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BRIEF ANALYSIS

The current political and legal situation in the Kyrgyz Republic and its influence for civil society and business

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Introduction

This document is intended for a wide range of stakeholders and is a political and legal analysis of the current situation in the Kyrgyz Republic (KR), the most important events since the mass protests that began on October 5, 2020, against the preliminary results of the parliamentary elections in the Kyrgyz Republic. Since then, events in the Kyrgyz Republic have been proceeding very quickly and chaotically. Therefore, this document aims to examine the ongoing processes from the point of view of political and legal analysis. It should be noted that this period coincided with the COVID-19 pandemic, and an emergency regime is in force in the country. No large-scale political analysis and research on these events have been carried out, and therefore the analysis is based on the legal component and the compliance of these events with the norms of the Constitution and the legislation of the Kyrgyz Republic. Also, the analysis is focused on the impact of the current political and legal situation on the civil and business community, as the most significant state institutions and sources of economic and social development of society.

It should be noted that the Community of Lawyers "TANDEM" tried to make this document as concise as possible for ease of perception, but at the same time not to lose its meaningfulness, focusing on raising individual legal issues and developing positions that require special attention to the search for and make a decision on them.

The analytical document contains the most pressing issues that are raised by society, experts, lawyers: constitutional reform and its stages of implementation, including the process of large-scale inventory, the legitimacy of the parliament of the Kyrgyz Republic, the initiative of new bills in various fields, as well as the problems of civil society and business, etc.

The Community of Lawyers "TANDEM" hopes that the presented analytical work will help decision-makers and experts, lawyers, representatives of civil society and business in their professional activities and assist in making informed and thoughtful decisions.

Part 1. The current socio-political situation in the Kyrgyz Republic

1.1. Functioning of government institutions from October 2020 to the present day.

On October 5, 2020, a rally began in the Kyrgyz Republic against the preliminary results of the elections to the Jogorku Kenesh of the Kyrgyz Republic, on October 15, 2020, protests led to the resignation of the President of the Kyrgyz Republic S. Jeenbekov, which marked the beginning of the process of a change of power in the Kyrgyz Republic and the form of government.

After the cancellation of the results of the elections to the Jogorku Kenesh of the Kyrgyz Republic of October 4, 2020, the functioning of the Jogorku Kenesh of the Kyrgyz Republic of the previous VI convocation has been extended. The passing of several laws concerning the electoral system and the "extension" of their own (current parliament's) powers, raised the question among the experts and the civil community about the legitimacy of the parliament and the laws it produced during this period.

Extraordinary elections of the President of the Kyrgyz Republic were held on January 10, 2021, on the same day a constitutional referendum was held, where 40% of voters took part. As a result, 84% of the voters who took part voted for the presidential form of government. On January 28, 2021, the inauguration ceremony of the President of the Kyrgyz Republic S. Japarov took place.

On November 17, 2020, the first draft of the Constitution with 61 amendments was proposed, then on November 20, 2020, by decree of the Acting President of the Kyrgyz Republic, a constitutional meeting was created, which again began to prepare a new draft Constitution in the direction of the presidential form of government. After the inauguration of the President of the Kyrgyz Republic, the constitutional reform initiated by the country's parliament and the activities of the constitutional meeting took a more accelerated pace. The Law of the Kyrgyz Republic of March 12, 2021, No. 31 "On the appointment of a referendum (nationwide vote) on the draft Law of the Kyrgyz Republic "On the Constitution of the Kyrgyz Republic" was prepared and passed. At the same time, criticism from civil society persisted about the lack of transparency in the process of preparing the draft of the new Constitution and insufficient consultations with experts and civil society.

On April 11, 2021, a referendum was held, where more than 37% of voters took part. As a result, more than 79% of the voters who took part voted for the new Constitution. On May 5, 2021, the Law of the Kyrgyz Republic No. 59 "On the Constitution of the Kyrgyz Republic" (hereinafter referred to as the Law on the Constitution), adopted at a referendum, entered into force. According to article 8 of the "transitional provision" of the law on the Constitution, the Jogorku Kenesh of the Kyrgyz Republic and the Cabinet of Ministers of the Kyrgyz Republic, within six months, must take the necessary measures arising from the Constitution, including bringing existing laws and their decisions into line with the Constitution.

Furthermore, under Art. 4 "transitional provisions" of the law on the Constitution, prior to the formation of the composition of the Cabinet of Ministers in accordance with the new Constitution, by the Decree of the President of the Kyrgyz Republic No. 114 dated 05.05.2021 the Cabinet of

Ministers of the Kyrgyz Republic was temporarily formed, which will be finally formed after the adoption of the Constitutional Law "On the Cabinet of Ministers of the Kyrgyz Republic".

On a positive note, Article 5 of the "transitional provision" of the Constitutional Law ensures the stability of the judicial system: all judges retain their powers for the term of election/appointment. Nevertheless, the adoption of appropriate amendments to the laws concerning the judiciary is required to bring them into line with the Constitution of the Kyrgyz Republic. In this area, the corresponding work was carried out by the Administration of the President of the Kyrgyz Republic, drafts of 5 laws of the Kyrgyz Republic were prepared: constitutional laws "On the Constitutional Court of the Kyrgyz Republic", "On the Supreme Court of the Kyrgyz Republic and Local Courts", "On the Status of Judges of the Kyrgyz Republic", "On the Council for Justice of the Kyrgyz Republic" and the Law "On Judicial Self-Government Bodies".

At the same time, on June 27, 2021, the term of office of the CEC (Central Election Commission) of the Kyrgyz Republic expires. In view of the fact that the JK KR, despite the expiration of its terms of office, has not yet terminated its powers, the country is faced with a legal dilemma - which should come first: The JK KR (whose powers could be challenged) is formed by the CEC, or the CEC (whose powers will expire at the time of the elections) must hold elections to the JK KR. At the same time, it seems that any solution to this dilemma will be vulnerable from a legal point of view and may raise doubts about the legitimacy of the subsequent process.

The repeated elections of deputies of the Jogorku Kenesh, appointed by the CEC of the Kyrgyz Republic for December 20, 2020, did not take place due to the adoption of the Constitutional Law of October 22, 2020, No. 1 "On the suspension of the operation of certain norms of the constitutional Law of the Kyrgyz Republic" On the elections of the President of the Kyrgyz Republic and deputies of the Jogorku Kenesh Kyrgyz Republic". **According to Article 2 of this law, repeated elections or new elections of deputies of the Jogorku Kenesh of the Kyrgyz Republic were to be announced no later than June 1, 2021.**

Quite likely, referring to the provisions of Article 8 of the "transitional provision" of the Constitutional Law, where it is written that: "to The Jogorku Kenesh and the Cabinet of Ministers, within six months, to take the necessary measures arising from the Constitution, including bringing the laws in force and their decisions in line with the Constitution", **The JK KR can use this provision for the "next extension" of its powers. At the same time, such a position will be challenged legally, since the voters did not vote in the referendum for the extension of the parliament's powers.**

Legal uncertainty continues to affect the effectiveness of government institutions. According to part 2 of article 3 of the "transitional provision" of the law on the Constitution "until the election of elected bodies and the appointment of officials at all levels in accordance with the Constitution, elected and appointed state bodies, and officials continue to exercise their powers until their election, formation or appointment". Government officials (executive branch) prefer not to take responsibility, deal with "day-to-day" issues and do not show initiative. There is weak executive discipline due to the understanding of instability and uncertainty in retaining office after the formation of key government agencies in accordance with laws adopted in accordance with the Constitution. Unscrupulous government officials can use this circumstance for corrupt actions.

In addition, if, according to clause 2 of Article 89 of the Constitution of the Kyrgyz Republic, "the Chairman of the Cabinet of Ministers is simultaneously the head of the Presidential Administration", it is unclear in this connection, at present, these powers are exercised by different persons.

Thus, today there are the following legal issues concerning the institutions of state power:

- **The legitimate authorities are the President and the judiciary.**
- **The legitimacy and scope of powers of the sixth convocation of the Jogorku Kenesh of the Kyrgyz Republic are questionable. Strategic decisions should not be made at the stage of prorogation.**
- **There is uncertainty about the powers of the “temporarily” formed Cabinet of Ministers.**
- **The CEC is also in a state of “expiration of its term of office”.**

1.2. Large-scale inventory of regulatory legal acts in the Kyrgyz Republic: challenges and risks

On February 8, 2021, the Decree of the President of the Kyrgyz Republic "On Inventory of the Legislation of the Kyrgyz Republic" PD (presidential decree) No. 26 was adopted, according to which the Government of the Kyrgyz Republic was recommended to form an interdepartmental expert group under the Ministry of Justice of the Kyrgyz Republic by December 31, 2021. It should conduct a complete inventory of the adopted concepts, strategies, programs, and laws of the Kyrgyz Republic by branches of law for compliance with the Constitution, principles of social justice and partnership, necessity, expediency and efficiency, the sufficiency of regulation of the subject, elimination of internal contradictions and conflicts, gaps in the law, the results of which to make proposals aimed at eliminating the identified inconsistencies.

At the same time, since the adoption of the Decree, a new Constitution of the Kyrgyz Republic of May 5, 2021, was adopted, so the task was updated since it will be necessary to conduct an inventory for compliance with the new Constitution of the Kyrgyz Republic.

The Ministry of Justice has developed a new version of the draft law “On regulatory legal acts of the Kyrgyz Republic”, which has passed public discussion with the involvement of experts. The first version of the draft law had significant risks; the Community of Lawyers sent more than 40 recommendations to the draft law. At the moment, the draft law has been again submitted for public discussion on June 3, 2021, and is being studied by the Community of Lawyers.

After harsh criticism of the civil and expert community, the Ministry of Justice decided to abandon the "guillotine" principle in the inventory of the legislative framework in the Kyrgyz Republic, as reported on May 26, 2021, by the Minister of Justice of the Kyrgyz Republic A. Chynbayeva.

It should be noted that carrying out a complete inventory of the adopted concepts, strategies, programs, and laws of the Kyrgyz Republic by a branch of law is a very difficult task. By order of the Ministry of Justice of the Kyrgyz Republic dated April 15, 2021, No. 57, the **methodology for conducting an inventory** of the legislation of the Kyrgyz Republic was approved, according to which the assessment of laws will be carried out according to 5 criteria:

1. Legality, unity of the subject of regulation, legal certainty, and consistency
2. Relevance, necessity, and validity
3. Openness and predictability
4. Enforceability and Obligation
5. Taking into account the interests of the business

For each of the specified criteria, a maximum score of 20 points can be given, in total, the final maximum score is 100 points. At the same time, the methodology developed by the Ministry of Justice of the Kyrgyz Republic is rather confusing and seems to be ineffective, the proposed methodology is applicable only for analyzing legislation in the field of entrepreneurship and individual sectors of the economy. The point system is ill-conceived, the range of possible assessments ranges from 1.5 to 5, and at the same time there are no clear criteria for giving a particular assessment, some criteria are identical to the requirements of the examination carried out when considering draft regulations.

For example, the methodology proposes the use of such a criterion as anti-corruption expertise. Taking into account that when approving a draft normative legal act, an examination by the Ministry of Justice of the Kyrgyz Republic is already being carried out on it, the question arises regarding the advisability of its presence in the methodology. Similar questions arise for most of the assessment criteria reflected in the methodology.

Separately, the role of the Jogorku Kenesh of the Kyrgyz Republic in this process should be noted if draft laws are initiated based on the inventory results. It seems that taking into account the conclusion of the Venice Commission that “during the prorogation period, the level of legitimacy of legislative decisions is lower”, and the decision of the Constitutional Chamber of the Supreme Court that “the Jogorku Kenesh of the Kyrgyz Republic is obliged to show a high level of political responsibility to society during the prorogation period and be guided in their activities by the principle of reasonable restraint”, it seems that the participation of the Parliament of the Kyrgyz Republic of the sixth convocation in this process should be minimized as much as possible. Moreover, the work on the inventory should be completed by December 31, 2021, and by that time, the JK of the Kyrgyz Republic of the 7th convocation will already be functioning.

The Ministry of Justice of the Kyrgyz Republic is trying to ensure the transparency of the process of inventorying and preparation of legal acts in the working group headed by it, while in other groups there is the dissatisfaction of the civil society and the business ombudsman.

For example, to the working group headed by the General Prosecutor's Office of the Kyrgyz Republic, which took the initiative to prepare draft laws on criminal legislation, which is inappropriate.

In connection with the above, concerning this process, today there are the following questions:

- **Lack of a clear concept of the inventory process and shortcomings in the methodology of its implementation.**
- **An inventory of legal acts should not be carried out in a hurry; its result should be an analysis and its**

subsequent discussion with the involvement of a wide range of the public.

- Is it advisable to continue to adopt new laws and regulations on amendments and additions if new bills are being prepared in the process of an inventory of legislation?
- The JK of the KR of the 6th convocation should not adopt laws of a strategic nature, take all measures to form the 7th convocation of the JK as soon as possible.

1.3. Changes in criminal legislation towards criminalization and deviation from the course of humanization

On March 31, 2021, the Decree of the President of the Kyrgyz Republic "On the Council for Improving Judicial and Law Enforcement Activities under the President of the Kyrgyz Republic" PD No. 83 was adopted, according to which an *expert group was created to analyze the application of the Criminal Code of the Kyrgyz Republic, the Code of the Kyrgyz Republic on misconduct, the Code of the Kyrgyz Republic on violations, the Criminal Procedure Code of the Kyrgyz Republic, the Criminal Executive Code of the Kyrgyz Republic, the Civil Procedure Code of the Kyrgyz Republic, the Administrative Procedure Code of the Kyrgyz Republic, the laws of the Kyrgyz Republic "On probation", "On the basics of amnesty and the procedure for its application", "On mediation", "On the status of bailiffs and enforcement proceedings" and development of appropriate proposals for the Council.*

Such a group was created under the leadership of the General Prosecutor's Office of the Kyrgyz Republic. The specified expert working group developed drafts of the Criminal Executive Code of the Kyrgyz Republic, the Criminal Procedure Code of the Kyrgyz Republic, the Criminal Code of the Kyrgyz Republic, and the Code of the Kyrgyz Republic "On Offenses" and began to organize a procedure for public discussion of these projects. At the same time, according to the above-mentioned Decree of the President of the Kyrgyz Republic No. 83, the working group did not have the task of developing and further initiating the procedure for their adoption but was entrusted to analyze the application of specific laws and regulations and develop appropriate proposals for the Council.

At the same time, civil society criticizes both the organization of the procedure for preparing draft laws and regulations and their content. Thus, it is noted that the *General Prosecutor's Office of the Kyrgyz Republic did not provide access to the society and stakeholders (and even some members of the working group) to the draft laws and regulations. The projects posted on May 7, 2021, for public discussion on the website of the JK KR were irrelevant since at the same time work was being carried out to finalize them. The final versions of the projects appeared on the night of May 31, 2021, on the website of the General Prosecutor's Office, and on June 2, 2021, their presentation was organized to receive feedback from them. On June 8, 2021, at the initiative of civil society with the participation of the General Prosecutor's Office of the Kyrgyz Republic, a public discussion of these projects was held.* The expert community doubts the quality of the expert group and the competence of its members.

As for the content of the developed draft documents, first of all, it should be noted that there is no clear justification for the development of these draft documents in the new edition, there is no analysis of the existing codes and their shortcomings, as well as the conceptual component in general, which served as the basis for the development of draft new codes. The rationale for projects does not provide a clear answer.

According to the projects presented, the following main changes are proposed¹

- ***Misdemeanors are excluded from the Criminal Code and the institution of minor crimes is returned, respectively, the Misdemeanor Code will lose its force. Thus, the criminalization of criminal legislation is underway.***

- ***The terms of imprisonment are increasing, as well as sanctions against minors***, which may mean "dehumanization" of criminal legislation.

- ***The established system of the Unified Register of Crimes and Misdemeanors is breaking down***, which can lead to complications of statistics and accounting in this area, difficulties in carrying out system analysis and monitoring.

- Enforcement of criminal law concerning legal entities is excluded. At the same time, it should be noted that the possibility of criminal liability of legal entities as provided for in the UN Convention against Corruption, which the Kyrgyz Republic ratified by law No. 128 of August 6, 2005. As a rule, the institution of liability of legal entities within the framework of criminal law is applied to such crimes as corruption, environmental crimes, money laundering, and terrorist financing.

- ***The practices of bringing charges are returned instead of suspicion of committing a crime, initiating a criminal case, and pre-investigation verification.*** The introduction of practices of pre-investigation verification, during which there is no judicial control, the legal status of persons is not determined, therefore, is not protected by anything, has a risk of elements of corruption.

- ***The practices of the plea deal are excluded, and norms on the admission of guilt and reconciliation of the parties are introduced.*** At first glance, this initiative seems to be justified, since there has often been an abuse of the practices of "deal with the investigation", where former corrupt officials for payment of a "certain" (non-transparent way of a certain) amount, are released from liability. This fact puts danger in the principle of inevitability of punishment and has a corruption-related nature. ***At the same time, this institution is widely and successfully used in many developed countries of the world to solve crimes of dangerous organized criminal groups, and in the Kyrgyz Republic, the law enforcement practice was carried out poorly.***

- ***Changes are introduced to the institute of probation: probation supervision is extended from 5 to 10 years, while, the grounds are not clear, control by the probation authorities is significantly weakened:*** if under the current Criminal Procedure Code, a violation without good reason within 1 year may be the basis for canceling probation and referral for serving the sentence, then the proposed projects offer the violation time throughout the probation period, which, taking into account the proposed extension to 10 years, seems to negate the meaning of the probation.

- Practices of personal inspection and inspection of a vehicle, small vessels, and belongings are being introduced. At the same time, it is possible, in urgent cases, to inspect a vehicle, small vessels, belongings, hand luggage, luggage, hunting and fishing tools, obtained products, and other items in the absence of the owner. The proposed norms do not comply with Article 30 of the Constitution of the Kyrgyz Republic.

¹ A number of proposed changes to the criminal legislation of the Kyrgyz Republic are discussed in the section "Civil Society".

In this area, today there are the following legal and other issues:

- **There is no clear concept of initiating amendments to criminal, criminal procedure, and penal legislation, and systematic analysis of the existing codes has not been carried out.**
- **The draft codes prepared by the General Prosecutor's Office of the Kyrgyz Republic require careful study and wide public discussion.**
- **It is necessary to analyze the submitted projects for compliance with the obligations of the Kyrgyz Republic within the framework of the existing international treaties of the Kyrgyz Republic.**
- **It is necessary to prevent the adoption of these draft codes in a hurry since there is no objective need to speed up this process.**

Part 2. Political and legal situation and its impact on civil society in the Kyrgyz Republic.

2.1. Restrictions on the activities of civil society

Creation of prerequisites for criminal pressure: The proposed amendments to the Criminal Code in the field of countering extremist activities are proposed in accordance with the Shanghai Cooperation Organization (SCO) Convention on Countering Extremism. The Ministry of Internal Affairs of the Kyrgyz Republic proposes to supplement the article on the creation of an extremist organization with the word “political”, which, in terms of the content of the norm, will correlate with “incitement of enmity”, that is, criminal liability is provided for the creation of an organization whose activities will be aimed at inciting political enmity. If these amendments are adopted, the concept of “political enmity” can be used as a repressive tool in relation to objectionable persons who criticize the authorities, as well as for manipulation and fight with opposition individuals and organizations.

Legislative restrictions on the activities of non-profit organizations (NPO): Part 4 of Article 8 of the Constitution of the Kyrgyz Republic enshrined the requirements that “political parties, trade unions, and other public associations ensure the transparency of their financial and economic activities.”

On June 17, 2021, deputies of the Jogorku Kenesh approved the draft law on non-profit organizations in the third reading. According to the bill, a non-profit organization operating at the expense of funds provided on a gratuitous basis annually provides information on the sources of formation and directions of spending financial resources. Earlier, a bill envisaging amendments to the laws on the activities of NPOs was submitted for public discussion on December 31, 2019, and already in February 2020 was registered for parliamentary consideration. On March 4, 2020, the deputies approved it in the first reading, and on June 18, 2020, with amendments, they adopted it in the second reading.

Public discussion of the draft law on amendments and additions to the current law on NPOs was suspended by the Ministry of Justice of the Kyrgyz Republic on April 1, 2021, due to the beginning of the process of inventorying the legislation of the Kyrgyz Republic, earlier the latest version of this draft law was published on the public comment website on March 17, 2021. Further work on it is being carried out by an interdepartmental working group under the Ministry of Justice of the Kyrgyz Republic, which means that changes to the law on NPOs are expected.

The bill proposed to establish additional burdensome requirements only for a part of non-profit organizations registered as a public foundation, public association, the association of legal entities, or institutions. But the current legislation already provides for the provision of information by such organizations to the tax service, the social fund, and the statistics body about their activities, including information about the financial situation, the availability of property, expenses, the number and composition of employees, and their remuneration.

2.2. Restrictions on the Right to Hold Peaceful Assemblies

The right to peaceful assembly established by the Constitution of the Kyrgyz Republic is actively used by civil society. It is an organizer's right to give notice of a meeting. The absence of notification of the planned meeting, as well as its content, form, or deadline for submission, does not allow the organizers or participants to be held liable. The Law of the Kyrgyz Republic "On Peaceful Assemblies" provides for the conduct of spontaneous assemblies, the provision of which, including the protection of participants, the division of parallel or counter-assemblies, is entrusted to the internal affairs bodies. At the same time, law enforcement agencies do not always ensure the safety of participants in such actions. For example, during two rallies held near the Ministry of Internal Affairs on April 15, 2021 (the first against NGOs and the media, the second against violence against women "I don't want to be killed"), the internal affairs bodies did not take the necessary measures to ensure public order and safety of the participants of the second rally and other persons in the place of the meeting. The peaceful assembly was disrupted. The perpetrators are not prosecuted.

At the same time, the practice, which has been strengthened in previous years, continues to be applied by the judiciary issuing decisions prohibiting the holding of peaceful assemblies, with reference to the requirements of the law relating to non-specific assemblies, and when restrictions are imposed on the holding of any assemblies in a certain administrative territory and in a certain period of time without assessing the validity of the arguments of the applicants (internal affairs bodies or local self-government bodies). An analysis of court decisions shows that the decisions of the Internal Affairs Directorate and local self-government bodies to restrict the venue and transfer to the Gorky Park were fully satisfied by the courts.

The decision taken in February 2021 to prohibit peaceful assemblies in the center of Bishkek until April 22, 2021, did not prevent a peaceful assembly in Ala-Too Square from celebrating the day of Ak-Kalpak (March 5) during the same period, ***which testifies to the existing double standards, depending on the organizers of the peaceful assembly.***

2.3. Restriction of freedom of speech

Attempts to restrict freedom of speech, undertaken in previous years, continue. Thus, the Committee of the Jogorku Kenesh of the Kyrgyz Republic on Social Issues, Education, Science, Culture and Healthcare on May 31 formed a conciliatory group to develop an agreed version of the ***Law "On The Manipulating Information", returned with objection by ex-President S. Jeenbekov on August 3, 2020 (previously adopted by the JK Kyrgyzstan June 25, 2020).*** At the same time, there is a procedural violation, since the terms of the formation of the conciliatory group and the introduction of the agreed version have expired. According to Article 62 of the Law on the Regulations of the JK, the conciliation group was to be formed within no more than 10 working days, namely on August 14, 2020. In turn, the conciliation group, no later than 30 calendar days from the day the Jogorku Kenesh of the Kyrgyz Republic makes a decision on its creation, submits an agreed version of the law for consideration by the Jogorku Kenesh of the Kyrgyz Republic. That is, the entire process should have been completed no later than September 12, 2020.

As known, the bill provided for the powers of the authorized state body in the pre-trial order to restrict access to information that has signs of false or unreliable. In other words, in the territory of the Kyrgyz Republic, it will be possible to suspend the operation of any web portal without a court decision.

Clause 4 of Article 10 of the Constitution of the Kyrgyz Republic stipulates that “in order to protect the younger generation, events that are contrary to moral and ethical values, the public consciousness of the people of the Kyrgyz Republic, may be limited by law”. At the same time, the list of activities subject to restriction and the list of restricted access and dissemination of information will be established by law. ***In this context, the civil community raises concerns about the possible introduction of censorship, despite the fact that the provisions of paragraph 2 of this article 10 of the Constitution of the Kyrgyz Republic provide that “censorship is not allowed in the Kyrgyz Republic”. Also, if the law is adopted, there are risks of possible abuse by competent state bodies on formal grounds.***

Legal issues in this area:

- **It is necessary to strictly follow the legislative procedure concerning the law "On the manipulation of information", which was previously violated.**
- **Draft laws developed for the implementation of Article 10 of the Constitution of the Kyrgyz Republic must comply with the existing international standards recognized by the Kyrgyz Republic.**
- **The draft law "on the manipulation of information" has no validity and relevance for adoption.**

2.4. Law enforcement and the judiciary as a punitive body

There is abuse by law enforcement agencies, reflected in the restriction of civil rights and human freedoms. So, in recent years, the practice has taken root when law enforcement agencies summon Internet users for questioning for their statements on social networks. At the same time, not only civil activists who are active in the media space and social networks are summoned for interrogation, but also ordinary citizens. There are even cases of summoning for interrogation of a citizen who has reached 72 years of age.

Meanwhile, the decisions are taken by law enforcement agencies in high-profile cases (for example, in the case of R. Matraimov, to whom no preventive measures have been taken in accordance with the incriminated norms of criminal law), indicate double standards and undermine the implementation of the principle of inevitability of punishment and pluralism of opinions.

In the field of civil society, the main legal issues are:

- **Return of the JK KR to the consideration of draft laws restricting the rights of civil society, violating the norms of international law and procedures established by law.**
- **The practice of intimidating civil activists by law enforcement agencies, which undermines the democratic values of the rule of law.**
- **The proposed norms of "dehumanization" in the criminal legislation of the Kyrgyz Republic by the General Prosecutor's Office of the Kyrgyz Republic entail restricting the activities of civil society and the media.**

Part 3. Political and legal situation and its impact on business in the Kyrgyz Republic.

3.1. Threats to business security and private property

On May 6, 2021, the Jogorku Kenesh of the Kyrgyz Republic simultaneously in three readings adopted the **Law of the Kyrgyz Republic "On Amendments to Certain Legislative Acts in the Sphere of Corporate Governance"** (to the Law of the Kyrgyz Republic "On Joint Stock Companies", the Criminal Code of the Kyrgyz Republic), which provides for the introduction of temporary external management for companies operating in the format of concession agreements. Despite the fact that this law was adopted, as noted by its initiators concerning only one specific investor, the consequences of its adoption have an overall impact on the investment attractiveness of the Kyrgyz Republic, and also indicate the unpredictability of state policy in the field of investment. Taking into account that the mining industry is the locomotive of the Kyrgyz economy, there are risks concerning the potential foreign investors in the development of deposits in the Kyrgyz Republic. The law poses a serious threat to the investor in relation to his property and conflicts with the provisions of the **Law "On Investments in the Kyrgyz Republic" dated March 27, 2003 N66 regarding guarantees of protection against expropriation of**

investments. Questions arise regarding the compliance of the law with the provisions of Article 15 of the Constitution on the protection and inviolability of property.

Lately, there have been threats against the property of mining companies at the Jerui, Metal-Ken, and Terek-Sai deposits (whose property was destroyed and burned). To date, it is not known about the prosecution of the perpetrators and the restoration of damage.

Continued pressure from regulatory and law enforcement agencies also creates obstacles to the activities of the business community. We are talking about cases related to the activities of more than 100 medium and large entrepreneurs of the country, in respect of whom criminal cases have been opened since October 2020, for example, Gergert Sport, the Speculator chain of stores, tax evasion Chaikhana Navat and Beeline, etc.

At the same time, in the field of protecting the rights of investors from illegal inspections, there are resolutions of the Government of the Kyrgyz Republic "On the introduction of a temporary ban (moratorium) on inspections of business entities" dated December 17, 2018, No. 586 and "On the introduction of a ban on inspections of business entities carried out by law enforcement agencies" dated December 11, 2020, No. 602, as well as the Decree of the President of the Kyrgyz Republic "On additional measures to protect business entities" adopted on March 4, 2021, UP No. 61.

In this area, the following legal issues arise:

- **The need to comply with the procedures for adopting the Law "On Amendments to Certain Legislative Acts in the Sphere of Corporate Governance" (holding public discussions, specialized types of expertise, and regulatory impact analysis), since it is aimed at regulating entrepreneurial activities.**
- **Conflict of the norms of the above law with the provisions of investment legislation on state investment guarantees.**
- **Bringing to justice those involved in the violation of property rights of foreign investors and in causing harm.**
- **Bringing to account the employees of law enforcement and regulatory bodies carrying out or permitting unreasonable inspections of business entities.**

3.2. Unfair investors as part of the corruption system of the Kyrgyz Republic

The current situation with the Kumtor project must be considered from two points of view: from the side of the investor and the side of the state. From the investor's point of

view, the actions taken by the authorities in relation to Centerra and Kumtor are viewed as an encroachment on investments, violation of legislation, and existing agreements. At the same time, from the point of view of the state, there is significant damage to the environmental safety of the country and a corruption component, since the implementation of the project, there has been an interest of government officials to benefit from making decisions on the project.

In international investment law, a corrupt system and instability of the political situation is a significant political risk for a foreign investor and it is believed that investors prefer not to invest in states with political instability. But it should be noted that these assumptions apply only to bona fide foreign investors.

A corrupt system is a kind of "magnet" for unscrupulous foreign investors who are ready for various kinds of violations of the law, including environmental, tax, foreign exchange, etc. It is beneficial for unscrupulous investors to work in a country where there is a high level of corruption, this allows them to "solve" all issues in their favor.

Arrests and reports of receiving / extortion of bribes when making decisions on large investment projects indicate either the unfairness of investors or the obstacles put up by corrupt officials. One of the latest examples is the arrest on May 20, 2021, of the former Deputy Chairman of the Cabinet of Ministers, Minister of Digital Development A. Dyikanbaev for extorting a bribe from a Chinese company implementing the Safe City project. It is relevant to remember the resonant case for the sale of radio frequencies.

In this area, there are the following legal issues:

- **Strict adherence to all legal procedures and collection of evidence in corruption cases related to local and foreign investments.**
- **Openness and transparency of all legal proceedings in corruption cases related to local and foreign investments.**
- **Analysis of existing corruption risks (attention should be paid to the process of inventorying legislation and anti-corruption expertise of draft legislation).**

3.3. Recent legislative initiatives affecting business

The amendments proposed by the General Prosecutor's Office to the criminal legislation of the Kyrgyz Republic and the abolition of the Misdemeanor Code, lowering the threshold sums for economic crimes lead to the criminalization of economic crimes. There are also rules that create a conflict of interest in the conduct/appointment of inspections and investigative actions by tax authorities and prosecutors, and disproportionate punishments for economic crimes are established. At the same time, the amendments to the criminal legislation of the Kyrgyz Republic proposed by the General Prosecutor's Office contradict the concept outlined in the Decrees of the President of the Kyrgyz Republic "On the protection of property and support of entrepreneurs

and investors" dated January 29, 2021, No. 3 and "On additional measures to protect business entities" dated March 4, 2021, No. 61.

On the initiative of the deputy of the Jogorku Kenesh of the Kyrgyz Republic S. Ibrayev, on the website of the Jogorku Kenesh of the Kyrgyz Republic from May 27, 2021, the draft Law of the Kyrgyz Republic "On Amendments to Certain Legislative Acts of the Kyrgyz Republic" was posted for public discussion (to the Laws "On tariffs of insurance contributions for state social insurance", "On an investment of funds to finance the funded part of the pension on state social insurance in the Kyrgyz Republic") providing for an increase in the rates of insurance contributions for state social insurance. According to the bill, it is proposed to establish the rates of contributions for state social insurance. The bill contains significant corruption risks and will create a risk of growth of the shadow economy.

The right of an investigator or prosecutor to order inspections has been excluded from the new draft Criminal and Criminal Procedure Codes. ***Members of the working group on the development of the Criminal and Criminal Procedure Codes revised and removed the powers of the prosecutor and investigator "to appoint scheduled and unscheduled tax audits and other verification actions" to protect entrepreneurs.***

Legal issues in this area:

- **All changes in the field of business regulation should be made taking into account the interests of business, with obligatory public discussion with the wide involvement of the business community and analysis of the regulatory impact.**
- **All initiated legal act projects should be adopted in the context of the messages and decisions of the President of the Kyrgyz Republic on creating favorable conditions for business development, improving the investment climate, supporting the economic activities of business entities, and ensuring their legal protection.**

3.4. Instability of the political and legal system of the Kyrgyz Republic and its impact on investment attractiveness and business in general

The presence of stable, predictable rules for doing business, government guarantees for investors to protect their rights, freedoms, and legitimate interests are attractive factors for foreign investors and are taken into account when assessing the investment climate when compiling various international ratings of the country's investment attractiveness.

A positive factor in the inventory process is the application of the criterion (step 5) "Assessment of taking into account the interests of business in law" in the methodology of its implementation.

At the same time, the current plans for the inventory of legislation, which will lead to changes in legislation, including those related to entrepreneurial activity, the uncertainty of the duration of this process, and the timing of its completion is a factor of ambiguity for potential investors.

In addition, as noted above, the current instability of the institutions of state power may have a risk of interest in the Kyrgyz Republic only from unscrupulous foreign investors.

In this context, today there are the following legal and organizational issues:

- **Potential investors are in a "standby mode" in connection with the ongoing inventory of the legislation of the Kyrgyz Republic, while the timing and process of its implementation are not sufficiently thought out.**
- **The results of the inventory of legislation in the field of entrepreneurial activity should be prioritized and urgent.**
- **The earliest completion of the process of bringing the legislation of the Kyrgyz Republic into conformity with the Constitution and the formation of "permanent" state bodies.**

Conclusions and recommendations for analysis:

1. The current political and legal state in the Kyrgyz Republic is characterized by legal uncertainty. It should be noted that there has become a permanent state of a legal vacuum in the activities of some state institutions or the lack of the rule of law. The country was “knocked out” of the legal framework by the events of October 2020, and to this day it still cannot fully return to the legal field.
2. The carried out **constitutional reform** in the country requires bringing the normative legal acts of the Kyrgyz Republic in line with the basic law of the country. At the same time, **there are questions regarding the legitimacy of the parliament in terms of the adoption of socially significant normative legal acts.**
3. For several months after the events of October 5, 2020, disputes about the **legitimacy of the Jogorku Kenesh of the Kyrgyz Republic of the 6th convocation did not subside, and its status has not yet been determined.** The legal status of the Cabinet of Ministers is unclear, the powers of the CEC of the Kyrgyz Republic are coming to an end. This state of affairs generally affects both the effectiveness of state power and the legal component.
4. At the same time, it was decided to conduct an inventory of legislation by the Ministry of Justice of the Kyrgyz Republic, **the concept of which remains undefined to this day.**
5. The Administration of the President of the Kyrgyz Republic, the General Prosecutor's Office of the Kyrgyz Republic, deputies of the Jogorku Kenesh of the Kyrgyz Republic have developed packages of laws regulating the activities of the constitutional bodies of the state, changing conceptual approaches in various areas of legislation. The expected in the near future processes in the political and legal sphere is the formation of constitutional bodies, in particular, the Jogorku Kenesh of the Kyrgyz Republic, the Cabinet of Ministers of the Kyrgyz Republic, the People's Kurultai, the Central Election Commission of the Kyrgyz Republic, etc
6. **It seems that the transition period from the adoption of the Constitution to the final harmonization of legislation should take at least about 1 year.** In this connection, it is **recommended to create a legitimate basis for the further completion of the constitutional reform and the final return of all processes to the legal field.**

A “roadmap” for this process could look like this:

1. **Conducting a broad public discussion of the draft Law "On Amendments to the Constitutional Law of the Kyrgyz Republic" On the Elections of the President of the Kyrgyz Republic and Deputies of the Jogorku Kenesh of the Kyrgyz Republic ", developed by the Administration of the President of the Kyrgyz Republic.**
2. **Given the continuing uncertainty about the legitimacy of the Jogorku Kenesh of the Kyrgyz Republic, it seems**

justified to extend the powers of the current CEC (there is no doubt about its legitimacy) and, first of all, to hold elections to the Jogorku Kenesh of the Kyrgyz Republic in the very near future.

3. Consideration of the possibility of an appeal by the President of the Kyrgyz Republic to the Toraga of the Jogorku Kenesh of the Kyrgyz Republic with a proposal to hold an extraordinary session to adopt amendments to the electoral legislation regarding elections to the JK KR (i.e. JK KR does not go on a "vacation", but remains for consideration of specific draft law).

4. After the adoption by the Jogorku Kenesh of the Kyrgyz Republic with the established procedures of the law on elections, the President of the Kyrgyz Republic appoints the elections of the 7th convocation of deputies of the Jogorku Kenesh.

5. Holding elections to the Jogorku Kenesh of the Kyrgyz Republic in accordance with the new law and the beginning of the functioning of the Jogorku Kenesh of the Kyrgyz Republic of the 7th convocation.

6. Consideration of the JK of the Kyrgyz Republic of the 7th convocation of draft laws related to the functioning of state institutions in order to bring them into line with the Constitution of the Kyrgyz Republic and ensure their legitimacy.

Yours faithfully,

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