



The 3rd Meeting of the Eurasian Corporate Governance Roundtable

President Hotel “Kyivsky”

Kyiv, Ukraine

17-18 April 2002

Shareholder Rights, Equitable Treatment and the Role of the State

Questionnaire – Kyrgyz Republic

By

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hosted by

Securities and Stock Market State Commission of Ukraine

State Property Fund of Ukraine

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**The Global Corporate
Governance Forum**

Questionnaire

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Questionnaire

Country background information

1. Corporate Ownership structures:

1.1 Number and aggregate annual turnover of Open Joint Stock Companies (publicly listed / traded companies)

There are 61¹ listed companies. There is no information about aggregate annual turnover of those, because, at the time of completing the questionnaire, not all joint-stock companies filed their annual reports.

1.1.1 Number of listed companies that have never had any trades: 4

1.1.2 Number of listed companies that have had more than one trade: 45

1.1.3 Number of companies that are regularly traded on a monthly basis: 12

The above figures are only for listed companies.

1.2 Number and aggregate annual turnover of Closed Joint Stock Companies (non publicly listed / non traded companies):

¹ In accordance with the Edict of the President of Kyrgyz Republic of 10 May 1999, all transactions with open joint-stock company securities should be performed only at the stock exchange.

There are 257 closed joint-stock companies, and there is no information about their annual turnover due to the same reason (1.1).

1.3 Number and aggregate annual turnover of Joint Stock Companies with state owned stakes: 123 JSCs

1.3.1 Where the State owns over 50% of the company: 45 JSCs

1.3.2 Where the State owns from 30 to 50% of the company: 24 JSCs

1.3.3 Where the State owns less than 30% of the company: 54 JSCs

1.4 What is the aggregate market capitalisation of publicly listed / traded companies as a percentage of GDP?

As of 1 January 2002, State Securities Commission of the Government of the Kyrgyz Republic registered 1,530 share issues of open JSCs for 17,890 soms at par.

1.5 Major sources of corporate financing? (Bank loans? State subsidies? Securities?)

Securities and bank loans

1.5.1 What is the average debt-to-equity ratio of publicly listed / traded companies?

1.5.2 What is the aggregate amount of annual direct state subsidy to enterprises?

1.5.3 What is the aggregate amount of direct foreign investment in the domestic economy? Approximately USD 500 million

1.6 Total number of shareholders: Approximately, 400 thousand.

1.6.1 – Average number of shareholders of open joint stock companies: Approximately 250.

1.6.2 - What percentage of these shares are held by:

-employees:

-executive managers:

-foreign shareholders or institutional investors:

-the state:

-domestic corporations:

1.6.3 – Average number of shareholders of closed joint stock companies: Approximately 20

1.6.4 - What percentage of these shares are held by:

- employees:
- executive managers:
- foreign shareholders or institutional investors:
- the state:
- domestic corporations

1.7 Are there any cross shareholdings? If so is this a wide spread practice? Does it affect corporate control landscape?

There are no corporate groups in the Kyrgyz Republic. The existing groups comprise individual owners of companies, i.e. one shareholder – one or more shares.

1.8 Is there a trend towards the development of corporate groups? If so, for what reasons are corporate groups developing?

1.9 Are there any special links between financial institutions and corporate groups?

2. Privatisation procedures:

2.1 Percent of state commercial/production assets privatised to date: Approximately 80%

2.1.1 Number and aggregate annual turnover of enterprises privatised to date: Approximately 1,065 joint-stock companies.

2.2 By what methods may state assets be privatised? Auctions, tenders, transfers into ownership by company personnel.

2.2.1 Identify the percentage of assets privatised through each method.

2.3 What are the privatisation objectives and current methods used? The objective is to transfer state-owned assets into private ownership. Methods – auctions, tenders.

2.4 To what extent may foreign investors participate in privatisation? Same as domestic investors.

3. The legal and regulatory framework providing for shareholder rights

3.1 Identify the principal normative acts establishing and protecting the rights of shareholders (title of act, promulgating state body, date of adoption, identification number)?

The main normative acts establishing and protecting shareholder rights are:

- Civil Code of the Kyrgyz Republic of 8 May 1996 No. 15;
- Code of Administrative Responsibility of 4 August 1998 No. 114;

- Law of the Kyrgyz Republic of 15 November 1996 “On Business Partnerships and Companies”;
- Law of the Kyrgyz Republic of 21 July 1998 “On Securities Market” No. 95.

3.2 How recent and effective is the existing legislation?

These normative acts are being constantly improved, as time puts forward new requirements.

3.3 What are in your opinion the most important areas for reform of existing normative acts or the adoption of additional normative acts?

Further improvement of normative acts is required to better protect shareholder rights, to strengthen corporate governance at companies and to introduce new types of debentures.

3.4 Are there any significant pending laws or normative acts?

Now the adoption of a number of normative acts is being expected, the main one being the law of the Kyrgyz Republic on joint-stock companies.

3.5 What procedures are required to amend the bylaws / regulations of a company?

To introduce amendments to the rules and regulations of the Securities Commission, approvals by the concerned ministries and departments are required, subject to subsequent registration with the Ministry of Justice of the Kyrgyz Republic.

3.6 What procedures are required to amend the charter of a company?

To amend the charter, the general shareholders’ meeting should approve the decision and then the amendments must be registered with the Ministry of Justice of the Kyrgyz Republic.

Does the corporate governance framework protect the rights of shareholders?

1. Ownership Rights

Basic shareholder rights include the right to secure methods of ownership registration and to convey or transfer shares.

1.1 Are Shareholders able to register their shares without undue difficulties? What are the steps, documents, permissions and time required to register shares? On what grounds may authorities refuse the registration of shares?

Identify the relevant section(s) of the normative act(s) governing this issue

Describe any issues or problems arising in practice in connection with this matter

In accordance with the Law of the Kyrgyz Republic “On Securities Market,” issuers are entitled to issue securities from the moment of registering the securities and giving the state registration number by the Securities Commission of the Government of the Kyrgyz Republic. To register the issue, the issuer should submit the following documents:

- application for registration;
- text of the decision to issue securities;
- issue prospectus (if the issue is registered together with the issue prospectus);
- copies of constituent documents (on share issue to create a joint-stock company);
- supporting documents for the permission of the executive authority to allow the issue of securities (in the cases where such permission is required by law of the Kyrgyz Republic).

The Securities Commission is obliged to register securities or to give a justified refusal within 30 day of submitting the documents specified above. When additional documents are submitted, the calculation of the term is resumed.

Refusals may be justified by the following:

- issuer’s violating securities legislation of the Kyrgyz Republic, including the situations where the submitted documents allow one to conclude that the terms of issue and circulation of securities contradict legislation of the Kyrgyz Republic;
- the submitted documents do not contain complete information or the information does not comply with legislation;
- including false information in the issue prospectus or the decision to issue securities (or other documents based on which securities are registered).

Refusals to register securities and the issue prospectus may be challenged in court.

Registration of title to securities is effected by professional stock market participants who maintain registers of securities and are licensed by the Securities Commission of the Government of the Kyrgyz Republic. An agreement on maintaining the register is concluded by the issuer with only one registrar. If there are fewer than 50 shareholders, the issue is entitled to maintain the register itself.

Regulation on maintaining and keeping the register of registered securities owners in the Kyrgyz Republic stipulates that:

7.3. Making entries to the register on transfers of title to securities.

The registrar is obliged to make entries to the register on transfers of title to securities after submission of a transfer order by the registered person transferring securities or the person into whose account the securities are being transferred or an authorized representative of one of these persons or/ and the documents required by this Regulation.

Entries to the register are made within 3 days of providing the documents required by normative acts of the Kyrgyz Republic.

The registrar may not demand other documents from the registered entity, except for those specified by the present Regulation and other normative acts of the Kyrgyz Republic.

Transfers of securities burdened by obligations are subject to a written consent of the person for whose benefit such burdening was effected.

The registrar makes entries to the register concerning transfers of title to securities, if:

- all documents have been provided required by the present Regulation;
- the provided documents contain all information required in accordance with this Regulation:
- the number of securities indicated in the transfer order or other similar document does not exceed the number of securities accounted for in the account of the registered person transferring the securities;

the signature of the registered person or his authorized representative is compared to the original in accordance with the procedure stipulated by this Regulation;

the person paid for registrar's services or provided guarantees of payment in accordance with the latter's price list;

It is not allowed to refuse making an entry to the register, except for the cases stipulated by the present Regulation. In case of a refusal to make an entry to the register, the registrar should within 5 days of submitting the order to make an entry to the register send the applicant a justified notification of its refusal to make an entry to the register containing the reasons for refusal and actions that should be taken to eliminate the reasons preventing the making of the entry.

The registered person is entitled to attest his signature by a seal of the issuer's officer. In this case, the issuer is responsible for authenticity of the signature.

7.4. Documents required to make an entry to the register concerning the transfer of title to securities on concluding a transaction.

The registrar makes entries to the register concerning the transfer of title to securities on concluding a transaction after provision of the following documents:

transfer order (submitted to the registrar);

ID (submitted to the registrar);

an original or a notarised copy of the document confirming the powers of the authorized representative (submitted to the registrar);

securities certificates owned by the former owner in case of documentary securities (provided to the registrar).

1.2 How is share registration handled in public companies? What are the steps, documents, permissions and time required to register shares? On what grounds may authorities refuse the registration of shares?

Identify the relevant section(s) of the normative act(s) governing this issue

Registration of securities issues by public companies and registration of title to securities is made on general grounds specified in the previous section.

Describe any issues or problems arising in practice in connection with this matter

1.3 How are registers regulated?

1. Law of Kyrgyz Republic "On Business Partnerships and Companies"

2. Law of Kyrgyz Republic "On Securities Market"

3. Standards for maintaining registers of securities owners in the Kyrgyz Republic approved by Decree No. 73 of the Securities Commission of 02.10.2001 (Ministry of Justice of the Kyrgyz Republic registration No. 176-01 of 19.10.2001)

4. Regulation on maintaining and keeping registers of registered securities in the Kyrgyz Republic approved by Decree No. 22 of the Securities Commission of 30.04.1998 (as revised by decrees of the Securities Commission of 29.12.1998 No. 59 and of 12.07.1999 No. 31)

5. Regulation on maintaining the register of investment shares of the share investment fund approved by Decree No. 59 of the Securities Commission of 04.09.2001 (Ministry of Justice of the Kyrgyz Republic registration No. 168-01 of 10.10.2001)

1.4 What rights do shareholders and/or the public have to inspect a company's register of shareholders?

On the first demand of shareholders – nominal holders of shares or chargees, the registrar is obliged to provide them with excerpts from the register confirming their title to shares.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 60
2. Law of Kyrgyz Republic "On Securities Market" – Article 17
3. Regulation on maintaining and keeping registers of registered securities in the Kyrgyz Republic approved by Decree No. 22 of the Securities Commission of 30.04.1998 (as revised by decrees of the Securities Commission of 29.12.1998 No. 59 and of 12.07.1999 No. 31) – section 5
4. Regulation on maintaining the register of investment shares of the share investment fund approved by Decree No. 59 of the Securities Commission of 04.09.2001 (Ministry of Justice of the Kyrgyz Republic registration No. 168-01 of 10.10.2001) – section 3.

Describe any issues or problems arising in practice in connection with this matter

1.5 Are shares freely transferable in open versus closed joint stock companies? What are the restrictions?

Identify the relevant section(s) of the normative act(s) governing this issue

In open JSCs shares are freely transferable:

1. Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 61
2. Law of Kyrgyz Republic "On Securities Market" – Chapter 9.

In closed JSCs the shareholder wishing to sell the shares is obliged to offer other founders of the company or the company itself to buy them, unless constituent documents stipulate otherwise. If company founders refused to buy the shares, the shareholder is entitled to sell shares to third persons subject to company's consent (or if he does not get an answer during one month after the request).

1. Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 53, section 5

Describe any issues or problems arising in practice in connection with this matter

1.6 What are the requirements for authorising and issuing new capital?

The issuer is entitled to issue securities from the moment of their state registration and giving them state registration number by the Securities Commission. Until state registration have been completed, transactions with these securities are prohibited. Securities of open JSCs may be placed only by professional stock market participants licensed to pursue broker and dealer activities and also fiduciary management of securities in accordance with the procedure specified by law and through licensed organized traders of securities. Specialized registrars and

specialists maintaining and keeping registers of securities of open JSCs may make changes to registers based on documents supporting the transactions at organized securities markets.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 59
2. Law of Kyrgyz Republic “On Securities Market” – Chapter 7,8,9
3. Regulation on registering and re-registering securities in the Kyrgyz Republic approved by Decree No. 70 of the Securities Commission of 01.10.2002 (Ministry of Justice of the Kyrgyz Republic registration No. 180-01 of 29.10.2001)
4. Instructions No. 78 on placement of new securities issues approved by the Securities Commission of 14.09.2000.
5. Edict No. 121 of the President of the Kyrgyz Republic of 10.05.99 “On measures for further development of organized securities market”
6. Temporary rules for securities trading in the Kyrgyz Republic approved by Decree No. 30 of the Securities Commission of 12.07.1999 (as revised by Decree No. 37 of the Securities Commission of 21.10.1999)
7. Regulation on registering the results of placement of securities issues approved by Decree No. 76 of the Securities Commission of 02.10.2001 (Ministry of Justice of the Kyrgyz Republic registration No. 177-01 of 22.10.2001)
8. Regulation on suspending the issue and recognizing issues as invalid approved by Decree No. 92 of the Securities Commission of 06.11.2001 (Ministry of Justice of the Kyrgyz Republic registration No. 196-01 of 26.11.2001)
9. Decree No. 251 of the Government of the Kyrgyz Republic of 04.05.2000 “On additional measures to regulate the issues of attracting funds from the population by public placements of securities.”

Describe any issues or problems arising in practice in connection with this matter

1.7 What pre-emptive rights to the purchase of company shares do shareholders enjoy, if any?

Shareholders have the right of first refusal to buy shares issued by the company, unless otherwise stipulated by its charter.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 61
2. Law of Kyrgyz Republic “On Securities Market” – Article 45

Describe any issues or problems arising in practice in connection with this matter

2. Dividends

Basic shareholder rights include the right to share in the profits of the corporation.

2.1 How are dividends of the company set and distributed?

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 70
2. Regulation on paying dividends on shares of JSCs approved by the board of the State Securities Agency of the Government of the Kyrgyz Republic of 02.09.1996 as revised by Decree No. 10 the Securities Commission of 11.03.1998 (Ministry of Justice of the Kyrgyz Republic index No. 330 of 02.10.1996)

Describe any issues or problems arising in practice in connection with this matter

2.2 Under what circumstances may shareholders be restricted in their ability to share in profits?

JSCs may not announce and pay dividends:

- 1) until the charter capital has been paid up in full;
- 2) if the amount of charter capital will decrease as a result of paying dividends.

Owners of preferred shares are entitled to guaranteed (fixed) minimum dividends. If the company charter provides for cumulative preferred shares, their owners acquire the voting powers at the general shareholders’ meeting, which did not resolve to pay dividends or resolved to make a partial payment of dividends on preferred shares.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Business Partnerships and Companies” – Articles 59, 70.

Describe any issues or problems arising in practice in connection with this matter

2.3 Can shareholders vote at general meetings on distribution of profits?

The approval of profits distribution is part of the exclusive powers of the general shareholders’ meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 64
2. Law of Kyrgyz Republic “On Investment Funds” – Article 9

Describe any issues or problems arising in practice in connection with this matter

2.4 What specific recourse do shareholders have in case of delays or refusal to pay dividends?

In the event of delays or refusals to pay dividends, shareholders may apply to the Securities Commission or to court.

2.5 Is the company allowed to purchase its own shares? Under what conditions?

Joint-stock companies are allowed to repurchase their own shares in accordance with the decision of company's board of directors. Joint-stock investment funds that undertake to repurchase their shares are obliged to do so. Joint-stock investment funds that do not undertake to repurchase their shares may repurchase their shares at their discretion, however, the purchase of up to 10% of shares is only allowed.

1. Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 67
2. Law of Kyrgyz Republic "On Investment Funds" – Article 13, 15, 16.

2.6 If a company purchases its own shares (treasury shares), who, if anyone, may exercise voting rights with respect to these shares?

Identify the relevant section(s) of the normative act(s) governing this issue

Describe any issues or problems arising in practice in connection with this matter
It is possible that the required number of votes will not be cast to approve a decision.

3. Major corporate changes and shareholder meetings

Shareholders have the right to participate in decisions concerning fundamental corporate changes and should have the opportunity to participate effectively and vote in shareholder meetings.

3.1 How often do shareholder meetings have to be held?

Once a year, JSCs hold general shareholders' meetings irrespective of other meetings. Extraordinary shareholder meetings may also be held.

They are called:

In JSCs – by the management board, the audit committee or shareholders owning at least 0% of shares.

In joint-stock investment funds – by the board of directors on the motion by the board of directors, fund's capital management company, shareholders owning together at least 10% of fund's shares, fund's depository.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 64
2. Law of Kyrgyz Republic "On Investment Funds" – Article 9, 10.
3. Law of Kyrgyz Republic "On Banks and Banking" – Article 21.

Describe any issues or problems arising in practice in connection with this matter

3.2 What is the process and timeline for notification of shareholders?

Shareholders are notified of the general shareholders' meeting personally by registered mail. Besides, a general announcement should be published in the press indicating the time and place for the general shareholders' meeting and its agenda. The said notice should be given at least twenty days in advance of the general shareholders' meeting of an open JSC and at least ten days in advance for closed JSCs.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 64
2. Law of Kyrgyz Republic "On Investment Funds" – Article 10.
3. Law of Kyrgyz Republic "On Banks and Banking" – Article 22.

Describe any issues or problems arising in practice in connection with this matter

3.3 How are foreign shareholders treated regarding notification and participation?

There is no special treatment for foreign shareholders.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 64, clause 4

Describe any issues or problems arising in practice in connection with this matter

3.4 What advance notification must shareholders receive of the agenda of shareholder meetings?

Shareholders are notified of the general shareholders' meeting personally by registered mail.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic "On Business Partnerships and Companies" – Article 64, clause 4
2. Law of Kyrgyz Republic "On Investment Funds" – Article 10, clause 1
3. Law of Kyrgyz Republic "On Banks and Banking" – Article 22, clause 1.

Describe any issues or problems arising in practice in connection with this matter

3.5 What are the restrictions regarding the location of the general meeting?

General shareholders' meetings may be held in the place designated by the company charter.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 64, clause 4

Describe any issues or problems arising in practice in connection with this matter

3.6 Are there any restrictions on the participation of shareholders in the general meetings of shareholders? Of representatives of shareholders that are legal entities? Of proxies?

Each shareholder is entitled to attend the meeting personally or through an authorized representative.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 64, clause 5
2. Law of Kyrgyz Republic “On Investment Funds” – Article 11
3. Law of Kyrgyz Republic “On Banks and Banking” – Article 23, clause 5.

Describe any issues or problems arising in practice in connection with this matter

3.7 Are shareholders able to add items to the agenda? What is the procedure?

Shareholders holding together over 10% of votes may make proposals to the agenda of the general shareholders’ meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Banks and Banking” – Article 22, clause 1

Describe any issues or problems arising in practice in connection with this matter

3.8 Are all shareholders able to vote at general meetings? What are the majorities required for the following issues?

Holders of common shares and cumulative preferred shares, if so stipulated by the charter.

Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 59, clause 5

3.8.1 –on appointment and removal of directors?

The board of directors is appointed and dismissed by a 2/3 majority vote of shareholders attending the general shareholders’ meeting and their authorised representatives.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 59, clause 10
2. Law of Kyrgyz Republic “On Investment Funds” – Article 11, clause 7

Describe any issues or problems arising in practice in connection with this matter

3.8.2 –on appointment and removal of external auditors?

Appointment and dismissal of external auditors is an exclusive power of shareholders. Audits of the company may be performed any time on demand of shareholders with 10% and more percent of shares. The procedure for holding audits is determined by law and by the company charter.

Identify the relevant section(s) of the normative act(s) governing this issue

1. Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 64, clause 5, and Article 66, clause 3
2. Law of Kyrgyz Republic “On Investment Funds” – Article 24, clause 5, sub clause 7, where the board of directors appoints an external auditor.

Describe any issues or problems arising in practice in connection with this matter

3.8.3 –on issuing share capital?

Share issues are registered by the State Securities Commission of the Government

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Investment Funds” – Article 13 and 16.

Describe any issues or problems arising in practice in connection with this matter

3.8.4 –on the issuance of additional shares?

Additional share issues or changes of share par value is prohibited without state registration of the share issue and introduction of relevant changes to the charter of the joint-stock company.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 56, clause 6.

Describe any issues or problems arising in practice in connection with this matter

3.8.5 –on major corporate transactions (i.e. acquisitions, disposal, mergers, take-overs, etc.)

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Business Partnerships and Companies” – Articles 71 – 75

Describe any issues or problems arising in practice in connection with this matter

3.8.6 –on transactions with related parties?

Investment funds may not act as brokers buying shares issued by other investment funds; they may not transact with their affiliates.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Investment Funds” – Article 33, clause 1, sub clause 10-12.

Describe any issues or problems arising in practice in connection with this matter

3.8.7 –on changes to company business, strategy or objectives?

Other issues may be included within the powers of the general shareholders’ meeting.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Business Partnerships and Companies”

Describe any issues or problems arising in practice in connection with this matter

3.8.8 –on amendments to the statutes, articles or similar documents governing the company?

Exclusive powers of the general shareholders’ meeting include making changes to company by-laws, the charter or similar documents, regulating activities of the company.

Identify the relevant section(s) of the normative act(s) governing this issue

Law of Kyrgyz Republic “On Investment Funds” – Article 9

Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 64

Describe any issues or problems arising in practice in connection with this matter

3.8.9 –on any other relevant issue requiring a majority of votes?

Law of Kyrgyz Republic “On Business Partnerships and Companies” – Article 62, clause 1

3.9 Are shareholders permitted to vote other than in person? By what means (by proxy, absentee, postal vote, telephone or electronically)?

They are.

Identify the relevant section(s) of the normative act(s) governing this issue

Clause 5, Article 64 of the Law of Kyrgyz Republic “On Business Partnerships and Companies,” clauses 5.1 and 9.5 of the Rules for holding general shareholders’ meetings by joint-stock companies of the Kyrgyz Republic.

Describe any issues or problems arising in practice in connection with this matter

3.10 Do meeting notices clearly explain the procedures for voting? and appointment of proxies?

Identify the relevant section(s) of the normative act(s) governing this issue

Clause 4, Article 64 of the Law of Kyrgyz Republic “On Business Partnerships and Companies,” clause 3.2 and Addendum No. 1 to the Rules for holding general shareholders’ meetings by joint-stock companies of the Kyrgyz Republic.

Describe any issues or problems arising in practice in connection with this matter

No problems so far, the only one being that most shareholders came to own shares through coupon auctions and their addresses are not known.

3.11 Are shareholders able to convene extraordinary meetings? Under what conditions?

Identify the relevant section(s) of the normative act(s) governing this issue

Clause 3, Article 64 of the Law of Kyrgyz Republic “On Business Partnerships and Companies,” clause 5.3 of the Rules for holding general shareholders’ meetings by joint-stock companies of the Kyrgyz Republic.

Describe any issues or problems arising in practice in connection with this matter

3.12 What is the effect of shareholder resolutions on the company?

Identify the relevant section(s) of the normative act(s) governing this issue

Clause 1, Article 64 of the Law of Kyrgyz Republic “On Business Partnerships and Companies”

Describe any issues or problems arising in practice in connection with this matter

In some cases shareholders’ decisions are ineffective for the company and there are many issues that, sometimes, are referred to courts.

4. Equitable treatment

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders.

4.1 Does the corporate governance framework provide for different classes of shareholders (i.e. with varying voting rights or other special rights)? How are the existing classes defined?

Identify the relevant section(s) of the normative act(s) governing this issue

Article 51 of the Law of Kyrgyz Republic “On Securities Market”

Describe any issues or problems arising in practice in connection with this matter

Blocking decisions of minority shareholders.

4.2 Within a class, do shareholders have the same voting rights?

Identify the relevant section(s) of the normative act(s) governing this issue

Article 61 of the Law of Kyrgyz Republic “On Business Partnerships and Companies”

Describe any issues or problems arising in practice in connection with this matter

4.3 Are shareholders informed about their voting rights? Before they purchase?

Identify the relevant section(s) of the normative act(s) governing this issue

Article 61 of the Law of Kyrgyz Republic “On Business Partnerships and Companies”

Describe any issues or problems arising in practice in connection with this matter

4.4 Are changes in voting rights required to be subject to shareholder vote in general meeting? Under what conditions?

Identify the relevant section(s) of the normative act(s) governing this issue

Clause 5, Article 64 of the Law of Kyrgyz Republic “On Business Partnerships and Companies”

Describe any issues or problems arising in practice in connection with this matter

4.5 Are beneficial owners of shares able to exercise their voting rights, even if shares are held by custodians, nominees? What rights to information and notice do beneficial owners have?

They have voting powers.

Identify the relevant section(s) of the normative act(s) governing this issue

Describe any issues or problems arising in practice in connection with this matter

4.6 How many joint stock companies have floated securities on foreign capital markets? How do the holders of these securities exercise their corporate governance rights?

Three open joint-stock companies in Kazakhstan. In accordance with Article 61 of the Law of Kyrgyz Republic “On Business Partnerships and Companies,” exercised are property and non-property rights of shareholders.

4.7 What are the restrictions provided by the legal or regulatory framework over who can become a shareholder? For example, do foreign shareholders have a limit access to ‘strategic’ companies?

There are restrictions for investment funds concerning the purchase of company shares, which may be purchased only up to 25%. Legislation of the Kyrgyz Republic does not stipulate any other restrictions regarding the purchase of shares.

Describe any issues or problems arising in practice in connection with this matter

4.8 Are there special provisions in the legal or regulatory framework relating to certain categories of shareholders (such as employees, foreigners, and the state)? Please describe these provisions.

Identify the relevant section(s) of the normative act(s) governing this issue

Article 61 of the Law of Kyrgyz Republic “On Business Partnerships and Companies,” shareholders’ property and non-property rights.

Describe any issues or problems arising in practice in connection with this matter

4.9 Does the company have discretion over who can become a shareholder? Please specify.

Is this specified by the company law or other related laws?

Companies may not decide who is and who isn't to be a shareholder.

Describe any issues or problems arising in practice in connection with this matter

5. The State as a shareholder

5.1 Are the functions of the state as a regulator and the state as a shareholder clearly distinguished?

Identify the relevant section(s) of the normative act(s) governing this issue

Under law of the Kyrgyz Republic, all shareholders have equal rights.

Describe any issues or problems arising in practice in connection with this matter

5.2 Who has authority to exercise the state's right as a shareholder (government ministry, privatisation agency, other)?

Identify the relevant section(s) of the normative act(s) governing this issue

Regulation on the State Committee of the Kyrgyz Republic for managing state property and attracting direct investment approved by Decree No. 120 of the Government of the Kyrgyz Republic of 30.03.2001.

Describe any issues or problems arising in practice in connection with this matter

5.3 Does the state maintain a publicly available register listing the stakes of the state in joint stock companies?

Identify the relevant section(s) of the normative act(s) governing this issue

Describe any issues or problems arising in practice in connection with this matter

5.4 Has the state become a minority shareholder, as part of a process of privatising formerly state owned enterprises?

In certain sectors of the economy (trade, customer services, some branches of industry).

5.5 Have bankrupt companies been re-nationalised? What was the procedure? Please provide examples.

There were individual cases, for example, Kairat (formerly Maksat) joint-stock commercial bank, which was completely bought by the National Bank of the Kyrgyz Republic after receivership.

5.6 Under what circumstances do state representatives have a seat on the board? What qualification must such persons have? Are they civil servants?

Identify the relevant section(s) of the normative act(s) governing this issue

Usually, state representatives are appointed to the supervisory board by edicts of the President of the Kyrgyz Republic, executive orders of the State Property Committee.

Describe any issues or problems arising in practice in connection with this matter

They are too busy to pay much attention to company matters.

5.7 Do state representatives participate in shareholder meetings?

Identify the relevant section(s) of the normative act(s) governing this issue

Regulation on the State Committee of the Kyrgyz Republic for managing state property and attracting direct investment approved by Decree No. 120 of the Government of the Kyrgyz Republic of 30.03.2001.

Describe any issues or problems arising in practice in connection with this matter

5.8 Does the state have the same rights as other shareholders? If not, does it have more rights or fewer? Please specify.

All shareholders have equal rights under law of the Kyrgyz Republic.

5.9 Do state shares have a special status (in regard to voting rights, share in profit, over major strategic company decisions)?

All shareholders have equal rights under law of the Kyrgyz Republic.

5.10 Does the legal framework provide for Golden shares?

It does not.

5.11 Does the state have the power to veto decision by the majority of shareholders? Please specify.

No. Only through courts.

5.12 What are in your opinion the concerns of the state as a shareholder (i.e strategic, social, financial, public service)?

Depending on the industry, in which the company operates, but, basically, all of these and many more.

5.13 Do companies in which the state has a stake benefit from better conditions or privileges not generally enjoyed by, fully privatised companies? For example in terms of subsidies, tax payment? Does this distort competition?

5.14 Describe any significant concrete examples where the state exerted influence in corporate decision making beyond which its percentage share ownership would normally permit it.

5.15 Describe any significant concrete examples where social or political concerns rather than a desire to maximise the long-term profitability of the company affected the state's behaviour as a shareholder.

6. Market integrity

Market for corporate control should be allowed to function in an efficient and transparent manner.

6.1 Does the legal or regulatory framework (e.g., stock exchange listing rules) clearly set out the procedures for mergers, acquisitions and take-overs? Are there rules governing the substantial acquisition of shares?

Subject to approval of the state regulator, the stock exchange approves listing rules. When a 5% stake of shares (or larger) is purchased, the owner and the professional stock market participant are obliged to notify the state regulator of the purchase.

Describe any issues or problems arising in practice in connection with this matter.

Usually, owners do not provide such information.

6.2 Are extraordinary transactions such as mergers and the sale of substantial portions of corporate assets clearly disclosed?

Identify the relevant section(s) of the normative act(s) governing this issue

Article 51 of the Law of Kyrgyz Republic "On Securities Market," Regulation on disclosure of information

Describe any issues or problems arising in practice in connection with this matter

6.3 Describe anti-takeover devices commonly used to shield management or a group of shareholders from accountability?

Usually, a group of shareholders begin submitting applications to the state regulator of the securities market or to other ministries and departments.

6.4 Are there further restrictions on changes of corporate control such as competition policy, government ownership provisions?

Yes, there are, in respect of natural monopolies and military-technical facilities.

6.5 Do minority shareholders have the right to sell their shares to the bidder for the same or equivalent price as agreed between the bidder and the controlling shareholder?

It is for the owners to decide, what price to ask for his shares.

6.6 What are the restrictions to insider trading? Has there been any cases involving insider trading? What actions have been taken?

Regulation on insider trading. There was a case of suspension of a licence of a brokerage firm, which used inside information.

6.7 How does domestic law define an “interested” or “related” party?

6.7.1 Describe the procedures for approving or challenging transactions between the company and a related party

These procedures are enforced through courts.

6.7.2 What civil and administrative recourse does a shareholder have to challenge or invalidate a transaction between the company and an interested party?

- judicial authorities;
- general shareholders' meeting.

6.8 Who bears liability for losses caused to the company by harmful or exploitative related party transactions?

Article 69 of the Law of the Kyrgyz Republic “On Business Partnerships and Companies,” company officers under administrative and criminal law.

7. Enforcement and legal redress

All shareholders should have the opportunity to obtain effective redress for violation of their rights.

7.1 Which are the most frequent shareholder right violations?

Non-payment of dividends, violation of the rules for holding the general shareholders' meeting, etc.

7.2 Have companies been sanctioned for shareholder right violation?

Penalties are imposed on company officers under the Administrative Code of the Kyrgyz Republic.

7.3 In the past five years how many cases have been pursued? What were the result?

236 cases during three years involving total of 626.5 soms (approximately USD 12.5 thousand).

7.4 What are the sanctions provided by the legal framework?

Financial and administrative.

Identify the relevant section(s) of the normative act(s) governing this issue

Administrative Code of the Kyrgyz Republic and the Law "On Securities Market."

Describe any issues or problems arising in practice in connection with this matter

7.5 To which authorities can shareholders appeal in pursuit of redress, especially during changes of corporate control? What are the powers of these authorities? Is there any arbitration procedure?

To the state regulator of the securities market, to law enforcement authorities, to courts, to the National Bank (if the case concerns commercial banks). There is no court of arbitration in the Kyrgyz Republic.

7.6 What are the procedures for shareholders to seek legal redress? Is this process long? Is this process costly?

Filing an lawsuit with a court of law. It is different in each individual case, depending on the lawsuit.

7.7 Are class action lawsuits permitted? Have any class action lawsuits been filed?

In accordance with the Code of Civil Procedure, class lawsuits are permitted. So far, there were no such lawsuits by shareholders.

8. Shareholder awareness

8.1 Are shareholders sufficiently informed about their rights?

The state regulator has TV programs and publishes articles about the securities market in the media.

8.2 To what extent do shareholders attend shareholder meetings and exercise their voting right?

Attendance is satisfactory. Each year, shareholders become more aware of their rights.

8.3 Have shareholder associations been created? If so, are they influential?

The creation of a shareholder protection fund is envisaged.

8.4 Do voluntary codes of corporate governance practice encourage shareholders to exercise their rights?

8.5 Do shareholders pool their interests and/or votes (for example to elect board members)?

Legislation of the Kyrgyz Republic stipulates shareholders' pooling their votes to elect their representative on the supervisory board by cumulative voting. Basically, such practices are broadly used by commercial banks.

8.6 Are institutional investors active in the corporate governance field? If not, why? Mention some cases.

They are more active than ordinary shareholders because they have some professional background (certified as stock market professionals) and knowledge of corporate law.

8.7 What are the most frequent shareholder right violations?

Non-payment of dividends, violation of the rules for holding the general shareholders' meeting, etc.

8.8 What are from your point of view priority measures to improve shareholder rights?

Legislation must stipulate stricter responsibility of company managers. Transparency of activities of joint-stock companies should be improved. Shareholders must be better informed, this work to be done through the media, etc.