LEGAL ASSESSMENT REPORT ON

"INVESTOR PROTECTION IN THE SECURITIES MARKET OF THE KYRGYZ REPUBLIC"

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1 INTRODUCTION

This report (the "Report") has been prepared in connection with the European Bank for Reconstruction and Development ("EBRD") Project "Investor Protection Legislation Reform in the Kyrgyz Republic (Phase 1)" (the "Project").

1.1 The Project

1.1.1 Historic Background

In late 2004 and early 2005, the State Agency for Financial Supervision and Reporting under the Government of the Kyrgyz Republic (the "Agency"), the principal regulator of the securities market in the Kyrgyz Republic, approached the EBRD requesting technical assistance in reforming national legislation on investor protection in the securities market. The need for reform was triggered by the Rentengroup scandal, where an issuer raised more than USD $6 million and disappeared from the Kyrgyz Republic.

In 2005, EBRD conducted a Securities Market Legislation Assessment (the "Assessment"). The securities market legislation ("law on the books") was rated "low compliance" compared to international standards. Among various shortcomings, the Assessment revealed that (i) the disclosure requirements for issuers and large shareholders must be enhanced and (ii) capital adequacy, liquidity and insolvency requirements for intermediaries should be strengthened. The Assessment also revealed that the Kyrgyz Securities Market Law (1998) was outdated and that some problems in the corporate governance of Kyrgyz joint stock companies still remain.

The Kyrgyz Republic adopted a new Joint Stock Companies Law in 2003, which was substantially amended in August 2004, improving the disclosure requirements, strengthening the position of company auditing committees, clarifying the board of directors competence, setting new requirements for the approval of large transactions and providing for cumulative voting in the election of directors.

1.1.2 Objective

The Project has been designed to detect shortcomings in the existing securities market and corporate governance legislation with a view to proposing recommendations on the reform of primary and secondary securities market legislation. The implementation of our proposed recommendations should lead to improved transparency, effectiveness and credibility of the Kyrgyz capital markets.
1.2 Methodology

In carrying out the Project, we have adopted the following methodology:

(a) We have reviewed the existing reports on investor protection and corporate governance produced by international and foreign aid agencies (see Annex B "List of Reviewed Reports")

(b) We have reviewed and analysed the current securities market and corporate governance legislation to detect any provisions infringing investors' rights and gaps and conflicting provisions which impede the effective implementation of legislation;

(c) We have prepared a questionnaire on the implementation of legislation relating to the investor protection and corporate governance in the Kyrgyz Republic (the "Questionnaire");

(d) We have reviewed and analysed the responses to the Questionnaire by key securities market participants and other stakeholders in the Kyrgyz Republic;

(e) We have conducted a fact finding mission to the Kyrgyz Republic involving meetings with the Agency, key securities market participants and other stakeholders;

(f) We have assessed the effectiveness of the measures designed to protect investors' rights and legal interests;

(g) We have reviewed a draft "Law on Securities Market" and assessed the possible consequences of its enactment;

(h) We have reviewed the OECD Principles of Corporate Governance;

(i) We have reviewed the IOSCO Principles, the CIS Model Law on Investor Protection in the Securities Market and other IOSCO reports and recommendations with a view towards their implementation in the Kyrgyz Republic; and

(j) We have prepared recommendations for the improvement of relevant Kyrgyz law.

1.3 Scope of the Report

This Report concentrates on the following issues:

(a) corporate governance and the rights of shareholders;
the procedure for issuing securities and the disclosure obligations of
issuers, underwriters and other relevant participants in the securities
market;

rules for trading and supervision of market participants;

access to information and transparency; and

dispute resolution and enforcement of investors' rights.

In preparing this Report we have analysed the state of implementation and
enforcement of securities market legislation in the Kyrgyz Republic. In
particular, we have considered the following issues:

typical infringements of investors' rights in the Kyrgyz Republic;

legal obstacles to the efficient functioning of the securities market and
the regulatory role of the Agency; and

practical obstacles to the efficient functioning of the securities market,
such as a lack of general awareness among market participants of
regulatory, accounting and reporting requirements.

Our analysis of Kyrgyz laws and regulations governing the securities market is
based on our review of Kyrgyz laws and regulation and the advice of Kalikova
& Associates, Kyrgyz counsel to the Project, responses to the Questionnaire
and meetings with the Agency, key market participants and other stakeholders,
as well as various information available in the public domain.

2 KYRGYZ SECURITIES MARKET OVERVIEW

2.1 Historic Background

2.1.1 Privatisation

The transition of the Kyrgyz Republic from a planned to a market economy
started in 1991 with a programme for transferring state-owned enterprises into
joint stock companies and their subsequent privatisation.

The 1992 privatisation programme called for the closure of 200 state-owned
enterprises and the privatisation of 35 percent of state-owned companies,
50 percent of construction enterprises, 70 percent of housing, all services
industries and 25 percent of agricultural firms by the end of 1993.

By the end of 1994, 46 percent of all state-owned entities had been privatised,
and of these, more than half were transferred directly or into "operational
management" of private investors through competitive bidding. The remaining
54 percent were sold to employees of these enterprises through their labour collectives or transformed into joint stock companies. This initial preference for transfer of shares of state enterprises to labour collective ownership was abandoned in the later stages of privatisation since collective ownership was found to be the least effective in attracting new capital to restructured enterprises.

Privatisation legislation was further amended to offer higher percentages to management and other interested parties. The programme eventually evolved to include the following methods of privatisation: auctions, competitive bidding, "operational management" (i.e., lease) with an option to acquire shares and competitive tenders.

However, the 1992 privatisation programme failed to respond to the rapidly changing requirements of market reforms. In order to allow for a wider distribution of ownership among the Kyrgyz public and create a more egalitarian system, the Government introduced more competitive methods of enterprise sales and citizen privatisation vouchers. Pursuant to legislation co-authored by the World Bank and USAID and approved by the Kyrgyz Parliament in January 1994, all citizens were granted privatisation vouchers based on a formula linked to both salary and duration of work service.

Thirty-five percent of the shares of all enterprises undergoing privatisation were designated for investment by vouchers; five percent were designated as donations to employees; and 60 percent were to be evaluated by an inter-ministerial committee for sale to strategic investors. By 1995 more than 775 companies out of 4,400 were privatised by voucher sale. Vouchers could also be placed in investment funds, used to buy shares in companies undergoing privatisation until January 1996, exchanged for ownership of housing occupied by the voucher holder until the year 2000, or since September 1994, sold for cash on the stock exchange.

2.1.2 Emergence of Capital Markets


The Civil Code was adopted on May 8, 1996 and significantly improved the contractual framework for securities transactions. With the enactment of the Securities Market Law in 1998, the legal framework for regulation of securities markets emerged.

Another fundamental law, the Investment Funds Law, which governs investment fund activities was enacted in 1999.

Prior to the enactment of the Joint Stock Companies Law in 2003, joint stock companies were subject to the Business Partnerships and Companies Law.
The Licensing Law and its implementing regulation "on licensing of certain business activities" were approved by Government Resolution No. 260, dated May 31, 2001 and established licensing requirements for securities market professionals.

2.2 Market Participants

2.2.1 Stock Exchanges

There are three stock exchanges currently operating in the Kyrgyz Republic:

- Closed Joint Stock Company "Kyrgyz Stock Exchange"
- Closed Joint Stock Company "Exchange Trade System"
- Closed Joint Stock Company "Central Asian Stock Exchange"

In 2005, the total amount of transactions conducted at the stock exchanges of the Kyrgyz Republic reached 1,609.3 billion Soms (which is approximately USD 41,264,102 at the current official exchange rate of the National Bank of the Kyrgyz Republic).

(a) Kyrgyz Stock Exchange

The Kyrgyz Stock Exchange was the first trading floor available for trading in privatisation vouchers. It was officially established in 1994 and opened for trading in 1995.

In June 2000, the Kyrgyz Stock Exchange was transformed from a membership organization into a closed joint stock company.

In 2005, the volume of trading on the Kyrgyz Stock Exchange reached the following levels¹:

(i) volume of exchange transactions - 1,246 million Soms
(ii) number of securities transactions - 1,745
(iii) number of issuers securities transactions - 206

¹ KSE Professional Activities Report 2005.
(b) Exchange Trade System

The Exchange Trade System was established in 2001 as an organised securities market for broker/dealer firms operating in the southern region of the Kyrgyz Republic.

In 2005, the volume of trading at the Exchange Trade System reached the following levels\(^2\):

(i) volume of exchange transactions – 113.71 million Soms
(ii) number of securities transactions – 2,748
(iii) number of issuer securities transactions – 148

(c) Central Asian Stock Exchange

The Central Asian Stock Exchange was established in December 2004.

In 2005, the volume of trading at the Central Asian Stock Exchange reached the following levels\(^3\):

(i) volume of exchange transactions – 249.86 million Soms
(ii) number of securities transactions – 46
(iii) number of issuer securities transactions – 12.

2.2.2 Depositaries

The Closed Joint Stock Company "Central Depository" was established in 1997 with the support of USAID. It is a centralised recording organisation responsible for the clearing and settlement of securities operating with the Kyrgyz Stock Exchange. We understand that there are also three other licensed depositaries operating in the Kyrgyz Republic.

\(^3\) CASE Annual Report 2005.
2.2.3 Other market participants

According to the list of licensed securities market professionals maintained by the Agency, there are 112 securities market professionals operating in the Kyrgyz Republic. These include:

(a) 16 security register keepers;
(b) 4 depositories;
(c) 5 investment funds;
(d) 3 trade market intermediaries;
(e) 22 brokerage firms;
(f) 21 dealer firms;
(g) 22 trust companies;
(h) 11 investment consultants; and
(i) 8 investment fund management companies.

The following associations were established by securities market professionals to promote and develop the Kyrgyz capital market:

(a) UYUM Association of Independent Registrars and Depositories;
(b) Association of Securities Market Professionals;
(c) Association of Investment Funds;
(d) Association for the Protection of Shareholders' Rights; and
(e) Corporate Governance and Development Institute.

3 EXECUTIVE SUMMARY

This Report should be read in its entirety. For your convenience, we have, however, summarised below our key findings.
3.1 Regulation of the Securities Market

This section of the executive summary outlines major problem areas in implementing the Principles of Financial Market Regulation adopted by the International Organisation of Securities Commissions (the "IOSCO Principles") in the Kyrgyz Republic.

3.1.1 Regulator

Prior to 2001, the state securities market supervisory authority used the proceeds from the registration of securities to fund any shortages in its budget. However, after the enactment of Resolution No. 229 of the Government of the Kyrgyz Republic, dated April 18, 2003, the Agency is to be funded only from the republican budget. We understand that the current level of budgetary funding is insufficient to train the Agency's staff and to effectively supervise the securities market participants.

Kyrgyz law does not require public sector employees, including officers of the Agency, to disclose information about their commercial interests. Employees and officers of the Agency should be forbidden from discharging their duties where they have any commercial interests.

The Agency has adequate powers to conduct inspections of securities market participants and to impose certain sanctions on securities market participants including suspension and revocation of licenses and imposition of administrative sanctions for securities offences. However, the level of administrative fines is inadequate, and due to ineffective enforcement, the offenders often avoid paying administrative fines. Furthermore, Kyrgyz law primarily deals with enforcement of sanctions against individuals (i.e. directors and officers of the issuers and securities market professionals) and fails to establish a clear procedure for the enforcement of sanctions against legal persons.

Investors are not being informed of the investigations being carried out by the Agency and sanctions imposed on issuers.

3.1.2 Self-regulating organisations ("SROs")

Although the Securities Market Law establishes a statutory foundation for delegation by the Agency of part of its oversight functions to self-regulating organisations, and the Regulation of State Securities Commission of the Kyrgyz Republic "on self-regulating organisations of securities market professionals, approved by Resolution No. 29, dated July 2, 2001 empowers SROs to apply sanctions for violations of their rules and regulations, the existing stock exchanges have not yet adopted relevant rules and regulations to implement their oversight functions.
The Agency confirmed the SRO status of the Kyrgyz Stock Exchange. However, other than preparation and application of trading rules and listing requirements, the Kyrgyz Stock Exchange has not taken other steps towards full transition to an SRO. Recently, the Kyrgyz Stock Exchange wrote to the Agency with the request that it no longer be considered an SRO on the grounds that Kyrgyz law had to be amended before it could be considered an SRO. The two other stock exchanges operating in the Kyrgyz Republic, the Central Asian Stock Exchange and Exchange Trade System, provide no access to information on issuers whose shares they trade.

3.1.3 Issuers

We understand from responses to the Questionnaire that the decision to offer shares is often taken by the majority shareholders with a view to diluting the voting interests of minority shareholders. We also understand that assets of joint stock companies are being inadequately valued. In most cases, minority shareholders are not being informed of issues of shares. As a result of low market liquidity, majority shareholders acquire newly issued shares at a low or nominal price. In addition, such shares are often paid for by in-kind contributions which are not valued by an independent appraiser.

We understand that shares of many listed joint stock companies are not heavily traded. Perhaps, Kyrgyz legislation should be amended to introduce minimum listing requirements for joint stock companies. For example, in neighbouring Kazakhstan a joint stock company must meet the following two tests to become public: (i) equity capital must be at least 1,000,000 of the minimum monthly statutory pay (i.e. approximately USD 5,800,000); and (ii) the number of shareholders must be at least 500.

3.1.4 Information Disclosure Obligations

Although Kyrgyz law establishes a statutory foundation for full and complete disclosure of information by issuers, they typically fail to fully disclose information on their financial condition and investment risks. The law does not require issuers and underwriters to carry out due diligence in preparing prospectuses.

A number of respondents to the Questionnaire indicated that prospectuses are rarely reviewed by investors as they do not provide information on the issuer's strategy, value of its assets and intended application of the proceeds of the offering. The prospectuses are regarded by issuers and securities market participants as statistical documents which need to be filed with the Agency. It may be helpful if the Agency developed a model outline of certain issues to be addressed in a prospectus.
Unfortunately, the Agency has not developed a methodology which would enable it to check an issuer's compliance in the prospectus with the disclosure requirements.

Under the Joint Stock Companies Law, all joint stock companies with more than 500 shareholders and all listed joint stock companies must publicise their annual financial reports in the "mass media". However, according to the 2004 Annual Report of the State Securities Commission under the Government of the Kyrgyz Republic only 150 out of 1300 open joint stock companies registered in the Kyrgyz Republic have publicised their annual financial reports. Although Kyrgyz law imposes administrative liability on joint stock companies for failing to publicise their annual financial reports, these requirements are not being adequately enforced.

3.1.5 Accounting and Auditing


By Resolution No. 235, "On International Audit Standards" dated April 22, 2003, the Government of the Kyrgyz Republic introduced International Audit Standards 2001 ("IAS"). However, many companies having up to 500 shareholders and securities traded at stock exchanges do not conduct an independent audit. Furthermore, although under Kyrgyz law an auditor must conduct an audit objectively, diligently and impartially, a very different situation is often observed in practice. We understand that Kyrgyz auditors appear to sometimes certify distorted financial statements.

Although Kyrgyz law imposes administrative and criminal liability for negligent and malfeasant audits, it does not establish clear criteria for the indemnification of losses incurred by investors as a result of such audits.

3.1.6 Ongoing Disclosure and Material Development Reporting by the Issuers

Article 51 of the Securities Market Law provides that annual reports must be submitted only by companies making public offerings of securities.

However, the Regulation on Disclosure of Information adopted by the Agency provides that all issuers irrespective of whether or not they make public or private offerings of securities are required to submit quarterly reports to the Agency. This leads to the submission of burdensome reports by companies making private offerings. As a result, private offerings become unnecessarily costly to issuers. The implementation of reporting requirements appears to be unnecessarily costly for issuers making private placements.
3.1.7 Market Intermediaries

The Regulation "on the normative parameters of sufficiency established for professional participants of the securities market", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 28, dated July 2, 2001 requires market participants to maintain a minimum amount of capital, a loss recovery reserve fund, and maximum debt to capital and minimum liquidity ratios.

However, our research indicates that the compliance of market participants with the debt to capital and liquidity ratios are not properly monitored.

The Agency should promote the establishment of a compliance function at securities market intermediaries. The scope, structure and activities of the compliance function should be proportionate to the nature, scale and complexity of a market intermediary’s business and should be subject to periodic reviews by the Agency.

In addition, we believe that the Agency should prepare a set of recommendations requiring persons doing business in securities in the Kyrgyz Republic to conduct their activities in an ethical manner.

3.1.8 Secondary Market

According to our research, shares of the majority of listed open joint stock companies are not heavily traded (i.e. they are not liquid). However, the sale and purchase of shares of listed companies may be concluded only through stock exchanges.

3.1.9 Direct Transactions

According to our analysis securities transactions are primarily carried out as "direct transactions" outside market intermediaries, and are only registered with market intermediaries at the closing stage. This creates the conditions for price manipulation. The organised securities trading systems lack essential infrastructure for securities operations. Securities transactions are rarely concluded by means of an electronic sale and purchase order system. A Delivery Versus Payment (DVP) system has yet to be implemented.

Although the stock exchanges are entitled to impose sanctions for price manipulation, we are unaware of any instances where they have been applied. Overall, Kyrgyz law does not clearly impose liability for price manipulation. The Agency and SROs should be given effective tools to combat price manipulation.
3.1.10 Insider Trading

Although the Regulation "on transactions made with the use of insider information", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 41, dated August 2, 2001 provides Agency officials with powers to investigate any suspicious transactions, the Agency is relatively inexperienced in investigating transactions concluded with the use of "insider information". It lacks the financial resources and its staff is not trained to deal with insider trading.

Although Article 330 of the Code of Administrative Liability imposes administrative liability for the use of insider information, the current level of administrative fines is inadequate as the potential gains from insider trading can exceed the maximum penalty which the law permits the Agency to impose. Furthermore, parliament should consider introducing criminal liability for insider trading.

3.1.11 Clearing and Settlement


However, we understand that these procedures have yet to be fully implemented by market participants. In particular, stock exchanges have yet to introduce a Delivery Versus Payment system.

3.2 Corporate Governance

This section of the executive summary outlines major inconsistencies between the CIS Model Law on the Protection of Investor Rights in the Securities Market (the "CIS Model Law") and Kyrgyz corporate legislation.

3.2.1 General Meeting of Shareholders

Notice of Meeting and Access to Information

The legal requirements regarding the timing, notice and holding of general meetings are often violated by the management of joint stock companies. In practice, shareholders' rights are often violated by unreasoned denials to transact business proposed by shareholders. Furthermore, shareholders face problems in exercising their right of access to information about the company's financial performance, including financial statements and auditor's or audit committee's reports.
Under the Joint Stock Companies Law notice of a general meeting must be publicised in the press. However, the Joint Stock Companies Law does not expressly prescribe which particular newspaper must be used to publicise a notice of general meeting. Companies located in remote regions of the Kyrgyz Republic often publicise their notices of general meetings of shareholders in local newspapers with limited circulation.

**Decision on Offering of Securities**

The terms and conditions of offering are rarely discussed at a general meeting of shareholders. The management body usually draws the conditions of issuance while the shareholders approve the management decision without giving details of what is being proposed. The shareholders often do not understand the terms of the offering because no explanation is given by management.

**Minutes of Meeting**

It is not uncommon for the management of a joint stock company to omit from the minutes of the general meeting of shareholders issues raised by minority shareholders. Management often refuse to address questions raised by minority shareholders and side with the majority shareholders.

**Passive Attitude of Investors and Absentee Voting**

Article 48 of the Joint Stock Companies Law provides that 60 percent of the total outstanding voting shares constitutes the quorum necessary to hold a general meeting and 40 percent is necessary to hold an adjourned general meeting. However, some joint stock companies are unable to achieve the quorum necessary to hold even an adjourned general meeting. In some instances, the majority of shareholders do not attend meetings on purpose in order to prevent the reaching of a quorum. Passive attitudes of shareholders to the exercise of their rights in certain cases prevent companies from holding general meetings.

**Changes to the Agenda of Meeting**

It is often the case in many Kyrgyz joint stock companies that a general meeting is required to consider items which are not included on the agenda. The Joint Stock Companies Law may need to be amended to allow the management board and shareholders holding at least 20 percent (or perhaps 10 percent) of the voting shares to introduce changes to the agenda at a general meeting. However, any such change should be subject to full disclosure in respect of the item proposed in the same manner as for the other items included in the agenda prior to the general meeting.
3.2.2 Right to Request Special Meeting of Shareholders

Unlike the CIS Model Law which provides that a shareholder holding 10 or more percent of shares in the company has the right to request a special meeting of shareholders, under Kyrgyz law only shareholders holding 20 or more percent of shares in the company have such a right.

Article 9(2) of the CIS Model Law provides that when the agenda of the extraordinary meeting includes the election of members of the board of directors, the holders of at least 2% of the voting shares have a right to nominate candidates to the board of directors. Perhaps, similar provisions should be introduced into Kyrgyz law.

3.2.3 Voting Rights

Kyrgyz law is silent on the status and enforceability of voting agreements. Nevertheless, the requirement for shareholders to have a certain number of voting rights to decide certain matters implies the possibility of entering into such voting agreements. Accordingly, in order to secure the right of minority shareholders to enter into voting agreements and jointly exercise their rights, requirements for such agreements should be introduced into Kyrgyz law.

Kyrgyz law provides that preferred shareholders have the right to vote on such matters as reorganisation, liquidation, or introduction into the company charter of amendments restricting the rights of preferred shareholders. Nevertheless, unlike the CIS Model Law (Article 6), Kyrgyz law does not contain mechanisms designed for the protection of preferred shareholders. Therefore, it is necessary to amend Kyrgyz law to include a provision requiring that any decision to approve charter amendments limiting the rights of preferred shareholders may be passed only by a majority or supermajority of preferred shareholders.

3.2.4 Valuation of Assets and Expropriation of Securities

There has been a lot of controversy about the interpretation and application of Articles 22.5 and 23.3 of the Joint Stock Companies Law. Under Article 22.5 of the Joint Stock Companies Law, the relevant state privatisation authority may cancel shares allocated by the state to employees of the joint stock company upon its privatisation without a court decision. Article 23.3 provides for the re-evaluation of assets of privatised enterprises prior to a new issue of shares. It requires shareholders to pay any increase in the nominal value of shares resulting from such re-evaluation. If the amount of such increase is not paid up, a portion of shares of the shareholder corresponding to such an increase can be cancelled.
Article 19 of the Kyrgyz Constitution provides that private property is inviolable and no one can be coercively deprived of his ownership right without a valid court order. Articles 22.5 and 23.3 of the Law contradict the Kyrgyz Constitution.

The implications of Articles 22.5 and 23.3 need to be further investigated. The Joint Stock Companies Law may need to be amended to address the uncertainties arising therefrom. There has been some concern that companies have been issuing shares for consideration which does not take into account the true value of the company's assets and business, and for this reason, some minority shareholders oppose the repeal of Article 23.3 even though it is a blunt instrument for dealing with such problem.

3.2.5 Pre-emptive Rights

Under Article 25 of the Joint Stock Companies Law, shareholders have a pre-emptive right to purchase shares in a new issue. However, the Joint Stock Companies Law establishes no specific procedure by which shareholders can exercise their pre-emptive rights. No provision of law requires issuers to notify their shareholders of their respective rights or establishes a time period for the exercise of pre-emptive rights.

We note that under Article 4 of the CIS Model Law shares can be issued if so decided by the board of directors of the company which is not allowed under Kyrgyz law.

3.2.6 Change of Control

Article 74 of the Joint Stock Companies Law sets forth procedural requirements for the acquisition of 50 percent or more of the ordinary shares in joint stock companies. Violation of such procedural requirements may render the acquisition invalid. A person intending to purchase independently or jointly with its affiliates 50 percent or more of the ordinary shares in a joint stock company must send a written statement of its offer to such joint stock company. A joint stock company is required to send to its shareholders notice of the proposed share acquisition and request exercise of the right of first refusal, but the law says nothing about what an investor should do if there is no response from the shareholders to such a request. Thus, the law does not describe which steps an investor purporting to acquire a controlling stake should take if certain shareholders do not respond to the offer.

3.2.7 Interested Person Transactions

The CIS Model Law contains some disclosure provisions that are not included in Kyrgyz law. Specifically, the CIS Model Law requires officers and majority shareholders to disclose information on possible transactions in
which they have an interest (Article 30.2 of the CIS Model Law). Kyrgyz law should include such a provision.

Furthermore, Kyrgyz law should be amended to include a provision similar to Article 30.8 of the CIS Model law which grants shareholders holding one or more percent of shares the right to petition a court for invalidation of an interested person transaction if such transaction was committed in violation of the requirements established by law.

It is important for shareholders to be informed about interested person transactions committed by the company. Unfortunately, unlike the CIS Model Law which requires the disclosure of information about such transactions in the annual report of the company, Kyrgyz law does not require such disclosure.

In addition, Kyrgyz law establishes no clear definition of a "family member". The courts have difficulty setting aside transactions concluded by distant "family members" of the officers or significant shareholders of a joint stock company. We understand that many transactions in the Kyrgyz Republic are concluded by relatives of the officers and significant shareholders of the joint stock companies.

We understand from responses to the Questionnaire that members of the audit committee in a number of Kyrgyz Joint Stock Companies are relatives of the company's directors or major shareholders. It is necessary to amend Kyrgyz law to ensure that family members of the directors or significant shareholders disclose their interest in accordance with regulations prescribed by the Agency.

3.2.8 Right to Request Buyback

Both Kyrgyz law and the CIS Model Law contain similar buyback provisions empowering the board of directors of a company to set the purchase price of its shares. However, the CIS Model Law also contains provisions protecting shareholders who sell their shares to the company. Thus, under Article 6.3 of the Model CIS Law the buyback price shall be no less than the market value of assets approved by an independent appraiser and shareholders can appeal to a court against the decision of the board of directors approving the buyback price within not more than three months from the date of such decision. It is necessary to amend Kyrgyz law to include such provisions.

3.2.9 Right to Request Independent Audit

Kyrgyz law provides that shareholders holding 10 or more percent of the shares in a company have the right to demand that an audit be conducted by a company auditor or by another independent auditor. But unlike the CIS Model
Law (Article 8), Kyrgyz law contains no provisions describing how this right can be exercised, specifically, whether shareholders can petition a court to order an audit, and to propose an auditor other than the one appointed by the company.

3.2.10 Appraisal of Non-cash Contributions

The Kyrgyz Joint Stock Companies Law allows shares to be paid in cash or other assets. In case of non-cash payment for shares, the risk exists that the value of property rights provided in exchange for shares may be other than the fair market price. However, the CIS Model Law contains provisions which minimise such risk. Specifically, the value of the assets provided in exchange for shares (except cash) must be determined by an independent appraiser. The same approach should be adopted in the Kyrgyz Republic.

3.2.11 Liability of Directors and Officers

Article 65 of the Kyrgyz Joint Stock Companies Law imposes liability on directors and other officers of a company for the damage caused to the company by the decisions passed by these officers or bodies of the company. However, the Kyrgyz Joint Stock Companies says nothing about when officers are not liable for damage caused by their decisions. We believe that this gap should be filled; otherwise officers will be unfairly punished, for example, in the case of changes in market conditions, which caused losses to the company. In this regard, the relevant provision of the CIS Model Law could be used. We recommend using the provision relating to directors' liability set forth in Article 25(3) of the CIS Model Law to amend Kyrgyz law. In particular, under Article 25(3) of the CIS Model Law a director or manager must not be held liable, if he: (a) does not have a personal interest in the decision; (b) believes that he is reasonably well informed about the grounds of the decision under the circumstances; and (c) has reasonable grounds to believe that the decision is made in the best interest of the company and its shareholders.

3.2.12 Derivative Actions

Kyrgyz law does not contain any provisions empowering shareholders to file derivative actions, although there is a need for such a right in the Kyrgyz Republic. In this regard, Kyrgyz law should be amended to permit shareholders holding one or more percent of the shares to apply to the court on behalf of the company to hold the officers of the company liable provided that they had earlier applied to the board of directors, but the latter ignored their request. In this case Kyrgyz law should provide that the company shall bear the costs connected with an action brought by a shareholder, unless the court finds that the action is baseless and the shareholder acted in bad faith. The introduction of derivative actions will help protect the interests of shareholders and the company from possible abuse of power by officers of the company.
3.2.13 *Major Transactions*

Kyrgyz law requires that certain major transaction be approved by the shareholders. In practice, the sale of shares in Kyrgyz joint stock companies is often treated to be a major transaction. Clearly, the sale of shares should not be a major transaction.

The CIS Model Law unlike Kyrgyz Law expressly provides that major transactions do not include transactions that would otherwise conform to the definition of a major transaction, but are performed in the ordinary course of business, or are connected with the sale of common shares of the company or securities convertible into common shares of the company. Perhaps, similar provisions should be introduced into Kyrgyz law.

It is important for shareholders to be informed about major transactions entered into by the company. Unfortunately, unlike the CIS Model Law which requires the disclosure of information about the major transactions entered into by the company in its annual report, Kyrgyz law does not require such disclosure.

3.3 *Dispute Resolution and Transparency*

3.3.1 *Judicial Enforcement*

Most investor criticism relates to inadequate judicial protection of investor rights. Investors complain that judges have no expertise in the resolution of disputes concerning investor rights. We understand that shareholders are often denied their rights when disputes involve governmental authorities or partially state-owned companies.

We have reported a number of cases where the rights of minority shareholders have been violated.

3.3.2 *Alternative Dispute Resolution*

As mentioned above investors complain about lack of awareness of the securities market and corporate laws amongst Kyrgyz judges and, generally, the effectiveness of the Kyrgyz judiciary.

In this regard, we would recommend that the Agency adopts a number of measures aimed at promoting alternative dispute resolution in the securities market.

As a precondition for alternative dispute resolution, broker-dealer firms and other securities market professionals should provide for mediation and/or arbitration in their contracts. Perhaps, the Agency should issue
recommendations providing for the inclusion of non-binding mediation and binding arbitration clauses into the contracts of securities market professionals, including preparation of standard forms.

It should be noted that Article 38 of the Kyrgyz Constitution provides that civil disputes can be settled by arbitration tribunals (“Courts of Arbitration”). The Arbitration Courts Law was enacted in July 2002. It establishes a statutory foundation for the operation of Kyrgyz arbitration courts. In September of 2002, the first Court of Arbitration was established under the auspices of the Chamber of Commerce and Industry of the Kyrgyz Republic. In 2003, it was renamed as the International Court of Arbitration under the Chamber of Commerce and Industry of the Kyrgyz Republic (the “ICA”).

A specialised alternative dispute resolution forum for resolution of corporate and securities related disputes could be established under the auspices of the ICA or any of the securities market professionals associations. Such forum should have proper rules and procedures for the effective resolution of securities disputes and be recognised by law.

3.3.3 Publication of Normative Acts

Under Article 39 of the Law "On Normative Legal Acts of the Kyrgyz Republic" the laws and normative acts of the Kyrgyz Republic come into force upon their publication in the "mass media" (i.e. leading national newspapers). However, most normative acts regulating the activities of securities market participants adopted by the Agency have never been publicised in official newspapers. The legitimacy of these regulations is therefore questionable.

3.3.4 Agency Database

Over the past three years, the Agency has been working on the establishment of a publicly accessible database on issuers and professional participants in the securities market. Such database is accessible online at the web-site of the Agency www.fsa.kg. We understand that the Agency is experiencing difficulty in updating the database due to insufficient funding.

3.3.5 OECD Principles of Corporate Governance

This sub-section analyses Kyrgyz laws and corporate governance practices in light of the OECD Principles of Corporate Governance (2004) (the "OECD Principles").

**Ensuring the Basis for an Effective Corporate Governance Framework**

The OECD Principles provide:
"The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities."

Although Kyrgyz Joint Stock Companies Law and regulations of the Agency generally establish an adequate statutory basis for effective corporate governance, the Agency and court system of the Kyrgyz Republic lack experience and resources to fulfil their supervisory, regulatory, enforcement and judicial roles.

As described in Section 3.3.3 of this Report, the legislation affecting corporate governance practices is often not published. Moreover, we understand from responses to the Questionnaire that court decisions are often not timely, transparent nor fully explained.

Thus, Kyrgyz laws would need to be further revised to ensure transparency of the decision making process and permit timely and effective judicial review of the Agency's decisions. As mentioned in Section 3.3.1, reform of the court system of the Kyrgyz Republic is required to ensure effective enforcement of laws, regulations and administrative decisions affecting transactions with securities.

**The Right of Shareholders and Key Ownership Functions**

The OECD Principles provide:

"The corporate governance framework should protect and facilitate the exercise of shareholders’ rights."

As described in Sections 3.2.1 to 3.2.3 of this Report, respondents to the Questionnaire indicate shareholders have difficulties in accessing the material information on joint stock companies in a timely manner and on regular basis. They are often denied their rights to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes matters.

Similarly, minority shareholders are often not being adequately informed about forthcoming general meetings of shareholders or denied their right to ask questions at such meetings.

Kyrgyz merger control and take over regulations need to be further reformed to ensure that extraordinary transactions, such as mergers, and sale of substantial portion of corporate assets are clearly disclosed so that investors understand their rights and recourse.
We note that the Joint Stock Companies Law establishes relevant statutory foundation for protection of shareholder rights. However, these rights are not being adequately enforced by Kyrgyz courts.

**The Equitable Treatment of Shareholders**

The OECD Principles provide:

"The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights."

As described in Section 3.2.1 to 3.2.3 of this Report, rights of minority shareholders are often abused. Although Kyrgyz law gives minority shareholders the right to challenge decisions of the general meeting, these rights are not being adequately upheld by the Kyrgyz judiciary. We understand from responses to the Questionnaire that the management of many joint stock companies completely ignore the views and concerns of minority shareholders.

Furthermore, as mentioned in Section 3.2.2, Kyrgyz law does not expressly require that any decision to limit the rights of the preferred shareholders be passed by the majority of preferred shareholders.

**The Role of Stakeholders in Corporate Governance**

The OECD Principles provide:

"The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises."

Key stakeholders in corporate governance include employees of the privatized enterprises and trade unions.

**Disclosure and Transparency**

The OECD Principles provide:

"The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company."
As described in Section 3.1.4 of this Report, many Kyrgyz joint stock companies do not publish their annual reports or carry out required external audits. We understand that it is not uncommon for shareholders to experience difficulty in obtaining information on the financial and operating results, company objectives and ownership structures of many Kyrgyz joint stock companies. We also understand that the remuneration policy for members of the board and key executives of Kyrgyz joint stock companies, and information on their qualifications and other directorships and whether they are regarded as independent by the board is rarely accessible.

3.4 Recommendations

3.4.1 Short-Term Objectives

Funding of the Agency

The Agency should have sufficient funding to carry out its functions. At present, the Agency is funded from the republican budget. The legislation should be amended to permit the Agency to use the proceeds from the registration of offerings to finance its activities.

Administrative Fines

The Code of Administrative Liability should be revised to increase the level of administrative fines for the securities offences committed by:

(a) Issuers of securities; and
(b) Securities market professionals;

Disclosure Obligations

The Agency should consider adopting a methodology for checking the information contained in investment prospectuses and securities reports. In particular, the Agency should consider introducing requirements for proper due diligence of the prospectuses by underwriters and other professional advisers.

Independent Registrars of Securities

Kyrgyz legislation should be amended to impose liability for offences committed by independent registrars of securities.

Auditors

Kyrgyz legislation should be amended to facilitate claims by investors against negligent and malfeasant auditors.
3.4.2 Medium-Term Objectives

Minimum Capital of Joint Stock Companies

At present there is significant number of joint stock companies whose shares are not heavily traded. Minimum listing requirements for joint stock companies should be introduced. In particular, the Agency should consider increasing minimum requirements for the amount of capital and number of shareholders of public companies. The public company status to be granted by the Agency should be perceived by investors as an indicator of share liquidity.

The Agency should consider revising requirements to the minimum amount of capital of regular joint stock companies. The increase in minimum capital requirements would lead to conversion of many joint stock companies to limited companies. This, in turn, would lead to a better regulation of the remaining joint stock companies and make them more attractive to investors.

Alternative Dispute Resolution

The Agency should promote use of alternative dispute resolution for securities related disputes. In particular, the Agency should consider promoting establishment of a mediation and arbitration centre for resolution of the securities related disputes under the auspices of the International Court of Arbitration affiliated to the Kyrgyz Chamber of Commerce or any of the securities market professionals associations. The Agency may consider preparing guidelines for brokers and dealers providing for incorporation of standard mediation and/or arbitration provisions in their service agreements.

Enforcement of Administrative Sanctions

The current procedure for review of administrative offences relating to the securities transactions should be revised to facilitate the enforcement of administrative sanctions against legal person. At present, procedures are focused on the enforcement of sanctions against individuals.

Corporate Governance

The Joint-Stock Companies Law should be further amended to incorporate certain provisions of the CIS Model Law. In particular, Articles 6(3), 8, 9(2), 25(3), 30(2) and 30.(8) of the CIS Model Law cited above should be incorporated into Kyrgyz law.
3.4.3 Long-Term Objectives

Judicial Enforcement

Kyrgyz judges are not experienced in the resolution of securities related disputes. Training of judges and reform of the judiciary system should be considered in the long-term.

Compliance Function

The Agency should enhance inspections of the compliance function at the securities market intermediaries. The legislation should provide for external audit and self-certification of market intermediaries.

Professional Liability Insurance Schemes

Mandatory professional liability insurance schemes should be developed for professional securities market professionals and auditors.

Publication of Normative Acts and Access to Information

The Government should promptly publish all primary laws and secondary level legislation on a Government website.

To ensure transparency the Agency should publish prospectuses of the issuers on its web-site or ensure their on-line publication by relevant stock exchanges.

4 LEGAL AND REGULATORY FRAMEWORKS FOR SECURITIES MARKET

4.1 Legal Framework

The legal framework for the securities market is comprised of the Constitution of the Kyrgyz Republic dated May 5, 1993 (the "Constitution"), international treaties to which the Kyrgyz Republic is a party, laws and instruments, including Presidential edicts, Governmental resolutions, Ministerial decrees and instructions, as well as regulatory acts of the Agency.

4.1.1 Primary Legislation

The primary legislation of the Kyrgyz Republic in the field of investor protection in the securities market consists of the following key laws:

(a) the Constitution;

(b) the Civil Code of the Kyrgyz Republic, dated June 1, 1996 (the "Civil Code");
(c) the Criminal Code of the Kyrgyz Republic, dated January 1, 1998 (the "Criminal Code");

(d) the Code of Administrative Liability of the Kyrgyz Republic, dated October 1, 1998 (the "Code of Administrative Liability");

(e) the Law of the Kyrgyz Republic "On Joint Stock Companies", dated April 8, 2003 (the "Joint Stock Companies Law");

(f) the Law of the Kyrgyz Republic "On Securities Market", dated August 7, 1998 (the "Securities Market Law");

(g) the Law of the Kyrgyz Republic "On Investment Funds", dated August 13, 1999 (the "Investment Funds Law");

(h) the Law of the Kyrgyz Republic "On Banks and Banking Activity", dated August 13, 1997 (the "Banks and Banking Activity Law");

(i) the Law of the Kyrgyz Republic "On Investment in the Kyrgyz Republic", dated April 4, 2003 (the "Law on Investment"); and

(j) the Law of the Kyrgyz Republic "On Privatisation of State Property in the Kyrgyz Republic", dated March 2, 2002 (the "Privatisation Law").

The Constitution

The Constitution defines fundamental principles of statehood and sets out the respective powers of the legislative, executive and judiciary branches in the Kyrgyz Republic. The Constitution proclaims basic human rights and fundamental freedoms which can be conditionally divided into personal, political and economic rights. The fundamental economic rights are described in Article 16 of the Constitution. These include:

(a) the right to economic freedom and use of property for any activity not prohibited by law;

(b) the right to possess, use and dispose of private property.

Under the Constitution the state must protect private property. Anyone who is a victim of an unlawful act by a state body or public servant has a right to be compensated by the state.

Thus, the Constitution establishes general principles for economic freedom and investor protection in the Kyrgyz Republic.

The Civil Code
The Civil Code establishes a statutory foundation for property rights, contractual relationships, and other fundamentals of business activity for both local and foreign investors. It defines a range of organisational forms for legal persons. Companies and organisations can be established as open or closed joint-stock companies, limited or unlimited liability companies, partnerships, production cooperatives, and state and municipal enterprises. The Civil Code contains provisions dealing with subsidiary and dependent companies. These provisions specify when a parent company is liable directly or indirectly for the debts of a wholly-owned subsidiary, or for the debts of another company in which it has a controlling interest.

Articles 37 to 43 of the Civil Code define different types of "securities" by law.

The Criminal Code

The Criminal Code contains several articles establishing criminal liability for securities offences.

Article 197 establishes criminal liability for "knowingly including false or inaccurate information in a prospectus; approving a prospectus that contains information known to be false or inaccurate; approving results of the issuing that are known to be false or inaccurate", provided, however, that any of these offences has caused substantial harm.

Any person responsible for the preparation of the prospectus, including executive officers of the issuer and securities market professionals, could be held liable under Article 197. An offence under Article 197 is punishable by a fine of 200 to 500 times the minimum monthly statutory salary. Currently, the minimum monthly statutory salary is 100 Som, which is approximately USD 2.5 at the current exchange rate.

Under Article 197 the forgery of securities or distribution of forged securities for sale is punishable by imprisonment of up to 15 years and depending on the seriousness of the harm inflicted and the type of offender, punishment may include the confiscation of property.

The Code of Administrative Liability

The Code of Administrative Liability determines which offences are subject to administrative liability and sets forth procedures for administrative proceedings.

Chapter 24 establishes administrative liability for violations of securities market and corporate governance legislation and enumerates the following securities offences:
(a) Offering of securities not registered in the manner prescribed by law;

(b) Inclusion of inaccurate information in the prospectus, public offer or sale of securities without publication of a prospectus in the manner prescribed by law, and non-disclosure of information required by law;

(c) Dereliction of duty by the managing company of an investment or non-state pension fund;

(d) Application of money by investment and non-state pension funds for improper purposes;

(e) Non-observance of investment restrictions applicable to investment funds and non-state pension funds;

(f) Violation by investment and non-state pension funds of any requirements for recording and maintaining their assets;

(g) Non-disclosure in "mass media" by an open joint stock company of the data from its annual balance sheet and financial performance report;

(h) Carrying out securities transactions without a duly issued licence and expert certificate for granting the right to carry out securities transactions;

(i) Use by an issuer's officer of inside information capable of affecting the market value of securities for personal gain or its communication to third parties;

(j) Furnishing of false or inaccurate information or refusal to furnish required information to the state body supervising securities market participants;

(k) Violation of the information disclosure requirements;

(l) Preventing Agency officials from discharging their duties and non-compliance with, or neglect of the requirements of Agency officials by issuers or securities market professional;

(m) Violation of the procedure for holding open sale (underwriting) of securities;

(n) Violation of the rules for maintaining registries of securities holders;

(o) Violation of the procedure for submitting reports to the Agency, and unfair advertising of securities;
(p) Violation of the procedure for holding the general meeting of shareholders;

(q) Violation of rules for executing and registering securities transactions.

Offences under Chapter 24 are punishable by administrative fines of 1,000 Soms to 10,000 Soms for natural persons, and/or 10,000 Soms to 50,000 Soms for legal persons, depending on the type of violation.

The Joint Stock Companies Law

The Joint Stock Companies Law determines the legal status of joint stock companies in the Kyrgyz Republic. It sets forth requirements for the formation and governance of joint stock companies and, thus, establishes a statutory foundation for shareholders’ rights.

The Joint Stock Companies Law provides for the following governance structure of joint stock companies:

(a) a general meeting of shareholders;

(b) a supervisory body (not required for stock companies with less than 50 shareholders);

(c) an executive body (board of directors or sole director);

(d) an internal audit commission.

The Law extends to all joint stock companies established or being established in the Kyrgyz Republic with few exceptions. Article 1 of the Law provides that:

(a) the legal status of joint stock companies operating the Toktogul hydroelectric power station system and high voltage electric transmission lines of 110 kilovolt or more, with all their substations, are subject to separate legislation governing the special status of these enterprises;

(b) joint stock companies engaged in pension fund, banking or insurance businesses are subject to the Joint Stock Companies Law to the extent that their activities are not regulated by special laws governing these activities;

(c) the quorum and other requirements governing decision-making by the general meeting of shareholders in an investment fund are subject to the provisions of the Investment Funds Law.
The Securities Market Law

The Securities Market Law establishes statutory requirements for issuing and circulating securities in the Kyrgyz Republic. It establishes a foundation for the regulation of the activities of securities market professionals and certain disclosure and transparency requirements for issuers. Pursuant to the Securities Market Law, all offerings of securities (shares and bonds), whether private or public, must be registered with the state securities market authority (i.e. the Agency).

The issuing and circulation of governmental and municipal securities, as well as securities of the National Bank of the Kyrgyz Republic, are not subject to the provisions of the Securities Market Law.

Issuers are required to disclose to the Agency any acquisition of 5 percent or more of their shares by any investor. However, our research shows that issuers often do not inform the Agency of such acquisitions.

The Agency, with the support of the Asian Development Bank, has prepared a draft new Law on Securities Market (the "Draft Securities Market Law"). The Draft Securities Market Law is currently being considered by several ministries of the Kyrgyz Government. The Draft Securities Market Law purports to reform the current legal framework by enhancing the self-regulation of stock exchanges and the statutory registration of public offerings of securities.

The Investment Funds Law

The Investment Funds Law sets forth requirements for the establishment, operation, reorganisation and liquidation of investment funds. Investment funds can be established in the form of joint stock companies or non-corporate entities, such as unit investment funds.

The Investment Funds Law provides for the following governance structure of an investment fund: a general meeting of shareholders, a supervisory board, an executive body consisting of a sole director or a number of directors, which could be both external (the managing company) and internal (the management board).

A unit investment fund is created and managed by a managing company.

The Banks and Banking Activity Law

Under the Banks and Banking Activity Law, a person acquiring 5 percent or more of the shares of a commercial bank must obtain the prior consent of the National Bank. The Banks and Banking Activity Law establishes limitations
on the acquisition of shares of banks by persons registered or residing in certain jurisdictions. Any acquisition of shares in a bank by an entity incorporated in a jurisdiction which is on the list of "restricted jurisdictions" of the National Bank is void.

The Law on Investment

The Law on Investment establishes general principles of investor protection in the Kyrgyz Republic. These are aimed at improving the investment climate in the Kyrgyz Republic and promoting local and foreign investment. The Law on Investment:

(a) defines the terms, "investment", which includes the acquisition of shares and other securities by legal and natural persons,

(b) "investor", which distinguishes between foreign and domestic investors;

(c) provides for the equal treatment of domestic and foreign investment;

(d) permits investors to apply to an international arbitration tribunal to resolve their disputes with Kyrgyz authorities; and

(e) contains important stabilisation guarantees, providing that changes to legislation (except changes to the Constitution and legislation related to issues of taxation, national security, safety and environmental protection, legislation involving national defence or security or ecological safety and public health) which worsen the position of an investor are not applicable for a period of 10 years from the date of the relevant legislative change.

The Privatisation Law

The Privatisation Law establishes a framework for the conversion of state-owned enterprises into joint stock companies and their privatisation.

Article 31 of the Law establishes the concept of a "golden share", which entitles the Government to maintain certain control over privatised companies. In particular, the golden share gives the Government a right to veto certain decisions of the meeting of shareholders, including decisions relating to changes to a charter; reorganisation and liquidation of the joint stock company or execution of certain material contracts. The Agency is entitled to request information (i.e. the names of securities holders and the type and par value of their securities) from the register of shareholders of a joint stock company in which the State holds a golden share. The rights established by a golden share are valid until their revocation by a Governmental decision.
4.1.2 Secondary Legislation

Secondary legislation includes the Edicts of the President of the Kyrgyz Republic, Agency regulations and normative acts of the ministries and other state bodies of the Kyrgyz Republic (the "Normative Acts"). We have reviewed the following key Normative Acts:

(a) the Edict of the President of the Kyrgyz Republic No. 121 "on measures to foster development of organised securities market", dated May 10, 1999;

(b) the Edict of the President of the Kyrgyz Republic No. 419 "on the establishment of State Agency for Financial Supervision and Reporting under the Government of the Kyrgyz Republic", dated May 10, 1999;

(c) the Regulation "on the disclosure of information in the securities market", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 90, dated December 16, 2002;

(d) the Regulation "on the procedure and terms of transfer of shares in state-owned companies to trust management", approved by Resolution No. 584 of the Government of the Kyrgyz Republic, dated September 7, 1998;

(e) the Regulation "on licensing of certain entrepreneurial activities", approved by Resolution No. 260 of the Government of the Kyrgyz Republic, dated May 31, 2001;

(f) the Regulation "on issuance, placement and cancellation of medium-term government coupon bonds", approved by Resolution No. 260 of the Government of the Kyrgyz Republic, dated May 11, 1998;

(g) the Regulation "on issuance, placement and cancellation of treasury obligations", approved by Resolution No. 498 of the Government of the Kyrgyz Republic, dated August 16, 2000;

(h) the Temporary Regulation "on issuance and circulation in the Kyrgyz Republic of municipal securities", approved by Resolution No. 692 of the Government of the Kyrgyz Republic, dated October 8, 2002;

(i) the Regulation "on State Agency for Financial Supervision and Reporting Agency under the Government of the Kyrgyz Republic", approved by Resolution No. 551 of the Government of the Kyrgyz Republic, dated December 2, 2005;
(j) Government Resolution No. 593 "on international financial reporting standards", dated September 28, 2001;

(k) the Regulation "on the procedure for review of administrative offences relating to securities transactions", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 90, dated November 2, 2001;

(l) the Regulation "on the order of carrying out inspections of the activity of issuers and the professional securities market participants", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 42, dated May 22, 2002;

(m) the Regulation "on licensing of certain types of entrepreneurial activities", approved by the Government of the Kyrgyz Republic, No. 260, dated May 31, 2001;

(n) the Regulation "on clearing activity in the securities market of the Kyrgyz Republic", approved by the National Commission for the Securities Market under the President of the Kyrgyz Republic, No. 63, dated December 30, 1998;

(o) the Regulation "on organisers of trade in the securities market", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 38, dated April 29, 2002;

(p) the Regulation "on transactions made with the use of insider information", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 41, dated August 2, 2001;

(q) the Regulations "on the professional activities of brokers and dealers in the securities market of the Kyrgyz Republic", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 2, dated January 9, 2002;

(r) the Regulation "on the reporting requirements for organisers of trade in the securities market in the Kyrgyz Republic", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 24, dated March 7, 2002;

(s) the Regulation "on the normative parameters of sufficiency established for professional participants in the securities market", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 28, dated July 2, 2001;
the Regulation "on the unified state register of securities of the Kyrgyz Republic and the order of assignment of state registration numbers", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 30, dated July 2, 2001;

the Regulation "on the admission in the territory of the Kyrgyz Republic of securities which have been issued by foreign issuers, and the procedure for the registration of foreign issuers", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 67, dated September 14, 2001;

the Regulation "on the confidential management of securities", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 71, dated October 1, 2001;

the Regulation "on the release and circulation of bonds in the Kyrgyz Republic", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 109, dated December 20, 2001;

the Regulation "on maintaining a register of the owners of share investment funds", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 59, dated September 4, 2001;

the Regulation "on the requirements relating to the preparation, calling and conduct of the general meeting of shareholders", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 12, dated March 3, 2004;

the Regulation "on self-regulating organisations of securities market professionals", approved by Resolution No. 29 of the State Securities Commission of the Kyrgyz Republic dated July 2, 2001.

the Regulations "on the registration of the results of securities issuance", approved by Resolution No. 76 of the State Commission for the Securities Market under the Government of the Kyrgyz Republic, dated October 2, 2001;

Instruction "on the procedure for the election of the board of directors of a joint-stock company by cumulative voting", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 44, dated June 26, 2003;

Standards "on the issuing of additional shares and shares placed by conversion", approved by the State Commission for the Securities
Market under the Government of the Kyrgyz Republic, No. 41, dated June 4, 2004;

(dd) Order "for carrying out direct transactions within the JSC "Kyrgyz Stock Exchange", agreed by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 49, dated September 4, 2001;

The above mentioned normative acts are discussed and referred to in Section 5 of this Report.

4.1.3 *International Treaties*

Annex A contains a list of bilateral and multilateral investment protection treaties to which the Kyrgyz Republic is a party.

4.2 *Institutional Framework*

4.2.1 *Establishment of the Agency*

A financial market supervisory authority was established in 1991 with the creation of the State Agency for Supervision of Securities Transactions under the Cabinet of Ministers of the Kyrgyz Republic.

In September 1996, the State Agency for Supervision of Securities Transactions was transformed into the National Commission on Securities Markets under the President of the Kyrgyz Republic. Then, in December 2000, the National Commission on Securities Markets under the President of the Kyrgyz Republic was transformed into the State Commission on Securities Market under the Government of the Kyrgyz Republic.

The Agency was established by Presidential Edict No. 419 "On Formation of the State Agency for Financial Supervision and Reporting under the Government of the Kyrgyz Republic", dated September 20, 2005.

The Agency unified the regulatory functions that previously were carried out by the former State Securities Market Commission, the State Agency for Financial Reporting Standards and Audit and the Non-banking Sector Development Agency under the Ministry of Finance of the Kyrgyz Republic.

The Agency is a specialised governmental body for the regulation and control of the securities market.

The "Regulation on the State Agency for Financial Supervision and Reporting Agency" approved by Resolution No. 551 of the Government of the Kyrgyz
Republic, dated December 2, 2005 (the "Regulation on the Agency") sets forth the structure of the Agency and defines its powers and responsibilities.

The main objectives of the agency are protecting the interests of investors and establishing a regulatory framework to ensure the integrity, transparency and credibility of the financial markets.

4.2.2 Structure of the Agency

The Agency is comprised of an Executive Council, and central and regional Departments.

The Executive Council of the Agency consists of five members, including the chairman (i.e. director of the Agency), deputy-chairman (i.e. deputy-director of the Agency) and three other members. The chairman is appointed by the President of the Kyrgyz Republic. The other members of the Executive Council are appointed by the Prime Minister of the Kyrgyz Republic on the recommendation of the chairman.

4.2.3 Responsibilities of the Agency

Pursuant to Article 4 of the Securities Market Law and Section III of the Agency Regulation, the Agency is suppose to carry out the following functions:

(a) developing and implementing state policy for securities market development and coordinating the functions of state bodies;

(b) developing and implementing a regulatory framework for securities market participants;

(c) developing and approving standard documentation for the issuance of securities, including prospectuses of foreign and domestic issuers;

(d) registering prospectuses and securities offerings of local and foreign issuers;

(e) developing and implementing regulations and uniform standards for professional activities in the securities market, including trade and other operations with securities, reporting requirements for issuers and securities market professionals, requirements for maintaining the securities holder register and conduct of the settlement and depository activities and custody services;

(f) ensuring that the volumes of securities issued correspond to the number of securities placed and circulated;
(g) providing recommendations on regulations that govern the operation of the stock exchanges;

(h) investigating activities of securities market professionals;

(i) establishing and maintaining a publicly accessible information database on issuers, securities market professionals and statutory regulations relating to the securities market;

(j) establishing disclosure standards for issuers and securities market professionals;

(k) promoting growth of the securities market and conducting market research;

(l) setting forth entry qualification requirements for, and approving the qualification of, persons carrying out professional activities in the securities market; and

(m) issuing recommendations with respect to the implementation of legislation, professional activities in the securities market, and the operation of stock exchanges as well as developing relevant methodologies.

5 ISSUES IDENTIFIED

5.1 Regulation of the Securities Market

The IOSCO Principles fall into nine groups. The first four groups of principles relate to Regulators, Self-Regulating Organisations, Enforcement, and Cooperation in Regulation and address the powers and role of the regulator. The next five groups of principles relate to Issuers of Securities, Collective Investment Schemes, Market Intermediaries, Secondary Securities Markets and Clearance and Settlement Procedures and address the practical implementation of these five groups of principles.

5.1.1 Regulator

The IOSCO Principles relating to the regulator provide that:

(a) The responsibilities of the regulator should be clear and objectively stated.

(b) The regulator should be operationally independent and accountable in the exercise of its functions and powers.
(c) The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

(d) The regulator should adopt clear and consistent regulatory processes.

(e) The staff of the regulator should observe high professional standards including appropriate standards of confidentiality.

Independence of the Agency

The Agency as a regulatory body must have adequate resources enabling it to properly perform its regulatory functions, train its staff, educate securities market professionals and investors.

As world practice shows, in a majority of countries, the regulators operate on a self-financing basis which provides the regulator with financial independence and adequate resources to increase its capacity.

It should be noted that until 2001, the state securities market supervisory authority used the proceeds from the registration of securities to fund any shortages in its budget. However, after the enactment of Resolution No. 229 by the Government of the Kyrgyz Republic dated April 18, 2003, the Agency is to be funded only from the republican budget.

To effectively discharge its regulatory functions, the Agency needs to increase its human resources and financing capacity. Inadequate financing limits the Agency's ability to attract skilled professionals and prevents it from performing its regulatory functions through publication of its regulatory guidelines and normative acts. In order to accomplish its purpose, the Agency must be independent, and have a stable source of financing.

The principle of independence implies not only financial and political independence of the Agency, but also independence from the commercial interests of its officers and employees in the discharge of their functions. In this regard, it should be noted that current legislation on public service requires a state official to annually disclose information about property and income received. However, this requirement does not ensure the implementation of the principle of independence. Public employees and officers should be required to promptly disclose information about their commercial interests (if any) and should be forbidden from discharging their duties where they have any commercial interests.

Recommendations

- Adopt a code of conduct for employees of the Agency and enhance rules for the disclosure of senior civil servants’ income.
• Take steps towards creating conditions for stable and adequate financing of the Agency free of any governmental or political interference as practiced worldwide.

• Develop professional training programmes and create other incentives for Agency staff.

**Enforcement Powers of the Agency**

The IOSCO Principles relating to enforcement of securities regulations provide:

(a) The regulator should have comprehensive inspection, investigation and surveillance powers.

(b) The regulator should have comprehensive enforcement powers.

(c) The regulation system should ensure the effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.

Pursuant to Section IV of the Regulation on the Agency, the Agency has the following powers:

(a) receive from supervised business entities the requisite reporting, certificates and other information about their financial and economic activity and request the respective information from other institutions, organisations and nationals;

(b) establish requirements for the conduct of securities transactions by securities market professionals;

(c) suspend or block securities transactions in the event of a violation of law;

(d) invalidate the issuance of securities in the manner prescribed by law or cancel the issuance of securities in the case of a liquidation or reorganisation of the securities issuers, or in accordance with the judgment invalidating the issuing of securities;

(e) inspect activities of securities market professionals and issuers, and any related entity, including insiders and their affiliates;

(f) impose on issuers and securities market professionals and their officers administrative sanctions for violation of securities law;
forward materials to law-enforcement bodies and bring legal actions on matters within its competence including invalidating the issuance of securities or of securities transactions;

suspend operations of investment funds, appoint a temporary manager of an investment fund or take other regulatory action in case of violation of normative acts of the Kyrgyz Republic;

request the management bodies of joint stock companies to hold special general meetings of shareholders; and

impose economic and administrative sanctions and fines for violations of Kyrgyz law.

The Agency has adequate powers to conduct inspections of securities market professionals and companies which have securities outstanding in the market, to impose certain sanctions on securities market participants including suspension and revocation of licenses and imposition of administrative sanctions for securities offences.

However, we understand from responses to the Questionnaire, that administrative fines which are being imposed by the Agency are inadequate. Many offenders pay insignificant fines and continue to commit securities offences.

We understand that due to ineffective enforcement, the offenders avoid sanctions. Furthermore, the Agency has no direct powers to grant injunctions, and certain types of securities offences remain unremedied even after the imposition of administrative fines.

We have reviewed the Regulation on the Procedure for review of administrative offences relating to the securities transactions, approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 90, dated November 2, 2001 (the "Regulation on Administrative Sanctions"). The Regulation on Administrative Sanctions primarily deals with the imposition and enforcement of administrative sanction against natural persons (i.e. officers of the issuer, market intermediaries and professional market participants). However, it fails to adequately address the enforcement of sanctions against legal persons.

We have also reviewed the Regulation on the order of carrying out inspections of the activity of issuers and professional securities market professionals, approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 42, dated May 22, 2002 (the "Regulation on Inspections"). The Regulation on Inspections provides for the conduct of inspections on a regular and an extraordinary basis. It provides
Agency officials with adequate powers to verify the records of the issuer, market intermediaries and professional market participants relating to conduct of the securities transactions and the corporate governance thereof.

Ms. Larissa Mosevnina, Chairman of the Association for the Protection of Shareholders' Rights, in her responses to the Questionnaire, indicates that sanctions imposed by the Agency as a result of inspections are not being adequately enforced. Furthermore, shareholders receive no information on the results of inspections, including offences identified by the Agency.

**Recommendations**

- **Increase the size of administrative fines.**

- **Clarify the procedure for imposition and enforcement of administrative sanctions for securities offences against legal persons.**

- **Develop a set of rules providing for co-operation between the Agency, judiciary and law enforcement bodies with respect to enforcement of administrative sanctions for securities offences.**

**Licensing of Market Participants**

Edict No. 121 of the President of the Kyrgyz Republic dated May 10, 1999, "On Measures to Foster Development of an Organised Securities Market", provides that all securities transactions (including sales or public offerings) must be carried out exclusively by professional securities market participants duly licensed to engage in broker/dealer or trust company activities or through licensed trade organisers (i.e. stock exchanges).

Securities market professionals are required to obtain a licence in order to engage in their professional activities.


We note that Governmental Resolution No. 260 does not clearly distinguish between various types of professional activities in the securities market. However, we understand that the Agency has imposed certain limitations on the applicant's right to engage in several types of professional activities in the securities market and that a separate license is issued for each type of professional activity.
An applicant for a licence must satisfy the following requirements:

(a) employ staff holding the relevant qualification certificates;

Pursuant to Section 30(6) of Resolution No. 260 applicants may be subjected to a test of professional competence to obtain the relevant qualification certificate.

(b) satisfy the minimum capital requirements (see Section 5.1.4 "Market Intermediaries" for current level of minimum capital requirements);

(c) maintain a recording and reporting system; and

(d) submit requisite documents (application for licence, document confirming payment of a licensing fee, copies of the state registration certificate, certificate confirming applicant's taxpayer identification code (number) and its social insurance registration certificate, etc.).

Thus, in the Kyrgyz Republic, broker/dealer companies are required to keep records of client transaction and are forbidden to use funds and securities of clients without their consent. Kyrgyz law sets minimum financial condition requirements for market professionals in order to secure the protection of investors' rights. The requirements regarding the financial condition of the securities market professionals are set, and control over their implementation is carried out, by the Agency.

5.1.2 Self-regulating organisations ("SROs")

The IOSCO Principles relating to self-regulation provide that:

(a) SROs should be allowed direct regulatory oversight responsibility in the areas of competence to the extent appropriate to the size and complexity of the markets.

(b) SROs should be subject to oversight by the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

The Securities Market Law allows for the creation and functioning of SROs implying that the rules and regulations of the Securities Market Law are to be followed by all members. It defines SROs as follows:

"A Self-regulating organisation of securities market professionals is a nonprofit voluntary association of securities market professionals created and existing under the laws of the Kyrgyz Republic. A Self-regulating organization is established by securities market professionals to create conditions for their
professional activities, ensure compliance with professional ethics standards in the securities market, protect the interests of security holders and other clients of securities market professionals, and to establish rules and standards for conducting securities transactions, ensuring effective activities in the securities market."

We note that the State Securities Commission of the Kyrgyz Republic adopted the Regulation on self-regulating organisations of securities market professionals, which has been approved by Resolution No. 29, dated July 2, 2001. Subsequently, the Regulation on Organizers of Trade in the Securities Market, approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 38, dated April 29, 2002 (the "Regulation on SROs") established a regulatory framework for operation of stock exchanges and their supervision by the securities market authority.

The Regulation on the Reporting by Organizers of Trade in the Securities Market in the Kyrgyz Republic, approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 24, dated March 7, 2002 established daily, quarterly and annual reporting requirements for stock exchanges, which must report to the Agency.

While in international practice, the regulator delegates part of its oversight functions to a self-regulating organisation and empowers it to apply sanctions for violations of its rules and regulations, this is not the case in the Kyrgyz Republic. Although the Regulation on SROs provides that the organisers of trade should apply such sanctions to their members for breach of the trading regulations, we are not aware of any instances of their application.

Resolution No. 7 of the National Securities Market Commission under the President of the Kyrgyz Republic dated March 10, 1998 confirmed the SRO status of the Kyrgyz Stock Exchange. It should however be noted that the Kyrgyz Stock Exchange has not yet adopted the full set of rules which would typically be expected from an SRO. Other than preparation and application of trading rules and listing requirements, the Kyrgyz Stock Exchange has not taken other steps towards full transition to an SRO. Recently, the Kyrgyz Stock Exchange wrote to the Agency with the request that it no longer be considered an SRO on the grounds that Kyrgyz law had to be amended before it could be considered an SRO.

We understand that only the Kyrgyz Stock Exchange provide access to prospectuses of the issuers. The other two stock exchanges operating in the Kyrgyz Republic, the Central Asian Stock Exchange and the Exchange Trade System, have yet to develop their information databases.

**Recommendations**
• Develop a methodology for the assessment of compliance of market intermediaries with internal regulations of SROs; and

• Develop a methodology for checking compliance of SRO’s with the reporting and other requirements established by the Regulation on SROs.

5.1.3 Issuers and their Information Disclosure Obligations

The IOSCO Principles relating to issuers provide that:

(a) There should be full, timely, and accurate disclosure of material information necessary for investors’ decisions.

(b) Security holders should be treated in a fair and equitable manner.

(c) Issuers must also observe internationally accepted accounting and auditing standards.

Public Offerings

The "Standards for Issuance of Securities" approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 47, dated August 4, 2004 (the "Issuance Standards") establish procedural requirements for public offerings.

In particular, the Issuance Standards establish the following procedure for the public offering of securities in the Kyrgyz Republic:

• approval of the offering by the general meeting of shareholders of the issuer;
• preparation of the prospectus;
• registration of the securities (i.e. securities are assigned state registration number) and prospectus with the Agency;
• preparation of forms and/or certificates of securities, if in certificated form;
• offering of securities to the public;
• registration of a report on the results of the offering;
• disclosure of the information on the results of the offering to the public; and
• redemption of bonds.

_Private Offerings_

The Issuance Standards establish a very similar procedure for the private placement of securities. However, in the case of private placements the registration of prospectus is not required if securities are offered to less than 50 investors or the amount of offering does not exceed 500 times the minimum monthly statutory salary (i.e. 50,000 Kyrgyz Soms, which is approximately USD 1,265 at the current exchange rate).

_Registration of Offering_

Pursuant to the Securities Market Law, the registration of an issuance with the Agency takes 30 days. This 30 day period resumes if any additional documents are required. Thus, the duration of registration can be protracted for an uncertain time period.

Corporate securities such as shares and bonds must be registered with the Agency. Kyrgyz law distinguishes between two types of securities offerings to be registered with the Agency:

(a) initial issuance of shares; and

(b) additional issuance of shares.

This is not the case with bonds. Pursuant to Article 39 of the Business Partnerships Law, bonds can be issued by limited liability companies. Bonds issued by limited liability companies are not subject to registration with the Agency.

In order to register the issuance of securities, issuers must submit documents supporting such issuance to the Agency. The Agency has developed the following specific standards regulating the registration procedure:

(a) Standards for the issuance of shares upon incorporation of joint stock companies;

(b) Standards for the issuance of additional shares and shares placed by conversion; and

(c) Standards for the issuance of bonds.

Each type of securities issue is subject to specific requirements regarding the documents to be submitted for registration, the content of such documents, and the registration procedures.
Edict No. 121 by the President of the Kyrgyz Republic dated May 10, 1999, requires all transactions involving securities of open joint stock companies to be held by licensed trade intermediaries and to be registered by a depository.

We understand from responses to the Questionnaire by Ms. Larissa Mosevnina, Chairman of the Association for the Protection of Shareholders' Rights, that both initial and additional share issues by Kyrgyz companies are often aimed at the dilution of voting interest of minority shareholders. According to Ms. Mosevnina, the majority shareholders exercise full control over offerings. The inadequate valuation of assets of joint stock companies results in the shares being offered at a very low or nominal price. Since there is a lack of liquidity in the Kyrgyz market and minority shareholders have virtually no power to influence voting on the issue of new shares, the majority shareholders acquire shares of a new issue at a nominal price thus further diluting the voting rights of minority shareholders. The minority shareholders are often not informed of the offering at all. This state of affairs is clearly prejudicial to minority shareholders. Ms. Larissa Mosevnina provides an example in her responses to the Questionnaire, where dilution of minority shareholder interest in Kyrgyz joint stock companies took place (see also Section 5.2 "Valuation of Assets and Expropriation of Securities"). Ms. Mosevnina alleges that the state share in a joint stock company has decreased from 40% to 0.7% as a result of unlawful share issuances.

Prospectus

(a) Registration of Prospectus

Both the Joint Stock Companies Law and the Securities Market Law provide that any investment prospectus relating to the offering of securities to more than 50 investors or any offering of securities for an aggregate amount in excess of 500 times the minimum monthly statutory salary established by Kyrgyz law (i.e. 50,000 Kyrgyz Soms, which is approximately USD 1.250 at the current exchange rate) must be registered with the Agency.

According to our analysis the majority of placements in the Kyrgyz Republic are made by private offerings which exceed 50,000 Kyrgyz Soms (approximately USD 1.250).

(b) Publication of Prospectus

The Joint Stock Companies Law requires issuers to publish a notice of the availability of the prospectus in the Kyrgyz press and ensure access to the prospectus for any interested investor.

Article 328 of the Administrative Liability Code imposes liability on officials for their failure to publish the prospectus.
(c) Content of Prospectus

We note that the Agency adopted a standard form of prospectus for an offering of shares by a joint stock investment fund pursuant to the Regulation of the State Commission on the Securities Market under the Government of the Kyrgyz Republic No. 61 dated September 11, 2001.

No standard form of prospectus has been adopted for offerings by other joint stock companies.

Depending on the type of securities, a typical Kyrgyz investment prospectus should contain basic information about the issuer, such as:

(a) information on the identity of the issuer (legal name and address of the joint stock company; names of its founders; number and date of its state registration certificate); information on persons holding 5 percent or more of its shares; structure of the issuer's governance bodies; information on the subsidiaries, branches and representative offices of the issuer, membership in commodity, currency, stock and other exchanges with the indication of their names and location);

(b) information on the financial condition of the issuer (audited balance sheets; financial performance reports; independent auditor information; the issuer's balance sheets for the preceding three years or for the period since the issuer's incorporation; information on distribution of profit; capital investment, any incomplete construction and uninstalled equipment; indebtedness of the issuer; report on previous issuances of securities by the issuer; and

(c) information on the forthcoming issuance of securities (form and type of securities offered, procedure for registration of rights in securities); total volume of the securities issuance; number of securities forming part of the issuance; date of the decision approving the issuance; limitations on potential securities holders; starting and completion dates for the offering of securities; prices and payment for shares; securities market professionals or associations to be involved in the offering of securities as of the prospectus registration date; procedure for receiving income from the issued securities; the name of the registration authority for the issuance of securities; application of proceeds from the issuance of securities; risk factors by groups: environmental, social, engineering, and economic risks.

Unfortunately, the Agency has not elaborated a methodology which would enable it to check issuers' compliance with the disclosure requirements in the prospectus and detect violations on the issuers' part. The law does not require
the issuer and underwriter to carry out due diligence in preparing the prospectus.

Our research shows that issuers typically fail to fully disclose information on their financial condition and on the investment risks.

A number of respondents to the Questionnaire indicated that prospectuses are rarely reviewed by investors as they do not provide information on the issuer's strategy, value of its assets and intended application of the proceeds of the offering. The prospectuses are regarded by issuers, securities market participants and, sometime, investors as statistical documents which need to be filed with the Agency.

Recommendations

• The Agency should consider adopting a methodology for checking issuers' compliance with disclosure obligations and requiring prospectuses to be verified by professional advisers.

• The Agency should consider adopting a methodology for consideration of claims against issuers and their professional advisers arising from issuers failure to comply with the disclosure requirements in the prospectus.

• The Agency should consider preparing a model outline of the key issues to be addressed in a prospectus for Kyrgyz issuers and their underwriters.

Registration of the Results of Offering

The Regulations on the registration of the results of securities issuance, approved by Resolution No. 76 of the State Commission for the Securities Market under the Government of the Kyrgyz Republic, dated October 2, 2001 establishes procedural requirements for the registration of a report on the offering results. The issuer must submit a report on the offering results within 30 days from the date on which all shares have been duly subscribed. The Agency would typically register the report on the offering results within 15 days from the date of its submission.

Independent Registrars of Securities

Under the Securities Market Law any issuer with more than 50 investors (as well as any issuer which has listed its securities on a stock exchange), must engage an independent registrar to maintain the register of its security holders. Under Article 33 of the Joint Stock Companies Law an open joint stock company must engage an independent registrar to maintain the register of its shareholders irrespective of the number of its shareholders.
Although the implementation of these requirements has contributed to a substantial decrease in the number of unlawful alienations of securities, our analysis shows that the registrars of securities are not being adequately supervised. Furthermore, many joint stock companies fail to register their securities with independent registrars.

In particular, we understand from Ms. Larissa Mosevnina, Chairman of the Association for the Protection of Shareholders’ Rights, that in a number of instances the representatives of an independent registrar breached Kyrgyz law. Ms. Mosevnina alleges that the representatives of such registrar made untrue statements at the general meetings of shareholders of a joint stock company on instructions of the majority shareholders, as a result of which the property of such joint stock company was pledged to a third party.

**Recommendation**

- adopt regulation on the activities of registrars of securities;
- increase the level of administrative fines for failure by joint stock companies to maintain a register of securities with an independent registrar; and
- increase the level of administrative fines and introduce criminal liability for breaches by registrars of their statutory duties.

**Accounting and Auditing**

In 2001, the Kyrgyz Republic adopted the Law on Accounting which established a statutory foundation for international financial reporting and audit standards.


The Resolution on IFRS provides for a phased transition of Kyrgyz legal entities to IFRS by 2009. It contains the following schedule:

<table>
<thead>
<tr>
<th>Legal Person</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issuers who have made public securities offerings</strong></td>
<td></td>
</tr>
<tr>
<td>1. Joint stock companies which have placed shares in an aggregate amount in excess of 500,000 Soms</td>
<td></td>
</tr>
</tbody>
</table>
Under the stringent control of the National Bank of the Kyrgyz Republic, all Kyrgyz banks have gradually adopted IFRS. However, many joint stock companies operating in the securities market have yet to adopt IFRS.


Although Kyrgyz law requires all issuers to carry out an annual audit of their financial statements, many companies having up to 500 shareholders and securities traded at stock exchanges do not conduct an independent audit.

Furthermore, although under Kyrgyz law an auditor must conduct an audit objectively, diligently and impartially, a very different situation is often observed in practice. Kyrgyz auditors appear to sometimes certify distorted financial statements.

Under Kyrgyz law auditors can be held liable for breach of their statutory duties. Negligent and malfeasant auditors can be punished with a fine ranging from 100 to 200 times of the minimum monthly statutory salary (which is currently 100 Soms (i.e. approximately USD 2.5)), deprivation of the right to occupy certain posts or engage in certain activities for up to 3 years, or by imprisonment for up to 5 years.
Kyrgyz law establishes no clear guidelines as to the validity of clauses that limit the liability of auditors. Many service agreements with auditors contain extensive limitation of liability clauses, including the limitation of liability for negligence. In practice, it may be impossible for an investor to obtain a judgment against a negligent auditor.

**Recommendation**

- the Agency should consider reforming the laws and regulations relating to auditors' liability. Kyrgyz law should be amended to facilitate civil suits against negligent and malfeasant auditors;

- The Agency should co-operate with other state bodies and market participants with regard to the implementation of compulsory audit risk insurance which would permit claims against auditors to be satisfied from insurance proceeds.

- Ensure translation of latest amendments to IAS and IFRS into Russian and Kyrgyz.

**Ongoing Disclosure and Material Development Reporting by Issuers**

Pursuant to Article 51 of the Securities Market Law, an issuer of publicly placed securities must disclose information about the financial performance of such securities in the following form:

(a) a securities report; and

(b) a statement of "material events and actions" affecting the financial performance of the issuer.

A securities report must contain the following information about the issuer:

(a) the financial condition of the issuer; and

(b) the securities of the issuer.

Under the Regulation "on the disclosure of information in the securities market" approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 90, dated December 16, 2002, (the "Regulation on Disclosure") issuers must submit annual and quarterly securities reports to the Agency.
Issuers are required to submit a statement of material "events and actions" affecting their financial and business performance within five days from the occurrence of such "event or action".

Article 51 of the Securities Market Law provides that securities quarterly securities reports must be submitted only by companies making public offerings. However, the Regulation on Disclosure extends the quarterly reporting requirements to all issuers who have registered their prospectuses with the Agency, irrespective of whether or not they have made initial public offerings. Considering that any private placements in excess of 50,000 Kyrgyz Soms (approximately USD 1,265) requires the registration of a prospectus, such requirement leads to the submission of burdensome quarterly reports by companies making private offerings. As a result, private offerings become unnecessarily costly to issuers.

**Recommendation:**

- Ensure that any interested person has full access to the annual and quarterly reports of issuers.
- Increase the level of administrative fines for breach of the reporting requirements by issuers.

**Publication of Financial Statements by Issuers**

Pursuant to Article 25 of the Joint Stock Companies Law, shareholders are entitled to receive information relating to the company's financial condition and business performance.

Under the Joint Stock Companies Law, all joint stock companies with more than 500 shareholders and all listed joint stock companies must publicise their annual financial reports in the "mass media".

According to the 2004 Annual Report of the State Securities Commission under the Government of the Kyrgyz Republic only 150 out of 1300 open joint stock companies registered in the Kyrgyz Republic have publicised their annual financial reports. It is difficult to discuss transparency in the securities market and fair corporate governance, when the majority of issuers do not publicize their annual reports. The main reason for this is the lack of resources for publicising material information.

Article 335-1 of the Administrative Liability Code establishes administrative liability for issuers and securities market professionals who do not comply with disclosure requirements.

**Recommendation**
• Increase administrative fines for failure by joint stock companies to publicise, and provide access to, their financial statements.

5.1.4 Market Intermediaries

The IOSCO Principles relating to market intermediaries provide that:

• Minimum entry standards for market intermediaries must be set.

• Other prudential requirements should be set, including initial and current capital requirements reflecting the risks of market intermediaries.

• Intermediaries should follow internal standards and exercise control aimed at protecting clients' interests and ensuring proper risk management.

• Procedures should be set for dealing with market failures and aberrations to minimise loss to investors and contain systemic risk.

In the Kyrgyz Republic trade intermediaries established as both stock exchanges and off-exchange trading companies can operate on the basis of a licence issued by the Agency and are subject to surveillance and oversight by the Agency.

The primary function of the market intermediary is to organise the market for securities traded on the basis of demand and supply and market price principles and to prevent price manipulation.

The involvement of trade intermediaries implies a complex procedure whereby securities are first transferred by the holder to the depository as a nominal holder and then after a transaction is closed, the depository transfers the securities to the purchaser and makes settlements.

We note that the Regulation on the normative parameters of sufficiency established for professional participants of the securities market, approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 28, dated July 2, 2001 (the "Regulation on Parameters of Sufficiency") established clear requirements for the minimum capital, loss recovery reserve fund, debt to capital and liquidity ratios of the market participants, including market intermediaries.

The minimum capital requirements are expressed by reference to the minimum statutory monthly salary, which is currently 100 Som, (approximately USD 2.5 at the current exchange rate of the National Bank of the Kyrgyz Republic). Legal persons applying for a specific licence must have the following minimum capital:
<table>
<thead>
<tr>
<th>Type of Activity</th>
<th>Minimum Capital in Kyrgyz Soms</th>
<th>US Dollar Equivalent as at 21 August 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depositories</td>
<td>1,500,000</td>
<td>37,965</td>
</tr>
<tr>
<td>Clearing companies</td>
<td>1,500,000</td>
<td>37,965</td>
</tr>
<tr>
<td>Trade organizers</td>
<td>17,000,000</td>
<td>430,380</td>
</tr>
<tr>
<td>Trust companies</td>
<td>1,000,000</td>
<td>25,310</td>
</tr>
<tr>
<td>Dealer companies</td>
<td>750,000</td>
<td>18,982</td>
</tr>
<tr>
<td>Broker companies</td>
<td>500,000</td>
<td>12,655</td>
</tr>
<tr>
<td>Registrars of securities</td>
<td>300,000</td>
<td>7,593</td>
</tr>
<tr>
<td>Investment consultants</td>
<td>50,000</td>
<td>1,265</td>
</tr>
<tr>
<td>Investment fund management companies</td>
<td>1,500,000</td>
<td>37,965</td>
</tr>
</tbody>
</table>

Securities market professionals are required to contribute two percent of their earnings to a statutory loss recovery reserve fund and maintain a debt to equity ratio of one to five. The Regulation on Parameters of Sufficiency provides a formula for calculation of the liquidity coefficient which must be maintained by the securities market participants at all times.

We understand that market participants are not being adequately supervised for compliance with the debt to equity and liquidity ratios.

**Recommendations**

- Monitor compliance of the professional securities market participants with relevant debt to equity and liquidity ratios requirements.

**Compliance Function at Securities Market Intermediaries**

The Agency should promote the establishment of a compliance function at securities market intermediaries. The scope, structure and activities of the compliance function should be proportionate to the nature, scale and
complexity of a market intermediary’s business. The compliance function should generally perform the following:

- Identify the regulatory requirements imposed on the market intermediary;
- Establish, communicate, monitor and enforce effective compliance policies and procedures to address regulatory requirements for market professional;
- Provide information to its senior management on applicable laws and regulations to assist them with their compliance responsibilities; and
- Provide assistance, guidance and/or training to business units and staff in relation to compliance.

We recommend that the compliance function at the market intermediaries should be subject to periodic review by the Agency. The Agency should assess, detect, and correct any compliance problems that could cause harm to investors, while attempting to minimise the burden on the firm being examined. In particular, the Agency should review and evaluate policies and procedures and controls put in place to identify, assess, monitor and report on compliance with regulatory requirements at professional market participants.

The Agency should have the authority to bring an enforcement action, or an appropriate disciplinary proceedings, against market professionals for their failure to establish and maintain the compliance function.

We note that the IOSCO's Technical Committee "Report on Compliance Function at Market Intermediaries" dated March 2006, recommends that the regulators consider the following measures to assess the compliance function at the market intermediaries:

(a) Direct examination, by the regulator, of the compliance function of a market intermediary at the time of licence application;

(b) Direct examination, by the regulator, of the compliance function as part of the general on-site inspections of market intermediaries, which may be conducted either on a regular basis or pursuant to a risk-based approach;

(c) Direct examination, by the regulator, of the internal policies and operational procedures and controls of market intermediaries and subsequent amendments;
(d) Examination of a market intermediary, including its compliance function, by external auditors appointed by the market intermediary, and the forwarding of the results of the examination to the regulator;

(e) Examination by SROs, either on a periodic or “for cause” basis, of market intermediaries. However, SROs are, in turn, examined by the regulator, in order to assess the adequacy of the SROs’ supervision and examinations of market intermediaries;

(f) Periodic self-assessment and/or certification by the governing authority and/or senior management of market intermediaries, which should be filed with the regulators for review; and

(g) Revising and re-examination of the compliance function where issues had previously been identified with the firm about the operation of the compliance function.

The Agency should consider adopting above measures taking into consideration the size of the firm, the complexity of its business, including the type of risk it faces, and the firm’s compliance history. Such examinations may cover: the adequacy of the firm’s policies and procedures, the structure of the compliance function (such as the degree of independence and lines of reporting), human and material resources dedicated to the compliance function, qualifications and fitness of the person(s) responsible for compliance, and possible or mandated measures taken to address deficiencies previously identified.

We note that the Agency has adopted a Regulation "on the order of carrying out inspections of the activity of issuers and the professional securities market participants", approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 42, dated May 22, 2002, ("Regulation on Inspections") which provides for systematic checks on the activities of brokers and dealers.

The Regulation on Inspections may need to be further amended to include recommendations of the IOSCO Report on Compliance Function at Market Intermediaries. In particular, brokers and dealers should be required to obtain external audits, give self-certifications and submit audit and self-certification reports to the Agency.

**Recommendations**

- Brokers and dealers should be required to obtain external audits, give self-certifications and submit audit and self-certification reports to the Agency.
5.1.5 Secondary Market

The IOSCO Principles relating to secondary markets provide that:

(a) Establishment of trading systems including securities exchanges shall be subject to regulation and oversight.

(b) Exchange and trading systems should be subject to current oversight with the end in view of insuring the integrity of the market through fair and objective rules securing a balance of needs of various market participants.

(c) Regulation should facilitate transparency of trading.

(d) Regulation should facilitate detection and prevention of manipulation, and other unfair trading practices.

(e) Regulation should ensure proper management of large exposures, default risk, and market disruption.

(f) The system for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed not only to ensure fairness, effectiveness, and efficiency, but also to reduce systematic risk.

Direct Transaction

According to our research, securities transactions are primarily carried out as "direct transactions" outside the market intermediaries, and are only registered with the market intermediaries at the closing stage. This creates the conditions for price manipulation. The organised securities trading systems lack essential infrastructure for securities operations. Securities transactions are rarely concluded by means of an electronic sale and purchase order system. A Delivery Versus Payment (DVP) system has yet to be implemented.

Although the Order for carrying out direct transactions within the JSC "Kyrgyz Stock Exchange", agreed by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 49, dated September 4, 2001 attempts to regulate the conduct of direct transactions. Although the stock exchanges are entitled to impose sanctions for price manipulation, we are unaware of any instances where they have been applied. Overall, Kyrgyz law does not clearly impose liability for price manipulation.

According to the data published in the 2004 annual report of the State Securities Commission under the Government of the Kyrgyz Republic, the securities of only 10 of 1000 joint stock companies have been traded on a
regular basis (1-2 transactions per week), the securities of about 20 of 1000 companies have been traded once in each month. The securities of other companies have been traded only 1-3 times in a year.

**Recommendation**

- The Agency should establish a procedure for investigating alleged price manipulation.

**Liquidity of the Securities Market and Fees of Licensed Professionals**

We understand from responses to the Questionnaire that the shares of a majority of listed open joint stock companies are not heavily traded (i.e. they are not liquid). However, the sale and purchase of shares of listed companies may be concluded only through stock exchanges. Acquisition of shares through stock exchanges is costly due to stock exchange, broker and depository fees and travelling costs to the regional centres of Bishkek or Osh.

**Recommendation**

- Amend Kyrgyz legislation to require an increase in the minimum level of share capital for joint stock companies going public. This should result in the conversion of many joint stock companies into limited liability companies and reduce the number of joint stock companies to those whose securities are being traded (liquid).

- Investigate the fees of market intermediaries and professional participants.

**Insider Trading**

Articles 53 and 54 of the Securities Market Law prohibit the use of insider information.

Although the Regulation on transactions made with the use of insider information, approved by the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 41, dated August 2, 2001 provides Agency officials with powers to investigate any suspicious transactions, the Agency has yet to adopt measures to combat the use of insider information. We understand that the Agency is relatively inexperienced in investigating of the transactions concluded with use of "insider information". It lacks the financial resources and its staff is not trained to deal with insider trading.

The Agency may impose administrative sanctions for the use of insider information. Pursuant to Article 330 of the Code of Administrative Liability, the use by an issuer's officer of insider information for personal gain or its
communication to third parties is punishable with a fine of 20 to 50 times of the minimum monthly statutory salary. Currently, the minimum monthly statutory salary is 100 Soms. However, the potential gains from insider trading could exceed the maximum penalty which the law permits the Agency to impose.

Recommendations

- Increase the amount of administrative fines and introduce criminal liability for insider trading.
- Train staff of the Agency to investigate inside trading.

Ethical Standards for Securities Market Professionals

We believe that the Agency's should prepare a set of recommendations requiring persons doing business in securities market in the Kyrgyz Republic to conduct their activities in an ethical manner.

In particular, the Agency should consider developing a range of ethical rules and guiding principals for securities market professionals.

We note that IOSCO's SRO Consultative Committee has recently issued a report containing a number of recommendations with respect to development of a Model Ethical Code. In particular, we note that report recommends that firms engaged in the financial services industry adopt the following ethical principles:

- Integrity and Truthfulness
- Promise Keeping
- Loyalty – Managing and Fully Disclosing Conflicts of Interest
- Fairness to the Customer
- Doing No Harm to the Customer or the Profession
- Maintaining Confidentiality
Perhaps, the Agency should consider such recommendations in developing a set of rules and guiding principles for securities market professionals in the Kyrgyz Republic.

**Recommendation**

- We recommend that the Agency develops a set of recommendations establishing a benchmark for the implementation of ethical standards by SROs and securities market professionals.

5.1.6 **Clearing and Settlement of Securities**

Clearance and settlement services provided by trade intermediaries must ensure a swift and effective settlement of securities transactions. Trade intermediaries should facilitate the development of national securities depositories and ensure trade transparency including through public disclosure to market participants and investors.


However, we understand that these procedures have yet to be fully implemented by market participants. In particular, stock exchanges have yet to introduce a Delivery Versus Payment system.

5.1.7 **Collective Investment Schemes**

The IOSCO Principles relating to collective investment schemes provide:

(a) The regulation system should set standards for the licencing and regulation of investment companies.

(b) The regulation system should set rules regarding the legal form and structure of collective investment schemes and the separation and protection of assets of clients.

(c) The regulation should ensure disclosure of investor information as stipulated in the principles relating to the issuers, which is necessary for evaluating the suitability of an investment scheme for a particular investor.

(d) The regulation should ensure a proper basis for evaluation of assets, pricing and cancellation of shares in the collective investment fund.
The requirements of IOSCO Principles relating to investment funds are ensured by the Investment Funds Law and respective normative framework providing for the functioning of two types of funds: joint stock investment funds and unit funds.

There are 5 licensed investment funds operating in the Kyrgyz Republic established as joint stock companies. The number of investment funds is decreasing. In 1997, there were 16 investment funds. The biggest number of investment funds was observed during the period of mass privatisation. As a result of a decrease in the volume of privatisation of state-owned companies, and because of a lack of liquid instruments in the securities market, the assets of the funds accumulated during privatization is gradually decreasing.

Although Kyrgyz law establishes a general framework for the operation of investment funds, specific normative acts should be adopted to specify the requirements for the evaluation of assets and the redemption of shares in investment funds.

**Recommendations**

- Adopt specific requirements for independent evaluation of assets and redemption of shares in investment funds.

5.2 Corporate Governance

It should be noted that the majority of provisions in Kyrgyz corporate governance legislation corresponds to the provisions of the CIS Model Law on investor protection. Nevertheless, a number of model law provisions can be applied to improve the Kyrgyz law by increasing protection of investors' rights in the securities market.

5.2.1 Shareholders' Approval of the Offering of Securities

Under Kyrgyz law the issuance of securities must be discussed and approved by a general meeting of shareholders.

However, in practice, the terms and conditions for offering securities are rarely discussed at a general meeting of shareholders. The management body usually draws the conditions of issuance while the shareholders approve the management decision without getting into the details of what is being proposed. Minority shareholders often do not understand the terms of the offering because no explanation is given by management.

**Recommendation**
• Kyrgyz law may need to be amended to make the corporate decision-making process regarding the issuance of shares more transparent and the fiduciary duties of directors more clear.

5.2.2 General Meeting of Shareholders

Kyrgyz law establishes certain rights and powers of shareholders that are incidental to general meetings of shareholders. These include:

(a) the right to call a general meeting;
(b) the right to call a special general meeting; and
(c) voting rights at a general meeting.

The Right to Call a General Meeting of Shareholders

The legal requirements regarding the timing, notice and holding of general meetings are often violated by the management of joint stock companies. In practice, shareholders' rights are often violated by unreasoned denials to place items on the agenda. Furthermore, shareholders face problems in exercising their right of access to information regarding the company's financial performance, including financial statements and auditor's or inspection commission's reports.

We note that in order to remedy this problem the State Commission for the Securities Market under the Government of the Kyrgyz Republic, No. 12, dated March 3, 2004 issued the Regulation on the requirements relating to the preparation, calling and conduct of the general meeting of shareholders. However, we understand from responses to the Questionnaire that the legal requirements for the preparation, calling and conduct of the general meetings are often violated.

Under the Joint Stock Companies Law, a notice of general meeting must be publicised in the press. However, the Joint Stock Companies Law does not expressly prescribe which particular newspaper must be used to publicise a notice of general meeting. Companies located in remote regions of the Kyrgyz Republic often publicise their notices of general meetings of shareholders in local newspapers with limited circulation.

Notices of general meetings of joint stock companies located in remote regions of the Kyrgyz Republic rarely appear in nationwide newspapers such as Slovo Kyrgyzstana, Kyrgyz Tuusu and Erkin Too. Accordingly, the shareholders may be unaware of the forthcoming general meeting if notice is publicised in a local newspaper.
The Joint Stock Companies Law contains many gaps in the procedural requirements with respect to the conduct of general meetings of shareholders.

For example, Article 48 of the Joint Stock Companies Law provides that 60 percent of the total outstanding voting shares constitutes the quorum necessary to hold a general meeting and 40 percent is necessary to hold the adjourned general meeting. However, some joint stock companies are unable to achieve the quorum necessary to hold even adjourned general meeting. In some instances, a majority of shareholders do not attend meetings on purpose in order to impede the holding of the meeting. Passive attitudes of shareholders to the exercise of their rights in certain cases prevent companies from even holding general meetings.

The joint stock companies whose shareholders fail to attend general meetings year after year are unable to hold their general meetings or make decisions that require at least 2/3 of the total votes to be adopted. We understand that some joint stock companies propose that the Joint Stock Companies Law be amended to enable them to forfeit the shares of shareholders who fail to attend general meetings on a regular basis or alienate such shareholders' rights to the payment of dividends. However, a practical solution could be to introduce a rule enabling general meetings to consider and pass resolutions that previously required at least 2/3 votes of the total voting shares to be passed instead by a majority vote or at least 2/3 of the shareholders participating in the relevant general meeting.

We understand from Ms. Larissa Mosevnina, Chairman of the Association for Protection of Shareholders' Rights, that management of joint stock companies often omit to include in the minutes of the general meeting of shareholders issues raised by minority shareholders. Moreover, the management often refuses to address questions raised by minority shareholders and typically side with the majority shareholders.

Some joint stock companies hold general meetings by absentee votes. However, our review of Articles 40.2 and 39 of the Joint Stock Companies Law establishing the procedure for holding general meetings by an absentee vote revealed many inconsistencies. Article 40.2 of the Joint Stock Companies Law provides that a resolution of the general meeting, passed by an absentee vote, shall be deemed valid if passed by shareholders holding in aggregate at least 60 percent of voting shares in the company. However, Article 39 provides that notwithstanding the quorum, each item on the agenda should be passed by a number of shareholders specified in the law.

It is often the case in many Kyrgyz joint stock companies that a general meeting is required to consider items which are not included on the agenda. The Joint Stock Companies Law may need to be amended to allow the
management board and shareholders holding at least 20 percent (or perhaps 10 percent) of the voting shares to introduce changes to the agenda at a general meeting. However, any such change should be subject to full disclosure in respect of the item proposed in the same manner as for the other items included in the agenda prior to the general meeting.

**Right to Request Special Meeting of Shareholders**

Unlike the CIS Model Law which gives a shareholder holding 10 or more percent of shares in the company the right to request a special meeting of shareholders, under Kyrgyz law only shareholders holding 20 or more percent of the shares in the company have such a right. Nevertheless, such practice is not prejudicial to shareholder rights or their implementation. However, Article 9(2) of the CIS Model Law contains provisions that empower shareholders who are not entitled to request a special general meeting of shareholders, to nominate candidates to the board of directors.

"9.1 A shareholder (or group of shareholders) owning at least ten percent of the voting shares of the company or a lower percentage specified by the charter of the company, has the right to request the Board of Directors to hold an Extraordinary Meeting of Shareholders to discuss and vote on items that have been put forward by the requesting shareholder(s) which fall within the authority of the General Meeting of Shareholders.

9.2 The agenda of the Extraordinary Meeting of Shareholders cannot be changed without the consent of the requesting shareholder(s). When the agenda of the Extraordinary Meeting of Shareholders includes the election of members of the Board of Directors by cumulative voting, the holders of at least two percent of the voting shares shall have the right to nominate candidates for the Board of Directors".

Shareholders should be granted a similar right under Kyrgyz law.

In practice, there is a gap in Kyrgyz law when the board of directors ignores a shareholder’s request for a special meeting. We understand that the Agency has drafted a bill to amend the Joint Stock Companies Law of the Kyrgyz Republic to include a provision that if the board of directors ignores a request by eligible shareholders to call a general meeting, such shareholders shall have the right *inter alia* to hold the meeting and claim compensation for expenses incurred in connection with the holding of such meeting. However, the CIS Model Law provision which allows shareholders whose request to call a general meeting was ignored by the board of directors the right to seek enforcement of their rights in court, is more preferable than the provision
contained in the Agency's bill, as it reduces the risk of shareholder abuse of their right to request shareholder meetings.

**Voting Rights**

Kyrgyz law is silent on the status and enforceability of voting agreements. Nevertheless, the requirement for shareholders to have a certain number of voting rights to decide certain matters implies the possibility of entering into such voting agreements.

Both Kyrgyz law and the CIS Model Law allow for the issuance of various classes of shares, including preferred shares, and provide that preferred shareholders have the right to vote on such matters as reorganisation, liquidation, or introduction into the company charter of amendments restricting the rights of preferred shareholders. Nevertheless, unlike the CIS Model Law (Article 6) which protects the preferred shareholders from decisions not to pay or pay partial dividends on preferred shares, Kyrgyz law does not contain such mechanisms designed for the protection of preferred shareholders. It is also necessary to amend Kyrgyz law to include a provision requiring that any decision to approve charter amendments limiting the rights of preferred shareholders may be passed only by a majority of preferred shareholders.

**Recommendations**

- Amend the Joint Stock Companies Law to include provisions establishing a procedure for the enforcement by a shareholder of its right to propose an item for inclusion in the agenda of the general meeting, in case the board or executive body refuses to put the item on the agenda.

- Amend the Joint Stock Companies Law to include provisions setting forth a procedure for absentee voting.

5.2.3  **Valuation of Assets and Expropriation of Securities**

There has been a lot of controversy about the interpretation and application of Articles 22.5 and 23.3 of the Joint Stock Companies Law.

Under Article 22.5 of the Joint Stock Companies Law, the state property agency may expropriate shares allocated by the state to employees of the joint stock company upon its privatisation without a court decision.

Pursuant to Article 23.3 of the Joint Stock Companies Law, joint stock companies created as a result of privatisation must re-value their assets prior to an issue. If the valuation of the assets of a privatised company is higher than prior to its privatisation, the joint stock company must increase its share
capital accordingly by increasing the nominal value of its shares. The shareholders must pay the difference in the nominal value of shares. Otherwise, a portion of their shares can be cancelled up to the amount of the increase in value of their shares. However, certain investors acquired new shares of privatised companies prior the enactment of the Joint Stock Companies Law and paid up their nominal value without regard to the increase in the valuation of assets. Article 23.3 is very controversial in the Kyrgyz Republic. There has been some concern that companies have been issuing shares for consideration which does not take into account the true value of the company's assets and business, and for this reason, some minority shareholders oppose the repeal of Article 23.3 even though it is a blunt instrument for dealing with such problem.

Article 19 of the Kyrgyz Constitution provides that private property is inviolable and no one can be coercively deprived of his ownership right without a valid court order. Articles 22.5 and 23.3 of the Joint Stock companies Law appear to contradict the Kyrgyz Constitution.

**Recommendations:**

- The implications of Articles 22.5 and 23.3 need to be further investigated. The Joint Stock Companies Law may need to be amended to address the uncertainties arising therefrom.

5.2.4 Pre-emptive Rights

Under Article 25 of the Joint Stock Companies Law, shareholders have a pre-emptive right to purchase shares in a new issue. However, the Joint Stock Companies Law establishes no specific procedure by which shareholders can exercise their pre-emptive rights. No provision of law requires issuers to notify their shareholders of their respective rights or establishes a time limit for the exercise of pre-emptive rights.

Some joint stock companies use this against shareholders by establishing a maximum or minimum term which is usually too short for shareholders to exercise their right (often one week).

If the pre-emptive right to purchase shares is infringed, the shareholder may apply to the Agency for invalidation of the issuance of shares or to the court to render the issuance void. However, as soon as the share issue report is registered by the Agency, the share issue is considered valid. In this case, shareholders may apply to the court to challenge the issue on the grounds of infringement of their pre-emptive rights.

We note that under the CIS Model Law shares can be sold if so decided by the board of directors of the company which is not allowed under Kyrgyz law.
5.2.5 Change of Control

Article 74 of the Joint Stock Companies Law sets forth procedural requirements for the acquisition of 50 percent or more of the ordinary shares in joint stock companies. Violation of such procedural requirements may render such an acquisition invalid. A person intending to purchase independently or jointly with its affiliates 50 percent or more of the ordinary shares in a joint stock company must send a written statement of its offer to such joint stock company. A joint stock company is required to send to its shareholders notice of the proposed share acquisition and a request to notify the joint stock company as to whether they elect to exercise their right of first refusal, but the law says nothing about what an investor should do if there is no response from the shareholders to such a request. Thus, the law does not describe which steps an investor purporting to acquire a controlling stake should take if certain shareholders do not respond to the offer.

5.2.6 Interested Person Transactions

Under Article 75 of the Joint Stock Companies Law any transaction concluded by a joint stock company with its officers, shareholders holding directly or indirectly 20 percent or more of the voting shares of such joint stock company or any representatives, intermediaries or family members of such officers or shareholders is an "interested person transaction".

Article 76 of the Joint Stock Companies Law provides that interested party transactions must be concluded on an arms-length basis. Any interest in the transaction must be disclosed by an interested party. Under Article 78 of the Joint Stock Companies Law, any "interested party transaction" may be invalidated by a court decision if the legal requirements were not observed.

Kyrgyz law establishing requirements for interested person transaction adopts the same approach as the CIS Model Law. However, the CIS Model Law contains some disclosure provisions that are not included in Kyrgyz law. Specifically, the CIS Model Law requires officers and majority shareholders to disclose information on possible transactions in which they have an interest (Article 30.2 of the CIS Model Law). Kyrgyz law should include such a provision.

To prevent any baseless use of company assets and protect the interests of shareholders, Kyrgyz law should be amended to include a provision similar to Article 30.8 of the CIS Model Law, which grants shareholders holding one or more percent of shares the right to petition a court for invalidation of an interested person transaction if such transaction was committed in violation of the requirements established by law.
It is important for shareholders to be informed about interested person transactions committed by the company. Unfortunately, unlike the CIS Model Law which requires the disclosure of information about such transactions in the annual report of the company, Kyrgyz law does not.

Unlike Kyrgyz law, the CIS Model Law establishes that the requirements for interested person transactions do not apply to the following transactions:

(a) A transaction concluded by a company with one shareholder who is simultaneously the sole executive body of the company;

(b) A transaction concluded by a company if all shareholders are interested persons;

(c) A transaction committed in exercise of the pre-emptive right to purchase shares;

(d) A transaction on buyback or acquisition of shares;

(e) A transaction concluded in the process of reorganisation of a company by merger with another company or amalgamation with another company, if this other company owns more than 75 percent of the voting shares of the reorganised company.

The introduction of such a provision in the Kyrgyz Republic will address the problems encountered by shareholders and companies in the course of the practical commission of such transactions. Thus, it is hardly possible to conduct a transaction in the Kyrgyz Republic without violating the requirements of the law if there is one shareholder in the company or all shareholders have an interest in the transaction. Upon commission of interested person transactions under the pre-emptive right, the rights of shareholders are not violated, etc. However, we understand that the bill to amend the Joint Stock Companies Law drafted by the Agency tries to solve this problem. Thus, it establishes that the transaction will not be found to be an interested person transaction, if:

(a) A company has one shareholder acting simultaneously as a sole executive body;

(b) All shareholders have an interest in the transaction;

(c) A transaction is committed as a pre-emptive right to purchase the offered shares of the company.

In addition, Kyrgyz law establishes no clear definition of a "family member". The courts have difficulty setting aside transactions concluded by distant
"family members" of the officers or significant shareholders of a joint stock company. In practice, many transactions in the Kyrgyz Republic are concluded by relatives of the officers and significant shareholders of joint stock companies. The Preamble to the Family Code of the Kyrgyz Republic dated August 30, 2003 No. 201 (the "Family Code"), reads as follows:

"This Code, in accordance with the Constitution of the Kyrgyz Republic defines the terms and conditions of marrying, divorcing and invalidating marriage, regulates personal non-property and property relationships among family members: spouses, parents and children (adoptive parents and adopted children), and in cases and to the extent, provided for by family legislation, among other relatives and other people, and defines the forms and procedures for placing in families the children left without parental care.

Furthermore, Article 2 of the Family Code contains the following definitions:

"family means a group of people connected by property and personal non-property rights and duties, resulting from marriage, kinship, affinity, adoption or any other form of taking children for fosterage and intending to strengthen and develop family relations;

"close relatives means parents, children, adoptive parents, adopted children, full-siblings and half-siblings, grandfather, grandmother, and grandchildren";

"family composition means a group of people, living together, connected with family relationships, keeping a common household and having a common budget";

It follows from the foregoing that "family members" include spouses, parents and children (adoptive parents and children), and their relatives, if they live together, keep common household and have a common budget. Furthermore, close relatives living separately and having different budgets, but connected by property and personal non-property rights and duties can be considered family members.

As mentioned above, Article 76 of the Joint Stock Companies Law provides that an interested party has a duty to disclose its interest in the transaction being concluded by a joint stock company to such joint stock company. Thus, the officers and shareholders (with 20 percent or more of the voting rights) of joint stock companies must disclose their interest in the transaction which is being concluded by the joint stock company with their family members.
However, it is not clear from the law to what extent such duty applies where a party to the transaction is a distant relative of an officer or shareholder (e.g. half-sibling of a shareholder or officer of the company).

It should also be noted that provisions relating to the duty of disclosure of interested party transactions contain a number of gaps. For example, Article 77.1 of the Joint Stock Companies Law provides that an interested party transaction involving an executive officer or director of the joint stock company as an interested party must be approved by a resolution of the board of directors passed by majority votes of the directors which are not interested in the transaction.

However, it is not clear from the Joint Stock Companies Law who should approve the transactions involving statutory auditors or shareholders with 20 percent or more of voting shares of the joint stock company. The Law fails to require that such transactions be approved by a general meeting of shareholders or the board of directors.

We understand from responses to the Questionnaire that members of the audit committee in a number of Kyrgyz joint stock companies are relatives of directors or major shareholders. It is necessary to amend Kyrgyz law to ensure that family members of the directors or significant shareholders disclose their interest in accordance with regulations prescribed by the Agency.

**Recommendation**

- Amend the Joint Stock Companies Law to include provisions containing a clear definition of an "interested person".
- Exclude transactions in which all shareholders are interested or transactions for the sale of shares to shareholders having a pre-emptive right, from the list of interested party transactions.
- Restrict family members of directors and major shareholders from holding positions on the audit committees of joint stock companies.

5.2.7 Right to Dividends

Unlike the CIS Model Law, Kyrgyz law does not provide for the payment of interim dividends. Nevertheless, such a state of affairs does not violate the interests and rights of shareholders to dividends, and secures the protection of the rights of creditors of a joint stock company.

Both Kyrgyz law and the CIS Model law set limitations on dividend payments in case a company becomes insolvent or if the dividend payment will lead to an insolvency of the company.
5.2.8 **Right to Request Buyback**

Both Kyrgyz law and the CIS Model Law contain similar buyback provisions empowering the board of directors of a company to set the purchase price of its shares. However, the CIS Model Law also contains provisions protecting shareholders who sell their shares to the company. Thus, under Article 6.3 of the Model CIS Law the buyback price shall be no less than the market value of assets approved by an independent appraiser and shareholders can appeal to a court against the decision of the board of directors approving the buyback price within not more than 3 months from the date of such decision. It is necessary to amend Kyrgyz law to include such provisions.

5.2.9 **Right to Request Independent Audit**

Both Kyrgyz law and the CIS Model Law provide that shareholders holding 10 or more percent of shares in a company have the right to demand that an audit be conducted by the company auditor or by another independent auditor. But unlike Kyrgyz law, the CIS Model Law (Article 8) contains provisions describing how this right can be exercised, specifically, whether shareholders can petition a court to order an audit, and to propose an auditor other than the one appointed by the company.

5.2.10 **Appraisal of Non-cash Contributions**

The Kyrgyz Joint Stock Companies Law allows shares to be paid in cash or other assets. In case of non-cash payment for shares, the risk exists that the value of property or non-property rights provided in exchange for shares may be other than the fair market price. However, the CIS Model Law contains provisions which minimise such risk. Specifically, the value of the assets provided in exchange for shares (except cash) must be determined by an independent appraiser. The same approach could be adopted in the Kyrgyz Republic.

5.2.11 **Liability of Directors and Officers**

Like the CIS Model Law, the Kyrgyz Joint Stock Companies Law (Article 65) imposes liability on directors and other officers of a company for the damage caused to the company by decisions passed by these officers or bodies of the company. However, the Law says nothing about when officers are not liable for damage caused by their decisions. We believe that this gap should be filled; otherwise officers will be unfairly punished, for example, in the case of changes in market conditions, which caused losses to the company. In this regard, relevant provisions of the CIS Model Law could be used. We understand that the bill drafted by the Agency attempts to solve this problem. We recommend using the provision relating to directors' liability set forth in Article 25.3 of the CIS Model Law to amend Kyrgyz law.
5.2.12 *Derivative Actions*

Unlike the CIS Model law, Kyrgyz law does not contain any provisions empowering shareholders to file derivative actions, although there is a need for such a right in the Kyrgyz Republic. Kyrgyz law should be amended to permit shareholders holding one or more percent of the shares to apply to the court on behalf of the company to hold the officers of the company liable provided that they had earlier applied to the board of directors, but the latter ignored their request. In this case the Law should provide that the company shall bear the costs connected with an action brought by a shareholder, unless the court finds that the action is baseless and the shareholder acted in bad faith. The introduction of derivative actions will help protecting the interests of shareholders and the company from possible abuse of power by the officer of the company.

5.2.13 *Major Transactions*

Kyrgyz law requires that certain major transaction be approved by the shareholders. However, the CIS Model Law unlike Kyrgyz law provides that major transactions do not include transactions that would otherwise conform to the definition of a major transaction, but are performed in the ordinary course of business, or are connected with the sale of common shares of the company or securities convertible into common shares of the company. The introduction of such a provision in the Kyrgyz Republic would eliminate the need for shareholders who are issuing additional shares to have such an issuance be approved as a major transaction.

To prevent any baseless use of company assets and protect the interests of shareholders, Kyrgyz law should be amended to include a provision similar to that contained in Article 29.5 of the CIS Model Law, which grants shareholders holding one or more percent of shares to apply to the court for the invalidation of a major transaction if it was entered into in violation of the requirements established by law.

It is important for shareholders to be informed about major transactions entered into by the company. Unfortunately, unlike the CIS Model Law requiring the disclosure of information about major transactions entered into by the company in its annual report, Kyrgyz law does not require such disclosure.

5.2.14 *Protection of the Rights of Investors in Case of Reorganization of the Company*

The following documents must be provided to all shareholders prior to a general meeting at which a reorganisation is to be discussed:
(a) draft document describing the conditions of reorganisation;
(b) conclusion by an independent expert concerning the proposed conditions of reorganisation;
(c) annual reports and financial reports for the previous three financial years of all joint stock companies taking part in reorganisation;
(d) financial reporting as of the date not later than 90 days prior to the date of the draft document describing the conditions for the proposed reorganisation if the annual financial reporting as of the last reporting date is more than 6 months prior to the date of the draft document describing the plan of reorganisation;
(e) report of the board of directors describing the plan of reorganisation (economic and legal), and its economic necessity for the company;
(f) other documents required by the charter of the company.

5.2.15 Audit Committee

Except for legislation regulating banking activities, Kyrgyz law does not require a joint stock company to form an audit committee. However, we understand that the bill to amend the Joint Stock Companies Law drafted by the Agency provides that public joint stock companies (i.e. joint stock company whose securities are held by 500 or more holders or joint stock companies which held open (public) placement of securities) audit, remuneration and management committees. We understand that the draft bill also introduces the requirement that the number of director employees of such companies should not exceed one third of the total number of directors.

5.3 Dispute Resolution and Transparency

5.3.1 Typical Violations by Issuers and Judicial Enforcement

According to the 2005 Annual Report of the Agency, the most frequent breaches of Kyrgyz laws by issuers include failure to comply with:

(a) requirements for the passing of a shareholder resolution to issue securities;
(b) disclosure obligations;
(c) conditions of issuance; or
(d) reporting requirements with respect to securities placement.

Under the Civil Code and Joint Stock Companies Law any breach of securities laws may invalidate the issue. Any interested person (i.e. the Agency, issuer, shareholder or securities market professional) may challenge the transaction by way of judicial proceedings.

If the transaction is rendered void, investors are entitled to a refund of their investment, but may be unable to recover expenditures connected with the acquisition of securities (i.e. brokers' commissions, processing fees, etc.).

The Agency as the supervisory authority is eligible under Article 47 of the Securities Market Law to apply to a court for the repayment of investments to investors.

Most investor criticism relates to inadequate judicial protection of investor rights. Investors complain that judges have no expertise in the resolution of disputes concerning investor rights.

For instance, one of the district courts of Bishkek city issued a ruling to depriving several shareholders of their rights to shares because they failed to attend shareholders' meetings in the course of few years. Furthermore, shareholders are often denied their rights when the disputes involve governmental authorities or partially state-owned companies or where the "state interests" are at stake. There have been a number of cases concerning the reorganisation of partially state-owned joint stock companies. In these cases, the government withdrew the assets of joint stock companies in breach of minority shareholder rights.

We have reported a number of cases where the rights of minority shareholders have been violated.

5.3.2 Alternative Dispute Resolution

As mentioned above investors complain about lack of awareness of the securities market and corporate laws amongst Kyrgyz judges and, generally, the effectiveness of the Kyrgyz judiciary.

In this regard, we would recommend that the Agency adopts a number of measures aimed at promoting alternative dispute resolution in the securities market.

In particular, the Agency should promote the use of mediation and arbitration. Mediation is an informal, voluntary approach to dispute resolution in which a mediator facilitates negotiations between the disputing parties, helping them to find their own mutually acceptable resolution. The mediator does not impose a
solution, but rather helps make it possible for the parties to create an acceptable solution themselves. With mediation, if one of the parties is not happy with the end result, there is no obligation to accept the final negotiated settlement.

In contrast, arbitration is a method of resolving a dispute between two parties through the intervention of an impartial third party knowledgeable in the area of controversy. This method is similar in form to a court proceeding in the sense that the arbitrator studies the evidence and makes a final decision that is binding on all parties.

As a precondition for alternative dispute resolution, broker-dealer firms and other securities market professionals should provide for mediation and/or arbitration in their contracts. Perhaps, the Agency should issue recommendations providing for the inclusion of non-binding mediation and binding arbitration clauses into the contracts of securities market professional participants, including preparation of standard forms.

It should be noted that Article 38 of the Kyrgyz Constitution provides that civil disputes can be settled by the courts of arbitration (i.e. arbitration tribunals).

The Law on Courts of Arbitration, enacted in July 2002, establishes a statutory foundation for the operation of Kyrgyz Courts of Arbitration. In September of 2002, the Chamber of Commerce and Industry of the Kyrgyz Republic established a permanent court of arbitration. The court of arbitration was founded as a non-profit organization in the form of a public fund, not based on membership of its founders. In October 2003, the court of arbitration under the Chamber of Commerce and Industry was transformed into the International Court of Arbitration under the Chamber of Commerce and Industry of the Kyrgyz Republic (the “ICA”).

The purpose of ICA is to help legal and natural persons to reach resolution of their disputes without recourse to judicial procedures provided that there is an arbitration agreement (arbitration clause). The parties may agree to submit to ICA their disputes arising from contractual or other civil relations including foreign trade and other international economic contracts, including investment disputes.

The ICA may consider disputes arising from purchase and sale (supply) contracts, work and service contracts, goods and/or service exchange contracts, cargo and passenger carriage contracts, trade representation and mediation contracts, lease, scientific and technical exchange contracts, industrial and other construction contracts, licensing operations, investment, credit and settlement and insurance contracts and contract for other business activities and civil relations.
In the Kyrgyz Republic, arbitration is based on the principles of independence and impartiality of the arbitrator, equality of parties, adversary proceedings, and binding force of the arbitral award. The highest governing body of the ICA is the Supervisory Board consisting of 7 members. The ICA arbitrators are the representatives of organizations interested in the establishment and development of alternative dispute resolution in the Kyrgyz Republic. At present, the ICA includes about 100 arbitrators specialising in various areas of law and economy.

Since its establishment, the ICA has considered 17 disputes⁴. We understand that only one out of 17 disputes considered by the ICA relates to a securities transaction in the Kyrgyz Republic. Arbitration practice in the area of securities market and corporate governance is practically absent in the Kyrgyz Republic.

We note that the Law on Investment permits investors to submit any investment disputes to arbitration. The alternative dispute resolution forum could be established under the auspices of the Agency or any of the securities market professionals associations. Such forum could be established in the form of a separate legal entity and should have proper rules and procedures for the effective resolution of securities market disputes.

Such alternative dispute resolution forum should be recognised by law. In particular, legislation may need to be introduced to identify the status, structure, revenues and resources of such alternative dispute resolution body, including the qualification of mediators and arbitrators to be made eligible for resolution of the securities related disputes.

5.3.3 Publication of Normative Acts

Under Article 39 of the Law "On Normative Legal Acts of the Kyrgyz Republic" the laws and normative acts of the Kyrgyz Republic come into force upon their publication in the "mass media" (i.e. leading national newspapers). However, most normative acts regulating the activities of securities market participants adopted by the Agency have never been publicised in official newspapers. The legitimacy of these regulations is therefore questionable.

5.3.4 Agency Database

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⁴ Statistical data of the ICA.
Over the past three years, the Agency has been working on the establishment of a publicly accessible database on issuers and professional participants in the securities market. Such database is accessible online at the web-site of the Agency www.fsa.kg. We understand that the Agency is experiencing difficulty in updating the database due to insufficient funding.
ANNEX A

INTERNATIONAL TREATIES RELATING TO INVESTOR PROTECTION IN THE KYRGYZ REPUBLIC

_Bilateral Treaties_

(a) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of Belarus on Promotion and Mutual Protection of Investments (ratified by Law No. 50 dated March 3, 2000);

(b) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of Uzbekistan on Mutual Promotion and Protection of Investments;

(c) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of India on Mutual Promotion and Protection of Investments (ratified by Law No. 42 dated April 10, 1998);

(d) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of Georgia on Promotion and Mutual Protection of Investments;

(e) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of Kazakhstan on Promotion and Mutual Protection of Investments (ratified by Law No. 151 dated August 17, 2004);

(f) The Inter-Governmental Agreement between the Swiss Federal Council and the Kyrgyz Republic on Promotion and Mutual Protection of Investments (ratified by Law No. 26 dated January 15, 2003);

(g) The Inter-Governmental Agreement between the Kyrgyz Republic and the Azerbaijan Republic on Mutual Promotion and Protection of Investments (came into effect on August 27, 1997);

(h) The Inter-Governmental Agreement between the Kyrgyz Republic and Mongolia on Promotion and Mutual Protection of Investments (ratified by Law No. 66 dated July 10, 2001);

(i) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of Tajikistan on Promotion and Mutual Protection of Investments (ratified by Law No. 95 dated November 20, 2001);

(j) The Inter-Governmental Agreement between the Kyrgyz Republic and Kingdom of Sweden on Promotion and Mutual Protection of Investments (ratified by Law No. 22 dated January 2003);
(k) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of Moldova on Mutual Promotion and Protection of Investments (ratified by Law No. 251 dated December 30, 2003);

(l) The Inter-Governmental Agreement between the Kyrgyz Republic and the Republic of Finland on Promotion and Protection of Investments (ratified by Law No. 154 dated August 17, 2004);

(m) The Inter-Governmental Agreement between the Kyrgyz Republic and the United Kingdom of Great Britain and Northern Ireland on Promotion and Protection of Investments (the instruments were exchanged in Bishkek on June 18, 1998);

(n) The Inter-Governmental Agreement on Mutual Promotion and Protection of Investments between the Kyrgyz Republic and the Islamic Republic of Iran (ratified by Law No. 83 dated May 23, 2002);

(o) The Inter-Governmental Agreement between the Republic of Kyrgyzstan and the Turkish Republic on Mutual Promotion and Protection of Investments (ratified by Decree No. 178-1 by the LA of Jogorku Kenesh dated August 18, 1995 and Decree No. 167-1 of the PRA of Jogorku Kenesh dated September 28, 1995);


**Multilateral Treaties**

(a) The Frame Inter-Governmental Trade and Investment Enhancement Agreement among the United States of America, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, the Republic of Turkmenistan, and the Republic of Uzbekistan

(b) The Agreement Establishing General Principles of Securities Market Formation among the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan (ratified by Law No. 7 dated January 14, 2000);

(c) The Marrakech Agreement Establishing the World Trade Organization (acceded by the Kyrgyz Republic under Protocol of October 14, 1998);
(d) The Washington Convention of 1965 on the Settlement of Investment Disputes between State and Nationals of Other States (ratified by Law No. 47 dated July 5, 1997);

(e) The Seoul Convention of 1985 Establishing the Multilateral Investment Guarantee Agency;

(f) The Convention on Investor Protection among the Azerbaijan Republic, the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, and the Republic of Tajikistan (ratified by Law No. 48 dated March 3, 2000);

(g) The Memorandum among the governments of member states of the Shanghai Cooperation Organization on the Basic Objectives and Directions of Regional Economic Cooperation and Initiation of the Process of Trade and Investment Facilitation among the People's Republic of China, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Uzbekistan, the Russian Federation, and the Republic of Tajikistan;

ANNEX B

LIST OF REVIEWED REPORTS


