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Legal Framework Regulating Credit Relations in Kyrgyzstan

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Legal Framework Regulating Credit Relations in Kyrgyzstan

by M.Bobukeeva

I. General Provisions

A. Laws of the Kyrgyz Republic

1. The main laws regulating credit relations are as follows:

- Civil Code of KR;
- Law of KR “On Banks and Banking Activities in KR”;
- Law of KR “On the National Bank of KR” dated as of 29 July, 1997 № 59;
- Law of KR “On Credit Unions” dated as of 28 October, 1999;
- Law of KR “On Mortgage” dated as of 29 May, 1999;
- Law of KR “On Agricultural Land Management” dated as of 11 January, 2001;
- Law of KR “On Operation in Foreign Currency” ;
- Law of KR “On Micro-financial Organizations in the Kyrgyz Republic”

2. Priority legal rules applied in KR are those stipulated by the international treaties.

- USA and KR Treaty of Promotion and Mutual Security of Investments, ratified by Resolutions of Jogorku Kenesh of KR of 11 December, 1993, Washington, of 19 January 1993;
- Credit Agreement between KR and International Development Association on privatization in agriculture and reorganization of enterprises, ratified by resolutions of the Legislative Assembly of Jogorku Kenesh of 10 November 1995, 3№ 254-1 and Assembly of Peoples’ Deputies of Jogorku Kenesh of 30 November, 1995, II № 222-1 of 28 July, 1995;
- Credit Agreement between KR and IDA on Development (Project of Private Enterprises Support) of 29 June, 1995.

In line with the aforementioned International Treaties, the parties mutually accept and agree as follows: “activities rising from capital investments” mean non-limited application and access to registration, licenses and other authorizations (which are to be issued without delay at any rate) as well as access to financial institutions and credit markets.

II. Loan (Chapter 34, paragraph 1, Civil Code)

A. General term of loan

1. Under a loan agreement, one party (a lender) shall transfer into ownership of the other party (a borrower) money or fungible things, and the borrower shall return the same amount of money (amount of loan) to the lender or the equal amount of items of the same type and quality. A loan agreement shall be considered entered into as of the moment the money or objects are transferred (Article 724 of Civil Code).
2. Physical and legal persons can act both as the borrower and the lender.

B. Peculiarities of Loan Agreements

1. A loan agreement must be in writing given the value of the agreement exceeds the minimal wage (100 KGS) provided by law by not less than ten times, and

irrespective of the amount if a party to the agreement is a legal entity (Article 178, Civil Code).

2. Under loan agreement the lender shall have the right to receive interest on the amount of a loan.

The procedure and terms for interest payment shall be stipulated by the loan agreement. If the procedure and terms of payment are not provided, they shall be paid monthly until the date of loan recovery.

3. The borrower shall return to the lender the amount of the received loan within the term and in the procedure provided by the agreement.

In the even the date for recovery of the loan is not specified, the borrower must return the amount of the loan within thirty days after the lender presents such claim.

C. Aside from the ordinary loan there are target and budget loans:

1. Target Loan:

- a) If the agreement is entered into on condition that the borrower is obliged to use funds for a definite purpose (target loan), the borrower shall ensure the possibility for the lender to exercise control over the targeted use of the loan;
- b) if the borrower fails to adhere to the condition on targeted use of the loan amount, as well as breaches the obligation provided by the agreement, the lender is entitled to demand from the borrower to return the loan amount and interest thereon in advance, unless otherwise provided by the agreement.

2. Budget loan

- a) Under the agreement on state loan, the borrower is the Kyrgyz Republic in the name of the Government or another state body, and the lender is a citizen or a legal entity.
- b) Such an agreement is a voluntary one and reached by means of acquisition by the lender of the issued state debentures or state securities which prove the right of the lender to get the lend money from the borrower. Amendments to the agreement are not allowed.

D. Securing performance of borrower's obligations

1. If the borrower fails to perform obligations provided by the loan agreement to secure return of the loan amount, and in case of loss of security or deterioration of its condition due to circumstances beyond the lender's liability, the lender is entitled to claim an advance return of the loan agreement and payment of interest due, unless otherwise provided by the loan agreement.

III. Credit (Chapter 34, paragraph 2 of Civil Code)

A. General Provisions:

1. Under a credit agreement, a bank or any other lending institution (creditor) shall grant funds (credit) to the borrower in the amount and based on the terms provided

by the agreement, and the borrower shall return the amount of money lent and pay interest thereon.

2. Crediting institution (organization) is a legal entity which for the sake of profit as the main objective of its operation and on the basis of a special permission (license) of the National Bank is entitled to carry out banking operations. Crediting institution is set up on the basis any form of ownership as an economic society.
3. Bank is a crediting institution, which exercises an exclusive right to carry out in aggregation the banking operations as follows: attraction of monetary resources into the deposits of both physical and legal entities, allocation of the above resources on its own behalf and at its own expenses on the conditions of repayment and promptness, opening and management of bank accounts of physical and legal entities.

B. Parties of Credit Agreement

1. Creditors can be only the banks, specialized crediting institutions, non-commercial financial and crediting institutions which have either a license or a permission of the National Bank.
2. Borrowers can be both physical and legal entities.

C. Form of Credit Agreement

A credit agreement must be in writing. Failure to comply with the written form of agreement shall entail its invalidity.

D. Subject of Credit Agreement

1. Subject of credit agreement can be monetary resources both in the national and foreign currency.
2. Interest rate term: this term is a significant one for the credit agreement. Lacking provisions on interest imposed for use of credit is the ground to consider the agreement false and apply to the latter rules of the loan agreement.
3. Therefore, if the creditor and the borrower are to agree on subject of agreement and interest thereon, the credit agreement enters into force as of the moment they agree.

E. Types of credit:

1. There are three kinds of credit:

- Cash
- Commodity
- Commercial

2. Cash credit is the most widely-spread credit granted in monetary equivalent.
3. Commodity credit. Parties may enter into the contract providing for obligation of one party to provide other party with fungible things (contract of commodity credit). Conditions on the number, assortment, complementalness, quality, packages and/or packing of provided things must be fulfilled in accordance with the rules on the contract of sale (Articles 428-448, Civil Code), unless otherwise provided by the contract of commodity credit.

For example:

The Resolution of GoK of 15 November, 2000 № 670 has adopted a Standard Statute on Procedure of Allocation of Commodity Credits in a way of mineral fertilizers, fuel, lubricants, plant protection means and other inputs provided to the Government as commodity and financial support or purchased at state credits[]

Thus, the Resolution of GoK of 23 January, 1997 № 25 has adopted the Mechanism of crediting of agricultural commercial producers from budget resources, which provides the government support of commercial producers with mineral fertilizers and plant protection means.

4. Commercial credit. Contracts, performance of which is connected with transfer of money and other fungible things to the ownership of other party, may provide for extending the credit to that party or by that party including in the form of advance payment, deferral and installment payment for the goods, works or services (commercial credit), unless otherwise provided by the law.

Parties of the commercial credit contract can be any entities eligible to enter into the contract as provided for by the law (see point B, Section III of this report)

IV. Correlation of Credit Agreement

1. As it has already been noted before, credit relations are a special variety of loan relations, therefore, legal regulation of credit agreement and loan agreement is very much similar. However, despite the similarity there are number of significant differences as follows:
 - a) subject of loan is exclusively the monetary or other things defined by family characteristics while the subject of credit can be only the monetary resources.
 - a. provision on interest rate in the loan agreement is not significant. The loan agreement unlike the credit one can be interest-free.
 - b. Pursuant to the civil law any entity can be the lender under the loan agreement in contrast to the credit agreement.
 - c. The credit agreement clearly provides for the form of the agreement to be reached– in writing, while the loan agreement can be reached in a different form than the written one.

V. Performance of obligations

A. Ways to secure the performance of obligations:

1. penalty;
2. pledge;
3. retention of property;
4. surety;
5. guarantee;
6. earnest money/deposit

1. Concept of penalty

Penalty (fine, surcharge) means the sum of money stipulated by the laws or contract or any other property which the debtor is obliged to pay or transfer to the creditor under circumstances of

improper performance or default of liabilities. The creditor shall not be obliged to prove the inflicted losses when requesting for payment.

2. Concept and ground for pledge/mortgage

By virtue of mortgage, the creditor under the mortgage-backed liability (mortgagee) shall be entitled, in case of improper performance or default of liabilities by the debtor to claim for debt from the cost of mortgaged property with the priority right against other creditors to the owner of the mortgaged property (mortgagor).

Types of pledge:

Pledge can be made in a way of:

- pawn/pledge;
- mortgage.

Pawn is a type of pledge when the property in pledge is transferred from mortgagor to mortgagee.

Mortgage is a method of securing performance of a monetary obligation or an obligation in the monetary form against pledge of the ownership right or other right to the immovable property as provided for by the Law on Mortgage of the Kyrgyz Republic.

Mortgage shall terminate with:

- termination of mortgage-backed liabilities;
- by demand of the mortgagor under circumstances of gross breach of obligations by one of the parties which may cause loss or damage of the mortgaged property, the other party is entitled to claim for the anticipatory performance of obligations and /or anticipatory termination of mortgage;
- in case of destruction of the subject of mortgage or termination of mortgage right if the mortgagor did not use the right of replacement or restoration of the subject of mortgage;
- in case of public sale of the subject of mortgage given that sale was impossible.

Fact of mortgage termination must be registered in the same register where the right of mortgage had been registered.

Third example:

On 12 January, 1999 the Kyrgyz Agricultural and Financial Corporation (KAFC) appealed to the Court of Arbitration with a claim to incur a penalty upon “Kirishe” Peasant Farm at 131617 Soms 92 tyin including 128817 Soms and 41 tyin of principal (unpaid credit), 2854 Soms 51 tyin – fine, in a way of recovery against mortgaged property.

The award of Chui Oblast Court of Arbitration of 12 February, 1999 (the case № 07-17/99-C7) was to meet the claim of KAFC utterly.

On 3 August, 1999 “Kirishe” peasant farm appealed to the Supreme Court of Arbitration of KR on reopening the case in the exercise of supervisory powers and recalling the judgement of Chui Oblast Court of Arbitration, on the ground that ‘Kirishe peasant form had already transferred 30 000 Soms (receipt № 210 of 12 November, 1998) on account of 70 000 Soms; 28 000 Soms (receipt № 206 of

7 December, 1998) and 1200 Som (receipt № 201 of 23 December, 1998) which the KAFC did not take into account when making a claim.

The Supreme Court of Arbitration of KR after examining materials of the case № 07-17/99-C7 and application of KAFC and having heard the arguments of both parties awarded as follows: the award of Chui Oblast Court of Arbitration of 12 February, 1999 re the case № 07-17/99-C7 shall be liable to vacation on the ground as follows:

Claim of KAFC for recovery against the mortgaged property of “Kirishe” peasant farm is in conflict with the Law of KR “On Mortgage”. Article 33 provides for the non-judicial procedure of foreclosure of the subject of mortgage, therefore, the proceedings thereto shall be stopped. The Court stipulates therewith Article 335 of the Civil Code of KR regulating the procedure of foreclosure of subject of mortgage is in conflict with the provisions of the Law of KR “On Mortgage”.

As provided for by the Law of KR “On Regulatory and Legal Acts of the Kyrgyz Republic”, the Court shall apply the rules of the latest law namely of the Law of KR “On Mortgage”.

KAFC shall reckon 7 000 Soms, transferred by “Kirishe” peasant farm on account of interests and fine payment. In line with Instructions of the National Bank of KR “Policy of Accounting, Credits Applicable in Banks and Lending Institutions” and directives № 4 (1997) of the National Bank “On Interests Policy”, KAFC should have reckoned money transferred by “Kirishe” peasant farm - 70 000 Soms (receipt № 210 of 12 November, 1998 – 3000 Soms); 28 000 Soms (receipt № 206 of 7 December, 1998) and 1200 Som (receipt № 201 of 23 December, 1998) on account principal repayment as indicated in the aforementioned documents of payment.

Under these circumstances, the award of the Supreme Court of Arbitration of KR is as follows: due to incorrect legal assessment of the presented evidence the court has not applied relevant rules of the substantive law and has come to incorrect verdict of justified claims of KAFC. Thereby, the Supreme Court of Arbitration considers it is necessary to make a new award on the case № 07-17/99-C7.

Claim of KAFC for 131617 Som 92 tyin shall be met at 123288 Soms 84 tyin including:

- 70729 Soms of principal debt;
- 41960 Soms 84 tyins of interests thereon (calculated in line with points 4,3 and 4.4 of the credit contract № 254);
- 10608 Soms of fine for default performance of obligations;

The Supreme Court of Arbitration of KR being governed by Article 323 of the Civil Code and bearing in mind the incommensurability of the forfeit/penalty accepts as correct to decrease of the forfeit imposed in “Kirishe” peasant farm from 21108 Soms (calculated in line with point 4.3 of the Credit Contract) to 10608 Soms.

In addition, “Kirishe” peasant farm is obliged to recover 5341 Soms 55 tyins of state tax to KAFC.

The proceedings based on the claim of KAFC for foreclose of subject of mortgage has been stopped.

Thereby the award of the Supreme Court of Arbitration is as follows:

1. Application of “Kirishe” peasant farm on revival of time for reopening the case in the exercise of supervisory powers re the award of the Chui Oblast Court shall be satisfied; To revive for

“Kirishe” peasant farm time for appealing against the award of the Chui Oblast Court of Arbitration as of 12 February 1999 (the case № 07-17/99-C7)

2. The award of Chui Oblast Court of Arbitration as of 12 February 1999 (the case № 07-17/99-C7) by claim of the Kyrgyz Agricultural Financial Corporation for 131617 Soms and 92 tyins shall be put aside and a new award shall be made thereon.
3. To collect from the account of “Kirishe” peasant farm in favor of KAFC 123288 Soms and 84 tyins including 70720 Soms of principal debt, 41960 Soms and 84 tyins of interests payment and 10698 Soms of fine for default of obligations under Credit Contract. To issue a writ of execution.

3. Retention of property of the debtor

- a) The Creditor which holds a thing liable for transfer to the debtor or another person defined by the debtor is entitled, if the debtor fails to meet his obligations, to retain it till the relevant liability is satisfied.
- b) The Creditor can retain the thing despite the fact that after the thing passed into possession of the creditor, the rights on it were granted to the third party. Claims of the creditor retaining the thing shall be satisfied from its cost in the volume and procedure stipulating the discharge of lien.
- c) The peculiarity this manner of meeting the liability as the retention of property is that the creditor has the right of retention of property of the debtor till the latter directly meets his liabilities, i.e. there is no need to have a provision in the contract/agreement stipulating the creditor’s right of property retention.
- d) The custodian under the contract on custody who is waiting for the storage services paid can become the creditor exercising the right of property retention, as well as the carrier under the contract on transportation which can keep the shipment until the recipient pays for the transportation services, sub-contractor which does not transfer the thing made by him until the customer pays for the work.

4. Guarantee

a) Guarantee is one of the ways to ensure performance of liabilities. Under contract on guarantee, the guarantor undertakes to be responsible for performance of liabilities in full or portion by the other person.

b) Obligations of underwriter (guarantor)

5. Default or improper performance of guarantee-backed obligations by the debtor, the underwriter (guarantor) shall be jointly responsible to the creditor unless the guarantee agreement provides the subsidy security of the guarantor.
6. The guarantor shall be equally responsible to the creditor in full face the debtor is, including payment of interests, reimbursement of court costs on debt collection and other losses of the creditor caused by default or improper performance of obligations by the debtor, unless otherwise provided by the guarantee agreement.

c) Termination of guarantee may emerge with:

3. termination of guarantee-backed obligation and if its change may cause the increase of obligation or other adverse consequences for the guarantor without his agreement;

4. transfer of a debt to the other person if the guarantor did not agree to share responsibility with a new debtor;
5. if at maturity of the guarantee-backed obligation, the creditor refused to accept the performance of the obligation offered by the debtor or guarantor.
6. If the validity (stipulated by the guarantee agreement) of guarantee expires.

5. Bank guarantee

- a) By virtue of bank guarantee, the bank or other lending institutions or insurance organisation shall issue by request of another person a written obligation to pay his creditor in compliance with conditions of the guarantor's obligation a sum of money upon written creditor's demand.
- b) For the issued guarantee the guarantor (bank) shall be remunerated by the person who received the guarantee.
- c) Bank guarantee shall come into effect as of the date it is issued, unless otherwise is provided by the guarantee.
- d) Liability of the guarantor to the creditor is restricted solely to payment of an amount on which the guarantee was issued.
- e) The guarantor's liability to the creditor shall terminate with:
 - 1) payment to the creditor of an amount secured by guarantee;
 - 2) expiry of guarantee;
 - 3) renouncement by the creditor of his rights under guarantee;
 - 4) following the renouncement of the creditor's rights written announcement on discharge of the guarantor from his obligations.

6. Advance

- a) An advance is a monetary amount allocated by one the parties under agreement on the account of the sum due to the other party as a proof of reaching the agreement and as a guarantee of its performance.
- b) Agreement on advance regardless of it's amount should be made in a written form.
- c) If the obligations terminate before the performance of the agreements commenced either by mutual agreement of the parties or due to impossibility of performance the advance should be given back.
- d) If the party which granted an advance is responsible for default of the agreement, the advance shall be left with the other party. If for non-performance of the agreement is responsible the party which received the advance, it shall pay a twofold amount of the advance to the other party. In addition, the party responsible for non-performance of the agreement shall reimburse the other party all losses adjusted for the advance.

B. Ground for termination of obligations

4. Performance of the obligation (proper performance shall terminate the obligation). The creditor when accepting the performance shall issue a receipt to the debtor by his claim to prove full or partial performance.

5. By agreement of the parties the obligation can be terminated by provision of smart-money/indemnity (payment of money, transfer of property, etc.). The amount, time and procedure of provision of indemnity shall be agreed by the parties.
6. In full or part by reckoning of the counter and homogeneous claim which has already matured or has not been determined or determined as due to call. An application of one of the parties shall be a ground for reckoning.
7. coincidence of debtor and creditor in one person;
8. agreement of the parties on replacement of the primary obligation by another one stipulating other subject or way of performance (revival);
9. discharge of the debtor by creditor from his obligations given the discharge does not violate the rights of other persons to the creditor's property;
10. impossibility of performance cause by circumstances neither of the parties responsible for
11. Due to the act (public act) issued by the state authorities or local self-governance, which made the performance impossible in full or partially.
12. Death of the debtor if the performance can not be ensured without his personal involvement or in another way directly linked with the debtor.
13. Death of the creditor, of the performance personally designated to the creditor or in another way directly linked with the creditor;
14. Liquidation of a legal entity (debtor or creditor), apart from the cases when the performance of obligations is imposed on other legal entity (obligations arising from injuries to life or health, etc.)

C. Procedure of Foreclosure of Mortgaged Property

1. In the event of default and/or improper performance of the obligation on the part of the obligor (mortgagor), the mortgagee shall:
 - a) fill in the notice on default of the obligations on the part of the obligor (mortgagor);
 - b) deliver it to the obligor (mortgagor). If direct delivery is impossible the notice shall be sent to the obligor (mortgagor) via registered mail at his address indicated in the agreement.
2. The notice on default of obligations shall be filled in writing and shall contain the following data:
 - a) 1) name and location (place of residence) of the obligor (mortgagor);
 - b) 2) name and location (place of residence) of the mortgagee;
 - c) 3) synopsis of defaulted obligations of the obligor (mortgagor);
 - d) the amount of indebtedness on interest and/or principal to be paid by the obligor;

- e) the amount of all fees, costs, expenses to be paid by the obligor (mortgagor) as of the moment of filling in the notice;
 - f) proposal on voluntary performance of obligations including the amount of all indebtedness within the definite period not to be less than 30 days from the moment of receipt of the notice by the obligor (mortgagor); the definite term shall be established by the mortgagee independently or by the agreement of parties (if possible);
 - g) other data which the mortgagee considers necessary;
 - h) date of notification and mortgagee's signature.
3. Registration of notice on default of the obligation in the body which has performed state registration of mortgage (Gosregister, Pledge Office in the Ministry of Justice), as well as sending of the copy of the notice to the mortgagees under preceding and subsequent mortgages, shall not be required.
 4. The obligor, after receipt of the notice shall satisfy all lawful mortgagee's claims arising from the notice and terminate circumstances which caused the notice.
 5. In the event of dispute, the obligor (mortgagor) may take measures on settlement of dispute via non-judicial procedure or apply to the court for withdrawal of the notice by the mortgagee.

VI. The procedure of agricultural land mortgage

A. General Provisions

1. Under the Law “On Management of Agricultural Land” the right to take land shares and plots in mortgage shall be exercised solely by banks and specialized agricultural and financial institutions licensed by the National Bank of the Kyrgyz Republic.
2. Credit on mortgage is a credit allocated in a monetary equivalent (KGS) for a period stipulated in the contract reached between the lender and the borrower and secured by the agricultural land plot as a collateral.
3. Main parties of the mortgage-backed relations are as follows:
 - a) the borrower – a citizen of the Kyrgyz Republic the right of ownership of agricultural land plot, who received a credit under the credit contract or contract on mortgage;
 - b) the lender – a commercial bank or a special agricultural crediting institution empowered by the laws of the Kyrgyz Republic on mortgage crediting.
4. The subject of mortgage may be agricultural land shares and plots owned by residents of the Kyrgyz Republic.
5. Agricultural land shares with the right of ownership thereon transferred to the banks and specialized agricultural and financial institutions shall be liable to sale by open auctioning only to other owners of land shares within the same land plot.
6. Agricultural land shares with the right of ownership thereon transferred to the banks and specialized agricultural and financial institutions shall be liable to sale by open auctioning only to other owners of land shares within the same land plot.
7. The buyer can be any rural dweller reached 18-years age and having the Kyrgyz citizenship.

C. Particularities of Foreclosure of Mortgaged Agricultural Land Plots

1. As the Law on Mortgage provides for, mortgage of the agricultural land plot may secure the obligation, amount of which is not less than half of the initial (starting) price of the land plot determined in accordance with land legislation.
2. Foreclosure of the agricultural land plot which is the subject of mortgage shall be allowed in case if the mortgagor has no other property mortgaged under this mortgage agreement.
3. In case of valid reasons connected with the use of the agricultural land, which caused default of obligations including bad harvest, natural calamities, flood, hail, and other extreme weather conditions, at mortgagor's request, the court may order to postpone the sale of this land for the period up to three years.
4. Upon declaration of repeated public sale of agricultural land unaffected, the bodies of local self-government may purchase the subject of mortgage at its initial (starting) sale price at which the subject of mortgage was traded at the repeated sale.
5. In case of lease of the agricultural land plot by the person which purchased it at sale or by the mortgagee which retained it in accordance with the requirements of this Law, the mortgagor shall have a priority right to enter into agreement on lease of the land plot during one year from the moment of its alienation at sale to the buyer (mortgagee) on equal terms with other persons.
6. The seller of the agricultural land plot must notify in writing the mortgagor of the intention to sell the land plot to other person with indication of price and other material conditions of sale.
7. If the mortgagor refuses to buy or fails to buy the land plot being sold during one month from the date of notification, the seller may sell the land plot to other person.

B. Main Requirements to Credits on Mortgage

(Interim requirements to mortgage crediting for agricultural land plots adopted by the Resolution of Government of the Kyrgyz Republic and the National Bank of the Kyrgyz Republic of 4 September, 2002 № 605)

1. Credit on mortgage shall be allocated against the agricultural land plot in the borrower's ownership as a collateral.
2. fgfg
3. Credit on mortgage shall be allocated on terms of full repayment, promptness and under a strict control over the utilization of credit resources
4. When allocating the credit, the lender should:
 - a) ensure control over the targeted utilization of credit resources;
 - b) reflect mortgage crediting in the crediting policy of commercial banks and special agricultural crediting institutions;
 - c) check whether the mortgaged land plot is possessed on the right of ownership or the right in rem, and demand the consent in writing of all the owners of the plot under mortgage if it is in collective or joint ownership as well as the consent of the owner of land if the plot is possessed by the mortgagor by right of use;
 - d) check with Gos Register whether the land plot had been mortgaged to the other lender or not and check up the rights of the third parties on the mortgaged land.

- e) If the cost of the collateral (land plot) indicated in relevant documents casts some doubt, the lender shall fix his cost based on preliminary estimation made either independently or with involvement of estimators empowered by the law of the Kyrgyz Republic to estimate the land plots;
- f) conduct the marketing survey in order to determine the liquidity of the land plot under mortgage and its anticipated sale price in case the credit will not be repaid.

5. To get the credit on mortgage the borrower should provide:

- a) application for credit, where the amount, terms and conditions of payment and purpose the credit is applied for;
- b) business-plan, including feasibility study and justification for use of credit resources; plan of production, sources of credit repayment, plan and terms of credit repayment;
- c) legal documents for the land plot;
- d) other documents, which a commercial bank or special agricultural crediting institution may require from the borrower (contracts, agreements, letters of reference, etc.)

6. Decision on the allocation of credit shall be considered within the terms as follows:

- a) consideration of an application for credit – within 10 days as of the moment its receipt.
- b) analysis of documents and decision making – normally within 3 weeks as of the moment of their presentation (this can be prolonged up to 2 months if required and documentary proved);
- c) notice on refuse – not later than 3 days after the decision was made; contacts with a borrower should be kept normally not less than once a month with a check up visit if required.

7. Form and content of contract on mortgage

- a) Contract on mortgage shall be drawn up in a written form and notarially certified. The contract considered valid and enters into force at the moment of state registration of mortgage as set forth by the laws of the Kyrgyz Republic regulating the state registration of immovable property rights.
- b) Contract on agricultural land plots mortgage shall contain:
 - 1) title (name) and location (place of residence) of the parties;
 - 2) subject of mortgage (name, etc.)
 - 3) estimate cost of the land plot liable for mortgage;
 - 4) reference to the document proving the borrower's ownership right.
 - 5) data on the land plot liable for mortgage (location, areas, characteristics, etc.)
 - 6) merits of the basic liability (allocation of credit resources);
 - 7) scope of basic liability secured by mortgage (amount of the allocated credit, interest rates).
 - 8) terms of satisfaction of basic mortgage-backed liabilities (period of credit);
 - 9) rights and responsibilities of the parties under contract on mortgage should guarantee both the borrower and the lender protection of their interests;
 - 10) ground for foreclosure of the land plot under mortgage;
 - 11) specific terms

12) legal addresses and prerequisites of the parties

c) The contract on mortgage shall be enclosed with a copy of the plan (demarcation sketch) of the land plot issued by the relevant and authorized state body.

VII. The procedure of budget loans and foreign credits repayment by agricultural producers?

By the Resolution of the Government of the Kyrgyz Republic of 3 October, 2000 № 612 were adopted “Provisions on Procedure of Budget Loans and Foreign Credits Repayment by Agricultural Producers by Means of Supply to the Procurement Organizations”

1. Borrowed funds that can be repaid in a way of commodity settlement include:

- a) budget loans;
- b) foreign credits against the guarantee of the Government or secured by the latter;

2. The procedure of repayment

a) Farming entities with loan arrears shall submit to the State Fund of Economy Development at the Ministry of Finance of the Kyrgyz Republic and the State Agency for Procurements at the Government of KR a list of goods on account of loan arrears.

b) The State Agency for Procurement at GoK shall draw up a schedule of procurements of food staff and other goods, within the presented range, to arrange tenders for supply of agricultural goods.

c) The State Fund of Economy Development at MoF, based on information provided by the farming entities – borrowers shall communicate with the procurement organisations a list of suppliers of agricultural products.

d) The ministries, state committees, administrative agencies and other budget organisations – purchasers, based on information provided by the State Fund of Economy Development shall jointly with the farming entities- borrowers agree the volume of supply and other terms and conditions thereto.

VIII. Procedure of State Regulation of Credit Institutions

A. Body exercising banking control.

1. The National Bank of KR (NBKR) is a body exercising control and regulation of activity of financial and credit institutions.

2. NBK is entitled:

- a) to determine economic norms, issue instructions, directives and recommendations for the purpose performing functions of licensing and control; procedures of their implementation in line with this Law;
- b) to check activity of banks, their affiliates and interlinked with them companies (insiders and affiliated companies); or to assign independent auditing companies to make check up;
- c) to request and receive information and reports and demand clarification thereto;

- d) to instruct to take actions on improvement of financial situation; to introduce temporary administration; to suspend or withdraw the license or impose a fine as provided for by this Law to prevent unsafe, unsound or careless activities;
- e) to issue normative acts pertaining to detection and prevention of financial machinations and money laundering and take urgent actions thereto (submission of reports to the NBKR and other bodies concerned, adjustment of banking procedures, training of staff, submission of data on clients of the bank);
- f) to suspend, by written request of legal bodies authorized to detect and prevent financial machinations or by its own decision, any bank operations which are suspicious for a time provided by relevant regulatory acts of the NBKR;

C. Fees for licenses

(Resolution of the Board of the National Bank of KR dated as of 25 July, 2001 № 27/2)

1. have been adopted fees for licenses in the amounts as follows:

- 1) for the right of pawn operations – 3-fold monthly minimum wage;
- 2) for the right of exchange operations with cash foreign currency - 3-fold monthly minimum wage;
- 3) for the right of bank operations:
 - in national currency -3-fold monthly minimum wage;
 - in foreign currency - 3-fold monthly minimum wage;
 - with precious metal -3-fold monthly minimum wage;
- 4) for the right to carry on activities of a special financial and credit institution -3-fold monthly minimum wage;
- 5) for the right to carry on activities of credit unions – 1 Som.

In case of redrawing, prolongation or issuing a copy of the license, the payment shall be charged in the amount of 1 minimum monthly wage.

IX. Organisations allocating credits to rural citizens:

- 1. The Kyrgyz Agricultural and Financial Corporation
- 2. Financial Fund *Bai-Tushum*
- 3. Mercy Corp International
- 4. Asian Credit Company Crossroude
- 5. FINCA-KYRGYZSTAN
- 6. Credit Unions
- 7. the Micro-Crediting Center
- 8. The European Bank of Reconstruction and Development (EBRD)

A. The Kyrgyz Agricultural and Financial Corporation (hereinafter referred to as KAFC)

1. Legal status: KAFC is a Joint Stock Company which was set up in line with the Resolution of GoK dated as of 2 July, 1996 № 303 and is a multi-purpose commercial crediting and financing institution with the main assignment to support the process of reorganization of agricultural farms, privatization of agri-industrial enterprises and development of private sector in agriculture.

2. Main activities of KAFC:

- to render services to agricultural commercial producers and agribusiness enterprises in line with the policy of KAFC. On a commercial basis KAFC allocates credits on purchase of inputs for agricultural production, labor payment; and other services to private farmers engaged in crop and livestock production;
- to allocate short- and long-term credits for capital investments into construction, repair of premises and on-farm irrigation systems, purchase of agricultural machinery and equipment, development of cattle-breeding and other economic activities;

KAFC allocates credits for working capital and investment credits to agricultural production cooperatives and other agri-business enterprises dealing with processing and storage of agricultural goods, agricultural machinery service enterprises and trade organizations dealing with procurement of agricultural products.

3. The Board of Directors is composed of 7 people: the Minister of Finance, the Minister of Agriculture and Water Resources, Chairman of the State Property Fund, three representatives of private sector (farms of agri-business enterprises) and the Executive Director of KAFC.

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Tel: 665339, 665038

B. Financial Fund *Bai-Tushum* (at ACDI/VOCA and Caritas)

1. Legal status: *Bai-Tushum* is a public fund (as provided for by Article 169, Civil Code).
2. Financial Fund *Bai-Tushum* was set up in October 2000 by the American Institution ACDI/VOCA and Swiss Caritas on the basis of earlier established farmers' credit associations operating in Osh, Jalal-Abad and Chui Oblasts. There are representative offices in Nookat, Kara-Suu, Aravan and Uzgen rayons of Osh Oblast.
3. This Fund runs the programme aimed at development of agriculture and both medium and small scale business in the country and has got the expertise in allocation of loans.

Loans are provided by the Fund both to legal and physical entities for development of agricultural processing, livestock-breeding, small enterprises. Loans amount from 20 000 up to 150 000 Soms for a period up to a year subject to the project and at an annual interest rates reaching 37%-44%. Loans taken should be secured by collateral (property). Number of clients is about 700 people.

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Toktogul str., 216
Tel.: (0-312) 211642, 212960

Osh, 714000
Lenin str., 428
Tel.: (3222) 56461, 227442

Jalal-Abad, 715607
Matrosova str., 8
Tel.: (03722) 56728, 56043

C. Mercy Corp International

1. Legal status: Mercy Corp International is a non-commercial international agency (USA) assisting in projects design and development. It is registered in Portland, Oregon, USA

2. Mercy Corp is the first financial institution opened in Kyrgyzstan in 1994 running micro-crediting programmes for women. The key goal of these programmes is to improve financial situation of families as well as to support self-employment among women, conduct training and provide technical assistance.

3. Seasonal credits are allocated to farmers in spring and autumn for agricultural production, purchase of agricultural machinery and lorries, processing and storage of agricultural goods.

- Total amount of credits allocated: 1 500 000 USD;
- Offices in Chui, Osh, Jalal-Abad, Issyk-Kul and Naryn Oblasts

4. Micro-credits are given to women groups (with more than 6 in composition) bearing joint responsibility in the areas as follows: small-sized industry, agriculture, machinery, agribusiness.

Group credits are allocated under this programme. Members of the group are not supposed to secure collateral as a secondary source of credit repayment. Group-responsibility principle is applied, it means, the group bears responsibility for each member. Such an approach eliminates the possibility of credit non-repayment. Interest rates are fixed in the way they cover operating and administrative costs and anticipated inflation. At present 19 types of credits are offered among which are credits for commercial activities, livestock-breeding, production and other seasonal activities.

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8 microdistrict, 28-a
Business Center
Tel.: 512330, 512331

D. FINCA-KYRGYZSTAN

1. Legal status: FINCA-Kyrgyzstan is a constituent part of FINCA International, non-commercial institutions with branches in 17 countries world-wide and the headquarters in Washington, D.C., USA. FINCA-Kyrgyzstan is an independent institution providing micro-credits and technical assistance and has an access to alternative sources of financing. There is a network of branches of FINCA in Kyrgyzstan.

2. FINCA is an institution providing credits under USAID support. FINCA-Kyrgyzstan provides small crediting, runs the programme of savings and provides technical assistance to low-income and vulnerable groups of the population, which can not pawn their property and give legal guarantee of credit repayment. Most of them (above 90% of credit recipients) are women. Micro-financing programme is an efficient tool for poverty reduction and enterprise development.

3. FINCA-Kyrgyzstan commences its work in Kyrgyzstan in 1995 and:

- Allocated credits at above 8 312 000 USD in total;
- Has got offices in Chui, Osh, Jalal-Abad, Issyk-Kul and Naryn Oblasts;
- Number of clients – 12 770 people;
- An average amount of credit – 128 USD;
- Credit period – 4 months;
- Interest rates – 5% per month in national currency;

- Repayment ratio – 99%;
- Savings of clients 829 656 USD in total.

4. Terms of micro-crediting:

- a Saving and Credit Group (SCG) is set up with 10-20 persons on a voluntary basis;
- Credit amount: primary amount - 4000 Soms per person at 5% monthly;
- Collateral is not required given that all the group bears the joint responsibility for credit repayment by each member of the group;
- Credit period: 4 months for the first credit;
- Members of SCG should make savings at 20% of credit amount. Savings are kept at the “internal” account of SCG and allocated to its members at interest rate fixed by the members themselves.
- An amount of next credit is subject to the amount of the primary one plus savings.

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Tel.: 295947, fax: 681810*

*Balykchi, Internatzionalnaya str., 47
Tel.: 0 (3944) 25816*

E. Financial Company for Support and Development of Credit Unions in KR. Credit Unions

1. Credit Union is a non-commercial financial and credit organization established to assist its members by merging personal savings and further utilization for mutual crediting at affordable interest rates as well as to render financial services. Credit Union is an independent form of legal entity.
2. This institution was set up by initiative of the National Bank of KR in April 1997. Capital portfolio of the Company amounts at 10 million Soms (around 2 million USD, 1USD=50 Soms). Asian Development Bank credit at 12,5 million USD (NB of KR as a recipient) made a basis for its establishment.

F. Micro-Crediting Centers established by state bodies

1. The State Employment Services set up the Micro-Crediting Center to provide support to unemployed people.

As on 1 April 2002, the number of unemployed citizens amounted at 87,2 thousand people, including 62,3 thousand with an official status of the unemployed, i.e. 3,2 % of active population. A sufficient number of unemployed is bunched in Jalal-Abad (20,4% of total unemployed), Chui (14%), Osh (14,9%) Oblasts and in Bishkek city (16,7%). More than 700 unemployed were granted with micro-credits.

2. Procedure and terms of micro-crediting:

In line with the Resolution of the Government of the Kyrgyz Republic of 7 September, 1999 № 484, preconditions to get financial support for self-employment are as follows:

- registration of residents as the unemployed at the employment center at place of their living;

- entry of the age of 18;
- eligibility to be on the dole as provided for by the Law of KR “On Employment Promotion”;
- submission of feasibility study (business-calculation);

With the unemployed person willing and capable to run his business, the employment centers will reach a contract of a standard pattern stipulating:

- obligations of the parties;
- amount of financial support.

Financial support is granted first of all for such activities which are priority for the area the unemployed is registered in.

Financial support is granted at the amount of 12-months unemployment benefit.

When being granted with a financial support, from the unemployed can not be withdrawn earlier paid unemployment benefits regardless of time they were paid. The unemployed having received financial support is struck off the register.

However, the Government undertakes steps to develop and strengthen the micro-crediting system for the unemployed at assistance of non-banking sector and Non-Government Organizations and establishes “credit unions” for the unemployed.

3. Terms of micro-crediting

The right to get micro-credits is exercised by the Credit Applicants – physical persons – residents of the Kyrgyz Republic as well as those from vulnerable/low-income groups of the population. Micro-credits are given both in the national and foreign currency available at the Fund.

G. Asian Credit Company Crossroude

Credits are allocated in US Dollars. Credit period varies from 2 up to 12 months. Maximum amount of credit is from 1000 up to 25 000 USD with the annual interest rate reaching 35%. Alongside with other lines, Crossroude supports agriculture. Collateral is to be presented in a way of immovable property physically located within the city of Bishkek, or vehicles. To get credit resources from this institution one should have a sustainable production or another business successfully running for not less than 6 months.

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Center “Yujnye Vorota”, 4 th floor
Tel.: 51 23 33, 51 23 32*

H. The European Bank of Reconstruction and Development (EBRD)

This institution allocates credit resources via the following Kyrgyz Banks: Joint Stock Commercial Bank “Kyrgyzstan” and “Ineksim”.

Crediting via the above banks commenced in June 2002 at interest rate 25-27%. Credit period – up to 3 years (normally for a year). Maximum credit amount is 50 thousand USD (normally 5 thousand USD). Collateral is compulsory (including equipment).

Hence, one can conclude that this credit is more oriented at the industrial sector of the economy.