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*This document does not constitute  
legal advice<sup>1</sup>*

## **INFORMATION LETTER concerning amendments to the Constitution of the Kyrgyz Republic**

### **INTRODUCTION**

On December 11, 2016 the Kyrgyz Republic (the "KR") held a referendum (nationwide popular vote) concerning amendments to the Constitution of the KR of June 27, 2010 (the "Constitution"). According to data of the Central Election Committee of the KR, the referendum was attended by 1,200,438 voters, which accounts for 42.09% of all electors, 79.6% of which voted "**FOR**" the amendments to the Constitution.

The amendments to the Constitution will take effect 15 days after the date of official publication of the Law of the KR "On Amendments to the Constitution of the Kyrgyz Republic", except for Articles 70, 72, 75, 81 and 87 of the Constitution, which will take effect on December 1, 2017. As of the date of this Information Letter, the Law of the KR "On Amendments to the Constitution of the Kyrgyz Republic" has not been published.

Below are **some of the amendments** to the Constitution, which, in our view, may, to some extent, have an impact on business environment in the KR.

### **PROCEDURES AND CONDITIONS OF APPLICATION OF TREATIES AND UNIVERSALLY RECOGNIZED PRINCIPLES AND NORMS OF INTERNATIONAL LAW**

Pursuant to amendments to Article 6 of the Constitution, the procedures and conditions of application of treaties and universally recognized principles and norms of international law shall be determined by the *laws of the KR*.

In our opinion, the procedures and conditions of application of treaties may be determined in each particular case in the process of ratification of the treaty or by adoption of the new law and/or amendments to the existing law setting forth the procedures and conditions of application of the treaty.

Articles 6 and 41 of the Constitution were amended by removing the provisions concerning: (i) direct effect and priority of norms of treaties on human rights over norms of other international

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<sup>1</sup> This document is an executive summary of some amendments to the Constitution of the Kyrgyz Republic adopted by the referendum (nationwide popular vote) on December 11, 2016. This document aims to provide general information to the clients and partners of Kalikova & Associates. This document does not constitute legal advice or legal opinion and cannot be considered as such. This document contains our professional opinion, which may disagree with opinions of other professionals or state bodies and their officials. For more detailed information please contact Aicholpon Jorupbekova ([ajorupbekova@k-a.kg](mailto:ajorupbekova@k-a.kg)) or Eldiir Raiymkulov ([erayimkulov@k-a.kg](mailto:erayimkulov@k-a.kg)).

treaties; and (ii) duty of the KR to take measures to restore the violated human rights and freedoms and/or pay compensation for damages in case if such violation is established by international bodies on human rights.

#### **INAPPLICABILITY OF STATUTES OF LIMITATIONS TO CERTAIN CATEGORIES OF CRIMES**

According to amendments to Article 26 of the Constitution, the right of exemption from criminal liability due to the expiration of the statute of limitations for crimes may be established by the law. The statutes of limitations shall not apply to the crimes such as genocide<sup>2</sup> and ecocide.<sup>3</sup>

#### **INAPPLICABILITY OF STATUTES OF LIMITATIONS TO PERSONS INVOLVED IN THE "KUMTOR" PROJECT**

Article 2 of the Law of the KR "On Amendments to the Constitution of the Kyrgyz Republic" establishes inapplicability of statutes of limitations to criminal cases against persons charged with *abuse of office* during the preparation and implementation of mining operations at the "Kumtor" gold mine, as well as the persons charged with *abuse of duty at non-state enterprises and organizations*, involved in the mining operations at the "Kumtor" gold mine. Such persons shall be prosecuted and punished irrespective of the date of commission of the above crimes, except for the persons for whom the statutes of limitations accrue under a final judgment.

Pursuant to the Criminal Code of the Kyrgyz Republic (Chapters 23, 30):

- The *abuse of office* means crimes committed by an official such as: corruption, abuse of powers, carrying out illegal inspections by an official of the state authority, exceeding the limits of powers, torture (committed by an official), granting land rights in violation of land legislation by an official, conclusion of contract, conducting the public procurement contrary to the interests of the KR, illegal use of official position during the process of privatization, taxation, customs, licensing and permitting activities, failure to follow the conditions established by the laws of the KR and contract in terms of restrictions or termination of supply of electricity or disconnection from other essential services, illegal use of budgetary funds, illegal enrichment, illegal participation in entrepreneurial activity, extortion, receiving and giving bribes, intermediation in bribery, official forgery, unlawful issuance of passport of the citizen of the KR, as well as entering false information in the documents that caused the illegal acquisition of citizenship of the KR, negligence.
- The *abuse of duty* means crimes against interests of service in the non-state enterprises and organizations *such as*: abuse of powers by an employee of commercial or other

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<sup>2</sup> According to Article 373 of the Criminal Code of the KR "genocide" means actions aimed at the full or partial destruction of national, ethnic, racial or religious group through killing of members of such group, inflicting serious harm to their health, forcible prevention of childbirth, forcible transfer of children, forcible resettlement or creation of other living conditions aimed at the physical destruction of members of such group.

<sup>3</sup> According to Article 374 of the Criminal Code of the KR "ecocide" means the mass destruction of flora and fauna, poisoning of the atmosphere or water resources, as well as commission of acts that are able to cause an ecological disaster.

organizations, abuse of powers by a private notary public, issuance of an audit report with knowingly false audit opinion (report), exceeding the limits of powers by an employee of a private detective services, commercial bribery, acceptance of an illegal payment by an employee.

#### **PROHIBITION ON IMPRISONMENT FOR NON-PERFORMANCE OF CONTRACTUAL OBLIGATIONS**

Article 24 of the Constitution used to establish a constitutional prohibition on imprisonment for non-performance of civil law obligations. Article 24 of the Constitution was amended to read as follows: "*No one can be imprisoned only on the basis of inability to perform a contractual obligation*". This clause, in our view, does not exclude the possibility of imprisonment for non-performance of other civil law obligations, arising out of non-contractual obligations (including unilateral transactions, acts of state bodies and bodies of self-government, judicial decision, establishing civil rights and obligations, and other civil law obligations not based on contract).

#### **AMENDMENTS CONCERNING JUDICIARY**

Paragraph 23 of Article 1 of the Law of the KR "On Amendments to the Constitution of the Kyrgyz Republic" provides basis for introduction of the new institution – *the Disciplinary Commission of the Council of Judges*, set up by the President, Jogorku Kenesh and Council of Judges by appointing one third of members each. The Disciplinary Commission, among other things, will propose the removal of judges for violation of integrity standards, as well as give consent to temporary suspension and prosecution of judges in criminal or administrative proceedings. The judges removed from office for violation of integrity standards, shall not be allowed in the future to hold any public or municipal office set forth by the law, and shall be deprived of right to enjoy any privileges granted to incumbent and former judges.

#### **AMENDMENTS CONCERNING CLARIFICATIONS OF THE SUPREME COURT ON THE ISSUES OF COURT PRACTICE AND THEIR BINDING FORCE FOR ALL COURTS AND JUDGES OF THE KR**

The amendments to Article 96 of the Constitution establish the binding force of clarifications of the Plenum of the Supreme Court on the issues of court practice for all courts and judges of the KR, which, in our opinion, will facilitate uniform application of the laws of the KR by the courts.

#### **AMENDMENTS CONCERNING THE PROSECUTOR'S OFFICE**

In accordance with Article 104 of the Constitution, the Prosecutor's Office, among other things, is vested with (i) supervision over precise and uniform implementation of laws by the bodies of executive branch, bodies of local self-government, their officials; and (ii) criminal prosecution of officials of state bodies.

Paragraph 26 of Article 1 of the Law of the KR "On Amendments to the Constitution of the Kyrgyz Republic" introduced clarifying provisions regarding the aforementioned functions of the Prosecutor's Office. According to the above Article, the Prosecutor's Office shall exercise supervision over precise and uniform implementation of laws by the bodies of executive branch,

as well as other state bodies, *list of which is determined by constitutional law*, bodies of local self-government and official of the indicated bodies, and is entitled to initiate criminal cases against officials of state bodies, *list of which is determined by constitutional law*, as well as *criminal prosecution of persons having military status*.

**AMENDMENTS CONCERNING THE APPOINTMENT OF MEMBERS OF THE GOVERNMENT AND POWERS OF THE PRIME MINISTER**

Pursuant to amendments to Articles 72, 87 and 89 of the Constitution:

- A member of the Government may be removed from office by recommendation of the Prime Minister; in case if the President does not issue a decree on removal of the member of the Government from office, the Prime Minister may after consultation with the leaders of factions of parliamentary majority remove the member of the Government from office by his own decision; in case of resignation or dismissal of the member of the Government, the Prime Minister within 5 working days shall propose a candidate for the vacant position to the Jogorku Kenesh; the candidate approved by the Jogorku Kenesh shall be appointed by the President to the respective position of the member of the Government; in case if the President does not issue a decree on the appointment of the member of the Government, he is considered appointed;
- the Prime Minister has a power to independently appoint and dismiss heads of local state administrations;
- Deputy of the Jogorku Kenesh may be appointed as the Prime Minister or first Vice Prime Minister with conservation of deputy's seat and a right to vote on plenary sessions of the Jogorku Kenesh; resignation, dismissal and termination of competences of the Prime Minister or first Vice Prime Minister by the deputy of the Jogorku Kenesh leads to full restoration of his competence as a deputy.

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This Information Letter reflects only **some of the amendments** to the Constitution. There is a list of other amendments to the Constitution regarding the highest values, marriage, citizenship, powers of the Jogorku Kenesh, the President, formation and dismissal of parliamentary factions and other issues.