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Legal Organizational Structures in the Kyrgyz Republic (Agribusiness enterprises and other legal entities)

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BASIS CRSP

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by M.Bobukeeva

I. BASIC PROVISIONS

A. Legislation

The Civil Code is the main regulating law for the legal status of organizations. However, the following laws also have some connection to agribusiness enterprises and will be referred to in this document:

- Land Code
- Law on Agricultural Land Management
- Law on Peasant farm
- Law on Cooperation
- Law on Business Partnerships and Companies
- Law on Water Users Associations
- Law on Credit Unions

B. Definition of a legal entity: an organization, which holds separate property under its ownership, based on the right of business management or operative administration, and which can acquire and exercise property and personal non-property rights in its name, and is liable for its obligations with this property, and which can sue and be sued, and has its separate balance or budget.

C. General characteristics of a legal entity

1. possession of separate property that is included in the separate balance of commercial organizations or budget of non-commercial organizations. (Ar. 83 of the Civil Code)
2. has independent property obligations (Ar. 84, 97 CC)
3. has independent legal capacity in its (Ar.84, 86 CC)
4. settlement account in the name of the legal entity (Law on Business Partnerships and Companies)
5. seal or stamp(Law on Business Partnerships and Companies)
6. state registration (Ar. 86 CC., Law on State Registration of Legal Entities)
7. possessing a license to perform activities, which require a license (Ar. 84 CC., Law on Licensing)
8. name of legal entity (Ar. 86, 89 CC)
9. legal address (Ar.89)

D. Two types of legal entities: (article 85 CC)

1. **commercial organizations:** pursuing profit and distributing it among the participants
2. **non-commercial organizations:** pursuing profit is not their main purpose. Their main activity is providing social services, assistance in development of culture, education, and realization of other socially useful goals.

F. Moment of emerging of legal entity

1. A legal entity shall emerge at the moment it is founded and shall terminate at the moment of the decision on its liquidation.

2 A legal entity shall be considered established from the moment of its state registration and terminates from the moment when it is taken off the State Register of Legal Entities. (Ar. 86, Ar. 96 CC)

E. Legal Organizational Structures of Legal Entities (Ar. 85 CC)

1. Commercial Organizations.

a. cooperatives, as commercial organizations

b. peasant farms, registered as legal entities

c. general partnerships

d. limited partnerships

e. joint stock companies

f. limited liability companies

g. additional liability companies

e. state enterprises

2. Non-commercial Organizations

a. cooperatives, as non-commercial organizations

b. credit unions

c. associations or unions (associations of legal entities)

d. public and religion organizations

e. public foundations

f. water users associations

g. institutions

3. Organizations without establishing a legal entity

a. peasant farms, acting as individual entrepreneurs

b. unions of individual entrepreneurs, acting within the frame of partnership contracts (partnership)

F. Agribusiness Organizations

a. The Land Code presents the following types of agricultural organizations (Ar. 36):

- Peasant farm
- Agricultural cooperatives
- Partnerships

II. CREATION AND MANAGEMENT OF A LEGAL ENTITY

A. Creation of a Legal Entity

1. A legal entity may be founded by one or several founders.

The Founders can be citizens and legal entities of the Kyrgyz Republic, as well as foreign citizens and legal entities.

B. Foundation Documents

1. Foundation Agreement

a) is concluded and signed by all the participants and must be certified by a notary public if at least one of the Founders is a private person.

b) Foundation Agreement must:

- determine obligations of the Founder on creating a legal entity;
- determine the procedure of joint activity for its creation, terms of transfer of the Founders' property to the legal entity, and participation in its activity.;
- determine terms and order of distribution of profit and losses among the participants;
- determine the procedure for management of its activity;
- determine the procedure for withdrawal of Founders/participants from the legal entity.

b) Foundation Agreement may contain any other terms by agreement of the Founders.

The following legal entities act only on the basis of the Foundation Agreement:

- general partnerships
- limited partnerships

2. Charter

a) is ratified by the Founders and signed by the person, empowered to do so at the General Meeting of Founders.

The following legal entities act only on the basis of the Charter:

- credit unions
- public associations
- religious organizations
- state enterprises
- institutions

3. Both the Foundation Agreement and the Charter:

- a. must define the legal entity
- b. indicate its location
- c. determine the procedure for management of legal entity's activity
- d. contain any other information, provided by the legislation on legal entities of the appropriate type.

The following legal entities act on the basis of both the Foundation Agreement (if there are more than one Founder) and the Charter:

- cooperatives

- joint stock companies
- limited liability companies
- additional liability companies
- associations and unions
- water users associations
- peasant farms with the status of a legal entity

C. Executive Bodies of a Legal Entity

a. The management procedures of a legal entity's activity is determined by the Law, can be set forth in the Charter or other Foundation Documents (Ar. 40 of the Law on Business Partnerships and Companies).

b. A legal entity can have one executive body (Director, Board of Directors), as well as several at the same time (Director and Directorate, Chairman and Board of Directors), and they can be individual or joint. Bodies can be appointed, if the legal entity has only one Founder, or elected, if there are several participants (Founders).

D. Name of a Legal Entity

1. A legal entity shall have a name. Name should indicate: legal organizational structure, type of its activity. After registration, a legal entity has an exclusive right to use its name.

E. Representative Offices and Affiliates

1. Legal entities can open representative offices and affiliates in other places, which are separate subdivisions of this legal entity.
2. Manager of a representative office, given such powers, can conclude and sign contracts in the name of the representative office, which will also be considered to be concluded in the name of a legal entity.

F. Legal Address of a Legal Entity.

Location of a legal entity is determined by the place of its state registration.

G. procedure of State Registration of Legal Entities

(Regulations on the Procedure of State Registration of Legal Entities, by the Order #79, from June 1, 2001, of the Ministry of Justice).

a) step one:

Bodies of Justice, having checked them for compliance with the legislation of the Kyrgyz Republic:

- issues an order on state order on state or simplified registration;
- issues a Directive to the body of State Statistics and gives it to the applicant along with a copy of the order and one copy of the Foundation Documents for the purpose of receiving a Statistical Registration Card of a legal entity.

Registration by bodies of Justice is free.

b) step two:

Body of State Statistics, having received a Directive, shall, within no more than two working days, include the subject into the Unified State Register of Statistical Units, and issue Statistical Registration Card.

For registration Body of State Statistics charges:

- legal entities with foreign participation – 176 Som 45 Tyin;
- legal entities -140 Som.

c) step three:

State Tax Inspection registers a legal entity as a tax payer within 10 days from the moment of issuance of Certificate of State (Simplified) Registration and Foundation Documents, certified by the Ministry of Justice or its territorial branch.

State Tax Inspections registration fee is – 60 Som.

d) step four:

Within 10 days from the moment of receiving a Certificate of State Registration a legal entity shall register as a payer of insurance fees.

Bodies of Social Fund charge for registration – 25 Som.

e) step five:

Tax Body gives the applicant a reference addressed to:

a) bodies of the Ministry of Internal Affairs for getting approval for producing seals and stamps;

б) commercial banks and (or) other financial institutions for opening settlement or other accounts.

F. Registration of Legal Entities with Foreign

The Founder shall present additional documentation to the Ministry of Justice: passport - for individuals, and documents or notarized copies with notarized translations into state official or Russian language – for legal entities.

3. Termination of Legal Entity

Termination of a legal entity could be done through reorganization or liquidation.

1. Reorganization (Ar. 92 CC)

a. Reorganization of a legal entity may be performed as merger, annexation, division, separation, and transformation by the decision of its Founders/ participants empowered by the Foundation Documents.

b. The rights and obligations of a former legal entity shall be transferred to the newly emerging legal entity in accordance with the transfer deed and split balance sheet.

2. Liquidation (Ar.96 CC)

a. liquidation can be voluntary or enforced.

Voluntary liquidation is performed:

- either by decision of the Founders/partners,

- or by decision of a legal entity's body, empowered to do so by the Foundation Documents
- b. grounds for voluntary liquidation
- expiration of the term for which a legal entity was created
 - achievement of purposes for which a legal entity was created
 -
- c. Enforced liquidation
- is determined by the decision of a court
 - grounds for enforced liquidation include:
 - void registration
 - lack of appropriate licenses
 - performing activity, prohibited by law
 - performing activity, that violates the legislation, or contradicts the Foundation Documents.

III. COPARISON OF BUSINESS PARTNERSHIPS AND COMPANIES

A. Common Features of Business Partnerships and Companies

1. availability of Charter Capital divided into parts (contributions) or shares
2. they are commercial with the main purpose of pursuing profit and distributing it among the participants
3. possess property transferred to them by the Founders
4. are created on exceptionally voluntary grounds
5. participants of both business partnerships and companies define their management structure and bodies of a legal entity.

B. Differences Between Business Partnerships and Companies

1. The Law defines a business partnership as a union of persons, and company – as a consolidation of capital.
2. Participants of business partnerships (*except investors of limited partnerships*) can only be individual entrepreneurs and/or commercial organizations. At the same time, the minimum number of participants should be no less than two (p.3 Ar. 10 of the Civil Code, Law on Business Partnerships and Companies).
3. The main participant of business partnerships (general and limited) is a general partner, who bears joint unlimited liability for all its obligations, including his property. Investors of limited partnerships do not bear any liability for obligations of their organizations, but bear risk of losses, that could result from the activity of this business. Investors' risk of losses is limited to the amount of the contribution they made.
4. Usually, participants of partnerships, in addition to making a material contribution, directly participate in the activity of the partnership.
5. Unlimited liability of general partners in general and limited partnerships makes it impossible for one general partner to participate in more than one partnership at the same time.

In contrast to this, a company, formed as consolidation of capital, does not require (but also does not prohibit) personal participation of the Founders in its activity. That is why it is possible to participate in several companies.

6. The Foundation Agreement serves as a Charter for business partnerships (Ar's. 109, 123 of the Civil Code)
7. Companies do not require personal participation of Founders/partners in its activity, thus the Founder can participate in several companies at the same time.

IV. GENERAL PARTNERSHIP

A. Definition of General Partnership

1. Business activity of the participants is considered to be the activity of the partnership.
2. Partners bear joint liability for all obligations of partnership with all their property.
3. There must be personal trusting relations between partners.

B. Amount of Charter Capital

1. Amount is set at discretion of the Founders based on mutual agreement. General partnerships do not have a right to issue shares.

C. Name

1. Must have all the names of its participants (or words "and company", as well as words "general partnership").

D. Founders

1. Must be individual entrepreneurs or commercial organizations. (Ar. 105 (3) CC)
2. There must be no less than two participants. If there are less than two participants, general partnership should be liquidated or transformed into an appropriate legal entity within 6 months.

E. Documents

1. Foundation Agreement, which also serves as a Charter, and is the only foundation document for GP. Foundation Agreement is signed by all its participants. (Ar. 109 CC)
2. Foundation Agreement defines terms and procedures of the following:
 - a. amount and composition of Charter Capital
 - b. amount and procedure of changes of partners' parts (shares)
 - c. obligations and liability of participants
 - d. procedure of forming management bodies
 - e. Terms and procedure of transfer of the Founders' property to the property of GP.
 - f. participation in the activity of GP
 - g. distribution of profit and losses among the Founders of GP
 - h. terms and procedure of withdrawal from GP
 - i. other information, provided by legislation of the Founders.

F. Parts of the Founders

1. Shares of all the Founders must be proportional to their contributions into the Charter Capital, if not stated otherwise in the Agreement.
2. Shares are calculated in percent.

G. Liability of Participants for its Obligations

1. Participants of general partnership bear joint and individual liability with all their property for partnership's obligations. (Ar. 144 (1) CC).
2. Business activity of the Founders is considered to be the activity of the partnership
3. In case of withdrawal of a Founder from general partnership, his joint and individual liability for partnership's obligations will stay for the period of two years since the moment of leaving.
4. In case of liquidation of general partnership's activity, Founder's joint and individual liability for partnership's obligations stays for the period of two years since the moment of liquidation.

H. Rights and Responsibilities of Participants

1. Responsibility of the Founder to participate in the activity of the partnership in accordance with the terms of its Foundation Agreement;
2. Making contribution to the Charter Capital of GP;
3. Right to acquire profit in proportion to their parts;
4. Responsibility to cover the losses in proportion to their parts;
5. The most important feature of the legal status of the participant of general partnership is related to the fact that unlimited liability for partnership's obligations excluded the possibility to eliminate any of the partners from participation in distribution of profit and losses (Ar. 113 (1) CC).

I. Liquidation

1. General partnership can be liquidated on the grounds, that are similar for all legal entities (Ar. 96, 100 CC)
2. General partnership cannot exist having only one participant, and, if after liquidation there is only one participant left, organization is transformed into a company or peasant farm.

V. LIMITED PARTNERSHIPS

A. Definition of Limited Partnership

1. A partnership in which, along with general partners, who bear full liability for partnership's activity, includes limited partners, who, in the limits of their contributions, only bear risk of losses, connected to this partnership's activity, but are not liable for obligations with their personal property.
2. One person can be a general partner in only one limited partnership.
3. Whereas, individual entrepreneurs and/or commercial organizations can be general partners in LP. Citizens and legal entities can be investors of a limited partnership.
4. Investor of a limited partnership does not have a right to participate in the management of partnership's activity and dispute the actions of general partners.

B. Contribution Limitations of Limited Partnerships

Total amount of all contributions of limited partners cannot exceed 50 percent.

C. Liquidation

1. Limited partnership is liquidated on the same grounds as general partnership, as well as when all the participants leave. In the latter case, those general partners who stayed can transform LP into general partnership instead of liquidation. (Ar. 126 (1) CC)
2. Investor keeps the right to leave the partnership at any time and receive his contribution (share in the Charter Capital, but not in the all property of the partnership).
3. Limited partnership is liquidated when all its participants leave.

D. Responsibilities of participants/investor related to property

1. Other participants (*investors, limited partners*) make contributions to the partnership's property and are not liable for its obligations with all their personal property. Since their contributions become partnership's property, they only bear risk to lose their contributions, thus their risk is less than that of the general partners. That is why limited partners are not allowed to participate in management of limited partnerships.
2. Investors do not have a right to participate in management of partnership, so they have to fully rely on general partners, who are responsible for affairs related to use of partnership's property.
3. Investor of limited partnership bears limited responsibility in the limit of his contribution to Charter Capital.

E. Legal Status of Limited Partnership Participants

1. When distributing profit from contributions and parts, limited partners must receive their share first (similar to the status of holders of preference shares in joint stock companies).
2. When liquidating a partnership, investors are given preference over general partners in receiving their contributions. Contribution can either in money equivalent or a land plot.

F. Specifics of Limited Partnership

1. Limited Partnership often can be seen as a type of general partnership, *which has an opportunity to use additional capital of investors*, but not general partners. This explains, why the regulations applied to partners in general partnerships can be used for general partners in limited partnerships (Ar. 12 (2) CC), and *why regulations applied to participants of business companies (JSC, LLC and cooperatives) can be used for limited partners*.
2. In particular, agricultural producers could use form of limited partnership in order to attract additional investment (in the form of contributions from limited partners), that are so much necessary to develop agricultural production.
3. The peculiarity of a limited partnership is that including the name of investor into the name of the limited partnership, automatically leads to its transformation into general partnership in the form of unlimited and joint liability for debts of limited partnership with all his personal property (par. 3, p. 4, Ar. 122 CC). It is known, that including the name of general partner into the name of limited as well as general partnership serves a good reference for potential creditors.

VI. LIMITED LIABILITY COMPANY

A. Definition of Limited Liability Company

1. Consolidation of capital, as opposed to union of persons, as in partnership, one or several participants, with Charter Capital, divided into shares.

2. Participants are not liable for its obligations outside the limits of the contributions they have made.
3. The name of the company should include words “*Limited Liability Company*” LLC
4. Citizens and legal entities can become participants, but their total number cannot exceed thirty.
 - a. if there are more than thirty participants, LLC should be transformed into Joint Stock Company within one year, if not, after one year, it becomes subject to liquidation.

B. Foundation Documents

1. Foundation Agreement signed by its Founders
2. Charter, approved by the General Meeting of Founders by two-thirds of the majority vote.
3. Foundation Documents should include:
 - a. name of LLC
 - b. location
 - c. provisions on amount of shares of each participant
 - d. amount, composition, terms and the procedure for making contributions
 - e. participants’ responsibility for violating liability to make contributions
 - f. composition and authority of company’s management bodies and decision making procedures

C. General Meeting of Participants

1. makes alterations to the Charter, including changing the amount of the Charter Capital
2. forms and recalls executive bodies
3. approves annual reports and accounting balances
4. distributes profit and losses
5. makes decisions on reorganization and liquidation (Ar. 131 (3) CC)

D. Property of LLC

1. The property may be in the company’s ownership, as well as borrowed, but the Charter Capital (all contributions from the participants) must have monetary value.
The Law of the Kyrgyz Republic on Business Partnerships and Companies determined that the amount of Charter Capital cannot be less than one minimum wage established in the Kyrgyz Republic as of the moment the founders make their contributions to the charter capital. If the amount of Charter Capital decreases, the company can be liquidated.
2. Participants can contribute land plots into Charter Capital, but then the land becomes property of LLC. According to the Law on Agricultural Land Management, **agricultural land cannot not be owned by a legal entity.**
3. By agreement between the withdrawing Founder and the remaining ones, payment of the value of the portion of the LLC’s property may be made in-kind.
(Ar. 16(3), 43 of the Law on Business Partnerships and Companies).
4. A limited liability company participant has the right to sell or otherwise yield his share in the property of the company, which corresponds to his share in the Charter Capital of the company, or a part thereof, to one or several participants of the company. (Ar. 133 (1) CC)

5. In case of a participant's death or reorganization of legal entity, former participants of the company, their shares can be transferred to their successors and legal assignees. On these grounds they can demand their admission to the company. However, it is possible to foresee in the Charter that such admission would be only possible upon other participants' consent. (Ar. 133 (5) CC). If other participants' refuse to transfer share to successors, the latter or other assignees will only have a right to compensation of the above-mentioned share at the expense of the company.
6. The future of land plots included in the property of liquidated or reorganized company is regulated by general procedures on liquidation or reorganization of legal entities, if a land plot was used for contribution into Charter Capital.

VII. ADDITIONAL LIABILITY COMPANY

A. Basic Principles

1. Additional liability company (ALC) is similar to LLC, except the fact that in case of insolvency of ALC, its participants are liable for its obligations. This liability also covers personal property of the participants.
2. If the property of such company is not enough to satisfy the requirements of creditors, the participants of ALC bear liability for company's obligations with their private property, in this case they bear appendant liability, i.e. participants of ALC bear liability for company's obligations not only within limits of their contributions to the Charter Capital, but also with all their other property. However, the amount of liability is limited: it does not cover all their personal property, as in general partnership, for example, but only to its part in equal multiple proportions to the value of their contributions (for example three times, five times, etc.).
3. In case of insolvency of any participant, his additional liability for the company's obligations shall be apportioned among the other participants proportionally to their contributions or according to another procedure provided by the company's Foundation Documents). That is why the total amount of additional guarantees is left untouched.

According to the Ar. 138 (3) of CC of the Kyrgyz Republic, the provisions of the Code, dealing with a limited liability of companies and, in accordance with corresponding provision of the Law on Business Partnerships and Companies, shall apply to an additional liability of companies, because it is not provided otherwise by any special regulations set forth for additional liability companies.

VIII. JOINT STOCK COMPANY (JSC)

A. Basic Principles

1. One of the most common forms of legal entity.
2. The Charter Capital is divided into certain number of shares, and participants bear liability limited only to the cost of their shares. (Ar. 139 (1) CC)
3. Limited liability of shareholders
4. The number of participants cannot exceed the number of shares
5. Membership does not require personal participating in its working activity
6. Right to be a participant is certified by possession of shares
7. Right to participate in management and receive dividends is kept after liquidation

B. Two Types of Joint Stock Companies

1. Open JSC

- a. shareholder can sell shares without consent of other shareholders
- b. other shareholders do not have a preference right to buy during expropriation
- c. number of shareholders is not limited
- d. shares can be freely sold
- e. open subscription for shares
- f. open for public, for example must publish its annual report and accounting balance sheets. (Ar. 140(2) CC)
- g. amount of the Charter Capital should not be less than the amount of 500 minimum monthly wages

2. Closed JSC

- a. shares are distributed exclusively among the Founders and other group of people short listed before.
- b. a consent of two shareholders is needed to sell a share
- c. Shareholders have a priority right to buy the shares being sold by other shareholders of the company
- d. the number of participants shall not exceed fifty
- e. distribution and subscription are performed only in private order
- f. does not require public openness
- g. amount of the Charter Capital does not have to be less than the amount of 100 minimum monthly wages

C. Foundation Documents of Open Joint Stock Company

1. Basic Principles

- a. If a JSC is created by one person, then, according to the Charter, a open JSC is formed
- b. The Foundation Agreement must be signed by all the Founders, the Charter must be signed by the person, empowered to do so by the Foundation Agreement

2. Foundation Agreement:

- a. determines the procedure for Founders' activity on creation of open JSC (including rights and liabilities of Founders for creating a company);
- b. defines the terms and procedure for transfer of Founders' property to the property of JSC;
- c. determines amount and composition of Charter Capital and each Founder's share
- d. composition, terms and procedure for making contributions by participants
- e. responsibility of Founders related to violating liability for making contributions
- f. information on categories of issued shares
- g. determines procedure for distribution of profit and losses
- i. determines executive bodies of the company
- j. procedure of withdrawal and other information, set forth by the law and the Founders of JSC.

3. Charter

- a. contains information on the type of the company
- b. contains information on category of issued shares, their nominal value, and quantity
- c. provides information on the rights of shareholders
- d. determines the procedure for forming a reserve fund, representative offices and affiliates of the company (if such exist)

D. Foundation Documents of Closed Joint Stock Company (CJSC)

1. General

- a. If CJSC is created by only one person, a Charter should be enough. If it is created by more than one person - a Charter along with the Foundation Agreement.
- b. Foundation Agreement must be signed by all Founders. Charter must be signed by the person, empowered to do so by the General Meeting.

2. Foundation Agreement

- a. determines the procedure for creating of CJSC
- b. contains the terms and procedure for participation in its activities and distribution of profits and losses
- c. determines the procedures for management of the company and withdrawal from it
- d. determines the size of each Founder's share
- e. determines the procedure for making contributions
- f. contains information on category of issued shares and their distribution among Founders
- g. determines rights and liabilities of Founders for creating the company

3. Charter

- a. contains information on category of issued shares, their nominal value, and quantity
- b. provides information on the rights of shareholders
- c. determines the amount of Charter Capital
- d. determines composition and powers of executive bodies, as well as the decision making procedure, including consensus and majority vote
- e. determines the procedure for creating representative offices and affiliates

E. Reorganization and liquidation

1. General Meeting has the power to reorganize and liquidate JSC
2. At reorganization, JSC has the right to be transformed into limited liability company or cooperative (Ar. 149(2) CC).
3. If the net value of asset becomes lower than it is set forth by the law, JSC should be liquidated.
4. The grounds for liquidation by the decision of the court are:
 - a. lack to receive appropriate license
 - b. performing activity, prohibited by law
 - c. violating legislation
 - r. other grounds, set forth by Civil Code, for example, failure to satisfy the requirement of creditors (Ar. 96(4), Ar. 100 CC)

5. According to the article 99 CC, the requirements of creditor at reorganization of JSC are satisfied in the following order:
 - in the first priority, the claims of citizens to whom the debtor is liable for causing damage to life or health shall be satisfied by capitalizing the relevant periodical payments in the procedure established by the law;
 - in the second priority, severance and salary payments shall be furnished to persons who worked under a labor agreement (contract), but for not in excess of three months;
 - in the third priority, requirements of creditors against the principal amounts and interests thereon of creditors not secured by a lien shall be satisfied;
 - in the fourth priority, recovery of balance due to budget and non-budgetary funds shall be made;
 - in the fifth priority, claims for forfeit (fine and penalty) of creditors of the third and the fourth priority including interests on the principal amounts of payments due to budget and non-budgetary funds.
6. The property of JSC left after satisfying requirements of creditor, is transferred to its Founders (participants), who have liability rights related to this company.

IX. SIMILAR FEATURES OF LIMITED LIABILITY COMPANY AND CLOSED JOINT STOCK COMPANY

1. The main feature of CJSC and LLC is the fact that they are both commercial organizations, where the participants are not liable for company's obligations, but bear risk of losses, related to its activity, limited to the amount of their *contributions* or shares that belong to them (Ar. 127(1) and Ar. 139(1) CC). This is the main difference between CJSC and LLC from additional liability company and other business partnerships.
2. Maximum number of LLC and CJSC participants is limited by the Law.
3. The possibility of transfer of shares of LLC and CJSC to the third parties is substantially limited by legislation and can be additionally limited by the Charter.

X. DIFFERENCE BETWEEN LLC AND CLOSED JSC

1. One difference between LLC and CJSC is very substantial in practice. As it has already been mentioned before, whereas LLC participant can at any time transfer his share to the LLC itself (upon withdrawal from LLC) and receive the value of part of the property of LLC, corresponding to his share in the LLC's Charter Capital, shareholder, usually, cannot demand to redeem (reimburse) his shares.

XI. COOPERATIVES

A. Basic Principles

1. Cooperative is a legal entity, formed on the basis of membership, including consolidation of property as well as joint participation of members in organizational activity.
2. Cooperatives as their main purpose can perform commercial or non-commercial activity.
3. Cooperatives cannot issue shares.

B. Establishment

1. Foundation Document, approved by the General Meeting of members, is the Charter of cooperative, that should include the information on the following:
 - a. on size, composition and procedure for making share contributions
 - b. on type and procedure for members' participation in its activity
 - c. on extent and terms of participants' liability

2. The Charter must contain:

- a. the name of cooperative
 - b. location
 - c. the purposes of the cooperative activity
 - d. the procedure for joining the cooperative
 - e. grounds and procedure for withdrawal from the cooperative
 - f. the conditions on amount, composition and procedure of payment of share contributions by cooperative members
 - g. procedure for voting when each member has only one vote
 - i. description of all types of contributions (shares) and rights and privileges each type provides
 - j. rights and duties of general members and associate members
 - k. members' liabilities
 - l. obligation to use services of the cooperative
 - m. deadlines and terms of payment of the value of share contributions to cooperative members upon from a cooperative
3. Cooperative must have at least three members of any nationality
- a. legal entities, as well as natural persons can join into cooperative
4. Associated membership can be provided by the Charter
- a. Associated members make share contributions on which dividends can be accrued but do not have the right to vote, i.e do not have management rights

C. Types of Share Contributions

1. Obligatory share contribution
 - a. the share contribution of a cooperative member that is obligatory and which gives the right to vote and the right to participate in the activity of the cooperative and to use its services and advantages, and receive established cooperative payments;
2. Additional share contribution
 - a. is made on voluntary basis in excess of the obligatory share on which dividends are accrued in the amount and according to the procedure set forth in the charter of a cooperative;
3. Contribution in the form of land plot:
 - a. Ar. 8 of the Law of the Kyrgyz Republic on Cooperation that describes the procedure for creating an agricultural cooperative, provides that land plots (shares) contributed by members of a cooperative as initial share contributions shall remain in their ownership and may only be transferred to cooperatives for use provided that this land plot (share) will be returned upon withdrawal of the cooperative members from it. The land plot (share), which is used by the cooperative may be mortgaged by the owner of the land plot (share) only after notification of the cooperative.
4. The practical novelty of the Law on Cooperation is that it cancelled the requirement of personal participation in working activity of cooperatives. This criterion prevented peasant farms in the regions from uniting into cooperatives for the purpose of purchasing necessary seeds, spare parts for agricultural machinery maintenance, chemical fertilizers, selling the

grown produce for favorable price, without having to distract their members from their main activity on producing agricultural products.

5. Elimination of the main peculiarity of processing cooperatives – personal participation in working activity, allowed the members of the cooperative to participate in several cooperatives at once.

D. Liability

1. Cooperative members are not liable for the cooperative's obligations, and bear risk of losses, associated with the activity of the cooperative, within the limits of value of the initial share contributions made. (Ar. 30(2) of the Law on Cooperation).
2. Where the property and funds of the cooperative is insufficient to satisfy the requirements of the creditors, cooperative members may be asked to make additional contributions defined in proportion to the obligatory share or in the other procedure established by the Charter of the cooperative. (Ar. 30(5) Law on Cooperation)

E. Withdrawal of Members

1. Cooperative members have an absolute right to leave the cooperative
2. Cooperative members can be expelled as a penalty for insufficient performing of membership responsibilities
3. Withdrawing cooperative member should receive his initial share contribution back (except land share) or receive property, corresponding to his initial share contribution, as well as other payments in the amounts, terms and conditions that are set forth by the Charter of the cooperative, but no later than 3 months after the end of a fiscal year.
4. Land plot share is made on the terms of receiving it back upon withdrawal of cooperative member from the cooperative (Ar. 19(4) Law on Cooperation).
5. The successors of the deceased cooperative member, not admitted to the cooperative shall be paid the value of the initial share contribution of the deceased cooperative member or shall receive back the land plot contributed previously as the initial share contribution to the cooperative for use. (Ar. 17(6) Law on Cooperation)

F. Reorganization and Liquidation

1. Reorganization and liquidation of cooperative are regulated by the civil legislation on reorganization and liquidation of legal entities.
2. General Meeting of cooperative members has a right to make a decision on voluntary reorganization or liquidation of cooperative.
3. It is possible to force cooperative to reorganization or liquidation by the court decision.

XII. PEASANT FARM

A. Basic Principles

1. Independent business entity, which activity is based primarily on personal labor of members of one family, relatives and other persons jointly engaged in agricultural production
2. Farm is based on the property that is owned by the members of the peasant farm
3. Registration of peasant farm, created a legal entity is free.

B. Foundation Documents

1. Peasant farm is created on the basis of:
 - a. Charter, approved at the General Meeting of capable members, and

- b. agreement, that determines the procedure for creating and dividing of property of the peasant farm (Ar. 2(4) of the Law on Peasant Farm)

C. Right of Ownership

1. Peasant farm belongs to its members based on collective joint ownership right
2. Collective joint ownership covers:
 - a. plantations on the land plot
 - b. buildings and facilities
 - c. cattle
 - d. agricultural machinery
 - e. equipment and inventory
 - f. produce and income

D. Right to Land Plot

1. There are three models used:
 - a. land plot belongs to the head of the peasant farm
 - b. land plot belongs to all members based on collective joint ownership right
 - c. land is used based on the agreement between members of peasant farm
2. Land plot belongs to the head of the peasant farm
 - a. the head has all the rights and is the only member of legal relations associated with this land plot
 - b. the head's activity on land plot management is limited
 - c. the head does not have the right to sell the land plot without consent of the members
3. Land plot belongs to all members based on collective joint ownership right
 - a. all members have equal rights and responsibilities associated with this land plot
4. Members of the peasant farm have the right to conclude an agreement, based on which, there can be other types of rights to land in addition to above-mentioned rights.

Article 13 (3) of the Law on Peasant Farm sets forth a special provision for peasant farms, according to which land plot ownership right or right to use the land plot may be contributed to a peasant farm on condition that the same land plot be returned in the event of the peasant farm member withdrawal from the peasant farm.
5. Land plots that are owned can be transformed to a cooperative or partnership only for use on the basis of the contract concluded in writing.

XIII. STATE ENTERPRISES

A. Basic Principles

1.State enterprise is an organization, property and profit of which are owned by the state and are assigned to such enterprise in order to carry out its business activities. (Ar.158 CC).

2.There are state enterprises based on the right of economic management and state enterprises based on operational management

B. Name

Must indicate that it is a state enterprise.

C. Foundation Documents

Charter is the Foundation Document.

The Charter determines:

-objectives and purposes of its activity,

-reorganization and liquidation,

-appointment of the Director (Head of the enterprise),

-procedure for monitoring purposeful use and safety of enterprise's property.

D. Liability

The Kyrgyz Republic bears secondary liability for the obligations of a state enterprise, if the property of the enterprise is not sufficient to clear off the debts. The Government bears risks, associated with enterprise's activity and is liable for its debts with all its property (Ar.159 CC)

XIV. CREDIT UNIONS (Law on Credit Unions)

A. Basic Principles

1. Financial and credit organization is created for the purpose of providing financial assistance to its participants (members) by means of consolidating of their personal savings and crediting at. It also provides financial services.

2. There must be 10 and more persons in order to create a credit union.

3. The capital of the credit union must be formed only with the funds of the participants.

4. It has to acquire a license from the National Bank of the Kyrgyz Republic.

B. Foundation Documents

1. Operates based on the Charter.

2. The Charter of the credit union must contain:

a. full and brief firm name of the credit union;

b. proof of the fact that the credit union is created by the people with common interests, and determining the character of such commonness;

c. list of settlements, on the territory of which the credit union will perform its activity;

d. provisions about rights and liabilities of the credit union participants;

e. procedure and terms of entering and withdrawal (expulsion) of the participants into and from the credit union.;

f. determining of minimal savings share, that has to be paid upon entering;

g. procedure and terms of making and redeeming of savings share by the participants of the credit union;

h. provisions about register of the credit union participants;

i. provisions about management bodies of the credit union; decision making procedure by management bodies, including the list of issues that need the majority vote of the credit union participants;

j. distribution of liabilities between management bodies of the credit union;

k. procedure and terms of giving credits to the participants of the credit union, as well as the requirements for their security;

l. procedure for allocation of free funds of the credit union and types of financial and credit organizations, to which they can be invested;

m. procedure for creating a reserve fund for covering potential losses, as well as other reserves of the credit unions, if such are to be formed;

n. procedure for making alterations and addenda to the Charter of the credit union.

B. Reorganization and Liquidation (Ar. 33 Law on Credit Unions)

a. Can voluntary be self-liquidated:

- must hand in the original of the license to the National Bank of the Kyrgyz Republic within three days from the moment the decision on self-liquidation was made;

- must stop giving credits from the moment of the decision on self-liquidation was made;

- credit union must fulfill all obligations to the creditors and the credit union participants.

б. In case of insolvency the credit union is subject to liquidation in accordance with the legislation on bankruptcy.

XV. ASSOCIATIONS AND UNIONS

A. Basic Principles

1. Union of legal entities (commercial as well as non-commercial organizations) into a non-commercial organization (Ar. 165 (1,2) CC).
2. Purpose of creation – assistance to common interests of the participants. This purpose does not require constant participation of the Founder.
3. Profit received at the expense of non-commercial union of legal entity cannot be distributed among its members, and must be used for purposes of the association.
4. Members of the association (union) keep full autonomy and may be members of more than one association (union).

B. Foundation Documents

1. Two types of Foundation Documents:
 - a. Foundation Agreement, and
 - b. Charter
2. The Foundation Agreement must:
 - a. express will to perform unification
 - b. determine the conditions of participation
 - c. determine the purpose of association
3. The Charter must contain:
 - a. procedures for forming and authority of the association's management bodies
 - b. procedure for making decisions, including the issues, which are to be decided unanimously, or by the qualified majority of association
 - c. procedure for distribution of property, remaining after liquidation of the association.

C. Liability

1. Association does not bear liability for its members' (participants') debts.
2. Members of the association bear secondary liability for its obligations in the amount and order, set forth by the Foundation Documents of the association.
3. Withdrawn or expelled members can bear secondary liability for association' obligations in proportion to their initial shares for the period of two years from the moment of leaving. (Ar. 167 (2) CC)

XVI. PUBLIC ASSOCIATIONS

A. Basic Principles

1. Volunteer associations of citizens on the basis of common interests for the purpose of protecting their common interests and achieving charter goals of the united citizens. (Ar.161 CC KR).
2. It is created by the initiative of not less than three legally capable physical persons.
3. Legal status of public associations and religious organizations is set forth by the Law on Non-commercial Organizations, and the Law on Freedom of Religion and Religious Organizations..

B. Foundation Documents

Is created on the basis of the Charter, approved at the General Meeting (Conference).
The Charter must contain:

-determination of priority operations objectives of the public association, procedure for use of its property.:

- admission and expulsion of members of the public association;
- procedure for forming management bodies;
- decision on creating affiliates and representative offices;
- participation in activity of other legal entities;
- reorganization and liquidation.

C. Liability

Members of public associations do not bear liability for obligations of public associations, and associations do not bear liability for obligations of its members.

XVII. PUBLIC FOUNDATIONS

A. Basic Principles

1. Founded by one or more capable physical persons or legal entities on the basis of voluntary nongovernmental property shares.
2. Do not have membership.
3. Pursue social, cultural, charitable, educational goals.

B. Foundation Documents

1. Charter

2. Charter of the foundation must contain:

- name of the foundation, including the work 'foundation';
- information about foundation's goals;
- provisions about foundation's bodies, including Monitoring Committee or other body, that monitors the foundation's activity;
- procedure for appointment and dismissal of foundation's officials;
- foundation's location;
- about the future of foundation's property in case it is liquidated.

C. Liability

Founders do not bear liability for obligations of the foundations they have created, and the foundation does not bear liability for obligations of its Founders.

D. Liquidation

1. Decision on foundation's liquidation can only be made by court upon the petition of interested persons..

2. Foundation can be liquidated:

- if property of the foundation is not enough to achieve its goals and the likelihood of acquiring the necessary property is unreal;
- if foundation's goal cannot be achieved, and the necessary changes of foundation's objectives cannot be performed
- in case the foundation digresses, in its activity, from the goals set forth by the Charter;
- in other cases, set forth by the Law (Article 163 CC)

XVIII. UNION (ASSOCIATIONS) OF WATER USERS

A. Basic Principles

1. Organization, created by water users for the purpose of use and maintenance of the system or irrigation, as well as providing irrigation water to the owners and users of agricultural land.
2. Initiative group consisting of no more than 10 people must found WUA, that will include legal

entities or physical persons, who own or have a right to use agricultural land plots.

B. Foundation Documents

a) Two types of Foundation Documents:

1. Foundation Agreement

2. Charter

b) Foundation Agreement of WUA is signed by all its Founder.

Charter of WUA is signed by the Chairman of the Foundation Assembly.

c) The Charter of WUA must contain:

1) name of WUA;

2) location of WUA;

3) description of WUA's service area, including plans and maps;

4) subject and objectives of WUA's activity;

5) structure and competence of WUA's management bodies;

6) rights and responsibilities of WUA members;

7) procedure for admission to WUA, grounds and procedure for termination of WUA's membership;

8) procedures for gathering General Meeting;

9) provisions about determining of initial shares to WUA;

10) liability of WUA members;

11) procedure and sources for compensation to members of WUA of damage to agricultural crops and their land plots as a result of them being serviced by WUA.;

12) conditions of termination of WUA's activity (reorganization and liquidation).

C. WUA Membership

a) Owner or user of agricultural land plot can be a member of WUA.

b) Person who has a right to use agricultural land plot based on the lease agreement can become a member of WUA only after approval of the lessor in writing.

D. WUA's Management Bodies

a) General Meeting of WUA;

b) Board of WUA;

c) Revision Committee.

E. Reorganization and Liquidation

a) Reorganization and liquidation are performed in accordance with the civil legislation and the Charter of WUA.

b) Property and financial fund that are left after satisfying all obligations during WUA's liquidation process, except for fixed assets received gratis from the Government, are subject to distribution among WUA members by the decision of the Liquidation Committee, or body, which made a decision on liquidation in accordance with terms set forth by the Charter of WUA.

XIX. INSTITUTION

A. Basic Principles (231 CC, 32-34 Law on Non-commercial Organizations)

1. Can be created by one or more legally capable physical persons or legal entities..

2. Property is assigned to the institution on the right of operational management, i.e. Board of Directors performs its activity within the powers set forth by the Law, as well as owner's assignments..

3. Alienation (sale, granting) or other type of use of property assigned to it, is performed only upon owners agreement.

4. Distribution of institution's profit is determined by the owner.

B. Foundation Documents

1. The Charter must contain:

- structure,
- procedure for creating and activity,
- powers of management bodies.

C. Liability

1. Is liable for its obligations with funds that are at its disposal.

2. Owner bears secondary liability for its obligations in case of insufficiency of its funds.

XX. INDIVIDUAL ENTREPRENEURSHIP

A. Basic Principles

1. Individual entrepreneurial activity is private business activity of citizens, performed without forming a legal entity, aimed at pursuing profit and personal income based on property (*including land*), that belongs to them on the right of ownership or right of use.

Individual entrepreneurs can be citizens of the Kyrgyz Republic, foreign citizens and persons without citizenship, who permanently (temporarily) reside on the territory of the Kyrgyz Republic

From the moment of state registration, a citizen shall be entitled to engage in private business activity without formation of a legal entity, in the capacity of an individual entrepreneur. (Ar. 58 (1) CC).

Regulations for registration of individual entrepreneurs are also applied for creation and registration of peasant farms without forming a legal entity. It shall act exclusively on the basis of the agreement defining the procedure of formation and division of the common joint property of the peasant farm. (Ar. 2 Law on Peasant Farm).

B. Establishment

1. Registration as a business entity (individual entrepreneur) by the bodies of state statistics, located in the area of registration
2. Paying a corresponding registration fee as an individual entrepreneur
3. Rules of the Civil Code are applied to the individual entrepreneurship, which regulate activity of legal entities, that are commercial organizations, if otherwise is provided by the legislation or the essence of legal relations.
4. Individual entrepreneur who is not able to satisfy creditors' requirements can be acknowledged bankrupt (insolvent) by the decision of the court

C. Liability

1. Individual entrepreneur bears unlimited liability for his obligations to his creditors, with all his property, except property protected by the Law.

XXI. LIMITED PARTNERSHIP

A. Basic Principles

1. Under the partnership contract (joint activities contract) two or more persons (partners), take the obligation to merge their contributions and act jointly without formation of a legal entity for the purpose of pursuing profit or achievement of other purpose, which does not contradict with the law. (Ar. 970 CC).
2. The essence of this form is in multilateral transaction, where parties pursue common goals, but do not act as debtors or creditors towards each other
3. Only individual entrepreneurs and/or commercial organizations can unite into partnerships.
4. Management is performed jointly by all the participants.

B. Liability

1. In case the partnership contract deals with implementation of business activities by the partners, each partner shall be liable for common contractual obligations with all his property, proportionally to the value of his contribution in the common business (Ar. 976 (1) CC).
2. Partners bear secondary and individual liability for common obligations, that are not set forth by the contract.
If the partnership contract deals with implementation of business activities by the partners, partners bear secondary and individual liability for common obligations (Ar. 976 (2) CC).
3. The difference between a partnership and a general partnership is that the property of a general partnership belongs to general partnership, whereas the property of a partnership belongs to its participants on the basis of common property used for benefits of all partners.

C. Profit

1. Profit is distributed proportionally to participants' contributions, if otherwise is not set forth by the contract.
2. Contract, that excludes any participant from the process of receiving profit, is invalid.

D. Termination of Partnership Contract

1. Partnership can be terminated in the following cases:
 - a. acknowledging one of the partners obscurely missing, disabled or partially capable.
 - b. acknowledging one of the partner bankrupt
 - c. death of the partner or reorganization of participating legal entity, if otherwise is not stated
 - d. withdrawal of any of the participants
 - e. cancellation of partnership contract
 - f. expiration of specified time of the partnership
 - g. achieving the objective of the contract of partnership or conditions which make the achieving of this objective impossible
 - h. giving participant's share to the creditor
 - i. on the grounds set forth by the Civil Code or otherwise specified by the partnership
2. Upon termination of a legal entity, initial shares and property is returned to the participants, who made such contributions.

For example, if an agricultural land plot was invested as an initial share, after termination of partnership agreement, it will be returned to him unconditionally, since, in accordance with the Article 36 of the Land Code of the Kyrgyz Republic, participants who own agricultural land plots transfer them to the partnership only on the right of use. In this case, the will of the land plot owner to transfer his land property is carried out on the basis of contract, concluded in writing.

3. After termination of contract, participants bear secondary and individual liability for unfulfilled obligations to the third parties. (Ar. 979 (2) CC).