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BRIEF LEGAL ANALYSIS OF THE LEGISLATION OF THE KYRGYZ REPUBLIC IN THE SPHERE OF THE EXECUTIVE BRANCH OF THE GOVERNMENT

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INTRODUCTION

This document is intended for a wide range of stakeholders and is a brief legal analysis regarding the legal acts regulating the activities of executive authorities.

This legal analysis covers current situation related to transition to the presidential form of government and formation of executive power in terms of compliance with the Constitution of the Kyrgyz Republic (hereinafter referred to as the Constitution), the laws of the Kyrgyz Republic.

Community of Lawyers “Tandem”¹ hopes that the presented analytical work will help decision makers, as well as experts, lawyers, civil society representatives in their professional activities and assist in making informed and sound decisions.

Definitions:

Full title	Short title
The Constitution of the Kyrgyz Republic as of May 5, 2022	Constitution
The President of the Kyrgyz Republic	President
The Cabinet of Ministers of the Kyrgyz Republic	Cabinet of Ministers
The Constitutional Law “On the Cabinet of Ministers of the Kyrgyz Republic” adopted on October 11, 2021 № 122	Constitutional Law on the Cabinet of Ministers
The Kyrgyz Republic	KR
The Administration of the President of the Kyrgyz Republic	Administration of the President
The Rules of Procedure on the Cabinet of Ministers KR as of October 28, 2021 № 233	Rules of Procedure of the Cabinet of Ministers
The Authorized Representative of the President of the Kyrgyz Republic in the regions	Authorized Representative of the President

¹ Website of the organization – www.lawyers.kg

1. Brief Perspective on the History of Executive Branch of the Government in the Kyrgyz Republic

A strong state means the construction of a rule of law state. The legislative framework should correspond to public administration and the system of executive power, its effective structure and functioning, and coordinated mechanism for interaction of state power branches. Political and other decisions should be taken in compliance with the above.

Executive bodies should work in concert at all levels, fruitfully implementing state programs and development strategies.

Since the moment of obtaining the independence of the Kyrgyz Republic, the country has been making attempts through trial and error to build an appropriate system of executive power that could be more efficient than the previous ones, including by amending the Constitution and forms of the government.

Year	Constitution	Form of the government (based on review of the norms containing the functions of authorities)
1991	As of May 5, 1993	Presidential
1996	Amendments to the Constitution as of February 16, 1996	Presidential (aimed at strengthening the powers of the President)
1998	Amendments to the Constitution as of October 21, 1998	Presidential
2003	As of February 18, 2003	Presidential
2007	As of October 23, 2007	Presidential (aimed at strengthening the powers of the President)
2010	As of June 27, 2010	Parliamentary
2016	Amendments as of December 28, 2016	Parliamentary
2021	As of May 5, 2021	Presidential

In this regard, the Community of Lawyers “Tandem” considers it necessary to conduct a legal analysis on the subject and develop recommendations and proposals.

2. The system of executive bodies in the Kyrgyz Republic

2.1. Structure of executive authority in the KR

In general, the following bodies can be included in the system of executive authorities in the Kyrgyz Republic, based on the relevant regulations in force:

- *The President (the head of executive branch of the government)*
- *The Chairman of the Cabinet of Ministers*
- *The Cabinet of Ministers*
- *Local state administrations.*

According to the Constitution, the President “*heads the executive branch of the Kyrgyz Republic*” (clause 1, article 66), “*manages the activities of executive branch*” (clause 3, article 66) and “*exercises the executive power*” (clause 1, article 89).

The norms regarding the executive power in the Kyrgyz Republic are contained in Chapter III “Executive Power” of the Constitution (articles 89-93).

In this article the following executive bodies are indicated:

- **The President of the KR, the Cabinet of Ministers (which consists of the Chairman, deputies of the Chairman and other members of the Cabinet of Ministers)**, who exercise their powers in accordance with article 91 of the Constitution;
- **Local state administrations** that exercise executive powers on the territory of their respective administrative-territorial units (article 93 of the Constitution).

The system of executive authorities is not clearly defined.

In turn, the constitutional law on the Cabinet of Ministers more specifically stipulates the system of executive authorities, which reflects its model of implementation in the Kyrgyz Republic. Thus, according to Article 1 of the constitutional law on the Cabinet of Ministers, the system of executive authorities consists of:

- 1) The President of the Kyrgyz Republic,
- 2) The Cabinet of Ministers,
- 3) Ministries and state committees,
- 4) Administrative agencies,
- 5) Authorized Representatives of the President in the regions,
- 6) Local state administrations.

3. The head of executive branch of the Kyrgyz Republic

The executive branch of the Kyrgyz Republic is headed by the President (clause 1 of Article 66 of the Constitution). At the same time, there is the institution of the Chairman of the Cabinet of Ministers, who is also the head of the Presidential Administration.

In current situation, political and legal aspects indicate that a certain part of the functions of the head of executive branch is carried out by the Chairman of the Cabinet of Ministers, who can be perceived and positioned as the first person of the executive branch of the government. Earlier in the Kyrgyz Republic, the Prime Minister was the head of the executive branch, and the President acted as an “arbitrator” between all three branches of power.

Thus, **currently there is a problem of “dualism” in the leadership of the executive branch.**

The Constitutional Law on the Cabinet of Ministers provides norms on the possibility of exercising certain functions of the head of executive branch (i.e., the President) by the head of the Cabinet of Ministers. At the same time, according to the Constitution, the Chairman of the Cabinet of Ministers is the head of the Presidential Administration (paragraph 2 of clause 2 of Article 89), “organizes the activities of the Cabinet of Ministers” (clause 2 of Article 90) and is responsible to the President for the activities of the Cabinet of Ministers.

Thus, the functions of the Chairman of the Cabinet of Ministers and the head of the Presidential Administration are assigned to the Chairman of the Cabinet of Ministers.

At that, in the media space there is no division of cases when the head of the Cabinet of Ministers acts **as the head of the Cabinet of Ministers or as the Head of the Presidential Administration.** Most often, the media space contains information about the head of the Cabinet. A certain part of the functions of the head of the presidential administration are non-public, perhaps such functions are performed by him when solving organizational issues within the presidential administration, while we consider it necessary to emphasize importance of separating these “roles”.

The status of the Chairman of the Cabinet of Ministers must be clearly defined. However, in paragraph 3 of the Rules of Procedure² of the Cabinet of Ministers, the following is written: “*Chairman of the Cabinet of Ministers - Head of the Presidential Administration*”, and further in the text there is no differentiation of his functions.

Such a mixture of functions of the Chairman of the Cabinet of Ministers has led to the fact that in the text of the constitutional law on the Cabinet of Ministers there are norms on the Authorized Representatives of the President in the regions, local state administrations and other executive bodies. They do not clearly define the powers and obligations of each of the institutions, as well as mechanisms of accountability to the Cabinet. The regulations of the Cabinet of Ministers contain norms that the Authorized Representatives of the President in the regions must coordinate their trips outside the entrusted territory with the Chairman of the Cabinet of Ministers, and not with the President or the head of the Presidential Administration.

In addition, there are questions regarding validity of the right assigned to the head of the Cabinet of Ministers to apply “*measures of rewards and disciplinary action against ministers, chairmen of state committees, heads of other executive bodies*” (clause 23, part 2, article 18 of the constitutional law on the Cabinet of Ministers), while they are applied by the president. At the

² <https://www.gov.kg/ru/p/reglament>, Rules of Procedure of the Cabinet of Ministers of the Kyrgyz Republic approved by the Resolution of the Cabinet of Ministers of the KR as of October 28, 2021 № 233

same time, according to part 1, paragraph 3, article 14, *“The President has the right to impose a disciplinary sanction on the Chairman of the Cabinet of Ministers, members of the Cabinet of Ministers and heads of other executive bodies, as well as apply reward measures to them”*.

Thus, the above circumstance again indicates the presence of "dualism" between the powers of the President and the Chairman of the Cabinet of Ministers.

According to article 89, paragraph 3 of the Constitution *“The President, on the basis of the constitutional law, directs the activities of the executive branch, gives instructions to the Cabinet of Ministers and its subordinate bodies, controls the implementation of its instructions, cancels acts of the Cabinet of Ministers and its subordinate bodies, temporarily removes members of the Cabinet of Ministers from office.”* At the same time, according to paragraph 3 of the Rules of Procedure of the Cabinet of Ministers, the functions to give instructions to members of the Cabinet of Ministers, heads of other executive bodies (not only subordinated to the Cabinet of Ministers), control over the execution of instructions of the President are assigned to the Chairman of the Cabinet of Ministers. At the same time, these powers of the President could be delegated only by the relevant act of the President, and not by the decision of the Cabinet of Ministers.

The current legislation provides the following norms containing some distinction between the powers of the President and the Chairman of the Cabinet of Ministers. They relate to the delimitation of functions on appointment of officials of the executive branch: the heads of state bodies are appointed by the President, their deputies - by the Chairman of the Cabinet of Ministers.

The logic is unclear, where it is said that the deputy heads of state bodies in charge of defense, public order and national security are appointed by the President, and not by the Chairman of the Cabinet of Ministers (part 2 of paragraphs 15, 16 of article 18). These provisions are automatically transferred from the powers of the Prime Minister provided for in clause 17, part 2, article 18 of the Constitutional Law “On the Government of the Kyrgyz Republic” as of June 18, 2012 No. 85, when the heads of these bodies were appointed by the President in accordance with the Constitution of 2010.

The lack of a clear separation of powers between the President and the Chairman of the Cabinet of Ministers poses serious risks for the image of the executive branch of the government and emergence of conflicts of interest between the parties.

4. The Cabinet of Ministers of the Kyrgyz Republic

The status of the Cabinet of Ministers is regulated by the constitutional law on the Cabinet. While the issues of organizing the activities of the Cabinet of Ministers are defined by the Rules of procedure of the Cabinet of Ministers.

According to part 1 of article 2 of the constitutional law on the Cabinet of Ministers, it is stipulated that *“the Cabinet of Ministers is the highest collegial body of executive power.”* In this regard, it should be noted that according to the Constitution, the highest body of executive power (whether individual or collegial) is the President, who heads the Cabinet of Ministers and manages its activities. In this case, it seems, we should talk about the Cabinet only as a collegial body, and not as the highest body of executive power.

In accordance with paragraph 1 of article 15 of the constitutional law on the Cabinet of Ministers, *“the activities of the Cabinet of Ministers are organized by the Chairman of the Cabinet of Ministers through sessions, consultations and meetings of members of the Cabinet of Ministers, their speeches and decision-making.”* At the same time, neither the constitutional law itself, nor the Rules of procedure of the Cabinet of Ministers contain regulation of such forms of organization of activities as “consultations” or “meetings”. At the same time, the word “consultations” seems to imply a limited number of issues on which consultations take place and the number of participants. At the same time, issues of national importance in a collegiate body cannot be adopted through partial participation of members of the Cabinet of Ministers, especially in the absence of clear regulation.

The Rules of Procedure of the Cabinet of Ministers (clause 29) provides for the possibility of a “written survey” of members of the Cabinet of Ministers: *“on certain issues that cannot be delayed, or on issues that are not necessary to be discussed at meetings of the Cabinet of Ministers, decisions can be made by the Cabinet of Ministers without holding a meeting. In these cases, draft regulatory legal acts of the Cabinet of Ministers are agreed with members of the Cabinet of Ministers by means of a written survey”.* At the same time, the norm “on a written survey” is absent in the constitutional law on the Cabinet of Ministers.

In addition, most of the meetings of the Cabinet of Ministers are held under the chairmanship of the Chairman of the Cabinet of Ministers (not the President, as indicated by the Constitution), who signs the relevant decisions of the Cabinet of Ministers.

In practice, there are situations when a decision of the Cabinet of Ministers adopted at a meeting chaired by the Chairman of the Cabinet of Ministers (for example, related to some bill), will then be signed by the President, who will have different opinion regarding the document, not in support of the position of the Cabinet. This situation could damage the reputation of the executive branch of the government.

In general, it should be noted that the constitutional law on the Cabinet of Ministers requires additions and amendments to bring it in line with the norms of the Constitution. Without going into details, it should be noted that a number of norms “automatically” transferred from the previous Constitutional Law “On the Government of the Kyrgyz Republic” cannot always be applied to the Cabinet of Ministers due to a change in the form of the government and current status of the Cabinet of Ministers.

5. The Authorized Representative of the President of the Kyrgyz Republic in the regions

Legal status of the Authorized Representatives of the President in the regions is not sufficiently regulated at the moment. There are no constitutional provisions and a separate law on this institution, there is a Regulation on the Authorized Representatives of the President approved by Presidential Decree No. 302 of July 15, 2021.

After adoption of the Constitution, the previously appointed Authorized Representatives of the Government in the regions were renamed to "Authorized Representatives of the President".

At the same time, this institution functions in the presence of another institution of executive power on the ground - local state administrations (akims). The interaction of LSG bodies with the Authorized Representatives in the regions does not have a sufficient legal basis, however, in practice, the Authorized Representatives work the same way as before when they were governors of regions, dealing with all "regional" issues.

From the provisions of paragraph 3, clause 9 of the Rules of Procedure of the Cabinet of Ministers, it is clear that this institution is a kind of a "layer" between local state administrations, namely: *"local governments shall apply to the Cabinet of Ministers, to the Chairman of the Cabinet of Ministers, Deputy Chairmen of the Cabinet of Ministers and other members of the Cabinet of Ministers exclusively through the Authorized Representatives of the President in the regions, the mayors of the cities of Bishkek and Osh, with the exception of complaints about illegal actions of the above persons"*.

The question arises about effectiveness of this management model at the territorial level, where in order to make decisions in any case it is necessary to coordinate with the "top" - the central executive authorities.

6. Local state administration

The Constitution is the legal framework for the activities of executive authorities on the territory of the relevant administrative-territorial unit (Article 93), as well as the Law "On Local State Administration and Local Self-Government Bodies" as of October 20, 2021 No. 123.

Executive power at the territorial level is represented by the Authorized Representatives of the President in the region, local (district) state administrations (akimiats) and local territorial divisions of ministries and departments.

At the same time, there is no clear hierarchy of bodies exercising executive power at the territorial level. According to part 2 of article 112 of the Constitution, *"executive bodies of local self-government and their leaders are accountable in their activities to representative bodies."* According to article 8 of the Law "On Local State Administrations and Local Self-Government Bodies", akimiats are accountable in their actions to the President and the Chairman of the Cabinet of Ministers. In this regard, the following questions arise:

- To which of them is the akim accountable or to all three of them at the same time?

- On what issues is he accountable to the President, on what - to the Chairman of the Cabinet of Ministers, and on what - to local self-government bodies and who will determine these issues?
- What will happen in a hypothetical situation if they evaluate the work of the akim differently?

However, the accountability of akims should also be considered in relation to the question of which entities have the right to appoint and dismiss akims. Previously, akims were appointed by the Prime Minister of the Kyrgyz Republic based on proposal of a joint meeting of local keneshes. They had the right to express a vote of censure in relation to akim, which could serve as a basis for dismissal of akim.

Now the law provides that akim is appointed and dismissed by the President based on proposal of the Chairman of the Cabinet of Ministers in consultation with the Authorized Representative of the President in the region. (part 2, article 8 of the Law). At the same time, only the President has the right to prematurely dismiss akim, without taking into account the opinion of the Chairman of the Cabinet of Ministers and the Authorized Representatives of the President. The role of local keneshes in matters of appointment and dismissal is limited. This means that akim does not bear any responsibility for his performance to local keneshes, and, accordingly, to local population. The lack of accountability of akim to local representative bodies may carry the risk of dissatisfaction of local community.

It is clear that the goal is to strengthen the vertical of executive power, which in principle corresponds to the presidential form of the government, however, it should be noted that there are certain risks that exist with current reporting model of local executive authorities, in which regard it is recommended to improve the regulations in this spheres to achieve their unified, coordinated and efficient performance.

**Respectfully,
Team of the Community of Lawyers “Tandem”**