

Comparative Summary of Anti-Corruption Laws in the CIS Economic Region

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Second edition



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Kyrgyzstan



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Overview of Anti-corruption Laws in Kyrgyz Republic

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1. Principal sources of law applicable to anticorruption issues

The Kyrgyz Republic has introduced a number of laws and policies in order to fight corruption and bribery in the country. These legal acts are specific to governmental officials, officials of local self-governed authorities and those holding state or equivalent positions in the Kyrgyz Republic. The Law of the Kyrgyz Republic “*On Fighting Corruption*” adopted on 6 March 2003 is the main legal act on fighting corruption and bribery in the Kyrgyz Republic.

The list of other major legal acts, including codes, presidential edicts and governmental regulations specific to corruption, bribery, and abuse of power are provided below.

1.1. International anticorruption regulations

- UN Convention against corruption, dated 10 December 2003, ratified by the Law of the Kyrgyz Republic on August 6, 2005.
- Millennium challenge account threshold programme assistance agreement between the United States of America and the Kyrgyz Republic for the programme to improve the rule of law and control corruption, dated 14 March 2008 ratified by law No. 56 of the Kyrgyz Republic on 14 April 2008.

1.2. Codes

- Criminal Code of the Kyrgyz Republic dated 1 October 1997 (as amended on 11 July 2011) (Articles 5, 183, 224, 310 - 314).
- Civil Code of the Kyrgyz Republic Part II dated 5 January 1998 (as amended on 17 July 2009) (Article 511).

1.3. Laws

- Law of the Kyrgyz Republic “*On Fighting Corruption*”, dated 6 March 2003 (as amended on 26 February 2009);
- Law of the Kyrgyz Republic “*On Public Service*”, dated 11 August 2004 (as amended on 25 February 2010);
- Law of the KR “*On Municipal Service*” dated 21 August 2004 (as amended on 28 April 2008);
- Law of the Kyrgyz Republic “*On Public Procurement*”, dated 24 May 2004 (as amended on 20 July 2009);
- Law of the Kyrgyz Republic “*On Combating Financing of Terrorism and Legalization of Illegally Generated Revenues (Money Laundering)*”, dated 31 July 2006;
- Law of the Kyrgyz Republic “*On Declaring and Publication of Data on Revenues, Obligations and Property of Persons Occupying Political and Other Special State Positions, and Close Relatives Thereof*”, dated 7 August 2004 (as amended on 28 December, 2006);

- National Strategy for Fighting Corruption in the Kyrgyz Republic, dated 11 March 2009;
- Regulation on National Agency of the Kyrgyz Republic for Corruption Prevention, dated 21 October 2005;
- Regulation on National Council of the Kyrgyz Republic on Fighting Corruption, dated 17 February 2009;

1.4. Kyrgyz Republic President’s anticorruption initiatives

- Edict No. 382 of the President of the Kyrgyz Republic “On additional measures on strengthening of the fight against economic crime, smuggling and corruption”, dated 14 December 1998;
- Edict No. 240 of the President of the Kyrgyz Republic “On measures on improving the system of the fight against corruption and economic crime” dated 22 July 2003;
- Edict No. 476 of the President of the Kyrgyz Republic “On urgent measures of fight against corruption”, dated 21 October 2005;
- Edict No. 155 of the President of the Kyrgyz Republic “On national strategy for fighting corruption in the Kyrgyz Republic”, dated 11 March 2009;
- Edict No. 146 of the President of the Kyrgyz Republic “On priority measures on implementing systems of testing using polygraph detectors in the sphere of public service”, dated 27 August 2010;

2. Persons subject to anticorruption regulations

2.1. General definitions

In the Kyrgyz Republic (KR) anticorruption laws and regulations are applicable to:

- Government Officials;
- Municipal Officials;
- Heads of State Organizations;
- Officials.

(i) Government Officials

Pursuant to the Law of the KR “*On Public Service*” dated 11 August 2004 (the “Public Service Law”), Governmental Officials are defined as Kyrgyz citizens holding political or administrative public offices in the state body on a permanent basis, paid from the state budget and performing professional activities within the provided authority. According to the KR President’s Decree “*On Approving Register of Public Positions of KR*”, dated 27 August 2007, the list of the Governmental Officials includes:

- Political public officials* - President of the KR; State Secretary of the KR; Advisor of the President of the KR; Head and deputy heads of the President’s Administration of the KR; Prime Minister of the KR; Ministers of the KR; Speaker of the Parliament of the KR; Governors of the KR; as well as other heads of governmental offices of the KR;
- Judicial officials* - judges and all other officers of judicial bodies of the KR; prosecutors and other officers in the prosecutor’s offices of KR;

(c) *Administrative public officials* - officers of various state authorities of the KR, including officers of the State Secretariat; officers of the President’s Administration of the KR and its subdivisions; officers of the Security Council of the KR; officers of the ministries of the KR; officers of the central Government of the KR, officers and members of the KR Parliament, officers of administrative agencies, state committees and foundations under the Government of the KR; advisors and assistants of all political public officers; officers of customs, tax authorities, financial police, social fund, statistical committees, National Bank, State Auditing Chamber, Central Commission on Elections and National Referendums, drug enforcement agencies as well as other officers of various state bodies of the KR.

(ii) Municipal Officials

Pursuant to the Law of the KR “*On Municipal Service*” dated 21 August 2004 (the “Municipal Service Law”) the Municipal Officials are defined as Kyrgyz citizens holding political or administrative municipal offices in the representative and executive-administrative bodies of self-governed authorities. According to the KR President’s Decree “*On Approving Register of Political and Administrative Municipal Positions of KR*”, dated 28 June 2006, the Municipal Officials include:

(a) *Political municipal officials* - deputies of local governments, heads of counties, towns and cities, mayors of cities and other elected officials of local self-governed authorities;

(b) *Administrative municipal officials* – all officers of local self-governed authorities.

(iii) Heads of State Organisations

Pursuant to the Anti-Corruption Law, the Heads of State Organisations are defined as heads of organisations and companies whose activity is financed from the state budget or where the state has a participating interest (shares) in the charter capital. However, the Anti-Corruption Law does not set an exact amount of the participation interest (shares) to be owned by the state. Accordingly, heads of organisations and companies, where the state has any shareholding of any size can be considered as being subject to anticorruption laws. Commercial companies, such as Kyrgyztelecom, Kyrgyzaltyn (Kyrgyzgold), Kyrgyzneftegaz (Kyrgyz Oil and Gas), fall within the definition of state organisations since the Kyrgyz Republic is the majority shareholder in these commercial companies.

(iv) Officials

Under the laws of the Kyrgyz Republic the Officials are those persons who are permanently, temporarily or under special authorization carry out functions of a representative of authority or perform organisational-and-executive, administrative-and-economic, controlling and auditing functions in the state bodies, local self-governed authorities, state and municipal organisations, as well as the Armed Forces of the Kyrgyz Republic or military formations.

(v) Other

Individuals and legal entities, including their officials and employees, who illegally provide benefits, material and other amenities to Governmental Officials and Municipal Officials.

2.2. List of persons subject to anticorruption regulations

Pursuant to the Law of the KR “*On Fighting Corruption*” and the Criminal Code of the Kyrgyz Republic the following persons are recognized as being subject to anticorruption laws:

- Officials;
- Governmental Officials;
- Municipal Officials;

- Heads of organisations and companies whose activity is financed from the state budget or where the state has a participating interest in the charter capital;
- Individuals and legal entities, including the latter's officials and employees, who illegally provide benefits, material and other amenities to Governmental Officials and Municipal Officials;

3. Legal restrictions imposed on government officials / public officers

3.1. General restrictions and duties

Pursuant to the Kyrgyz anticorruption laws and regulations the Officials, Government Officials, Municipal Officials and Heads of State Organisations are prohibited from receiving, from individuals and legal entities, rewards or compensations in a form of gifts, money, services, actions or inaction incidental to the performance of their official duties.

In addition to above, the Government Officials and Municipal Officials are prohibited from:

- engaging in commercial activity, other than pedagogical (educational), scientific and other creative activities;
- engaging in entrepreneurial activity, as well as using their official status to derive benefit or to support third parties' activity with a view to receive any form of compensation;
- unlawfully interfering with the operation of other state bodies and legal entities;
- unlawfully favouring certain individuals and legal entities while adopting decisions for their own private gain or interest; or violating the manner of reviewing and adopting decisions with regard to appeals of individuals and legal entities;
- unreasonably refusing to provide information to individuals and legal entities or providing such information in an untimely and/or inadequate manner, as well as unlawfully requesting from such persons information not required by Kyrgyz Laws;
- transferring governmental and municipal financial and other resources to campaign funds of candidates and public organisations; as well as unlawfully transferring such resources to individuals and legal entities;
- impeding access for individuals and legal entities to exercise their rights and interests; and
- affecting the procurement procedures in the interest of any parties to such procurement.

3.2. Gifts and other benefits

Pursuant to the Anticorruption Law the Officials, Government Officials, Municipal Officials and Heads of State Organisations are prohibited from accepting

- any gifts¹, money, or services paid by third parties incidental to performance of their official duties, except for token gifts, symbolic souvenirs presented following the commonly accepted rules of courtesy or during protocol or other official events;

¹ The Governmental Officials and Municipal Officials may accept ordinary gifts, provided that the value of such gifts does not exceed 10 (ten) index rates (approximately USD 22).

- travel invitations for holiday trips, health or any other purposes within the Kyrgyz Republic and abroad from any legal entities and individuals, except if such travel invitations are made:
 - (a) upon invitation of close relatives at their own expense;
 - (b) upon invitation of other individuals, if the relationships therewith do not involve the official duty activities of the invited persons;
 - (c) under international treaties of the Kyrgyz Republic or mutual agreement between Kyrgyz and foreign state authorities and/or international organisations;
 - (d) with the consent of the superior official or collective management body in order to participate in international scientific, sport, creative, professional, or humanitarian events, or made in accordance with the charter activities of public associations upon invitation and at the expense of the counterparts.

4. Liability for the violation of anticorruption rules

Depending on the status of relevant person subjected to anticorruption regulations and type of violation the Kyrgyz Laws stipulate for disciplinary, administrative and criminal liability.

4.1. Criminal offences and liability

The criminal offences, which are directly related to corruption and entail criminal liability, include *inter alia* the following:

- legalisation of money or other illegally acquired property;
- abuse of power or official position;
- official's inaction;
- registration of illegal transactions;
- misuse of authority or exceeding official powers;
- forgery;
- false bankruptcy;
- negligence;
- illegal participation in entrepreneurial activity;
- receiving a bribe;
- offering or giving a bribe;
- bribery brokerage;
- illegal enrichment.

The types and amounts of the penalties to be imposed for above crimes depend on gravity and scope of material damage and the type of crime. The penalties include:

- fines;
- termination of office;
- disciplinary labour;

- deprivation of right to hold specific positions or engage in certain activities for a specific term;
- confiscation of property;
- imprisonment.

It should be noted that the criminal liability may only be imposed on individuals.

4.2. Administrative offences and liability

The corruption offences for which administrative liability is imposed include *inter alia*:

- illegal refusal by officials to review applications of individuals and legal entities;
- distortion of information in state registries by officials;
- failure to provide information or submission of false or incomplete information;
- carrying out illegal entrepreneurial activities and derivation of unlawful income;
- failure to take measures to prevent and counteract corruption;
- provision of unlawful material compensation by legal entities or individuals.

Administrative penalties include:

- fines;
- official warning;
- administrative arrest;
- requirement to undertake public works;
- prohibition to engage in certain activities or to hold certain positions for specific period of time;
- confiscation of property.

Foreign individuals and foreign legal entities could be held liable for administrative offences.

4.3. Offences and liability incurred by legal entities

Under the laws of the Kyrgyz Republic, Kyrgyz legal entities bear only civil and administrative liability arising from the anticorruption laws. Legal entities are not subject to criminal liability, however, should the grounds for criminal liability arise, the managers and officers of such entities are subject to criminal liability.

Fines or prohibition of a legal entity's activities may be imposed on a legal entity as a punishment for corruption offences.

5. Anticorruption practices

In the Kyrgyz Republic anticorruption charges lead to criminal punishment for bribery, abuse of power, illegal enrichment and similar offences. Generally the bribery involves a demand by government officials for financial reward for fulfilling his or her official duties,

bribery of the members of various state commissions which grant rights for property during bids. It should be noted that bribery by government officials is considered by the courts of the Kyrgyz Republic as one of the most serious crimes as it undermines the reputation of the government offices, creates a widely held perception that by way of corruption it is possible to reach personal goals and usually bribery entails the commission of other crimes.

One of the best examples of corruption can be illustrated in the case when the state prosecutor was accused of corruption as he filed a claim in the interest of the claimant-commercial entity which allowed the claimant to avoid the requirement to pay the state duties for the judicial review of the claim. As pursuant to the procedural laws of the Kyrgyz Republic claims filed by the state prosecutor's are exempt from the payment of state duties.

6. Recommendations on Companies' Compliance Policies

As a former USSR country and being similar to its neighboring countries, the Kyrgyz Republic is at the initial stages of developing and implementing corporate anti-corruption regulations and compliance procedures. Only a small number of companies, which are mainly large international or global corporations doing business in the Kyrgyz Republic have introduced corporate anti-corruption policies.

Taking into account the latest trends in the Kyrgyz Republic aimed at strengthening the anti-corruption regulations it is highly recommended that all companies operating in the Kyrgyz Republic develop corporate anticorruption policies and ensure that these are implemented by executives, employees and representatives, and especially by companies that often deal with licensing and permitting, state procurement and government contracts.

Such policies shall among other things:

- provide detailed description of types of anticorruption violations, legal restrictions imposed on government officials to accept any gifts and other benefits and potential;
- provide list of persons subject to anticorruption regulations;
- provide detailed description of acts which might be common business practice, however are considered anticorruption offences such as gifts, invitations to cultural and sport events, souvenirs and company's promotional materials and similar;
- define potential gravity of liability for the Company, government official and the employee who is in violation of anticorruption regulations.

Each employee should be provided and acquainted with the company's anticorruption policies at all times. It is also important that companies regularly update their anticorruption compliance policies in accordance with developments in the anticorruption regulations in the Kyrgyz Republic.

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