



## CORPORATE ISSUES

INDUSTRY AND LEGAL UPDATE

**KALIKOVA  
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*Information for effective business solutions*

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### Industry Update

November 21, 2014

#### **Companies older than 18 years are reminded to update their registration status**

Legal entities, branches, or representative offices (re)registered before January 1, 1997, are required to update their registration status by undergoing state reregistration or registration of dissolution by January 1, 2015. This was announced by the press service of the Ministry of Justice.

Those who fail to duly undergo state reregistration or registration of dissolution by January 1, 2015 shall be subject to forcible liquidation by court decision upon application of the Social Fund and(or) tax authority.

The procedure and list of necessary documents for state reregistration and registration of dissolution of legal entities, branches (representative offices) are specified in Articles 6, 10, 12, 13, 16 and 17 of the State Registration of Legal Entities, Branches (Representative Office) Law, the Ministry of Justice reported.

November 21, 2014

#### **Crystal OJSC announces tender for sale of 100% stake in Tash-Kumyr Solar LLC at starting price of \$3.4 million**

Crystal OJSC announced a tender for sale of a 100% stake in Tash-Kumyr Solar LLC to be held on December 22, 2014 at 2 pm.

The starting price of the property complex is \$

### Legal Update

December 23, 2014

#### **Members of Parliament propose to simplify the dissolution/liquidation process**

On December 23, 2014, at the meeting of the Parliamentary Committee on Economic and Fiscal Policy MP Dastan Bekeshev ("Ar-Namys") proposed to simplify the dissolution/liquidation process.

According to him, today, the dissolution/liquidation process takes from 4 months to 2 years.

The bill proposes to amend Article 63 of the Tax Code by excluding the requirement regarding the written notification of the tax and customs authorities about the commencement of the dissolution/liquidation process since such notification under Kyrgyz law must be given by the justice authorities.

It also proposed to amend Article 84 of the Tax Code by excluding the requirement regarding the notification of the tax authorities about the place and time of destruction of the books and records.

The proposed amendments offer the following:

- the current calendar year shall not be the subject of the scheduled inspection;
- the scheduled inspection with all possible extensions shall not exceed 30 calendar days for regular taxpayers and 50 calendar days for major taxpayers from the date of delivery of respective orders to them;
- the counter and repeated inspections shall not be subject to extension;

3,450,000. The investor must invest at least 300 million soms and put the factory into operation within 2-3 years.

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October 28, 2014

### **41 debtor companies to be declared bankrupt by Bankruptcy Department**

Over 9 months of the current year, the Bankruptcy Department under the Ministry of Economy received 41 bankruptcy petitions against insolvent debtors, the Ministry of Economy reported.

Among debtors undergoing bankruptcy proceedings are 84 companies with assets, including 4 large enterprises, Crystal OJSC, Mailu-Suu Electric Bulb Factory OJSC, OREMI OJSC, Ak-Suu-Vita OJSC. Other enterprises have insignificant assets.

According to the Department, as of October 1 of the current year, there are 312 business entities declared bankrupt. Since the beginning of the year, 56 debtors were declared bankrupt.

Bankruptcy proceedings are ended in respect of 38 debtors, suspended in respect of 1 entity, and terminated in respect of 1 entity, while adjudication of bankruptcy is reversed in respect of 5 entities.

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October 25, 2014

### **Joint-stock companies with state participation paid 1.4 billion soms as dividends for 9 months**

For January – September 2014, dividends from joint-stock companies with state participation reached 1 billion 472.1 million soms, the State Property Fund reported.

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October 14, 2014

### **Canadian court arrests 60% of Kyrgyzstan's shares in Centerra Gold**

On October 14, 2014 the Ontario Superior Court of Justice imposed injunction (the "Order") blocking 47 million shares of Kyrgyzaltyn JSC ("KJSC") in Centerra Gold Inc., Canadian mining company, ("Centerra") at the request of Stans Energy Corp., Canadian mining company, ("Stans"), as disclosed in its statement.

The Order prohibits the Kyrgyz Republic and KJSC from selling, disposing, exchanging, assigning, transferring, pledging or encumbering 47,000,000 shares (the "Centerra Shares") in the capital of Centerra registered in the name of

- the tax authorities shall make decision regarding the unscheduled inspection within 15 calendar days from the date of occurrence of the grounds for unscheduled inspection and shall ensure the delivery of respective order to the taxpayer and the commencement of unscheduled inspection within not later than 30 calendar days from the date of occurrence of the grounds provided in Article 100 of the Tax Code;

- under Article 105 of the Tax Code, the onsite inspection shall be deemed completed on the date of delivery to the taxpayer of the onsite inspection report. This report shall be delivered to the taxpayer on or before the date of completion of the onsite inspection indicated in the order;

- the onsite inspection results shall be reviewed within not more than 10 business days from the date of delivery to the taxpayer of the onsite inspection report;

- the decision regarding the onsite inspection results shall be issued within not more than 3 business days from the date of review of the onsite inspection results;

- failure by a tax official to comply with the requirements of Article 106 of the Tax Code may be the ground for reversal of the decision of the tax authority and for subjecting the official to liability provided by Kyrgyz law.

Due to reversal of the requirement for the founders (members, shareholders) of a legal entity to remain liable for 2 years after its liquidation, it is proposed to include a requirement in the Civil Code that the publication of the dissolution/liquidation information shall be mandatory.

The initiators of the bill offer that during the dissolution/liquidation of a business entity, the social insurance authorities shall perform the check of the accuracy and timeliness of payment of social insurance contributions within 15 calendar days from the date of filing a request for inspection and shall issue a certificate of no debt within the same period (if there is no debt).

In this regard, in order to eliminate existing contradictions and to bring the provisions of relevant laws in compliance with the provisions of the Civil Code, it is proposed to amend a number of regulatory acts.

To simplify the dissolution/ liquidation process, it is proposed to exclude the interim balance sheet requirement from Article 11 of the Accounting Act and to exclude the written permission requirement for joint-stock companies.

To eliminate unnecessary barriers in the registration and dissolution/liquidation process, it

KJSC.

Considering that after yesterday trade on the Toronto stock exchange the Centerra Shares' cost was \$4.96 per share, 60.76% of the Centerra Shares will cost \$233,120,000. At present, the Centerra Shares' cost is estimated at \$383,660,300.

The Order was obtained in a proceeding by Stans for recognition and enforcement of an international arbitration award of the Arbitration Court at the Moscow Chamber of Commerce & Industry against Kyrgyz Republic for US\$118.2 million for initiating proceedings in the republic to declare invalid the extension of the license agreement for Kutessay II rare earths deposit (the "Award").

Stans will be seeking an extension of the injunction until the hearing of its application for recognition and enforcement of the Award as a judgment of the Superior Court of Justice.

"At this time, we see no alternative other than to proceed as we have on our present track for successful resolution of our arbitration award," says Rodney Irwin, Interim President and CEO.

At the same time, on September 24, the Federal Arbitration Court of Moscow District sent the case for a new trial on decision of the Arbitration Court under Moscow Chamber of Commerce and Industry (MCCI) in paying \$118.2 million of compensation to Stans.

In addition, on September 23, the Kyrgyz side received the decision of the CIS Economic Court on the interpretation of Article 11 of the Convention for Protection of Investors' Rights, which states that the article hasn't sufficient grounds for appeal of investors to any international court.

The government believes that on the basis of this article Stans filed a claim to Arbitration Court of MCCI without arbitration agreement with the government of the republic.

On the basis of this interpretation, Kyrgyzstan declared the decision of the Arbitration Court at MCCI baseless. The government states that the decision of the CIS Economic Court cannot be appealed and its decision canceled the earlier decision of the Moscow Arbitration.

#### Background

In January 2013, the Kyrgyz Prosecutor General's Office started a criminal case on a charge of illegal renewal of the agreement with Kutessay Mining, regardless of non-performance of license obligations in 2010 and 2011. Later, the case was referred for consideration to the Inter-District Court of Bishkek which on March 19 upheld the PGO's position and declared the renewal of the license illegal.

is proposed to amend the State Registration Act as follows:

- to exclude the requirement for "publication in one of the government-approved mass media" (the so-called publication in press principle) and to replace it by the requirement for "publication on the official website of the registering authority";
- to exclude Article 10.14 and Article 11.3 of the State Registration Act as establishing too burdensome registration (re-registration) requirements for legal entities.

The bill also proposes to optimize the registration process for individual entrepreneurs by delegating the registration powers from the statistical authorities to the tax authorities, which, in its turn shall be required to notify the Social Fund and the statistical authorities regarding the registration of an individual entrepreneur.

The bill was supported by other MPs.

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December 18, 2014

### **Parliament ratified Agreement establishing Kyrgyz Russian Development Fund**

The respective bill was approved by 66 MPs. According to deputy minister of finance Almaz Baketaev, the total charter capital of the fund will be \$500 million. The first \$100 million will arrive in the special account of the National Bank in the nearest future. The remaining \$400 million will arrive by May 29, 2016. The Russian side undertakes to attract \$500 million as a highly preferential loan on the conditions of the International Development Association and without guarantees of the Kyrgyz Government.

The Kyrgyz Russian Development Fund is established to implement the Agreement on Developing Economic Cooperation in the Context of Eurasian Economic Integration signed between the Governments of the Kyrgyz Republic and the Russian Federation on May 29, 2014 in Astana.

The fund is established to promote economic cooperation between the KR and the RF, modernization and development of the Kyrgyz economy, efficient use of opportunities arising from participation in the Eurasian economic integration.

The fund will finance sustainable projects in the strategic sectors of the Kyrgyz economy by providing loans, participating in capital, and using other financial instruments in relationships with business entities registered or operating in the territory of the KR including such sectors as:

Kutessay Mining responded that all claims of the PGO were baseless since the company was unable to perform its obligations in 2010-2011 due to force majeure events following the April 2010 uprising, when President Kurmanbek Bakiev was overthrown and the work of the government authorities was paralyzed. According to Kutessay Mining, for two years all mining companies had difficulties with the approval of their action plans by the Geology Agency.

Stans acquired Kutessay Mining in 2009 along with two mining licenses for Kutessay II (rare earths, bismuth, molybdenum and silver) and Kalesay (beryllium and lead) deposits which were valid until 2029 and cost \$1 million.

- agribusiness;
- sewing and textile industry;
- processing industry;
- mining and metallurgical industry;
- transport;
- housing construction;
- trade;
- entrepreneurship development;
- infrastructure development.

The fund will be based in Bishkek. The fund's financial statements and audit reports will be subject to public disclosure.

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October 15, 2014

### **MP D. Bekeshev believes O. Tekebaev's bill proposing criminal liability of employees of strategic entities may discourage investors**

The bill proposing amendments to the Criminal Code of the Kyrgyz Republic initiated by MP Omurbek Tekebaev (Ata Meken) to impose criminal liability on CEOs and employees of strategically important enterprises may deter investors. Such opinion was expressed by MP Dastan Bekeshev (Ar-Namys) today October 15, at the meeting of Parliament.

He believes that all companies, which accounts for over 5% of national GDP will be governed by this law. This means that investors will not be interested in increasing their income.

The bill is reviewed by the committee on legality, legal order and crime fighting.

D. Bekeshev said that this law must be reviewed by the committee on economic and fiscal policy since this is an economic issue.

The presenter of this issue, Kenjebek Bokoev (Respublica) said that upon the second reading no proposals were made. The committee on legality had questions but the bill was passed without proposals, he said.

In his turn, D. Bekeshev said that Respublica during the 2010 elections promised to support enterprises but this is not true.

Speaker Asylbek Jeenbekov (SDPK) said that these proposals should have been made during the second reading of the bill.

«You refer the bills to relevant committees, - D. Bekeshev said. You have to be guided not by the title of the bill but by its substance. If it refers to economy then the committee on economic and fiscal policy should review it».

«Everything was done correctly, the issues were discussed properly, the hearings were conducted duly, you should have raised your suggestions upon the first reading», A. Jeenbekov said.

Today October 11 Parliament sent to voting in the second reading the bill proposing amendments to the Criminal Code of the Kyrgyz Republic imposing criminal liability on CEOs and other employees of strategically important enterprises for disruption or stoppage of production.

The administrative and engineering/technical personnel of the enterprise irrespective of its form of ownership:

- are not exempt from complying with the regulations effective in the state;
- are not eligible to cause harm to legal interests of the state and its citizens;
- must not endanger political, socioeconomic and financial stability, law and order, safety and ecology of Kyrgyzstan and its regions;
- are not eligible to exert psychological pressure (blackmail) on the mass consciousness in order to obtain exemptions from standards and rules admitted and observed by other business entities.

«Taking into account the above and realizing the need for ensuring the continuous operation of a strategically important enterprise, I deem it reasonable to propose relevant additions to the Criminal Code of the Kyrgyz Republic. The bill proposes to add Article 316-1 to the Criminal Code of the Kyrgyz Republic which imposes criminal liability on CEOs and employees of strategically important enterprises whose actions or omissions facilitate stoppage of production at these enterprises, Tekebaev reported.

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October 6, 2014

### **Parliamentary committee starts to consider foreign agent bill**

The Parliamentary committee on legality, legal order and crime-fighting will on October 7 start considering the bills proposing amendments to the NGO Law, State Registration of Legal Entities, Branches, Representative Offices Law, and the Criminal Code.

The bills are initiated by MPs Tursunbai Bakir Uulu, Nurkamil Madaliev, and Nadira Narmatova.

The bill proposes amendments whereby NGOs may acquire the status of foreign agents and be included in the register if they receive funds and other assets from the foreign states, international organizations, foreign citizens, stateless persons, or from Kyrgyz legal entities receiving funds and other assets from the above sources and involved in political activities.

The NGOs included in the Foreign Agent Register will become the object of tough financial regulation and inspections.

In addition, the Criminal Code will be amended to include the definition of the term “foreign agent”.

As MPs state in the explanatory note, «most NGOs despite their constituent documents intervene into political life of the state by participating and financing the organization and conduct of political actions in the Kyrgyz Republic striving to form public opinion and to make government bodies adopt decisions contrary to consistent and purposeful state policy for sustainable development of the country».

The main provisions of the bill were borrowed by MPs from the similar foreign agent law in Russia.

The bill was criticized by the representatives of foreign states and international organizations.

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