

THE LAW OF THE KYRGYZ REPUBLIC

On Agreements on Sharing of Production Resulting from Development of Mineral Resources

- Chapter I. General provisions
- Chapter II. Signing and execution of agreements
- Chapter III. Closing provisions

This Law is purposed to establish legal grounds for relationships arising in the process of administration of domestic and foreign investments made in the prospecting and development of mineral deposits located in the Kyrgyz Republic, these relationships being governed by the terms of production sharing agreements entered into in congruence with this Law.

Chapter I General provisions

Article 1. Relationships governed by the KR Law "On agreements on sharing of production resulting from development of mineral resources"

1. This Law governs relationships arising in the course of concluding, executing and terminating production sharing agreements and also specifies the legal framework for such agreements.

2. Relationships which be not covered by this Law, inclusive of those arising in the course of development of land and other resources, will be administered in pursuance of the applicable laws.

3. Relationships arising in the course of exploration and development of mineral deposits, product sharing as well as transportation, processing, storage, use, sale or disposal of the product effected in any other way will be governed by the terms of a production sharing agreement entered into pursuance of this Law.

The rights and obligations of a production sharing agreement which should be of a civil legal nature will be defined in pursuance of this Law and Civil Code of the Kyrgyz Republic.

In case that any legal act of the Kyrgyz Republic should have provisions other than those which are specified under this Law, these provisions governing the relationships stipulated under Clause 1 of this Article, the provisions of this Law will prevail.

Article 2. Production sharing agreement

1. A production sharing agreement (hereinafter referred to as "Agreement") is an agreement which evidences the make-over, on a fee-payable basis and limited-duration basis, by the Kyrgyz Republic to a subject of economic activity (hereinafter referred to as "Investor") of the exclusive rights to explore and develop mineral deposits within the area specified in the Agreement and also to perform work required to support the activities as listed above, with the Investor undertaking to carry out the works specified at its own cost and risk. The Agreement will set forth all conditions associated with the mineral resources use, inclusive of the processing of recovered mineral raw material as well as conditions and procedure for the product sharing between the parties to be effected in pursuance of this Law.

2. The conditions governing mineral resources development will be formulated under an Agreement in conformance with the KR Law.

The right to use a portion of mineral resources confined within a certain area can be limited, suspended or terminated in pursuance of an Agreement entered into in compliance with the KR Law.

3. Agreements which have been signed prior to the enactment of this Law will be administered in conformance with the conditions set forth in such Agreements. In this case the provisions of this Law will apply to the Agreements as referred to above subject to such an application being not in contravention of the provisions specified under the said Agreements.

Article 3. Parties to Agreement

The parties to an Agreement (hereinafter referred to as "Parties") are:

The Kyrgyz Republic (hereinafter referred to as "the State"), represented for the purpose of an Agreement by the KR Government or designated state administration bodies;

Investors - physical and legal entities of the Kyrgyz Republic, foreign physical and legal entities who (1) engage in investing of their own assets, borrowed and attracted capital in the exploration, prospecting and mining of mineral raw materials and (2) are the users of mineral resources as stipulated under the Agreement.

Article 4. Use of mineral resources under the terms of an Agreement

1. The right of use of mineral resources under a product sharing arrangement will be granted to Investors on the basis on an Agreement entered into in pursuance of this Law.

2. A land lot containing mineral resources will be made over for use by investors in compliance with the terms of an Agreement. In this case a license to use such a land lot, which will evidence the investor's right to use the portion of mineral resources specified under the Agreement, will be issued to the Investor following the signing of an Agreement, this Agreement being executed in conformance with the KR Law. A license will be effective over the entire duration of an Agreement and can be prolonged, re-registered or terminated in conformance with the terms of the Agreement.

3. In case that an Investor should be represented by an association of legal entities who be not having the status of a body corporate, then the license as referred to in Clause 2 of this Article will be issued to one of the participants of the said association with this license indicating that the participant concerned will act on behalf of the association in point and also providing the list of the other participants.

Article 5. Duration of Agreement

1. Duration of an Agreement will be determined subject to the Parties' own discretion. However, the extended duration of the Agreement may not be in excess of 10 years.

2. If this be an initiative of the Investor and also subject to complying by the Investor with the agreement terms, the duration of an Agreement may be extended to allow for the completion of economically expedient development of the deposit and provision for the expedient use and protection of mineral resources. In this case the terms and procedures for such an Agreement prolongation will be determined subject to agreement by the Parties. If an Agreement is prolonged, the license to develop mineral resources, as referred to in Clause 2, Article 4 of this Law, will be re-registered by the body responsible for the mineral resources use surveillance to ensure that it retains its validity over the extended duration of the Agreement.

Chapter II Signing and execution of Agreements

Article 6. Agreement signing procedures

1. An Agreement will be concluded by the KR Government, or the body designated by same, with the winner of a tender or auction to be conducted in compliance with the procedures established under the KR Law and in conformance with the timeframe agreed upon by the parties. An Agreement will be concluded not later than 6 months from the date the tender/auction results have been declared, except for the cases provided for under Clause 2 of this Article. The terms of a tender/auction will provide for the participation of domestic economic entities in the execution of an Agreement with the participators' shares being determined subject to discretion of the KR Government.

2. If an Agreement should provide for the development of mineral deposits located in the areas of traditional use of natural resources, the terms of a tender/auction or an agreement providing for the use of natural resources allowed on a non-contest basis will provide for the payment of compensation to be commensurate with the degree of disturbance of the regular mode of natural resources use.

3. A tender/auction will be conducted under administration of the state bodies (as be designated by the KR Government) in conformance with the procedures established by the KR Government.

4. If it is found necessary by the KR Government, an Agreement can be concluded without prior tender/auction, provided that the following is the case:

- an Agreement needs to be concluded with the specific Investor due to the reasons of defense and security of the State;
- the tender/auction has been declared as abortive due to participation in such an auction of a single

Investor only. If this should be the case, a agreement can be concluded with the Investor who have participated in the tender/auction, the agreement terms being congruent with those of the tender/auction;

- if, by the date of enactment of this Law, the Investor in point has already been granted legal rights to prospect and develop mineral resources granted (in pursuance of the KR Law) under conditions other than those of the Agreement. In this case, an Agreement can be concluded with the mineral resources user as referred to above or another legal entity or association or legal entities established with the assistance from this user;

- in case that negotiations conducted with the Investor on the subject of preparation of a draft Agreement have been started prior to enactment of this Law.

An Agreement will be concluded in the cases as described above within such time as be agreed upon by the parties, provided that the signing date is not spaced more than 6 months apart from the enactment of the applicable decree of the KR Government.

3. Work-out of the terms governing the use of mineral resources and preparation of a draft Agreement for each site of mineral resources development will be performed under the administration of the committee as designated by the KR Government.

The said committee will be composed of representatives of the relevant executive bodies, inclusive of the state body responsible for the mineral resources use administration, local state administration bodies and self-governance bodies as well as representatives from the relevant Committee under the House of Legislature of the KR Jogorku Kenesh. If should be necessary, the operations of the said Committee will be supported by production and research entities and expert and consultative advice.

The work associated with the formulation of the tender/auction terms, development of feasibility studies and preparation of a draft Agreement will be funded from the proceeds resulting from execution of the Agreement.

4. A decision to sign an Agreement on behalf of the State will be taken by the KR Government.

5. The signing of an Agreement on behalf of the State will be the responsibility of the KR Government or a state administration body as designated by same.

In case that the other Party to an Agreement be represented by a foreign physical or legal entity, the signing of the Agreement will be subject to ratification by the KR Jogorku Kenesh.

6. An Agreement will be signed within the timeframe, as agreed upon by the parties, following the completion of negotiations between the duly authorized representatives of the Parties, these negotiations having to result in co-approval of the necessary terms of the Agreement at hand, which have not been included into the requisite terms of the preceding tender/auction. The terms of an Agreement will not be in contravention of the requisite terms of the tender/auction.

Article 7. Terms governing the conduct of contractual works

1. The works and lines of activity which are provided for under an Agreement (hereinafter referred as "contractual works") will be performed in compliance with the programs, projects, plans and cost estimates as be approved in accordance with the procedures set forth under the agreement.

2. Contractual works will be performed in conformance with the KR Law requirements and the duly approved standards (norms, rules) of safety at the workplace, mineral resources protection, environmental protection and public health protection. Further, the Agreement will provide for the Investor's duties as set out below:

- grant legal entities of the Kyrgyz Republic the priority right to participate in works in the capacity of contractors, suppliers, carriers, etc. on the basis of agreements entered into with the Investor;

- employ national staff (citizens of the Kyrgyz Republic) to make a minimum of 80% of the entire company workforce; employ foreign personnel during the initial phase of the works only, or, if there be no adequately qualified workers and experts in the Kyrgyz Republic;

- place orders for the manufacture of equipment, hardware and materials required for the geologic exploration and development of mineral deposits and processing of mineral raw material with domestic legal entities of the Kyrgyz Republic and foreign legal entities carrying their activity in the Kyrgyz Republic and being registered as taxpayers in same, the volume of such orders being a minimum of 50% of the total cost of all orders;

- buy new equipment and implement modern technology to support contractual work on the basis of a tender. In this case the goods made in the Kyrgyz Republic (equipment, hardware and materials) must not be second to similar goods of a foreign making in terms of reliability, safety, quality and delivery dates;

- perform actions designed to prevent negative environmental impact of contractual works and act to eliminate the aftereffects of such impact;

- provide insurance against loss arising from accidents resulting in an adverse environmental impact;

- remove all facilities, equipment and other property on completion of contractual works and administer reclamation of the site of contractual works.

The Parties will coordinate the administration of standards (norms, procedures), which are applied in the international practice of prospecting and development of mineral resources and govern the safe conduct of work, protection of mineral resources, environment and public health, subject to obtaining prior approval for the said standards (norms, procedures) from the KR state bodies involved.

The Parties will provide in an Agreement that a certain portion of the technological equipment to be used in the development of mineral deposits and processing of mineral raw material (if stipulated under the agreement), which is bought by the Investor with the intention of subsequent refunding of the costs by the compensatory portion of the produce, must be made in the Kyrgyz Republic.

3. If an Agreement should provide for works to be performed at sites located within the areas of regular natural resources use, the Investor will administer environmental protection measures as required under the KR Law and also pay the relevant compensation in such cases and in such a manner as established under the KR Law.

4. Administration of contractual work, inclusive of the accounting to be performed in conformance with Article 14 of this Law, will be the responsibility of the investor or the project operator as designated by the Investor. The office of a project operator, whose area of activity must be limited to the administration of the said works, can be held by legal entity organized in the form of a full or limited partnership which have been newly established in the Kyrgyz Republic by the investor for the purposes as listed above. The Investor will be accountable to the State for the project operator's actions as if these were his own.

5. On completion of certain phases of mineral deposit location and prospecting work the Investor will return the portions of land, received by same for use, in conformance with the terms of the Agreement. The boundaries of the returnable land lots as well as the procedures for, timetable and terms of return will be provided for under the Agreement.

6. The geologic, technical & economic and other information on the site of contractual work and prospective mineral deposit development will be submitted to a state expert examination in such volumes and in conformance with such procedures as established under the Law of the Kyrgyz Republic.

7. The purpose of coordinating the performance of contractual work will be served by the Parties providing for the establishment of a steering committee to be composed of an equal count of representatives from each party. The quantitative composition, the rights and duties of the steering committee and its operating procedures will be set out under the Agreement.

Article 8. Product sharing

The saleable product as designated in pursuance of the feasibility study will be subject to sharing between the State and the Investor involved as specified for under the Agreement, which will provide for the conditions and procedures for:

- determining the overall amount of saleable product;
- determining the portion of saleable product to be made over to the investor, this portion serving to cover the Investor's expenses arising from the performance of contractual work (compensatory product). The amount of capital and operating costs, which are subject to refunding to the Investor through administration of the compensatory product, will be determined by agreement based on technical & economic calculations performed in conformance with the standards and norms as established under the applicable laws of the Kyrgyz Republic;

- the sharing of profit-carrying product between the State and the Investor, the term "profit-carrying produce" standing for the saleable product less (1) the portion of this produce allotted to cover the fee for mineral resources use and (2) the compensatory product;

- the make-over to the State of the portion of saleable product receivable by same in pursuance of the terms of the Agreement;

- the receipt by the Investor of the portion of saleable product receivable by same in pursuance of the terms of the Agreement.

The ratios of both the compensatory product and the distributable profit-carrying product, which are set in the process of negotiating the terms of the Agreement between the Investor and the Government, will not be subject to amendment while the Agreement be executed.

Article 9. Investor's right of enjoyment of saleable product

1. The compensatory product and also the portion of profit-carrying product, which are receivable by the Investor in pursuance of the terms of an Agreement, will become the legal property of the Investor.

2. Mineral raw material and the products of processing of same, which become the legal property of the Investor in pursuance of the terms of an Agreement, can be brought out of the customs boundaries of the Kyrgyz Republic in compliance with such conditions and in accordance with such procedures as set forth under the Agreement, this export being not subject to any quantitative limitations except for cases specified under the KR Law "On governmental administration of foreign trade operations in the Kyrgyz Republic".

Article 10. The State's right of enjoyment of saleable product

1. The portion of profit-carrying product, which is receivable by the State in pursuance of the terms of an Agreement, will become the legal property of the State and be subject to bringing in the national budget.

2. The portion of profit-carrying product, which becomes the property of the State, will be used to accommodate the needs of the State in such a manner as be determined by the KR Government with the proceeds from the sale of this product being brought in the national budget.

Article 11. Right of enjoyment of assets and information

1. The assets, which have been produced or bought by the investor and are put to use by same in the process of performance of the contractual work, will be designated as property of the investor, if not provided otherwise under the Agreement.

The right of enjoyment of the aforesaid property may pass over from the Investor to the State as of (1) the day of full refunding of the cost of this property or (2) the date of termination of the Agreement, or (3) the date as may be agreed on by the parties in such conditions and in such a manner as be provided for under the Agreement. In this case the Investor will be vested with an exclusive right to enjoy the property as indicated above over the entire duration of the agreement on a free-of-charge basis in the process of performance of the contractual work with this Investor being responsible for the maintenance of the said property and bearing the risk of accidental loss or damage of the property.

2. All primary information of the geologic, geophysical, geochemical and other nature, the results of decoding of the aforesaid information and the derivative data, and also rock samples, inclusive of core and formation water, as obtained by the Investor in the course of performance of the contractual work, will become the legal property of the State. The Investor will have the right to use the aforesaid information, decoding results and samples toward achieving the objective of the Agreement, subject to complying with the confidentiality requirements as set forth under the Agreement. The procedures for use of the said information, decoding results and samples, and also the procedures for bringing of same out of the Kyrgyz Republic will be designated by the Agreement in compliance with the KR Law.

Article 12. Taxes and payments accompanying the execution of an Agreement

Taxes and payments accompanying the execution of an Agreement will be payable in pursuance of the Tax Code and the Customs Code of the Kyrgyz Republic.

Article 13. Transportation, storage and processing of mineral raw material

1. The Investor will have the right of free use of transportation, storage and processing facilities, this use being administered on a contractual and non-discriminatory basis.

2. While performing the contractual work, the Investor will have the right to construct the mineral raw material and saleable product storage, processing and transportation facilities, the right of enjoyment of such facilities being designated under the Agreement subject to provisions of Article 11 of this Law.

Article 14. Accounting and reporting

1. Accounting of the Investor's financial and economic activity accompanying the performance of contractual work will be administered separately for each single Agreement and will also stand apart from accounting administered while in the performance of any activity which be not associated with the Agreement. The procedures for the aforesaid accounting, inclusive of that performed in order to reimburse the Investor's expenses, will be designated by the Agreement in compliance with the KR Law.

2. The accounting and reporting accompanying the performance of contractual work will be administered in the currency of the Kyrgyz Republic (soms) and foreign currency. If accounting should be

administered in foreign currency, then reports submittable to the state agencies involved, will contain accounting information denominated in both the foreign and local currencies. In this case the foreign currency figures will be denominated in Kyrgyz soms based on the exchange rate established by the KR National Bank as at the reporting date.

Article 15. Banking accounts and exchange control

1. In order for the Investor to be able to perform the contractual work, the Investor will need to have at his disposal the adequate funds deposited on banking accounts (in local and foreign currency), primarily in the banks located in the Kyrgyz Republic, or overseas banks (this latter case requiring clearance from the KR National Bank), the aforesaid funds being disposable exclusively for the purpose of performance of the said works.

2. The Investor will have the right to receive and keep the foreign currency proceeds from the sale produce, which be due to him in accordance with the Agreement, on the banking accounts as indicated above and also to use these accounts to pay any expenses accompanying the performance of contractual work, make payments of the mineral resources use fee and freely dispose of the balance remaining on the said accounts.

Article 16. Transfer of contractual rights and duties

1. The Investor will have the right to transfer, in full or in part, his contractual rights and duties to any legal or physical entity subject to mandatory approval from the KR Government, provided that such entities have the adequate financial and technical resources and experience in the area of administrative activity required for due performance of contractual work.

2. A transfer of contractual rights and duties will be administered in a written format and will involve the draw-up of a special statement (which will become an indispensable part of the agreement) in conformance with such procedures and in accordance with such schedule as be designated under the agreement , and will also be accompanied by re-registration of the license to use mineral resources, this re-registration being due for completion within 30 days from the date of signing of the aforesaid statement.

3. Subject to approval from the Government, the Investor can use his property and proprietary rights to provide collateral for his obligations arising from agreements accompanying the performance of the Agreement, provided that the KR Civil Code provisions are complied with in due manner.

Article 17. Stability of the terms of an Agreement

1. The terms of an Agreement will be effective over the entire duration of the Agreement. Any amendments to an Agreement will be allowed subject to mutual agreement by the Parties and may also be made at the request from one of the Parties following a substantial change of pertinent circumstances, this request being filed in compliance with the KR Civil Code.

Any amendments to the terms of an Agreement as made by mutual agreement of the parties will be put into effect in accordance with the same procedures which applied to inurement of the original Agreement, except for the tender procedures.

2. In case that the legislature of the Kyrgyz Republic should establish, while the Agreement be in the process of execution (this Agreement must be ratified by the KR Jogorku Kenesh), new standards which produce an adverse effect on the results of the Investor's commercial operations performed in the framework of the Agreement, the investor will have the right to act in conformance with the terms of the Agreement made prior to enactment of the said amendments to the KR Law, except for the case when these amendments are purposed to establish new standards (norms, rules) of safe operation, protection of mineral resources, environment and public health.

Article 18. State guarantee of the Investor's right

1. The Investor will enjoy the guarantee of proprietary and other rights which he has been vested with and which he proceeds to exercise in compliance with the Agreement.

3. The Investor will stay beyond the power of legal acts inured by the executive bodies and self-governance agencies if such acts provide for limitation of the Investor's rights which he has been vested with and proceeds to exercise in pursuance of the terms of the Agreement, except for directives issued by the supervisory bodies involved in conformance with the KR Law, these directives being purposed to ensure safety at the workplace, protection of mineral resources, environment and public health, and to also serve the

interests of public and national security.

Article 19. Ensuring compliance with the terms of an Agreement

1. The state control purposed to ensure due compliance with the terms of a Agreement will be the responsibility of the state administrative bodies involved.

2. The authorized representatives from the state bodies, which are listed in Clause 1 of this Article and are charged with ensuring due compliance with the terms of a production sharing agreement, will have the right of free access to the site of contractual works and the documents originating in the process of the contractual work, this access being only purposed to ensure due execution of the agreement.

Article 20. Parties' amenability

The Parties will be amenable for non-execution or inadequate execution of their respective contractual duties as required under the KR Law.

Article 21. Termination of Agreement

An agreement will terminate on expiry of its term of validity or before the expiry date, subject to mutual approval of the parties, and also on such grounds and in accordance with such procedures as provided for under the Agreement (this Agreement being formulated in compliance with the KR Law in effect as at the date of signing).

Termination of an Agreement (this being subject to mutual approval of the parties) will take effect in accordance with the same procedures as applied to the signing of the original agreement, except for the tender procedures.

Article 22. Dispute settlement

Any disputes between the State and the Investor which may arise in connection with execution, termination and non-validity of the Agreement will be settled in court in conformance with the terms of the Agreement. An Agreement may provide for the out-of-court settlement of disputes between the parties.

Article 23. Privilege of the State

Agreements entered into with foreign physical and legal entities will provide, in conformance with the KR Law, for the waiver by the State of the privilege of court immunity and immunity against a prior provision for a lawsuit and execution of a court ruling.

Chapter III Closing provisions

Article 24. Treaties of the Kyrgyz Republic

If a treaty, which the Kyrgyz Republic is a party to, should have provisions other than those specified under this Law, the treaty provisions will prevail.

Article 25. Enactment

This Law will take effect as of the day of its formal publishing.

Article 26. Bringing legal acts in congruence with this Law

The KR Government will provide the KR Jogorku Kenesh with recommendations concerning the bringing of legal acts of the Kyrgyz Republic in congruence with this Law.

President of the Kyrgyz Republic A. Akaev

Adopted by the Legislative Assembly
of the Jogorku Kenesh of the Kyrgyz Republic March 11, 2002