Kyrgyz Republic”, all guarantees provided by investment legislation apply to a concessionary, while disputes between a concessionary and concession authorities are subject to settlement by courts of the Kyrgyz Republic or, with consent of the parties, by international arbitration.

### **Production Sharing Agreement**

According to the Law of the Kyrgyz Republic “On Production Sharing Agreements in Subsoil Use”,<sup>243</sup> the Kyrgyz Republic, based on a production sharing agreement, may for a fee provide to an investor using

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<sup>240</sup> Article 10 of the Law of the Kyrgyz Republic “On Subsoil”.

<sup>241</sup> The Law of the Kyrgyz Republic “On Concessions and Concession Enterprises in the Kyrgyz Republic” dated March 6, 1992 (with the latest amendments as of October 17, 2008).

<sup>242</sup> The Law of the Kyrgyz Republic “On Foreign Investments in the Republic of Kyrgyzstan” dated June 28, 1991 (the Law was repealed according to the Law No. 66 of the Kyrgyz Republic of September 24, 1997, with the exception of Part 1, Article 20, and Article 23) and Law of the Kyrgyz Republic “On Investments in the Kyrgyz Republic” dated March 27, 2003 (with the latest amendments as of October 17, 2008).

<sup>243</sup> The Law of the Kyrgyz Republic “On Production Sharing Agreements in Subsoil Use” dated April 10, 2002.

subsoil the prerogative right to search, explore and mine mineral resource deposits and perform related works within an established time, while the investor using subsoil, in its turn, must undertake performance of these works at its own expense and its own risk. The respective agreement shall contain all necessary conditions related to subsoil use, including those on processing of raw minerals, procedures and conditions of production sharing between the parties in accordance with the Law of the Kyrgyz Republic “On Production Sharing in Subsoil Use”.

The Government of the Kyrgyz Republic or an agency authorized by it concludes the agreement on behalf of the Kyrgyz Republic. An investor using subsoil may be a Kyrgyz or foreign individual or legal entity. The Law provides that an investor having no status of a legal entity and represented by an association of legal entities may also act as an agreement party.<sup>244</sup> Agreements to which a foreign individual or legal entity is a party are subject to ratification by the Jogorku Kenesh of the Kyrgyz Republic.

A production sharing agreement is concluded on the basis of tender or auction results. In individual cases upon the decision of the Government of the Kyrgyz Republic an agreement may be concluded in the absence of a tender or auction. Tenders and auctions are held by the public agency authorized by the Government of the Kyrgyz Republic subject to the procedures established by the Government of the Kyrgyz Republic.

Based on a signed production sharing agreement, a license to use subsoil shall be issued to the subsoil user to prove the subsoil user’s right to use the respective subsoil portion. The license is issued for an established term, may be extended or re-issued, or may lose effect subject to the agreement provisions. The agreement is concluded for a fixed term with the consent of the parties; the term may not exceed 10 years, but may be extended for a period sufficient for completion of economically feasible development of the deposit in cases provided by law.

Conditions of the agreement remain in force for the agreement duration. An agreement may be amended with consent of the parties or upon the demand of a party in cases where material change of circumstances has taken place as provided by the Civil Code of the Kyrgyz Republic. If within duration of an agreement ratified by the Jogorku Kenesh of the Kyrgyz Republic amendments that aggravate the investor’s position under the agreement are introduced into legislation of the Kyrgyz Republic, the investor may further apply the agreement provisions as set forth prior to the amendments, with the exception of changes to requirements of work safety, subsoil protection, environment protection, and protection of public health.

Disputes between an investor and the state shall be settled subject to the agreement provisions by judicial procedure. Agreements with foreign individuals and legal entities may provide for the Kyrgyz Republic’s resignation from judicial immunity, immunity against provisional remedy and execution of judgment.

### **Development Perspectives**

Under the State Property Privatization Program for 2008-2012 in the Kyrgyz Republic,<sup>245</sup> privatization is to be carried out

- State shareholding in Kyrgyzneftegaz OJSC producing oil and gas;
- State shareholding in Kyrgyzgaz OJSC engaged in import, transportation and sale of natural gas;
- State shareholding in Kyrgyzaltyn OJSC including enterprises engaged in prospecting, exploration, and development of gold deposits and gold refinement;
- State shareholding in Khaidarkan Mercury plant which produces and processes mercury and complex ores containing mercury, antimony, fluorite;
- State shareholding in Suluktakomur OJSC producing brown coal in the south of the republic;
- Institutions and public enterprises, subordinated to the State Agency for Geology and Mineral Resources of the Kyrgyz Republic: North Kyrgyz Geological Expedition PE, South Kyrgyz

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<sup>244</sup> Article 4 of the Law of the Kyrgyz Republic “On Production Sharing Agreements in Subsoil Use”.

<sup>245</sup> Decree No. 1037-III of the Jogorku Kenesh of the Kyrgyz Republic dated June 5, 2006.

Geological Expedition PE, Kyrgyz Geophysical Expedition PE, Kyrgyz Complex Hydrogeological Expedition PE, Construction and Mounting Department, House Management, Central Laboratory PE, Bishkek Research Plant of Exploration Equipment;

In February 2009, the competition was announced for the right to use subsoil to develop a big brown coal deposit Karakeche with reserves of 90 million tons for open-pit mining and 119 millions tons for underground mining.<sup>246</sup>

In order to improve Kyrgyz subsoil use law, the Kyrgyz Government has formed the interdepartmental working group consisting of representatives of executive agencies, deputies of the Parliament, and heads of public and private enterprises and their associations engaged in subsoil use business.<sup>247</sup> At present, a draft of the new Law of the Kyrgyz Republic “On Subsoil” is under discussion.

### 19.3 TELECOMMUNICATIONS

#### State Regulation

The Ministry of Transport and Communications of the Kyrgyz Republic is responsible for development of the national communications policy. In addition, the National Agency for Communications of the Kyrgyz Republic has been established as an independent public authority in charge of regulation of this area.<sup>248</sup>

The National Agency for Communications of the Kyrgyz Republic has, among others, the following powers: issuance of licenses and permits to import and operate radio electronic equipment and high frequency devices, certification and recognition of certificates of telecommunication equipment, supervision of compliance with legislation and license conditions and requirements, approval of tariffs for services of monopolist operators, and assurance of proper operation of the communications industry in the Kyrgyz Republic.

#### Licensable Activities

The following activities in the field of telecommunications are business activities subject to licensing:

- Mobile (wireless) communication services (GSM, TDMA/D-AMPS, IMT-MC, CDMA, WCDMA/UMTC)
- Stationary communication services (local and long-distance, including international)
- Telematic services (telephoto, message processing, EMS, conference calls, information services, voice dial)
- Transmission of data by using radio frequency specter or cable devices (Internet, SMS, WAP, GPRS, EDGE, VoIP, VPN, Wi-Fi and Wi-Max Internet access)
- Use of radio frequency specter
- Design, production, construction, installment of networks, lines, structures, systems and devices required to provide the above services and to operate the above communication systems

Communication services not subject to licensing are services related to organization of communication for internal and production use, i.e., internal communication networks:

- Located within the same building or in adjacent buildings
- Having service points located within the distance smaller than established by the National Agency for Communication of the Kyrgyz Republic

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<sup>246</sup> Ordinance No. 197-r of the Government of the Kyrgyz Republic dated May 8, 2008, [http://www.kgs.bishkek.gov.kg/news\\_rus.htm](http://www.kgs.bishkek.gov.kg/news_rus.htm).

<sup>247</sup> Ordinance No. 19 of the Government of the Kyrgyz Republic dated February 5, 2007 (with the latest amendments as of April 25, 2007).

<sup>248</sup> Law of the Kyrgyz Republic “On Electric and Postal Communications” dated April 2, 1998 (with the latest amendments as of August 15, 2007).

- Not crossing public areas

It must be noted that frequencies in the range 2404 to 2483.5 MHz are provided for Wi-Fi systems throughout the territory of the Kyrgyz Republic without use of outside antennas and without licensing, with the exception of the city of Bishkek and its suburbs.

### **Licensing**

In order to obtain a license, an applicant needs to file with the National Agency for Communications of the Kyrgyz Republic a set of requisite documents.<sup>249</sup>

The license is issued on the basis of the decision of the Licensing Committee of the Consultative Council of the National Agency for Communications of the Kyrgyz Republic which must be issued within not later than 30 days from the date of filing requisite documents.

The license is issued for a specified term which must not be less than 2 years. Usually, the license is issued for a term of 10 years.

Each activity related to telecommunications is licensed separately; however, a general license for several activities may be issued where it is technically feasible (for example, the license to provide mobile radio telecom services usually covers the right to design, produce, construct, or install necessary networks, lines, structures, systems and devices, and the right to operate such communications system).

The license states the area covered by it: one territorial unit or the entire territory of the Kyrgyz Republic.

The license processing fee is 300 soms (about 7 US dollars as of March 2009).

Licenses for some types of telecommunication services related to long distance calls and batch transmission of voice in real time (GPRS, EDGE, VoIP, VPN, EV-DO, EV-DV, HSDPA, HSUPA) are issued on condition of the licensee's obligation (reflected in the license agreement) to invest not less than 20 million som (about 476 thousand US dollars as of March 2009) in the telecommunication infrastructure of the Kyrgyz Republic within 1 year from the date of license issuance.

In addition to a license, for some activities the following permits and approvals are required.

### **Permit to Use Radio Frequencies and Radio Frequency Channels**

To provide communication services using radio frequency spectrum (such as mobile communication services, wireless Internet access, television and radio broadcast services, and security alarm systems), a permit of the National Agency for Communication of the Kyrgyz Republic for the right to use radio electronic devices and high frequency communication devices (also known as radio frequency allocation) is required.

Frequency allocation is provided within one month upon completion of the respective expert group work<sup>250</sup> and the decision of the Radio Frequency Resource Commission of the Consultative Council of the National Agency for Communications of the Kyrgyz Republic. In cases where international coordination is required or the allocated frequency needs to be entered into the international registry of frequencies, timeframe within which the issue is considered and decision upon it is taken are subject to the regulation approved by the International Telecommunications Union.<sup>251</sup>

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<sup>249</sup> Chapter 36 of the Regulation on Licensing of Certain Activities (as last amended August 27, 2007) approved by Resolution No. 260 of the Government of the Kyrgyz Republic dated May 31, 2001.

<sup>250</sup> The Regulation on procedure for allocation of radio frequency nominals for radio electronic means and high frequency devices approved by Decision of the State Commission for Radio Frequencies of the Kyrgyz Republic dated October 21, 1997.

<sup>251</sup> The Regulation on procedure for application for and registration with the International Union of Electric Communication of radio frequency allocations to radio electronic means in the Kyrgyz Republic, approved by

Frequency allocation is valid for a period of 1 to 3 years, unless a license for services or permit for operation of radio electronic devices has been issued. In presence of a license for communication services, frequency allocation is valid for the term of the license validity.

### **Import of Telecommunications Devices**

Radio electronic devices and high frequency devices, technical devices producing radio frequency radiation or electromagnetic waves may be imported into the territory of the Kyrgyz Republic with authorization of the National Agency for Communications of the Kyrgyz Republic.<sup>252</sup>

This requirement applies to the equipment functioning in the frequency range from 3 kHz to 3000 GHz, regardless of its power and purpose.<sup>253</sup>

Generally, the procedure for issuance of import authorization by the National Agency for Communication of the Kyrgyz Republic takes 1 to 2 days, while the authorization is valid for 1 month.

### **Certification and registration of communications devices**

According to the principal legislation on telecommunications, the following are subject to mandatory certification:<sup>254</sup>

- ✓ any technical equipment producing radio frequency radiation or
- ✓ high frequency electromagnetic waves

The list of telecommunication equipment subject to mandatory certification developed pursuant to technical regulation legislation is approved by the Government of the Kyrgyz Republic.<sup>255</sup>

The National Agency for Communication of the Kyrgyz Republic carries out:

- Mandatory certification of communication devices to assure their compliance with the safety norms and electromagnetic compatibility requirements
- Voluntary certification to prove conformity of the equipment to established technical parameters

Procedure of certification, including relevant testing, takes about 15 days. Procedure of recognition of a certificate issued by a foreign country takes about 5 days.

A conformity certificate issued by the National Agency for Communication of the Kyrgyz Republic is valid for 1 year.

All diplomatic and consular missions of foreign states and representative offices of international organizations operating in the territory of the Kyrgyz Republic are allowed to use without registration radio transmission devices, regardless of their radiation power, and high frequency devices with

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Resolution No. 4/1 of the State Commission for Radio Frequencies of the Kyrgyz Republic dated December 16, 1998.

<sup>252</sup> Article 22 of the Law of the Kyrgyz Republic “On Electric and Postal Communication”.

<sup>253</sup> The Regulation on procedure for development, production, designing, construction (installation), purchase (sale), operation in the Kyrgyz Republic and import from foreign countries of radio electronic means and high frequency devices, approved by Decision of the State Commission for Radio Frequencies of the Kyrgyz Republic dated October 21, 1997.

<sup>254</sup> Article 9 of the Law of the Kyrgyz Republic “On Electric and Postal Communication”.

<sup>255</sup> Resolution No. 639 of the Government of the Kyrgyz Republic dated December 30, 2005.



generators of not more than 0.005 kW; and household satellite television sets and high frequency devices with generators under 0.005 kW having no open radiation system.<sup>256</sup>

The Government of the Kyrgyz Republic develops a list of products subject to mandatory certification by the public authority in charge of veterinary safety, plant quarantine, epidemiological, sanitation, and environmental supervision. The list of products subject to sanitary and epidemiological examination does not include radio technical equipment.<sup>257</sup>

However, subject to the existing legislation of the Kyrgyz Republic<sup>258</sup>, the Department of State Sanitation and Epidemiological Surveillance under the Ministry of Health of the Kyrgyz Republic issues sanitation and epidemiological certificates for radio equipment required for placing and operating such equipment and its spare parts, in particular, mobile radio communication means (base stations of mobile radio communication, subscriber terminals of satellite communication), operating in 27-2400 MHz frequency range.<sup>259</sup>

A sanitation and epidemiological review takes 15 to 30 days. A sanitation and epidemiological certificate is valid for 1 year.

### **Development Perspectives**

The Kyrgyz Republic is introducing technologies to transmit satellite TV and radio broadcasts in remote settlements. Satellite TV and radio broadcasting now covers 65 settlements.<sup>260</sup>

The Kyrgyz Republic has expanded the market of international and domestic long distance call services. There are 20 companies operating in this market.<sup>261</sup> However, telecom infrastructure is less developed in the regions than in big cities of the republic. To date, there are 500 settlements in the country where no fixed-line telephone services are provided, whereas local telephone services are provided by 46 telecom service providers.

The growth of income from telecom services is attributed to the growing number of users of mobile phone and the Internet services. The number of subscribers of fixed-line telecom services has grown by 20% if compared to 2001, while the number of subscribers of mobile phone services for the same period has increased more than 42 times as much.<sup>262</sup> Meanwhile, mobile phone services are not available in 342 villages that are located in out-of-the-way places of the country.<sup>263</sup>

At present, there are 8 mobile phone service providers in the Kyrgyz Republic holding service licenses, of which 5 operate through:<sup>264</sup> 3 providers deploying GSM 900/1800 standard, 1 provider deploying CDMA20001X standard, 1 provider deploying CDMA20001X EV-DO standard and 1 provider deploying D-AMPS standard. 2 of the operating providers plan to launch networks of 3<sup>rd</sup> generation deploying UMTS/WCDMA standard. The total number of mobile phone service users has reached 3.2

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<sup>256</sup> The Instruction on procedure for issuance of permits for purchase, operation and import of radio electronic means and high frequency devices by diplomatic and consulate missions of foreign states and representative offices of international organizations in the Kyrgyz Republic approved by Order No. 2/3 of the State Commission for Radio Frequencies of the Kyrgyz Republic dated June 2, 1998.

<sup>257</sup> Resolution No. 74 of the Government of the Kyrgyz Republic dated 12 March 2007.

<sup>258</sup> The Regulation on procedure for carrying out sanitary and epidemiology examination of the products as to their safety for human health (with the latest amendments as of May 5, 2008) approved by Resolution No. 329 of the Government of the Kyrgyz Republic dated June 6, 2003.

<sup>259</sup> Sanitary and epidemiology rules and standards “Hygienic requirements to placement and exploitation of terrestrial movable radiocommunication means”, approved by Resolution No. 10 of the Head State Sanitary Doctor of the Kyrgyz Republic dated February 20, 2004.

<sup>260</sup> Point 5.1.8 of the Country Development Strategy for 2007-2010 approved by Edict No. 249 of the President of the Kyrgyz Republic dated May 16, 2007.

<sup>261</sup> [http://www.mtk.gov.kg/index.php?option=com\\_content&view=article&id=77&Itemid=75](http://www.mtk.gov.kg/index.php?option=com_content&view=article&id=77&Itemid=75)

<sup>262</sup> Point 5.1.8 of the Country Development Strategy for 2007-2010.

<sup>263</sup> [http://www.mtk.gov.kg/index.php?option=com\\_content&view=article&id=77&Itemid=75](http://www.mtk.gov.kg/index.php?option=com_content&view=article&id=77&Itemid=75)

<sup>264</sup> [http://www.nas.kg/uploads/posts/ot4et\\_NAS\\_KR\\_za\\_2007\\_god.doc](http://www.nas.kg/uploads/posts/ot4et_NAS_KR_za_2007_god.doc)

million; penetration of mobile phone service industry has reached 53%. The service area covers 85% of the population of the republic.<sup>265</sup>

By 2010, the total number of the Internet users will reach one third of the whole population of the country. By 2010, more than 90% of personal computers will be integrated into local networks and 100% of state agencies will use automated accounting systems.<sup>266</sup> At the moment, 63 operators provide data transmission and Internet access services.<sup>267</sup>

Development policy prioritizes the efforts to develop telecom infrastructure and to construct main communication lines delivering to all regions of the country a minimum package of telecom services, and to introduce alternative modern technologies for providing access to informational and telecommunication resources, including:

- Creation of the main fiber-optic communication line;
- Creation of an alternative operator of main communications (structural subdivision of the national telecom operator Kyrgyztelecom OJSC – the Republican Production Association of Main Lines of Television and Radio Broadcasting, – is the owner of the operating main lines and communications lines);
- Telephonization of 526 non-telephonized settlements;
- Development of telecom services in the rural area deploying CDMA-450, Vi-MAX+VSAT standards;
- Using local subdivisions of Kyrgyzpochtasy PE operating in the areas with underdeveloped telecom infrastructure to set up 91 centers of public access to informational and telecom technologies enabling free access to the Internet and other information services;
- Ensuring full coverage of settlements by television and radio broadcasting programs.

The Government of the Kyrgyz Republic is carrying out privatization of 77.84% share in the national telecom operator– Kyrgyztelecom OJSC.<sup>268</sup> As part of the investment competition announced in June 2008, the investor must assume the following obligations with respect to Kyrgyztelecom OJSC.<sup>269</sup>

- Entry into new markets and expansion in existing markets;
- Introduction of efficient management, skill upgrading for personnel;
- Environmental protection commitments;
- Using tariff plan compliant with tariff policy approved by the Government of the Kyrgyz Republic;
- Maximum telephonization of non-telephonized rural areas of the Kyrgyz Republic (setting up public telephone centers providing local, international and long-distance calls and the Internet services);
- Full digitalization of Kyrgyztelecom OJSC networks;
- Increasing telephone density;
- Making state television and radio broadcasting programs available in all settlements of the Kyrgyz Republic;
- Preservation of the current configuration and mode of operation of the republic production association of microwave link lines, television and radio broadcasting – Kyrgyztelecom OJSC.

In August 2008, there were reviewed applications of 6 investors:

- a German company Axos Capital GmbH;
- consortium consisting of a Kazakh company Kazakhtelecom OJSC and a Kyrgyz company ElKat Invest CJSC;

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<sup>265</sup> [http://www.mtk.gov.kg/index.php?option=com\\_content&view=article&id=77&Itemid=75](http://www.mtk.gov.kg/index.php?option=com_content&view=article&id=77&Itemid=75)

<sup>266</sup> Point 5.1.8 of the Country Development Strategy for 2007-2010.

<sup>267</sup> [http://www.mtk.gov.kg/index.php?option=com\\_content&view=article&id=77&Itemid=75](http://www.mtk.gov.kg/index.php?option=com_content&view=article&id=77&Itemid=75)

<sup>268</sup> Resolution No. 590 of the Government of the Kyrgyz Republic dated December 19, 2005, Ordinance No. 156-r of the Government of the Kyrgyz Republic dated April 7, 2006, <http://privatization.kt.kg/index.html>.

<sup>269</sup> [http://spf.gov.kg/index.php?option=com\\_content&task=view&id=233&Itemid=154](http://spf.gov.kg/index.php?option=com_content&task=view&id=233&Itemid=154).



- consortium consisting of a Kazakh LLP K.S.D. Investment Company, Cyprus companies Nimisco Holdings Co. Limited and Colimar Holdings Co. Limited, and a Kyrgyz company Ala-Too Keni OJSC;
- a Turkish company Turktelekom;
- a Russian company Rostelecom OJSC;
- consortium consisting of Kyrgyz companies Telecom Invest LLC, KyrgyzCreditBank OJSC, BiMoCom Ltd. LLC, Ermen-Too Resources OJSC.

Later, Rostelecom OJSC, Turktelekom and Axos Capital GmbH were debarred from participating in the competition. For the time being, the winner of the investment competition is not announced yet.

At present, the draft of the new Law of the Kyrgyz Republic “On Electric Communications” is under discussion.

#### **19.4 MICROFINANCE**

The microfinancing sector in the Kyrgyz Republic is characterized by dynamic development and a diversity of participants. The first microfinancing organizations have been established with the support of international donors. Within 10 years of its development, the microfinancing sector has had considerable achievements. The Kyrgyz Republic is the first Central Asian country where specific laws on microfinance institutions have been adopted.

##### **Microfinance Organizations**

The Law of the Kyrgyz Republic “On Microfinance Organizations”<sup>270</sup> provides for the following 3 forms of microfinance organizations that may operate in the Kyrgyz Republic:

- ✓ Microcrediting agency – a non-profit organization that may engage in microcrediting operations
- ✓ Microcrediting company – a for-profit organization that may engage in microcrediting operations and has the right to purchase and sell debt and perform financial leasing operations
- ✓ Microfinance company – a for-profit organization that may engage in microcrediting operations and is duly authorized to accept fixed-term deposits from individuals and legal entities

Microfinance companies may not accept deposits for the first 2 years after acquiring a license, with the exception of:

- Companies that have been accepting deposits and issuing credits for two years prior to the effective date of the Law of the Kyrgyz Republic “On Microfinance Organizations”
- Credit unions that have had the right to accept deposits and issue credits subject to the Law of the Kyrgyz Republic “On Credit Unions”<sup>271</sup>
- Microcrediting companies or microcrediting agencies that have been operating for 2 years on the basis of a certificate issued by the National Bank of the Kyrgyz Republic, and meet qualification requirements and other licensing requirements of the National Bank of the Kyrgyz Republic

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<sup>270</sup> The Law of the Kyrgyz Republic “On Microfinance Organizations in the Kyrgyz Republic” dated July 23, 2002 (with the latest amendments as of December 1, 2005).

<sup>271</sup> The Law of the Kyrgyz Republic “On Credit Unions” dated October 28, 1999.

As of 28 February 2009, 167 microcrediting agencies, 192 microcrediting companies and 2 microfinance companies are operating in the Kyrgyz Republic. Of them 6 microcrediting agencies and companies are eligible to engage in factoring and leasing operations.<sup>272</sup>

Also, as of February 28, 2009, there are 241 operating credit unions, of which 11 are eligible to take deposits from its members.

### **Development Perspectives**

In order to support sustainable development of non-banking sector and to enhance public access to financial services in remote rural areas, the National Bank jointly with the Kyrgyz Government intends to take steps to implement the Mid-term Microfinance Development Strategy for 2006-2010.<sup>273</sup>

Commercial banks or their subsidiary microfinance organizations can also contribute to the development of microcrediting market and promote broader access of the public to the new types of financial services.

Commercial banks can consider creating subsidiary microfinance organizations as one of the methods to reduce costs of microcrediting and related reserve expenses.

In the perspective, overall banking growth will be, perhaps, connected with the creation of rural banks on the basis of credit unions given their qualitative growth and with the conversion of microfinance institutions into commercial banks.<sup>274</sup>

The Government of the Kyrgyz Republic plans to carry out in 2008-2012 privatization of a state shareholding in Entrepreneurship Development Fund Microcrediting Company OJSC.<sup>275</sup>

## **19.5 CONSTRUCTION**

Legal basis for the construction industry is set forth by the Law of the Kyrgyz Republic “On Urban Planning and Architecture in the Kyrgyz Republic”<sup>276</sup> which considers all types of urban planning and all stages of urban planning and architecture processes that take place within the territory of the Kyrgyz Republic, sets forth status of urban planning and architectural objects, regulates norms and procedures of urban planning and architecture, provides for liability, and regulates international cooperation in this area.

In addition, respective legal environment includes Laws of the Kyrgyz Republic “On Basics of Urban Planning Legislation of the Republic of Kyrgyzstan”,<sup>277</sup> “On Individual Residential Construction”<sup>278</sup>, and legislation on architecture, urban planning and construction, norms and rules of urban planning and construction, regulations, standards, instructions, orders, and other published legal acts.

In 2007, there was adopted the Kyrgyz National Housing Construction Program for 2008-2010<sup>279</sup> which is concentrated on the structural reform of production base of housing construction and development of creative environment in the construction industry, the deployment of efficient construction machines and tools. The program prioritizes the efforts to develop legal mechanisms, to improve the existing legal

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<sup>272</sup> [http://www.nbkr.kg/web/interfeis.builder\\_frame?language=RUS](http://www.nbkr.kg/web/interfeis.builder_frame?language=RUS)

<sup>273</sup> Resolution No. 637/37/7 of the Government of the Kyrgyz Republic and the National Bank of the Kyrgyz Republic dated December 30, 2005.

<sup>274</sup> [http://www.nbkr.kg/web/interfeis.builder\\_frame?language=RUS](http://www.nbkr.kg/web/interfeis.builder_frame?language=RUS)

<sup>275</sup> State Property Privatization Program for 2008-2012, approved by Resolution No. 518 of the Government of the Kyrgyz Republic dated September 17, 2008.

<sup>276</sup> The Law of the Kyrgyz Republic “On Urban Planning and Architecture” dated January 11, 1994 (with the latest amendments as of February 16, 2006).

<sup>277</sup> The Law of the Kyrgyz Republic dated December 21, 1991 (with the latest amendments as of June 11, 2003).

<sup>278</sup> The Law of the Kyrgyz Republic dated December 21, 1991 (with the latest amendments as of November 2, 1995).

<sup>279</sup> Resolution No. 562 of the Government of the Kyrgyz Republic dated November 26, 2007.

framework and to draft the new legislation to settle the housing shortage. Besides, particular attention is paid to the residential mortgage financing.

### Licensing

Urban planning, research and design of residential, public and production premises and structures, construction and assembly works (with the exception of construction of individual residential houses) are activities subject to licensing.<sup>280</sup> Respective licenses are issued by the State Agency for Architecture and Construction under the Government of the Kyrgyz Republic. The licenses are unalienable and termless and have an unrestricted license territory.

To obtain a construction license, an individual or legal entity must have not less than one expert per each activity/project for which licensing is requested, and each expert must have a respective qualification certificate;<sup>281</sup> proof of capacity to perform work of the given level of complexity is required to have the respective liability level assigned.

The Kyrgyz Republic may recognize construction licenses issued by other CIS countries in accordance with the Agreement on Mutual Recognition of Construction Licenses Issued by the Licensing Authorities of the CIS Countries of 27 March 1997.<sup>282</sup> Earlier the Government of the Kyrgyz Republic had concluded agreements on mutual recognition of construction licenses with Russia<sup>283</sup> and Kazakhstan.<sup>284</sup>

Foreign individuals and legal entities may obtain construction licenses on the same conditions and subject to the same procedures that apply to individuals and legal entities of the Kyrgyz Republic. Moreover, legislation of the Kyrgyz Republic provides for no restrictions with respect to foreign participation in construction companies founded in the Kyrgyz Republic.

### Development Perspectives

According to the World Bank's Report *Doing Business Report 2009*, the Kyrgyz Republic ranks 152<sup>nd</sup> out of 178 countries in terms of the procedures, time and costs to obtain licenses.

In this regard, the Kyrgyz Government resolved<sup>285</sup> to develop the new procedure for implementing investment and construction intentions.<sup>286</sup>

Thus, since the start of the reform of permit system, the duration of review period, the number of procedures and the fees has substantially reduced. Construction document processing fees have decreased by 40%, project review fees have reduced by 44%. The review period in architecture and construction authorities has reduced by 33%, and the fees have reduced by 70%.<sup>287</sup>

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<sup>280</sup> Article 9 of the Law of the Kyrgyz Republic "On Licensing", Resolution No. 260 of the Government of the Kyrgyz Republic dated May 31, 2001.

<sup>281</sup> Resolution No. 74 of the Government of the Kyrgyz Republic dated March 12, 2007.

<sup>282</sup> The Regulation on procedure for carrying out sanitary and epidemiological examination of products as to their safety for human health (with the latest amendments as of March 5, 2008), approved by Resolution No. 329 of the Government of the Kyrgyz Republic dated June 6, 2003.

<sup>283</sup> The Sanitary and Epidemiological Rules and Standards "Hygienic Requirements for Placing and Operating Terrestrial Mobile Radio Communication Means" approved by Resolution No. 10 of the Chief State Sanitary Physician of the Kyrgyz Republic dated February 20, 2004.

<sup>284</sup> The Law of the Kyrgyz Republic "On Microfinance Organizations in Kyrgyz Republic dated July 23, 2002 (with the latest amendments as of December 1, 2005).

<sup>285</sup> Resolution No. 126 of the Government of the Kyrgyz Republic dated April 4, 2008 (with the latest amendments as of December 5, 2008).

<sup>286</sup> Regulation on procedure for issuance of permits to design, construct and make other changes in real estate facilities and on procedure for commissioning into operation of completed construction facilities (with the latest amendments as of February 12, 2009), approved by Resolution No. 252 of the Government of the Kyrgyz Republic dated May 30, 2008.

<sup>287</sup> <http://rus.kabar.kg/2008/09/15/proekt-vsemirnogo-banka-doing-business-vnedrenie-edinogo-okna-v-stroitelstve-peremestilo-kyrgyzstan-na-112/>.

The introduction of a one-stop-shop registration principle in the construction industry has contributed to the Kyrgyz Republic's moving to 58<sup>th</sup> position among 181 countries, according to the World Bank's report Doing Business 2009.<sup>288</sup>

Simultaneously, the Government of the Kyrgyz Republic made a decision to improve the supervisory system and procedures in the field of architecture and construction,<sup>289</sup> to toughen the requirements for liability of entities engaged in architecture and urban planning and to ensure good quality of construction facilities.<sup>290</sup>

### **Restrictions to Placement of Construction Objects**

A number of legislative restrictions apply to the placement of construction objects. These restrictions are related to environmental concerns and designated purposes of land plots and apply to the construction on land of agricultural purposes,<sup>291</sup> land of public use in settlements around the Issyk Kul Lake,<sup>292</sup> water protection areas and suburban areas,<sup>293</sup> territories of state preserves, national natural parks, and other specially protected natural territories,<sup>294</sup> and to the construction of objects that may affect the condition and regeneration of forests.<sup>295</sup>

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<sup>288</sup> <http://www.doingbusiness.org/ExploreTopics/DealingLicenses/Details.aspx?economyid=106>

<sup>289</sup> Resolution No. 540 of the Government of the Kyrgyz Republic dated December 15, 1995 (with the latest amendments as of July 3, 2006).

<sup>290</sup> Resolution No. 95 of the Government of the Kyrgyz Republic dated February 10, 2009.

<sup>291</sup> Article 11 of the Law of the Kyrgyz Republic "On Management of Agricultural Lands" dated January 11, 2001 (with the latest amendments as of June 12, 2007).

<sup>292</sup> Article 19 of the Law of the Kyrgyz Republic «On Sustainable Development of Issyk-Kul Ecological and Economic System" dated August 13, 2004.

<sup>293</sup> The Water Code of the Kyrgyz Republic dated 12 January 2005; Article 26 of the Law of the Kyrgyz Republic "On Urban Planning and Architecture of the Kyrgyz Republic".

<sup>294</sup> The Law of the Kyrgyz Republic "On Specially Protected Natural Territories" dated May 28, 1994.

<sup>295</sup> Article 35 of the Forest Code of the Kyrgyz Republic dated July 8, 1999 (with the latest amendments as of July 2, 2007).

### **Conclusion**

This information guide attempts to address as fully as possible the issues faced by investors who wish to establish and conduct business in the Kyrgyz Republic. Nevertheless, we understand that it may not answer all your questions, as business and its regulation have multiple aspects. Moreover, any specific business situation involves a variety of questions, the answers to which can be found not only in specific law provisions, but also in the practice of their application.

However, we hope that the guide will suffice as a starting point for understanding business conduct in the Kyrgyz Republic better, and will help entrepreneurs and companies planning or conducting business in the Kyrgyz Republic to make their business more efficient.

Any comments on this guide would be greatly appreciated and should be e-mailed to: [lawyer@k-a.kg](mailto:lawyer@k-a.kg) (marked "Guide to Business in the Kyrgyz Republic").

## **About Kalikova & Associates**

Formed in 2002, Kalikova & Associates has grown rapidly into one of the leading law firms in Kyrgyzstan specializing in business law services.

The firm has gained a reputation as a reliable partner to its clients among which are the leading foreign and local companies, transnational corporations, diplomatic missions and international organizations. Our legal advices are based on careful analysis of existing legislation and economic, political and cultural trends in Kyrgyz Republic and are tailored to the individual needs of our clients. Our primary goal is to provide our clients with high quality advices that facilitate effective business decisions.

### **Our Goals**

Our goals are to take our client's business to success and to promote business development in the Kyrgyz Republic.

### **Our Services**

We produce efficient legal solutions designed to protect, support and promote our clients' business.

### **Areas of Practice**

We provide services in the following areas:

- Corporate law, securities, mergers and acquisitions
- Corporate restructuring, liquidation, bankruptcy
- Investment, concession, privatization
- Due diligence
- Contracts, cross-border transactions
- Labor and employment
- Intellectual property
- Customs and technical regulation
- Advertisement, anti-monopoly regulations
- Taxation
- Business licenses and permits
- Commercial dispute resolution
- Legal research and analysis, bill drafting

We offer advice on legal regulation of the following industries:

- Banking
- Microfinance
- Exploration and development of mineral resources
- Energy, including generation and distribution of electricity, oil and gas
- Mobile communications and data transmission services
- Import and sale of computers, communication devices, information technologies
- Import and wholesale of equipment, foodstuff, pharmaceutical and beauty products
- Tobacco and alcohol production and sale
- Real estate and construction, production of construction materials
- Civil aviation
- Hotel and recreation
- Educational institutions
- Mass media
- Non-profit institutions, charity organizations

## **Clients**

Clients and beneficiaries of our services are leading local and foreign companies, transnational corporations, international organizations and financial institutions implementing long-term and short-term business projects in Kyrgyzstan. We also consult diplomatic missions and government agencies of foreign states.

## **Experience and Qualification**

Our lawyers have played an active role in negotiating, structuring and launching major investment projects in the Kyrgyz Republic in gold mining industry, manufacture of tobacco products, hotel business, glass and cement production, international trade, banking, microfinance, telecommunications, exploration and mining, aircraft leasing, electric energy generation and distribution and a number of other industries.

We advise clients regularly on business start-up matters, such as: choosing a legal structure of a new business company, establishing and registering a local company, settling and formalizing relationships with local partners and public authorities, complying with legal requirements (licensing, certification, taxation) for engaging in certain businesses, registering intellectual property rights, formalizing commercial finance and secured transactions, obtaining land rights, hiring expatriate and local personnel and a number of other matters related to setting up and operating a business in the Kyrgyz Republic. Our goal is to build a solid and stable legal foundation for successful business.

Our attorneys have been involved in drafting investment agreements between foreign investors and the Kyrgyz Government. Our legal opinions with respect to the standing of local mining companies have been accepted by stock exchanges in England, Australia, and Canada for the purposes of public offerings of corporate securities.

We work with many international and foreign law firms and audit companies on projects requiring our attorneys' expertise.

## **Professional Approach**

Our practice represents a combination of:

- ✓ Knowledge of legislation of the Kyrgyz Republic
- ✓ Application of practices of companies conducting business in the Kyrgyz Republic, and understanding of the process of business project implementation
- ✓ Familiarity with the work of public authorities, policy, economy, and culture
- ✓ Mastery of modern techniques and standards of international legal practice
- ✓ Aspiration towards professional growth

## **Professional Team**

Prior to joining Kalikova & Associates, many of our lawyers have gained extensive experience working for government agencies, international organizations and businesses. We have established and maintain broad professional contacts and efficient cooperation with both public and private sectors.

Currently, there are 18 lawyers in our firm, specializing in the following areas: corporate law, intellectual property, labor law, taxation, customs control and technical regulation, real estate and construction, mineral resources, energy, banking and finance, telecommunications, and litigation.

Our team consists of lawyers educated both in the Kyrgyz Republic and abroad. Our attorneys hold degrees from local and foreign law schools, including leading institutions of higher legal education in Kyrgyzstan, United States, Russia, Sweden, Hungary and Singapore.



Our lawyers have completed internship programs in leading law firms in the United States and Europe. Our lawyers are members of the Association of Lawyers of Kyrgyzstan, arbitrators of the International Court of Arbitration of the Kyrgyz Republic. Our team includes licensed advocates (litigation lawyers) and certified patent attorneys.

In addition to the state (Kyrgyz) and the official (Russian) languages, our lawyers are fluent in English and conversant in various other foreign languages.

### **Recognition**

Our law firm is listed in the international guides to law firms, such as: Chambers Global “The World’s Leading Lawyers for Business”, “The European Legal 500”, LexisNexis Martindale-Hubbell “International Law Directory”, “Asia Law & Practice”, and the British Chamber of Commerce Guide, and others.

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