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*Transparency and Disclosure*

**SURVEY – Kyrgyz Republic**

by

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hosted by

**The National Securities Commission of Georgia**  
**The Georgian Stock Exchange**

**International Regional Federation of Accountants and Auditors Eurasia**



**The Government of Japan**

**The Global Corporate Governance Forum**

### **The List of Used Abbreviations**

ACKR – Administrative Code of the Kyrgyz Republic;

JSC – Joint stock company;

OJSC – Open joint stock company;

CCKR – Civil Code of the Kyrgyz Republic;

SMSC – Kyrgyz Stock Market State Commission;

SCAAS – Kyrgyz State Commission on Accounting and Audit Standards;

KSML – The Law of the Kyrgyz Republic “On Stock Market”;

KBCL – The Law of the Kyrgyz Republic “On Business Companies”;

KSE – Kyrgyz Stock Exchange;

KNB – Kyrgyz National Bank;

MC (Model charter) – Model charter of an OJSC approved by the resolution of Kyrgyz Government as of July 26, 1997, • 433;

CDC – Corporate Development Center of the Kyrgyz Prime Minister’s Office;

### **QUESTIONNAIRE**

#### **• – WHAT IS THE ROLE OF YOUR INSTITUTIONS REGARDING FINANCIAL AND NON-FINANCIAL DISCLOSURE?**

##### **1. What is the role of your institution in establishing disclosure standards (specify)?**

1. Provides both oral and written consultations to shareholders, enterprise managers, representatives of international organizations, legal firms and all interested parties on the issues related to operation of JSCs, rights and obligations of participants of corporate relations, including disclosure of information to shareholders and potential investors;
2. Develops draft regulations, which govern the operations of joint stock companies taking into account already established practice, monitors changes and amendments to current legislation, develops together with interested agencies draft amendments and alterations to legal acts governing operations of joint stock companies, including disclosure of information by a company;
3. Upon the request of the Administration of the President of the Kyrgyz Republic, the Office of the Prime-Minister of the Kyrgyz Republic, ministries and agencies, as well as self-governance bodies, shareholders, enterprise managers, and international organizations provides both oral and written explanations on all corporate governance and corporate law issues;
4. Develops local acts, such as the Bylaw on the Board of Directors, Bylaw on Management, Bylaw on the General Shareholders’ Meeting, Bylaw on the Audit Committee, Bylaw on Company Affiliates, etc, which govern internal issues of company operation;
5. Preparation and publication of brief practical manual (based on Model JSC charter) regarding the procedure for convening and holding regular and extraordinary general shareholders’ meetings; in this case it refers to disclosure of information on forthcoming general shareholders’ meeting;

6. Attending general shareholders' meetings where our specialists monitored practical implementation of current legislation, explained the rights and obligations of shareholders, provided consultations on procedure related issues on holding the general shareholders' meeting. Participated in the general shareholders' meetings of both 100% privately owned companies and companies with a state-owned stake;
7. Preparation of materials on Kyrgyz legislation, which refer to commercial law, implementation of corporate governance principles in the Kyrgyz Republic, and disclosure of information by JSCs;
8. Publication of newspaper articles, giving radio interviews dedicated to financial and non-financial disclosure by JSCs;
9. Preparation of Corporate Governance and Corporate Law Manual.

**2. What is the role of your institution in enforcing disclosure rules/regulations (specify)?  
What sanctions can it impose?**

CDC together with the Department for Economic Policy of the Administration of the President of the Kyrgyz Republic and Department of Kyrgyz Government created the foundation for implementation of the Decree of the President of the Kyrgyz Republic «On creation of sound corporate governance system in the Kyrgyz Republic».

Under this Decree, in order to create sound legislative, institutional and structural conditions for the development of corporate governance, the Government of the Kyrgyz Republic is to prepare and submit for consideration of Kyrgyz Parliament the draft laws, which envisage introduction of amendments to Kyrgyz legislation.

The legal group developed the Draft Law «On Introduction of Amendments and Alterations to the Civil Code of the Kyrgyz Republic and the Law of the Kyrgyz Republic «On Business Companies», which was approved and submitted (in April 30, 1999) by Kyrgyz Government for consideration of Kyrgyz Parliament..

The draft law includes some amendments to the Civil Code of the Kyrgyz Republic and the Law “On Business Companies”, as well as additional disclosure provisions.

In accordance with the instruction of Kyrgyz Government the legal group provided consultations on bringing the charters of monopoly JSCs «KyrgyzEnergO», «KyrgyaGazMunayzat», «KyrgyzTelekom», «NAK Kyrgyzstan Aba Zholdory» in line with corporate governance principles, conducted their expertise, and provided specific proposals, including disclosure related proposals.

In accordance with the instruction of Kyrgyz Government, the group developed the scheme for transformation (reorganization) of joint stock companies «•yrgyzEnergO», «•yrgyzElectronika», «•yrgyzAltyn», which also covered disclosure related issues.

### **3. What are other roles and responsibilities of your organization (i.e. licensing, training, etc.)?**

In accordance with the scope of powers of consultants, one of major responsibilities of consultants is provision of consultations.

Mostly consultations were provided on such issues as operation of joint stock companies, rights and obligations of participants of corporate relations, procedure related issues on holding the general shareholders' meeting, nomination of candidates for election to company management bodies, disclosure of information by the company.

In addition, legal group consultants were in charge of the rubrics "Legal framework" and "Questions-Answers" in the Newspaper "Corporate Bulletin", which covered in detail and based on current legislation the issues of disclosure by JSCs. Annual reports of JSCs were also published in this newspaper.

Publishing activities were another important aspect in the operations of legal and corporate governance group. Our specialists developed and published the booklet "Management of JSCs", which includes the Bylaw on the general shareholders' meeting, Bylaw on the Board of Directors, Bylaw on Management, Bylaw on the Audit Committee;

CDC's major work was focused on holding seminars and lectures in the following areas: law, finances, management, marketing. Lectures were designed for the following target audience:

- shareholders
- representative of JSC management bodies
- representatives of local state administrations
- practicing lawyers
- professional stock market participants
- students
- all interested citizens.

Lectures were accompanied by explanations of Kyrgyz corporate legislation (including disclosure issues), as well as explanations regarding practical implementation of Kyrgyz laws, resolutions of Kyrgyz Government, regulations of Kyrgyz Securities Commission and the Ministry of Justice.

## ***B – COUNTRY BACKGROUND INFORMATION***

### **1. Number of JSCs:**

#### 1.1 Number of open JSCs

#### 1.2 Number of closed JSCs

***• – DOES THE CORPORATE GOVERNANCE FRAMEWORK ENSURE THAT TIMELY AND ACCURATE DISCLOSURE IS MADE ON ALL MATERIAL MATTERS REGARDING THE CORPORATEION?***

**1. Is the company required to prepare annual (or more frequent) audited financial statements showing the financial performance and the financial situation of the company?**

**Is this required by the company charter, securities law, stock exchange regulations or other relevant laws?**

In accordance with subclause 3 of clause 1 of article 148 of the Civil Code of the Kyrgyz Republic (CCKR) annual report, balance sheet, profit and loss account of the company, as well as distribution of its profits or losses are approved at the general shareholders' meeting. To implement this norm open joint stock companies (OJSC) are mandated to publish the above documents (clause 2 of article \_\_\_ of CCKR). Preliminary the annual report, profit and loss account, balance sheet and other financial documents of an OJSC should be audited by an independent auditor to confirm that financial statements are accurate (clause 5 of article 148 of CCKR).

The Kyrgyz Law "On Business Companies" (Kyrgyz Business Company Law - KBCL) specifies personal non-property right of shareholders to receive information on company operations, to get familiar with accounting data and other documents inclusive (subclause d of clause 2 of article 61 of KBCL). Company management is mandated to prepare annual report, balance sheet, profit and loss account and secure shareholders' access to these documents (paragraph 2 of clause 2 of article 65 of KBCL).

**Is it applied in practice?**

In practice not all JSCs observe this requirement.

**What are the enforcement procedures? Are there any sanctions (specify)?**

Administrative Code of the Kyrgyz Republic (ACKR), articles 328, 330, 331, 335 stipulate administrative fines with regard to officers of JSCs, which violate the disclosure procedure and fail to publish the annual report.

**2. Is consolidated financial reporting required for corporate groups? On what basis?**

**Is this required by the company law, securities law, stock exchange regulation or other related laws?**

In accordance with current legislation a company, which has affiliates, prepares consolidated financial statement to include the information on both parent company and the affiliate(s).

**It is applied in practice?**

Companies fulfill this requirement in full and on a regular basis.

**What are the enforcement procedures? Are there any sanctions (specify)?**

In accordance with 346 of ACKR officers of JSC may be subject to administrative fines.

**3. Is the company required to include in annual reports:**

**3.1. Company goals and strategy?**

**Is it applied in practice?**

**What are the enforcement procedures? Are there any sanctions (specify)?**

Although company and securities laws do not mandate to specify company goals and strategy in the annual report, in practice company management bodies include this information in their reports at the general shareholders' meeting.

### **3.2. Major share ownership and voting rights?**

#### **Is this required by the company law, securities law, stock exchange regulation or other related laws?**

In accordance with articles 44, 45 of Kyrgyz stock market law (KSML ) the issuer of publicly placed securities is mandated to annually disclose information on its securities and its financial operations (annual securities report), which must include the list of owners (shareholders) of the issuer, who own 5 and more percent of company equity.

The list of legal entities, in which this issuer owns 5 and more percent of charter capital. The report is compiled on the results of each year no later than 30 calendar days following the end of the year. The annual report should be approved by the authorized body of the issuer and submitted to the SMSC, as well as must be submitted upon request to the owners of securities.

In accordance with the agreement concluded between the KSE and listing company, the company on the annual basis provides to the KSE the information on shareholders, who own 5 and more percent of its shares.

Information on the owners of at least 5% of shares of a commercial bank is also provided to the National Bank of the Kyrgyz Republic (KNB). This information is provided annually within 10 days as of the date of changes.

Charters of certain companies also specify the disclosure of additional information.

#### **Is it applied in practice?**

Practically all JSCs provide this information to the SMSC, but not always provide it to the shareholders. This is explained by the fact, that shareholders are not always well informed about their rights.

#### **What are the enforcement procedures? Are there any sanctions (specify)?**

In accordance with ACKR, in case of untimely provision of information to the SMSC officers of the issuer may be subject to administrative fines.

### **3.3. Related party transactions (management's direct or indirect interest in any material transaction to which the company or any of its subsidiaries was or is to be a party)?**

#### **Is this required by the company law, securities law, stock exchange regulation or other related laws?**

In accordance with article 68 of KBCL, clauses 20.2, 20.3. of the Model charter, members of the Board of Directors, Management and the Audit Committee are company officers.

Company officers perform their functions in the interests of the company. If a company officer has financial interest in a transaction to which the company is a party, such officer must:

- 1) Give written notice to this effect to the Board of Directors and Management;

- 2) Receive written permit to conduct a transaction from the Board and Management.

Financial interest of a company officer means:

- 1) The case when he is the owner, creditor, or maintains labor relations with major suppliers of the company, or is an important customer of the company;
- 2) The case when he is the owner, creditor, or maintains labor relations with natural persons or legal entities, partly or completely established on the basis of company property, or is entitled to profit from disposal of company's property.

Company officers may not allow the use of company property or property rights for the purposes, which contradict to resolutions of the general shareholders' meeting or the Board of Directors.

Company officers within the term of their activities shall restrain from establishing or participation in any operations, which compete with the company, except if such competition is directly allowed in writing by the majority of uninterested members of the Board or uninterested shareholders, who hold more than 50% stake in the charter capital of the company.

In accordance with the instruction of the KNB «Regarding compilation of periodic regulatory bank report by commercial banks of the Kyrgyz Republic» dated Oct. 28, 1996, a commercial bank is to provide quarterly information on loans extended to affiliated entities and bank shareholders.

#### **Is it applied in practice?**

Rather seldom, since this issue is not completely resolved on the legislative level.

#### ***What are the enforcement procedures? Are there any sanctions (specify)?***

In case of compulsory liquidation of the company officers in default are held materially accountable to the creditors on company obligations if the company's property is insufficient to repay its liabilities.

Company officer shall not be held liable if it is proved that he undertook reasonable measures to prevent the liquidation even if these measures turned out to be a failure.

If annual report, balance sheet, profit and loss account or interim financial statement distort financial status of the company, company officers who signed the above documents shall be held collectively liable to the third injured parties.

### **3.4. The identity and the professional background of board members and key executives, and their individual or collective remuneration?**

#### **Is this required by the company law, securities law, stock exchange regulation or other related laws?**

In accordance with article 65 of the Business Companies Law, unless otherwise specified by the company charter, the terms of remuneration payable to the members of Management shall be established by the Board of Directors.

In accordance with clauses 17.19. 17.20. 17.21. 17.28. 17.29. 17.30. of the Model Charter approved by Kyrgyz Government, upon the resolution of the general shareholders' meeting members of the Board of Directors may work full or part time.

The method and level of remuneration for the Board members is established each year at the general shareholders' meeting. Expenses are covered by the company.

No board member is entitled to get any personal profit from the company, other than remuneration established by the general shareholders' meeting, income from any shares owned by him and compensation of expenses related to his official capacity.

Each year the Board of Directors establishes the type and amount of remuneration payable to each member of Management.

Upon request, a shareholder may receive from the company the information on remuneration payable to company officers.

In accordance with article 24 of the Law "On Banks and Banking Activities" the Board of Directors of a bank may be elected both from among shareholders, including the founders, and outside experts who have a recognized reputation and professional experience on economic, financial, monetary or legal issues.

In accordance with article 25 of the above law members of Management of a bank may be specialists with professional experience in the area of banking, financial, economic and legal issues.

Establishing the amount and terms of compensation for members of Management falls under the exclusive jurisdiction of the Board of Directors of a bank. The charters of many banks specify the requirements for Management candidates (higher financial or legal education, professional experience, lack of previous conviction).

**Is it applied in practice?**

Applied in accordance with current legislation and company charters.

**What are the enforcement procedures? Are there any sanctions (specify)?**

With regard to commercial banks, the violation of reporting requirements, the procedure for submission of reports to the KNB and publication in the official press may result in fines totaling 0,1% of paid-up charter capital.

***3.5. Directors' and key executives' ownership interest in company shares?***

**Is this required by the company law or by the stock exchange regulation?**

In accordance with articles 44, 45 of the KSML, the issuer of publicly placed securities must annually disclose the information on its securities and financial results of operation. This information must include the list of persons who are members of the management bodies of the

issuer, including the extent of their participation in the charter capital of the issuer, as well as its subsidiaries and affiliated companies.

The report is compiled on year-end results no later than 30 calendar days following the end of the year. The annual report must be approved by the authorized body of the issuer, submitted to the SMSC, and upon request must also be provided to shareholders of the issuer.

In accordance with the instruction of the KNB “On compiling periodic regular bank statements by commercial banks of the Kyrgyz Republic” dated Oct.28, 1996 the following information on management bodies must be specified:

- Information on members of a bank’s Board and their share ownership.
- Information on members of a bank’s Management and their share ownership.

**Is it applied in practice?**

Yes, regarding the provision of information to the SMSC, and not always regarding the provision of information to shareholders. This is explained by the fact that shareholders are inadequately informed about their rights.

**What are the enforcement procedures? Are there any sanctions (specify)?**

In accordance with ACKR, administrative sanctions may be applied to officers of the issuer in case of violation of the timeframe for provision of information or non-provision of information upon shareholders’ request.

Regarding a commercial bank, violations related to the accuracy of statements, their provision to the KNB and publication in the official press may result in fines totaling 0,1% of paid-up charter capital.

**3.6. Material foreseeable risk factors (trends or uncertainties that are expected to have or have had a material impact on the company)?**

**Is this required by the company law, securities law, stock exchange regulation or other related laws?**

Annual reports do not specify foreseeable risk factors, which may arise and have a negative impact on company business. This information is specified by the issuer in the prospectus of securities issue intended for public placement.

In accordance with the instruction of the KNB “On compiling periodic regular bank statements by commercial banks of the Kyrgyz Republic” dated Oct.28, 1996, commercial banks specify all information on their risk assets.

**Is it applied in practice?**

The companies are mandated to specify in the prospectus of share issue the risk factors (environmental, economic), which may arise and have a negative impact on company business.

**What are the enforcement procedures? Are there any sanctions (specify)?**

If the prospectus specifies false information, the SMSC may invalidate the securities issue.

Regarding a commercial bank, violations related to the accuracy of statements, their provision to the KNB and publication in the official press may result in fines totaling 0,1% of paid-up charter capital.

**3.7. Material issues regarding employees and other stakeholders (management-employee relations, business ethics, environment, or other public policy concerns)?**

**Is this required by the company law, securities law, stock exchange regulation or other related laws?**

Securities and JSC legislation does not specify special provisions, which mandate a JSC to publish this information.

**Is it applied in practice?**

Sometimes separate JSCs, in order to promote their operations, publish this information.

**What are the enforcement procedures? Are there any sanctions (specify)?**

**3.8. The governance / organizational structure of the company (i.e. key positions in the company)?**

**Is this required by the company law, securities law, stock exchange regulation or other related laws?**

During submission of the annual report on securities to the SMSC, KNB (for commercial banks), the issuer must specify its management bodies, including first, middle, last name and passport details of its officers, and the number of shares of the issuer held by its officers. Shareholders may at any time and upon request receive this information from the issuer.

A listing company is mandated to give respective notice to the stock exchange no later than within 10 days following the resolution on changes in the composition of supervisory, executive and controlling bodies.

**Is it applied in practice?**

Practically all Kyrgyz companies submit such reports and upon request provide such information to shareholders. The only problem is related to submission of report within the term established by the SMSC (no later than 5 days following the approval of report by the general shareholders' meeting) in accordance with the Instruction on submission of annual report on securities dated 04.09.1997, •23. As for provision of information to the KNB, it is provided on time and in full.

***What are the enforcement procedures? Are there any sanctions (specify)?***

Under the ACKR, violating the term for submission of annual report may lead to administrative sanctions towards company officers (members of the executive body of the company).

For commercial banks the violations regarding the accuracy of reports, their submission to the KNB and publication in the official press may lead to fines totaling 0,1% of paid-up charter capital.

**3.8. An analysis of the company's operational results?**

**Is this required by the company law, securities law, stock exchange regulation or other related laws?**

In accordance with the CCKR, the Law "On Business Companies", open JSCs must publish in the press the annual report, balance sheet, and profit and loss account. In accordance with accounting rules approved by the SMSC as of Sep. 4, 1997, #23, JSCs which make public placement of securities must publish the following in the press:

- Balance sheet;
- Report on financial results;
- Current liquidity ratio.

During the general shareholders' meeting the Board of Directors and company Management analyze their operation in their reports to shareholders.

In accordance with the agreement, concluded between the stock exchange and a listing company, the listing company must annually and within 10 days after the general shareholders' meeting submit to the stock exchange the annual report of Management, annual report of the Audit Committee, annual balance sheet, report on results of business operations, the statement of cash flow, explanatory note to financial statements, and conclusion of the auditor on company financial statements.

A commercial bank submits to the KNB the information, which one way or another includes the analysis of business operation and financial status of a bank.

**Is it applied in practice?**

Not always, due to lack of funds.

**What are the enforcement procedures? Are there any sanctions (specify)?**

In accordance with the ACKR, non-publication of information subject to publication may lead administrative fines towards company officers.

For commercial banks the violations regarding the accuracy of reports, their submission to the KNB and publication in the official press may lead to fines totaling 0,1% of paid-up charter capital.

***4. Is the company required to disclose extraordinary developments affecting the company (i.e. mergers/acquisitions, resignation of key executives, filing for bankruptcy, etc.)***

1. Provisions, which mandate to disclose the information on emerging material factors, which may have impact on business operations of the company are specified in articles 44, 51, of the Law «On Stock Market», the Regulation on the procedure for disclosure of information regarding material factors (events and activities), which influence business operation of a securities' issuer, approved by the SMSC as of Dec. 30, 1998, #61.

**Issuers, which must provide this information** - JSCs in which at least one securities' issue was accompanied by registration of the prospectus (public placement of shares).

**The procedure and term for provision of information** – Notice on material factors is given to the SMSC, and information must be published in the press with the circulation enabling access of wide public and the majority of holders of the issuer's securities within 5 working days after the material factor has emerged. Shareholders may receive this information upon request to the issue.

Types of events and activities the emergence of which mandates the company to publish the information and give respective notice to the SMSC:

- Changes in personal composition of company management bodies (except the general shareholders' meeting);
- Changes in the stake held by the company in its subsidiaries and affiliated companies, as well as in the stakes held by persons who are members of company management bodies;
- The company must inform on purchase by any person of more than 5% stake in its charter capital and or more than 5% of its shares, as well as on changes in such stake in the volume divisible by 5%. Companies which issue shares without registration of prospectus of the issue (private placement) must inform on purchase by any person of more than 20% stake in its charter capital and or more than 20% of its shares, as well as on changes in such stake in the volume divisible by 5%;
- One-time or mutually related agreements of the company, the amount of which or the value of property on which constitutes at least 10% of the value of company assets as of the date of agreement;
- Fact(s), which resulted in increase/decrease of the value of the issuer's assets more than by 10%;
- Reorganization of the company, its subsidiaries or affiliated companies. The company must inform on its reorganization, as well as on reorganization of subsidiaries and affiliated companies.

In case of lodging claims against the issuer, which may have significant impact on its financial status (initiation of bankruptcy procedures is also applicable).

In accordance with the agreement concluded between the listing company and KSE the company provides the information specified by such agreement, which may significantly influence financial operations of the company.

Similar information (but taking into account banking specific aspects) is provided to the KNB by commercial banks.

**Is it applied in practice?**

Most of JSCs do not inform on the emergence of such facts due to short period for giving notice (Regulation adopted in Dec. 1998), as well as expenses related to the publication of such information.

**What are the enforcement procedures? Are there any sanctions (specify)?**

The SMSC may apply administrative sanctions to company officers, who violate the procedure for submission of such information to investors, the SMSC and publication of information in the press.

For commercial banks the violations regarding the accuracy of reports, their submission to the KNB and publication in the official press may lead to fines totaling 0,1% of paid-up charter capital.

**5. What accounting standards are used?**

**5.1 Are companies required to prepare accounts in accordance with local or recognized International Accounting Standards (specify)?**

*Is this required by the company law, securities law, stock exchange regulation or other related laws?*

Companies listed on world stock exchanges or planning to get listed on world securities markets must compile and submit their financial statements in full compliance with the IAS. Mostly, Kyrgyz companies prepare their statements in accordance with Kyrgyz Accounting Standards (18 standards) approved by the Ministry of Finance of the Kyrgyz Republic, Order •242/• dated July 22, 1997.

**What are the enforcement procedures? Are there any sanctions (specify)?**

In accordance with the ACKR, company officers may be subject to administrative fines for violating the bookkeeping and accounting procedure.

**5.2. What are the major differences between the local and International Accounting Standards?**

The difference is in the implication. The same (or similar) terms often have different meaning (Profit, prime cost of sold products, cash)

The difference is in the approach. Transactions are registered differently under the local and international accounting standards. Example: method for calculation and accounting of revenues and expenses at the time of transaction, i.e. shipment of goods and billing (Accrual-basset) on the one hand, and the method for accruing on the other hand. To determine whether the company has earned profit of incurred losses, the proceeds (income) should be compared with expenses. For this it is necessary to accumulate expenses and not to account them until the related goods or services are sold.

The difference is also in the information. Financial information under Kyrgyz standards is still geared towards satisfaction of informational needs of tax and controlling authorities. As a result, companies understate their operational expenses and charge the expenses directly to capital, without reflecting tax fines and misclassifying “Other” expenses.

### **5.3. What are, in your opinion, the major deficiencies of the local accounting standards?**

The deficiencies are as follows:

- Lack of clear economic logic;
- Distorted actual indicators of profitability and company value;
- Lack of simplicity and incomprehensibility for the users of financial information.

### **5.4. Is there a program for implementing IAS (specify)?**

To improve bookkeeping and accounting system in the Kyrgyz Republic and bring it in line with IAS, a State Committee on IAS and Audit Standards (SCAAS) was created in accordance with the Decree of the President of the Kyrgyz Republic «On Measures to Reform Bookkeeping and Accounting System in the Kyrgyz Republic» dated 03.04.2000. •73. The SCAAS approved the program for reforming the bookkeeping and accounting system in the Kyrgyz Republic in accordance with IAS within 2000-2002. Currently the SCAAS has prepared and is finalizing national accounting standards developed in accordance with IAS.

### **6. Are the annual accounts required to be audited? If so how frequently and by whom?**

**Is this required by the company law, securities law, stock exchange regulation or other related laws?**

Article 148 of the CCKR, and Article 66 of the KBCL stipulate the obligation of open JSCs to annually hire an independent auditor (not linked by any interests to the company or its officers) to confirm the accuracy of annual financial statements. In addition to annual independent audit, financial statements may at any time be verified by an auditor upon the demand of a shareholder (shareholders) who hold at least 10% of company shares. The audit in business entities, including JSCs, is specified in the Law is conducted in accordance with the Law “On Auditing Activities” and provisions specified in a company charter.

The procedure for hiring auditors in JSCs involved in banking, insurance and investment operations is governed by separate regulations within the framework of the above law.

Under current legislation, which governs banking, insurance and investment operations, banks, insurance companies and investment funds are mandated to conduct independent audit to verify their annual financial statements.

The stock exchange rules also mandate a listed company to provide to the stock exchange its financial statements certified by an auditor.

**Is it applied in practice?**

Most JSCs hire an independent auditor to verify the accuracy of annual financial statements. However, some companies do not have their statements audited due to the lack of funds.

***What are the enforcement procedures? Are there any sanctions (specify)?***

In accordance with article 64 of Kyrgyz Law “On Business Companies” the General Shareholders’ Meeting annually approves the auditor and the amount of his compensation. If this issue was not considered by the General Shareholders’ Meeting due to its absence in the agenda of the Meeting, company officers (members of Management) may be subject to administrative sanctions for violation of the procedure of the General Shareholders’ Meeting.

For commercial banks the violations regarding the accuracy of reports, their submission to the KNB and publication in the official press may lead to fines totaling 0,1% of paid-up charter capital.

**7. What is the role of the board of directors in ensuring that the company complies with financial and non-financial disclosure requirements?**

*Is this required by the company law, securities law, stock exchange regulation or other related laws?*

**Is it applied in practice?**

The Board of Directors is not responsible for disclosure of information by the company both to the state authorities and shareholders/potential investors, since members of the Board are not entitled to act on behalf of the company. In this respect the role of the Board is as follows: in accordance with Article 65 of KBCL, the annual report, balance sheet and profit and loss account, which are to be submitted to shareholders, must be signed by all members of Management and the Board of Directors. In case of absence of one or several signatures there should be note specifying the reasons for such absence.

In practice, the executive body (Management, the Director General) is responsible for financial and non-financial disclosure.

**What are the enforcement procedures? Are there any sanctions (specify)?**

If the annual report, balance sheet and profit and loss account or interim financial report significantly distort financial status of the company, company officers who signed the above documents are held collectively liable to the third parties, which incurred losses resulting from such distortion.

**8. What is the role of the management in ensuring that the company complies with financial and non-financial disclosure requirements?**

*Is this required by the company law, securities law, stock exchange regulation or other related laws?*

In accordance with current legislation only the executive body is entitled to act on behalf of the company. Thus, the executive body is responsible for management of day-to-day business of the company and acts on behalf of the company during conclusion of business agreements, including the agreements related to publication of financial information (profit and loss account, balance sheet) and the annual report. Administrative liability for violation of the term for publication is born by the member of the executive body.

*Submission of information to shareholders and potential investors.*

Many JSCs, in accordance with the charter, have the Corporate Secretary (member of Management), who is responsible for provision of information to shareholders. In accordance with current securities legislation the executive body of the company is accountable for disclosure of information, which must be provided to shareholders and investors.

The KBCL, in addition to financial disclosure, stipulates the publication of the annual report. However, it does not specify what must be included in this report. In accordance with Kyrgyz law “On Stock Market” companies must submit to the SMSC the annual report on securities, which includes the information on the structure of management bodies, company officers and their stake in the company charter capital, balance sheet, profit and loss account. Information from the report may be provided upon shareholder’s request (Article 51 of securities law).

### **Is it applied in practice?**

In practice company Management is working on disclosure to shareholders.

#### ***What are the enforcement procedures? Are there any sanctions (specify)?***

For violating the term for publication, non-provision of information to shareholders members of company Management are held liable in accordance with articles 328, 335 of the ACKR.

In accordance with article 68 of the KBCL, if the annual report, balance sheet and profit and loss account or interim financial report significantly distort financial status of the company, company officers (members of Management, the Board of Directors, the Audit Committee) who signed the above documents are held collectively liable to the third parties, which incurred losses resulting from such distortion.

#### ***9. Are auditors required to be independent (e.g. no material relationships with the company including other fee-generating activities)? If so, how is independence defined? Who appoints the auditor?***

1. Article 148 of the CCKR and article 66 of the KBCL stipulate engaging of an auditor by the company, who has no material relations with the company or its shareholders.

2. In accordance with Article 3 of Kyrgyz Law «On Audit Activities», persons who conduct audit are banned from engaging in any other type of business activity except the provision of audit related services (specified in this article).

Violation of this requirement may result in cancellation of the license for performance of audit activities, as well as lead to administrative accountability of faulty persons in accordance with the above Law.

In accordance with article 24 of Kyrgyz Law «On Audit Activities» the following persons are banned from conducting the audit:

- 1) Persons, who have personal material interests in business entity to be audited;
- 2) Persons who have direct or indirect kin relationships with managers of a business entity to be audited or with the customer;
- 3) Persons who are officers, founders or shareholders of a business entity to be audited;
- 4) Employees of a business entity to be audited;
- 5) Officers, co-owners or employees of a subsidiary, affiliate or representative office of a business entity to be audited;

- 6) Auditors and audit organizations may not conduct audits:
- Of business entities, which are their founders, owners, shareholders, creditors, insurers, as well as business entities in which the audit organizations are the founders, owners, or shareholders;
  - Of business entities, which are their subsidiaries, affiliates and/or representative offices or in charter capital of which an auditor/audit organization holds a stake;
  - Of business entities, which were assisted by an auditor/audit organization in restoring and maintaining bookkeeping and preparation of financial statements.

Audit services may not be provided by state authorities, local self-governance bodies, state control and supervision authorities, as well as persons banned by the law from performance of audit activities.

### **Is it applied in practice?**

The above requirements are applied in practice due to serious sanctions for violations (like invalidation of the license).

### ***What are the enforcement procedures? Are there any sanctions (specify)?***

Accountability is specified in articles 35 –38 of Kyrgyz Law “On Audit Activities”.

### ***10. Are auditors liable (i.e. responsible) for negligence or other wrongdoing (specify)?***

### **Is this required by the company law, securities law, stock exchange regulation or other related laws?**

Article 35 of Kyrgyz Law “On Audit Activities” establishes that for improper fulfillment of its obligations on the volume of works specified in the agreement, the auditor (audit organization) is held materially and otherwise liable pursuant to respective provisions of the agreement and in accordance with current Kyrgyz legislation. Article 36 of the above law stipulates that for improper fulfillment of its professional obligations auditors may be subject to penalties in the form of suspension of the license or invalidation thereof.

License certifying the right to engage in audit activities may be invalidated in the following cases:

- Performance by the auditor (audit organization) of audit operations, which are not envisaged in the license issued to him without the receipt of a special license to engage in audit activities on other specialization;
- Use by the auditor/audit organization of information received during the audit for the purposes of other business activity (in addition to criminal accountability);
- Disclosure by the auditor/audit organization without the permit from managers of audited business entity of the contents of audited documents and the auditor’s conclusion, except cases directly specified by Kyrgyz legislation;
- Deliberate concealment by the auditor/audit organization of circumstances, which exclude the possibility for conducting the audit of business entity;
- Engagement in other types of business activity.

### **Is it applied in practice?**

Considering possible sanctions (suspension or invalidation of the license) auditors try to comply with legislative requirements.

*What are the enforcement procedures? Are there any sanctions (specify)?*

If the above facts are uncovered by Kyrgyz State Committee on Accounting and Audit, the faulty auditor's license may be invalidated. Based on a court ruling, an auditor may also be called to criminal accountability.

**11. Does the legal framework require companies to disclose to a specific range of users (i.e. SRO's, shareholders, securities regulators, etc.)? If so, does the legal framework distinguish what information must be disclosed to specific users and when this information must be disclosed?**

*Is this required by the company law, securities law, stock exchange regulation or other related laws?*

**Disclosure to shareholders:**

- Annual report, profit and loss account, balance sheet – 20 days before the date of holding the general shareholders' meeting, company Management must prepare these documents (article 65 of the KBCL);
- Company shareholder may at any time request from the company and get familiar with annual report on securities;
- Shareholder of a company, which issued securities with registration of the prospect of the issue, enjoys the right to receive the information included in the quarterly report, the report on material factors which have impact on financial status and business operations of the company;
- Auditor's report;
- Other information if it is mandatory for disclosure in accordance with provisions of company charter.

**Information provided to the SMSC:**

- Once a year within 5 days after the general shareholders' meeting all JSCs submit annual report on securities;
- Companies, which registered prospectus of the issue with the SMSC, submit to the SMSC a quarterly report no later than 30 days after the expiration of respective quarter;
- Companies, which registered prospectus of the issue with the SMSC, submit to the SMSC the report on material facts/events, which have impact on financial status and business operations of the issuer; the report is submitted no later than 5 days after the occurrence of respective facts;
- After the placement of shares companies submit to the SMSC the report on placement of shares.

**Information published by the company for general public:**

- Annual report, balance sheet, profit and loss account – must be published no later than June 1<sup>st</sup> of the year following the accounting year;
- The report on material facts/events, which have impact on financial status and business operations of the issuer; the report is submitted no later than 5 days after the occurrence of respective facts;

The procedure for provision of information is regulated by the CCKR (articles 140, 148); the KBCL (articles 65, 66); Kyrgyz securities law (articles 44, 51); Kyrgyz law "On Audit Activities»

(article 11); Regulation of the SMSC «Regarding the report on securities», «On quarterly report», «On material facts (events, actions)».

**Information disclosed to the stock exchange by the listed company.**

The information is divided into the information provided by the company during listing procedure, and information provided once company shares are listed at the stock exchange.

**During the listing procedure a company submits to the stock exchange the following documents:**

- Prospectus of securities issue, or the information bulletin, or other document required for registration of such securities;
- Copies, certified by tax authorities, of balance sheets and reports on financial results for the last three fiscal years;
- Copy of the balance sheet for the last quarter forerunning to the moment of submission of application to the stock exchange;
- Questionnaire on financial characteristics of the issuer signed by the authorized persons.

**In addition to the above information banks also submit**

- Information on compliance with financial rules;
- Information on availability of “negative” capital;
- Qualitative evaluation of loan portfolio.

**Information provided by the company to the stock exchange once its shares are listed:**

- Annually, no later than 10 days after the General Shareholders’ Meeting, submits to the stock exchange the report of Management, annual report of the Audit Committee, annual balance sheet, report on financial results of company operations, cash flow statement, explanatory note to financial statements and auditor’s conclusion on financial statements, major technical and economic indicators for the accounting period (for industrial companies) in the format developed by the issuer and finalized with the stock exchange;
- Quarterly submits interim balance sheet, and the report on financial results of business operations;
- No later than 10 days after the annual and extraordinary meetings submits to the stock exchange minutes of the meetings (resolutions) of the highest management body of the company;
- No later than 10 days after state re-registration submits to the stock exchange notarized copy of registered amendments to the charter of the company and notarized copies of certificates on state re-registration of a listed company;
- No later than 10 days after the date of a change submits to the stock exchange the information on the change of legal address and actual location of the company, its affiliates and representative offices;
- Additionally notifies the stock exchange in writing on fulfillment of resolutions adopted by the general shareholders’ meeting, namely the resolutions on the following: on issue of securities, on opening affiliates, representative offices, stakes in charter capital of other companies, and other significant resolutions;

- Not later than within 10 days after the adoption of respective resolution notifies the stock exchange on changes in the composition of the Board of Directors, Management and the Audit Committee;
- Notifies the stock exchange on change of the registrar no later than the next day following the day of conclusion of respective agreement;
- Promptly provides to the stock exchange the information, which may have impact on the value of company securities.

### **Information provided to the KNB**

In accordance with section 4 of the KNB instruction regarding the compilation of periodic regular bank statement by commercial banks of the Kyrgyz Republic dated Oct. 28, 1996, bank statements provided by commercial banks must include the following:

- Information on members of the Board of Directors and Management of the bank (provided annually and in case of any changes);
- Information on bank executive officers (provided annually and in case of changes);
- Basic information on a bank (provided annually and in case of changes);
- "Balance sheet " ( monthly);
- "Profit and loss statement" (monthly);
- "Off-balance statement on bank liabilities " (monthly);
- "Off-balance statement on other banks' liabilities " (monthly);
- "Securities portfolio" (monthly);
- "Other assets and liabilities" (monthly);
- "Changes in capital structure" (monthly);
- "Information on shares and other securities" (monthly);
- "Capital adequacy calculation" (monthly);
- "Term description" (quarterly);
- "Analysis of overdue loans" (monthly);
- "Classification of assets on degree of risks" (quarterly);
- "Information on written off and returned (previously written off) loans and leasing (quarterly);
- "Changes in reserve to cover potential loan and leasing losses" (quarterly);
- "Information on transactions with affiliated companies/related party transactions" (quarterly);
- "Information on transactions with bank's insiders" (quarterly);
- "Concentration of loans of 10 the biggest debtors, including affiliated companies" (quarterly);
- "Concentration of sources of financing" (quarterly).

### **Is it applied in practice?**

- Information to shareholders is disclosed pursuant to the procedure established in company charter;
- Full (but sometimes delayed) disclosure to the SMSC;
- Information to the stock exchange is disclosed pursuant to the agreements concluded between listed companies and the stock exchange.
- Information to the KNB is disclosed in full.

### ***What are the enforcement procedures? Are there any sanctions (specify)?***

The SMSC may apply administrative sanctions to company officers, who violate the procedure for submission of information to investors and the SMSC.

For commercial banks the violations regarding the accuracy of reports, their submission to the KNB and publication in the official press may lead to fines totaling 0,1% of paid-up charter capital.

**11. Do all shareholders receive a copy of the annual report and accounts or are they able to obtain them upon request?**

**Is this required by the company law, securities law, stock exchange regulation or other related laws?**

In accordance with article 51 of Kyrgyz securities law, shareholders are entitled to get familiar with annual report on securities.

In accordance with article 65 of the KBCL, 20 days before the date of annual general shareholders' meeting company management must prepare annual report, profit and loss account, balance sheet and secure shareholders' access to this information.

Under the agreement with the stock exchange, a listed company is mandated to submit annual report to the stock exchange.

**Is it applied in practice?**

In most Kyrgyz companies shareholders may get familiar with annual report, however, in accordance with article 61 of the KBCL, the procedure for familiarizing shareholders is established by a company charter. The charters of some companies do not provide for detailed disclosure procedure.

**What are the enforcement procedures? Are there any sanctions (specify)?**

In accordance with article 328 of the ACKR, company officers may be subject to administrative sanctions in case of violations of the procedure for disclosure of information to investors.

**13. What are the channels of disclosure (i.e. dissemination through the press, over the internet, through the postal system)? Which are the most used?**

*Is this required by the company law, securities law, stock exchange regulation or other related laws?*

In accordance with article 140, 148 of the CCKR, article 65, 66 of the KBCL and article 11 of Kyrgyz law "On Audit Activities" open JSCs (including banks) publish the annual report (certified by the auditor) in the official press.

In accordance with Kyrgyz securities law (articles 44, 51), Regulation of the SMSC «On Materials Facts (events, activities)», in case of occurrence of the facts specified in the above legal acts the company must within 5 days publish the respective information in the press.

**Is it applied in practice?**

This rule is applied in practice. The most frequently used periodicals are «Slovo Kyrgyzstana », «Kyrgyz-Tuusuu».

*What are the enforcement procedures? Are there any sanctions (specify)?*

In accordance with articles 328, 335 of the ACKR, company officers may be subject to administrative sanctions in case of violations of the procedure for disclosure of information to investors.

For commercial banks the violations regarding the accuracy of reports, their submission to the KNB and publication in the official press may lead to fines totaling 0,1% of paid-up charter capital.

#### ***D- What are the training needs and existing training facilities for accountants and auditors?***

- 1. Does the legal and regulatory framework specify the qualifications or recognition criteria that an accountant must satisfy in order to be certified as a public accountant?***
- 2. Does company law or other laws and regulations specify the qualifications or recognition criteria that an auditor must satisfy in order to be able to conduct a statutory audit?***

Professional requirements to auditors are established by Kyrgyz law “On Audit Activities”.

- 3. Are there sufficient training facilities for accountants and auditors (specify)?***

Available training facilities are insufficient.

- 4. Do local auditors have sufficient training and resources to conduct audits according to internationally used auditing standards? Are they sufficiently familiar with International Accounting Standards? If so, how do they gain such knowledge and experience?***

Due to limited finances and lack of legislation in the area of IAS, local auditors do not have sufficient training and are practically unfamiliar with IAS.

- 5. Do companies have a dedicated accounting department? If so, does this department employ certified accountants? Who supervises the work of the accounting department?***

JSCs have accounting department. All JSCs have accountants, who mostly keep the books in accordance with Kyrgyz accounting standards. As a rule the operation of an accounting department is supervised by the CEO.

- 6. Do internal accountants have sufficient training and resources to prepare annual accounts according to International Accounting Standards?***

Accountants of JSCs do not have sufficient training and resources for preparation of annual accounts in accordance with IAS.

- 7. What is the total number of certified accountants? How many accountants are certified yearly?***

Corporation "Pragma" has conducted training on IAS since Oct. 1999 through Dec. 2000. The total of 69 accountants were certified.

**8. How many certified accountants engage in auditing functions on a full-time basis? (i.e. what is the total number of licensed auditors?)**

The total number of licensed auditors (audit firms) - 27.

***E- Can you describe one or several cases involving major violations of disclosure requirements? (i.e. denied access to information; accounting manipulation; non disclosure of required strategic information; etc.). What enforcement actions were taken in each case?***

- 1) Rather often companies do not publish in the press the annual report, balance sheet, and profit and loss account.
- 2) Some companies do not hire an independent auditor to verify the accuracy of annual financial statements.
- 3) Since most of JSCs lack proper regulation of the procedure for provision of information to shareholders, the latter do not have the possibility to receive this or that information.

***F- What are from your point of view the impediments and deterrents to full disclosure by companies?***

Lack of detailed legislative provision as to what should be included in the annual report to be published by JSCs.

Many JSCs lack charter provisions which specify in detail what information may be provided to shareholders, what should be the volume of information and procedure for its provision.

***G- Please add any relevant information that has not been covered by the above questionnaire.***