

KALIKOVA  
ASSOCIATES &

# BUSINESS IN THE KYRGYZ REPUBLIC:

LEGAL ASPECTS

Information and Reference Guide

2018



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## FOREWORD

Dear Reader,

This information and reference guide is another regular issue which covers the legal aspects of doing business in Kyrgyzstan. This publication was requested by our customers, whom, having entered the market of this country, frequently faced issues related to starting and running their business in Kyrgyzstan, 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 issue was prepared by our entire team of lawyers practicing in various areas of commercial law. We are constantly increasing our abilities and this publication is evidence of our continuous search for new possibilities of professional growth.

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 this publication is a modest contribution of our company's professional team towards a better future for Kyrgyzstan.

This publication is also accessible for the worldwide audience on our website: [www.k-a.kg](http://www.k-a.kg).

**Yours 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 kilometres, or 77,540 square miles. 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 metres and 40.8% located 3,000 metres above sea. The average height above sea level is 2,750 metres, the highest point is 7,439 metres, and the lowest point is 401 metres.<sup>1</sup> The Kyrgyz Republic borders Kazakhstan to the north, Uzbekistan to the west and north-west, Tajikistan to the south-west, and China to the south and south-east.<sup>2</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 with the richest water resources in the world.

By its administrative and territorial system the Kyrgyz Republic belongs to unitary states and consists of 7 oblasts (Regions), (Chui, Issyk-Kul, Talas, Naryn, Jalalabat, Osh and Batken) and 2 cities of national status (Bishkek and Osh). 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 2nd 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>3</sup>

By the late 7th to early 8th century A.D. the Kyrgyz people had become a significant force respected by the powerful nations of Central Asia, and by the fourth decade of the 9th 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. As a result of 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>4</sup>

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

## 1.3 Population and Language

At the beginning of 2017 the number of permanent population of the Kyrgyz Republic was 6,140,200 people (men – 49.6%, women – 50.4%)<sup>5</sup>. Where, the number of urban population was 33.8%, and the number of rural population was 66.2%.

There are about 100 different nationalities in the Kyrgyz Republic. At the beginning of 2017, estimates of population by ethnic group were as follows: the Kyrgyz accounted for 73.2%, the Uzbeks – 14.6%, the Russians – 5.8%, the Ukrainians – 0.2%, the Germans – 0.1%, the Tatars – 0.5%, the Kazakhs – 0.6%, the Tajiks – 0.9%, the Azerbaijanis – 0.4%, the Turkmen – 0.1%, the Uighurs – 0.9%, the Dungans – 1.1%, the Koreans – 0.3%, the Turks – 0.7%, other ethnic groups – 0.7%.

Statistics show that children and adolescents represent 33.6%, working age population represents 59.1% and above working age population represents 7.3% of the total population<sup>6</sup>.

The national language of the Kyrgyz Republic is Kyrgyz, while the official language is Russian. In the Kyrgyz Republic, official documents of state authorities and local self-government must be adopted in the national language and in cases provided by law, must be translated into the official language and published in two languages. The document in the national language must be considered the original. Normative legal acts of the Kyrgyz Republic must be adopted in the national and official languages. In its official interactions with foreign state and international organizations (receptions, meetings, drafting and ratification of documents), the Kyrgyz Republic must use the national language or, where necessary, the official language, and the national language of the foreign state or the working language of the international organization.

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

2 <https://kyrgyzstan.orexca.com/rus/>

3 <https://www.open.kg/about-kyrgyzstan/population/158-naselenie-kyrgyzstana-s-drevneyshih-vremen-do-vi-veka.html>

4 Kyrgyz Statehood. Century Statistics. Bishkek, 2003.

5 The six-millionth resident was born on November 25, 2015.

6 <http://www.stat.kg/ru/statistics/naselenie>

## 1.4 National transport system

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. Currently, there are 11 airports in the Kyrgyz Republic, including 5 international (Manas, Osh, Issyk-Kul, Karakol, and Batken) and 6 domestic airports (Talas, Isfana, Jalal-Abad, Naryn, Kazarman, and Caravan (Kerben)).<sup>7</sup>

The total length of roads in the Kyrgyz Republic is 34,000 km, including 18,585 km of general use roads maintained by the structural units of the Kyrgyz Ministry of Transport and Roads and 15,190 km roads of cities, villages, agricultural, industrial and other enterprises.<sup>8</sup>

The Kyrgyz railway network consisting of two lines: the northern line (323.4 km) and the southern line (101.2 km) that link Kyrgyzstan with Kazakhstan and Uzbekistan. Kyrgyz Railways maintains 424.6 km of main tracks, 220 km of station tracks and 66.4 km of access tracks. The construction of the North-South transit railway linking the northern and southern parts of the country is a first priority national project in the Kyrgyz Republic.<sup>9</sup>

### Transit choices

Kyrgyzstan has signed air service agreements with 29 countries of the world.<sup>10</sup> There are direct air flights from the cities of the Kyrgyz Republic 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 link Kyrgyzstan with all neighbouring countries (Uzbekistan, Tajikistan, Kazakhstan, and China). The Kyrgyz Republic has signed bilateral agreements on international road transport with 19 states, including all CIS countries, Germany, Georgia, Iran, China, Latvia, Mongolia, Pakistan, Poland and Turkey.<sup>11</sup>

The railway network links Kyrgyzstan with Uzbekistan and Kazakhstan. At present, negotiations are

<sup>7</sup> The Government Program on Civil Aviation Development of the Kyrgyz Republic for 2016-2020, approved by the Government Resolution No. 131 of March 17, 2016; <http://www.airport.kg/about/airports>

<sup>8</sup> The Government Resolution No. 372, July 1, 2016, approving the Main Guidelines for Development of Road Industry 2016-2025.

<sup>9</sup> The Government Resolution No. 558 of September 30, 2014, approving the Main Guidelines for Development of Railway Transport of Kyrgyz Republic 2014-2020.

<sup>10</sup> <http://caa.kg/ru/deyatelnost/mejdunarodnaya-deyatelnost/>

<sup>11</sup> <http://mtd.gov.kg/v-sootvetstvii-s-mezhpravitelstvennymi-soglasheniyami-podpisannymi-pravitelstvom-kr-ministerstvo-osushchestvlyaet-obmen-blankami-razreshenij-na-osushchestvlenie-mezhdunarodnyh-perevozok-avtomobilnym-tra/>

underway on the project for construction of the China - Kyrgyzstan - Uzbekistan railway line.<sup>12</sup>

### Mail and Cargo Delivery

Both state-owned and private providers of mail and cargo delivery services are active in the market of the Kyrgyz Republic. 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 the world. Representation offices and licensees of international companies DHL, FedEx, TNT Express, and local companies Interpost, Kyrgyz Courier, and a number of others, provide express mail services.

## 1.5 Links to Other Countries

### 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 EICat, AsiaInfo, Kyrgyztelecom, Aknet, Saima Telecom, Alfa Telecom, IPNET, Megaline, Sky Mobile, and a number of others.

### Mobile Telecom Services

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

- GSM, WCDMA/UMTS, LTE standards mobile services network operated under Beeline brands;
- GSM, WCDMA/UMTS, LTE standard mobile services network operated under MegaCom brand;
- GSM, WCDMA/UMTS, LTE standard mobile services network operated under O! brand.

## 1.6 Political System

The political system of the Kyrgyz Republic is defined in the Constitution<sup>13</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 a period of 6 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 120 Parliamentarians elected for the term of 5 years on a proportional basis.

<sup>12</sup> <http://www.kjd.kg/ru/investment-projects/marshrut-kitai-kyrgyzstan-uz/>

<sup>13</sup> Constitution of the Kyrgyz Republic adopted on June 27, 2010.

- 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.

## 1.7 Judicial System

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

It should also be noted that in the Kyrgyz Republic there exist courts of arbitration courts which resolve civil disputes out of court. However, there is no separate law on international commercial arbitration. An award is enforceable under a writ of execution issued by the state court. In addition, the state court may order provisional measures in the legal cases reviewed by the permanent court of arbitration.

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

- Courts of primary jurisdiction are district level courts and city courts in the regions of the Kyrgyz Republic, district courts of Bishkek city, military courts of garrisons and inter-district courts. All of them consider and resolve the disputes falling within their jurisdiction on their merits.
- Courts of appellate jurisdiction are region (Oblast) level courts, Bishkek City court 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.
- The cassational level – the Supreme Court of the Kyrgyz Republic, consisting of the Plenary Assembly and 3 respective divisions within which, benches of 3 judges are formed to consider cases at law. The Supreme Court review decisions of courts of primary and appellate jurisdictions that have come into legal force by virtue of having cassational jurisdiction. It should be noted that decisions of courts of primary jurisdiction that have come into legal force but have not been appealed to the court of appellate jurisdiction may not be revised by virtue of having cassational jurisdiction.

Constitutional surveillance is carried out by the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic.

### Litigation in Kyrgyz Republic: Some Specific Features

Civil and administrative litigation in the Kyrgyz Republic has some specific features that should be taken into account. In particular:

- The filing fee is payable in advance at the time of filing the claim;
- Claims for damages must be expressed in local currency, even if a dispute arises from an international economic transaction and the transaction currency is specified in the contract;
- In civil litigation, an interim relief order can be issued by a court after acceptance of the claim which may be appealed to a court of higher jurisdiction;
- An attorney cannot independently obtain information concerning the defendant's assets (cash in bank, real estate, shares). Such information can be obtained on the basis of subpoena issued by the court at the attorney's request;
- Lawsuits can be dragged out by using bad-faith litigation tactics such as appealing certain decisions of the court on procedural grounds.

### Arbitration: Some Specific Features

The national arbitration legislation is based on the UNCITRAL Model Law on International Commercial Arbitration. International commercial arbitration is not separately regulated in the Kyrgyz Republic but is governed by the Arbitral Tribunals Act of the Kyrgyz Republic.

The International Court of Arbitration of the Kyrgyz Chamber of Commerce and Industry is the most effective permanent arbitral tribunal in the country.

Arbitration proceedings in the Kyrgyz Republic also have some specific features:

- The state court may not reverse an arbitral award, but may refuse to enforce it. This means that the respondent and/or the debtor is deprived of the active right to defend its interests at the place of arbitration, since it has to wait for the claimant and/or creditor to apply to the state court for an order confirming the award;
- The state court may communicate with the arbitral tribunal to enforce awards and interim relief orders, but not to enforce subpoenas;
- There is a growing tendency among the courts to apply a broad interpretation of non-arbitrability of disputes. However, there is no track record of the Supreme Court decisions on this matter.



## Enforcement of Judgment

Under the legislation of the Kyrgyz Republic<sup>14</sup>, executory deeds must be transferred to enforcement officers for execution. Writs of execution include the following:

- Writs of execution to enforce judgments, including property seizure orders;
- Court orders;
- Interim orders, interim relief, injunction;
- Notarized alimony agreements;
- Notarial executory deeds;
- Orders issued by public authorities, local self-governments or officials authorized to review violations;
- Certificates issued by employment dispute commissions and trade unions;
- Requests for execution, for payment of the settlement amount, the fee for the enforcement officer's services and related expenses;
- Order issued by other public authorities, local self-governments and officials in cases provided by law.

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. It also ensures the enforcement of judgments that have come into force and other acts provided by law and to carry out other activities aimed to create favourable conditions for the full and independent administration of justice.

The Kyrgyz Republic is a party to a number of international 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 10th 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 22nd 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 7th October 2002<sup>15</sup>;
- A number of bilateral agreements on mutual legal

14 The Law of the Kyrgyz Republic "On enforcement proceedings and the status of enforcement officers in the Kyrgyz Republic" dated March 18, 2002 No. 39 ( with the latest amendments as of March 13, 2015).

15 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 entered into force with respect to

support with Azerbaijan, Iran, India, China, Latvia, Mongolia, Russia, Kazakhstan, Uzbekistan, and other nations.

## 1.8 Economy

The Kyrgyz Republic is rich in natural resources, has a high level of public education, enjoys a geographically favourable location, and is characterized by a mild climate. The country has a vast potential for the 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 78th out of 180 countries in the 2017 Index of Economic Freedom released by the Heritage Foundation in conjunction with the Wall Street Journal. Its overall score has increased by 1.7 points because of notable increases in financial and monetary freedom. The Kyrgyz Republic is ranked 18th among 43 countries in the Asia-Pacific region, and its overall score is above the regional and world averages.<sup>16</sup>

The Kyrgyz Republic rose from 111th to 102nd position in the ranking of the Global Competitiveness Index 2017-2018 published by the World Economic Forum.<sup>17</sup>

The Kyrgyz Republic ranks 77th in the Ease of Doing Business Index 2018 rankings.<sup>18</sup>

### Key Macroeconomic Indicators<sup>19</sup>

In 2017, the Kyrgyz Republic's GDP amounted to over KGS 493 billion, having grown by 4.5% compared to corresponding period of the previous year. The volume of GDP (excluding Kumtor's gold mining output) amounted to more than KGS 445 billion having increased by 4.5%.

The volume of industrial production in 2017 amounted to over KGS 231 billion, having grown by 11.5% in comparison with the previous year. The growth in

the latter.

16 <https://www.heritage.org/index/country/kyrgyzrepublic>

17 <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>

18 <http://www.doingbusiness.org/data/exploreeconomies/kyrgyz-republic>

19 [http://www.minfin.kg/index.php?option=com\\_content&view=article&id=1697:-----2012-&catid=56:2010-10-05-10-28-02&Itemid=126](http://www.minfin.kg/index.php?option=com_content&view=article&id=1697:-----2012-&catid=56:2010-10-05-10-28-02&Itemid=126)

industrial production is attributable to increase in the production of metal ores, crude oil and natural gas, refined petroleum products, rubber and plastic products, other non-metallic mineral products, as well as food, drink and tobacco products.

Trends in the country's international trade indicate grown in key indicators. In January-November 2017, the volume of international trade amounted to about USD 6 billion having increased by almost 11% compared to the corresponding period of 2016. At the same time, exports increased by 12.8%, imports by 10.2%.<sup>20</sup>

## 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.

These economic reforms resulted in active transformation of state ownership. They 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 is now 70%. Many state-owned enterprises have been converted into municipal ownership.<sup>21</sup>

Economic reforms in the country have brought about the following general preconditions for the 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, farmers' associations, and other forms of business;
- Established two-level system of banking and crediting;
- Liberalized prices.

In 2009, the President of the Kyrgyz Republic<sup>22</sup> adopted a decision to conduct the analysis of operations of 20 <http://www.stat.kg/ru/news/po-itogam-2017-goda-vvp-kyrgyzstana-vyros-na-45-procenta/>

21 [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)

22 Edict No.: UP No. 96 of the President of the Kyrgyz Republic

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. To ensure the more efficient use of state-owned assets, the Kyrgyz Republic approved the State Property Privatization Program 2015-2017 (Parliament Resolution No. 5408-V, June 29, 2015) and the State Property Management System Reform Concept (Government Ordinance No. 244-r, June 5, 2015).

At present, the following state-owned enterprises are active: Kyrgyzpochtasy SOE, Kyrgyzaeronavigatsia SOE, Kyrgyzdipservice SOE, Kyrgyz Temir Jolu National Company SOE, Kyrgyzmarkasy SOE<sup>23</sup>, Pravitelstvennaya Svyaz SOE, Infocom SOE, Kyrgyzstroy service SOE, Kyrgyzresursy SOE, Komur SOE, Kyrgyz Experimental Biofactory SOE, Karakol Distillery SOE, Kara-Balta Distillery SOE, Kyrgyzteploenergo SOE, Issyk-Kul-Aurora Sanatorium SOE and others.<sup>24</sup> In the Kyrgyz Republic, the government participates in the management of 59 joint stock companies, of which 38 are in operation, 5 are in liquidation, 6 are in bankruptcy, and 10 are no longer in operation.<sup>25</sup>

## 1.9 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, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Brunei, Bulgaria, Burundi, Cambodia, Canada, the Central African Republic, Chad, Chile, China, Columbia, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Cyprus, the Czech Republic, the Commonwealth of Dominica, Denmark, Djibouti, the Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Finland, Fiji, France, Gambia, Germany, Georgia, Ghana, Greece, Guatemala, Guinea, Guyana, Hungary, India, Indonesia, Iraq, Iran, Ireland, Island, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, the Korean People's Democratic Republic, the Republic of Korea, Kuwait, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Lichtenstein, Lithuania, Luxemburg, Macedonia, Madagascar, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Namibia, Nepal, the Netherlands, New Zealand, Nicaragua, Norway, Oman, Palestine, Paraguay, Pakistan, Peru, Philippines, Poland,

dated February 10, 2009.

23 <http://www.stamp.elcat.kg/>

24 [http://www.fgi.gov.kg/index.php?act=view\\_material&id=737](http://www.fgi.gov.kg/index.php?act=view_material&id=737)

25 [http://www.fgi.gov.kg/index.php?act=view\\_material&id=1728](http://www.fgi.gov.kg/index.php?act=view_material&id=1728)

Portugal, Qatar, Romania, Russia, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, the Solomon Islands, the South African Republic, Spain, Sri Lanka, Sudan, Surinam, Sweden, Switzerland, Syria, Tajikistan, Thailand, the Togolese Republic, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the United Arab Emirates, Uruguay, Uzbekistan, Vatican, Vietnam, Yemen, Yugoslavia, Zambia.<sup>26</sup>

The Kyrgyz Republic has set up embassies to:

- Russian Federation (also covering the Republic of Georgia, the Republic of Armenia, the Republic of Finland);
- Republic of Ukraine (also covering the Republic of Moldova, the Republic of Romania);
- Republic of Belarus (also covering the Republic of Poland, the Republic of Latvia, the Republic of Lithuania);
- Turkmenistan;
- Republic of Tajikistan;
- Republic of Uzbekistan;
- Republic of Kazakhstan;
- Islamic Republic of Iran;
- People's Republic of China (also covering the People's Republic of Mongolia);
- Kingdom of Saudi Arabia (also covering 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 Republic of Italy);
- Kingdom of Belgium (also covering the Kingdom of Netherlands, the Grand Duchy of Luxembourg, the Republic of France);
- Austrian Republic (also covering the Republic of Hungary, the Republic of Slovakia, the Czech Republic, the State of Israel);
- Federal 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;
- Republic of Azerbaijan;
- Islamic Republic of Afghanistan;
- State of Kuwait;
- State of Qatar;
- United Arab Emirates.

The Kyrgyz Republic maintains 34 honorary consulates in various foreign states<sup>27</sup> including the following:

- A general consulate in Yekaterinburg, 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 Republic of Turkey;
- A general consulate in Dubai, the United Arab Emirates;
- A general consulate in Guangzhou, the People's Republic of China;
- A consular agency in Frankfurt am Main, the Federal Republic of Germany;
- 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<sup>28</sup>.

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

Currently, the Kyrgyz Republic belongs to 80 international and regional organizations, including the following regional organizations:<sup>29</sup>

- cooperation organizations: the United Nations Organization (UN), the Organization for Security and Cooperation in Europe (OSCE), the Economic Cooperation Organization (ECO), the Organization of Islamic Cooperation (OIC), the Collective Security Treaty Organization (CSTO), the Commonwealth of Independent States (CIS), the Eurasian Economic Cooperation (EAEC), the Shanghai Cooperation Organization (SCO);
- financial institutions: the International Monetary

<sup>27</sup> <http://www.mfa.gov.kg/contents/view/id/101>

<sup>28</sup> <http://www.mfa.gov.kg/contents/view/id/100>

<sup>29</sup> [http://kg.akipress.org/\\_print.php?db=news&id=53619](http://kg.akipress.org/_print.php?db=news&id=53619)

<sup>26</sup> <http://www.mfa.gov.kg/contents/view/id/98>

Fund (IMF), the Asian Development Bank (ADB), the International Bank for Reconstruction and Development (IBRD, the World Bank Group), the International Development Association (IDA, the World Bank Group), the European Bank for Reconstruction and Development (EBRD), the Islamic Development Bank (IDB), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA);

- trade organizations: the World Trade Organization (WTO), International Islamic Trade Finance Corporation (ITFC), the Economic Cooperation Organization Trade and Development Bank, World Customs Organization;
- food and agriculture organizations: the Food and Agriculture Organization (FAO), the International Centre for Agricultural Research in the Dry Areas (ICARDA), the International Commission on Irrigation and Drainage (ICID), the International Commission for Water Coordination (ICWC), the Secretariat of the UN Convention to Combat Desertification (UNCCD), the International Epizootic Bureau (IEB), the CIS Intergovernmental Council for Veterinary Cooperation, and the European and Mediterranean Quarantine and Plant Protection Organization (EPPO);
- transport and communications organizations: the International Telecommunication Union (ITU), the Universal Postal Union (UPU), the International Civil Aviation Organization (ICAO), Interstate Aviation Committee (IAC), the Transport Coordination Meeting, the Organization for Cooperation of Railways (OSJD), the Regional Commonwealth in the field of Communications (RCC);
- labour, social security and migration organizations: the International Labour 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 (WIPO), the Eurasian Patent Organization, the International Confederation of Societies of Authors and Composers (CISAC), the Interstate Council for Legal Protection of Intellectual Property;
- energy organizations: the Energy Charter Secretariat (ECS), the Energy Regulators Regional Association (ERRA), the International Atomic Energy Agency (IAEA);
- 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 Trans-boundary Context, the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Long-range Trans-boundary Air Pollution, the Vienna Convention for the Protection of the Ozone Layer, the UN Convention on Biological Diversity, the UN Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Green Climate Fund (GCF), the Climate Change Adaptation Fund (Adaptation Fund), the Global Environment Facility (GEF);

- natural disaster prevention organizations: the World Meteorological Organization (WMO), the Asian Disaster Reduction Centre (ADRC), the CIS International Council for Natural and Man-made Disasters, and the CIS International Council for Hydrometeorology;
- standards organizations: the CIS Interstate Council for Standardization, Metrology and Certification, the Interstate Scientific and Technical Commission for Standardization, Technical Regulation and Conformity Assessment of Construction Products, the International Organization for Standardization (ISO), the European Committee for Standardization.<sup>30</sup>

### **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, to assure their integrated coordination, to 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 is genuinely interested in international cooperation. Furthermore it actively participates in the structures of the CIS and within its framework, contributes to the further development

<sup>30</sup> Government Resolution approving measures to enhance efficiency of cooperation between the Kyrgyz Republic and international organizations, integration associations and treaty bodies, December 2, 2015 No. 817 <http://www.mfa.gov.kg/contents/view/id/99>



of commercial and economic relations between the member countries.

**The Organization of Islamic Cooperation (formerly, 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 Eurasian Economic Union (EAEU) - May 2014**

The Eurasian Economic Union is a regional economic integration organization possessing international legal personality and established by the Eurasian Economic Union Treaty. The EAEU guarantees the free movement of goods, services, capitals and labour, and the pursuit of coordinated, concerted and common policies in the economic sectors. The EAEU member states are: the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation. The EAEU was established with an aim to ensure overall modernization, cooperation and enhanced competitiveness of national economies and favourable conditions for stable development and raising of the living standards of the peoples of the member states.

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

The principal goals and objectives of the SCO are: to strengthen mutual trust, friendship and neighbourliness 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 21st 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.

The Constitution is the basic and paramount law to which all other laws must conform, including the laws directly or indirectly regulating investment in the Kyrgyz Republic such as the “Law on Licensing and Permitting System in the Kyrgyz Republic”, the “Law on Joint-Stock Companies”, the “Law on Mining”, the “Law on Free Economic Zones in the Kyrgyz Republic”, the Law on Customs Regulation in the Kyrgyz Republic, the Tax Code, the Land Code, the Customs Code, the Civil Code, the “Law on Public-Private Partnership in the Kyrgyz Republic” and many others. Nonetheless, the principal law governing investment is the “Law on Investment in the Kyrgyz Republic”.

Thus, under the legislation of the Kyrgyz Republic,<sup>31</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.

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>32</sup>:

- The People’s Republic of China (1995);
- The Republic of Turkey (1996)<sup>33</sup>;
- The Republic of Ukraine (treaty signed in 1993);
- The United States of America (1994)<sup>34</sup>;
- The Republic of Armenia (1995);
- The United Kingdom of Great Britain and Northern Ireland (1998)<sup>35</sup>;
- The Republic of France (1997);

31 The Law of the Kyrgyz Republic “On Investments in the Kyrgyz Republic” dated March 27, 2003 (with the latest amendments as of December 16, 2016 No.207 ).

32 In parentheses are the years on which the respective treaties came into effect in the Kyrgyz Republic, unless stated otherwise.

33 Ratified by the Parliament Legislative Assembly Resolution, August 18, 1995 Z No. 178-1 and the Parliament People’s Representative Assembly Resolution of September 28, 1995 P No. 167-1.

34 Ratified by the Parliament Resolution, December 11, 1993 No. 1291-XII.

35 Ratified by the KR Law, January 6, 1997 No. 5

- The Islamic Republic of Iran (2005);
- The Republic of Azerbaijan (1997);
- The Federal Republic of Germany (2006);
- The Republic of Georgia (first BIT signed in 1997, second BIT signed in 2016)<sup>36</sup>;
- The Republic of India (2000)<sup>37</sup>;
- The Republic of Kazakhstan (BIT signed in 1997)<sup>38</sup>;
- The Republic of Belarus (2001);
- The People’s Republic of Mongolia (treaty signed in 1999)<sup>39</sup>;
- The Swiss Confederation (2003)<sup>40</sup>;
- The Republic of Tajikistan (2001)<sup>41</sup>;
- The Kingdom of Sweden (2003);
- The Republic of Moldova (2004);
- The Republic of Finland (2004)<sup>42</sup>;
- The Republic of Korea (2008)<sup>43</sup>;
- The Republic of Latvia (signed in 2008)<sup>44</sup>;
- The Republic of Lithuania (2009)<sup>45</sup>;
- Denmark (signed in 2001);
- Malaysia (signed in 1995);
- The Islamic Republic of Pakistan (signed in 1996)<sup>46</sup>;
- The Republic of Indonesia (1997);
- The Republic of Uzbekistan (signed in 1997);
- The United Arab Emirates (signed in 2014)<sup>47</sup>;
- State of Qatar (signed in 2014)<sup>48</sup>;
- State of Kuwait (signed in 2015)<sup>49</sup>;
- The Republic of Austria (signed in 2016)<sup>50</sup>.

The Ministry of Economy of the Kyrgyz Republic is the central executive authority in charge of developing and pursuing the state investment policy.

The Investment Promotion and Protection Agency of the Kyrgyz Republic under the Prime Minister’s Office is the public authority in charge of pursuing the state policy in the field of investment, export and public-private partnership.<sup>51</sup>

36 Ratified by the KR Law, July 20, 2017 No. 134.

37 Ratified by the KR Law, April 10, 1998 No. 42.

38 Ratified by the KR Law, August 17, 2004 No. 151.

39 Ratified by the KR Law, July 10, 2001 No. 66.

40 Ratified by the KR Law, January 15, 2003, No. 26.

41 Ratified by the KR Law, November 20, 2001 No. 95.

42 Ratified by the KR Law, August 17, 2004 No. 154.

43 Ratified by the KR Law, June 23, 2008 No. 120.

44 Ratified by the KR Law, March 4, 2009 No. 74.

45 Ratified by the KR Law, February 6, 2009, No. 38.

46 Ratified by the KR Law, May 23, 2002, No. 83.

47 Ratified by the KR Law, May 28, 2015, No. 119.

48 Ratified by the KR Law, May 28, 2015, No. 117.

49 Ratified by the KR Law, July 21, 2016, No. 127.

50 Ratified by the KR Law, January 25, 2017, No. 11.

51 Regulation on the Investment Promotion and Protection Agency of the Kyrgyz Republic, approved by the Government Resolution No. 736 of November 13, 2017.

## 2.2 State Guarantees to Foreign Investors

Subject to its legislation<sup>52</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;
- 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 the 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 the 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 the 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

- Recognition by public authorities and officials of the Kyrgyz Republic of all intellectual property rights of foreign investors;
- In the event of amendments to the Law of the KR on Investments, or the tax legislation of the Kyrgyz Republic or the nontax payments legislation, the investor and the investee who meet the statutory requirements have the right, during 10 years from the date of signing the stabilization agreement, to choose such conditions as may be most favorable to them for paying taxes including value added tax but excluding other indirect taxes, and nontax payments (except fees and charges for public services) in the manner provided by the laws of the Kyrgyz Republic. The procedure and conditions for applying stabilization regime to tax and nontax legal relationships are established by the laws of the Kyrgyz Republic;
- 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.

## 2.3 Investment Agreement with the Government of the Kyrgyz Republic

The Government of the Kyrgyz Republic may execute investment agreements for implementing investment projects initiated by the investor in accordance with state development programs in high priority economic and social sectors. Such investment agreements may be executed through direct negotiations between the Government of the Kyrgyz Republic and the investor, provided that the amount of investment made by the investor in the investment project is not less than USD 50 million and the investor has internationally recognized business reputation, unique knowledge and experience in successfully implementing the projects in the similar area of practice.

## 2.4 Settlement of Investment Disputes

Under the legislation of the Kyrgyz Republic<sup>53</sup>, investment dispute parties may agree on any applicable procedure for settlement of investment disputes.

Failing such an agreement, an investment dispute between the Kyrgyz authorities and an investor shall be settled wherever possible by consultations between the parties. If the parties do not settle amicably within 3 months from the day of the first written request for such consultation, any investment dispute between the investor and the Kyrgyz authorities shall be settled in the Kyrgyz courts, unless either party to the

<sup>52</sup> Chapter 2 of the Law of the Kyrgyz Republic: "On Investments in the Kyrgyz Republic" dated March 27, 2003 No.66 (with the latest amendments as of December 16, 2016 No. 207).

<sup>53</sup> Article 18 of the Law of the Kyrgyz Republic: "On Investments in the Kyrgyz Republic" dated March 27, 2003 No.66.

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dispute between the foreign investor and the authority requests to consider the dispute in accordance with one of the following procedures by submitting to:

- the International Center for Settlement of Investment Disputes (ICSID) under the Convention on the Settlement of Investment Disputes between States and Citizens of Other States or under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the ICSID; or
- arbitration or an international ad hoc arbitral tribunal (commercial court) formed in accordance with the arbitration rules of the United Nations Commission on International Trade Law.

Some treaties on mutual support, encouragement and protection of investment (capital expenditure), to which the Kyrgyz Republic is a party, contain provisions entitling foreign investors to submit their investment disputes to international arbitral tribunals.

### 3. LEGAL STATUS OF FOREIGN NATIONALS

#### 3.1 Visa and Registration Requirements

Subject to the legislation of the Kyrgyz Republic<sup>54</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<sup>55</sup> of the foreign countries whose nationals are subject to a simplified visa regime. The law provides that nationals of foreign countries included in this list 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 Kyrgyz Republic at their personal request for a term of up to 90 days.<sup>56</sup>

- Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Bosnia and Herzegovina, the United Kingdom of Great Britain and Northern Ireland, the Republic of Hungary, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Denmark, the State of Israel, the Republic of Ireland, the Republic of Iceland, the Kingdom of Spain, the Italian Republic, Canada, the Republic of Cyprus, the Republic of Korea, the Republic of Lithuania, the Republic of Latvia, the Principality of Liechtenstein, the Grand Duchy of Luxembourg, the Republic of Macedonia, the Republic of Malta, Monaco, the Netherlands, the Kingdom of Norway, New Zealand, the Republic of Poland, the Portuguese Republic, the Republic of Romania, the Republic of Serbia, the Republic of Slovenia, Singapore, Slovak Republic, the United States of America, the Republic of Turkey, the Republic of Finland, the French Republic, the Republic of Croatia, the Republic of Montenegro, the Czech Republic, the Swiss Confederation, the Kingdom of Sweden, the Republic of Estonia, Andorra, Argentina, Brazil, Vatican City, Vietnam, the Kingdom of Thailand, the Kingdom of Saudi Arabia, Mexico, the United

Arab Emirates, San Marino, the Philippines, the Republic of Albania, Brunei Darussalam, the Republic of Indonesia, Republic of South Africa, the Republic of Chile, the Bolivarian the Republic of Venezuela, the State of Qatar, the State of Kuwait, the Sultanate of Oman, the Kingdom of Bahrain, Japan, the Islamic Republic of Iran (only visitor or tourist visas).

**Visa-free travel** possibilities are granted on the basis of the legislation of the Kyrgyz Republic<sup>57</sup> and 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 up to 60 days for nationals of: the Commonwealth of Australia, the Republic of Austria, the Kingdom of Belgium, Bosnia and Herzegovina, the Vatican, the United Kingdom of Great Britain and Northern Ireland, Hungary, the Federal Republic of Germany, the Netherlands, the Hellenic Republic, the Kingdom of Denmark, Iceland, Ireland, the Kingdom of Spain, the Italian Republic, Canada, the Republic of Korea, Kuwait, the Republic of Latvia, the Republic of Lithuania, the Principality of Liechtenstein, the Grand Duchy of Luxembourg, the Republic of Malta, Monaco, New Zealand, Norway, the United Arab Emirates, the Republic of Poland, the Portuguese Republic, the Kingdom of Saudi Arabia, the Republic of Singapore, the Slovak Republic, the Republic of Slovenia, the United States of America, the Republic of Finland, the French Republic, the Republic of Croatia, the Czech Republic, the Swiss Confederation, the Kingdom of Sweden, the Republic of Estonia, the State of Qatar, the State of Brunei Darussalam, the Kingdom of Bahrain, Japan;
- Visa-free entry for holders of all categories of passports of nationals of: the Republic of Armenia, the Republic of Azerbaijan, the Republic of Belarus, the Republic of Cuba, the Republic of Georgia, the Republic of Kazakhstan, the Democratic People's Republic of Korea, Malaysia (for the period from 1 month up to 3 months depending on purpose of stay), the Republic of Moldova, Mongolia (up to 90 days), the Russian Federation, the Republic of Tajikistan, the Republic of Ukraine (up to 90 days), the Republic of Uzbekistan (up to 60 days), the Turkish Republic (up to 1 month), Vietnam, Lao People's Democratic Republic;
- Visa-free entry for up to 1 month for nationals holding diplomatic and service passports of: the Republic of Hungary, the Islamic Republic of Pakistan, the Islamic Republic of Iran (up to 30 days for holders of service passports), the People's Republic of China, Turkmenistan, the

54 The Law of the Kyrgyz Republic "On External Migration" dated July 17, 2000, No.61 (with the latest amendments as of October 24, 2016 ).

55 Resolution No. 87 of the Government of the Kyrgyz Republic on Approval of List of Foreign States whose Nationals are Subject to a Simplified Visa Regime dated February 7, 2009 (with the latest amendments as of March 15, 2017).

56 Resolution No. 87 of the Government of the Kyrgyz Republic on Approval of List of Foreign States whose Nationals are Subject to a Simplified Visa Regime dated February 7, 2009 (with the latest amendments as of March 15, 2017).

57 The Law of the Kyrgyz Republic "On Introduction of Visa-free Regime for Citizens of Some States for up to 60 Days" dated July 21, 2012 No. 121 (with the latest amendments as of July 19, 2013)

Republic of Uzbekistan (up to 60 days), Singapore, the Republic of Korea, the Republic of Indonesia, the Republic of India (up to 90 days), the Republic of Romania (up to 90 days within a period of 180 days), the State of Kuwait (not exceeding 90 days per period of 60 months from the date of the first entry), the State of Qatar (up to 90 days);

- Visa-free entry for nationals holding diplomatic passports of: the Republic of Austria, the Kingdom of Belgium, Canada, the Kingdom of Denmark, the Republic of Finland, the Republic of France, the Federal Republic of Germany, the Republic of Greece, the Republic of Iceland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Portugal, the Kingdom of Spain, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, the United States of America, the Slovak Republic (up to 30 days), the Republic of Poland (up to 90 days within a period of 180 days).

### Visa Categories

- **Diplomatic visas** (issued to foreign nationals holding diplomatic passports and entering the Kyrgyz Republic for official purposes or for transit travel through its territory);
- **Official visas** (issued to foreign nationals holding service passports and entering the Kyrgyz Republic for official purposes or for transit travel through its territory);
- **Business visas** (issued to foreign nationals entering the Kyrgyz Republic for business purposes);
- **Investment visas** (issued to investors or heads of foreign investment companies or their family members (spouses, underage children or dependent parents) intending to engage in investment activities in the Kyrgyz Republic and producing all necessary documents confirming the investment of cash or tangible assets equivalent to KGS 10 (ten) million in the industrial or agricultural production, banking, energy, education, healthcare, planning and construction, information and communication technologies);
- **Tourist visas** (issued to foreign nationals entering the Kyrgyz Republic as tourists);
- **Work visas** (W1, issued to foreign nationals intending to engage in labour or individual entrepreneurial activity in the Kyrgyz Republic and applying for work permits. The work visa allows to stay in the Kyrgyz Republic for up to 90 days without the right to engage in labour or individual entrepreneurial activity);
- **Study visas** (issued to foreign nationals entering the Kyrgyz Republic for study);
- **Private visas** (issued to foreign nationals entering the Kyrgyz Republic for private purposes, such as visiting family and friends, undergoing medical

treatment, permanent or temporary residence);

- **Religious visas** (issued to foreign nationals entering the Kyrgyz Republic for cooperation with religious organizations with the consent of the public authority of the Kyrgyz Republic for religious matters);
- **Family visas** (issued to family members (spouses, underage children or dependent parents) of foreign nationals holding W1 and W2 visas, S study visas, and residence permits);
- **Transit visas** (issued to foreign national transiting through the Kyrgyz Republic to any third countries).

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 by the Government of the Kyrgyz Republic.<sup>58</sup>

### Residence Permit

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

Under Kyrgyz legislation<sup>59</sup>, foreign nationals or stateless persons residing in the Kyrgyz Republic for not less than 6 months may file with the local offices of the Department of Registration of Population under the State Registration Service under the Government of the Kyrgyz Republic closest to the place of location an application for residence permit.

A 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.

A 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.

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

Temporary residence permits are issued in the local offices of the Department of Registration of Population and Affidavits of Civil Status under the State Registration Service under the Government of the Kyrgyz Republic.

<sup>58</sup> Resolution on consular fees and charges for actual expenses No. 839 of the Government of the Kyrgyz Republic dated December 18, 2012.

<sup>59</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 (with the latest amendments as of July 15, 2015 ).



Permanent residence permits are issued to:

- Those who have duly received a 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 year from the date of filing the application.

The permanent residence permits are given out in the Department of Registration of Population and Affidavits of Civil Status under the State Registration Service under the Government of the Kyrgyz Republic.

Upon receipt of the residence permit, foreign nationals or stateless persons must within 5 business days file for registration with the territorial bodies of the Department of Registration of Population and Affidavits of Civil Status under the State Registration Service under the Government of the Kyrgyz Republic that are closest to the place of temporary or permanent residence.

### Registration Procedure

The list of foreign nationals and stateless persons exempt from registration at the place of stay, foreign affairs authority, public registration authority, or hotels and the period of exemption are approved by the Government of the Kyrgyz Republic.<sup>60</sup> Non-exempt foreign nationals and stateless persons must register within five working days from the moment of crossing the state border of the Kyrgyz Republic for the period and in the manner approved by the Government of the Kyrgyz Republic<sup>61</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.

<sup>60</sup> Government Resolution approving the procedure for registration of foreign nationals and stateless persons in the Kyrgyz Republic No. 689, December 19, 2016.

<sup>61</sup> Procedure for registration of foreign nationals and stateless persons in the Kyrgyz Republic approved by Government Resolution No. 689, December 19, 2016.

## 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<sup>62</sup>. Foreign nationals are equal under the law, regardless of sex, race, language, disability, ethnic origin, creed, age, political or other beliefs, education, social origin, property or other status, and other circumstances.

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, except for the nationals of the Eurasian Economic Union member states.<sup>63</sup>

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, enjoy cultural benefits and have property and personal non-property rights and all other rights equivalent to nationals of the Kyrgyz Republic.

A foreign national can freely move throughout the territory of the Kyrgyz Republic and choose a place of residence in the manner provided by Kyrgyz law. In which case, they are guaranteed inviolability of person and dwelling.

Foreign nationals are required to pay taxes and charges on the same basis as Kyrgyz nationals, unless otherwise provided by Kyrgyz law.

Foreign nationals in the Kyrgyz Republic have the right to refer to court and other government bodies for protection of their personal, property, family and other rights. They enjoy the same litigation rights as Kyrgyz nationals.

Foreign nationals who commit crimes, administrative or other legal offences in the territory of the Kyrgyz Republic are subject to the same liability as Kyrgyz nationals.

A foreign national staying in the Kyrgyz Republic is provided with the opportunity to contact the diplomatic or the consular mission of his own country, or if such is not available, the diplomatic or consular mission of another country authorized to protect the rights and legal interests of nationals of his country of citizenship.

<sup>62</sup> The Law of the Kyrgyz Republic "On Legal Status of Foreign National in the Kyrgyz Republic" dated December 14, 1993 No. 1296-XII (with the latest amendments as of October 11, 2011);

<sup>63</sup> Treaty on Eurasian Economic Union dated May 29, 2014.

## 4. FORMS OF BUSINESS

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

Branches and representative offices of foreign companies are not considered to be Kyrgyz legal entities. They are endowed with the property of their foreign founders, and act on the basis of the approved bylaws. The legislation of the Kyrgyz Republic distinguishes between branches and representative offices. The functions of representative offices are limited to representing a foreign legal entity and protecting its interests, performing transactions and other legal actions on behalf of the same. Branches, on the other hand, fulfil all or part of the functions of the foreign founder, including representation. The chiefs of the branch / representative office act under a power of attorney issued by the main / head office.

Under the legislation of the Kyrgyz Republic<sup>64</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.

The legislation of the Kyrgyz Republic provides for a number of restrictions with respect to branches and representative offices. Thus, a branch or 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.

#### State Registration of Branches and Representative Offices

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

State registration of branches and representative offices of foreign legal entities is carried out by the Ministry of Justice of the Kyrgyz Republic or its

<sup>64</sup> The Law of the Kyrgyz Republic “On Business Partnerships and Companies” dated November 15, 1996 (with the latest amendments as of May 20, 2016).

territorial subdivisions<sup>65</sup>. For the purposes of state registration, a foreign legal entity must submit the following documents<sup>66</sup>:

- i. The standard application form for registration;
- ii. The resolution of the authorized body of the foreign legal entity to establish the branch or representative office;
- iii. A copy of the certificate of state registration (re-registration) of the foreign legal entity (for branches or representative offices established by legal entities registered under the legislation of the Kyrgyz Republic);
- iv. A legalized<sup>67</sup> excerpt from the trade register or other proof that the foreign legal entity is in good standing under the laws of its country (for branches or representative offices established by foreign legal entities).
- v. A copy of passport (or other document deemed to be the proof of identity under Kyrgyz law) of an individual being the head of the branch or representative office.

For the establishment of a branch or representative office of a foreign or local bank, a permit of the National Bank of the Kyrgyz Republic is required.

For registration of their branches (representative offices), financial institutions, foreign or international organizations additionally submit the following documents to the registering authority:

- approved bylaws of the branch (representative office) in 2 copies;
- copies of foundation documents of the financial institution, foreign or international organization that made a decision to create a branch (representative office).

#### 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>68</sup>:

- i. The standard application form for registration;
- ii. The decision of the authorized body or court to

<sup>65</sup> Free-trade zone branches and representative offices of non-free-trade zone enterprises are subject to registration with the General Directorate of Free-Trade Zone. The General Directorate of Free-Trade Zone establishes the registration procedures for business entities with foreign investment.

<sup>66</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 (with the latest amendments as of December 16, 2016, No. 208).

<sup>67</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. Under Kyrgyz Law dated November 16, 2009, the Kyrgyz Republic has acceded to the Hague Convention abolishing the requirement of legalization for foreign public documents.

<sup>68</sup> Article 17 of the Law: “On State Registration of Legal Entities, Branches (Representative Offices)” dated February 20, 2009 (with latest amendments as of December 13, 2012).

- liquidate the branch or representative office;
- iii. The certificate of state registration (re-registration) of the branch or representative office;
- iv. The certificate of surrender of seals and stamps of the branch or representative office to the internal affairs authority.

The branches or representative offices of foreign legal entities must additionally submit the following documents:

- i. The certificate of no outstanding tax liabilities; and
- ii. The certificate of no outstanding social security liabilities.

The branches (representative offices) of financial institutions, foreign or international organizations are also required to submit the regulation on branch (representative office).

State 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 local 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>69</sup>, the Law of the Kyrgyz Republic “On Business Partnerships and Companies”, and the Law of the Kyrgyz Republic “On Joint Stock Companies”.<sup>70</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:

- The participants in a 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 a LLC are not subject to detailed legislative regulation, therefore, management and decision making in a LLC are more flexible.

The minimum charter capital of a LLC is KGS 1 (approximately USD 0.015 as of March 2018).

69 Part I of the Civil Code of the Kyrgyz Republic dated May 8, 1996 (with the latest amendments as of August 2, 2017 No. 170).

70 The Law of the Kyrgyz Republic “On Joint Stock Companies” dated March 27, 2003 (with the latest amendments as of May 20, 2016).

It must be noted that, subject to legislation of the Kyrgyz Republic<sup>71</sup>, a LLC may not have as its sole participant another business entity consisting of a single person.

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

### Joint Stock Companies

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.

Under Kyrgyz law,<sup>72</sup> a founder legal entity consisting of a single participant/shareholder may not act as the sole founder/shareholder of a joint stock company.

The minimum charter capital of a joint stock company is 100,000 KGS (approximately USD 1,466 as of March 2018). As of the date of founding a joint stock company, the charter capital must be fully paid in and distributed among the 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 court order. Shareholders of a closed joint stock company have pre-emptive right to purchase shares offered for sale by other shareholders of the same company.

An open joint stock company is a joint stock company the 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

71 Article 128 of the Civil Code of the Kyrgyz Republic.

72 Article 143 of the Civil Code of the Kyrgyz Republic.

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 within 2 months after the last annual meeting of shareholders, but no later than June 1st of the year following the reporting year, publish in the media an annual report on its financial and business performance.

### 4.3 State registration of Legal Entities

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 territorial subdivisions.

State 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<sup>73</sup> from the date of filing the necessary documents for a specified fee.

To be registered, a legal entity must submit the following documents:<sup>74</sup>

- i. The application for registration;
- ii. The decision of the founder(s) to establish a legal entity;
- iii. If a legal entity is the founder of another legal entity, a copy of the certificate of state (re) registration;
- iv. If a foreign legal entity is a founder of another legal entity, a legalized excerpt from the trade register or other proof that the foreign legal entity is in good standing under the laws of its country.
- v. A copy of passport (or other document deemed to be the proof of identity under Kyrgyz law) of an individual being the head of the legal entity.

For the establishment of a branch or representative office of financial institutions, foreign or international organizations, a written consent of the National Bank of the Kyrgyz Republic is required.

For registration of financial institutions, the following documents are additionally submitted to the registering authority:

- The standard application form for registration;
- The decision of the founder(s) to establish, approve (execute) the foundation documents and to elect the management bodies of the financial institution;
- The charter signed by the head of the financial institution in 2 copies;

<sup>73</sup> State registration of financial institutions, non-commercial organizations, as well as branches of financial institutions, foreign and international organizations within 10 calendar days from the date of submitting necessary documents to the registering authority.  
<sup>74</sup> Articles 10 and 11 of the Law: “On State Registration of Legal Entities, Branches (Representative Offices)”.

- The foundation agreement of the financial institution signed by all its founders in 2 copies.

### 4.4 Business Reorganization and Restructuring

Reorganization of a legal entity (merger, acquisition, split-up, spin-off, and conversion) may be carried out by the decision of its founders/participants or the body of the legal entity authorized by its founding documents, or, the regulatory authority for banks, financial institutions or other entities licensed to perform operations being their only permitted activity.

To restrict monopolistic practices, commercial organizations may be subject to compulsory reorganization by court order under the circumstances and in the manner provided by law.

**A merger** of legal entities is an arrangement whereby their rights and obligations are transferred to the newly established legal entity under a transfer deed.

**An acquisition** of a legal entity by another legal entity is an arrangement whereby the rights and obligations of the acquired company are transferred to the acquiring legal entity under a transfer deed.

**A split-up** of a legal entity is an arrangement whereby its rights and obligations are transferred to the newly established legal entities under a separation balance sheet.

**A spin-off** of one or more legal entities from the original legal entity is an arrangement whereby the rights and obligations of the reorganized legal entity are transferred to each of them under a separation balance sheet.

**A conversion** of a legal entity of a given type into a legal entity of another type (change in the legal form of organization) is an arrangement whereby the rights and obligations of the reorganized legal entity are transferred to the newly established legal entity under a transfer deed.

A transfer deed and a separation balance sheet are the documents required for reorganization of a legal entity. They must contain provisions on legal succession with respect to all liabilities of the legal entity reorganized. The transfer deed and separation balance sheet shall be approved by the 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 reorganization of a legal entity, its founders must notify the creditors in writing to this effect.



Under Kyrgyz law, in case of reorganization of business entities under the circumstances provided by the anti-monopoly law, the consent of the anti-monopoly authority of the Kyrgyz Republic is required.

#### 4.5 Business Closure

Liquidation of a legal entity entails its termination without transferring its rights and obligations to any other persons.

A legal entity may be liquidated:

- By the decision of the founders (participants) or the authorized body of the legal entity under the circumstances provided by the founding documents, including in connection with the expiration of the term for which the legal entity was established, or achievement of the purpose for which it was established, or invalidation of registration of the legal entity by the court as being established with irremediable violations of law; or
- By the decision of the court in the event of engaging in business without proper permit (license) or in business prohibited by law, or with other repeated or gross violations of law, or in the event of persistent engaging in business that is contrary to statutory goals of the legal entity; or in the event of revoking the license of banks, financial institutions, or other entities licensed to perform operations being their only permitted activity; and in such other cases as may be provided by law.

Liquidation of banks or financial institutions licensed by the National Bank of the Kyrgyz Republic occurs in the event of revocation of the banking license, subject to specific requirements for banks and other financial institutions.

Once the authorized body of the legal entity or the court makes a decision to liquidate the legal entity, the liquidation committee (liquidator) must notify the registration authority to this effect in writing within 3 business days enclosing a copy of the decision to liquidate the legal entity and to elect (appoint) the liquidation committee (liquidator).<sup>75</sup> The notice must indicate the procedure and period for filing the creditors' claims and the copy of the liquidation decision must be enclosed with it. At the same time, the period for filing the creditors' claims may not be less than 2 months from the date of the public announcement of liquidation.

The registration authority must, within 7 business days from the date of receipt of the liquidation notice, make a relevant entry in the state register and notify the Tax Service, Customs Service, Statistical Committee and Social Fund authorities to this effect.

<sup>75</sup> Article 13 of the Law: "On State Registration of Legal Entities, Branches (Representative Offices)".

For state registration of its termination, the legal entity must submit to the registration authority the following documents:

- i. The standard application form for termination of registration;
- ii. The decision of the authorized body of the legal entity or the court to liquidate the legal entity and to elect (appoint) the liquidation committee (liquidator);
- iii. The certificate of state registration (re-registration) of a legal entity;
- iv. The certificate of no outstanding social security liabilities;
- v. The certificate of no outstanding tax liabilities;
- vi. The certificate of surrender of seals and stamps to the internal affairs authority;
- vii. The decision of the authorized body of the legal entity to approve the liquidation balance sheet;
- viii. The certificate of repositioning the documents of the liquidated legal entity with the Kyrgyz Archives Agency;
- ix. The proof of payment of the registration fee.

For termination of state registration, financial lending institutions and non-commercial organizations must also provide their charters.

#### 4.6 Business Activity without Creating a Legal Entity

Under Kyrgyz law<sup>76</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:

- 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 local tax offices that are closest to the place of registration according to passport data, place of residence or place of business of a sole proprietor.

<sup>76</sup> Regulation on procedure of tax registration of taxpayers in the Kyrgyz Republic approved by KR Government Resolution dated April 7, 2011 No. 144 (with latest amendments as of November 25, 2016 No. 625 ).



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 Social Fund.

When running their 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 bound, numbered, sealed, and registered with the local tax authority.

Sole proprietors may engage in entrepreneurial activities without the need to register, 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>77</sup> or if such activities are subject to mandatory taxation on a patent basis<sup>78</sup> (for more detail on patenting refer to Section 6.11).

A patent is a document issued by the tax authority to certify payment of the respective tax by individuals in the area of their registration (permanent residence) or principal place of business. 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 day to 180 days.

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 their own application or court decision. In which case, termination is performed in accordance with the company liquidation rules.

<sup>77</sup> Resolution No. 733 of the Government of the Kyrgyz Republic dated June 25, 2015 No. 418 (with the latest amendments as of October 22, 2015 No. 723).

<sup>78</sup> Resolution of the Legislative Assembly of the 'Jogorku Kenesh' of the Kyrgyz Republic No.3 418-II of 29th June, 2001 (with the latest amendments as of August 24, 2017).

## 4.7 Free Economic Zones

Free economic zones (FEZ) are areas with special legal regime offering incentives to companies engaged in foreign trade and business activities<sup>79</sup>.

FEZ residents enjoy the following incentives and benefits:

- Partial exemption from all taxes, duties, fees, and charges, for the duration of residence in FEZ;
- Distribution of 0.1% to 2% of proceeds from sale of goods and services over a year to the General Directorate of FEZ for offering tax and other incentives on the premises of FEZ<sup>80</sup>;
- Simplified entry and exit requirements for foreign workers;
- Simplified and accelerated company registration process;
- Simplified customs procedures; and
- Direct access to critical infrastructure, including telecommunications, water supply, power, and transport, on the premises of FEZ.

FEZ residents may not engage in:

- development and production of mineral resources;
- import, production and sale of excisable goods, except those meant for production purposes and production of goods other than excisable goods, after payment of taxes and customs duties in accordance with the laws of the Kyrgyz Republic;
- production, repair and sale of weapons and ammunition, production and sale of explosives used in production of weapons;
- production, processing, storage, deactivation, and sale of radioactive, nuclear and other hazardous materials;
- import, storage, production and sale of narcotic and psychotropic substances, except precursors used in production purposes and imported in accordance with the laws of the Kyrgyz Republic.

State registration (re-registration) and termination of registration of FEZ residents are vested in the Ministry of Justice of the Kyrgyz Republic and its territorial subdivisions.

Companies willing to obtain the FEZ resident status must submit an application to the General Directorate of FEZ to enter into an agreement on conditions of residence in FEZ. The procedure for granting the FEZ resident status is established by the General Directorate of FEZ.

A company is considered a FEZ resident from the date of making a relevant entry in the register of FEZ

<sup>79</sup> The Law of the Kyrgyz Republic "On Free Economic Zones in the Kyrgyz Republic" dated December 16, 1992 (with the latest amendments as of July 7, 2011).

<sup>80</sup> For more detail on FEZ taxation refer to Section 6.11.

residents. The General Directorate of FEZ must enter the registration data in the register of FEZ residents within three working days from the date of signing the agreement on conditions of residence FEZ and issue a certificate of registration as a FEZ resident.

Currently, there are 5 free economic zones functioning within the territory of the Kyrgyz Republic: the Bishkek FEZ, the Maimak FEZ, the Naryn FEZ, the Karakol FEZ and Leilek FEZ.<sup>81</sup>

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<sup>81</sup> Resolution of the Government of the Kyrgyz Republic No. 431 of August 1, 2014.

## 5. LICENSES AND PERMITS

### Legislation

Licensing of certain types of activities, actions and operations is regulated by the Law of the Kyrgyz Republic “On Licensing and Permits System in the Kyrgyz Republic”.<sup>82</sup>

Licensing of banks, financial/lending and other institutions regulated by the National Bank of the Kyrgyz Republic is undertaken in accordance with the Kyrgyz legislation in the field of banks and banking, payment, microfinance, credit bureau and credit union services<sup>83</sup>.

The procedure for issuing licenses for the use of mineral resources, including the procedure for the extension, suspension, termination or transfer of such licenses as well as the license conditions, license control, fees and charges are regulated by the legislation of the Kyrgyz Republic in the field of mineral resources.

The procedure for issuing licenses and permits to carry out foreign trade activity is determined in accordance with the legislation of the Kyrgyz Republic in the field of foreign economic activity and the requirements of international treaties and acts constituting the law of the Eurasian Economic Union in the field of licensing. The export, import and transit of goods included in the common list of goods subject to prohibitions and restrictions on import or export by the member-states of the Eurasian Economic Union within the borders of the Eurasian Economic Community in trade with third countries are subject to non-tariff regulatory measures and restrictions in accordance with provisions of international treaties and acts constituting the law of the Eurasian Economic Union.

Frequency allocation and assignment, including the grant, renewal, suspension, termination, and revocation of licenses, licensing requirements and compliance, collection of license fees and charges are regulated by the legislation of the Kyrgyz Republic in the field of telecommunications.

The grant, renewal, suspension, revocation, termination of employment permits for foreign nationals and stateless persons and employment of Kyrgyz nationals abroad, permit requirements, control over collection of charges are regulated by the Kyrgyz legislation in the field of external labor migration.<sup>84</sup>

Licenses are issued on equal conditions and grounds to all persons (including stateless persons), regardless of the form of ownership.

<sup>82</sup> The Law of the Kyrgyz Republic “On Licensing and Permits System in the Kyrgyz Republic” No. 195 dated October 19, 2013 (with the latest amendments as of June 28, 2016).

<sup>83</sup> For more information on banking refer to Section 9.

<sup>84</sup> For more information on employment of foreign nationals in the Kyrgyz Republic refer to Section 10.

### Types of activities requiring licenses

Licenses are only required for activities and operations specified by law and to the extent necessary to maintain national security, government monopoly, law and order and to protect the environment, ownership, life and health of citizens. Under Kyrgyz law, licensing is mandatory for the following activities:

- Production, transmission, distribution, sale, export and import of electricity (except electricity produced from renewable sources or from other sources for personal use with capacity up to 1,000 kWh);
- Production, transmission, distribution, sale, export and import of heat (except heat produced from renewable sources or from any sources for personal use);
- Processing of oil and natural gas, except industrial-scale production and sale of bioethanol produced from vegetable feed;
- Production, transfer, distribution, and sale of natural gas;
- Production and distribution of ethyl alcohol;
- Production and distribution (storage for production or sale purposes, wholesale and retail trade) of alcoholic products;
- Private medical practice (except under a service or employment contract with private medical institutions or individual entrepreneurs);
- Pharmaceutical activities;
- Production and sale of vaccines and serums in specialized veterinary enterprises;
- Activities involving work with RG2 microorganisms;
- Activities in the field of electric communication (except internal or private telecommunications networks operators and services);
- Activities in the field of postal communication;
- Activities in the field of data transfer (except internal or private telecommunications networks operators and services);
- Urban planning, research and design of residential, public and production buildings and structures (Category I, II and III facilities);
- Construction and installation operations, except construction of individual residential houses (Category I, II and III facilities);
- Passenger transport services by motor vehicle (except taxi cars);
- International cargo transportation by truck;
- Passenger and (or) cargo transportation by air;
- Aircraft ground handling in airports (aerodromes) during arrival and departure, except maintenance and (or) repair of aircrafts;
- Passenger and (or) cargo transportation by water;
- Banking operations specified by the legislation of the Kyrgyz Republic in the field of banking, micro-

finance, payment systems and funds transfer, credit information exchange and credit union activities;

- Credit union activities;
- Microfinance activities;
- Pawn shop activities;
- Foreign currency exchange services;
- Credit bureau activities;
- Payment intermediary services effectuated through IT-based and electronic payment systems;
- Acceptance, processing, and issuance of financial information (processing and clearing services) relating to payments and settlements between third parties and participants of the payment system of a given processing or clearing center;
- Professional lottery activities;
- Transportation (including trans-boundary transportation) of toxic substances, including radioactive waste;
- Design, manufacture and sale of military products (munitions, military equipment, military-technical property, documentation, intellectual property, military-technical information referred to military products under Kyrgyz law) and military services (maintenance, upgrade, disposal of munitions, military equipment and their transportation, supply, and storage);
- Production, use, disposal of industrial explosive materials;
- Sale of explosive substances and products (including pyrotechnic ones);
- Production, repair, and trade in weapons and munitions;
- Design, production, manufacture, processing, storage, issue, sale, purchase and distribution of narcotic drugs, psychotropic substances and their precursors;
- Advocate practice;
- Private notarial practice;
- Voluntary universal life insurance services;
- Voluntary personal insurance services;
- Voluntary property insurance services;
- Voluntary liability insurance services;
- Mandatory insurance services;
- Mandatory and voluntary inward reinsurance services;
- Non-governmental pension fund activities;
- Organized market for trading securities;
- Securities broker services;
- Security holders registry keeper services;
- Securities depository services;
- Securities dealer services;
- Investment fund activities;

- Investment trust activities;
- Audit services;
- Bankruptcy administration services;
- Design, installation, adjustment and repair of anti-fire automatic devices; flameproofing of wooden structures and combustible theatrical display equipment;
- Educational activities (except state and municipal educational organizations carrying out pre-school, primary, basic and secondary general and out-of-school education programs);
- Import, export of arms and ammunition, as well as other products of military purpose according to the list approved by the Government of the Kyrgyz Republic;
- Import, export, re-export of goods included in the National checklist of controlled products of the Kyrgyz Republic approved by the Government of the Kyrgyz Republic;
- Insurance broker activities;
- Actuarial activities.

Also, licensing is mandatory for the following activities involving the use of limited public resources:

- Using radio frequency spectrum (except individuals and (or) legal entities using the radio-frequency spectrum for non-commercial production purposes);
- Taking timber from the woodland at woods of the forestry fund (felling license, small-scale timber supply permit);
- Taking flora resources for commercial purposes (flora resources taking permit, forest use permit);
- Disposal, storage, burial and elimination of toxic waste, including radioactive waste;
- Mineral tenure related activities (prospecting, exploration, or mining of mineral resources, including extraction and use of underground water, geological mapping and regional geological, geophysical and other scientific researches, building and operation of non-mining underground facilities, collection of mineralogical, paleontological materials for commercial purposes, collection of rock materials for decorative purposes and for their use as ornamental stones and building materials, and non-exploration and non-mining mineral tenure);
- Generation, use, processing, formation, storage, and elimination of substances which can form explosive mixtures (filling stations which fill compressed or liquefied gas cylinders);
- Generation, formation, storage, use and elimination of highly toxic substances.

#### Types of activities requiring permits

Permits are required for the following operations:

- Blasting operations;

- Mining operations;
- Import and export of ore and rock samples, concentrates, residues and laboratory tests for analytical research;
- Purchase of alluvial gold and gold concentrate;
- Import of commodities of plant origin under quarantine;
- Work permit issued to foreign citizens and stateless persons at employers' request based on overall quota in the territory of the Kyrgyz Republic;
- Employment of Kyrgyz citizens abroad;
- Transit of weapons and military equipment through the territory of the Kyrgyz Republic;
- Import, export, transit through the territory of the Kyrgyz Republic of narcotic drugs, psychotropic substances and their precursors;
- Purchase, storage, transportation, carrying, collection, display, of civilian and duty weapons and munitions;
- Purchase and sale of highly toxic substances;
- Purchase, sale, storage, transportation, carrying, import, export of special means approved by the Government of the Kyrgyz Republic;
- Test fishing for scientific purposes;
- Placement of waste in the environment;
- Discharge of pollutants into the environment;
- Release of pollutants into the atmosphere by stationary sources of pollution;
- Entry and exit from foreign country during international cargo transportation by truck;
- Transit through the territory of a foreign state during international cargo transportation by truck;
- International cargo transportation by truck;
- Cargo transportation to or from third countries during international cargo transportation by truck;
- International passenger transportation (regular and irregular);
- Transportation of dangerous goods;
- Storage of explosives materials used for industrial purpose;
- Storage of pyrotechnic products ;
- Import of pyrotechnic products to the Kyrgyz Republic;
- Purchase of explosives materials;
- Import to the Kyrgyz Republic of radio-electronic means (REM) and high-frequency devices (HFD), other technical means emitting radiofrequency radiation or high-frequency electromagnetic waves;
- Frequency acquisition for operation of radio-electronic means;
- Import and export of goods (products) subject to veterinary control;

- Transit through the territory of the Kyrgyz Republic of goods (products) subject to veterinary control;
- Transit through the territory of the Kyrgyz Republic of goods included in the National Checklist of controlled products of the Kyrgyz Republic approved by the Government of the Kyrgyz Republic;
- Development, production, sale, purchase, storage, transportation of special technical means used for surreptitious obtaining of information;
- Public or stimulating lottery.

### **Licensing Authorities**

Licenses are issued by the competent governmental authorities (licensors) exercising control over licensed activities. The list of the governmental authorities issuing licenses is set forth in the laws and acts of the Government of the Kyrgyz Republic.

Licenses issued in other countries are recognized valid in the Kyrgyz Republic under bilateral or unilateral or automatic recognition treaties.

### **License Issuance Procedure**

To obtain a license, an applicant shall submit to the competent governmental authority the following documents:

1. The standard application form;
2. A copy of proof of identity document (for individuals);
3. A copy of certificate of state registration of a legal entity or individual entrepreneur;
4. A copy of proof of payment of the application fee and the license and (or) permit fee;
5. Copies of documents set forth in the Regulation on Licensing of Certain Business Activities approved by the Government of the Kyrgyz Republic.

A licensor may not demand from the applicant any documents other than those provided by law or regulations. All documents submitted for the purposes of obtaining a license shall be duly registered by the competent authority. Applicants may apply for licenses and (or) permits online through licensors' websites by completing and submitting their application forms and scanned copies of original registration documents. In return, they receive the licensor's confirmation indicating the date of receipt of the application and the list of the documents submitted online.

Applicants may apply for an electronic license and (or) permit by indicating this in the application form.

Licenses are issued within thirty calendar days from the date of filing an application with all the required documents. The only exception is the license to use radio-frequency spectrum requiring coordination with neighboring countries of the Kyrgyz Republic.



## 6. TAXES AND CHARGES

Taxation in the Kyrgyz Republic is regulated by the Tax Code of the Kyrgyz Republic and other regulatory legal acts. The authority determining the tax policy of the Kyrgyz Republic is the Ministry of Economy of the Kyrgyz Republic. The competent authority exercising control over compliance with tax laws and full and timely payment of taxes is the State Tax Service under the Government of the Kyrgyz Republic.

Among mandatory charges are social security contributions to the Social Fund of the Kyrgyz Republic regulated by the Law “On State Social Security”, the Law “On Tariffs of Social Security Contributions for State Social Security”, and other acts.

For more information on social security contributions, fees and other mandatory charges please refer to points 6.9, 6.10 of this section.

### Types of Taxes

The current Tax Code was enacted in October 2008 and took effect on the 1st of January, 2009.

According to it, nowadays, the following taxes are paid in the Kyrgyz Republic under the general tax regime.

#### National taxes such as:

- Profit tax
- Income tax
- Value added tax
- Excise tax
- Mining taxes (Bonuses and Royalties)
- Sales tax

#### Local taxes such as:

- Land tax
- Property tax

For taxation purposes, legal entities are divided into domestic and foreign entities. 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, 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.

**Permanent establishment** is a permanent place of

business through which a foreign entity operates fully or partially and covers:

- Management headquarters;
- Division;
- 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 entrepreneur 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, without deductions at the following rates:

- For 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, the rate is 5%;
- For dividends and interest income (except interest income from securities listed on the Kyrgyz stock exchange in the highest and second highest listing categories), insurance payments under agreements of compulsory insurance or

reinsurance against risks, author's honoraria, royalties, income from services and works, the rate is 10%;

- Until January 1, 2017, (a) for dividends and interest income from works and/or services received from the leasing company, the rate is 1% and (b) for author's honoraria or royalties received from the leasing company, the rate is 0%;
- Dividends of a foreign organization not having a permanent establishment in the Kyrgyz Republic that are qualified as part of the profit subject to a 0% profit tax are subject to a 0% tax at source in cases provided by the Tax Code.

## 6.1 Profit Tax

**Payers** of profit tax include domestic entities, foreign entities operating through a permanent establishment in the Kyrgyz Republic, sole proprietors, as well as tax agents 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 individual operating through a permanent establishment in the Kyrgyz Republic from a source in the Kyrgyz Republic.

**Tax 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. At that, small and medium enterprises may calculate their taxable profit under the simplified procedure.<sup>85</sup> For foreign organizations receiving income at source in the Kyrgyz Republic and not having a permanent establishment in the Kyrgyz Republic, a tax base is an income without deductions.

Gross annual income includes all types of income identified in accordance with the accounting rules set forth in Kyrgyz law.

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/or other types of input in the organization in which a business entity is a participant;
- Value of fixed assets gratuitously transferred to an organization and money used as capital investments to develop its own production base

by the decision of the Kyrgyz Government or local authorities as well as value of facilities (to be used for social, cultural, housing, communal or household purposes, roads, electric networks, substations, boiler rooms, heating networks, gas networks, hydroelectric power facilities, thermoelectric power facilities, hydrotechnical facilities, water intake facilities, mining equipment, civil defence facilities, and land use rights) gratuitously transferred to ownership of business companies with state participation interest of more than 50% and/or specialized organizations owned by the Kyrgyz Republic or local authorities engaged in use and operation of the said facilities for their intended purpose;

- Value of fixed assets gratuitously transferred to a specialized organization (to be used for social, cultural, housing, communal or household purposes, roads, water supply and sewer, electric networks and meters, substations, boiler rooms, heating networks, gas networks and meters) engaged in use, operation, and maintenance of these facilities for their intended purpose regardless of form of ownership under the acceptance and transfer deed;
- 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; fee for technical maintenance of multi-apartment houses and servicing buildings and structures; fee for irrigation water supplied by water user associations to their members in the framework of the activity stated in the charter; (e) fee for religious rites, rituals, ceremonies, pilgrimage services and voluntary endowments;
- 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 the value of treasury shares (excess over par value);
- Gain in the value of sold treasury shares;
- Interest and gain in the value of securities listed on the stock exchanges in the highest and second highest listing categories on the date of sale;
- Dividends received by the taxpayers from equity interest in local companies.

Expenses fully or partially 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

<sup>85</sup> Small and medium enterprises mean payers of profit tax, except entities providing financial, insurance, investment fund or professional securities market services, and payers of excise tax whose proceeds from sale of goods, works or services, net of VAT and sales tax, do not exceed 30 million soms per calendar year.

research, construction, research and design works;

- Fixed asset depreciation amounts (at normal rates);
- Expenses incurred in connection with the repair of fixed assets (in a certain amount);
- State social security deductions;
- Losses incurred in connection with the sale of securities;
- Provision for probable loan losses and bank contributions to Deposit Protection Fund;
- Charity expenses (in a certain amount);
- Personnel training and re-training expenses;
- Business trip expenses;
- Representation expenses;
- Other documented income generation 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;
- Expenses related to production, acquisition and installation of fixed assets and other capital expenditures;
- Profit tax, value added tax (except VAT not subject to set-off), sales tax (except sales tax paid to suppliers during the purchase of goods, works or services), excise tax (except non-deductible excise tax);
- Expenses related to 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 regulatory 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.

For taxpayers engaged in extraction and sale of gold ore, concentrate, alloy and refined gold<sup>86</sup> the rate of

<sup>86</sup> Taxpayers engaged in extraction and sale of gold ore, concentrate, alloy or refined gold pay income tax at rates ranging from 1% to 20% depending on the value of gold. Taxable income is the proceeds (net of VAT and sales tax) from sale of gold alloy and refined gold, and the value of gold in ore and concentrate calculated on the basis of world market prices in the manner specified by the Kyrgyz Government.

the profit tax rate is **0%**. Local entities engaged in various areas of production and sale of own goods, including production and sale of goods received as a result of processing of goods in the Kyrgyz Republic, by using only the new equipment<sup>87</sup>, may, during 5 consecutive years, pay the profit tax at the rate of **0%** if they meet the criteria established by the Tax Code. For leasing companies the rate of the profit tax will be **5%**. Some entities are exempt from the profit tax (e.g. credit unions, charitable organizations, agricultural producers, etc.). For all other taxpayers, the rate of the profit tax is **10%**.

## 6.2 Income Tax

**Payers** of income tax are Kyrgyz citizens, resident non-Kyrgyz citizens and non-resident non-Kyrgyz citizens receiving income from a source in the Kyrgyz Republic, and tax agent (entity or sole proprietor) paying income to individuals from a source in the Kyrgyz Republic.

**Object** of taxation is:

1. economic activity, except business activity, resulting in income generated:
  - from a source within and/or outside the Kyrgyz Republic – in respect of Kyrgyz citizens and resident non-Kyrgyz citizens;
  - from a source within the Kyrgyz Republic – in respect of non-resident non-Kyrgyz citizens;
2. generation of any other income.

**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 State Tax Service of the Kyrgyz Republic.

The income tax period is one calendar year,

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

## 6.3 Value Added Tax

Value added tax (VAT) is a tax collected and remitted to the government on the value of VAT-taxable supplies in the territory of the Kyrgyz Republic, including taxable import supplies to the Kyrgyz Republic.

**Payers** of VAT are taxable entities and/or entities performing taxable import operations.

Under Kyrgyz tax legislation, an entity is subject to

<sup>87</sup> The new equipment means fixed assets imported to the Kyrgyz Republic after May 1, 2015 and not used therein before this date, or immovable property owned by the local entity or used by it under the financial lease (leasing) agreement. The new equipment does not include the fixed assets imported by the taxpayer after May 1 and used for extension or modernization of fixed assets or production facility acquired or produced by the taxpayer before May 1, 2015.

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 8 million KGS. 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 carried out by a taxable entity include the following supplies except non-taxable supplies:

- 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 (except export of metallic ores, concentrates, alloys and refined metals).

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

**Zero VAT** taxable supplies include the following:

- Export of goods, except export of gold and silver alloy and refined gold and silver, metallic ores, concentrates, alloys and refined metals;
- International carriage of passengers, luggage and cargos, except carriage by rail;
- Transit flights and related international carriage catering services, except international carriage by rail;
- Services related to the supply of electricity to pump stations supplying irrigation water to the fields and drinking water to the population.

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

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

**Taxable import;** Taxable import means the import of goods into the territory of the Kyrgyz Republic in accordance with the customs legislation of the Eurasian Economic Union and/or the customs legislation of the Kyrgyz Republic, except for import of VAT exempt goods.

Supplies of goods treated as taxable import are subject to **12% VAT**.

Thus, if an entity is registered or is required to register as a 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 a 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 centres;
- Supply by an agricultural producer of its own agricultural products and processed products;
- Supply of goods, works and services of food and processing enterprises (except excisable goods used in production) processing local agricultural raw products 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;
- Supply of prosthetic and orthopaedic items, supply of specialized goods for handicapped persons including their repair and supply of medicines according, including vaccines and veterinary medicines, as well as medical devices included in the lists determined by the Kyrgyz Government;
- Supply of financial services;
- Supply of property received by banks from their borrowers in repayment of debt to the extent of the amount of the debt;
- Supply by banks of refined standard and dimensional gold and silver bars and coins;
- 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;
- Supply of text books, reading books, scientific, artistic literature, magazines, children's literature published in state (Kyrgyz) language;
- Supply of services of processing the goods imported in the customs territory of the Eurasian Economic Union and subject to customs procedure of processing of goods in the customs territory and processing of goods for internal consumption;



- Supply of state property through privatization;
- Supplies by charitable organizations for charitable purposes in accordance with Kyrgyz law on sponsorship and charity;
- Supply of preschool education (private kindergarten) services;
- Supply private cardiac surgery services;
- Supply of services by private general education organizations;
- Supply of services by the Main Directorate of the State Specialized Security Service of the Ministry of Internal Affairs of the Kyrgyz Republic;
- Supplies related to social security, child and low-income aged people protection, and supplies related to education, medicine, science, culture, and sport and made by a non-commercial organization for a fee not exceeding expenses related to such supplies;
- Gratuitous transfer of socio-cultural, health and fitness, housing and household utilities facilities, roads, power networks, substations, boiling rooms, heating networks, gas networks, hydroelectric power facilities, thermoelectric power facilities, hydrotechnical facilities, water intake facilities, mining equipment, civil defence facilities, gratuitously transferred to ownership of business companies with state participation interest of more than 50% and/or specialized organizations owned by the Kyrgyz Republic or local authorities engaged in use and operation of the said facilities for their intended purpose;
- Gratuitous transfer of fixed assets into ownership of entities by decision of the Kyrgyz Government or local authorities;
- Gratuitous transfer of utility facilities to residential properties or their operators in the manner determined by the Kyrgyz Government;
- Gratuitous transfer of public utility networks to a specialized organization under a certificate of commissioning;
- 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 metallic ores, concentrates, alloys and refined metals;
- Supplies of goods, works and services by private partners and (or) a project company under the public-private partnership agreement subject to

approval by the Kyrgyz Government during the period specified in the public-private partnership agreement;

- Supply of jet fuel by a refuelling organization as on-board supplies for the refueling of aircraft engaged in international air services;
- Supply of goods or works under a social contract;
- Import of certain goods;
- Import of some fixed assets by business entities registered for VAT directly for their own operational purposes;
- 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 payer at the moment of transfer; 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.

## 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:

- Ethyl alcohol;
- Malt beer;
- Alcoholic drinks;
- Mixtures of alcoholic and non-alcoholic drinks;
- Tobacco products and other products containing tobacco;
- Jewellery 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;

**Tax base** includes:

- Physical volume of excisable merchandise required to be marked with the excise duty stamp; and/or
- Sale price of excisable merchandise, net of VAT, sales tax and excise tax; and/or
- Customs value of excisable merchandise determined in accordance with the customs legislation of the Customs Union and customs legislation of the Kyrgyz Republic; and/or
- Merchandise market price net of VAT, sales tax and excise tax 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 guaranteed merchandise to the guarantor or at the time of exchange operation on a free-of-charge basis; and/or

- Physical volume of sold excisable merchandise not required to be marked with the excise duty stamp.

**Basic rates of excise tax** are approved by the Tax Code of the Kyrgyz Republic. Excise tax rates can be changed by the Kyrgyz Government to the extent that such rates do not exceed the basic rate of the 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, net of VAT and sales tax.

**The sales tax rates** are:

- For the sale of goods, works or services subject to and/or exempt from VAT and payable in cash (except banks and mobile operators):
  - a) **1%** for trading activities<sup>88</sup>;
  - b) **2%** for other activities, aside from trading activities.
- For the sale of goods, works or services payable in cash, if such sale of goods, works or services is not a supply subject to or exempt from VAT (except banks and mobile operators):
  - a) **2%** for trading activities;
  - b) **3%** for non-trading activities.
- For the sale of goods, works or services subject to and/or exempt from VAT and payable in non-cash (except banks and mobile operators) – **0%**;
- For banks – **2%**;
- For mobile operators – **5%**.

## 6.6 Mining taxes

**Mining taxes** are:

- Bonuses
- Royalties

**Bonuses** are one-time payments for the right to engage in mineral exploration and mining activities.

Payers of bonuses are domestic entities or foreign entities operating through a permanent establishment

in the Kyrgyz Republic or sole proprietors holding mineral rights

**Tax base** means:

- in case of mining of a mineral deposit (except groundwater) - the amount of mineral reserves recorded by the State Balance of Mineral Reserves of the Kyrgyz Republic;
- in case of groundwater mining - the declared amount of water to be mined;
- in case of exploration and prospecting for minerals - the size of the license area;
- in case of collecting mineralogical, paleontological samples for commercial purposes and stone material for decorative purposes and using as ornamental stones and building materials - the size of the license area;
- in case of transferring mineral rights, the amount of mineral reserves that have not been mined at that time in accordance with mineral right holder reports (mining rights), or the size of the license area;
- in case of change in share capital of the right holder - the amount of mineral reserves that have not been mined at that time in accordance with mineral right holder's reports (mining rights) or the license area, in proportion to the change;
- in case of increase in the number of mineral reserves - the number of increased mineral reserves recorded by the State Commission on Mineral Reserves of the Kyrgyz Republic.

**Rates of bonuses** and procedures for their calculation are established by the Kyrgyz Government for all types of minerals according to the classification table depending on the amount of mineral reserves to be mined, as well as the size of the license area for prospecting and exploration of minerals and the collection of mineralogical, paleontological samples for commercial purposes and stone material for decorative purposes and use as ornamental stones and building materials.

**Royalties** are the current payments for the right to engage in production and/or extraction (recovery) of underground water.

**Payers** of royalties are domestic entities, foreign entities operating through a permanent establishment in the Kyrgyz Republic and sole proprietors engaged in:

- mining of mineral resources;
- extraction (recovery) of underground water;
- by-product extraction of oil and gas during test prospecting and exploration of hydrocarbons;
- occasional extraction of minerals for industrial experiment and testing and/or for disaster prevention and recovery.

<sup>88</sup> Trading activities mean the sale of goods purchased for sale.

**Tax base** includes:

- Proceeds, net 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 extracted from subsoil according to water gauge – for royalty payers except specialized water supplying entities.

**Rates** of royalties are set forth in the Tax Code of the Kyrgyz Republic as a percentage of proceeds or as the amount in KGS per unit of volume depending on the type of a mined (extracted) mineral and the amount of mineral reserves.

## 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.

**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 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;
- settlement lands and non-agricultural lands;
- orchard and garden areas,

by multiplying the area of the land plot by the basic rate of the land plot and applicable coefficients.

## 6.8 Property tax

**Payers** of property tax are entities and individuals that own taxable property such as:

- Residential property (residential houses, apartments, summer houses) meant for permanent or temporary residence and not used for business purposes (group 1);
- Residential property (residential houses, apartments, summer houses), boarding houses, holiday hotels, health resorts, resorts, production, administrative, industrial and other buildings and structures meant or used for business purposes (group 2);
- Temporary structures made from metal or other materials and used for business purposes, such

as kiosks, sheds, and other similar property (group 3);

- Transport vehicles, including self-propelled machinery (group 4).

**The objects of taxation** are the property holdings.

**Tax base** includes:

- With respect to the property falling under groups 1, 2 and 3, taxable value of the property determined in the manner specified in the Kyrgyz Tax Code;
- With respect to the property falling under group 4:
  - a) engine capacity or book value for internal-combustion engine vehicles or those without such engine;
  - b) value determined in the manner established by the Kyrgyz Government for transport vehicles without internal-combustion engine and book value.

**The property tax rates** are:

- For property in group 1, the rate is **0.35%**;
- For property in groups 2 and 3, the rate is **0.8%**; and
- For property in group 4:
  - a) for internal-combustion engine vehicles or those without such engine, **a fixed amount** set forth in the Kyrgyz Tax Code **per 1cm<sup>3</sup> of the engine capacity** of the taxable transport vehicle depending on its type and period of operation, or **0.5% of its book value**;
  - b) for transport vehicles without internal-combustion engine and book value, **0.5% of the value determined in the manner established by the Kyrgyz Government**.

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

**Payers** of state social security contributions are:

- Legal entities, including foreign ones, regardless of their legal structure or type of ownership, and their standalone subdivisions (branches and representative offices);
- Peasant (husbandry) farms;
- Individual entrepreneur and Individuals.

Rates and base of social security contributions are set by the Law “On Tariffs of State Social Security Contributions” depending on the payer’s status, tax regime, type of activity and other factors. For employers, the rates of social security contributions are set at up to 17.25% of all types of payments due to employees hired by them for permanent or temporary job. For employees, the rates of social

security contributions are set at up to 10% of all types of payments due to employees. In such case, employers are responsible for the proper assessment, withholding and remittance of both parts of social security contributions.

## 6.10 Mandatory fees and other charges

Additionally, Kyrgyz law imposes certain mandatory fees and other charges on business entities depending on their status and type of activity, such as customs duties (refer to section 15), license fees, waste disposal fees, local infrastructure development and maintenance fees, etc.

## 6.11 Special Tax Regimes

In addition to general tax regime, Kyrgyz law establishes special tax regimes for specified categories of taxpayers. These regimes are:

- Simplified single tax-based tax regime;
- Mandatory patent-based tax regime;
- Voluntary patent-based tax regime;
- Tax contract-based tax regime;
- Free economic zone tax regime;
- High-tech park tax regime.

**Under simplified single tax-based tax regime**, small and medium enterprises may pay single tax instead of profit tax or sales tax on their taxable income.

Single tax is charged at the following rates: (a) for agricultural products processing, production and trade, the rate is 4% of earnings in case of cash settlement and 2% in case of non-cash settlement, and (b) for other activities, the rate is 6% of earnings in case of cash settlement and 3% in case of non-cash settlement. Where the taxpayer is engaged in several undertakings, single tax is assessed and paid separately for each undertaking at the rates established for these undertakings.

Simplified tax regime is optional for all business entities, except payers of VAT, excise tax, or patent-based tax, providers of financial and insurance services, investment funds, professional securities market participants; providers of catering services; providers of resort and spa services.

**Mandatory patent-based tax regime** applies instead of income tax, VAT on taxable supplies and sales tax only to the providers of the following services: saunas and baths, except municipal ones, billiards, currency exchange offices, discotheques, all day parking, pawnshops, hair and beauty salons, private dentistry, billboard advertising, car washing services; and export of agricultural products.

Mandatory patent-based tax rates are set forth in the Kyrgyz Tax Code.

**Voluntary patent-based tax regime** applies instead of profit tax and sales tax only to individuals who are not VAT payers and only in respect of activities determined by the Kyrgyz Government. The base rates of voluntary patent-based tax are also determined by the Kyrgyz Government.

**Tax contract-based tax regime** applies to organizations and individual entrepreneurs engaged in business. Under this tax regime, a taxpayer and a competent tax authority execute a contract setting forth fixed amounts of profit tax, sales tax and VAT expected to be paid by the taxpayer in the next calendar year.

**Tax contract-based tax regime** does not apply to payers of mandatory patent-based tax, providers of lending, financial, and insurance services, investment and pension funds, professional securities market participants, delinquent tax debtors, payers of mining tax, payers of excise tax, entities engaged in business for less than 3 years, except providers of catering services, providers of resort and spa services, real estate developers and the same providers operating less than 3 months.

**Free economic zones tax regime** applies only to residents of free economic zones of the Kyrgyz Republic engaged in the production and sale of goods (works, services) except excisable goods, in free economic zones. Residents of free economic zones may be only organizations registered with the General Directorate of free economic zones. Residents of free economic zones are exempt from all taxes except income tax and other taxes withheld and paid at source in respect of activities carried out by them in free economic zones. For the above tax benefits residents of free economic zones pay a fee of up to 2% of earnings to the General Directorate of free economic zones. With respect to activities carried out in the rest of the Kyrgyz Republic and abroad, residents of free economic zones are subject to general tax regime.

**High-tech park tax regime** applies only to residents of high-tech parks engaged in business or international trade, provided that they comply with the requirements set forth in Kyrgyz law on high-tech park. Residents of high-tech parks are exempt from profit tax, VAT and sales tax for the period determined in accordance with Kyrgyz law on high-tech park, while employees of residents of high-tech park pay income tax at a reduced rate of 5%. The funding for the directorate of high-tech park comes from deductions from proceeds of its residents at the rate of 1%.



## 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<sup>89</sup>:

- The Republic of Kazakhstan;
- The Republic of Belarus;
- The Republic of Ukraine;
- The Republic of Tajikistan;
- The Republic of Uzbekistan;
- The Russian Federation;
- The People's Republic of Mongolia;
- The Republic of India;
- Canada;
- The Republic of Poland;
- Malaysia;
- The Republic of Turkey;
- The Swiss Confederation;
- The Islamic Republic of Iran;
- The People's Republic of China;
- The Republic of Austria;
- The Republic of Finland;
- The Republic of Moldova;
- The Federal Republic of Germany;
- The Republic of Lithuania;
- The Republic of Latvia;
- The Republic of Korea;
- The United Arab Emirates;
- Qatar;
- Kuwait;
- Pakistan;
- Kingdom of Saudi Arabia;
- The Republic of Estonia.

<sup>89</sup> Information taken from the website of the State Tax Service of the Kyrgyz Republic as of April 26, 2018: <http://www.sti.gov.kg>

## 7. ACCOUNTING AND AUDIT

### Financial Reporting

In the Kyrgyz Republic, International Financial Reporting Standards developed by the International Accounting Standards Board (London) are applied as uniform basis rules for accounting and financial reporting. Small business enterprises may use simplified accounting and financial reporting rules established by the Kyrgyz Government.

Financial institutions operating in accordance with the principles of Islamic banking and finance use Islamic financial accounting standards adopted in accordance with Kyrgyz law.

### Audit

In the Kyrgyz Republic, International Standards of Audit issued by International Federation of Accountants through the International Auditing and Assurance Standards Board (New York City, USA) are applied as auditing standards. Islamic financial institutions use the auditing standards for Islamic financial institutions developed by the Accounting and Auditing Organization for Islamic Financial Institutions, established and based in Manama, Bahrain.

Under Kyrgyz law, external audit is mandatory for banks and other organizations licensed by the National Bank of the Kyrgyz Republic, insurance organizations, public companies making initial public offerings of securities, investment funds, private pension funds, and such other persons as may be specifically set forth in Kyrgyz law. For other persons, audit is optional.

There are more than 100 licensed audit firms operating in the Kyrgyz Republic.<sup>90</sup>

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<sup>90</sup> Information is taken from the website of the State Service for regulation and supervision of financial market of the Kyrgyz Republic as of January 1, 2018 : <http://www.fsa.kg>

## 8. CURRENCY EXCHANGE CONTROL

The National Bank of the Kyrgyz Republic is the public authority responsible for the development and implementation of the uniform monetary policy and authorized to conduct currency transactions, including the purchase and sale of precious metals and foreign currency in foreign exchange markets, as well as the import (export) of precious metals and any currency without limitations for the purposes of managing international reserves and conducting monetary policy.

The national currency of the Kyrgyz Republic is the som, which is the only legal tender in the entire territory of the Kyrgyz Republic, mandatory for acceptance without limitations for all types of payments and monetary obligations.

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. A monetary obligation may provide that it must be paid in a local currency equivalent of certain amount in foreign currency. In such case, the amount payable in a local currency is calculated at the official exchange rate of the National bank of the respective currency on the day of payment, unless other rate or date is set by the law or agreement of the parties.

Under the legislation of the Kyrgyz Republic, local resident may take loans and credits in any currency, as well as buy and sell foreign currency without restriction or unreasonable delay at authorized banks or currency exchange offices. When receiving loans or opening accounts and deposits outside the Kyrgyz Republic, residents of the Kyrgyz Republic are required to register them with the National Bank and, upon request, provide information on these accounts and deposits, declarations, other documents and information related to transactions in foreign currency.

On the 8th of 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 regimes or multiple currency rate practices without the consent of the IMF.

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

- Transfer of foreign currency across borders;
- Currency import and export are not restricted if declared at customs points;
- National and foreign currency exchange

transactions, including one-time transactions;

- Purchase and sale of foreign currency by residents and non-residents at duly licensed banks, credit unions, specialized financial and lending institutions holding appropriate licenses issued by competent public authorities ;
- Current payments, operating revenues and cross-border transfer of capital.

That said, the National Bank has the right to restrict transfers of funds and capital to ensure observance of the Kyrgyz Republic's international obligations and economic security of the Kyrgyz Republic.

As mentioned above, residents of the Kyrgyz Republic must register<sup>91</sup> with the National Bank their accounts and deposits opened in foreign banks, and quarterly by the 15th day of the month following the reporting quarter, must submit account statements as of the end of the preceding quarter<sup>92</sup>. Notices can be sent by mail (registered mail) or delivered to the expedition of the National Bank by hand. If necessary, the National Bank may request more detailed information on these accounts or deposits.

The purpose of the National Bank's requirement for registration of accounts and deposits opened by residents of the Kyrgyz Republic with foreign banks is to improve the information base necessary for compiling the balance of payments of the Kyrgyz Republic. The balance of payments means statistical reporting, which reflects the aggregate data on international economic transactions of the Kyrgyz Republic with other countries of the world for a certain period of time.

Failure to submit or late or improper submission of information by residents of the Kyrgyz Republic maintaining accounts or deposits in foreign banks is punishable in the manner provided by the current administrative liability legislation of the Kyrgyz Republic.

<sup>91</sup> National Bank of the Kyrgyz Republic, Banks and Banking Act December 16, 2016 No. 206, Article 37.

<sup>92</sup> Regulation on registration of accounts and deposits of residents of the Kyrgyz Republic opened with foreign banks approved by the Resolution of the Executive Board of the National Bank of July 5, 2000 No. 26/2 (with the latest amendments dated June 14, 2017 No. 2017-P-10/24).

## 9. BANKING SYSTEM

### State Regulation

The banking system of the Kyrgyz Republic consists of the National (Central) Bank of the Kyrgyz Republic, commercial banks and other financial and lending institutions. Banking activities are regulated by the Law of the Kyrgyz Republic “On the National Bank of the Kyrgyz Republic, Banks and Banking Act” enacted on December 16, 2016, No. 206 and effective June 22, 2017 which embodies a number of previous banking regulations.

The National Bank is a central bank of the Kyrgyz Republic owned by the Kyrgyz Republic (the “National Bank”). The goal of the National Bank is to achieve and maintain price stability by pursuing the appropriate monetary and credit policy. The primary tasks aimed at achieving the goal of the National Bank are to maintain the purchasing power of national currency and to ensure efficiency, safety and security of banking and payment systems of the Kyrgyz Republic in order to promote long-term economic growth of the republic.

#### **The governing bodies of the National Bank are:**

1. The Executive Board of the National Bank, a chief governing body;
2. The Chairman of the National Bank, a chief executive officer.

The Executive Board of the National Bank is a collegial body responsible for the overall strategy, direction and management of the National Bank. The Executive Board of the National Bank consists of the Chairman of the National Bank, three Deputy Chairmen and three members of the Executive Board of the National Bank. The Executive Board of the National Bank functions on a permanent basis.

The National Bank issues normative legal acts forming an integral part of the banking legislation of the Kyrgyz Republic. Normative legal acts of the National Bank directly affecting the interests of individuals and legal entities, as well as regulating entrepreneurial activity must be officially published in the manner prescribed by the legislation of the Kyrgyz Republic in the official gazette and on the official website of the National Bank ([www.nbkr.kg](http://www.nbkr.kg)).

**The powers and functions of the National Bank are:** to oversee the banking system of the Kyrgyz Republic, including banks and other legal entities supervised by the National Bank; to determine and pursue monetary policy, to promote financial stability of the Kyrgyz Republic; to develop and pursue single currency policy; to release banknotes on an exclusive basis; to undertake various types and principles of bank financing; to oversee the payment system, to facilitate the effective, reliable and safe operation of the payment system of the Kyrgyz Republic; to

issue approvals and permits; to establish banking transaction rules; to act as the lender of last resort to banks; to own and manage all international reserves; to prepare a balance of payment statement together with the statistics authority, and to determine the international investment position of the Kyrgyz Republic; to draft and issue normative legal acts; to represent and act on behalf of the Kyrgyz Republic at international forums, conferences and organizations related to monetary and credit policy, banking and payment systems; to conduct banking transactions; to release (issue) electronic money; to protect banking consumer rights; to exercise other powers in accordance with the legislation of the Kyrgyz Republic.

### Monetary and credit policy

Monetary and credit policy is determined and carried out by the National Bank. When conducting monetary policy, the National Bank may interact with the Government of the Kyrgyz Republic. The National Bank independently and in cooperation with the Government of the Kyrgyz Republic develops and implements measures aimed at ensuring the financial stability of the Kyrgyz Republic, including macroprudential regulation.

The National Bank regulates the size and structure of the money supply by using the following instruments: buying and selling securities issued and guaranteed by the Government of the Kyrgyz Republic; buying and selling securities issued and guaranteed by the National Bank; buying and selling foreign currency; making loans to banks; changing the National Bank balances and reserve requirements; and other requirements and internationally recognized methods and tools in the field of liquidity regulation.

### Establishment and Licensing of Banks

A bank can be established and operate only as a joint-stock company (whether closed or open) and the amount of its charter capital must be not less than KGS 600 million (or approximately USD 9 million ).

A bank may conduct the following banking operations in national and/or foreign currency to the extent expressly provided in the license:

- Accepting deposits on its own behalf on a contractual basis;
- Investing own or borrowed funds on its own behalf on a contractual basis;
- Opening and maintaining accounts;
- Providing settlement, payment and cash services to customs and correspondent banks at their request;
- Issuing, buying, cashing, accepting, keeping, and confirming payment instruments (cheques, letters of credit, promissory notes, and other), including credit and debit cards;



- Buying the creditor's rights in accounts receivable (factoring);
- Paying off debt by buying promissory notes and bills of exchange (forfaiting);
- Issuing and placement of debt securities;
- Issuing bank guarantees;
- Providing money transfer services of clients, including without opening an account;
- Providing correspondent banking services;
- Providing foreign currency account services and buying and selling (exchanging) foreign currency on behalf of its clients;
- Buying and selling (exchanging) foreign currency on its own behalf;
- Making transactions in precious metals (silver, gold and platinum bars and coins);
- Making transactions in derivative financial instruments (derivatives);
- Issuing electronic money;
- Accepting and making payments and settlements for goods and services, which are other than the outcome of its activities, in favor of third parties through payment systems based on information technology and on electronic means and methods of payment;
- Acceptance, processing and delivery of financial information (processing, clearing) about payments and settlements of third parties to participants of the payment system of this processing and clearing center.

**Banks may undertake the following activities and transactions:**

- Issuing surety bonds and other obligations in favour of third parties;
- Issuing, buying or selling securities, and providing securities servicing and depository services;
- Providing non-cash assets trustee services;
- Providing safe deposit box services;
- Selling a collateral securing a bank loan;
- Providing investment services;
- Providing banking consulting services;
- Providing financial leasing services;
- Providing financial agent services.

Banks may undertake other activities permitted by law and not inconsistent with banking regulations of the Kyrgyz Republic. A bank may undertake only that activity which is necessary for its principal business activity or related to banking services.

A bank may undertake other types of licensable activities subject to the consent of the National Bank.

Foreign banks may set up their representative offices, subsidiaries and joint ventures in the Kyrgyz Republic

subject to the consent of the National Bank. Branches of foreign banks must obtain the license from the National Bank.

**Lending services**

A bank must provide lending services in compliance with responsible lending policy and banking regulations of the Kyrgyz Republic. A bank must have in place a lending policy approved by its Board of Directors and an effective credit risk management system. The Board of Directors must periodically (at least once a year) revise the bank's lending policy, credit exposure limits, credit risk management tools and procedures, and internal credit risk management control and audit policies. A bank must provide lending services subject to the National Bank requirements for lending and credit risk management policies. Islamic investment services must be provided in accordance with the banking regulations of the Kyrgyz Republic subject to specifics and peculiarities of Islamic principles of banking and finance.

**Mandatory deposit protection system**

Participation in deposit protection system is mandatory for all banks operating in the country. The functions of deposit protection system, formation and use of Deposit Protection Fund, payment of deposit protection compensations, relations among competent deposit protection authority, banks, National Bank, and other public authorities, and as other related matters are regulated by the Bank Deposit Insurance Act. A bank may choose to use additional deposit protection schemes applied in international banking practices.

**Bank investments**

A bank may undertake investments subject to the following requirements and restrictions:

- a bank's participation in a non-bank financial institution must be undertaken as a long-term investment;
- a bank's investment in each non-bank financial institution, including any financial inputs and loans, must not exceed 15% of the bank's equity (regulatory) capital. The total amount of such investments may not exceed 60% of the bank's equity (regulatory) capital;
- the size of the bank's investment in real estate must not exceed specified limits;
- related persons must be treated as one person.

**Standard Requirements for Banks**

The National Bank establishes standard requirements for banks, including minimum capital and reserve funds requirements. The National Bank also establishes mandatory requirements for officers of commercial banks (chairman and members of the Board of Directors, chief executive officer, deputy

chief executive officer, and members of the Executive Committee, chairman of the Audit Committee, chief credit officer, chief accountant, internal auditor and others) who are appointed with the consent of the National Bank.

Foreign-owned banks are subject to the same requirements as domestic banks, including minimum authorized capital, minimum reserve funds and other requirements.

### **Bank audit**

Banks are subject to annual external audit in accordance with international standards on auditing. The bank's Board of Directors must select and propose prospective audit firm or auditor candidates to the general meeting of shareholders. The National Bank may reject the audit firm or auditor candidates as inconsistent with the bank audit requirements and notify the bank thereof within at least 10 business days from the date of receiving the notice. The bank's external auditor can be only that audit firm which holds the respective license to provide bank audit services in the Kyrgyz Republic and meets the bank audit requirements of the National Bank.

The external auditor must be independent from the bank, which means the ability to act independently and freely from outside influence on the audit results, findings and opinions, under conditions preventing any outside influence on the external auditor's ability to express its opinion. The audit services contract must contain a disclaimer that the audit firm or any of its auditors or other employees has no interests in the bank, is independent and not bound by any relationship with the bank and its officers.

### **Bank supervision**

The National Bank provides supervision and regulation of banks and non-bank financial and lending institutions and other legal entities by conducting external supervision and inspection and adopting regulatory policies.

### **Bank Secrecy**

The provision of confidential banking information by banks is regulated by the Kyrgyz National Bank, Banks and Banking Act.

Confidential banking information includes any data provided by the client to the bank or created by the bank in the course of providing banking services or otherwise arising from relationships between the bank and the client, including their pre-contractual relationships.

Confidential banking information may be provided by the bank for use and such provision does not constitute the provision and disclosure of bank secrecy, to the

extent that it is provided to the following persons and used for the following purposes:

- to bank employees in order to perform their official duties related to the bank's principal business;
- to persons providing services to the bank in connection with the bank's business if such information is necessary for such services;
- to a person exercising control over the bank in order to prepare the consolidated report;
- to the court hearing the disputes between the bank and the client in the case and to the extent necessary to protect their rights and legitimate interests. At the request of the bank or its client, the hearing may be held in camera.

That said, the bank must ensure protection and privacy of confidential banking information provided to the above persons.

### **Exchange of confidential banking information**

To minimize credit risks and to exchange information, banks and other financial and lending institutions are required to exchange credit information on their customers through a credit bureau (Ishenim Credit Bureau CJSC). In addition, banks are permitted, by agreement, to share confidential banking information with each other.

The provision and circulation of confidential banking information for the purposes listed in the legislation on exchange of credit information are not regarded as disclosure of bank secrecy. Banks may provide confidential banking information to credit bureaux (and vice versa) with the consent of their clients who are owners of credit information.

### **Anti-Money Laundering and Counter-Terrorism Financing Measures**

Under Kyrgyz law, any cash or property transaction amounting to or exceeding KGS 1 million (or its equivalent in foreign currency) must be subject to mandatory control if it is related to any of the following operations (transactions):

1. all internal or external operations (transactions) conducted by banks and other financial lending institutions, except operations (transactions) included in the lists determined by the competent public authority in consultation with the National Bank;
2. operations (transactions), if at least one party is a natural or legal person registered, domiciled or located in the state (territory) where no disclosure or submission of information is required for conducting financial operations or if one of the parties is a person who is owner of the account in a bank registered in such state (territory).
3. other operations (transactions) exceeding the prescribed limit, namely:

- buying and selling foreign cash;
  - acquiring securities for cash by individuals;
  - exchanging banknotes for different denominations;
  - making capital contribution in cash by individuals;
  - cash flows of charitable or public benefit organizations or institutions, or foundations;
4. other movable and immovable property transactions:
- pawning of securities, precious metals, jewels, or other valuables;
  - paying insurance contributions by individuals or receiving life or other accumulative or retirement insurance premiums from individuals;
  - immovable property transactions amounting to or exceeding KGS 4.5 million;
  - movable property transactions;
  - receiving or providing property under a financial lease (leasing) agreement;
  - paying lottery prizes in cash;
5. money transfers:
- made by non-financial institutions on behalf of the client;
  - made or received through the use of non-account-based systems.

Cash or property operations (transactions) must be subject to mandatory control if at least one of their parties is included in the List of persons who have served sentences for committing terrorist or extremist crime compiled in the manner determined by the Kyrgyz Government.

Suspicious operations (transactions) are also subject to mandatory control. Suspicious transaction means any operation (transaction) that meets the criteria for suspicious operations (transactions) under the law, i.e. cash or property operations (transactions) which do not make evident economic sense or have an evident legal purpose and are not typical of a given individual or legal entity pursuant to the list of criteria for suspicious operations approved by the competent public authority.

### Disclosure of Information

Entities required to disclose information on the above transactions include banks, financial institutions, credit unions, insurance/reinsurance companies, mortgage companies, pension assets management companies, exchange offices, pawnshops and buying offices, professional participants of the securities market, commodity exchanges, insurance companies, leasing companies, operators of payment systems, lottery organizers, organizations carrying out

registration of rights to immovable and/or movable property, organizations handling accounts, realtors and dealers in precious metals and/or stones, trustees, postal and telegraph services, and others.

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 while providing their services to customers. Moreover, the entities are prohibited from disclosing 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”, 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 100 thousand (about USD 1,400 as of 2018) 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 associated with the financing of terrorism and proceeds of crime (money-laundering), etc.

### Banking Services

In the Kyrgyz Republic, pursuant to the data of the National Bank as of March 16, 2018 there are 25 registered commercial banks, including a branch of the National Bank of Pakistan. Also, there is a representative office of the International Bank in the Kyrgyz Republic.

According to the World Bank’s Report, ‘Doing Business’, 2017, the Kyrgyz Republic ranks 77th out of 190 countries in the world in terms of ease of doing business and 29th in the world in terms of ease of access to loans.<sup>93</sup>

### Principles of Islamic Finance in Kyrgyzstan

Along with traditional banking services, Islamic finance is actively developing in Kyrgyzstan. In May 2006, the Kyrgyz Republic, the Islamic Development Bank and EcolslamicBank CJSC signed a Memorandum of Understanding on introduction of Islamic banking and finance principles in the Kyrgyz Republic. The

<sup>93</sup> <http://www.doingbusiness.org/rankings>

parties to this Memorandum agreed to ensure phased introduction of the Islamic banking and finance principles in the banking system of the Kyrgyz Republic as an alternative to conventional financing principles.

In December 2016, the Kyrgyz Civil Code was amended to include the Islamic finance principles effective mid-2017. Formerly, Islamic banking services were regulated by the acts of the National Bank.

Many financial and lending institutions have the Islamic finance windows and/or have plans to fully convert to Islamic finance. In addition, there are microfinance and leasing organizations offering only Islamic finance services.

### Operations in Offshore Zones

Under Kyrgyz legislation<sup>94</sup>, Kyrgyz banks and other financial lending institutions eligible to open and maintain bank accounts are prohibited from establishing direct correspondent relations with banks or their affiliates and envelope banks registered in offshore zones or in states or territories offering preferential tax regime and/or requiring no information disclosure and/or submission to banking supervisory authorities.

The List<sup>95</sup> of states and territories offering preferential tax regime and/or requiring no information disclosure and/or submission to banking supervisory authorities (offshore zones) is provided below:

- Andorra;
- Anguilla (United Kingdom);
- Antigua and Barbuda;
- The Antilles Islands (Netherlands);
- Aruba;
- The Bahamas Islands;
- Bahrain;
- Barbados;
- Belize;
- The Bermuda Islands (United Kingdom);
- The British Virgin Islands (United Kingdom);
- The Cayman Islands;
- The Cook Islands (New Zealand);
- Costa Rica;
- The Dominican Republic;
- Gibraltar (United Kingdom);
- Grenada;
- The Labuan Island (Malaysia);
- Lebanon;
- Liberia;
- Lichtenstein;

<sup>94</sup> Kyrgyz Anti-money Laundering and Counter-Terrorism Financing Act of July 31, 2006 No. 135 (as amended May 10, 2017, Act No. 79).

<sup>95</sup> This List may be amended or supplemented by the decision of the Executive Board of the National Bank.

- Macao (China);
- the Maldives;
- Malta;
- The Marshall Islands;
- Mauritius;
- Monaco;
- Montenegro;
- Montserrat (United Kingdom);
- Nauru;
- Niue (New Zealand);
- Panama;
- Palau (Belau);
- Saint Kitts and Nevis;
- Saint Lucia;
- Saint Vincent and the Grenadines;
- San Marino;
- The Seychelles Islands;
- The Turks and Caicos Islands (United Kingdom);
- Vanuatu;
- Western Samoa.

Companies incorporated in the above states and territories may not act as founders, final beneficial owners or shareholders of resident banks of the Kyrgyz Republic including microfinance companies.

## 10. EMPLOYMENT RELATIONS

### Labour Law

The principal legal act regulating employment relations is the Labour Code of the Kyrgyz Republic.

Treaties and other international law instruments ratified by the Kyrgyz Republic constitute an integral part of the current Kyrgyz law and are binding in their entirety and directly applicable in the Kyrgyz Republic. It must be noted that the rules of the treaties ratified by the Kyrgyz Republic which are more favourable to employees shall prevail over the rules set forth in the laws and other regulatory acts of the Kyrgyz Republic, contracts or collective agreements.

### Employment Contract

**An employment contract** is an agreement between an employee and an employer whereby the employer undertakes to provide the employee with the work agreed on, to ensure proper working conditions as required by Kyrgyz law, collective agreement, contracts, internal regulations containing labour law provisions, to timely and fully pay salary to the employee, and the employee undertakes to personally perform his/her job functions in the relevant area of practice or official capacity and to observe the internal working regulations.

An employment contract is executed in writing, in two counterparts signed by both parties. The hire of an employee is completed within three days by the order (instruction or resolution) of the employer based on the employment contract.

An improperly executed employment contract may nevertheless be deemed concluded, if an employee has actually set to work with the consent and on the instruction of the employer or its representative. However, permitting the employee to work does not relieve the employer of the obligation to execute a written employment contract with such employee.

Employment contracts are executed for an indefinite period or definite period (of not more than 5 years for fixed-term employment contracts) or such other period as may be set forth in Kyrgyz law.

The fixed-term employment contract is entered into if employment relationship cannot be established for an indefinite period given the nature and conditions of the work to be performed, unless otherwise provided by Kyrgyz law.

Unless the term of the employment contract is specified therein in writing, such contract is deemed executed for an indefinite period. If neither party demands the termination of the fixed-term employment contract due to its expiration, and the employee continues to work after its expiration the employment contract is deemed executed for an indefinite period.

Employers are prohibited from executing fixed-term employment contracts without good cause to avoid offering employee rights and benefits guaranteed under Kyrgyz law.

### Probationary Period

When executing an employment contract, the parties may agree to a probationary period to determine if an employee is suitable for a particular job. The probationary period must be stipulated in the employment contract and may not exceed three months for general staff and six months for executive staff including senior managers and their deputies, senior accountants and their deputies, chiefs of branches, representative offices and other standalone subdivisions, unless otherwise provided by Kyrgyz law. The probationary period may not be extended even with the employee's consent.

If the employee's performance on probation is not satisfactory, the employer may terminate the employment contract by giving at least 3 days' prior written notice to the employee stating the reasons for considering the employee to have failed to satisfactorily complete the probationary period.

If during the probationary period the employee determines that this job is not suitable for them, the employee may terminate the employment contract by giving 3 days' prior written notice to the employer without stating the reasons for such termination.

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

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

### Job Transfer

A transfer to a different permanent position with the same employer at the employer's initiative, i.e. a change in employment functions or material terms of the employment contract, as well as a transfer to a permanent position with another employer or to another location together with the employer is allowed only with the written consent of the employee. The transfer of an employee to a job contraindicated for that employee due to their health condition is prohibited.

### Termination of Employment Contract

Kyrgyz law provides a conclusive list of the grounds for terminating an employment contract. The termination



of the employment contract is made by a respective order (instruction, resolution) of the employer.

### Working Time and Rest Time

Working time is the period of time during which an employee performs their employment duties in accordance with the internal working regulations or work schedule or terms of the employment contract.

The legislation limits the working hours per day, per week, per month.

Working time may vary as follows:

- Normal working hours;
- Short-time working;
- Part-time working.

Normal working hours may not exceed 40 hours per week, with the exceptions specified in the Kyrgyz Labour Code. Fewer hours per week may be specified in employment contracts by agreement of the parties.

Short-time working means working fewer hours than normal ones. It is limited to the following maximum working hours for the following categories of employees:

- maximum 24 hours per week for employees aged 14 to 16; maximum 36 hours per week for employees aged 16 to 18;
- maximum 36 hours per week for workers engaged in physically demanding labour or exposed to harmful or dangerous working conditions;
- maximum 36 hours per week for employees with disabilities of groups I and II who are paid at the same rate as the employees working normal hours.

Employees may work on a part-time basis by agreement of the parties and are paid in proportion to hours worked or output produced. The Kyrgyz Labour Code specifies a conclusive list of persons who are entitled to fewer hours per week or per day at their request.

A five-day working week and two-day weekend or a six-day working week and one-day weekend is determined by the internal working regulations or watch schedules approved by the employer in consultation with the employee representative body. In case of a six-day working week the maximum working hours per day or watch may not exceed: 7 hours per 40-hour working week, 6 hours per 36-hour working week, and 4 hours per 24-hour working week. The day before a holiday and at night, the working time is 1 hour less.

Rest time is time when employees take a break from work and may do whatever they choose.

Types of rest time are:

- breaks during the working day or shift;

- daily rest or rest between shifts;
- weekly rest (days off);
- non-working public holidays;
- leaves of absence.

During their working day or shift, employees have the right to one rest and meal break of minimum 30 minutes and maximum 1 hour not counted as time worked. The time and duration of breaks are stipulated in staff regulations or agreement between the employer and the employee. Some employees have the right to specific rest breaks during work time if so required by the technology, organization or conditions of work. The types of such work and duration of such breaks are stipulated in staff regulations.

Employees have the right to uninterrupted weekly rest (days off). Days off are rest days during the working week. Employees who work a 5-day week are entitled to 2 days off per week; those who work a 6-day week are entitled to 1 day off per week.

Non-working public holidays in the Kyrgyz Republic are:

- January 1 – New Year's Day;
- January 7 – Christmas Day (Orthodox Christmas);
- February 23 – Defender of the Fatherland's Day;
- March 8 – International Women's Day;
- March 21 – Nooruz National Holiday;
- April 7 – People's April Revolution Day;
- May 1 – Labor Day;
- May 5 – Kyrgyz Constitution Day;
- May 9 – Victory Day;
- August 31 – Independence Day; and
- November 7 and 8 – Ancestors' History and Memory Days.

Islamic holidays of Orozo-Ait and Kurman-Ait (celebrated according to the lunar calendar) are non-working public holidays.

When a non-working public holiday falls on a day off, it is extended to the next working day.

Employees are entitled to 1 annual paid leave of 28 calendar days. The annual paid leave longer than 28 days (extended annual leave) is granted to employees in accordance with the Labor Code and other laws of the Kyrgyz Republic.

The time on leave is counted as calendar days. If non-working public holidays occur during the leave period, these days will not be included in the leave period and will not be paid. The leave record card must be kept for each employee to reflect all data about leaves taken. The leave is documented by the order (instruction, resolution) or leave memo issued by the employer or its authorized person.

Employees may be granted a leave without pay upon request for family or other valid reasons. The duration of such leave is determined by agreement between the employer and the employee. The employer must grant such leave in cases provided by the Labour Code such as birth of a child, registration of marriage, death of close relatives, etc.). While on leave without pay, employees retain the right to their jobs (positions). The Labour Code prohibits employers from directing employees to take leave without pay.

### Compensation of Employees

Compensation of employees refers to wages paid by employers to employees for work done in accordance with laws, other regulatory acts, collective bargaining agreements, arrangements, internal regulations and employment contracts.

Wage is monetary remuneration (compensation) paid by an employer to an employee in exchange for work done depending on its complexity, quantity, quality, conditions and employee's qualification plus compensations and incentives (for example, premiums).

Wage is paid in cash in the national currency of the Kyrgyz Republic (KGS). Employees may not pay compensation of employees with promissory notes, debt instruments, ration cards, or other similar money substitutes.

### Minimum Amount of Compensation

A minimum wage (minimum compensation of employees) refers to a guaranteed monthly wage paid to an unskilled employee who completed minimum hours of ordinary work in ordinary working conditions.

A minimum compensation of unskilled employees is established by law and applies throughout the territory of the Kyrgyz Republic and cannot fall below subsistence level of an individual able to work.

In the Kyrgyz Republic, as of 2018, a statutory minimum wage is KGS 1,662 (approximately USD 24 as of March 2018).

A monthly compensation of an employee who has completed minimum hours of work over the given period and performed their employment duties may not fall below the statutory minimum wage.

A minimum wage does not include surcharges and bonuses, premiums and other incentive payouts, as well as payments for working in abnormal or particular climatic conditions or areas exposed to radioactive pollution, nor does it include other compensatory and social welfare payments.

### Due Date and Procedure for Payment of Wage

Due dates for payment of wage are established by a collective agreement or internal regulations of an

employer. Wage is paid at least once every calendar month.

At the time of payment of wages, employers must notify employees in writing of all amounts comprising the wage and payable to them for the given period of time, the amounts withheld and the grounds for withholding, and the amount receivable.

Wages may be paid to employees at place where they perform work or may be transferred to bank account specified by them as set forth in the collective agreement or employment contract.

Wages are paid to employees directly, except as otherwise provided by law or employment contract, for example, via a proxy.

If a regular payday falls on a weekend or public holiday, wage is paid on the day preceding the weekend or holiday. Vacation pay must be paid at least 3 days prior to such vacation.

In case of employers' failure to pay wages, vacation pays or other amounts payable to employees when due, such amounts will bear interest of 0.15% of the amount outstanding as of the date of actual payment per each calendar day of delay.

In case of employers' failure to pay all amounts payable to discharged employees when due will bear interest of 0.5% of the amount outstanding as of the date of actual payment per each calendar day of delay.

In 2015, to balance the interests of the employee and the employer, the Government of the Kyrgyz Republic made amendments to labor legislation whereby the maximum default interest (0.15% and 0.5%) was limited to 200% of the principal. This maximum default interest limitation applies only to the period from the date of default to the date of receipt of the claim for payment of salary, leave allowance or other overdue amounts payable to the employee. After the date of receipt of the claim, the maximum default interest limitation does not apply and the default interest accrues until the date of actual settlement.

Extra pay for dual employment/multiple jobs or replacement of temporarily absent employees is determined by agreement between the employer and the employee but may not be below 30% of the gross wage payable for extra job.

Employees working at night must receive extra pay for each hour but not less than one and one-half times the regular pay rate.

Employees working overtime must receive extra pay of at least one and one-half times the regular pay rate for the first two hours and double time pay thereafter.

Employees working on day off or non-working public holiday must receive extra pay of at least double time pay.

Employees having idle time through the fault of the employer must receive at least two-thirds of the regular pay rate. Employees having idle time through no fault of the employer and the employee must receive at least two-thirds of the regular pay rate (gross wage). Employees having idle time through their own fault receive no pay.

### **Labour Dispute Resolution**

A party of the employment contract (an employer or an employee) which inflicted damages on the other party must reimburse it for such damages as provided by Kyrgyz labour law. The amount of damages may be specified in the employment contract or other agreements executed in writing and attached thereto. In which case, damages payable by the employer to the employee under the contract may not be less and damages payable by the employee to the employer under the contract may not be more than the amount specified in the Labour Code or other laws of the Kyrgyz Republic. Termination of the employment contract after infliction of damages does not relieve the contracting party of liability.

Individual labour disputes, i.e. unresolved disagreements between the employer and the employee, are referred to labour dispute committees established within the employers (having 10 or more employees), or labour inspection authority or courts of the Kyrgyz Republic. The employee may at its own discretion choose one of these authorities to resolve a labour dispute. If there is no labour dispute committee, such dispute will be referred to the labour inspection authority or court.

Generally, the period for referring disputes to the above authorities is 3 months from the date of becoming aware of a violation of rights or 2 months from the date of receiving the notice of dismissal or the date of handing over the service book in actions for wrongful dismissal. In actions for unpaid wages, the period of limitation does not apply.

### **Employer's Liability**

An employer incurs liability for damages caused to its employees by an occupational injury or disease or other health impairment arising out of employment and occurring both on and off site or on the way to or from work in a transport vehicle provided by the employer.

### **Employment of Foreign Nationals**

Foreign nationals employed in the Kyrgyz Republic are subject to the requirements of the Labour Code, other laws and regulations of the Kyrgyz Republic containing the provisions of labour law, unless otherwise provided by Kyrgyz laws or treaties.

Employees of legal entities based in the Kyrgyz

Republic and fully or partially founded or owned by foreign companies or nationals (including subsidiaries of transnational corporations) are subject to the requirements of laws and regulations of the Kyrgyz Republic containing the provisions of labour law, unless otherwise provided by Kyrgyz laws or treaties.

### **Rights of Foreign Employees**

Foreign employees have the right to use their ability to work and to choose their trade, occupation or profession freely provided that they have a proper proof of education or experience and other supporting documentation.

### **Work Permit**

Employers may hire and employ foreign nationals on the basis of employment permits while foreign nationals may work or do business in the Kyrgyz Republic (except nationals of the Russian Federation, Republic of Kazakhstan, Republic of Belarus, Republic of Armenia<sup>96</sup>) on the basis of employment permits and work permits. The competent authority responsible for issuing permits to employers to hire foreign employees and work permits to foreign employees is the State Migration Service under the Government of the Kyrgyz Republic.

There is a fee to apply for employment or work permits collected by the migration authority to cover the cost of issuing such permits. The cost of employment and work permits is determined by the Kyrgyz Government.

The foreign worker quotas are set and approved by the Kyrgyz Government annually 4 months before the beginning of the calendar year with due regard being given to the interests of the state and the local labour market situation. The foreign worker quotas are distributed by the State Migration Service of the Kyrgyz Republic among the employers hiring foreign nationals and stateless persons to work in the Kyrgyz Republic with due regard being given to their input in the country's economy and with preference in filling vacancies being given to Kyrgyz nationals.

<sup>96</sup> Under the Treaty on the Eurasian Economic Union dated May 29, 2014, employees working in its member states are not required to receive permits to work there.

## 11. REAL PROPERTY

### Real Property Law

Under Kyrgyz Civil Code,<sup>97</sup> real property refers to land, minerals, water, forests, perennial plantings, buildings, structures and everything firmly attached to land, i.e. objects that cannot be moved without destroying or altering them. The state registration of real property rights is performed by the State Registration Service under the Government of the Kyrgyz Republic<sup>98</sup>.

Real property rights and encumbrances, as well as real property transactions are subject to mandatory state registration. The registration procedure is set forth in the Kyrgyz Law “On State Registration of Immovable Property Rights and Transactions”<sup>99</sup> and the Rules on state registration of rights and encumbrances (restrictions) on real estate rights and transactions<sup>100</sup>. Under Kyrgyz law, state registration is mandatory for the following rights:

- Right of ownership;
- Right of business management;
- Right of operational control;
- Right of permanent (with no fixed term) use of land;
- Rights arising from mortgage, including statutory mortgage or pledge;
- Right of temporary use, lease or sublease for the term of 3 years or more;
- Easements;
- Restrictions of rights to design, construct and use an individual unit of immovable property, except restrictions imposed on immovable property by the laws and other regulatory acts of the Kyrgyz Republic;
- Rights arising from court decisions;
- Right of use of natural resource listed in Kyrgyz laws;
- Rights arising from legalization of property;
- Other rights subject to registration at present or in the future under the Civil Code and other normative legal acts of the Kyrgyz Republic.

The following rights and restrictions are valid regardless of their registration or non-registration, but are not secured state protection:

- Right of access to electric power lines, telephone and telegraph lines and poles, pipelines, geodesic

points and other rights pertaining to a matter of public concern;

- Rights of spouses, children, and other dependents, established by Kyrgyz laws, even if these rights were not registered independently;
- Right of temporary use, lease or sublease for the term of less than 3 years;
- Right of preferential use of real property by its actual users established by Kyrgyz law;
- Rights of tax authorities established by Kyrgyz law;
- General restrictions and prohibitions (related to health care, public security and environmental protection) set forth in Kyrgyz law.

### Land Relations

The principal regulatory act governing land relations in the Kyrgyz Republic is the Land Code of the Kyrgyz Republic<sup>101</sup> according to which, the land fund in the Kyrgyz Republic comprises the following:

- Agricultural land including farmland and land occupied by on-farm roads, communications, water reservoirs, buildings and structures necessary for farming;
- Residential land (in towns, urban villages, and rural settlements);
- Industrial, transport, communications, defence and other infrastructure land;
- Specially protected areas;
- Forest land;
- Water-related land;
- Reserve land;
- State mineral reserve land;

The conversion (transformation) of land from one category into another is set forth by the Land Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic “On Conversion (Transformation) of Land Plots”, and the Provisional Regulation on procedure for conversion (transformation) of land plots.<sup>102</sup>

### Receiving the Right to Land

There are two ways to receive the right to land under Kyrgyz law:

- Transfer of the right to own or use a private land by an owner or user of this land under a civil transaction;
- Transfer of the right to own or use a public or municipal land by a competent authority.

Model Regulations setting forth the terms and conditions of the fee-based transfer of the right to own

<sup>97</sup> Article 24 of the Civil Code of the Kyrgyz Republic (with the latest amendments as August 3, 2013)

<sup>98</sup> Regulation on State Registration Service under the Government of the Kyrgyz Republic approved by the Resolution of the Government of the Kyrgyz Republic dated February 20, 2012 No. 128.

<sup>99</sup> The Law of the Kyrgyz Republic “On State Registration of Immovable Property Rights and Transactions” dated December 22, 1998 (with the latest amendments as of July 9, 2013).

<sup>100</sup> Approved by the Resolution of the Government of the Kyrgyz Republic of February 15, 2011 No. 49.

<sup>101</sup> The Land Code of the Kyrgyz Republic of June 2, 1999.

<sup>102</sup> The Law of the Kyrgyz Republic “On conversion (transformation) of land plots” dated July 15, 2013 and the Regulation on procedure of conversion (transformation) of land plots dated March 19, 2014 No. 169.



or lease municipal lands were adopted on September 23, 2011 under Kyrgyz Government Resolution N 571.

The right to land may be sold through auction, tender or direct sales by the land commission established for this purpose.

The right to land may be sold through direct sales in the following cases:

- a. If there is a private building or facility, including incomplete construction, on the land plot previously provided for fixed-term (temporary) use;
- b. If the land plot was put up for auction twice but was not leased out;
- c. If the land plot adjoins (borders) with part of a private building or facility for the construction of an entrance to, improvement or extension of the said objects, provided that the said land plot cannot be formed as a standalone unit of real property and the transfer of rights over such land plot to third persons may entail violation of rights of owners of these building or facilities;
- d. If the land plot adjoins (borders) with part of a private building or facility or is close to it, and is needed for setting up and maintaining parking lots, when the transfer of rights over such land plot to third persons may entail violation of rights of owners of these buildings or facilities.

As a result of the auction or direct sales, the parties execute the land purchase and sale agreement or the land lease agreement.

The agreement must be registered with the local registration authority and does not require notarization.

### **Residential Property**

Citizens and legal entities have the right to own residential property without limitation<sup>103</sup>.

### **Receiving the Right to Residential Property**

The grounds for creation of rights and obligations in respect of the residential property are:

1. acts of governmental and local authorities;
2. contracts and other transactions stipulated by law;
3. judicial acts;
4. decisions of authorized bodies of legal entities to reorganize the same;
5. membership in building cooperatives;
6. other grounds stipulated by law.

The right to residential property arises from the moment of its state registration in the manner provided by law.

<sup>103</sup> The Housing Code of the Kyrgyz Republic dated as of 9th July 2013

### **Restrictions on Foreign Ownership of Immovable Property**

There are no restrictions in Kyrgyz law on the right of foreign persons to acquire buildings and structures as long as they refer to non-residential assets.

Foreign persons may not own recreation, infrastructure or tourism assets, located in the ecological and economic system of Lake Issyk-Kul but they may use such assets in the manner determined by the Kyrgyz Government.

Also, there are a number of legal restrictions on the right of foreign persons to own land in the Kyrgyz Republic. A foreign person is a person who must meet one of the following:

- be a foreign national or stateless person;
- be a foreign legal entity, i.e. a legal entity which must meet one of the following:
  - be established and registered under the laws of a foreign state;
  - be fully owned by one or more foreign individuals or legal entities;
  - be controlled or managed by one or more foreign individuals or legal entities under a written contract, the right to sell a majority of the voting shares, the right to appoint a majority of members of its executive or supervisory body;
  - be registered within the Kyrgyz Republic and have at least 20% of its charter capital owned by foreign nationals, stateless persons, or legal entities mentioned in this paragraph;
  - be established by an international agreement or treaty.

The land rights of foreign persons are limited to the following:

- Foreign persons may not own or use agricultural land<sup>104</sup>;
- Foreign persons or foreign legal entities may receive residential land plots for fixed-term (temporary) use or into ownership as a result of enforcement of mortgage with subsequent disposal of land plot within two years from the moment of acquiring the ownership right in the manner provided by the pledge law of the Kyrgyz Republic;
- Foreign person may receive non-residential land plots (except land plots provided for agricultural or mining purposes) for fixed-term (temporary) use by the Government of the Kyrgyz Republic. In all other cases, non-residential land plots may be provided, transferred or transmitted to foreign persons through universal succession for fixed-term (temporary) use;

<sup>104</sup> Article 7 of the Law of the Kyrgyz Republic "On Management of Agricultural Land" dated January 11, 2001.



- Foreign persons may receive land plots intended for mining purposes for temporary use in the same manner as local mining right holders;
- Foreign nationals, stateless persons and foreign legal entities except repatriates may not receive land plots located within the frontier area for fixed-term (temporary) use or into ownership;
- Foreign banks and specialized financial institutions which received agricultural land plots into ownership as a result of enforcement of mortgage must dispose of these land plots within two years from the moment of acquiring ownership right in the manner provided in the pledge law.
- Foreign persons who have acquired ownership of agricultural land by way of universal succession (inheritance, reorganization) must alienate such land to a Kyrgyz national or legal entity within one year from the date of acquiring such ownership.

In general, under Kyrgyz law, any immovable property which has been lawfully acquired by a person but may not belong to it by operation of law must be alienated by such person within three years and the land plots - within one year from the date of acquiring, unless other period is provided by law.

The immovable property not alienated within specified period will be, depending on its type and purpose, either subject to forced sale by the court decision at the request of the state authority or local community with the proceeds from its sale being transferred to the former owner, or appropriated for state or communal needs with its value determined by the court being refunded to the former owner, less the cost of sale.

## 12. INTELLECTUAL PROPERTY

### Legal Framework for Intellectual Property Protection

The legal framework for intellectual property (IP) protection in the Kyrgyz Republic includes national legislation and international treaties to which the Kyrgyz Republic is a party.

The primary legislation regulating IP comprises the Civil Code of the Kyrgyz Republic<sup>105</sup>, the Patent Law<sup>106</sup>, the Law of the Kyrgyz Republic "On Trademarks, Service Marks and Appellations of Origin"<sup>107</sup>, Law of the Kyrgyz Republic "On Copyright and Neighbouring Rights"<sup>108</sup>, Law of the Kyrgyz Republic "On Legal Protection of Computer and Data Base Software"<sup>109</sup>, other laws and sub-laws.

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 Concerning the International Registration of Marks and the Protocol relating to that Agreement. In addition, since December 1998 the Kyrgyz Republic has been a member of the World Trade Organization (WTO). The requirements of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights served as the basis for the national intellectual property legislation.

### Industrial Property

Legal protection of industrial property (inventions, utility models, industrial designs, brand names, trademarks, service marks and appellations of origin) 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 origin 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

<sup>105</sup> Civil Code of the Kyrgyz Republic dated 8 May 1996 No 15 (with the latest amendments as of July 23, 2016 No. 134);

<sup>106</sup> Kyrgyz Patent Law dated 14 January 1998 No. 8 (with the latest amendments as of April 10, 2015, No. 76);

<sup>107</sup> The Law of the Kyrgyz Republic "On Trademarks, Service Marks and Appellations of Origin" dated January 14, 1998 No. 7 (with the latest amendments as of February 6, 2014, No.28);

<sup>108</sup> The Law of the Kyrgyz Republic "On Copyright and Neighbouring Rights" dated January 14, 1998 No.6 (with the latest amendments as of January 21, 2014, No.14);

<sup>109</sup> The Law of the Kyrgyz Republic "On Legal Protection of Computer and Data Base Software" dated March 30, 1998 No.28 (with the latest amendments as of December 8, 2006, No.205);

in the Kyrgyz Republic is the State Service of Intellectual Property and Innovation under the Government of the Kyrgyz Republic (Kyrgyzpatent).<sup>110</sup>

### 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 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.

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 Origin

A trademark or service mark is a designation which identifies goods or services of particular individuals or legal entities from those of others. A trademark may be designated by verbal, visual, volumetric or other signs or their combination<sup>111</sup>. A person applying to Kyrgyzpatent for a trademark can be previously not using such trademark for the goods and services specified in the application. Kyrgyz law does not require the applicants to confirm the prior use or intent to use the trademark when filing an application for registration.

The goods and services are classified according to the 11th edition of the International Classification of Goods and Services approved by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

A registered trademark is confirmed by a certificate. The period of validity of a registered trademark is 10 years from the date of filing with possibility of renewal for another 10 years at the trademark holder's request filed within the last year of its validity.

An appellation of origin means the geographical name of a region or locality, or country, used to designate a product originating in that region, locality, or country, and the quality or characteristics of which are essentially or exclusively due to the particular geographical environment comprising inherent natural and human factors thereof. A registered appellation of origin is confirmed by a certificate. The period of

<sup>110</sup> Official website of Kyrgyzpatent: <http://www.kyrgyzpatent.kg>

<sup>111</sup> Article 2, part 3 of the Law "On Trademarks, Service Marks and Appellations of Origin" dated January 14, 1998 No.7 (with the latest amendments as of February 6, 2014, No.28);

validity of the certificate is 10 years and is renewable for another 10 years at the request filed before its expiration.

### Copyright

Kyrgyz law protects works of science, literature, and art (copyright), as well as phonograms, performances, broadcasts by broadcasting and cable casting organizations (neighbouring 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 their 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.

Authors may protect their moral rights to an unpublished work and right holders may protect their exclusive proprietary rights to a work at any time during the period of copyright protection by registering them in Kyrgyzpatent's official registries which is confirmed by a certificate.

### Representation

Foreign persons or their patent attorneys handle cases related to IP protection through patent attorneys registered with Kyrgyzpatent<sup>112</sup>. As of today, there are 18 certified patent attorneys operating in Kyrgyzstan<sup>113</sup>. Residents of the countries which signed a bilateral agreement with the Kyrgyz Republic establishing mutual simplified procedures for IP rights can handle the cases related to obtaining a patent, registering a trademark and other activities independently or through their national patent attorneys unregistered in the Kyrgyz Republic. Under such agreements, individuals and legal entities of a foreign state enjoy in the territory of the Kyrgyz Republic the same rights and preferences as are currently provided to Kyrgyz individuals and legal entities.

The Kyrgyz Republic has signed bilateral agreements on cooperation in the field<sup>114</sup> of intellectual property with the following countries:

- the Russian Federation (the Agreement between the Government of the Kyrgyz Republic and the Government of the Russian Federation on cooperation in the field of protection of industrial property effective from October 13, 1995 and the

Agreement on mutual protection of intellectual property results used and received as a result of bilateral military technical cooperation effective from February 2, 2006);

- the Republic of Uzbekistan (the Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on cooperation in the field of protection of industrial property effective from December 24, 1996);
- the Republic of Kazakhstan (the Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan on cooperation in the field of protection of industrial property effective from April 8, 1997);
- the Azerbaijan Republic (the Agreement between the Government of the Kyrgyz Republic and the Government of the Azerbaijan Republic on cooperation in the field of protection of industrial property effective from August 27, 1997);
- the Republic of Armenia (the Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Armenia on cooperation in the field of protection of industrial property effective from June 18, 1998);
- the Turkish Republic (the Agreement between the Government of the Kyrgyz Republic and the Government of the Turkish Republic on cooperation in the field of protection of intellectual property effective from November 13, 1998);
- the People's Republic of China (the Agreement between the Government of the Kyrgyz Republic and the Government of the People's Republic of China on cooperation in the field of protection of intellectual property effective from November 8, 2006);
- the Republic of Belarus (the Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Belarus on cooperation in the field of protection of industrial property effective from September 22, 2007).

### Protection of Intellectual Property Rights

Kyrgyz customs authorities ensure protection of copyright and neighboring rights, trademarks and appellations of origin. For this purpose, at the request of right holders or their representatives, IP rights are entered in the register of protected intellectual property rights for up to two years upon payment of an appropriate fee. When the customs clearance of the goods bearing intellectual property reveals any signs of counterfeit, these goods shall be kept in temporary storage, and the release of such goods shall be suspended for 10 days with the possibility of renewal for the same period. During this period, the right holder or his representative shall submit to the customs authorities the documents confirming the

112 Article 6 part 3 of the Law of the Kyrgyz Republic "On Trademarks, Service Marks and Appellations of Origin" of January 14, 1998 (with the latest amendments as of February 6, 2014, No.28)..

113 Based on information found on the official website of Kyrgyzpatent: <http://patent.kg/index.php/ru/attorneys.html>

114 Based on information found on the official website of Kyrgyzpatent: <http://patent.kg/index.php/ru/legislation/int-agreements/int-govment.html>

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start of litigation to restore legal rights and interests in respect of suspended goods.

A holder of the IP right may apply to the state antimonopoly authority for the suppression of unfair competition. A decision (order) of this authority shall be binding throughout the territory of the Kyrgyz Republic in full and within specified time. Those who disagree with the decision (order) of state antimonopoly authority may appeal it to the court.<sup>115</sup>

Kyrgyz law establishes civil, administrative, and criminal liability for violation of intellectual property rights.

The Code of Administrative Liability imposes administrative fines as punishment for intellectual property violations. The court is the competent authority which reviews administrative violations in this area.

Criminal liability for violation of intellectual property rights is imposed by the Criminal Code of the Kyrgyz Republic. Thus, the violation of intellectual property rights is punishable by sanctions up to imprisonment.

According to the general rule, intellectual property rights are protected by judicial procedure. These disputes fall within the jurisdiction of state courts.

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<sup>115</sup> Article 20 of the KR Law on Competition, dated July 22, 2011 No.116 (with the latest amendments as of July 15, 2016, No.118)

## 13. ANTI-MONOPOLY REGULATION

### Legislation

Anti-monopoly legislation of the Kyrgyz Republic consists of the Law of the Kyrgyz Republic, "On Competition", Law of the Kyrgyz Republic "On Natural Monopolies in Kyrgyz Republic", Law of the Kyrgyz Republic "On Advertising", and others laws and regulations.

Natural monopolies are regulated and controlled by the anti-monopoly authority and relevant regulatory authorities within the scope of their competence. The State Anti-Monopoly Regulation Agency under the Government of the Kyrgyz Republic is the competent authority responsible for the pursuit of state antitrust and fair competition policy, the oversight of natural monopolies to ensure compliance with antitrust and fair competition requirements, and the regulation of fuel and energy industry.

### Unfair Competition

Unfair competition means any anti-competitive business practices aiming to gain unfair advantages inconsistently with current legislation, customary business practices, standards of honesty, reasonableness and fairness and may cause economic harm to other competing businesses or damage to their business reputation.

The State Anti-Monopoly Regulation Agency enforces antitrust and fair competition policy by controlling the operations of market participants. Some of its main functions include the following:

- Analysing the state of competition in the respective markets for goods and services (works);
- Protecting the rights of business entities and individuals against monopolistic and unfair competition practices and anticompetitive documents or acts (omissions) of state government or local self-government authorities;
- Preparing opinions on drafts of fair competition acts and regulations;
- Coordinating prices (tariffs) for services (works);
- Reviewing complaints and grievances of individuals and legal entities, irrespective of their ownership, regarding violation of antitrust, consumer protection and advertising laws; and
- Other.

### The list of practices prohibited by unfair competition law includes the following:

- Unauthorized copying of the business entity's goods and form of packaging and exterior design, except for the goods whose appearance is conditioned by their technical function;
- Direct reproduction of the other business entity's

products by violating its patent rights;

- Illegal use of another person's trademark, service mark, appellation of origin, business name, capable of creating confusion with other business entity;
- Distribution of false or distorted information on business profile and financial condition of the other business entity, capable of causing damage or harming its business reputation;
- Manufacture, sale, or other entry of the other business entity's products in the market by violating its intellectual property rights and similar rights of participants of civil turnover of goods, works and services (illegal use);
- Disclosure in the distorted way of the data on scientific and technical and production abilities of the competitor;
- Intentional violation, disruption, and termination by illegal means of the competitor's business relations;
- Bringing pressure by illegal means on the competitor's employees with an aim of inducing them to neglect of duties;
- Illegal receipt, use and disclosure of data on scientific-technical, production, or commercial activities of a business entity, including its trade secret;
- Bringing pressure by illegal means on the making and carrying out of business decisions by the competitor for the purposes of getting unfounded predominance over it;
- Unfounded appeals (addresses) to other market participants encouraging to terminate business relations of the competitor or prevent them from being established;
- Dissemination of any data capable of misleading consumers about the origin, method of manufacture, usability, or quality and other features of merchandise of the business entity, identity of the entrepreneur or characteristics of their business activity;
- Marking a merchandise by an improper distinguishing sign for the purposes of misleading consumers regarding the consumption and other important qualities of the merchandise;
- Concealing the fact that the merchandise is inconsistent with its purpose or requirements set for it;
- Intentional sale of particular products on relevant markets at prices lower than those offered in the competitive environment or below cost in order to limit competition;
- Incorrect comparison between the products made or offered by one business entity and those made or offered by another business entity;
- Unfair competition involving acquisition and use of an exclusive right to the means of individualisation



of a company, goods, works or services.

**The list of prohibited anti-competitive and abusive monopolistic practices includes the following:**

- Impeding access to the market for other business entities;
- Withdrawal of merchandise from circulation with the purpose of, or resulting in, the creation and/or supporting its deficit at the market or with the purpose of raising prices;
- Imposing contractual terms on a counteragent which are disadvantageous for it or are irrelevant to the subject of the agreement (unfounded demands to transfer funds, other property, property rights, workforce of the counteragent, etc.)
- Inclusion in the contract of discriminatory or privileged terms which put the counterpart in unequal position compared to the position of other business entities;
- Forcing the counteragent (consumer) to enter into an agreement only with certain manufacturer or purchaser;
- Consenting to enter into an agreement only on condition of introducing into it the provisions on merchandise in which the counterpart (or consumer) is not interested;
- Economically or technologically unfounded reduction or termination of manufacture of merchandise, if there is demand for it or supply orders for it are placed, if it can be profitably manufactured, and if such agreement or termination of manufacture of merchandise is not directly provided by Kyrgyz law or judicial acts;
- Unfounded refusal to perform the conditions of the agreement not attributable to force majeure events;
- Economically or technically unfounded refusal or evasion from entering into the agreement with certain buyers (customers) if there is a possibility of manufacture or supply of the respective merchandise and if such refusal or evasion is not directly provided by Kyrgyz law or judicial acts;
- Creation of discriminatory or exceptional conditions;
- Economically, technologically or otherwise unfounded establishment of various prices (tariffs) for one and the same product, unless otherwise provided by Kyrgyz law;
- Setting of unreasonably high or unreasonably low prices for financial services.

**Anti-competitive agreements of business entities**

The following shall be prohibited as anti-competitive concerted actions of competing business entities:

- Establishing (maintaining) prices (tariffs), discounts, allowances (surcharges), margins;

- Increasing, decreasing or maintaining prices on the same level in the market;
- Division of the market by territory, scope of sales or procurements, assortment of goods being sold, types of provided services or range of sellers or buyers (customers);
- Limiting market entry or exit for other business entities as sellers of certain merchandise or their buyers (customers);
- Coordinating scopes of production for the purposes of artificial change of the scope of offers;
- Unfounded refusal from contracting with certain sellers or buyers (customers);
- Establishing price discrimination;
- Unfounded decrease or termination of supply of goods for invalid reasons;
- Establishing standard terms and conditions of contracts which put consumers into a disadvantageous position or limit the freedom of choice of goods and business entities manufacturing these goods or have provisions irrelevant to the subject of the contract.

**The list of prohibited anti-competitive agreements of non-competing business entities includes the following:**

- Imposing contractual terms which are disadvantageous for the counteragent;
- Imposing exceptions which require purchasing certain goods only from the given seller, but not its competitor;
- Limiting territory or range of buyers;
- Imposing price limitations on resale of goods acquired by the buyer;
- Prohibiting sale of goods manufactured by the competitors.

**The above anti-competitive agreements can be deemed admissible by the antimonopoly authority in the following exceptional cases:**

- If they do or may result in (a) the better manufacture or sale of goods, promotion of technical or economic progress, or increased competitiveness of goods in the world market, (b) the creation of advantages (benefits) for the buyers commensurate with those acquired by business entities as a result of actions (omissions), agreements or concerted actions or transactions.

**Liability**

Persons guilty of violating antimonopoly law are held liable in accordance with Kyrgyz law. The imposition of liability does not release the culprits from the obligation to comply with the decision of the antimonopoly authority.

### Powers of the Anti-Monopoly Authority

The anti-monopoly authority and its local offices, within the scope of their competence, control compliance with the Kyrgyz antitrust legislation by undertaking measures designed to ensure:

- fair competition and effective functioning of markets for goods, works and services (de-monopolization of monopolistic sectors of economy, assessment of the state of competitive environment, development of proposals on removal of barriers to competition, approval of fees for permit documents of executive bodies, review of petitions/notices of business entities on merger, reorganization, liquidation, acquisition of shares (interests) in the charter capital of commercial organizations, making decision on forcible division of business entities occupying dominant position in the market and engaged in monopolistic activity, etc.);
- effective state control over compliance with the Kyrgyz antitrust and pricing policies (balancing the interests of consumers and natural and permitted monopoly entities, formation and maintenance of the public registry of natural and permitted monopoly entities, establishment of maximum allowed level of domination of business entities, etc.);
- protection of consumers from abusive monopolistic and unfair competition practices (maintenance of the database of free and paid services, approval of prices (tariffs) of services (works) provided by state government and local self-government authorities, approval of prices (tariffs) of services (works) provided by educational and medical institutions, organizations, irrespective of ownership, etc.);
- effective regulation of advertisers, advertising agents, and advertising distributors (protection against unfair competition in advertising, prevention and suppression of improper advertisement, sending materials related to violations of the advertising legislation to the licensing authorities to have the license of the violating entity suspended or revoked, etc.);

### Antitrust measures:

- Undertaking price regulation through price (tariff) setting and price ceiling;
- Establishing profitability ceiling requirements;
- Establishing mandatory or minimum consumer (subscriber) service requirements for natural monopolies, if the need in their goods or services cannot be fully satisfied, to the extent necessary to protect public interests, national security, natural resources and cultural values;
- Establishing trade mark-up size requirements;
- Establishing requirements for engineering and

technical services being natural monopoly entities to develop respective engineering and technical facilities, if the need in their goods (services) cannot be fully satisfied.

## 14. ENVIRONMENTAL PROTECTION

Environmental safety is an integral part of the country's national security and a prerequisite for sustainable development, preservation and sustenance of natural resources and the environment.

### Legislation

Kyrgyz legal and regulatory framework for environmental protection and effective natural resources management consists of the Environmental Protection Act of June 16, 1999, Atmospheric Air Protection Act of June 12, 1999, Environmental Impact Assessment Act of June 16, 1999, Specially Protected Natural Areas Act of May 3, 2011, Biosphere Reserves Act of June 9, 1999, Radiation Safety Act of June 17, 1999, and other environmental acts and regulations. Special safety requirements for protection of atmospheric air, water resources, wildlife species, soil and natural landscapes, and for disposal of industrial and domestic waste are established by the Environmental Safety General Technical Regulation Act of May 8, 2009.

The Kyrgyz Republic is getting more actively involved in the world community activity aimed at restraining global environmental threats including the process of the unification efforts of states. Since 2007, the Kyrgyz Republic has acceded to 11 international environmental conventions and 3 protocols to them.<sup>116</sup>

Currently, the competent public authority in charge of environmental protection, ecological security and nature management policy is the State Agency for Environment Protection and Forestry under the Government of the Kyrgyz Republic (the Agency).<sup>117</sup>

The competent public authority responsible for state supervision and control over environmental and technical safety is the State Inspection Office for Environmental and Technical Safety under the Government of the Kyrgyz Republic (SIETS).<sup>118</sup>

### Environmental Impact Assessments

Under the legislation of the Kyrgyz Republic, business entities' projects related to the use of natural resources are subject to environmental impact assessment.<sup>119</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.

There are two types of environmental impact assessment conducted in the Kyrgyz Republic: state environmental impact assessment and public environmental impact assessment. The financing or implementation of any natural resources management projects cannot be undertaken without obtaining prior state environmental clearance.

The design, planning, construction, reconstruction, modernization, and launching of facilities and activities that may have any direct or indirect impact on the environment must be undertaken in accordance with the environmental protection and natural resources management, reproduction and recovery policies and measures after completion of an environmental impact assessment.

### Environmental Standardization and Certification

Products/processes/services produced within the Kyrgyz Republic or imported into its territory that are potentially threatening environmental safety, people's health or lives, or reproduction 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 Audit

Environmental audit is undertaken by independent experts to review a company's operations and processes to determine compliance with environmental regulations, to prevent or remove environmental violations and to identify the risk of its environmental impacts. Environmental audit services are provided at the companies' own expense or using the duly raised capital.

<sup>116</sup> Concept paper on ecological safety of the Kyrgyz Republic approved by Kyrgyz Republic Presidential Edict No. 506: dated November 23, 2007.

<sup>117</sup> Regulations on the State Agency for Environmental Protection and Forestry under the Government of the Kyrgyz Republic approved by Governmental Resolution No. 123 dated February 20, 2012.

<sup>118</sup> Regulation on State Inspection Office for Environmental and Technical Safety under the Government of the Kyrgyz Republic N 136, dated February 20, 2012.

<sup>119</sup> The Environmental Impact Assessment Act of the Kyrgyz Republic, No. 54, dated June 16, 1999 (with the latest amendments of May 4, 2015 No. 92).

## 15. CUSTOMS REGULATION

The Treaty on Accession of the Kyrgyz Republic to the Treaty on the Eurasian Economic Union dated May 29, 2014 was signed on December 23, 2014 and entered into force on August 12, 2015. At present, the Kyrgyz Republic is a member of the Eurasian Economic Union (the "EAEU") and the treaties and acts of the EAEU became effective for the Kyrgyz Republic.<sup>120</sup>

The Kyrgyz Republic ratified the EAEU Customs Code Treaty on December 30, 2017, and since January 1, 2018, the customs matters in the Kyrgyz Republic are being governed by the customs legislation of the EAEU (including the EAEU Customs Code), the customs legislation of the Kyrgyz Republic including the Kyrgyz Constitution, Customs Regulation Act and other normative legal acts, and by the treaties and other international acts related to customs clearance.

The State Customs Service under the Government of the Kyrgyz Republic is the competent customs clearance authority in the Kyrgyz Republic.

The EAEU customs clearance procedures must be undertaken in accordance with the EAEU customs legislation or with that of the EAEU member states to the extent and as long as they are not regulated by the EAEU customs legislation.

Customs declaration is required for goods placed under a customs procedure or in other cases specified in the EAEU Customs Code.

Customs declaration of goods is made by the declarant or customs representative acting on behalf and at the instruction of the declarant.

Customs declarations can be submitted in written and/or electronic form.

Customs control is applied by the customs authorities represented by the competent customs officers acting within the scope of their official (functional) duties in accordance with the EAEU customs legislation and that of the EAEU member-states.

The goods crossing the customs border can be placed under a chosen customs procedure in the manner and on the terms and conditions set forth in the EAEU Customs Code and the EAEU member states legislation.

The chosen customs procedure can be replaced by another one in accordance with the EAEU Customs Code.

### Customs Procedures

There are following types of customs procedures applied to goods:

1. release for internal use;
2. export;
3. customs transit;
4. bonded warehouse;
5. inward processing ;
6. outward processing ;
7. processing for internal use ;
8. free customs zone;
9. free warehouse;
10. temporary importation under bond;
11. temporary exportation;
12. re-import;
13. re-export;
14. duty-free trade;
15. destruction;
16. bequeath to the state;
17. special customs procedure (special customs requirements for certain categories of goods in or outside the EAEU customs territory).

Free customs zone and bonded warehouse customs procedures are introduced by the treaties of the EAEU member-states.

Special customs procedures are introduced by the national legislation of the EAEU member state in accordance with the conditions and in respect of the goods specified in the decision of the EAEU Commission.

### Customs Payments

Customs payments include:

1. import customs duty;
2. export customs duty;
3. value-added tax charged on goods imported to the EAEU customs territory;
4. excise duty tax(s) charged on goods imported to the EAEU customs territory;
5. customs charges.

Special, anti-dumping and compensatory duties are introduced in accordance with the Eurasian Economic Union Treaty and charged in the manner provided in the EAEU Customs Code.

### Customs Control, its Objects and Forms

Customs control is a set of measures applied by the customs authorities, including with the use of the risk management system, to ensure observance of the EAEU customs legislation and that of the EAEU member-states.

Customs control is applied by the customs officers of the customs authorities to:

1. goods, including transport vehicles, crossing the

<sup>120</sup> <http://www.eurasiancommission.org/ru/nae/news/Pages/12-08-2015-1.aspx>

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customs border and/or subject to declaration under the EAEU Customs Code;

2. customs declaration forms, documents and information to be submitted under the EAEU customs legislation;
3. services related to cross-border movement of goods, customs services and customs procedures;
4. persons crossing the customs border.

Customs control is applied in the customs control zone, as well as in other places determined by the customs authorities for keeping goods, transport vehicles and documents with relevant information including in electronic form.

The forms of customs control include:

1. getting explanations;
2. verification of documents and information;
3. customs inspection;
4. customs search;
5. personal customs search;
6. customs inspection of premises and territories;
7. customs checkup.



## 16. INSURANCE

### Legislation

Insurance companies are regulated by the Civil Code and acts of the Kyrgyz Republic such as Organization of Insurance Act,<sup>121</sup> Mandatory Insurance of Employer Civil Liability for Occupational Injury or Death Act<sup>122</sup>, Mandatory Insurance of Carrier Civil Liability to Passengers Act<sup>123</sup>, Mandatory Insurance of Civil Liability of Carriers of Hazardous Cargoes Act<sup>124</sup>, Mandatory Insurance of Civil Liability of Entities Operating Hazardous Facilities Act<sup>125</sup>, Peculiarities of Crop Insurance Act<sup>126</sup>, Mandatory Insurance of Civil Liability of Vehicle Owners Act<sup>127</sup>, Mandatory Insurance of Residential Premises against Fire and Natural Disasters Act<sup>128</sup> and other normative legal acts.

### Establishment and Licensing

Insurance companies may be founded as open or closed joint stock companies with the initial charter capital amounting to:<sup>129</sup>

- at least 30 million KGS for voluntary insurance and/or re-insurance services, except universal life insurance;
- at least 100 million KGS for voluntary or mandatory insurance or reinsurance services including universal life insurance until January 1, 2017, and from July 1, 2017 at least 150 million KGS;
- at least 300 million KGS for re-insurance services until July 1, 2017;
- at least 100 million KGS for re-insurance services within free economic zones in the Kyrgyz Republic;
- at least 1 million KGS for insurance or reinsurance broker services.

Insurance services are subject to licensing and each type of insurance services requires a separate license. A license is valid for an unlimited period, unless otherwise provided therein. Insurance (premium or coverage) may be paid in either national or foreign

currency. Where the insurance premium is paid in foreign currency, the insurance coverage may be paid in Kyrgyz soms if so agreed by the parties.

Intermediary services of an insurance agent or broker involving the execution of insurance contracts on behalf of foreign insurance companies in the Kyrgyz Republic are not allowed. That said, the foreign insurance broker services are allowed in the Kyrgyz Republic upon recognition of the respective license issued by the competent authorities of the foreign states in the manner provided by the laws of the Kyrgyz Republic on the licensing of certain types of activities.

As of Q4 2017, there were 20 insurance (reinsurance) companies (with 37 branches) operating in the Kyrgyz Republic<sup>130</sup> including State Insurance Company OJSC. Insurance companies offer more than 84 types of voluntary and 5 types of mandatory insurance services.

Majority of insurance companies are registered in Bishkek with only 1 company registered in Jalalabat town and 2 companies operating in FEZ Bishkek<sup>131</sup>.

The rate of insurance premiums received is growing from year to year, thus triggering the growth of the rate of insurers entering into insurance contracts with insurance companies. Before 2005, it was mainly property and life insurance which predominated; voluntary liability insurance evolved later, with the introduction in 2010 of mandatory civil liability insurance for: employers against liability for death or injury of employees while on duty; carriers of passengers; carriers of hazardous cargoes; entities operating hazardous facilities. In 2015, two more types of mandatory civil liability insurance were introduced: for auto-owners and homeowners against fire and natural disasters.

Most of insurance premiums account for property, general liability, mandatory civil liability and accumulative insurance services.

<sup>121</sup> Organization of Insurance Act dated July 23, 1998 (with the latest amendments as of July 15, 2009).

<sup>122</sup> Mandatory Insurance of Civil Liability of Employer for Death or Injury of Employee While on Duty Act dated August 5, 2008.

<sup>123</sup> Mandatory Insurance of Civil Liability of Carrier to Passengers Act dated August 4, 2008.

<sup>124</sup> Mandatory Insurance of Civil Liability of Carrier of Hazardous Cargoes Act dated August 4, 2008.

<sup>125</sup> Mandatory Insurance of Civil Liability of Entities Operating Hazardous Facilities Act dated August 15, 2008 (as amended March 22, 2016).

<sup>126</sup> Peculiarities of Crop Insurance Act dated January 26, 2009 No. 31 (as amended April 2, 2016).

<sup>127</sup> Mandatory Insurance of Civil Liability of Vehicle Owners Act dated July 24, 2015 (as amended August 2, 2016).

<sup>128</sup> Mandatory Insurance of Residential Premises against Fire and Natural Disasters Act dated July 31, 2015.

<sup>129</sup> Government Resolution No. 292 dated June 1, 2016 approving minimum charter capital for insurance (reinsurance) companies and brokers.

<sup>130</sup> <http://www.fsa.kg/>

<sup>131</sup> Report of the State Insurance Market Supervisory Authority of the Kyrgyz Republic for 2011, <http://fsa.kg/?id=2806>.

## 17. SECURITIES MARKET

### Legislation

Kyrgyz securities market legislation consists of the Civil Code, Securities Market Act, Joint Stock Companies Act, State Service for Regulation and Supervision of Financial Market of the Kyrgyz Republic Act, and secondary legislation.

Exchange Trade System (ETS) and Kyrgyz Stock Exchange consolidated into one stock exchange in March 2011. Central Asian Stock Exchange (CASE) was declared bankrupt in 2010. At the moment, there are one stock exchange (Kyrgyz Stock Exchange CJSC) and one depository (Central Securities Depository) operating in the stock market.

### State Regulation

The Kyrgyz Financial Supervisory Authority (FSA) is the competent securities market authority providing oversight over non-banking financial market, accounting and auditing services.

The FSA, for the purposes of protecting the rights of investors and other third persons, is competent to conduct inspections of securities market participants.

The FSA is vested with relevant powers to carry out inspections of securities market participants and is entitled to impose certain sanctions thereon and to issue licenses to professional securities market participants to provide capital market services.

### Investment in Securities

According to the information available on the KSE website<sup>132</sup>, as of February 2018, on the trading floor of the KSE, there were registered 133 transactions for a total value of KGS 93 million. As for the corporate bonds, the primary market transactions increased by 11%, the secondary market transactions increased by 24%.

#### Primary market

Over the period under review, there were registered 51 primary market transactions for the total amount of KGS 89.2 million.

#### Secondary market

Over the period under review, there were registered 82 secondary market transactions for the total amount of KGS 3.7 million.

#### Listing

As of February 2018, 80% of the total volume of trade accounted for listed securities transactions, including

14 ordinary share transactions with a total value of KGS 0.1 million, and 63 corporate bond transactions with a total value of KGS 74.0 million.

### Securities Market Professionals

Currently, there is one officially registered licensed trade operator in the Kyrgyz Republic, Kyrgyz Stock Exchange CJSC (KSE).

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.

Professional securities market services can be provided by individuals or legal entities holding the following licenses:<sup>133</sup>

- Security holder registrar services;
- Keepers of registers of securities holders;
- Depository services ;
- Broker services;
- Dealer services ;
- Trust manager services;
- Investment fund manager services;
- Clearing services ;
- Securities trade organizer services;
- Investment consultant services.

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

<sup>132</sup> <http://www.kse.kg/ru/RussianAnalytics/4462/Informatsiya%20o%20otorgah%20na%20ZA0%20%C2%ABKFB%C2%BB%20za%20fevral%202018g>

<sup>133</sup> Based on information found on the official website of the Financial Supervisory Authority of the Kyrgyz Republic - [www.fsa.kg](http://www.fsa.kg)

## 18. PUBLIC-PRIVATE PARTNERSHIP

Public-private partnership (PPP) is a form of long-term and mutually beneficial cooperation between government and business to solve socially meaningful tasks. It is used by government to enter into a long-term contract with a private partner for the planning/(re)construction and/or operation of infrastructural facilities such as roads and railways, hospitals, schools, kindergartens, water and heat supply networks, etc., in which they share or reallocate risks, costs, benefits, resources, and responsibilities. As a result, government can solve infrastructure problems by attracting private investment and business can earn money by providing infrastructure operator services.

Over a period of 27 years since gaining independence, the Kyrgyz Republic has been facing financial and economic constraints preventing the construction, financing and operation of infrastructural facilities and adversely affecting the living standards of the people. Taking these circumstances into account, the Government has been undertaking active efforts over the past few years to introduce and promote PPPs in the country. Thus, it has developed the PPP policy, legal and institutional frameworks and identified potential PPP projects.

### Public Policy and Support for PPP

In 2016, as part of its efforts to create favourable conditions for practical implementation of PPP mechanisms in the Kyrgyz Republic, the Kyrgyz Government approved the PPP Development Program 2016-2021 designed to improve and enhance public administration, human potential, and public confidence and awareness regarding PPP.

In 2017, the Government approved the 40 Steps to the New Era Program representing a vision of the country's development for the period until 2040 and identifying a number of priority measures, including the PPP and investment law reform, designed to simplify the requirements and create favourable environment for direct foreign investment.

In 2014, as part of its efforts to support public partners (ministries, state committees, administrative departments, state-owned enterprises, etc.) involved in the preparation of PPP projects, the Government established the PPP Promotion Trust Fund to provide financing for consultancy services related to conducting of feasibility studies, drafting of tender documents and PPP agreements, evaluation of tenders and selection of preferred bidders.

### Legal and regulatory framework for PPP

A clear and predictable legal and regulatory framework is a critical determination of investment decisions.

Taking into account the influence of this factor, on February 22, 2012, Parliament enacted the Public-Private Partnership Act of the Kyrgyz Republic and a number of implementing policies and procedures such as:

- Project preparation guidelines for PPP projects financed from the PPP Promotion Trust Fund (approved by Kyrgyz Government Resolution No. 147, March 17, 2014);
- PPP tender procedure (approved by Kyrgyz Ministry of Economy Order No. 52, March 7, 2013);
- PPP tender rules and tender documents preparation procedure (approved by the Kyrgyz Government Resolution No. 39, January 28, 2013);
- Regulation on form of private participation in PPP projects (approved by Kyrgyz Ministry of Economy Order No. 39, February 28, 2013);
- Other.

The PPP legislation defines general requirements for preparation and implementation of PPP projects, coordination of competencies and responsibilities of PPP authorities, rights and obligations of public and private partners, government support, investment guarantees, PPP project stages, including tender process, terms and conditions of the PPP agreement, project financing, dispute resolution and other matters.

The Government keeps working to improve PPP legislation based on lessons learned from practice. Thus, on July 26, 2017, the Kyrgyz Ministry of Economy issued an order establishing a working group tasked with drafting the PPP Bill designed to simplify procedures and reduce the time it takes to prepare PPP projects and to hold a tender. The new PPP Bill will be adopted in 2018 to replace the current PPP Act.

### Institutional Framework for PPP

Effective and efficient institutional framework is the precondition for the successful implementation of PPP projects. Currently, an institutional framework for PPP is made up of the following public agencies:

- Government, a public agency responsible for the introduction and coordination of the government policy on PPPs and PPP development in the country;
- Ministry of Economy, a public agency responsible for the implementation of the government policy on PPPs and PPP development programs, evaluation and approval of PPP projects, provision of assistance to public partners in the preparation and implementation of PPP projects;
- Ministry of Finance, a public agency for risk management responsible for the approval of tender documents (including the PPP agreement), making changes to tender documents, and provision of government financial support from

- public funds;
- Investment Promotion and Protection Agency, a public agency responsible for the promotion, implementation and support of investment projects, including PPP projects.

### PPP Projects

The Ministry of Economy has determined the projects that are most suitable to be developed as PPPs in transport, healthcare, education, sport, culture, or energy sectors, for instance, municipal roadside parking, public transport improvement, Naryn bonded logistics centre construction, computed tomography scanners installation and other projects. Currently, these projects are in preparation.

The PPP hemodialysis services in Bishkek, Osh and Jalal-Abad Project is the first PPP project implemented in the Kyrgyz Republic and the first PPP healthcare project undertaken in Central Asia.<sup>134</sup> On August 15, 2017, the country's first PPP agreement was signed between the Ministry of Healthcare, as a public partner, and Fresenius Medical Care Deutschland GmbH (Germany), as a private partner. Moreover, this project has been named among the five best healthcare projects (along with UK and Turkey) by the Partnerships Awards 2018.<sup>135</sup>

### Procedure for selection of private partner

A private partner is selected through tender. The tender is held in accordance with law and consists of three stages: (1) prequalification of bidders; (2) selection of preferred bidder; and (3) signing of the PPP agreement.

At the stage of prequalification of bidders, the tendering commission, among other things, issues invitations for expression of interest, evaluates preliminary bids and selects prequalified bidders eligible to submit tender proposals.

At the stage of selection of preferred bidder, the tendering commission, among other things, issues request for proposal, evaluates and selects preferred bidder.

At the stage of signing of the PPP agreement, the public partner signs the PPP agreement with the preferred bidder within 60 (sixty) calendar days from the date of announcing the preferred bidder in mass media.

<sup>134</sup> <http://ppp.gov.kg/ru/proekty2/>

<sup>135</sup> <http://partnershipsawards.partnershipsevents.com/shortlist>

## 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 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: Legal Aspects").



## Information about Kalikova & Associates Law Firm

### About Us

Kalikova & Associates law firm (K&A) has been providing the legal services since 2002. Over this period, K&A has grown into the leading law firm in Kyrgyzstan specializing in business law services.

Over the years of its operation, K&A has accumulated a vast and diverse experience in providing legal services to companies doing business in Kyrgyzstan, including foreign investors, international organizations and diplomatic missions. K&A lawyers have consulted on a number of major investment projects in Kyrgyzstan in various areas such as mining, recreation services, financing from international financial institutions, and telecommunications consultancy services.

### Our Mission

Our mission is to facilitate business development in the Kyrgyz Republic by rendering legal services that meet high standards of professional and ethical conduct.

### Our Professional Objectives

We strive to provide highly professional legal services in Kyrgyzstan based on the following principles:

- Working in a team environment
- Understanding our clients' businesses
- Producing efficient solutions based on the knowledge and understanding of not only legal, but also economic, political and cultural environment in Kyrgyzstan
- Maintaining high standards of professional conduct

### Our Products

We produce efficient legal solutions to protect, support and promote our clients' business.

### Areas of Practice

We provide services in the following areas:

- Antimonopoly Regulation & Competition
- Contracts
- Corporate Issues & Capital Market
- Employment & Migration
- Environmental Protection, Health & Safety
- Intellectual Property
- International Trade, Customs & Technical Regulation
- Legislative Policy & Regulatory Practice
- Litigation & Arbitration
- Mergers & Acquisitions, Business Restructuring &

Reorganization

- Product Liability
- Project Finance
- Public-Private Partnership
- Taxation

We offer advice on the legal regulations of the following industries:

- Aviation
- Banking, Microfinance & Insurance
- Construction & Real Estate
- Education Services
- FMCG
- Hotel & Recreation
- Hydroenergy
- IT & Telecommunications
- International Organizations, Local Non-Governmental Organizations
- Mass Media
- Mining & Exploration
- Oil & Gas
- Pharmaceuticals & Beauty Products
- Tobacco & Alcohol

### About the Team

Team is the main asset of any law firm. K&A legal team is comprised of lawyers who are graduates of leading national and international law schools, attorneys at law and patent attorneys.

Before joining K&A, lawyers gained extensive experience working for governmental, international commercial and non-commercial organizations and for the time being, they maintain membership in professional associations such as the International Bar Association, Kyrgyz Bar Association, Kyrgyz Lawyers Union, Kyrgyz Patent Attorneys Association, Chartered Institute of Arbitrators, International Court of Arbitration of the Kyrgyz Chamber of Commerce and Industry.

K&A legal team is one of the largest legal practices in Kyrgyzstan.

### Our contacts

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