

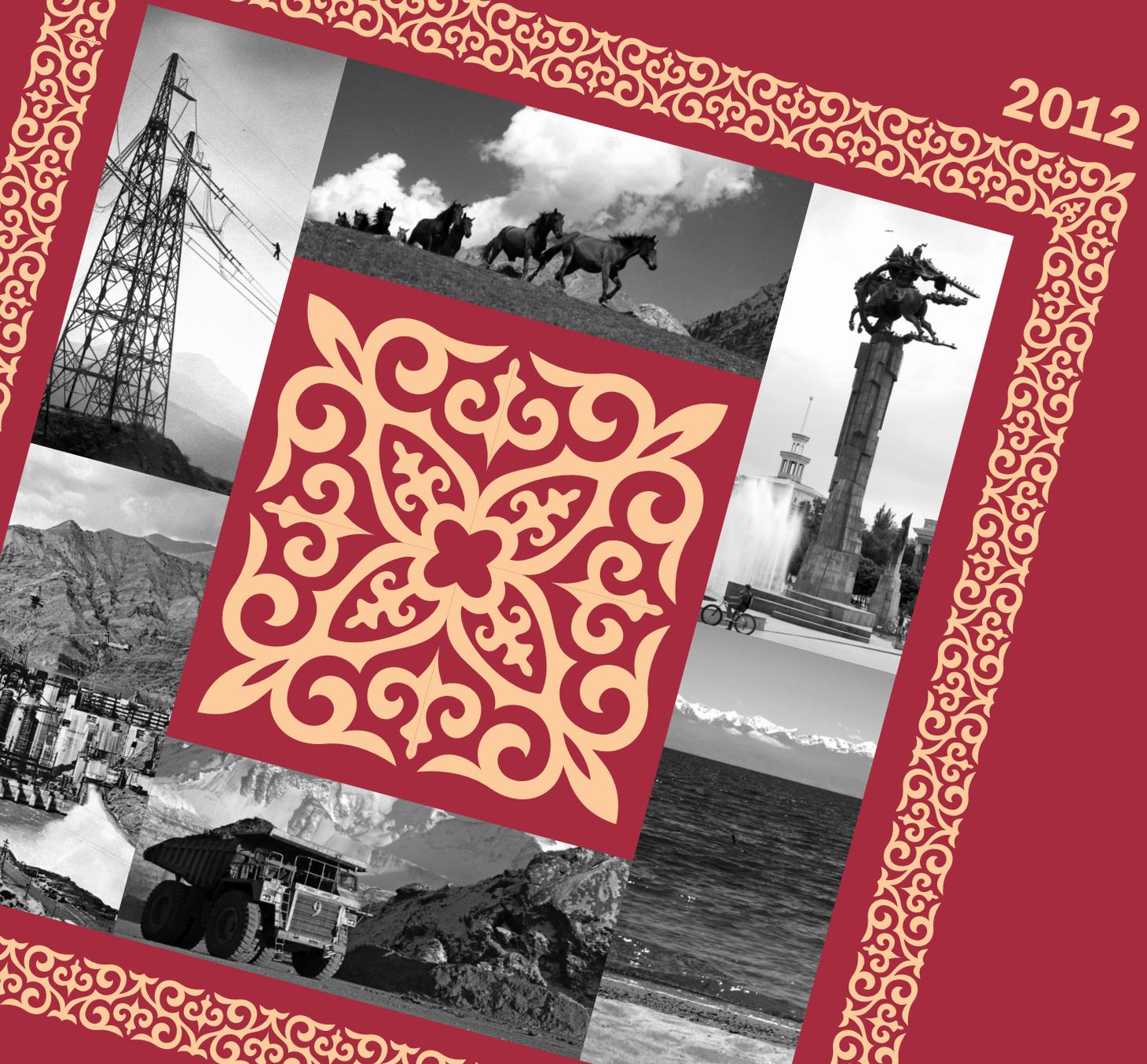
KALIKOVA &  
ASSOCIATES  
*law firm*

# BUSINESS IN THE KYRGYZ REPUBLIC:

LEGAL ASPECTS

Information and Reference Guide

2012





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## FOREWORD

### **Dear Reader,**

This information and reference guide (updated yearly) 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 guide was prepared by our entire team of lawyers practicing in various areas of commercial law and whom, consult with companies engaged in the following fields: mineral resources exploration and mining law, banking and finance, energy law, telecommunications, hotel business, construction and real estate and a number of other sectors of economy. We are constantly increasing our abilities and professionalism 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 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: AN 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, placing it 85th worldwide<sup>1</sup>. This landlocked nation stretches 900 km east to west and 410 km north to south.

The Kyrgyz Republic is a mountainous country with 94.2% of its territory located 1,000 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>2</sup>. The Kyrgyz Republic borders Kazakhstan to the north, Uzbekistan to the south-west, Tajikistan to the south, and China to the east and south-east<sup>3</sup>.

The climate is continental; air temperature varies from -40°C in the winter to +40°C in the summer. The landscape includes all natural zones common for the northern hemisphere, except the tropics. The republic is one of the 20 countries 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>4</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>5</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 <http://www.regions.gov.kg>

2 <http://www.welcome.kg/ru/news/443.html>,  
[http://kyrgyzstan-tourism.com/index.php?option=com\\_content&task=view&id=80&Itemid=90](http://kyrgyzstan-tourism.com/index.php?option=com_content&task=view&id=80&Itemid=90)

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

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

5 Kyrgyz Statehood. Century Statistics. Bishkek, 2003.

### 1.3 Population and Language

As of the 1st of January, 2011, the Kyrgyz Republic had a population of a little over 5,477,600 people<sup>6</sup>. The density of the population in the Kyrgyz Republic is 27.4 people per square kilometre. About 90 nationalities live in the country. The indigenous people, the Kyrgyz, represent 71.7%, the Uzbeks 14.4%, and the Russians 7.2% of the population.

- Urbanization:
  - Urban population: 34%
  - Rural population: 66%
  
- Annual population growth: 71.1% (2010)
  
- Age distribution (2011):
  - 0 to 9 years of age – 20.9%
  - 10 to 19 years of age – 20.0%
  - 20 to 29 – 19.6%
  - 30 to 39 – 13.3%;
  - 40 to 49 – 11.5%
  - 50 to 59 – 8.1%
  - 60 to 69 – 3.2%
  - 70 to 79 – 2.4%
  - 80 and more years of age – 1.0%

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

### 1.4 Links to Other Countries

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

The total length of roads in the Kyrgyz Republic is 34,000 km, including 18,810 km for general use roads maintained by the road units of the Kyrgyz Ministry of Transport and Communications and 15,190 km roads of cities, villages, agricultural, industrial and other enterprises.

The Kyrgyz Republic has signed bilateral interstate agreements on international road communications with 19 states, among which are all the CIS countries as well as Germany, Iran, China, Latvia, Mongolia, Pakistan, Poland, and Turkey<sup>8</sup>.

The railway transportation system of the Kyrgyz Republic is fairly well developed. This is explained by the mountainous relief of the country. At the same time, the country has a reasonably good transit capacity.

6 [www.stat.kg](http://www.stat.kg)

7 The Law of the Kyrgyz Republic "On National Language of Kyrgyz Republic" of 2nd April, 2004.

8 <http://www.mtk.gov.kg>

### Transit Possibilities:

Kyrgyzstan has signed air communications agreements with 26 countries of the world. However, regular air communications are maintained only with 11 countries.

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

### Mail and Cargo Delivery

Both state-owned and private providers of these services are active in the market of the Kyrgyz Republic – 7 mail companies are currently operating<sup>9</sup>. Thus, Kyrgyzpochtasy (Kyrgyz Post) state enterprise provides services of regular and express mail, including delivery of parcels and packages by land and by air, international express mail services, and services of postal money orders within the country and around the world. Representation offices and licensees of international companies DHL, FedEx, UPS, TNT Express, and local companies Interpost, Kyrgyz Courier, and a number of others, provide express mail services.

### The Internet

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

### Mobile Telecom Services

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

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

<sup>9</sup> [http://www.mtk.gov.kg/index.php?option=com\\_content&view=article&id=77&Itemid=75](http://www.mtk.gov.kg/index.php?option=com_content&view=article&id=77&Itemid=75)

## 1.5 Political System

The political system of the Kyrgyz Republic is defined in the Constitution<sup>10</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.
- The executive power of the Kyrgyz Republic is represented by the Government of the Kyrgyz Republic, line ministries, state committees, other executive authorities and bodies of local state administration subordinate to the Government.
- In the Kyrgyz Republic judicial power may only be administered by the courts. In the cases and pursuant to the procedure provided by law, all citizens of the Kyrgyz Republic have the right to participate in the implementation of justice.

## 1.6 Judicial System

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

Within the territory of the Kyrgyz Republic courts of arbitration may be established (for more detail on courts of arbitration see Section 2.5 below).

General jurisdiction courts have the following system:

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

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

<sup>10</sup> Constitution of the Kyrgyz Republic adopted on 27th June, 2010.

## Enforcement of Judgment

Under the legislation of the Kyrgyz Republic<sup>11</sup> the power to enforce decisions, rulings, and resolutions on civil, commercial, administrative cases, as well as sentences, rulings, and resolutions on criminal cases in the part of property claims, rests with the enforcement officer of the court.

In the Kyrgyz Republic, the judicial system includes the Judicial Department of the Kyrgyz Republic, which is the agency tasked to provide material, technical and methodological support to local courts. It also ensures the enforcement of judgments 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 Judicial Department is accountable to the Council of Judges of the Kyrgyz Republic<sup>12</sup>.

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

- UN Convention on Recognition and Enforcement of Foreign Arbitral Awards of 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>13</sup>;
- A number of bilateral agreements on mutual legal support with Azerbaijan, Iran, India, China, Latvia, Mongolia, Russia, Kazakhstan, Uzbekistan, and other nations.

Currently, the Kyrgyz Republic recognizes and enforces:

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

## 1.7 Economy

The Kyrgyz Republic is rich in natural resources, has a high level of public education, enjoys a geographically 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.

11 The Law of the Kyrgyz Republic "On Judicial Enforcement Proceedings and Status of Court Enforcement Officers in Kyrgyz Republic" dated 18th March, 2002 (with the latest amendments as of 24th December, 2009).

12 Edict No. 143 of the President of the Kyrgyz Republic dated 21st April, 2008.

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

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 115th out of 134 countries in the Forbes 'Best Countries for Business' list 2011<sup>14</sup>. It ranks 124th in terms of trade freedom, 12th in investor protection, 100th in personal freedom, 130th and 124th in innovation and technology, 130th in corruption, 13th in red tape, 110th in tax burden, and 113th in monetary freedom.

### **Key Macroeconomic Indicators<sup>15</sup>**

As primarily estimated, in 2011, Kyrgyzstan's GDP has grown by 7.0% as compared to 2010. Disregarding the Kumtor gold mining output, the GDP growth rate reached 5.5%.

During 2011, in Kyrgyzstan, the capital investment utilization level has grown 0.1% as compared to 2010. Also as compared with 2010, externally-financed investment in fixed assets has grown 9.5% with the internally-financed investment having been reduced by 2.5%.

In 2011, the inflow of direct investment has grown 48.4% compared to 2010. The inflow of investment from CIS countries has grown 44.9% compared to 2010. The inflow of capital investment from abroad has grown 1.7 times compared to 2010<sup>16</sup>.

In 2011, Kyrgyzstan's foreign trade turnover has grown 31.2% as compared to 2010. The republic has been trading with 120 countries of the world. It has been exporting goods to 66 countries, including Switzerland, Russia, Uzbekistan, Kazakhstan, the United Arab Emirates, and has been importing goods mainly from Russia, China, Kazakhstan, USA, and Uzbekistan.

### **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>17</sup>.

14 [http://www.forbes.com/lists/2011/6/best-countries-11\\_Kyrgyzstan\\_CHI148.html](http://www.forbes.com/lists/2011/6/best-countries-11_Kyrgyzstan_CHI148.html)

15 Social and economic conditions in the Kyrgyz Republic for January-August 2011 – Bishkek: 2011.

16 <http://212.42.101.124:1041/stat1.kg/images/stories/docs/obzor%20arhiv/2011/obzor%2008%202011.pdf>

17 [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)

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.

According to research by the Index of Economic Freedom 2011 Heritage Foundation, the Kyrgyz Republic is one of the “moderately free” countries in the world and its general score is higher than the average score in the world. The Kyrgyz Republic ranks 83rd out of 183 countries of the world and 12th out of 41 countries of the Asia Pacific region in terms of freedom of economy and its general score is higher than the average score in the region<sup>18</sup>.

In 2009, the President of the Kyrgyz Republic<sup>19</sup> adopted a decision to conduct the analysis of operations of existing public enterprises in terms of their efficiency and, where necessary, to carry out their reorganization and liquidation, privatization and conversion into joint stock companies. At present, the following publicly owned enterprises are active: Kyrgyzpochtasy PE, Kyrgyzaeronavigatsia PE, Kyrgyzdipservice PE, Kyrgyz Temir Jolu National Company PE, Kyrgyzmarkasy PE<sup>20</sup>, Pravitelstvennaya Svyaz PE, Infocom PE, Kyrgyzstroysservice PE, Kyrgyzresursy PE, Komur PE, Kyrgyz Experimental Bio-factory PE, Karakol Distillery PE, Kara-Balta Distillery PE, Temir PE, and others.

Also, a decision was adopted to carry out privatization of state shareholdings (up to 10% of the total number of outstanding or initially or additionally issued shares in public offerings) in joint-stock companies with state shareholding<sup>21</sup> by having them listed and publicly traded on the stock exchange. In Kyrgyzstan, the state has ownership interests in 51 joint stock companies, 32 of which have a state controlling stake. Based on their size, the state's stakes in joint stock companies are spread as follows: less than 25% (12), from 25% to 51% (6), from 51% to 100% (33). Among them, the following companies have been listed on stock exchanges in 2008: RSK Bank OJSC, Manas International Airport OJSC, Uchkun OJSC, Ayil Bank OJSC, TNK Dastan OJSC, Kyrgyzneftegaz OJSC, Kyrgyztelecom OJSC, Elektricheskii Stantsii OJSC, Severelectro OJSC.

- Kyrgyz Government Resolution of the 22nd of February, 2012 No. 143 “On Draft Program of Privatization of State Property in the Kyrgyz Republic for 2012-2014”.
- Kyrgyz Parliament Resolution of the 8th of July, 2011 No. 941-V “On Approval of Program of Efficient Management and Disposal of Nationalized Assets”.

The Kyrgyz Government plans to carry out privatization of the following property in 2008-2012<sup>22</sup>:

- State shareholdings and assets in energy companies (for more information refer to Section 19.1 below);

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

19 Edict No.: UP No. 96 of the President of the Kyrgyz Republic dated 10th February, 2009.

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

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

22 Kyrgyz State Property Privatization Program for 2008- 2012 approved by Resolution No. 518 of Government of the Kyrgyz Republic dated 17th September, 2008 (with the latest amendments as of 29th July, 2011); Resolution No. 84 of Government of the Kyrgyz Republic dated 14th March, 2008.

- State shareholdings in oil and gas, mining and metallurgy companies (for more detail refer to Section 19.2 below);
- State shareholdings in financial and lending institutions (for more detail refer to Sections 9 and 19.4 below);
- State shareholding in Kyrgyzayiltechservice Leasing Company OJSC;
- State shareholding in the national electric communications service provider (for more detail refer to Section 19.3);
- National postal service provider Kyrgyzpochtasy PE;
- State shareholding in the national air carrier Kyrgyzstan Air Company OJSC;
- National rail carrier Kyrgyz Temir Jolu National Company PE;
- Public enterprises subordinate to the Kyrgyz Ministry of Transport and Communications: Chui Region Enterprise of Bus Terminals and Stations PE and Chygyshvokzaly PE;
- State shareholdings in industrial enterprises: Dastan Transnational Corporation OJSC, Bishkek Machinery Plant OJSC, Bishkek Stamping Machinery Plant PE, Kyrgyzcable OJSC;
- State shareholding in Joint Venture Italkyr CJSC operating Hyatt Regency Bishkek hotel;
- Issyk-Kul hotel and trading complex (entity subordinate to the Department of Presidential Affairs);
- State shareholding in the national tobacco leaf exporter Kyrgyztamekisi State Corporation OJSC (having 5 subsidiaries engaged in tobacco leaf manufacturing and export, tobacco fermenting and tobacco products manufacturing);
- And others.

## 1.8 Foreign Affairs

### Diplomatic Relations with Foreign Nations

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

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

The Kyrgyz Republic has set up diplomatic missions to:

- Russian Federation (also covering the Republic of Azerbaijan, 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 Peoples Republic of Mongolia);
- Kingdom of Saudi Arabia (also covering the State of Kuwait, the Arab Republic of Egypt, the State of Qatar);
- Republic of India (also covering the Democratic Socialist Republic of Sri Lanka, the Kingdom of Nepal, and the People's Republic of Bangladesh);
- United Kingdom of Great Britain and Northern Ireland;
- Malaysia (also covering Singapore, the Republic of Indonesia, the Kingdom of Thailand, the Republic of Philippines);
- Japan;
- United States of America (also covering Canada);
- Swiss Confederation (also covering the Principality of Liechtenstein, the Republic of Italy); Permanent Mission to the United Nations and other international organizations based in Geneva;
- 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.

The Kyrgyz Republic also has the following consular offices:

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

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

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

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

Currently, the Kyrgyz Republic belongs to 84 international and regional organizations, including the following regional organizations<sup>23</sup>:

- cooperation organizations: the United Nations Organization, the Organization for Security and Cooperation in Europe, the Economic Cooperation Organization, the Organization of the Islamic Conference, the Collective Security Treaty Organization, the Commonwealth of Independent States, the Eurasian Economic Cooperation, the Shanghai Cooperation Organization, and the Organization for Economic Cooperation and Development;
- financial institutions: the International Currency Fund, the Asian Development Bank, the International Bank for Reconstruction and Development (the World Bank Group), the International Development Association (the World Bank Group), the European Bank for Reconstruction and Development, and the Islamic Development Bank;
- trade organizations: the World Trade Organization and the Agency for International Trade, Information and Cooperation;
- food and agriculture organizations: the Food and Agriculture Organization, the International Centre for Agricultural Research in the Dry Areas, the International Commission on Irrigation and Drainage, the International Water Coordination Commission, the Secretariat of the UN Convention to Combat Desertification, the International Epizootic Bureau, the CIS Intergovernmental Council for Veterinary Cooperation, and the European and Mediterranean Quarantine and Plant Protection Organization;
- transport and communications organizations: the International Union of Electric Communication, the Universal Postal Union, the International Civil Aviation Organization, and the Coordination Transport Meeting of Railroad Cooperation Organization;
- 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, the Eurasian Patent Organization, the International Confederation of Societies of Authors and Composers;
- energy organizations: the Energy Charter Secretariat, and the Energy Regulators Regional Association;
- environmental and biological safety organizations: the Secretariat of the United Nations Framework Convention on Climate Change and the Kyoto Protocol to the UN Framework Convention on Climate Change, the UN/ECE Convention on Environmental Impact Assessment in a 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, and the UN Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
- natural disaster prevention organizations: the World Meteorological Organization, the Asian Disaster Reduction Centre, the CIS International Council for Natural and Man-made Emergencies, and the CIS International Council for Hydrometeorology.

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

The key goal of the ECO as an inter-governmental regional institution is to identify the common interests of its member countries in various areas of economic cooperation, 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 of commercial and economic relations between the member countries.

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

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

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

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

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

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

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

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

Thus, under the legislation of the Kyrgyz Republic<sup>24</sup>, foreign investors enjoy the national treatment applied to individuals and legal entities of this country. Legislation provides for a broad scope of rights and guarantees to foreign investors, including guarantees of export and repatriation of investment, property, and information out of the Kyrgyz Republic, guarantees of protection against investment expropriation and coverage of losses incurred by investors, guarantees of income use and freedom of monetary transactions, and others.

According to; 'Doing Business 2011', the World Bank's Report covering 183 countries of the world, the Kyrgyz Republic ranks 70th<sup>25</sup>.

The Kyrgyz Republic has entered into a number of bilateral treaties on mutual support, encouragement and protection of investment (capital expenditure). Such treaties have been signed with a number of countries such as<sup>26</sup>:

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

<sup>24</sup> The Law of the Kyrgyz Republic "On Investments in the Kyrgyz Republic" dated 27th March, 2003 (with the latest amendments as of 22nd October, 2009).

<sup>25</sup> <http://www.doingbusiness.org/rankings>

<sup>26</sup> In parentheses are the years on which the respective treaties came into effect in the Kyrgyz Republic.

The Government of the Kyrgyz Republic has approved draft agreements on mutual support, encouragement and protection of investment with the Czech Republic<sup>27</sup>, and the Kingdom of the Netherlands<sup>28</sup>. Similar agreements with Japan, the Republic of Austria, the Republic of Singapore, the Republic of Hungary, the Republic of Macedonia, the Belgian-Luxembourg Economic Union, the Republic of Italy, the Republic of Slovakia, and Canada are currently planned<sup>29</sup>.

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

## 2.2 State Guarantees to Foreign Investors

Subject to its legislation<sup>30</sup>, the Kyrgyz Republic provides the following guarantees to foreign investors:

- National treatment of business activities, equal investment rights of domestic and foreign investors, no intervention into the business activities of investors, protection and restitution of infringed rights of investors in accordance with the legislation of the Kyrgyz Republic and international treaties;
- Export or repatriation of profit gained on investment, proceeds of investment activities in the Kyrgyz Republic, property, and information, out of the Kyrgyz Republic;
- Protection against expropriation (nationalization, requisition, or other equivalent measures, including action or omission on the part of authorized government bodies of the Kyrgyz Republic that has resulted in seizure of investor's funds or investor's deprivation of the possibility to use the results of their investment). In exceptional cases involving public interest, investments may be expropriated with concurrent state guarantees of appropriate coverage of damage incurred by the investor;
- The investor's right to freely use the income derived from their activities in the Kyrgyz Republic;
- The freedom to invest in any form into objects and activities not prohibited by 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;

27 Ordinance No. 125-r of the Government of the Kyrgyz Republic dated 12th April, 2000.

28 Ordinance No. 594-r of the Government of the Kyrgyz Republic dated 1st October, 2003.

29 "The Ministry of Economic Development of the Kyrgyz Republic".

30 Chapter 2 of the Law of the Kyrgyz Republic: "On Investments in the Kyrgyz Republic".

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

According to the World Bank's Report, 'Doing Business', 2011, The Kyrgyz Republic ranks 13th out of 183 countries of the world in terms of investor protection<sup>31</sup>.

### 2.3 Settlement of Investment Disputes

Under the legislation of the Kyrgyz Republic<sup>32</sup>, investment dispute parties may agree on any judicial institution to settle their dispute; these institutions may include third-party courts located within or outside the Kyrgyz Republic, domestic or international arbitration. Should an agreement thereupon not be reached, the dispute is subject to settlement by the judicial bodies of the Kyrgyz Republic.

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

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

- The International Centre for Settlement of Investment Disputes under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States or procedures regulating use of additional means for the Centre's Secretariat hearing<sup>33</sup>; or
- Arbitration or a provisional international arbitration tribunal (commercial court) established under the arbitration procedures of the UN Commission for International Trade Law (UNCITRAL).

<sup>31</sup> <http://www.doingbusiness.org/data/exploreeconomies/kyrgyz-republic/>

<sup>32</sup> Article 18 of the Law of the Kyrgyz Republic: "On Investments in the Kyrgyz Republic".

<sup>33</sup> The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 was ratified in 1997. However, ratifications have not been deposited.

The International Court of Arbitration, under the Chamber of Commerce and Industry of the Kyrgyz Republic (ICA)<sup>34</sup> has been active in the Kyrgyz Republic since its establishment in 2003. The goal of the ICA is to render support to individuals and legal entities interested in out-of-court settlement of their disputes that arise from civil law relations, such as foreign trade and other international business relations, including investment disputes, on condition that a third party agreement (arbitration clause) empowers the ICA for this.

The ICA is represented by 187 experts from 23 countries, including 79 international arbitrators from the United States, Switzerland, France, Kazakhstan, Russia, Ukraine, Uzbekistan, the United Kingdom, Sweden, the Netherlands, Belgium, Finland, Moldova, Turkey, India, Croatia, Romania, Austria, Korea, Poland, Italy, Mongolia and other countries<sup>35</sup>.

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34 <http://www.arbitr.kg/>

35 <http://www.arbitr.kg/index.php>

### 3. LEGAL STATUS OF FOREIGN NATIONALS

#### 3.1 Visa and Registration Requirements

Subject to the legislation of the Kyrgyz Republic<sup>36</sup>, foreign nationals and stateless persons may enter the Kyrgyz Republic for temporary or permanent residence on the basis of a visa, temporary or permanent residence permit.

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

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

Below is a list of the countries whose nationals are eligible to obtain Kyrgyz entry and exit visas from overseas diplomatic missions and consular offices of the Kyrgyz Republic and from consular offices in the republic at their personal request for a term of 1 month without the need to register with the bodies of the Ministry of Internal Affairs of the Kyrgyz Republic<sup>37</sup>:

- Australia, the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, Bosnia and Herzegovina, Canada, the Republic of Croatia, the Republic of Cyprus, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Republic of Finland, the Republic of France, the Federal Republic of Germany, the Republic of Greece, the Republic of Hungary, the State of Israel, the Republic of Ireland, the Republic of Iceland, the Republic of Italy, 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, the Principality of Monaco, the Republic of Montenegro, the Kingdom of Netherlands, the Kingdom of Norway, New Zealand, the Republic of Poland, the Republic of Portugal, the Republic of Romania, the Republic of Serbia, the Republic of Slovenia, Singapore, the Republic of Slovakia, the Kingdom of Sweden, the Swiss Confederation, the Republic of Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America.

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

- Visa-free entry for holders of all categories of passports: the Republic of Armenia, the Republic of Azerbaijan, the Republic of Belarus, the Republic of Cuba, the Republic of Georgia, Japan, the Republic of Kazakhstan (up to 60 days), the Democratic People's Republic of Korea, Malaysia (for business purposes or tourism for the period up to 1 month), the Republic of Moldova, the People's Republic of Mongolia (up to 3 months), the Russian Federation (up to 90 days), the Republic of Tajikistan, the Republic of Ukraine (up to 90 days), the Republic of Uzbekistan (up to 60 days), Vietnam.
- Visa-free entry into the Kyrgyz Republic for the term up to 1 month for nationals holding diplomatic and service passports: the People's Republic of China, the Republic of Hungary, the Islamic Republic of Iran, Turkmenistan, and the Republic of Uzbekistan, Singapore.
- Visa-free entry for nationals holding diplomatic passports: the Republic of Austria, the Kingdom of Belgium, Canada, 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 Republic

<sup>36</sup> The Law of the Kyrgyz Republic "On External Migration" dated 17th July 2000 (with the latest amendments as of 26th July, 2011).

<sup>37</sup> Resolution No. 87 of the Government of the Kyrgyz Republic dated 7th February, 2009.

of Italy, 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, and the United States of America.

### Visa Categories

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

Visas may be single-entry, double-entry, or multiple. A foreign national receiving a visa shall pay a state duty or a consular fee in the amount set forth in the respective resolution of the Government of the Kyrgyz Republic.<sup>38</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>39</sup>, foreign nationals or stateless persons residing in the Kyrgyz Republic for not less than 6 months may file with the bodies of the Kyrgyz Ministry of Internal Affairs closest to the place of location an application for residence permit.

<sup>38</sup> Resolution No. 521 of the Government of the Kyrgyz Republic dated 18th July, 1994 (with the latest amendments as of 17th September, 2007), Resolution No. 234 of the Government of the Kyrgyz Republic dated 16th April, 2009.

<sup>39</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 13th November, 2008 (as last amended 9th February, 2011).

**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 passport and visa control departments of the Ministry of Internal Affairs of the Kyrgyz Republic in the regional centres of Bishkek and Osh cities.

**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 month from the date of filing the application.

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

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

**Registration Procedure**

Foreign nationals and stateless persons (except foreign nationals exempt from registration) entering the Kyrgyz Republic for the period of more than 5 business days, must register a place of residence with the territorial subdivisions of the Ministry of Foreign Affairs of the Kyrgyz Republic, the territorial subdivisions of the Ministry of Internal Affairs of the Kyrgyz Republic, or with a hotel<sup>40</sup>.

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

<sup>40</sup> Article 8 of the Law of the Kyrgyz Republic: "On External Migration".

## 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>41</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.

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.

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.

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41 KR Law: "On Legal Status of Foreign National in the Kyrgyz Republic" of 14th December, 1993 No. 1296-XII.

## 4. FORMS OF BUSINESS

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

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

Under the legislation of the Kyrgyz Republic<sup>42</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 a representative office may only exist as long as their parent company exists. A branch or representative office may not be licensed to perform certain types of activities or provide certain types of services.

#### Registration of Branches and Representative Offices

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

Registration of branches and representative offices of foreign legal entities is carried out by the Ministry of Justice of the Kyrgyz Republic or its subdivisions. For the purposes of registration, a foreign legal entity must submit the following documents<sup>43</sup>:

- (i). Application for registration;
- (ii). Resolution of the authorized body of the foreign legal entity to establish the branch or representative office;
- (iii). Copy of the certificate of state registration (re-registration) of the legal entity;
- (iv). A legalized<sup>44</sup> extract from a registry or another document proving that the foreign legal entity is an operating legal entity under the laws of its country.

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

<sup>42</sup> The Law of the Kyrgyz Republic "On Business Partnerships and Companies" dated 15th November, 1996 (with the latest amendments as of 12th October, 2009).

<sup>43</sup> Article 10 and 15 of the Law of the Kyrgyz Republic "On State Registration of Legal Entities, Branches (Representative Offices)" dated 20th February, 2009 (last amended 18th December, 2009).

<sup>44</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 of 16th November, 2009, the Kyrgyz Republic has acceded to the Hague Convention abolishing the requirement of legalization for foreign public documents.

## 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>45</sup>:

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

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

## 4.2 Legal Entities

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

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

The key legal acts regulating activities of legal entities are the Civil Code of the Kyrgyz Republic<sup>46</sup>, the Law of the Kyrgyz Republic “On Business Partnerships and Companies”, and the Law of the Kyrgyz Republic “On Joint Stock Companies”<sup>47</sup>.

### Limited Liability Companies

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

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

The minimum amount of an authorized fund of an LLC must not be lower than 100 KGS (which, as of October 2011, is about USD 2.42).

It must be noted that, subject to the legislation of the Kyrgyz Republic<sup>48</sup>, if the founding legal entity consists of one shareholder/participant, it may not act as the only founder/participant of an LLC.

<sup>45</sup> Article 17 of the Law: “On State Registration of Legal Entities, Branches (Representative Offices)”.

<sup>46</sup> Part I of the Civil Code of the Kyrgyz Republic dated 8th May, 1996 (with the latest amendments as of 12th July, 2011).

<sup>47</sup> The Law of the Kyrgyz Republic “On Joint Stock Companies” dated 27th March 2003 (with the latest amendments as of 5th October, 2011).

<sup>48</sup> Article 128 of the Civil Code of the Kyrgyz Republic.

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

### Joint Stock Companies

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

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

According to the legislation of the Kyrgyz Republic<sup>49</sup>, if a founding legal entity consists of one participant/shareholder it may not act as the only founder/participant of a joint stock company.

Authorized capital of a joint stock company may not be lower than 100,000 KGS (which, as of October 2011, equals about USD 2,223). As of the date of founding, authorized capital must be completely paid in and distributed among founders.

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

A closed joint stock company is a joint stock company whose shares may only be distributed among its founders or within another predetermined group. A closed joint stock company may not carry out a public/open placement of shares issued or otherwise offer them to an unlimited group of persons. The number of shareholders in a closed joint stock company may not exceed 50; should the number of shareholders in a closed joint stock company exceed 50, the company must be reorganized into an open joint stock company within 1 year. Upon expiry of this period, the company will be subject to liquidation by judicial procedure. Shareholders of a closed joint stock company have 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 conditions established by law. An open joint stock company that has 500 shareholders or more and has carried out at least one public/open placement of securities must annually publish in the media an annual report on its financial and business performance.

### 4.3 Registration of Legal Entities

According to the World Bank's Report; 'Doing Business', 2012, the Kyrgyz Republic ranks 17th out of 183 countries in terms of the challenges of launching a business<sup>50</sup>. This ranking was improved by the Kyrgyz Government after introducing a "one-stop-shop" mechanism facilitating the procedure for the registration of business entities<sup>51</sup>.

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

<sup>49</sup> Article 143 of the Civil Code of the Kyrgyz Republic.

<sup>50</sup> <http://www.doingbusiness.org/data/exploreeconomies/kyrgyz-republic/>

<sup>51</sup> Resolution No. 182 of the Government of the Kyrgyz Republic dated 23rd April 2008 (last amended 19th May, 2009).

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

To be registered, a legal entity must submit the following documents<sup>52</sup>:

- (i). Application for registration;
- (ii). Decision of the founder(s) to establish a legal entity;
- (iii). A legalized extract from a state registry or other document confirming that the foreign legal entity is valid under the existing laws of its country.

#### 4.4 Business Re-Organization and Restructuring

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

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

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

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

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

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

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

A transfer deed and a division/separation balance sheet are required for the 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 division/separation balance sheet shall be approved by founders/participants of the legal entity or the authority that has taken the decision to reorganize, and shall be submitted together with the founding documents for state registration of the newly established legal entities or for amendment of the founding documents of existing legal entities.

<sup>52</sup> Articles 10 and 11 of the Law: “On State Registration of Legal Entities, Branches (Representative Offices)”.

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

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

#### 4.5 Closure of a Business

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

A legal entity may be liquidated:

- By the decision of its founders/participants or by the decision of the legal entity's body duly authorized for it by founding documents, including cases where such liquidation is caused by the expiration of the term for which the entity has been established, the achievement of purposes for which it has been established, or by a court decision on invalidity of the legal entity's registration due to irremediable violations committed in the course of its establishment; or
- By a court decision in cases where the entity has acted in the absence of the required permit/license, has engaged in the activities prohibited by law, or has committed other repeated or gross violations of law or continuously engaged in activities that contradict its charter purposes; in cases of revocation of a license of a bank, financial/lending institution, or institution for which the only allowed activity is the activity provided in its license; and in other cases stipulated by law.

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

A legal entity's body or the court that made a decision to liquidate the legal entity must notify this to the registration authority within 3 business days by sending a written notice together with the copy of the decision directing to liquidate the legal entity and to elect (appoint) the liquidation committee (liquidator)<sup>53</sup>. To register its dissolution, the legal entity must submit to the registration authority the following documents:

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

<sup>53</sup> Article 13 of the Law: "On State Registration of Legal Entities, Branches (Representative Offices)".

According to the World Bank's Report, 'Doing Business', 2012, the Kyrgyz Republic ranked 150th out of 183 countries in terms of time and cost required to close a business<sup>54</sup>. In order to improve the said ranking, the Kyrgyz Government resolved to develop recommendations regarding facilitation of procedures for company liquidation or bankruptcy<sup>55</sup>.

#### 4.6 Business Activities without Establishment of a Legal Entity

Under Kyrgyz law<sup>56</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 forms of business organization are not only attractive due to its simplified structure, state registration requirements and accounting procedures, but are 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 territorial subdivisions of the Kyrgyz National Statistics Committee that are closest to the place of residence of a sole proprietor.

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

When running 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 numbered, laced, sealed, and registered with the territorial subdivisions of the Kyrgyz State Committee for Taxes and Charges.

Sole proprietors may engage in entrepreneurial activities without the need to register with the territorial offices of the Kyrgyz National Statistics Committee, provided that they operate on the basis of a patent, if the respective business activities are included in the conclusive list of patent-based activities<sup>57</sup> or if such activities are subject to mandatory taxation on a patent basis<sup>58</sup> (for more detail on patenting refer to Section 6.11).

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

54 <http://www.doingbusiness.org/data/exploreeconomies/kyrgyz-republic/#resolving-insolvency>

55 Resolution No. 126 of the Government of the Kyrgyz Republic dated 4th April, 2008.

56 Regulation on procedure of state registration of sole proprietors in the Kyrgyz Republic; approved by Government Resolution No. 404 of 2nd July, 1998.

57 Resolution No. 733 of the Government of the Kyrgyz Republic dated 30th December, 2008 (with the latest amendments as of 3rd March, 2009).

58 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 26th December, 2003).

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 are they required to include the above income in the aggregate annual income when declaring their 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.

#### 4.7 Free Economic Zones

Free economic zones (the FEZ) are the zones where foreign economic and business activities<sup>59</sup> are subject to preferential legal treatment.

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

- Partial exemption from all taxes, dues, fees, and charges, for the entire period of activities within the free economic zone;
- Allocations in the amount of 0.1 to 2% from the annual proceeds from goods and services to the General Directorate of the free economic zone for the tax and other benefits enjoyed within its territory<sup>60</sup>;
- Complete exemption from customs duties on export of merchandise produced in the free economic zone, on import of merchandise into the free economic zone, and on merchandise for re-export;
- For merchandise produced within the territory of a free economic zone with the purpose of further export - exemption from quotas (with the exception of export into the customs territory of the Kyrgyz Republic, where volume of export may not exceed 30% of the total annual volume of merchandise produced within the free economic zone) and exemption from licensing;
- Simplified entry and exit procedure for foreign employees;
- Simplified and accelerated registration of a business entity;
- Simplified customs procedures; and
- Direct access to major infrastructure objects, including telecommunications, water supply, power supply, and transportation, in the course of activities within the territory of a free economic zone.

59 The Law of the Kyrgyz Republic "On Free Economic Zones in the Kyrgyz Republic" dated 16th December 1992 (with the latest amendments as of 7th July, 2011).

60 For more detail on FEZ taxation refer to Section 6.11.

Companies registered in free economic zones may not:

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

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

Currently, there are 4 free economic zones functioning within the territory of the Kyrgyz Republic: the **Bishkek** FEZ, the **Maimak** FEZ, the **Naryn** FEZ, and the **Karakol** FEZ<sup>61</sup>.

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

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

## 5. LICENSES AND PERMITS

### Legislation

Licensing is regulated by the Law of the Kyrgyz Republic “On Licensing”<sup>62</sup>. Banks, financial/lending institutions, and other institutions regulated by the National Bank of the Kyrgyz Republic are licensed subject to special laws<sup>63</sup> to the extent not inconsistent therewith.

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

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

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

<sup>62</sup> The Law of the Kyrgyz Republic “On Licensing” dated 3rd March, 1997 (with the latest amendments as of 5th October, 2011).

<sup>63</sup> For more information on banking refer to Section 9.

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

### **Licensing Authorities**

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

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

### **License Issuance**

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

- Standard application;
- Documents confirming the applicant's compliance with the respective legal requirements<sup>64</sup>;
- Documents confirming the payment of application and license processing fees; and
- A copy of the certificate of state registration of a legal entity.

A licensor may not demand from the applicant any documents other than those provided by the regulation on licensing of this business<sup>65</sup>. All documents submitted for the purposes of obtaining a license shall be duly registered by the licensing authority.

Licenses shall be issued for a fee within one month from the date of applying. The fee may not exceed 300 KGS (about USD 6.6 as of October 2011). The license renewal fee is equivalent to 1 calculation index.

<sup>64</sup> A specific list of documents for each specific activity.

<sup>65</sup> Regulation on Licensing of Certain Business Activities (with the latest amendments as of 15th July, 2011) approved by Resolution No. 260 of the Government of the Kyrgyz Republic dated 31st May, 2001 (with the latest amendments as of 10th September, 2009).

## 6. TAXES AND CHARGES

Taxation in the Kyrgyz Republic is regulated by the Tax Code of the Kyrgyz Republic and sub-laws (resolutions, regulations, instructions and orders). The authorized agency responsible for the supervision over the full and timely payment of taxes is the State Tax Service of the Government of the Kyrgyz Republic.

Mandatory charges include insurance payments to the Social Fund of the Kyrgyz Republic regulated by the Law “On State Social Insurance”, the Law “On Tariffs of Insurance Fees under State Social Insurance”, other acts and waste removal fees regulated by the Law “On Non-tax Payments” and sub-laws. The authorized agency responsible for administration of insurance fees is the Social Fund of the Kyrgyz Republic so far, but it is planned that soon these functions will be conferred on the State Tax Service of the Government of the Kyrgyz Republic. Surveillance over the payment of waste removal fees is also carried out by the State Tax Service of the Government of the Kyrgyz Republic.

### 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 administered in the Kyrgyz Republic.

#### National taxes are:

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

#### Local taxes are:

- Land tax
- Property tax

For taxation purposes, legal entities are divided into domestic and foreign entities. 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 and, as a rule, operates through a subsidiary or branch or representative office created in the Kyrgyz Republic.

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

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

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

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

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

## **6.1 Profit Tax**

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

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

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

**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.

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

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

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

- Value of property received as a share input and/or contribution to the charter capital, and income from sale of a participating interest in a company;
- Value of facilities (to be used for social, cultural, housing, communal or household purposes, roads, electric networks, substations, boiler rooms, heating networks, water intakes facilities, mining equipment, civil defence facilities) gratuitously transferred to specialized organizations engaged in use and operation of the said facilities for their intended purpose, value of fixed assets gratuitously transferred to enterprises, institutions and organizations and money used as capital investments to develop their own production base by the decision of the Kyrgyz Government or local authorities;
- Received by non-profit organizations:
  - a) membership and entrance fees;
  - b) humanitarian aid and grants, provided that they are used only for the purposes stated in the charter;

- c) value of gratuitously received assets provided that they are used only for the purposes stated in the charter;
- d) fee for technical maintenance of multi-apartment houses and servicing buildings and structures;
- e) fee for irrigation water supplied by water user associations to their members in the framework of the activity stated in the charter;
- Dividends received by taxpayers on income from participation in local companies;
- Value of property received by general partnership as contributions of partners;
- Value of property in trust management;
- Gain in 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 following the highest listing categories on the date of sale.

**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 research, construction, research and design works;
- Fixed asset depreciation amounts;
- Expenses incurred in connection with the repair of fixed assets;
- State social insurance payments;
- Losses incurred in connection with the sale of securities;
- Provision for probable losses and bank allocations to Deposit Insurance Fund;
- Expenses of the charity;
- Personnel training and re-training expenses;
- Business trip expenses;
- Representation expenses;
- Other income generating expenses.

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

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

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

## 6.2 Income Tax

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

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

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

**Tax base** is income estimated as the difference between the gross annual income, received by a taxpayer over the tax period, and deductions required by Kyrgyz tax legislation, but in any case representing not less than a minimum estimated income for the income tax period annually set by the Kyrgyz State Committee on Taxes and Charges.

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

## 6.3 Value Added Tax

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

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

Under Kyrgyz tax legislation, an entity is subject to taxation if it has been or must be registered for VAT. A business entity must register for VAT if, during 12 consecutive months or less, it has been making taxable supplies of goods, works or services in the territory of the Kyrgyz Republic for the amount exceeding 4 million KGS (about 85,900 USD as of March 2012). The entity which is not required to register for VAT may register for VAT voluntarily.

**The object** of VAT taxation includes:

- Taxable supplies; and
- Taxable import.

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

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

Taxable supplies are subject to 12% VAT, except VAT taxable supplies subject to a zero rate or 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;
- 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 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 customs territory of the Kyrgyz Republic, except for import of VAT exempt goods.

Supplies of goods brought across the border of the Kyrgyz Republic before the 1st of January, 2009, related to taxable import, are subject to 20% VAT. All other supplies of goods treated as taxable import are subject to 12% VAT.

Thus, if an entity is registered or is required to register as 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;
- Supply by an entity of goods (except excisable goods), berries, fruits and vegetables, industrially processed by this entity;
- Supply of goods, works and services of food and processing enterprises (except excisable goods used in production) processing local agricultural raw products for a term of 3 years according to the list approved by the Kyrgyz Government;
- Supply of public utilities to a physical person for household purposes;
- Supply of own goods, works, or services by correctional institutions and enterprises of the Kyrgyz penal system;
- Supplies of fixed assets under a financial lease agreement;
- Supply of prosthetic and orthopaedic items, supply of specialized goods for handicapped persons according to the list determined by the Kyrgyz Government and supply of medications;
- Supply of financial services (assessing and charging interest on credits and loans, extending credits and loans, issuing sureties and/or guarantees, including bank guaranties envisaging performance in monetary form, loan, credit or credit guaranty management by creditors; deposit operation, opening and maintaining bank accounts of organizations and physical per-

- sons including correspondent bank accounts; payment, transfer, debt obligations, cheques and commercial negotiable instruments and encashment operations; opening and maintaining metal accounts of physical persons and organizations reflecting a physical amount of refined precious metals belonging to this person; currency, banknote and legal tender operations, except golden coins and collection samples; stocks, bonds and other securities operations, payment cards and excise stamps operations, except custody services; operations involving participating interests in capital of business partnerships and companies; management of investment funds; clearing operations, including collection, verification, sorting and confirmation of payments, and offsetting of debts and determining clear positions of clearing participants such as banks and organizations performing certain banking operations; opening and maintaining letters of credits);
- 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 roaming services, interconnect services by Kyrgyz providers to customers of foreign providers, and supply of telecommunication services along international transit traffic by Kyrgyz providers to customers of foreign providers;
  - Supply of text books, reading books, scientific, artistic literature, magazines, children's literature published in state (Kyrgyz) language;
  - Supply of services of processing goods imported in the customs territory of the Kyrgyz Republic and subject to customs treatment entitled "Processing of goods in the customs territory" and "Processing of goods under customs control";
  - Supply of state property through privatization;
  - Supply of services by charitable organizations for charitable purposes in accordance with Kyrgyz law on sponsorship and charity;
  - Supplies to social security, child and low-income aged people protection services, and supplies in the sphere of education, medicine, science, culture, and sport made for a fee not exceeding expenses related to such supplies;
  - Gratuitous transfer of socio-cultural, housing and household utilities facilities, roads, power networks, substations, boiling rooms, heating networks, water intake structures, mining equipment, civil defence facilities, by specialized organizations using and operating said facilities for their intended purpose by decision of the Kyrgyz Government or local self-governance authorities;
  - Supply by government and municipal authorities of ritual goods and rendering of ritual services to the public related to burial or funeral;
  - Supply of mineral fertilizers, chemical plant protection means, animal vaccines and medications according to the list established by the Kyrgyz Government;
  - Supply to a local agricultural producer of agricultural machinery manufactured at Kyrgyz enterprises according to the list approved by the Kyrgyz Government;
  - Supply and export of golden and silver alloys and refined gold and silver;
  - Import of securities, standard forms of passports and ID cards of Kyrgyz citizens; specialized goods for handicapped persons according to the list approved by the Kyrgyz Government; textbooks and school stationery, as well as scientific publications according to the list approved by the Kyrgyz Government; goods exempt from VAT within tax treatments defined by Kyrgyz customs legislation (for example: transit, re-export); scientific equipment of geological (geophysical, geodesic) expeditions for seismic acquisition; excise stamps and currency, except those used in numismatics; goods used as aids in rescue efforts following disasters and military conflicts; goods supplied as humanitarian aid and grants in the manner specified by the Kyrgyz Government; goods to be officially used by diplomatic missions and consular offices of foreign states and international organizations, including their family members, in accordance with international

treaties; infant food according to the list approved by the Kyrgyz Government; natural gas; medications; pedigree agricultural animals and seed materials, mineral fertilizers and chemical plant protection means, as well as animal vaccines and medications according to the list approved by the Kyrgyz Government; specialized goods for construction and reconstruction of glass-making furnace;

- Import of 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;
- 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;
- Retail sale in the Kyrgyz Republic of jewellery and other items or their parts made of precious metals or metals plated with precious metals.

**Tax base** includes:

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

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

## 6.5 Sales Tax

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

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

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

**Rates** of sale tax are:

- in case of sale of goods, works or services by VAT payers and in case of sale of goods, works, or services exempt from VAT:
  - a) 1% – for trading business;
  - b) 2% – for business other than trade;
- in case of sale of goods, works, or services by non-VAT payers if such sale of goods, works or services is not VAT-exempt supply:
  - a) 2% – for trading business;
  - b) 3% – for business other than trade.

## 6.6 Subsoil use taxes

Subsoil use taxes are:

- Bonuses;
- Royalty.

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

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

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

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

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

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

**Tax base** include:

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

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

## 6.7 Land tax

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

**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;
- lands of settlements and land not used in agriculture;
- orchard and garden plots,

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 physical persons that own taxable property:

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

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

**Tax base** includes:

- for the property falling under groups 1, 2 and 3 – taxable value of the property determined in the manner specified in the Tax Code of the Kyrgyz Republic;
- for the property falling under group 4:
  - a) for transport vehicle driven by an internal combustion engine or having no such engine, – working volume of engine or book value;
  - b) for transport vehicle having no internal combustion engine and book value– the value determined in the manner established by the Government of the Kyrgyz Republic.

**Rates** of property tax are:

- 0.35% - with respect to property in group 1;
- 0.8% - with respect to property in groups 2 and 3;
- with respect to property in group 4:
  - a) fixed amount for each 1cm<sup>3</sup> of the working volume of engine of taxable transport vehicle established by the Tax Code of the Kyrgyz Republic depending on the type of transport vehicles and length of operation, or 0.5% of the book value of the transport vehicle for those driven by an internal combustion engine; or having no such engine;
  - b) 0.5% of the value determined in the manner established by the Government of the Kyrgyz Republic – for transport vehicles having no internal combustion engine and book value.

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

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

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

**Rates** of deductions to the Social Fund of the Kyrgyz Republic are as follows:

**With respect to employers:**

- Legal entities, standalone division employers - monthly at the rate of up to 17.25% of all payments to hired workers retained to perform permanent or temporary work regardless of the type of ownership of the employer or type of registration with tax authorities of the Kyrgyz Republic

**With respect to employees:**

- Legal entities and standalone divisions – monthly at the rate of up to 10% of all types of payments to them;
- With respect to peasant farms and farmer enterprises operating as self-employed – monthly at the rates specified above;
- With respect to peasant farms and farmer enterprises operating as non-self-employed – at the basic rate of land tax paid in a lump sum by the 25th of July or in equal instalments by the 25th of July or the 25th of December of the current year.
- With respect to individual entrepreneurs subject to simplified taxation system or tax contract – at the rate of 9.25% of the average monthly salary;
- With respect to individual entrepreneurs subject to patent-based special tax treatment (except those leasing out movable and immovable property) and individual entrepreneurs and their employees engaged in textile and garment manufacturing industry – at the rate equalling the value of the insurance policy;
- With respect to individual entrepreneurs and other individuals receiving income from lease of movable and immovable property – at the rate of 9.25% of the received income less the cost of maintenance of this property, but not less than the amount of average monthly salary;
- With, respect of individuals operating as self-employed under current licenses and receiving the fee (remuneration) – at the rate of 9.25% of the received fee (remuneration).

## 6.10 Waste removal charge

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

**Rate** of charge is determined by the local self-governance authorities:

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

## 6.11 Special Tax Treatments

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

- Single tax based simplified taxation system;
- Mandatory patent based tax;
- Voluntary patent based tax;
- Tax contract based tax;
- Tax treatment in free economic zones;
- Tax on special means;
- Tax treatment of high-tech Park.

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

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

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

**Tax contract based tax** can be paid by companies and sole proprietors engaged in business activities. This tax is paid in accordance with the contract between a taxpayer and a tax authority stating the amount of fixed sums of profit tax, sales tax and VAT to be paid by a taxpayer in the following calendar year. Taxpayers under tax contract do not include the following persons: those

paying mandatory patent based tax; those providing credit, finance, or insurance services; investment and pension funds; securities market professionals having tax debts; subsoil use tax payers; excise tax payers; and those operating for not less than 3 years.

**Tax treatment in free economic zones** is applied only to Kyrgyz FEZ entities manufacturing and selling goods (works, services), except excisable goods, in the territory of FEZ. FEZ entities include companies registered with the general directorate of FEZ. FEZ entities are exempt from all taxes, except income tax and other taxes deductible and payable at source, in respect of the activity carried out in the territory of FEZ. For the above tax benefits FEZ entities pay to the general directorate of FEZ a fee of 2% of proceeds. In respect of the activity carried out in other territory of the Kyrgyz Republic and abroad, FEZ entities are subject to the general tax treatment.

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

**Tax treatment of high-tech park;** is applied in respect of the high-tech park residents pursuing business or foreign trade activity provided that they meet the requirements established by Kyrgyz high-tech park law. The high-tech park entities are exempt from tax on profit, VAT, and sales tax, while the employees of the high-tech park residents are required to pay income tax at a reduced rate of 5%.

## 6.12 Double Taxation Treaties

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

- The Republic of Kazakhstan (1998);
- The Republic of Belarus (1998);
- The Republic of Ukraine (1999);
- The Republic of Tajikistan (1999);
- The Republic of Uzbekistan (2000);
- The Russian Federation (2000);
- The People's Republic of Mongolia (2004);
- The Republic of India (2001);
- Canada (2000);
- The Republic of Poland (2004);
- Malaysia (2006);
- The Republic of Turkey (2001);
- The Swiss Confederation (2002);
- The Islamic Republic of Iran (2005);
- The People's Republic of China (2003);
- The Republic of Austria (2003);
- The Republic of Finland (2004);
- The Republic of Moldova (2006);
- The Federal Republic of Germany (2006);
- The Islamic Republic of Pakistan (2008);
- The Republic of Latvia (2008).

The Government of the Kyrgyz Republic has signed the agreement with the Republic of Lithuania (not ratified) and approved drafts of similar treaties with the Republic of Georgia, the Republic of Armenia, the Kingdom of Netherlands, and the Czech Republic. For the time being, the drafts of the treaties received from the Republic of Azerbaijan and the Republic of France are under review, the negotiations with the Grand Duchy of Luxembourg and the Republic of Korea are underway, and the negotiations with the Kingdom of Spain and the Republic of South Africa are planned.

## 7. ACCOUNTING AND AUDIT

### **Financial Reporting**

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

### **Audit**

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

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

As of today, there are 68 licensed audit organizations.

## 8. CURRENCY EXCHANGE CONTROL

### Transactions in Foreign Currency

The legislation of the Kyrgyz Republic<sup>66</sup> provides that a financial liability must be expressed and settled in the national currency. The use of foreign currency and payment documents in foreign currency for settling financial obligations within the territory of the Kyrgyz Republic is allowed in cases and subject to procedures established by legislation.

On 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 treatments or multiple currency rate practices without the consent of the IMF.

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

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

Under Kyrgyz legislation<sup>67</sup>, the transfer of currency, valuables other than currency, and the recording of necessary data in the customs declaration (lists), are performed in accordance with Kyrgyz customs legislation.

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

66 Article 307 of the Civil Code of the Kyrgyz Republic.

67 The Law of the Kyrgyz Republic "On Foreign Currency Transactions" dated 5th July, 1995 (as last amended 19th May, 2009).

## 9. BANKING SYSTEM

### State Regulation

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

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

- Issuance of licenses for all types of banking operations;
- Approval of requirements of minimal authorized capital amount and capital base of banks, Capital adequacy standards, currency and interest risks, risk of the bank’s involvement in criminally derived money laundering and terrorism financing and
- Other regulation of banking activities binding for all banks;
- Also the application of preventive measures and imposition of sanctions on banks breaching or failing to comply with established requirements.

### Establishment and Licensing

A bank can be established and operate only as a joint-stock company (whether closed or open) and the amount of its charter capital must be not less than KGS 600 million (or approximately USD 13,433,328 as of October 2011), and KGS 100 million (or approximately USD 2.23 million) for operating banks.

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

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

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

### Standard Requirements for Banks

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

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

## Liquidation and Re-Organization

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

## Bank Secrecy

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

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

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

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

## Measures against Financing of Terrorism and Money Laundering

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

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

- Money transfers:
  - Performed by organizations other than financial and lending institutions, upon request of a customer;
  - Performed through systems not requiring account opening for transfer or receipt of money.

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

### **Disclosure of Information**

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

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

### **Deposit Insurance**

Under the Law of the Kyrgyz Republic “On Bank Depositor Protection”, 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 2,222 as of October 2011) in total, including interests on deposits.

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

### **Banking Services**

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

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

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

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

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

The Non-cash payments sector actively develops. Thus, gross non-cash payments have grown by 31%, while clearing payments have grown by 14%.

Banks in Kyrgyzstan operate with credit cards such as MasterCard, Diners Club, Visa, traveller's cheques American Express, Thomas Cook, CitiCorp and with registered cheques.

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

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

According to the World Bank's Report, 'Doing Business', 2011, the Kyrgyz Republic ranks 28th out of 183 countries in the world in terms of the legal rights of borrowers and lenders, and the availability and legal framework of credit registries.

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

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

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

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

By mid 2011, EcoBank OJSC has lent 895,748 thousand KGS under the principles of Islamic finance.

### **Operations in Offshore Zones**

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

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

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

### **Development Perspectives**

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

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

The National Bank and the Kyrgyz Government plan to establish Special Kyrgyz Bank Refinancing Fund to support commercial banks.

## 10. LABOR AND EMPLOYMENT

### Labour Legislation

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

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

### Labour Agreement

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

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

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

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

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

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

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

### Trial Period

A labour agreement may, with consent of the parties, provide for a **trial period** to assure the employee's professional competence required for the position. The provision regarding a trial must be included into a labour agreement. The trial period may not exceed 3 months (or 6 months for heads and deputy heads of organizations, chief accountants and their deputies, heads of branches, rep-

resentation offices and other structural units of an organization), unless otherwise provided by Kyrgyz legislation. The trial period may not be extended even if the employee gives their consent thereto.

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

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

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

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

### **Transfer to another Job**

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

### **Termination of a Labour Agreement**

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

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

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

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

Working hours are subdivided into:

- Normal working hours;
- Reduced working hours;
- Incomplete working hours.

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

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

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

Whom; are paid in the same way as for normal working hours.

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

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

### Labour Compensation

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

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

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

### Minimal Amount of Compensation

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

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

Under current Kyrgyz law, from the 1st of January, 2007 the minimal salary in the Kyrgyz Republic is 340 KGS (about USD 7.58 as of October 2011).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Settlement of Labour Disputes**

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

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

### **Liabilities of the Employer**

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

### **Foreign Labour**

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

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

### **Rights of Foreign Employees**

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

### **Work Permit**

Employers may involve and use foreign labour and foreign nationals may pursue employment or business activities in the Kyrgyz Republic subject to an employer's permit and a work permit respectively issued by the State Committee of the Kyrgyz Republic on Migration and Employment.

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

Procedure for depositing contributions guaranteeing travel of foreign employees out of the Kyrgyz Republic and procedure for refunding these contributions to the employer are established by the Government of the Kyrgyz Republic. The Kyrgyz Ministry of Labour, Employment and Migration are the public agency authorized to issue an employer's permit and a work permit for a foreign national.

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

Annually, 4 months prior to the beginning of each calendar year, the Government of the Kyrgyz Republic approves foreign labour quotas taking into account national interests and the situation at the domestic labour market. The Kyrgyz Ministry of Labour, Employment and Migration distributes the labour migration quota among entities that employ foreign nationals and stateless persons within the territory of the Kyrgyz Republic, taking into account their contribution to the economic development of this country, and priority right of Kyrgyz nationals to vacant jobs.

According to the World Bank's Report, **'Doing Business', 2009**; the Kyrgyz Republic ranks 81st out of 181 countries in terms of difficulty of hiring and firing employees. In 2008, in this regard, the Kyrgyz Government resolved to develop recommendations and action plan for improving Doing Business's "Hiring and firing workers" indicator. The Government is currently working on making changes and amendments to labour legislation with a view to balance labour relations between the employee and the employer.

## 11. REAL ESTATE

### Legislation on Real Estate

According to the Civil Code of the Kyrgyz Republic<sup>68</sup>, real estate includes land plots, subsoil portions, detached water objects, forests, perennials, buildings, structures, and all objects closely linked to land, i.e., all objects that may not be moved without damage incomparable to their purpose.

Real estate rights and encumbrances, as well as real estate transactions, are subject to mandatory state registration. Registration procedure is set forth in the Law of the Kyrgyz Republic “On State Registration of Rights to Immovable Property and Transactions Therewith”<sup>69</sup>. Under Kyrgyz legislation, the following are subject to mandatory state registration:

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

According to the World Bank’s, ‘Report Doing Business’, 2011, the Kyrgyz Republic ranks 17th among 183 countries of the world in terms of the steps, time, and cost involved in registering property in Kyrgyz Republic<sup>70</sup>.

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

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

<sup>68</sup> Article 24 of the Civil Code of the Kyrgyz Republic.

<sup>69</sup> The Law of the Kyrgyz Republic “On State Registration of Rights to Immovable Property and Transactions Therewith” dated 22nd December, 1998 (with the latest amendments as of 30th March, 2009).

<sup>70</sup> <http://www.doingbusiness.org/data/exploreeconomies/kyrgyz-republic/>.

## Land Relations

The principal normative legal act regulating land relations in the Kyrgyz Republic is the Land Code of the Kyrgyz Republic<sup>71</sup>. Under the Land Code, land of the Kyrgyz Republic is broken down by the following categories:

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

The transfer (conversion) of lands from one category into another is set forth in the Land Code of the Kyrgyz Republic, and the Regulation on procedure for transfer (conversion) of land plots from one category into another or from one type of land into another<sup>72</sup>.

## Acquisition of a Right to a Land Plot

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

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

On the 23rd of September, 2011, the Kyrgyz Government Resolution N 571 approved «Standard regulations on procedures and conditions of paid provision of ownership or lease rights over municipally owned land plots».

The provision of rights over land plots is effected by bidding at auction, tender or direct sales. For these purpose, the commission is formed responsible for the provision of rights over land plots.

Use rights are provided by 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 estate and the provision 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 provision of rights over such land plot to third persons may entail violation of rights of owners of these buildings or facilities.

<sup>71</sup> The Land Code of the Kyrgyz Republic dated 2nd June, 1999 (with the latest amendments as of 22nd July, 2011).

<sup>72</sup> The Regulation on Procedure for Transfer (Conversion) of Land Plots from One Category into Another or from One Type of Land into Another approved by Resolution No. 19 of the Government of the Kyrgyz Republic dated 22nd January, 2008 (as last amended 8th December, 2010).

Based on the record of the auction or direct sales results, the agreement is executed for sale and purchase or lease of the land plot.

The agreement is subject to state registration with the local registration authority and does not require mandatory notarization.

To date, in Bishkek, those who were using a land plot are now permitted to redeem such land plot<sup>73</sup>.

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

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

### **Housing Stock**

Buildings and structures located in the Kyrgyz Republic belong either to the housing stock, or to non-residential premises. Under the Housing Code of the Kyrgyz Republic<sup>74</sup> the following belong to the housing stock:

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

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

To acquire property right to an object belonging to the housing stock of the Kyrgyz Republic, a foreign individual or legal entity must obtain a permit for the object purchase, exchange, or acceptance as a gift. The permit is issued by an interdepartmental commission<sup>75</sup>.

### **Recreation Area**

Under the legislation of the Kyrgyz Republic<sup>76</sup>, recreational objects (i.e., objects used in recreation, health improvement, and tourism) may be publicly held by the Kyrgyz Republic, or privately held by individuals and legal entities of the Kyrgyz Republic or held by local state administrations and self-government bodies.

<sup>73</sup> The Regulation on procedure for redemption of land plots earlier allocated for temporary use, formation of land plot redemption commissions and distribution of proceeds from sale of land plots (with the latest amendments as of 20th January, 2009) approved by Order No. 80 of the Mayor's Office of Bishkek city dated 20th February, 2008.

<sup>74</sup> The Housing Code of the Kyrgyz Republic dated 20th May, 1983 (with the latest amendments as of 1st August, 1995).

<sup>75</sup> Resolution No. 82 of the Government of the Kyrgyz Republic dated 15th February, 1999 (with the latest amendments as of 13th December, 2007).

<sup>76</sup> The Law of the Kyrgyz Republic "On Sustainable Development of Issyk-Kul Ecological and Economic System" dated 13th August, 2004 (as last amended 26th July, 2011).

## Restrictions on Immovable Property Ownership by Foreign Nationals

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

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

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

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

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

- Rights to own or use agricultural land may not be granted to foreign persons<sup>77</sup>
- Rights to own land plots of any category may not be granted to foreign persons, except for the purposes of residential mortgage loans under Kyrgyz law "On Pledge"<sup>78</sup>
- Land located within a settlement (town, village of urban type, rural settlement) may be granted to foreign persons for temporary use (up to 50 years); these land plots may be transferred into ownership of foreign persons in cases where these persons are engaged in mortgage crediting of residential construction subject to the Law of the Kyrgyz Republic "On Pledge"<sup>79</sup>
- Land located outside settlements may be provided to foreign persons for temporary use (up to 50 years) on the basis of a respective decision of the Government of the Kyrgyz Republic, or, in the absence of such decision, on the basis of universal legal succession (inheritance, re-organization) for temporary use up to 50 years
- Should a foreign entity have acquired property rights to a land plot subject to universal legal succession procedure (inheritance, reorganization), the person must alienate the respective land plot in favour of a national or legal entity of the Kyrgyz Republic within 1 year from the date of acquisition of rights to it.

<sup>77</sup> Article 7 of the Law of the Kyrgyz Republic "On Management of Land Used in Agriculture" dated 11th January, 2001 (with the latest amendments as of 22nd July, 2011).

<sup>78</sup> Article 5: of the Land Code of the Kyrgyz Republic.

<sup>79</sup> The Law of the Kyrgyz Republic "On Pledge" dated 12th March, 2005 (with the latest amendments as of 12th July, 2011).

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

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

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

Kyrgyz law does not regulate the procedure for waiver of immovable property rights with simultaneous determination of an owner. The ownership right is terminated upon alienation by the owner of his/her/its property to other persons, or waiver of the ownership right by the owner, or perish or destruction of the property or loss of the ownership right to the property, or in other cases provided by law. An individual or legal entity can waive the ownership right to his/her/its property having declared this waiver or having performed other actions expressly evidencing that he/she/it was deprived of possession, use or disposal of the property without an intention to preserve any rights to this property. However, waiver of the ownership right does not entail termination of the owner's rights and obligations with respect to the relevant property until the ownership right to this property is acquired by the other person<sup>80</sup>.

The owner voluntarily waiving his/her/its ownership right or other rights to the immovable property can apply to the authority for registration of immovable property rights in person with a written request stating his/her/its waiver of the ownership right and other rights to the immovable property. In this case, the owner's waiver of the ownership right or other rights must be recorded in the respective files<sup>81</sup>.

<sup>80</sup> The Civil Code of the Kyrgyz Republic: Part I.

<sup>81</sup> The Rules of state registration of immovable property rights and encumbrances (restrictions) thereon and related transaction, approved by Resolution of the Government of the Kyrgyz Republic dated 15th February, 2011 No. 49.

## 12. INTELLECTUAL PROPERTY

### Legal Basis for Intellectual Property Protection

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

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

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

### Industrial Property

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

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

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

### Inventions, Utility Models, and Industrial Designs

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

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

**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 of Goods

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

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

## Copyright

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

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

## Protection of Intellectual Property Rights

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

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

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

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

In some cases the right holder may resort to other public authorities, such as the anti-monopoly or customs authority, in cases where violation of intellectual property right is related to unfair competition or movement of goods containing intellectual property objects across customs borders. As of today, 15 certified patent attorneys operate in Kyrgyzstan.

## 13. ANTI-MONOPOLY REGULATION

### Legislation

Anti-monopoly legislation of the Kyrgyz Republic consists of the Law of the Kyrgyz Republic, “On Competition”, Law of the Kyrgyz Republic “On Natural and Permitted Monopolies”, Law of the Kyrgyz Republic “On Advertising”, and others.

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

### Bad Faith Competition

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

The State Agency for Anti-Monopoly Regulation under the Government of the Kyrgyz Republic pursues a policy aimed at the prevention of unfair competition at the market by controlling the market participants. The functions of the state anti-monopoly authority are as follows:

- Assessment of the competitive environment in the respective markets of goods and services (works);
- Protection of rights of business entities and individuals against monopolistic abuses, unfair competition, and acts of state government and local self-government bodies directed at limiting competition;
- Issuance of opinions on bills pertaining to functioning of market relations, development of competitive environment, protection of consumer rights and advertisement;
- Approval of prices (tariffs) for services (works);
- And others.

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

- 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 licensing 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 circulation 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;
- Agreements (coordinated acts) limiting competition;
- 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, applicability for use, or quality and other features of merchandise of the business entity, identity of the entrepreneur or characteristics of his 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 bulk sale of certain kinds of merchandise in the respective market for the purposes of price manipulation, in cases when this is directed at limiting competition or affects the interests of consumers.

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

- 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;
- Breaching the pricing procedure including the establishment and maintenance of monopolistically high (low) prices;
- 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;
- Collusion for the purpose of limiting competition, which can be proved by the economic analysis of the situation;
- Creation of discriminatory or exceptional conditions;
- Economically, technologically or otherwise unfounded establishment of various prices (tariffs) for one and the same goods, unless otherwise provided by Kyrgyz law.

### **Anti-competitive agreements of business entities limiting competition**

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;
- Artificial increase (decrease) of prices for goods leading to limitation of competition;
- 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;
- Providing some business entities with an opportunity to acquire a substantial amount of goods in the conditions of limited offer.

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

- 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.

In the following exceptional cases, anti-competitive concerted actions shall be recognized by the antimonopoly authority as legal:

- If a business entity proves that positive effects outweigh negative effects of the agreement (concerted actions),
- 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 shall be held liable in accordance with Kyrgyz law. The imposition of liability shall not exempt the culprits from the obligation to execute the decision of the antimonopoly authority.

### **Powers of the Anti-Monopoly Authority**

The anti-monopoly authority and its territorial bodies shall within the scope of their powers exercise state supervision of compliance with antimonopoly legislation of the Kyrgyz Republic, in particular:

- over development and protection of competition to ensure effective functioning of markets of goods, works and services (de-monopolization of monopolistic sectors of economy, assessment 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.);
- over effective state control to ensure compliance with Kyrgyz law on antimonopoly and pricing regulation (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.);
- over protection of the legal rights of consumers against monopoly and unfair competition (maintenance of the database of free and paid services, approval of prices (tariffs) of services (works) provided by state government and local self-government bodies, approval of prices (tariffs) of services (works) provided by educational and medical institutions, organizations, irrespective of ownership form, etc.);
- over regulation of the advertising activity of advertisers, advertising agent, 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.);

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

- Price regulation by the establishment of prices/tariffs or their limits;
- The establishment of profitability limits;
- Identification of consumers/subscribers entitled to mandatory servicing, and/or establishment of minimal level of their supply in cases where their needs in goods/services produced/sold by a natural or permitted monopoly may not be fully satisfied, taking into account the protection of citizens' rights and legal interests, national security, the protection of the environment, and the protection of cultural property;
- The imposition of trade mark-ups;
- The imposition of obligations on engineering and technical services being natural monopoly entities, development of respective nets of engineering and technical maintenance in case it is impossible to fully satisfy the demands for goods (services) manufactured (provided) by this entity.

## 14. ENVIRONMENTAL PROTECTION

Ecological safety is an essential part of the country's national security and is a mandatory prerequisite for conservation of natural systems and sustenance of environmental quality.

### Legislation

Kyrgyz law contains provisions governing relations on the environmental protection and the rational use of natural resources. Among them are the Law of the Kyrgyz Republic "On Environment Protection", "On Protection of Atmospheric Air", "On Specially Protected Natural Areas", "On Biosphere Areas in the Kyrgyz Republic", "On Radiation Safety of Kyrgyz Population", and other normative legal acts that establish a legal basis for the protection of the environment and its components. Special requirements on ecological safety for the protection of atmospheric air, water objects, species of fauna and flora, soil and natural landscapes, as well as for the disposal of the production and consumption waste are set forth in the Law "General Technical Regulations to Ensure Ecological Safety in the Kyrgyz Republic" as of the 8th of May, 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>82</sup>.

Currently, the public executive 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<sup>83</sup>.

### Environmental Impact Review

Under the legislation of the Kyrgyz Republic, business entities' projects related to the use of natural resources are subject to environmental impact review<sup>84</sup>. This requirement has been introduced to prevent negative consequences for public health and the environment that may be caused by business and other activities. In addition, the adequacy of planned activities has to be assessed at stages preceding decisions on compliance with legislation on the environmental protection of the Kyrgyz Republic.

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

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

82 Concept paper on ecological safety of the Kyrgyz Republic approved by Kyrgyz Republic Presidential Edict No. 506: of 23rd November, 2007.

83 Regulations on the State Agency for Environmental Protection and Forestry under the Government of the Kyrgyz Republic approved by Governmental Resolution No. 123 of 20th February, 2012.

84 The Law of the Kyrgyz Republic "On Environmental Impact Review" dated 16th June, 1999 (with the latest amendments of 26th February, 2007).

**Environmental Standardization and Certification**

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

**Environmental Impact Audit**

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

## 15. CUSTOMS REGULATION

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

The authority in charge of customs regulation in the Kyrgyz Republic is the State Customs Service under the Government of the Kyrgyz Republic.

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

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

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

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

### Customs Treatments

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

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

## Customs Charges

In the Kyrgyz Republic customs charges consist of:

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

From the 17th of October, 2009, there apply export dues on exported from the Kyrgyz Republic re-generated paper and cardboard (waste paper) classified under code TN VED 4707, at the rate of 10 (ten) KGS per 1 kg.

From the 15th of February, 2012 to the 15th of August, 2012, there apply seasonal export dues on fertilizers classified under code TN VED 3101 00 000 0 – 3105, at the rate of 14 KGS per 1 kg.

## Customs Control

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

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

- Goods and vehicles moved across the customs frontiers
- Documents that contain information on the goods and vehicles and are required for submission to tax authorities by the Customs Code of the Kyrgyz Republic;
- Activities of persons included in the registry of persons engaged in customs-related services;
- Compliance with the established restrictions upon use and disposal of goods
- Calculation and payment of customs charges

**Forms of Customs Control:**

- Inspection of documents and information
- Verbal questioning
- Clarifications
- Inspection of goods and vehicles
- Customs inspection
- Personal inspection
- Special marks or identification signs of goods in cases provided by the current legislation of the Kyrgyz Republic
- Audit-based control
- Control with use of audit methods;
- Accounting of goods.

## 16. TECHNICAL REGULATION

The Law of the Kyrgyz Republic “On the Basics of Technical Regulation in the Kyrgyz Republic”<sup>85</sup> sets forth the legal basis for the development, adoption, application and implementation of mandatory requirements to products, processes/methods of production, storage, transportation, sale, use and disposal, and conformity evaluation of products.

The public authority in charge of technical regulation is the Ministry of Economic Development and Trade of the Kyrgyz Republic<sup>86</sup>, which develops and implements a unified state policy of technical regulation. The Ministry of Economic Development and Trade of the Kyrgyz Republic is also responsible for performance of obligations undertaken by the Kyrgyz Republic under the Agreement on Technical Barriers to Trade<sup>87</sup> and Agreement on Application of Sanitary and Phytosanitary Measures<sup>88</sup>.

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

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

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

- within 2006-2011<sup>89</sup> the general technical regulations on safety of transport vehicles, on safety of transportation processes, on safety requirements of food products and the processes of their production, storage, transportation, sale, and disposal, on safety of buildings and structures, on safety of construction items, on module approach to procedures for conformity evaluation, on electromagnetic compatibility;

In 2010-2011, the Kyrgyz Government<sup>90</sup> has adopted the general technical regulations on the safety of buildings construction, medicines, bottled natural water, confectionary, juices, winery products, ethyl spirit, vodka, sugar, beer.

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

### Standardization

Standardization documents of the Kyrgyz Republic are represented by:

- National standards of the Kyrgyz Republic

85 The Law of the Kyrgyz Republic “On the Basics of Technical Regulation in the Kyrgyz Republic” dated 22nd May, 2004 (as last amended 14th October, 2011).

86 Edict of the President of the Kyrgyz Republic No. 149 dated 30th April, 2005 (as last amended 27th October, 2007).

87 The Agreement on Technical Barriers to Trade dated 15th April, 1994.

88 The Agreement on Application of Sanitary and Phytosanitary Measures dated 15th April, 1994.

89 The Program for the development of top priority technical regulations for 2006-2007, approved by Resolution No. 11 of the Government of the Kyrgyz Republic dated 12th January, 2006.

90 Governmental Resolutions No. 143 of 2nd August, 2010, No. 137 and No. 139 of 6th April, 2011, No. 172 of 19th April, 2011, No. 356 and No. 357 of 5th July, 2011, No. 388 of 14th July, 2011, No. 437 of 1st August, 2011.

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

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

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

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

The Government of the Kyrgyz Republic<sup>91</sup> has developed: (i) the general procedure for mandatory certification of products; (ii) the list of products subject to mandatory proof of conformity; (iii) the procedure for approval of the declaration of conformity and its registration; (iv) the nomenclature of the products to be attested as conforming by the declaration of conformity; (v) mandatory technical safety norms that apply to such products.

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

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

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

The Government of the Kyrgyz Republic<sup>92</sup> has established a unified procedure for the recognition of results of mandatory conformity certification by relevant authorities of the exporting countries on the basis of multilateral or bilateral agreements, or subject to a unilateral procedure. The Kyrgyz Republic recognizes conformity certificates, conformity declarations and test records obtained in Azerbaijan, Armenia, Belarus, China, Georgia, Kazakhstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine, in cases where requirements to products are equivalent.

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

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

<sup>91</sup> Resolution No. 639 of the Government of the Kyrgyz Republic dated 30th December, 2005 (with the latest amendments as of 23rd October, 2007)

<sup>92</sup> Resolution No. 8 of the Government of the Kyrgyz Republic dated 11th January, 2006 (with the latest amendments as of 23rd October, 2007).

The Government of the Kyrgyz Republic<sup>93</sup> has approved a list of authorized bodies responsible for state supervision of compliance with mandatory requirements to products, and the scope of their powers. In accordance to the list:

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

93 Resolution No. 473 of the Government of the Kyrgyz Republic dated 30th June, 2006 (as last amended 18th February, 2009).

## 17. INSURANCE

### Legislation

Activities of insurance companies are regulated by the Law of the Kyrgyz Republic “On Organization of Insurance in the Kyrgyz Republic”<sup>94</sup>, “On Mandatory Insurance of Employer Civil Liability for Death or Injury of Employee While on Duty”<sup>95</sup>, “On Mandatory Insurance of Carrier Civil Liability to Passengers”<sup>96</sup>, “On Mandatory Insurance of Civil Liability of Carriers of Hazardous Cargoes”<sup>97</sup> and “On Mandatory Insurance of Civil Liability of Entities Operating Hazardous Facilities”<sup>98</sup> and other legal acts.

### Establishment and Licensing

Insurance companies may be founded as open or closed joint stock companies with the charter capital being<sup>99</sup>:

- 30 million KGS for newly established insurance companies to engage in voluntary insurance and re-insurance;
- Not less than 25 million KGS for operating insurance companies engaged in voluntary insurance and reinsurance;
- Not less than 200 million KGS for newly established insurance companies to engage solely in re-insurance;
- Not less than 100 million KGS for operating insurance companies engaged solely in re-insurance;
- Not less than 50 million KGS for insurance companies to engage in combined mandatory insurance and re-insurance.

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

For the time being, there are 14 insurance companies operating in Kyrgyzstan<sup>100</sup>. Out of 14 insurance companies 5 companies have foreign capital. These businesses are mainly based in Bishkek (13 companies) with only 1 company, based in Jalalabat town<sup>101</sup>.

### Reporting by Insurance Companies

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

94 The Law of the Kyrgyz Republic “On Organization of Insurance in the Kyrgyz Republic” dated 23rd July, 1998 (with the latest amendments as of 15th July, 2009).

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

96 The Law of the Kyrgyz Republic “On Mandatory Insurance of Civil Liability of Carrier to Passengers” dated 4th August, 2008.

97 The Law of the Kyrgyz Republic “On Mandatory Insurance of Civil Liability of Carrier of Hazardous Cargoes” dated 4th August, 2008.

98 The Law of the Kyrgyz Republic “On Mandatory Insurance of Civil Liability of Entities Operating Hazardous Facilities” dated 15th August, 2008.

99 Government Resolution No. 300 dated 25th November, 2010.

100 Report of the Kyrgyz Financial Market Supervisory Authority for 2011, <http://fsa.kg/?id=2806>

101 *ibid*

Financial indicators such as insurance reserves, assets and equity capital are compared as follows<sup>102</sup>:

Financial indicators	As of 1st December, 2010 (m. KGS)	As of 1st December, 2011 (m. KGS)	Increase (%)
Total Assets	915.2	1,045.5	14.2
Liabilities	150.2	319.7	112.8
Including net insurance reserves	81.0	105.6	30.4
Equity capital	750.8	679.4	- 9.5

### Development Perspectives

Currently, the State Service for Regulation and Supervision of the Financial Market under the Government of the Kyrgyz Republic jointly with the insurance companies and other interested parties is considering the need for introducing the following types of mandatory insurance:

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

For the purposes of further development of insurance activities in the Kyrgyz Republic the State Service for Regulation and Supervision of Financial Market plans to adopt the Concept Paper on development of mandatory insurance in the Kyrgyz Republic for 2012-2016, to create the institute of actuaries in the Kyrgyz Republic and to bring the current laws into line with the international standards on insurance supervision<sup>103</sup>.

<sup>102</sup> ibid

<sup>103</sup> ibid

## 18. SECURITIES MARKET

### Legislation

The legislation of the Kyrgyz Republic regulating the securities market consists of the Civil Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic “On Securities Market”, Law of the Kyrgyz Republic “On Joint Stock Companies”, Law of the Kyrgyz Republic “On State Service for Regulation and Supervision of Financial Market of the Kyrgyz Republic”, and subordinate legislation.

In 2011, the consolidation of stock exchanges took place resulting in the establishment of the stock market represented by the Kyrgyz Stock Exchange CJSC, the Central Depository of Securities and the Stock Exchange of Kyrgyzstan.

Also, to guarantee return on investment into residential lending and to ensure low risk, to develop the mechanism of issuing mortgage certificates (housing certificates and bonds secured by pledge) there was developed the draft law “On Mortgage-Backed Securities”.

### State Regulation

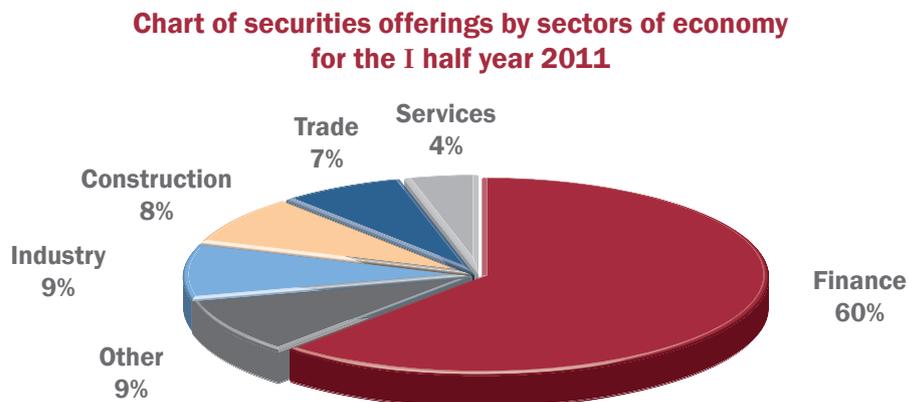
The state securities market regulator is the State Service for Regulation and Supervision of the Financial Market of the Kyrgyz Republic, which regulates the relations arising in connection with the state regulation and supervision over non-banking financial market, accounting and auditing.

The State Service for Regulation and Supervision of the Financial Market of the Kyrgyz Republic also being a supervisory authority is authorized, for the purposes of protecting the rights of investors and other third persons, to conduct inspections of securities market participants.

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

### Investment in Securities

Dynamics of corporate securities by sectors of the economy for the first half-year of 2011 is as follows:



In 2011, there were issued bonds of two major companies at the stock market: Shoro OJSC, with the volume of offering being 45 million Kyrgyz KGS and Roskazmet LLC with the volume of offering being 60 million KGS.

In the Kyrgyz Republic, all stock exchange transactions are carried out via licensed trade operators. There is one stock exchange operating in the securities market, the Kyrgyz Stock Exchange CJSC. Besides, this March the consolidation of the depository system was carried out resulting in the Central Depository's being vested with the functions of the agency for securities storage and recording.

### **Securities Market Professionals**

Currently, there is one officially registered licensed trader 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.

As of the 1st of January, 2011, in addition to the 3 stock exchanges mentioned above, the following securities market professionals are operating in the Kyrgyz stock market:

- Company registrars – 18
- Depositories – 4
- Brokers – 28
- Dealers – 24
- Trust managers – 31
- Investment fund managers – 11
- Investment funds – 6
- Investment consultants – 10
- Clearing companies – 1

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:

- **UYUM** Association of Independent Registrars and Depositories;
- Association of Securities Market Professionals;
- Investment Funds Association;
- Shareholder Protection Association; and
- Institute of Corporate Governance and Development.

## 19. REGULATION OF SPECIFIC INDUSTRIES

### 19.1 Electric power industry

#### State Regulation

The Government of the Kyrgyz Republic develops a general policy for the electric power industry.

The purpose of state regulation of the electric power industry is to provide electricity and heating on an economically feasible, socially acceptable, and non-discriminatory basis throughout the territory of the Kyrgyz Republic, and to supervise reliability, safety, and continuity of production and consumption of electric and heating power<sup>104</sup>.

The executive authority responsible for the development and implementation of a unified state policy in the field of energy/heating and production is the Ministry of Energy of the Kyrgyz Republic.

In 2008, the Kyrgyz National Energy Program for 2008-2010 and the Fuel and Energy Industry Development Strategy until 2025 were approved<sup>105</sup>.

The Kyrgyz energy strategy prioritizes efforts towards the rational and effective use of natural fuel and energy resources and available technical, scientific and human resources.

The energy policy for 2008-2010 focuses on the following major tasks:

- Ensuring the safe and undisturbed supply of electricity, first of all, to local consumers
- Pursuing cardinal reforms in the industry management system by creating market-oriented institutional and legal frameworks and finalizing structural reforms in the fuel and energy industry
- Pursuing a well-balanced tariff and pricing policy enabling energy companies to cover their actual costs and preventing the cross-subsidizing of consumers;
- Reducing losses and stopping power thefts;
- Developing rules concerning access to power networks and sale of power generated by using alternative energy sources, and mechanisms to subsidize them;
- Improving financial and corporate governance in the fuel and energy industry, toughening requirements for commercial or financial discipline and fostering profitability of entities engaged in this industry;
- Developing programs for the technical upgrade of the industry;
- Improving investment climate in the fuel and energy industry;
- Making efforts to promote the competitive advantage of the Kyrgyz power industry in the regional electricity market;
- Developing energy efficiency and conservation program taking into account the obligations of the Kyrgyz Republic under its treaties with CIS countries;
- Developing programs for replacing hydrocarbon fuel by local alternative energy sources to reduce dependence on imported energy resources and to limit the emissions of greenhouse gases;
- Monitoring the financial condition of the electric power industry for the purposes of annually reducing a target indicator of quasi-fiscal deficit by 1-2% of GDP.

Kyrgyz energy policy, in the long-term perspective, is oriented towards protecting the legal rights and interests of citizens and business entities, fostering national defence and security capacities, promoting efficient management of state property, achieving a cardinaly different state of the fuel and

<sup>104</sup> The Law of the Kyrgyz Republic "On Electric Power Industry" dated 28th January 1997 (with the latest amendments as of 26th July, 2011).

<sup>105</sup> Resolution No. 346-IV of the Jogorku Kenesh of the Kyrgyz Republic dated 24th April, 2008.

energy industry, and rests on consistent efforts made by the state to achieve the most important strategic goals in the area of power industry development and privatization of energy facilities.

In 2008, the Kyrgyz Small and Medium Scale Energy Program until 2012; was approved<sup>106</sup>. The Program focuses on the following tasks:

- Pursuing Kyrgyz energy policy in the area of small and medium scale energy;
- Creating favourable investment climate in small and medium scale energy;
- Making efforts to introduce a specific Clean Development/Joint Implementation Mechanism subject to the requirements of the Kyoto Protocol in the area of small and medium scale renewable energy;
- Staffing and recruitment of personnel qualified to implement the program;
- De-monopolization of energy market, creating competitive environment.

The authority responsible for implementing the tasks stated in the Program is the Directorate for Small and Medium Scale Energy in the Kyrgyz Republic.

### Licensing

In the Kyrgyz Republic the following are subject to licensing: the production, transmission, distribution, and sale of electricity, the construction of power stations, substations and power lines, and the import and export of electricity. Foreign individuals and legal entities may obtain licenses to engage in the above activities subject to the same procedures as apply to individuals and legal entities of the Kyrgyz Republic. A license is issued for a specific activity for an unlimited term.

Currently, the State Department for Fuel and Energy Industry Regulation under the Ministry of Energy of the Kyrgyz Republic acts as a licensor.

Upon technical review of the documents submitted by an organization or an entrepreneur in order to obtain a license for production, transmission, distribution and sale of heating energy, the Department of Energy and Gas of the Ministry of Energy of the Kyrgyz Republic<sup>107</sup> and the State Energy and Gas Supervisory Authority of the Ministry of Energy of the Kyrgyz Republic decide whether the applicant can perform activities subject to licensing<sup>108</sup>.

### Construction and Reconstruction of Generating Capacities

The total Kyrgyz hydropower capacity is estimated at 142.5 billion kWh (placing Kyrgyzstan in 3rd position among CIS countries after Russia and Tajikistan). The total established capacity of all 17 electric power plants existing in Kyrgyzstan, of which 2 are thermal power plants (Bishkek and Osh Heat and Power Plants), the other 15 are hydro power plants is 3,586.48 MW<sup>109</sup>. Only on the Naryn River, it is feasible to build 7 more cascades consisting of 33 hydropower plants, with summarized installed capacity of 6,450 mw and annual power output of more than 22 billion kWh<sup>110</sup>.

Elektricheskie Stantsii OJSC was set up on the basis of:

- Existing cascade of Toktogul hydropower plants (Toktogul hydropower plant (1,200 MW) and

106 Decree № 365 of the President of the Kyrgyz Republic dated 14th October, 2008.

107 Order No. 30 of the Ministry of Industry, Energy and Fuel Resources of the Kyrgyz Republic dated 23rd May, 2007.

108 Resolution No. 334 of the Government of the Kyrgyz Republic dated 15th August, 2007.

109 Governmental Resolution, "On Fundamentals of Electric and Thermal Power Tariff Policy for 1998-2000", dated the 27th April, 1998, No. 222.

110 [http://www.energo-es.kg/projects/investment\\_projects/](http://www.energo-es.kg/projects/investment_projects/)

- Kurpsai hydropower plant (800 MW);
- Atbashy hydropower plant (40 MW);
- Enterprises of hydropower plants under construction (Tashkumyr hydropower plant (450 MW), Shamaldysai hydropower plant (240 MW), Uchkurgan hydropower plant (180 MW), Kambarata 1 hydropower plant (1,900 MW), Kambarata 2 hydropower plant (360 MW));
- Central Heating and Power Plants (CHPP) of Bishkek City (with 666 thousand kW power capacity, and 1,443.9 Gcal/hour heating capacity) and Osh City (with 25 thousand kW power capacity, and 143.515 Gcal/hour heating capacity),

In which not less than 93.72% of shares were retained in state ownership. No state shareholding may be sold, pledged, or credited against external debt of the Kyrgyz Republic, or transferred in trust, and no new shares may be issued without the consent of the Jogorku Kenesh of the Kyrgyz Republic. No property of Electrichestkie Stantsii OJSC may be alienated in any form including indirect ones, except for Kambarata 1 and Kambarata 2 hydropower plants under construction and CHPP of Bishkek City<sup>111</sup>.

In 2006, the Government of the Kyrgyz Republic approved the proposal on the phased construction of a thermal condensation electric power plant at the Kara-Keche coal deposit as a basic source of electric power<sup>112</sup>.

In July 2009, the regulations were adopted on the procedure of construction, commissioning and technological connection of small HPPs to electric networks<sup>113</sup>, defining that:

- The Ministry of Energy of the Kyrgyz Republic shall grant the right to construct small HPPs by holding a tender;
- Enterprises owning electric networks shall guarantee the connection of small HPPs to their networks;
- Agreements for design and construction of small HPP shall be executed with the design and construction organizations jointly with the tender winner and enterprise owning the electric networks;
- The design and construction organizations must have licenses to perform design and construction works of the necessary level of complexity and responsibility.

In 2008, the Government of the Kyrgyz Republic issued a decision to re-launch the construction of Kambarata 2 hydropower station (360 MW).

In October 2009, the Jogorku Kenesh of the Kyrgyz Republic passed the law<sup>114</sup> lifting all bans on the circulation of shares and assets of Kambarata HPPs 1 and 2, which allows their pledging for attracting investments.

The first aggregate of Kambarata HPP 2 was commissioned in August 2010 using the own funds of the Kyrgyz Republic.

In February 2009, the Government of the Russian Federation and the Government of the Kyrgyz Republic signed the agreement on the construction of Kambarata 1 hydropower plant (with the capacity of 1,900 MW), whereby the Russian Federation agreed to provide finance during 2009-2013 to the newly established Kyrgyz-Russian joint stock company for the purposes of the construction of Kambarata 1 hydropower plant<sup>115</sup>.

111 The Law of the Kyrgyz Republic "On Special Status of Cascade of Toktogul Hydropower Stations and National High Voltage Power Lines" dated 21st January, 2002 (as last amended 30th July, 2007).

112 Governmental Resolution No. 536 of 24th July, 2006.

113 Regulations on procedure for construction, commissioning and technical connection of small hydropower plants to electric networks approved by Governmental Resolution No. 476 of 28th July, 2009.

114 The Law of the Kyrgyz Republic "On Annulment of the Law on Construction and Operation of Kambarata Hydropower Plants 1 and 2" of 12th October, 2009.

115 <http://www.president.kg/ru/press/news/3327/>

As part of the hydropower development program, it is planned to construct and commission the second aggregate of Kambarata HPP 2 with the volume of financing being USD 132 million of which USD 44 million will be expectedly drawn in 2012.

Besides, the construction of Kambarata HPP 1, which is considered as a major investment project with the volume of financing being USD 1,700 million of which USD 566.7 million will be expectedly drawn in 2012; the construction of the Upper Naryn HPP Cascade is also under consideration. It is proposed to build 4 small hydropower plants (Akbulun, Naryn 1, 2, 3) with the total project value being USD 412 million, of which USD 137.3 million will be drawn in 2012.<sup>116</sup>

In 2010-2011, it is proposed to start the building of 3 small HPPs on the rivers Boyom and Kemin with the total capacity of 165 MW.

The European Bank for Reconstruction and Development is ready to consider its participation in the financing of the construction of small and medium size hydropower stations<sup>117</sup>.

The Asian Development Bank plans to allocate USD 44.3 million for support of energy of Kyrgyzstan. These funds are planned to be used to raise potential of National Electric Nets of Kyrgyzstan, to acquire necessary equipment for reduction of commercial losses in the energy sector, with USD 16 million of the total amount being the credit and the rest being the grant funds. This project suggests co-financing by the Kyrgyz side totalling USD 11 million.

RusHydro, a major Russian energy company, expressed interest in the construction of 4 HPPs on the Upper Naryn Cascade with an estimated project value of USD 412 million and the total established capacity of 311 MW.

The Ministry of Energy of the Kyrgyz Republic is in the process of negotiating with Sino Hydro, a Chinese company, on the construction of the Suusamyр Kokomeren HPP Cascade. It is expected that the feasibility study will be completed by the end of 2011, and the construction documents will be completed in 2012. The construction of a 3-HPP cascade with the total capacity of 1,305 MW will take 5-6 years. HPPs will produce 3 billion 300 million kWh of electricity equalling 10% of the existing capacities of the country. The total project value will be about USD 2 billion.

### **Construction of power lines and substations**

In November 2005, the Government of the United States and the Government of the Kyrgyz Republic signed a grant agreement to finance the preparation of a feasibility study<sup>118</sup>:

- for the construction of 33 km of 220 kV Uzlovaya-Alay high voltage power lines;
- for the connection of 1 km of 500 kV Toktogul hydropower plant-Lochin high voltage power lines to 500 kV Datka substation;
- for the construction of 500 kV Datka substation;
- for the connection of 81 km of 220 kV Kristal-Kurpsai hydropower plant high voltage power lines to 500 kV Datka substation;
- for the connection of 5 km of 220 kV Kurpsai hydropower plant –Oktyabr high voltage power lines to 500 kV Datka substation;
- for the construction of 90 km of 220 kV Kristal-Datka high voltage power lines;

<sup>116</sup> Resolution No. 724 of the Government of the Kyrgyz Republic dated 26th December, 2008.

<sup>117</sup> <http://ca-news.org/news/102641>

<sup>118</sup> The Grant Agreement between the Government of the USA and the Government of the Kyrgyz Republic dated 22nd November, 2005, ratified by Edict UP № 65 of the President of the Kyrgyz Republic dated 13th February, 2006.

- for the construction of 5 km of 220 kW Datka-Oktiabr high voltage power lines;
- for the construction of 220 kW Kurshab substation;
- for the construction of 46 km of 220 kW Datka-Kurshab high voltage power lines;
- for the construction of 108 km of 220 kW Kurshab-Uzlovaya high voltage power lines

To improve power transmission, new power lines, the capacity of Kurpsai hydropower plant, Shamaldy-Sai hydropower plant and Tash-Kumyr hydropower plant and substations, and to prevent overloads and high cost of power transmission.

In 2007, the Kyrgyz Republic, the Islamic Republic of Pakistan and the Republic of Tajikistan signed a memorandum of understanding regarding the creation of power structures, lines, and grids between Central Asia and South Asia enabling the export of 1,300 MW power from the Kyrgyz Republic and Tajikistan to the Islamic Republic of Pakistan through the territory of Afghanistan (CASA-1000 Project)<sup>119</sup>. At present, the work is underway on preparing a feasibility study in respect of the grants of international financial institutions.

During the period from 2009 until 2011, the Kyrgyz Republic plans to do the following<sup>120</sup>:

- construct 110 kW Aigultash-Samat high voltage power lines;
- construct 500kW/220kW Datka substation and reconstruct 220 kW high voltage power lines;
- construct 500kW/220kW Kemin substation and 500 kW Datka-Kemin power lines<sup>121</sup>

to create conditions for capacity output of Kambarata HPPs 1 and 2 and to create its own 500 kW power lines network which will ensure safe power supply to Kyrgyz consumers when operated in parallel with the neighbouring grids of the region or in isolation.

In October 2006, the Government of the Kyrgyz Republic and an American company AES Silk Road, Inc. signed a memorandum of understanding regarding the construction of 500 kW high voltage power lines connecting grids of the Kyrgyz Republic and the Republic of Tajikistan and the grids of the Kyrgyz Republic and the Republic of Kazakhstan<sup>122</sup>.

In June 2007, the Government of the Kyrgyz Republic approved a draft agreement between the Kyrgyz Republic and the Islamic Development Bank to finance the project of the construction of the 110 kW Aigultash-Samat high voltage power lines and substation<sup>123</sup>. In March 2010, the work began on the construction of power lines and reconstruction of substation. The construction works are being carried out by GTMH Company, a subsidiary of a French company INEO of GDF Suez Group. This company was involved in the implementation of several projects in the Chui, Issykul, and Talas regions and in the construction of Alay-Aygultash-Samat power line which is planned to be commissioned in November 2011. In January 2010, Kyrgyzstan's National Electric Net OJSC and Chinese company, Tebian Electric Apparatus (TBEA), signed the agreement on the construction of 410 km of Datka Kemin 500 kW power lines. At present, the planning is underway for Kemin. 500kW power lines and substation and the financing of their construction by Chinese Export and Import Bank are under consideration<sup>124</sup>.

In December 2009, the Kyrgyz Republic and the Republic of Tajikistan proposed to develop a unified policy on the construction of the Hodjent-Datka-Kemin-Almaty 500 kW power line and expressed interest in the construction of the Hodjent-Datka 500 kW power line for further supplies of electricity

119 <http://www.cawater-info.net/news/08-2008/10.htm>

120 Order No. 82 of the Ministry of Industry, Energy and Fuel Resources of the Kyrgyz Republic dated 29th August, 2007

121 National Grid of Kyrgyzstan OJSC: [www.energo.kg/o%20kampanii/perspektiva/perspektiva.htm](http://www.energo.kg/o%20kampanii/perspektiva/perspektiva.htm)

122 Ordinance No. 610-r of the Government of the Kyrgyz Republic dated 31st October, 2006.

123 Government Ordinance No. 161-r of 7th June, 2007.

124 The Interim Government Ordinance No. 470 of 16th June, 2010

to third countries through the territories of the Kyrgyz Republic and Tajikistan within the framework of CASA-1000 Project. The volume of project financing is USD 197.0 million of which USD 65.7 million will be drawn in 2012<sup>125</sup>.

In September 2009, the Kyrgyz Republic and the Republic of Kazakhstan discussed the possibility of joint planning and construction of the Kemin-Almaty 500 kW power line. In November 2010, the working groups of both countries exchanged benchmark data of the feasibility study for the construction of high voltage line. The total project value is USD 140 million of which USD 46.7 million will be drawn in 2012<sup>126</sup>.

### **Electric Power Market and Setting Tariffs**

To assure a functional system of commercial relations in the process of production, sale and purchase of electric power, the following rules of electric power market have been developed<sup>127</sup>:

Purchase and sale of electric power performed by producing and distributing organizations, importers, and major production users is based upon contracts of electric power purchase and sale, with the exception of purchase and sale performed at the balance market of electric power. Contracts of electric power purchase and sale are developed and approved by the Ministry of Energy of the Kyrgyz Republic.

Tariffs for electricity are established by the State department of regulation of fuel and energy complex under the Ministry of Energy of the Kyrgyz Republic with the consent of the Jogorku Kenesh of the Kyrgyz Republic according to the following principles:

- Prices must reflect the full cost of production, transmission and distribution of thermal or electric energy, including the cost of production and maintenance, compensation of capital costs, attraction of investments and interest rate on repayments;
- Non-discrimination in respect of setting tariffs for energy supply services and electricity, including their quality;
- All consumers of similar group with similar consumption characteristics served by one distribution enterprise must be entitled to equal tariffs and services.

According to the resolution of the Executive board of the State department of 'regulation of fuel and energy sector' of the Ministry of Energy of the Kyrgyz Republic of 21st April, 2010 No. 93 "On Tariffs for Electric Energy", tariff for electricity for all industrial consumers shall be 132.7 tyins per 1 kWh excluding taxes and for the general public - 70 tyins excluding taxes.

### **Renewable energy sources**

In 2008, the Law of the Kyrgyz Republic "On Renewable Energy Sources" was adopted<sup>128</sup>. The purpose of the law is to provide legal basis for the development and use of renewable energy sources, improvement of energy structure; diversification of energy resources, improvement of social welfare, energy safety of the republic, environmental protection and sustainable economic development. According to the adopted law:

<sup>125</sup> Governmental Resolution No. 553 of 13th September, 2011 "On Forecast of Socioeconomic Development of the Kyrgyz Republic for 2012 and forecast for 2013-2014".

<sup>126</sup> Ibid

<sup>127</sup> Resolution No. 187 of the Government of the Kyrgyz Republic dated 6th April, 2000

<sup>128</sup> Law No. 283 of the Kyrgyz Republic "On Renewable Energy Sources" dated 31st December, 2008 (as last amended on 10th October, 2011).

- The regulated activities include the production, consumption and sale of heat, power and fuel using renewable energy sources as well as the production and supply of equipment and technologies in the area of renewable energy sources;
- State regulation in the area of renewable energy sources is carried out by the Government of the Kyrgyz Republic and competent authorities; one of regulation methods is setting tariffs for energy generated in the framework of the projects involving the Kyrgyz Republic with the payback period of up to 8 years;
- Construction, purchase and operation of installations using renewable energy sources may be carried out by any legal or physical person subject to the requirements of laws and technical rules effective in the Kyrgyz Republic;
- Financing of scientific and technical researches aimed to develop and use renewable energy sources is provided from state budget funds;
- Certain preferences are granted to the producers of power and heat generated by using renewable energy sources and to the consumers of such energy;
- Tariffs for energy generated by using renewable energy sources and purchased by energy companies are established with the account of compensation of costs of energy companies purchasing it and the amount of compensation is included in the national power tariff established by energy companies;
- Import and export of equipment, installations and spare parts used to produce energy using renewable energy sources are exempt from customs fees;
- Energy generated by using renewable energy sources must be mandatorily purchased by energy companies<sup>129</sup>.

The Law provides that the activities in the area of renewable energy sources are subject to licensing in accordance with Kyrgyz law, unless the renewable energy sources are used for one's own consumption.

### **Privatization of Energy Facilities**

In 2008 - 2012, the Government of the Kyrgyz Republic made a decision to carry out privatization of the following<sup>130</sup>:

- 80.49% share in Severelectro OJSC engaged in the distribution and sale of electricity in Chui and Talas regions, and Bishkek city; State shareholdings in other regional distribution companies: Vostoelectro OJSC supplying electricity to Issykul and Naryn regions, Oshelectro OJSC supplying electricity to Osh and Batken regions, and Jalalabatelectro supplying electricity to Jalalabat region;
- Institutions subordinate to the Ministry of Energy of the Kyrgyz Republic including Kyrgyz Energy R&D Centre "Energya" and Kyrgyz Engineering & Research Institute "Energoproject";
- Property complex of CHPP 1 of Bishkek City (subdivision of Elektricheskii Stantsii OJSC), producing heat and hot water in Bishkek City;
- 80.49% share in Bishkekteploset OJSC engaged in transportation and sale of heat and hot water in Bishkek City;

In 2008, the Government of the Kyrgyz Republic has considered 3 forms of privatization:

- Transfer in trust of 80.49% share in Severelectro OJSC and Bishkekteploset OJSC (without title transfer to the trustee) on a competitive basis for a term of 5 years;

<sup>129</sup> Under the Law of the Kyrgyz Republic "On Renewable Energy Sources" dated 31st December, 2008, if energy companies fail to observe this requirement, they shall compensate renewable energy companies for lost profit.

<sup>130</sup> Resolution No. 84 of the Government of the Kyrgyz Republic dated 14th March, 2008, State Property Privatization Program for 2008-2012 approved by Government Resolution No. 518 of 17th September, 2008 (as last amended 29th July, 2011).

- Transfer of 80.49% share in Severelectro OJSC and Bishkekteploset OJSC, property complex of CHPP 1 of Bishkek City to investor as concession for a term of 5 to 50 years;
- Sale of 80.49% share in Severelectro OJSC and Bishkekteploset OJSC, property complex of CHPP 1 of Bishkek City.

It should be noted that as of November 2011, all of the above Kyrgyz energy companies remain un-privatized.

## 19.2 Mineral resources

Within the territory of the Kyrgyz Republic deposits of various mineral resources have been discovered and explored. The country has a substantial amount of mineral resources. Among its leading minerals are gold, mercury, antimony, rare earths, tin, wolfram, coal, non-metallic minerals and underground waters. It is anticipated to produce iron, titanium, vanadium, aluminium, copper, molybdenum and beryllium. There is a possibility of the industrial production of tantalum, niobates, cobalt, zirconium, lithium and stones<sup>131</sup>.

### State Regulation

The State Agency for Geology and Mineral Resources under the Government of the Kyrgyz Republic and the Ministry of Economy of the Kyrgyz Republic are the authorized public agencies responsible for government regulation in the area of subsoil use.

The Ministry of Economy of the Kyrgyz Republic is responsible for developing public policy on the management of Kyrgyz mineral resources and forecasting the development of the mining industry<sup>132</sup>.

The State Agency for Geology and Mineral Resources under the Government of the Kyrgyz Republic is the legal successor to the Ministry of Natural Resources of the Kyrgyz Republic<sup>133</sup> and is the authorized public agency in the area of subsoil use and mining industry development. The said agency is responsible for implementing public policy on development and use of subsoil, suspending and cancelling mineral licenses, protecting subsoil and other subsoil use functions<sup>134</sup>.

The issues related to the state supervision for environmental, industrial and technical safety are handled by the State Inspectorate for Environmental and Technical Safety under the Government of the Kyrgyz Republic. The functions of this agency also include state control over compliance with environmental and industrial safety standards applicable to the mining industry.

Apart from the above state bodies, the local state administration and local self-government bodies are endowed with a number of mineral resources functions and powers. They include allocation of land allotments and temporary land use rights, ensuring free access for licensees to license areas, participation in work of a tender or auction commissions, arrangement of public environmental expert appraisal of mining projects, working with local communities to prevent illegal interference in the activities of mineral right holders.

Besides, the local state administrations are empowered to register and regulate individual artisan miners.

<sup>131</sup> <http://www.geo.gov.kg/index.php/ru/deposits>

<sup>132</sup> Government Resolution No. 762 of 30th December, 2011, Government Resolution No. 12 of 12th January, 2012.

<sup>133</sup> Government Resolution No. 762 of 30th December, 2011.

<sup>134</sup> The Regulation on the State Agency for Geology and Mineral Resources under the Government of the Kyrgyz Republic approved by Resolution No. 127 of the Government of the Kyrgyz Republic dated 20th February 2012.

## Types of Subsoil Use

The right to use subsoil arises under the license, the concession agreement, the production sharing agreement and the state registration.

### License

In most cases; rights to use subsoil are granted to the subsoil users on the basis of a license issuance. The State Agency for Geology and Mineral Resources issues licenses subject to the procedure and on conditions set forth in the Law of the Kyrgyz Republic “On Subsoil”<sup>135</sup>, adopted in accordance with its laws on specific mineral resources, such as coal, oil, and gas<sup>136</sup>, and Regulations on the Procedure for Subsoil Use Licensing<sup>137</sup>.

The Law of the Kyrgyz Republic “On Subsoil” provides for types of subsoil use and procedure for license issuance, rights and responsibilities of subsoil users, powers of public authorities, types of tax payments for subsoil use, and other issues.

A license may be issued to an individual or legal entity of the Kyrgyz Republic or another country by tenders, auctions or direct negotiations. The number of mineral licenses issued to a subsoil user is not limited<sup>138</sup>. Tenders are conducted for the nationally significant deposits. Auctions are held for deposits, occurrences, prospective areas, the list of which is established by the State Agency for Geology and Mineral Resources; for the rest, licenses are awarded by holding direct negotiations, including by declaring two auctions invalid<sup>139</sup>.

There exist the following types of licenses for subsoil use:

- License to use subsoil with the purposes of geological prospecting
- License to use subsoil with the purposes of geological exploration
- License to use subsoil with the purpose of development of mineral resource deposits
- License for subsoil use not related to geological exploration or development of mineral resource

**A license for geological prospecting of subsoil** gives its holder an exclusive right to carry out geological prospecting for certain mineral resources within the boundaries of the license area for up to 5 years. Upon expiration of the license term the licensee is entitled to its extension as provided by an engineering design. The licensee has an exclusive right to transformation of the held license into a license for geological exploration in respect of an occurrence or deposit.

*The maximum size of the license area for geological prospecting is not limited*<sup>140</sup>.

**A license for geological exploration of subsoil** gives its holder the prerogative right to carry out geological exploration for certain mineral resources within the boundaries of the license territory for up to 10 years. Upon expiration of the license term the licensee is entitled to its extension as provided by an engineering design. The licensee has an exclusive right to transformation of the held license into a license for development of an explored mineral deposit<sup>141</sup>.

<sup>135</sup> The Law of the Kyrgyz Republic “On Subsoil” dated 2nd July 1997 (with the latest amendments as of 28th October, 2011).

<sup>136</sup> The Law of the Kyrgyz Republic “On Coal” dated 3rd February 1999 (with the latest amendments as of 18th June, 2005), Law of the Kyrgyz Republic “On Oil and Gas” dated 8th June 1998 (with the latest amendments as of 9th March, 2004).

<sup>137</sup> The Regulation on the procedure of subsoil use licensing approved by Resolution No. 336 of the Government of the Kyrgyz Republic dated 15th August, 2007 (as last amended 9th October, 2009).

<sup>138</sup> Article 30.2 of the Law of the Kyrgyz Republic, “On Subsoil” dated 9th August 2012.

<sup>139</sup> Article 23 of the Law of the Kyrgyz Republic “On Subsoil” dated 9th August 2012.

<sup>140</sup> Article 33.2 of the Law of the Kyrgyz Republic “On Subsoil” dated 9th August 2012.

<sup>141</sup> Article 34 of the Law of the Kyrgyz Republic “On Subsoil” dated 9th August 2012.

**The holder of a license for mineral deposit mining** within the mining allotment has the prerogative right to carry out geological exploration, mine and process mineral stock, utilize mining and production waste products, refine, sale and export all mineral resources mined and all products of mineral stock processing. The license is issued for a period up to 20 years and may be extended till depletion of the mineral resources.

**A License for subsoil use** not related to geological exploration and development of mineral deposits is awarded for the purposes of underground storage facilities for oil, gas, and radioactive substances, underground warehouses, structures and other facilities. The term of the license is stated in an engineering design which can be extended for the same term as provided by an adjusted engineering design.

### **Concession**<sup>142</sup>

Rights of subsoil use may be granted on the basis of a concession. Procedure and conditions on which a concession is granted and a concession agreement is concluded are provided by the Law “On Concessions and Concession Enterprises in the Kyrgyz Republic”<sup>143</sup>, the Civil Code, and the Law of the Kyrgyz Republic “On Investments in the Kyrgyz Republic”.

A concession is granted on a tender basis. A list of objects offered for concession, as well as the tender procedure, shall be prepared by authorized agencies according to the scope of their respective powers and approved by the Government of the Kyrgyz Republic<sup>144</sup>.

A concession agreement is concluded between the Government of the Kyrgyz Republic or another authorized or specially established body, and the concessionary. A foreign national, an individual, a legal entity, or a joint venture registered subject to legislation of the Kyrgyz Republic, may act as a concessionary. A concession agreement may be concluded for a term of 5 to 50 years and may be prolonged with consent of the parties. The agreement must contain provisions on its parties, concession object, types, conditions, amounts and procedures of payments, minimal capital investment amounts, quotas on volume of production, environment protection provisions, legal facts occurrence of which may entail amendment of the Agreement provisions upon demand of its party, terms of the Agreement, and other provisions as set forth in the Law of the Kyrgyz Republic “On Concessions and Concession Enterprises in the Kyrgyz Republic”.

According to the Law of the Kyrgyz Republic “On Concessions and Concession Enterprises in the Kyrgyz Republic”, all guarantees provided by investment legislation apply to a concessionary, while disputes between a concessionary and concession authorities are subject to settlement by courts of the Kyrgyz Republic or, with consent of the parties, by international arbitration.

### **Production Sharing Agreement**<sup>145</sup>

According to the Law of the Kyrgyz Republic “On Production Sharing Agreements in Subsoil Use”<sup>146</sup>,

<sup>142</sup> For the purposes of making the effective legislation consistent with the Law on Subsoil, the Ministry of Economy has developed the draft of the Law on Concessions.

<sup>143</sup> The Law of the Kyrgyz Republic “On Concessions and Concession Enterprises in the Kyrgyz Republic” dated 6th March, 1992 (with the latest amendments as of 17th October, 2008).

<sup>144</sup> The Law of the Kyrgyz Republic “On Foreign Investments in the Republic of Kyrgyzstan” dated 28th June, 1991 (the Law was repealed according to the Law No. 66 of the Kyrgyz Republic of 24th September, 1997, with the exception of Part 1, Article 20, and Article 23) and Law of the Kyrgyz Republic “On Investments in the Kyrgyz Republic” dated 27th March, 2003 (with the latest amendments as of 22nd October, 2009).

<sup>145</sup> To make the effective legislation consistent with the Law on Subsoil, the Ministry of Economy has developed the draft Law on Production Sharing Agreements

<sup>146</sup> The Law of the Kyrgyz Republic “On Production Sharing Agreements in Subsoil Use” dated 10th April, 2002.

the Kyrgyz Republic, based on a production sharing agreement, may for a fee provide to an investor using subsoil the prerogative right to search, explore and mine mineral resource deposits and perform related works within an established time, while the investor using subsoil, in their turn, must undertake performance of these works at their own expense and their own risk. The respective agreement shall contain all necessary conditions related to subsoil use, including those on processing of raw minerals, procedures and conditions of production sharing between the parties in accordance with the Law of the Kyrgyz Republic “On Production Sharing in Subsoil Use”.

The Government of the Kyrgyz Republic or an agency authorized by it concludes the agreement on behalf of the Kyrgyz Republic. An investor using subsoil may be a Kyrgyz or foreign individual or legal entity. The Law provides that an investor having no status of a legal entity and represented by an association of legal entities may also act as an agreement party<sup>147</sup>. Agreements to which a foreign individual or legal entity is a party are subject to ratification by the Jogorku Kenesh of the Kyrgyz Republic.

A production sharing agreement is concluded on the basis of tender or auction results. In individual cases upon the decision of the Government of the Kyrgyz Republic an agreement may be concluded in the absence of a tender or auction. Tenders and auctions are held by the public agency authorized by the Government of the Kyrgyz Republic subject to the procedures established by the Government of the Kyrgyz Republic.

Based on a signed production sharing agreement, a license to use subsoil shall be issued to the subsoil user to prove the subsoil user’s right to use the respective subsoil portion. The license is issued for an established term, may be extended or re-issued, or may lose effect subject to the agreement provisions. The agreement is concluded for a fixed term with the consent of the parties; the term may not exceed 10 years, but may be extended for a period sufficient for completion of economically feasible development of the deposit in cases provided by law.

Conditions of the agreement remain in force for the agreement duration. An agreement may be amended with consent of the parties or upon the demand of a party in cases where material change of circumstances has taken place as provided by the Civil Code of the Kyrgyz Republic. If within duration of an agreement ratified by the Jogorku Kenesh of the Kyrgyz Republic amendments that aggravate the investor’s position under the agreement are introduced into legislation of the Kyrgyz Republic, the investor may further apply the agreement provisions as set forth prior to the amendments, with the exception of changes to requirements of work safety, subsoil protection, environment protection, and protection of public health.

Disputes between an investor and the state shall be settled subject to the agreement provisions by judicial procedure. Agreements with foreign individuals and legal entities may provide for the Kyrgyz Republic’s waiver of judicial immunity, immunity from provisional measures and execution of judgment.

### **State Registration**

State registration is required for scientific mineral researches conducted according to the approved program and for individual artisan mining. State registration of scientific mineral research is performed by the State Agency for Geology and Mineral Resources. The term established for the accomplishment of scientific research programs is the same as the term of validity of the mineral rights awarded under the state registration.

State registration of individual artisan mining is performed by local state administrations. The alluvial mineralized areas can be developed by individual artisan mining. The procedure for organizing individual artisanal mining is determined by the Regulation approved by the Government.

<sup>147</sup> Article 4 of the Law of the Kyrgyz Republic: “On Production Sharing Agreements in Subsoil Use”.

## Mining Taxes and Mandatory Fees

As a rule, the mining industry in the Kyrgyz Republic is subject to general tax regime implying the following taxes and reporting requirements for local and foreign companies operating in the Kyrgyz Republic through their permanent establishments:

- profit tax (10%);
- income tax (10%);
- VAT (general rate of 12%, for certain operations 0% or 20%);
- excise tax (varies depending on the type of excisable goods, their price or physical volume);
- sales tax (from 1% to 3%);
- income tax applicable to taxpayers engaged in extraction and sale of gold-containing ore, gold-containing concentrate, gold allow, and refined gold (from 1% to 20% depending on world prices per one troy ounce).

## Development Perspectives

In 2012-2013, it is planned to launch production at gold deposits Bosymchak (Alabuka district of Jalalabat region), Kumbel (Naryn district of Naryn region) and Nasonovskoye (Panfilov district of Chui region)<sup>148</sup>, and to expand gold production by starting up Yugozapadny and Sarytor sections of Kumtor deposit.

The State Agency for Geology and Mineral Resources plans to hold, by 2012, two auctions which will be organized and conducted according to the requirements of the new Law on Subsoil of 2012<sup>149</sup>.

## Current legislative reforms

The Kyrgyz Republic strives to create a favourable investment climate for all subsoil users as provided by the newly enacted Law on Subsoil. As part of the efforts to improve the investment climate, to optimize mineral legislation and to further develop the new Subsoil Law implementing mechanisms a number of statutory acts have been drafted.

At present, the Ministry of Economy is drafting the Mining Industry Development Strategy aimed at promoting a sustainable development of the mining industry and maximizing the mineral resources potential for the purposes of reforming the mining industry, as well as a number of draft laws on subsoil use, namely:

- The Law on Concessions;
- The Law on Mining Concession;
- The Law on Production Sharing Agreements;
- The Regulation on mineral tender process;
- The Regulation on mineral licensing process;
- The Regulation on mineral auction process;
- The Regulation on mineral license fee charging process;
- The Regulation on process of allocation of land for subsoil use purposes;
- The Government Resolution approving the above draft Regulations.

<sup>148</sup> <http://www.kyrtag.kg/?q=news/16872>. The construction of the gold refinery at Bosymchak deposit will be completed in 2012.

<sup>149</sup> <http://www.knews.kg/ru/econom/22510/>

### 19.3 Telecommunications

#### State Regulation

The Ministry of Transport and Communications of the Kyrgyz Republic is responsible for development of the public policy in the area of communications<sup>150</sup>.

The Kyrgyz State Commission for radio frequencies as an interdepartmental collegiate body coordinates activities of public agencies in the area of use of radio frequency range<sup>151</sup>. The state commission for radio frequencies is vested with the functions of adopting strategic recommendations in respect of using radio frequencies, long-term development of networks and communication systems, and conversion (release) of radio frequency range in the Kyrgyz Republic.

Besides, the National Agency for Communications of the Kyrgyz Republic regulates communications industry and has, among others, the following powers: issuance of licenses and permits to import and operate radio electronic equipment and high frequency devices, certification and recognition of certificates of telecommunication equipment, supervision of compliance with legislation and license conditions and requirements, approval of tariffs for services of monopolist operators, and assurance of proper operation of the communications industry<sup>152</sup>.

#### Licensable Activities

The following activities in the field of telecommunications are business activities subject to licensing:

- Mobile (wireless) radio communication services (GSM, TDMA/D-AMPS, IMT-MC, CDMA, WCDMA\UMTC, LTE and other);
- Stationary communication services (local and long-distance, including international);
- Telematic services (telephoto, message processing, EMS, conference calls, information services, voice dial);
- Transmission of data by using radio frequency spectre or cable devices (Internet, SMS, WAP, GPRS, EDGE, VoIP, VPN, Wi-Fi and Wi-Max Internet access);
- Use of radio frequency range<sup>153</sup>;
- Design, production, construction, instalment of networks, lines, structures, systems and devices required to provide the above services and to operate the above communication systems.

Communication services not subject to licensing are services related to organization of communication for internal and production use, i.e., internal communication networks:

- Located within the same building or in adjacent buildings
- Having service points located within the distance smaller than established by the State Agency for Communication of the Kyrgyz Republic<sup>154</sup>
- Not crossing public areas

It must be noted that by decision of the State Radio Frequencies Commission, frequencies in the range 2404 to 2483.5 MHz are provided for Wi-Fi systems throughout the territory of the Kyrgyz Republic without use of outside antennas and without licensing, with the exception of the city of Bishkek and its suburbs.

<sup>150</sup> Law of the Kyrgyz Republic "On Electric and Postal Communications" dated 2nd April, 1998 (with the latest amendments as of August 15, 2007). Jogorku Kenesh Resolution No. 1452-V of 23rd December, 2011: "On Structure of Government of Kyrgyz Republic".

<sup>151</sup> "Regulations on State Commission on radio frequencies approved by Presidential Edict No. 131"; of 24th February, 2009.

<sup>152</sup> "Regulations on State Commission on radio frequencies approved by Presidential Edict No. 124"; of 20th February, 2012.

<sup>153</sup> Such separate licenses for use of radio frequency range are not issued in practice.

<sup>154</sup> State communications agency did not determine the distance between service points yet.

## Licensing

In order to obtain or renew a license, an applicant needs to file with the State Agency for Communications of the Kyrgyz Republic an application with a set of requisite documents<sup>155</sup>.

The license is issued on the basis of the decision of the Licensing Committee of the State Agency for Communications of the Kyrgyz Republic<sup>156</sup> after preliminary review by its structural units. The decision whether to issue or refuse the license (or renew or suspend or revoke the license) must be issued within not later than 30 days from the date of filing the application and all requisite documents.

The license is issued for a specified term which must not be less than 2 years. For the time being, the license is issued for a term of 2 to 5 years.

Each activity related to telecommunications is licensed separately; however, a general license for several activities may be issued where it is technically feasible (for example, the license to provide mobile radio telecom services usually covers the right to design, produce, construct, or install necessary networks, lines, structures, systems and devices, and the right to operate such communications system). The license states the area covered by it: one territorial unit or the entire territory of the Kyrgyz Republic.

## Fees, charges and duties

The state license processing fee is 300 KGS (about 6.45 US dollars as of April 2012).

Apart from this, licensees are required to pay the following fees, charges and duties:

- Annual fee of 1% of licensee's proceeds from licensable activity charged to cover the cost of supervisory function in licensing;
- Annual fee charged to cover the cost of supervisory function in use of radio frequency range, including fee to cover the cost of maintenance, improvement and development of the public radio control system;
- Fee charged to cover the cost of issuance of compliance certificates;
- Fee charged to cover the cost of issuance of frequency acquisitions for the right to use waves and denominations of radio frequency range;
- Fee charged to cover the cost of issuance of

Licenses for some types of telecommunication services related to long distance calls and batch transmission of voice in real time (GPRS, EDGE, VoIP, VPN, EV-DO, EV-DV, HSDPA, HSUPA) are issued on condition of the licensee's obligation (reflected in the license agreement) to invest not less than 20 million KGS (about 430.1 thousand US dollars as of April 2012) in the telecommunication infrastructure of the Kyrgyz Republic within 1 year from the date of license issuance.

Those willing to obtain the right to provide cellular communication services in UMTS/WSDMA<sup>157</sup> standard must participate in the pilot tender for respective waves of radio frequency range. The tender winners are required to perform the following investment obligations:

<sup>155</sup> Chapter 36 of the Regulation on Licensing of Certain Activities (as last amended 16th February, 2012) approved by Resolution No. 260 of the Government of the Kyrgyz Republic dated 31st May, 2001.

<sup>156</sup> Regulations on Licensing Committee and procedure for issuance of licenses by the State Agency for Communications under the Government approved by Agency Director's Order No. 84-pr of 21st June, 2010.

<sup>157</sup> Government Resolution No. 588 of 15th August, 2006, Temporary Regulations on pilot tender for right to use radio frequency range waves in 3G WCDMA/UMTS standard approved by Government Resolution No. 135 of 5th April, 2011.

- 1) To pay a tender fee of KGS 50 thousand (as of April 2012, approximately USD 1.1 thousand);
- 2) To pay the starting price for allocation of radio frequency range wave which is KGS 40 million (as of April 2012, approximately USD 861 thousand);
- 3) To reimburse for the cost of conversion (release) of radio frequency range of up to KGS 200 million (as of April 2012, up to USD 4.3 million);
- 4) Within the first two years to create and start operation of network in Chui region and within 5 years expand the communications network in the entire territory of the Kyrgyz Republic;
- 5) Within the first two years to establish in 100 communications unit of state enterprise Kyrgyzpochtasy located in rural areas of the Kyrgyz Republic public access centres equipped with necessary hardware and access to the Internet;
- 6) Within the first two years to organize training and education courses for cellular communications specialists (possibly in one of the high educational institutions);
- 7) In the second year, to organize in the territory of the Kyrgyz Republic, considering the market demands, the production (construction of handsets of mobile (cellular) communication, including UMTS/WCDMA standard handsets);
- 8) Other.

In 2011, the Kyrgyz Government temporarily replaced the performance of obligations specified in paragraphs 5-8 above by the payment of a one-time fee of KGS 50 million (as of April 2012, about USD 1.1 million)<sup>158</sup>.

### Permits and consents

In addition to a license, for some activities in the area of electric communications the following permits and approvals are required.

- Permits for import of radio electronic means and high frequency devices, other technical means emitting radio frequency radiation or being sources of high frequency electromagnetic waves;
- Allocation/assignment of numeration (range of numbers, intercity and international codes);
- Allocation/assignment of denominations, radio frequency waves;
- Frequency assignment;
- Certificates of compliance for communications equipment and hardware.

### Permit for Import of Telecommunications Devices

Radio electronic devices, high frequency devices, and other technical devices producing radio frequency radiation or electromagnetic waves may be imported into the territory of the Kyrgyz Republic under the permit for import issued by the National Agency for Communications of the Kyrgyz Republic<sup>159</sup>.

However, according to the decision of the State Commission for Radio Frequencies an import permit is required for radio electronic means and high frequency devices functioning in the frequency range from 3 kHz to 3000 GHz, regardless of its power and purpose<sup>160</sup>.

Generally, the procedure for issuance of import authorization by the State Agency for Communication of the Kyrgyz Republic takes 1 to 2 days, while the authorization is valid for 1 month.

<sup>158</sup> Government Resolution No. 135 of 5th April, 2011.

<sup>159</sup> Article 22 of the Law of the Kyrgyz Republic: "On Electric and Postal Communication".

<sup>160</sup> Point 3 of the Regulation on procedure for development, production, designing, construction (installation), purchase (sale), operation in the Kyrgyz Republic and import from foreign countries of radio electronic means and high frequency devices, approved by decision of the State Commission for Radio Frequencies of the Kyrgyz Republic dated 21st October, 1997 (Minutes No. 2).

## Certification and registration of communications devices

According to the principal legislation on telecommunications, the following are subject to mandatory certification<sup>161</sup>:

- any technical equipment producing radio frequency radiation or
- high frequency electromagnetic waves

However, the Kyrgyz Government approved a conclusive list of communications equipment subject to mandatory certification<sup>162</sup>.

The State Agency for Communication of the Kyrgyz Republic carries out:

- Mandatory certification of communication devices to assure their compliance with the safety norms and electromagnetic compatibility requirements
- Voluntary certification to prove conformity of the communication means to established technical parameters

Procedure of certification, including relevant testing, takes about 15 days. Procedure of recognition of a certificate issued by a foreign country takes about 5 days. A conformity certificate issued by the State Agency for Communication of the Kyrgyz Republic is valid for 1 year.

All diplomatic and consular missions of foreign states and representative offices of international organizations operating in the territory of the Kyrgyz Republic are allowed to use without registration radio transmission devices, regardless of their radiation power, and high frequency devices with generators of not more than 0.005 kW; and household satellite television sets and high frequency devices with generators under 0.005 kW having no open radiation system<sup>163</sup>.

The Government of the Kyrgyz Republic develops a list of products subject to mandatory certification by the public authority in charge of veterinary safety, plant quarantine, epidemiological, sanitation, and environmental supervision. The list of products subject to sanitary and epidemiological examination does not include radio technical equipment<sup>164</sup>.

However, subject to the existing legislation of the Kyrgyz Republic<sup>165</sup>, the Department of State Sanitation and Epidemiological Surveillance under the Ministry of Health of the Kyrgyz Republic issues sanitation and epidemiological certificates for radio equipment required for placing and operating such equipment and its spare parts, in particular, mobile radio communication means (base stations of mobile radio communication, subscriber terminals of satellite communication), operating in 27-2400 MHz frequency range<sup>166</sup>.

A sanitation and epidemiological review takes 15 to 30 days. A sanitation and epidemiological certificate is valid for 1 year.

161 Article 9 of the Law of the Kyrgyz Republic: "On Electric and Postal Communication".

162 Resolution No. 639 of the Government of the Kyrgyz Republic dated 30th December, 2005 (as last amended 18th February, 2009).

163 The Instruction on procedure for issuance of permits for purchase, operation and import of radio electronic means and high frequency devices by diplomatic and consulate missions of foreign states and representative offices of international organizations in the Kyrgyz Republic approved by order No. 2/3 of the State Commission for Radio Frequencies of the Kyrgyz Republic dated 2nd June, 1998.

164 Resolution No. 74 of the Government of the Kyrgyz Republic dated 12th March 2007.

165 The Regulation on procedure for carrying out sanitary and epidemiology examination of the products as to their safety for human health approved by resolution No. 329 of the Government of the Kyrgyz Republic dated 6th June, 2003 (as last amended 5th March, 2008).

166 Sanitary and epidemiology rules and standards "Hygienic requirements to placement and exploitation of terrestrial movable radio communication means", approved by Resolution No. 10 of the Head State Sanitary Doctor of the Kyrgyz Republic dated 20th February, 2004.

### Use of radio frequency range

To provide services using radio frequency range (for example, cellular communications services, wireless Internet services, TV and radio broadcasting services, security alarm services) it is necessary that the State Agency for Communications of the Kyrgyz Republic assign radio frequency range denominations and waves and issue a permit for the use of the radio frequency range (frequency assignment) in accordance with the National table of allocation of radio frequencies among radio services of the Kyrgyz Republic<sup>167</sup>.

Frequency assignment is issued by decision of the Radio Frequency Resources Commission of the Kyrgyz Republic after completion of the analysis of electromagnetic compatibility and interdepartmental coordination. The decision to issue or refuse the frequency assignment (or revoke, suspend, renew, reallocate, or prolong the earlier issued frequency assignment) must be issued within 30 after the date of submitting the application and all necessary documents<sup>168</sup>. Where it is necessary to do interdepartmental coordination, radio monitoring and inclusion of frequency assignment into international registry of radio frequencies the time for review and issuance of the decision is up to 6 months.

Frequency assignment is valid for 2 years. If there is a communication license in place, the frequency assignment is issued for the effective term of the license.

For issuance of frequency assignment by the State Agency for Communications of the Kyrgyz Republic the fee is charged for the issuance and renewal of frequency assignment and annual fee to cover the cost of supervisory function in regulation and use of radio frequency range. For the time being, the Kyrgyz Government plans to increase the amount of the annual fee charged to cover the cost of supervisory function in regulation and use of radio frequency range.

The State Agency for Communications of the Kyrgyz Republic plans to post the table of free radio frequency waves on its official page in the Internet<sup>169</sup>.

### Use of numeration resource

The State Agency for Communications of the Kyrgyz Republic allocates numbers, ranges of numbers, intercity and international codes to operators according to the System and Plan of Numeration of communication networks of the Kyrgyz Republic.

The Kyrgyz Government plans to introduce the fee for using the numeration resource.

### Development Perspectives

The Kyrgyz Republic is introducing technologies to transmit satellite TV and radio broadcasts in remote settlements. Satellite TV and radio broadcasting now covers 185 settlements.<sup>170</sup>

The Kyrgyz Republic has expanded the market of international and domestic long distance call services. There are 43 companies operating in this market, of which 23 provide services on the basis of IP technologies<sup>171</sup>. However, telecom infrastructure is less developed in the regions than in big cities of

167 Regulations on allocation of radio frequency denominations for radio electronic means and high frequency devices approved by decision of the State Radio Frequency Commission of the Kyrgyz Republic of 21st October, 1997 (Minutes No. 2)

168 Regulations on the procedures for applying and registration in the International Union of Electric Communication of radio frequency assignments to radio electronic means in the Kyrgyz Republic approved by resolution of State Radio Frequency Commission of the Kyrgyz Republic of 16th December, 1998 No. 4/1.

169 [http://nas.kg/index.php?option=com\\_content&view=article&id=58&Itemid=153&lang=en](http://nas.kg/index.php?option=com_content&view=article&id=58&Itemid=153&lang=en).

170 Point 471 of the Country Development Strategy for 2009-2011 approved by Edict No. 183 of the President of the Kyrgyz Republic dated 31st March, 2009.

171 Report: of the State Agency for Communications of the Kyrgyz Republic for 2010.

the republic. To date, there are 447 settlements in the country where no fixed-line telephone services are provided, whereas local telephone services are provided by 12 telecom service providers, including Kyrgyztelecom OJSC, out of 43- 49 operators having respective licenses<sup>172</sup>.

The growth of income from telecom services is attributed to the growing number of users of mobile phone and the Internet services. The number of subscribers of fixed-line telecom services has grown by 20% if compared to 2001, while the number of subscribers of mobile phone services for the same period has increased more than 42 times as much<sup>173</sup>. The number of cellular communications subscribers covers about 85% of the entire population of the Kyrgyz Republic. The total number of mobile subscribers is 9 times more than the number of fixed-line subscribers. Meanwhile, mobile phone services are not available in 342 villages that are located in out-of-the-way places of the country<sup>174</sup>.

At present, there are 8 mobile telecom services providers in the Kyrgyz Republic holding service licenses, of which 7 operate through<sup>175</sup>: 3 providers deploying GSM 900/1800 standard, 2 providers deploying CDMA 800 standard, 2 providers deploying CDMA 450 standard and 1 provider deploying D-AMPS standard. 2 of the operating providers launched networks of 3G UMTS/WCDMA standard.

The total number of the Internet users by the end of 2010 reached half of the whole population of the country. At the moment, 65 operators provide data transmission and Internet access services<sup>176</sup>.

The Government's telecommunications policy for 2012-2014 is aimed at the formation and development of measures to improve the quality of communication services, accessibility of telecommunications services by introducing wireless subscriber access, construction of high speed transport fibre-optic main lines, modernization and digitalization of telecommunication networks and improvement of investment climate in the industry<sup>177</sup>.

Development policy prioritizes as before the efforts on the construction of a modern high-tech and competitive national data transmission network (i.e. to develop telecom infrastructure and to construct main communication lines) to ensure guaranteed and equal public access to all regions of the Kyrgyz Republic, a minimum package of telecom services, and to introduce alternative modern technologies for providing access to informational and telecommunication resources, including by<sup>178</sup>:

- Improving mechanism and legal regulation aimed at developing telecommunication services, promoting competition and improving investment climate;
- completion of construction of the main fibre-optic communication line for the purposes of increasing transit potential of the Kyrgyz Republic for organization of transportation of international traffic in directions Tajikistan – China, Uzbekistan-China and regarding transit independence of Kazakhstan;
- Completion of telephone services of non-telephone settlements;
- Development of telecom services in the rural area deploying CDMA-450 and Vi-MAX+VSAT standards;

172 Points 486 and 473: of the Country Development Strategy for 2009 – 2011 and Report of the State Agency for Communications of the Kyrgyz Republic for 2010.

173 Point 5.1.8 of the Country Development Strategy for 2007-2010 approved by Edict No. 249 of the President of the Kyrgyz Republic dated 16th May, 2009 (lost effect).

174 General information on communications industry on the Internet page of the Ministry of Transport and Communications of the Kyrgyz Republic <http://www.mtk.gov.kg>

175 Report of the State Agency for Communications of the Kyrgyz Republic for 2010

176 Ibid

177 Government Resolution No. 553 of 13th September, 2011.

178 Points 479 and 480 of the Country Development Strategy for 2009 – 2011, National Strategy "Information Communications Technologies for Development of Kyrgyz Republic" approved by President's Edict No. 54 of 10th March, 2022.

- Using local subdivisions of Kyrgyzpochtasy PE operating in the areas with underdeveloped telecom infrastructure to set up centres of public access to informational and telecom technologies enabling free access to the Internet and other information services;
- Connecting all schools of the Kyrgyz Republic to the Internet;
- Creating at rural governments a network of public information centres with access to the Internet;
- Continuing the development of public computer network (industry information systems: population register, company register, education register, transport register, immovable property register, automated systems: treasury, medicine, geology and mineral resources);
- Creating a main line communications provider at the Republican production union of radio-relay main lines of television and radio broadcasting;
- Modernizing the telecommunication network and ensuring conditions for shifting from an analogue to a digital network, including television and radio broadcasting;
- Ensuring full coverage of settlements by television and radio programs.

The Government of the Kyrgyz Republic plans to carry out privatization of:

- 51% share in the national telecom operator– Kyrgyztelecom OJSC, holding the license for fixed-line communication, data transmission and mobile communication GSM 900-1800 (without the Republican production union of radio-relay main line television and radio broadcasting, which presumably will be separated as an independent main line communications operator)<sup>179</sup>;
- 51% share in the public cellular communications operator, Kyrgyz Mobile Company, holding the license to provide mobile services in WCDMA/UMTS and GSM 1800 standards<sup>180</sup>;
- 49% share in cellular communications operator, Alfa Telecom CJSC, holding the license to provide mobile services in WCDMA/UMTS and GSM 900-1800 standards<sup>181</sup>.

At present, the draft of the new Law of the Kyrgyz Republic “On Electric Communications” is under discussion<sup>182</sup>.

## 19.4 Microfinance

The micro-financing sector in the Kyrgyz Republic is characterized by dynamic development and a diversity of participants. The first micro-financing organizations have been established with the support of international donors. Within 10 years of its development, the micro-financing sector has had considerable achievements. The Kyrgyz Republic is the first Central Asian country where specific laws on microfinance institutions and microfinance activity have been adopted.

### Microfinance Organizations

The Law of the Kyrgyz Republic “On Microfinance Organizations”<sup>183</sup> provides for the following 3 forms of microfinance organizations that may operate in the Kyrgyz Republic:

- Micro-crediting agency – a non-profit organization that may engage in micro-crediting operations
- Micro-crediting company – a for-profit organization that may engage in micro-crediting operations and has the right to purchase and sell debt and perform financial leasing operations

179 Government Resolution No. 143 of 22nd February, 2012, Concept of Reorganization, Denationalization and Privatization of Communications Industry of the Kyrgyz Republic adopted by Government Resolution No. 220 of 25th April, 1998.

180 Government Resolution No. 143 of 22nd February, 2012.

181 Jogorku Kenesh Resolution No. 941-V of 8th July, 2011.

182 Draft law on the Internet page of the State Agency for Communications of the Kyrgyz Republic [http://nas.kg/index.php?option=com\\_content&view=article&id=61&Itemid=156&lang=en](http://nas.kg/index.php?option=com_content&view=article&id=61&Itemid=156&lang=en)

183 The Law of the Kyrgyz Republic “On Microfinance Organizations in the Kyrgyz Republic” dated 23rd July, 2002 (with the latest amendments as of 27th March, 2009).

- Microfinance company – a for-profit organization that may engage in micro-crediting operations and is duly authorized to accept fixed-term deposits from individuals and legal entities

Microfinance companies may not accept deposits for the first 2 years after acquiring a license, with the exception of:

- Companies that have been accepting deposits and issuing credits for two years prior to the effective date of the Law of the Kyrgyz Republic “On Microfinance Organizations”
- Credit unions that have had the right to accept deposits and issue credits subject to the Law of the Kyrgyz Republic “On Credit Unions”<sup>184</sup>
- Micro-crediting companies or micro-crediting agencies that have been operating for 2 years on the basis of a certificate issued by the National Bank of the Kyrgyz Republic, and meet qualification requirements and other licensing requirements of the National Bank of the Kyrgyz Republic

As of 30th September, 2011, there are 4 microfinance companies, 317 microcredit companies, 111 microcredit agencies, 198 credit unions, 12 credit unions eligible to take deposits for their members and 1 specialized financial crediting institution operating in the Kyrgyz Republic<sup>185</sup>.

### **Development Perspectives**

Commercial banks or their subsidiary microfinance organizations can also contribute to the development of micro-crediting market and promote broader access of the public to the new types of financial services.

Commercial banks can consider creating subsidiary microfinance organizations as one of the methods to reduce costs of micro-crediting and related reserve expenses.

In the perspective, overall banking growth will be, perhaps, connected with the creation of rural banks on the basis of credit unions given their qualitative growth and with the conversion of microfinance institutions into commercial banks<sup>186</sup>.

The Government of the Kyrgyz Republic plans to carry out in 2008-2012 privatization of a state shareholding in Entrepreneurship Development Fund Micro-crediting Company OJSC<sup>187</sup>.

<sup>184</sup> The Law of the Kyrgyz Republic “On Credit Unions” dated 28th October, 1999.

<sup>185</sup> <http://www.nbkr.kg>

<sup>186</sup> [http://www.nbkr.kg/web/interfeis.builder\\_frame?language=RUS](http://www.nbkr.kg/web/interfeis.builder_frame?language=RUS)

<sup>187</sup> State Property Privatization Program for 2008-2012, approved by Resolution No. 518 of the Government of the Kyrgyz Republic dated 17th September, 2008 (as last amended 29th July, 2011).

## CONCLUSION

This information guide attempts to address as fully as possible the issues faced by investors who wish to establish and conduct business in the Kyrgyz Republic. Nevertheless, we understand that it may not answer all your questions, as business and its regulation have multiple aspects. Moreover, any specific business situation involves a variety of questions, the answers to which can be found not only in specific law provisions, but also in the practice of their application.

However, we hope that the guide will suffice as a starting point for understanding business conduct in the Kyrgyz Republic better, and will help entrepreneurs and companies planning or conducting business in the Kyrgyz Republic to make their business more efficient.

Any comments on this guide would be greatly appreciated and should be e-mailed to: **lawyer@k-a.kg** (marked "Guide to Business in the Kyrgyz Republic").

## INFORMATION ABOUT KALIKOVA & ASSOCIATES

### About Us

Established in 2002, Kalikova & Associates Law Firm (K&A) has rapidly grown into one of the leading firms 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, financing from international financial institutions, telecommunications and the recreation business.

According to 'Chambers Global', the International Law Firms directory, K&A is "a very popular choice as local counsel for international law firms with no local presence in Kyrgyzstan." According to K&A clientele feedbacks collected through interviews with clients by Chambers Global 2012 (<http://www.chambersandpartners.com/Global>) and Chambers Asia 2012 (<http://www.chambersandpartners.com/Asia>), K&A lawyers are "very thorough in their research and timely in their feedback," "knowledgeable not only in terms of the local laws and legislation, but also about political tendencies and local relationship issues we might face." Some clients admit that they "can easily recommend this firm," and others assess that "they are very happy with the lawyers - they are very hands-on and do their best to give you clarity."

### 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;
- Intellectual property;
- Contracts;
- Corporate issues and capital market;
- International trade, customs issues and technical regulation;

- Taxation;
- Product liability;
- Environmental protection and safety;
- Mergers and acquisitions, structuring, and business reorganization;
- Project financing, public private partnership;
- Legal representation and arbitration;
- Labour and migration issues.

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

- Aviation;
- Banking, microfinance and insurance;
- Hotel and recreation business;
- IT and telecommunications;
- Local and international non-government organizations;
- Real estate and construction;
- Educational services;
- Exploration and development of mineral resources;
- Mass media;
- Tobacco and alcohol industry;
- Mass consumption goods;
- Pharmaceuticals and cosmetic products;
- Energy, oil and gas.

### **Clients**

Clients and beneficiaries of our services are leading local and foreign companies, transnational corporations, international organizations and financial institutions implementing long-term and short-term projects in Kyrgyzstan.

### **Experience and Qualification**

Our lawyers have played an active role in negotiating, structuring and launching major investment projects in Kyrgyzstan in gold mining industry, manufacture of tobacco products, hotel business, glass and cement production, trade, banking, microfinance, telecommunications, exploration and mining, aircraft leasing, electric energy generation and distribution and a number of other industries.

### **Professional Team**

Currently, there are 20 lawyers in our firm, educated both in Kyrgyzstan and abroad. Our lawyers are members of the Association of Lawyers of Kyrgyzstan, American Bar Association, International Bar Association, arbitrators of the International Court of Arbitration of the Kyrgyz Republic. Our team includes licensed litigation lawyers and patent attorneys.

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