

Bishkek City

Dated July 31, 2006, No. 135

## **THE LAW OF THE KYRGYZ REPUBLIC**

### **On Counteracting the Terrorism Financing and Legalization (Money Laundering) of Proceeds from Crime**

See also:

Instruction of the President of the Kyrgyz Republic dated June 26, 2006, RP No. 245 (On Approval of the Provisions of the Interdepartmental Committee for Counteracting to the Terrorism Financing and Legalization (Money Laundering) of Proceeds from Crime)

#### **Chapter I. General provisions**

##### **Article 1. Goal, objective and scope of this Law**

1. The present Law is aimed at protection of rights and legitimate interests of citizens, society and the state, and integrity of the financial system of the Kyrgyz Republic against criminal trespasses, through establishing the legal mechanism of counteracting the terrorism financing and legalization (money laundering) of proceeds from crime.
2. The primary objective of this Law is to develop the legal framework for prevention, revelation and investigation of activity related to terrorism financing and legalization (money laundering) of proceeds from crime, and to build the legal framework for establishment of the authorized public agency empowered to collect data, analyze and disseminate information about suspicious transactions and operations and those subject to obligatory control in accordance with the present Law. This agency shall have right to demand the relators to take measures aimed to counteracting the terrorism financing and legalization (money laundering) of proceeds from crime, in accordance with this Law and other statutory acts.
3. This Law governs the relations among citizens of the Kyrgyz Republic, foreign citizens and stateless persons – residents of the Kyrgyz Republic, organizations implementing transactions and operations with funds or other property, and governmental bodies controlling transactions and operations with funds or other property in the Kyrgyz Republic for prevention, revelation and suppression of actions related to terrorism financing and legalization (money laundering) of proceeds from crime.
4. If a legally effective international treaty whereto the Kyrgyz Republic is a party, establishes the rules other than those contained herein, the rules of this international treaty shall apply.

##### **Article 2. Basic terms and notions used in this Law**

The following basic terms and notions are used for the purposes of this Law:

**Proceeds from crime** are the funds and other movable and immovable property obtained as a result of commitment of crimes envisaged in the Criminal Code of the Kyrgyz Republic;

**Legalization (money-laundering) of proceeds** means giving a legal form to possession, use or disposal of funds or other property obtained by deliberately criminal ways;

**Other property** means items and belongings and interests representing material values (movable and immovable assets including securities, gems and precious metals, antiques, and other property pursuant to the existing legislation);

**Suspicious transaction and operation** means a transaction and operation bearing signs of suspicious transactions and operations according to this Law, that is, the transactions and operations effected with funds or other property without a clear economic or obvious legal purpose and non-relevant to activity of a given legal entity or individual(s) according to the list of suspicious operation signs approved by the authorized public agency;

**Authorized public agency** is the governmental executive body established or assigned by the President of the Kyrgyz Republic and entitled pursuant to this Law to collect and analyze information and take appropriate actions aimed to counteracting the terrorism financing and legalization (money laundering) of proceeds from crime;

**Terrorism financing** means provision or collection of funds in any ways or attempted provision or collection of funds with the view of their use or with understanding of their intended use, fully or partially, for any action aimed to explosion, arson or other actions threatening with people deaths or resulting in their deaths, substantial damage or occurrence of other socially dangerous consequences, where such actions have been committed for the purpose of public security violation, frightening of population to undermine or abate the existing state power, or frightening or compulsion of state structures, international, commercial, public and other organizations to take or refuse taking any action in the interests of terrorists or terrorist organizations, as well as the threatening with such actions for the same purposes;

**Relator** means any legal entity and/or individual listed further: banks (including their affiliates), finance and credit and other institutions licensed and regulated by the National Bank of the Kyrgyz Republic including currency exchange offices and pawnshops; professional participants of equity market; commodity exchanges; insurance organizations; casinos and other gambling establishments with slot-machines, roulettes and other gambling devices or facilities, bookmaker offices, and founders and organizers of lotteries, sweepstakes, system (electronic) games; organizations registering rights to movable and/or immovable assets; state traffic inspection bodies; mail and telegraphy organizations providing money transfer services and other organizations performing settlements and/or payments; realtors when participating in sale and purchase of real estate for their clients; sellers of gems and precious metals when performing any cash operations with their clients;

**Obligatory control** is the system of measures to be taken by authorized agency and regulated by this Law and statutory acts adopted in accordance therewith, for control of operations with

funds or other property, and to be implemented by this agency on the basis of information provided by organizations performing such operations and for checking this information in accordance with the laws of the Kyrgyz Republic;

**Internal control** means activity of organizations performing operations with funds or other property for submission of information to the authorized public agency about the operations subject to obligatory control and other operations with funds or other property related to terrorism financing and legalization (money laundering) of proceeds from crime;

**Shell bank** means a bank registered in states and territories wherein it is not present physically;

**FATF** means the Financial Action Task Force on Money Laundering.

## **Chapter II. Prevention of terrorism financing and legalization (money laundering) of proceeds from crime**

### **Article 3. Measures aimed to counteracting the terrorism financing and legalization (money laundering) of proceeds from crime**

1. Banks and other financial and credit institutions entitled to open and operate bank accounts, shall not have the right to open anonymous bank accounts (deposits), accounts (deposits) to bearer and to perform any operations without identification of counteragents and/or clients, according to statutory acts of the Kyrgyz Republic.

Banks and other finance and credit institutions entitled to open and operate bank accounts shall refuse a legal entity and individual to open a bank account (deposit) or operate their bank accounts, if this entity/individual fails to submit the documents necessary for fulfilling the bank account (deposit) opening requirements, operations therewith and identification of a client, or if obviously unreliable documents are submitted, or if the information is available concerning participation of this entity/individual in terrorist activities, which has been received in accordance with this Law. In the cases specified in this paragraph, banks and other finance and credit institutions entitled to open and operate bank accounts shall have the right to terminate the agreements made with their clients (holders of accounts) and depositors.

Relators are obliged to perform the following procedures:

- Establishing of the client's identity, that is, execution of a series of measures enabling identification of a client – natural person (surname, name, patronymic, registration and residence place, birth date, passport data, authorities to dispose of funds on the account and other data required pursuant to the statutory acts of the Kyrgyz Republic);
  - Verification of the legal status of a client – legal entity including information about its name or the client's name, organizational and legal form of the client's activity, address, officials and other data pertaining to the by-laws regulating the client's activity;
  - Authentication of authorities and personalities entitled to dispose of funds on the account;
- and

- Other procedures stipulated by the statutory acts.

2. Banks and other financial and credit institutions entitled to open and operate bank accounts shall not have the right to establish direct correspondent relations with the banks registered in offshore areas, their affiliates, associated banks and separated subdivisions not being independent legal entities, and those registered in states or territories providing preferential tax treatment and/or not allowing for disclosure and/or submission of information to banking supervision authorities pursuant to requirements and recommendation of the Basle Committee on Banking Supervision.

This restriction shall not apply to establishment of direct correspondent relations with affiliates registered in offshore zones, the parent organizations of which are located (registered) outside the offshore zones.

Establishment of shell banks is prohibited.

Banks and other finance and credit institutions entitled to open and operate bank accounts shall not have the right to establish and maintain correspondent relations with shell banks, and shall take precautions against effecting transactions and operations with foreign financial institutions – respondents, which allow shell banks to use their accounts.

3. A legal entity having the status of a company (association) registered in an offshore area in accordance with the laws of its registration country shall not be a founder or a shareholder of a resident bank in the Kyrgyz Republic.

For the purposes of licensing and regulation of activities of banks and other finance and credit institutions, the National Bank of the Kyrgyz Republic shall define the list of entities, states and offshore territories and establish the conditions and restrictions for transactions and operations with them.

4. The relators are obliged to:

- Develop the internal control rules and procedures aimed at counteracting the terrorism financing and legalization (money laundering) of proceeds from crime;

- Store for not less than five years from the closing of account all data and records relating to the client identification, as well as all data on transactions and operations with monetary funds and other property. Information in these records shall be sufficient for restoring individual transactions and operations with a view to form relevant evidence for examination and investigation;

- Not to make known the fact of transferring information to the authorized public agency. Informing third persons on the fact of transferring such information to the authorized public body is only possible in cases directly envisaged by the laws of the Kyrgyz Republic. The employees of organizations operating with monetary funds and other property have no right to inform their clients or other persons about transfer of information to the authorized public agency.

5. Banks and other financial and credit institutions entitled to open and operate bank accounts shall suspend operations of individuals and legal entities, which are reported to be participants of terrorist activity (terrorism financing), for three working days from the date when the client's instruction on its performance should be fulfilled, and shall submit the information about this operation to the authorized public agency not later than on the date of its suspension.

If within the said period the authorized agency has not resolved to suspend the concerned operation of individuals and legal entities, which are reported to be participants of terrorist activity (terrorism financing), for a further period, the banks and other finance and credit institutions entitled to open and operate bank accounts shall perform the operation with funds and other property as instructed by the client.

Suspension or arrest of operations with funds and other property of individuals and legal entities, which are reported to be participants of terrorist activity (terrorism financing) for the period exceeding the same specified in resolution of the authorized agency may be implemented only subject to a ruling, decision, judgment of courts, and a resolution of investigating authorities on the cases in process as per the court decision.

If the ruling, decision or judgment of court or the investigating authorities' resolution approved by the prosecutor on suspension of the concerned operation for a further term or on arrestment, have not been received within the period specified in the authorized agency's resolution, the banks and other finance and credit institutions entitled to open and operate bank accounts shall perform the operation with funds and other property as instructed by the client.

6. The relators and their personnel shall be exempted from liability for damage, loss of profit or moral damage caused by lawful fulfillment of their obligation to properly submit the information about suspect transactions and operations as provided for herein, if in doing so the established procedure of performing such actions has not been violated.

Suspension of operations, refusal to open a bank account (deposit) or perform an operation with an account as well as termination of a bank account agreement and closing of account envisaged in this Article shall not constitute the ground for civil and other responsibility of the relators.

7. The relators shall pay particular attention to business relations and transactions and operations with organizations and persons from countries and territories, which do not apply or insufficiently apply the FATF recommendations, and with associated organizations, affiliates and missions, the parent companies of which are registered in such countries and territories. The list of such countries and territories shall be approved by the authorized public agency together with the National Bank of the Kyrgyz Republic and other supervisory bodies.

8. The control of implementation of this Law by individuals and legal entities with regard to recording, storage and submission of information about transactions and operations liable obligatory control, and to organization of internal control shall be performed by relevant

supervisory bodies in compliance with their competence and in the order established by the laws of the Kyrgyz Republic, and by the authorized agency where the bodies supervising the activities of individual organizations effecting transactions and operations with funds and other property, are unavailable.

#### **Article 4. Obligatory control requirements (conditions)**

1. The information about suspicious transactions and operations, and those with funds and other personal and real assets, falling under the list of criteria stipulated in this Law or in connection therewith and determining the transactions and operations liable to the obligatory control, shall be submitted by the relators to the authorized public agency in the format established by it not later than on the working day following the date of transaction/operation.

This information shall be documented and shall include:

- type of the transaction or operation and grounds of its effecting;
- effective date of the transaction or operation and the amount thereof;
- information necessary for identification of a individual executing the transaction or operation (data of passport or other identification document), addresses of his/her abode and residence;
- name, tax payer identification number, registration place and location address of a legal entity;
- information required for identification of the individual or legal entity, for and on behalf of whom/which the transaction or operation is to be effected, tax payer identification number (if any), address of abode or residence of the individual or legal entity;
- information needed for identification of the representative of an individual or legal entity executing the transaction or operation on behalf of another person/entity by virtue of the power of attorney, law or act of a duly authorized governmental body or local self-government, and residence address of such representative of an individual or legal entity; and
- information necessary for identification of the beneficiary of the transaction or operation with fund or other property, including name of the beneficiary and his/her account number.

2. Where the relators suspect that any transaction or operation is effected for the purpose of terrorism financing and legalization (money laundering) of proceeds from crime, they are obliged to inform the authorized public agency of such transactions and operations no matter whether these pertain to the transactions and operations envisaged in Article 6 hereof or not.

3. Banks, finance and credit institutions, professional participants of equity market and insurance organizations shall record in writing the actually established circumstances of complicated, unusually large transactions and operations and those implemented through an unordinary scheme without any economic purpose.

### **Chapter III. Organization of activity for counteracting the terrorism financing and legalization (money laundering) of proceeds from crime**

#### **Article 5. Authorized public agency**

1. The authorized public agency to be established or assigned by the President of the Kyrgyz Republic is the governmental body, whose tasks, functions and authorities in the sphere of counteracting the terrorism financing and legalization (money laundering) of proceeds from crime shall be determined in accordance with this Law.

Interference of public authorities with solving the questions referred hereby to the competence of the authorized public agency shall not be allowed except for the cases envisaged by this Law and other laws of the Kyrgyz Republic.

2. Within the limits of its competence, the authorized public agency shall:

- 1) Collect and analyze information concerning transactions and operations subject to the obligatory control;
- 2) Develop and implement the measures for improving the system of prevention, revelation and suppression of suspicious transactions and operations and those related to terrorism financing and legalization (money laundering) of proceeds from crime, including provision of clarifications on taking the measures for counteracting the terrorism financing and legalization (money laundering) of proceeds from crime, particularly, in revealing suspicious transactions and operations and reporting of the same;
- 3) Submit to court (judge), public prosecutor, investigation and inquest bodies the documents and other materials regarding terrorism financing and legalization (money laundering) of proceeds from crime based on official written inquiries on the proceedings taken pursuant to the laws of the Kyrgyz Republic. This information may be also submitted by the authorized public agency to law enforcement bodies and courts at its own initiative;
- 4) Perform its activity for prevention and preclusion of legalization (money laundering) of proceeds from crime;
- 5) Pursuant to the existing legislation, have the right of access to (use of) databases (registers), which are created and/or maintained by the governmental bodies;
- 6) Subject to availability of sufficient grounds demonstrating the transaction's or operation's relation with terrorism financing and legalization (money laundering) of proceeds from crime, submit appropriate information to law enforcement bodies in accordance with their competences.

3. The authorized public agency shall suspend effecting of transactions and operations with funds or other property for the period of up to five working days, if at least one of the parties to these transactions and operations is the individual or legal entity reported to be a participant in the terrorist activity (terrorism financing), and; if the information received by

this agency in compliance with the Article 3, item 6 of this Law cannot be considered ungrounded according to preliminary checking results.

4. Managers and officials of the authorized public agency, the National Bank of the Kyrgyz Republic and other governmental bodies, including the former ones, who have or have had the access to information from the relators pursuant to this Law, shall bear criminal and other responsibility for illegal disclosure and use of commercial or other secrets, and abuse of his official position, in accordance with the legislation of the Kyrgyz Republic.

#### **Article 6. List of criteria determining the transactions and operations subject to obligatory control**

1. The transaction or operation with funds or other property or a series of interrelated transactions or operations effected within fourteen days shall be subject to obligatory control, if the amount thereof is equal to or more than Soms 1,000,000 (or their equivalent in foreign currency), and such transaction or operation by its nature is attributable to one of the types of transactions or operations envisaged by paragraph 2 of this Article.

2. The transactions and operations with funds or other property subject to obligatory control include:

1) All internal and external transactions and operations effected by banks and other financial and credit institutions entitled to open and operate bank accounts (deposits);

2) Transactions and operations, where at least one of the parties is an individual or a legal entity having the place of registration, abode or residence in a country (on the territory) wherein (whereon) disclosure or submission of information about financial operations is not allowed for, or one of the parties is a person, holding his/her account with a bank registered in such country (on such territory).

The list of such countries (territories) shall be specified by the authorized public agency in coordination with the National Bank of the Kyrgyz Republic based on the lists approved by international organizations engaged in counteracting the legalization (money laundering) of proceeds from crime, and shall be published;

3) Other operations and transactions exceeding the threshold established herein:

- Purchase or sale of foreign currency in cash;
- Purchase of securities by an individual for cash;
- Exchange of bank notes of one denomination to bank notes of another denomination;
- Investing by an individual of money in cash to an organizations' authorized capital; and
- Cash flow of charitable, public organizations and institutions, foundations;

4) Other transactions with movable and immovable assets in excess of the threshold established herein:



- Placing of securities, precious metals, gems or other values to a pawnshop;
- Payment by an individual of an insurance fee or receipt from him/her of a premium for life insurance and other types of cumulative and social insurance;
- Transaction with real estate, if the amount concerned is equal to or more than Soms 4,500,000;
- Transaction with movable assets;
- Receipt or provision of property under financial lease (leasing) agreement;
- Payment of funds in form of a prize received from a lottery, sweepstake (mutual betting) or from other gambles;

5) Money transfer(s):

- Effected by other than financial and credit organizations, as instructed by their clients; and
- Through the systems enabling such operations without opening an account, and their receipt.

3. Transactions and operations with funds or other property shall be subject to obligatory control if at least one of the parties thereto is an individual or legal entity reported to be involved in the terrorist activity (terrorism financing) including organizations tending to religious extremism, with such information being obtained in the order established by the laws or international treaties of the Kyrgyz Republic.

4. Suspect transactions and operations are subject to obligatory control.

#### **Chapter IV. International cooperation in counteracting the terrorism financing and legalization (money laundering) of proceeds from crime**

##### **Article 7. Exchange of information and legal assistance**

1. Based on the international treaties of the Kyrgyz Republic, the authorized public agency shall cooperate with the competent authorities of foreign states at the stages of data collection, preliminary investigation, legal proceedings and execution of court decisions in the sphere of counteracting the legalization (money laundering) of proceeds from crime and terrorism financing.

2. The authorized public agency and other public authorities of the Kyrgyz Republic engaged in counteracting the legalization (money laundering) of proceeds from crime and terrorism financing shall furnish the competent authorities of foreign information with appropriate information based on their requests or at their own initiative following the order and on the grounds envisaged by the international treaties of the Kyrgyz Republic.

3. The information concerning the revelation, withdrawal and confiscation of proceeds from crime and/or related to terrorism financing shall be submitted to the competent authorities of

foreign states only if that does not prejudice the national safety interests of the Kyrgyz Republic.

4. The information concerning the revelation, withdrawal and confiscation of proceeds from crime and/or related to terrorism financing shall be submitted to a competent authority of a foreign state at its request, provided that it will not be used for the purposes not indicated in the request without the prior consent of the relevant public authorities of the Kyrgyz Republic, which have provided it.

5. When sending a request to a competent authority of a foreign state, the authorized public agency shall ensure the confidentiality of the submitted information and shall use it only for the purposes stated in the request.

Pursuant to the international treaties and the laws of the Kyrgyz Republic, the public authorities of the Kyrgyz Republic engaged in counteracting the legalization (money laundering) of proceeds from crime and terrorism financing, shall accomplish within their competences the requests from the competent authorities of foreign states on confiscation of the proceeds from crime and on execution of separate proceedings for detection of the proceeds from crime, property arrestment, seizure of property, including making of an examination; interrogations of suspects, accused persons, witnesses, victims and other persons; searches, captions, transfer of physical evidences; handing over and transmittal of documents.

6. The expenses related to accomplishment of the above requests shall be compensated according to the international treaties of the Kyrgyz Republic.

7. For the purposes of counteracting the terrorism financing and legalization (money laundering) of proceeds from crime, the body for supervision and regulation of banks and other finance and credit institutions shall be entitled to demand, receive and submit appropriate information to the banking supervision bodies of foreign states at their requests and at its own initiative.

8. The demands on provision and submission of information (materials) with the view of combating the terrorism financing and legalization (money laundering) of proceeds from crime shall be made and fulfilled in the Kyrgyz Republic under the conditions envisaged in this Law.

## **Chapter V. Final provisions**

### **Article 8. Responsibility for violation of this Law**

1. The violation of the requirements stipulated in this Law by the organizations effecting transactions and operations with funds or other property shall entail the responsibility envisaged by the legislation of the Kyrgyz Republic.

2. Submission of information about suspicious transactions and operations with funds or other property and those subject to obligatory control to the authorized public agency

pursuant to the requirements established herein shall not constitute the disclosure of official, commercial or bank secrets.

3. The National Bank of the Kyrgyz Republic shall supply the authorized public agency including at its request with information and documents required for performance of its functions in the order agreed with the National Bank of the Kyrgyz Republic.

4. Submission of information and documents by public authorities and local self-governments including at the request of the authorized public authority for the purposes and in the order envisaged in this Law shall not constitute the disclosure of official, bank and commercial secrets.

#### **Article 9. Entry of this Law into force**

1. The present Law shall enter into force three months after the date of its official publication.

It has been published in the "Erkintoo" Newspaper No. 58, on August 8, 2006

2. The Government of the Kyrgyz Republic shall:

- Prepare and submit to the Zhogorku Kenesh (Supreme Assembly) the proposals on bringing the statutory acts of the Kyrgyz Republic in compliance with this Law;

- Develop the statutory acts necessary for implementation of this Law.

K. Bakiev,

President of the Kyrgyz Republic

Adopted by the Zhogorku Kenesh

of the Kyrgyz Republic on June 16, 2006