

# **THE LAW OF THE KYRGYZ REPUBLIC**

## **“ON PROCEDURE FOR CONDUCTING INSPECTIONS OF BUSINESSES”**

Chapter 1. General Provisions

Chapter 2. Procedure for Conducting Inspections

Chapter 3. Rights, Obligations and Responsibility of Parties in Conduct of Inspections

The present Law establishes the procedure for conducting inspections of businesses by authorized bodies and determines the rights and responsibilities of authorized bodies and businesses in relations arising from inspections and the protection of businesses from illegal interference with their activities.

### **CHAPTER 1. GENERAL PROVISIONS**

#### **Article 1. Scope of Application of the Present Law**

1. The present Law shall regulate the relations of the authorized bodies whose powers to conduct inspections are established in the laws of the Kyrgyz Republic with businesses whose activities are subject to inspection pursuant to legislation of the Kyrgyz Republic.

2. Authorized bodies shall develop and adopt normative legal acts regulating activities pertaining to the conduct of inspections pursuant to the requirements of the present Law.

3. If an international treaty of the Kyrgyz Republic ratified in an established manner provides for rules other than those stipulated in the present Law, the provisions of such an international agreement shall prevail.

#### **Article 2. Basic Definitions Used in the Present Law**

Authorized bodies – bodies of the executive and local self-governance bodies authorized by laws of the Kyrgyz Republic to perform inspections of businesses with the list of these bodies prepared by Government of the Kyrgyz Republic and approved by Jogorku Kenesh of the Kyrgyz Republic.

An inspection – any form of the state control or oversight aimed at ensuring compliance by businesses with legislation of Kyrgyz Republic that regulates their activities.

A scheduled inspection – an inspection conducted by an authorized body pursuant to the plan of inspections of businesses it approved.

An unscheduled inspection – an inspection of businesses conducted on the grounds as provided for in Article 7 of the present Law.

A cross-inspection – an inspection conducted by tax authorities with respect to third parties if during the conduct of scheduled tax inspections tax authorities decide to, including per requests of tax authorities of other countries, inspect certain documents immediately pertaining to transactions performed by a taxpayer with the entities indicated.

A control inspection – an inspection of whether or not a business has eliminated the violations revealed during a previous inspection.

A re-inspection – an inspection conducted based on a complaint from a business with respect to results of the scheduled inspection and to clarify certain issues related to the scheduled

inspection conducted earlier that were either not reflected or unclearly reflected in the act on the earlier scheduled inspection.

Businesses – legal entities, individual entrepreneurs, branches and representative offices registered under a procedure as established in legislation of the Kyrgyz Republic.

### **Article 3. Basic Principles of Conducting Inspections of Businesses**

The basic principles of authorized bodies' conducting inspections of businesses are:

- presumption of in-good-faith acting on part of businesses;
- all contradictions and cases of vagueness in legislation of Kyrgyz Republic setting mandatory requirements cannot be used against businesses;
- if a business applied a provision of law contradicting another provision of law, such actions shall be deemed proper and not be deemed illegal;
- non-interference with the businesses' activities;
- legality, objectivity, and publicity of the authorized bodies' activities;
- inadmissibility of redundancy (overlapping) in the agency and inter-agency control and oversight during inspections;
- funding of the inspections performed by authorized bodies only from the state budget;
- establishment of mandatory requirements subject to inspections through laws only;
- authorized bodies' mandatory informing businesses about, and explaining to them, normative legal acts of the Kyrgyz Republic that establish mandatory requirements compliance with which is the purpose of inspections;
- continuity and promptness of an inspection, i.e. full and rapid performance of an inspection within the timeframe given.

### **Article 4. Restrictions during Inspections**

The authorized bodies and their officers shall not:

- collect fines and other charges in cash from businesses during the immediate performance of an inspection. All settlements shall be made through appropriate settlement accounts and financial institutions;
- receive shares of the financial and administrative sanctions or other charges that are remitted to the state revenue pool as a result of a performance of an inspection;
- demand documents and explanations not pertinent to the subject of the inspection;
- collect, store, use and disseminate the information about businesses that was received in violation of legislation of the Kyrgyz Republic;
- disseminate information constituting state, commercial or otherwise protected secrets received by the authorized bodies as a result of performance of inspections except when stipulated otherwise by laws of Kyrgyz Republic.

## **CHAPTER 2. PROCEDURE FOR CONDUCTING INSPECTIONS**

### **Article 5. Types of Inspections**

Pursuant to the present Law there are several types of inspections:

- Scheduled inspections;
- Unscheduled inspections;
- Cross-inspections;
- Control inspections;

- Re-inspections.

## **Article 6. Scheduled Inspections**

1. Scheduled inspections shall be conducted by authorized bodies in compliance with their plan of inspections of businesses approved.
2. Scheduled inspections of businesses shall not be conducted more than more than once a year.  
A scheduled inspection shall cover a business's activity over a period of time following the day the previous inspection ended.
3. Businesses shall be notified about a scheduled inspection in written at least 10 days prior to the commencement of the inspection.
4. The specificities of scheduled inspections that pertain to compliance by businesses with the requirements of public health and life safety, including their separate categories, environmental protection, wildlife protection and prevention of consumer-confusing actions, shall be established by technical regulations.

## **Article 7. Unscheduled inspections**

1. Unscheduled inspections shall be conducted under following circumstances:
  - upon the receipt by the authorized bodies of a request from a business to have an inspection conducted.
  - upon the receipt by the authorized bodies of information about a business's violating the legislation of Kyrgyz Republic.
  - upon violations by businesses of an appropriate technological processes, malfunction of structures, equipment, presence of emergency conditions under which damages to life and health of people, property, and environment are highly possible.
  - upon the receipt by the authorized bodies a written petition of an individual or a legal entity about violations by a business of rights and interests of the petition filer accompanied by documents, materials and other confirming information.
2. Requests that do not allow for establishing name and location of an individual who petitioned to the control and oversight body cannot serve as a basis for conducting an inspection.
3. Unscheduled inspections shall be conducted on the basis of a resolution (decree, injunction) issued by an authorized body within three days.

## **Article 8. Cross-inspections**

1. Whenever during the conduct of scheduled tax inspections tax authorities need to obtain information about activities of a taxpayer related to third parties, the tax body can demand that these third parties provide documents pertaining to the activities of the taxpayer inspected.
2. The purpose of a cross-inspection is to control compliance by a taxpayer with legislation on taxes and charges.
3. The subjects of a cross-inspection shall include information and documents of individuals and legal entities acting as counterparties to the taxpayer inspected to establish the fact of a deal or a commercial transaction made or to obtain other information.
4. A cross-inspection shall be conducted within the timeframe and scope of a scheduled tax inspection in compliance with the Tax Code and the present Law.
5. Whenever cross-inspections are ordered, the resolution shall contain the name of the entity to be inspected, documents and/or issues to be inspected.

## **Article 9. Control Inspections**

Control inspections shall be conducted to inspect whether or not a business has eliminated the violations detected during the previous inspection.

Control inspections can only be performed after the expiration of the period of time given to the business to eliminate the detected violations.

## **Article 10. Re-inspections**

1. A re-inspection shall only be conducted whenever a business disagrees with the findings of the inspection. The grounds for a re-inspection shall include an appeal of inspection findings filed by the business with the authorized body.

A business's appeal shall be reviewed by the authorized body within 30 days and a substantiated decision shall follow.

2. A re-inspection shall be conducted pursuant to requirements provided for in paragraphs 2 and 3 of Article 12 of the present Law.

3. Whenever a re-inspection is conducted, one is prohibited to inspect all issues included in the original scheduled inspection. Only the appealed findings of the original scheduled inspection shall be subject to a re-inspection.

## **Article 11. Procedure for Conducting Inspections**

1. Scheduled and unscheduled inspections shall be conducted to control a business's compliance with legislation of the Kyrgyz Republic and shall not aim to levy financial and other sanctions on the business.

2. Whenever violations of legislation are identified in the course of scheduled inspections, an officer of an authorized body shall explain to the business the subject and essence of the violation and shall have the right to issue a written warning to the business mandating the latter to eliminate the violation within 3 days if the elimination of the violation impacts the ensuring of safety of life and health of people, and within 30 days in all other cases.

3. After the expiration of the timeframe indicated in paragraph 2 of the present Article, the authorized body shall conduct a control inspection. A control inspection shall only be conducted to establish whether the business has eliminated the violations identified in the course of the scheduled inspection and shall not exceed the scope of this purpose.

If in the course of a control inspection it is established that violations had not been eliminated, an officer of the authorized body shall determine measures to influence the business pursuant to legislation of the Kyrgyz Republic.

4. Provisions of the present Article shall apply to unscheduled inspections as provided for in paragraphs 1 and 2 of Article 7 of the present Law.

5. Inspecting businesses by various state bodies with respect to the same subject of inspections shall be prohibited.

6. Inspecting a business's operations conducted during the time period covered by a scheduled inspection after three years after the date of that scheduled inspection shall be prohibited.

## **Article 12. Procedure for Arranging Inspections by Authorized Bodies**

1. Inspections of businesses shall be conducted by officers of authorized bodies.

2. Inspections of businesses shall be conducted on the basis of a resolution (decree, injunction) of the authorized body.

The Resolution shall contain:

- number and date of resolution (decree, injunction) on inspection;
- name of the authorized body;
- name of officer(s) authorized to conduct an inspection;
- name and address of the business or name of an individual entrepreneur with respect to which an inspection is being conducted;
- purpose and subject of inspection conducted;
- legal grounds for the inspection;
- date of commencement and date of completion of the inspection.

3. Two copies of the resolution (decree, injunction) to conduct an inspection shall be signed by the head of the authorized body and certified with a stamp. Only individuals indicated in the resolution (decree, injunction) shall be admitted to the inspection.

4. The period for inspecting businesses shall not exceed thirty calendar days. This period may be extended in exceptional cases per a written resolution of the head of the authorized body conducting the inspection no more than once for a period of no more than 10 days.

The decision to extend the inspection period can be appealed in court.

### **Article 13. Inspections Logbook**

1. The recording of inspections of businesses conducted by the authorized bodies shall be performed in the Inspections Logbook.

2. Officers of the authorized bodies have to enter the following information into the Inspections Logbook at the commencement of the inspection:

- name of the state body;
- date of commencement and date of completion of the inspection;
- grounds for, and subject of, the inspection;
- positions and names of individuals conducting the inspection and their respective signatures.

3. In case the Inspections Logbook is not available at the business's premises, a corresponding note of such a fact is entered into the act or protocol of the inspection.

4. The format of the Inspections Logbook and the procedures for recording the inspections conducted in that logbook shall be determined by Government of Kyrgyz Republic.

### **Article 14. Access to the Territory or Premises to Conduct Inspections**

1. The access of the authorized bodies' officers to a territory or premises of businesses shall be gained by such officers by producing their service IDs and their authorized body head's resolution (order, injunction) to conduct an inspection with respect to the business in question.

2. The authorized bodies' officers shall not gain access to the territory or premises of the business during the time other than the latter's working hours nor by violating provisions of the present Law.

### **Article 15. Procedures for Inspection-related Paperwork**

1. Two copies of an act shall be composed by the inspecting officer of an authorized body in an established format based on the findings of the inspection.

This act shall include:

- date, time and place of the preparation the act;
- name of the authorized body;
- date and number of the resolution (order, injunction) based on which the inspection had been performed;

- name and number of the service ID and position of the officer(s) who conducted the inspection;
- name and address of the business or name of the individual entrepreneur that had been inspected;
- date, time and place of the inspection;
- information on the findings of the inspection including any violations detected;
- information about whether the business or the individual entrepreneur familiarized itself (himself/herself) with the act or refused to do so and their signatures;
- signature of the officer conducting the inspection.

The act shall be accompanied by acts describing the selection of samples, examinations held, and protocols of the examinations and tests administered.

2. One copy of the act with copies of any appendices shall be given to the business's director or authorized representative (a business's director or authorized representative must sign a note confirming the receipt of the act and copies of appendices) or sent to him/her by mail.

Regardless of the findings of the inspection, the act shall be signed by the inspecting officer, director or other authorized representative of the business. In case the business dissents with facts outlined in the act, its director or authorized representative must sign an act and make a record of dissent. Explanations and documents in written clarifying the grounds for these objections shall be submitted by the business to the authorized body within 10 days after the act is received.

3. In case the officer conducting an inspection discovers any violations, he/she shall draw up a protocol in a form established by the legislation of Kyrgyz Republic on administrative responsibility.

4. The findings of the inspection that contain information that constitutes a state, commercial, or other legally protected secret shall be filed pursuant to the requirements provided for in the corresponding laws of Kyrgyz Republic.

### **CHAPTER 3. RIGHTS, OBLIGATIONS AND RESPONSIBILITY OF PARTIES IN CONDUCT OF INSPECTIONS**

#### **Article 16. Obligations and Rights of Authorized Bodies and Inspecting Officers**

1. The authorized bodies shall:

- fund inspections from the state budget;
- conduct inspections at the location of businesses or where these businesses perform their activities.
- not use contradictions and lack of clarity in legislation of the Kyrgyz Republic that establish requirements to be inspected against businesses;
- provide explanations to businesses with respect to proper observation of requirements of legislation of the Kyrgyz Republic subject to inspection.

2. The inspecting officers shall:

- produce their service IDs and provide the business with a copy of the resolution (decree, injunction) on inspection.
- make a record on the inspection conducted in the Inspections Logbook.
- conduct an inspection strictly pursuant to the resolution (decree, injunction) on performance of the inspection and the legislation of the Kyrgyz Republic.
- conduct inspections during working hours of the businesses in presence of their authorized representatives.

- demand only those documents and other materials that directly pertain to the subject of inspection.
- collect samples (test specimens) only in the minimum quantities necessary to conduct an inspection.
- provide, on the business's demand, the business with normative legal acts on the grounds of which and pursuant to which the inspection is conducted.
- substantiate the violations identified during the inspection with provisions (norms) of legislation of the Kyrgyz Republic.
- not disclose confidential information and the information gained during the inspection if disclosure of such information can bring damages to the business.

3. The officers conducting an inspection shall have the right to:

- demand documents from the business and receive information and explanations on the issues imminently related to the inspection in question.
- if necessary, write down notes (make copies of excerpts) from the documents and make copies of the documents.
- observe facilities, equipment and other property if such an observation is related to the inspection.
- observe the technological processes if the inspection is related to the compliance with technological requirements.
- undertake measures to hold executives of the businesses inspected liable in case the business refuses to fulfill the legal demands of the inspecting officer and in case the business violates requirements of legislation of Kyrgyz Republic.

4. The officers conducting an inspection shall not:

- demand or receive any remuneration from the businesses for the inspection conducted.
- use the fact of violation by a business as a reason for intervening into its activities.

## **Article 17. Obligations and Rights of Businesses during Inspections**

1. The businesses shall:

- upon a legitimate demand of the officers conducting an inspection, produce documents and other materials needed to conduct the inspection.
- render assistance to the officers conducting the inspection.

2. The businesses shall have the right:

- to demand that the officers conducting an inspection produce their service IDs and documents constituting the grounds for performance of the inspection.
- not to allow the unauthorized individuals to participate in the inspection.
- not to comply with the officers' demands if the latter's demands are of no relevance to the subject of the inspection.
- to demand that the officers conducting the inspection make a record on performance of the inspection in the Inspections Logbook.
- to receive from the officer conducting the inspection a copy of the resolution (decree, injunction) on performance of the inspection and a copy of the document reflecting the findings of the inspection.
- to appeal the findings of the inspection to a superior authorized body or in court.

## **Article 18. Measures Undertaken with respect to Violations Identified during Inspections**

1. If having identified during an inspection a violation by the business of legislation of Kyrgyz Republic, the authorized bodies shall within their authority undertake measures to eliminate the violations identified to prevent any possible damage to life and health of people, property and

environment, and undertake measures to hold liable those individuals who committed the aforesaid violations.

2. If it is established during an inspection that the product (service or work) may be hazardous and may inflict damage to life, health, environment and property of consumers, the authorized body shall undertake measures to prevent the damage and bring the information about such a hazardous product (service or work) to consumers.

### **Article 19. State Protection of Rights of Businesses during Inspections**

The protection of rights of the businesses during the performance of the inspection is carried out in an administrative and/or court proceeding.

Actions of the officers conducting an inspection and the decision of the authorized body can be appealed with a superior authorized body, a body of the prosecutor's office or directly in court in a manner established by the legislation of Kyrgyz Republic.

Businesses' appealing the decision of the authorized body on levying of fines shall suspend the assessment of the fines in question until the appeal is resolved in essence.

### **Article 20. Authorized Bodies' Responsibility during Inspections**

1. The authorized body and its officers in case they fail to duly exercise their functions and duties during an inspection and commit unlawful actions (inaction) shall be held liable pursuant to legislation of the Kyrgyz Republic.

2. Officers of authorized state bodies that committed unlawful actions (inaction) during the inspection of businesses shall not have the right to hold any position in the authorized state bodies for a period of three years after their fault is established in a court proceeding.

3. Findings of the inspection pointing to violations by a business of legislation of the Kyrgyz Republic that are not confirmed in a court proceeding shall be grounds for relieving the officer who conducted that inspection from his/her duties.

4. Authorized state bodies shall within one month notify the business whose rights and legal interests were violated about the measures undertaken with respect to officers responsible for violation of the legislation of the Kyrgyz Republic.

5. Losses incurred by a business including forgone profits resulting from unlawful actions of authorized state bodies or their officers that infringed the rights of businesses and resulting from undue exercise by these authorized state bodies or their officers of duties provided for in the legislation of the Kyrgyz Republic with respect to businesses shall be reimbursed by these officers.

### **Article 21. Public Protection of Rights of Businesses during Inspections**

1. Organizations, regardless of their legal forms, in accordance with the charter-stipulated provisions, shall have the right to protect the rights and legal interests of the businesses pursuant to the present Law.

2. Organizations shall have the right to address the prosecutor's office with motions to issue a protest with respect to normative legal acts of the authorized bodies that contradict the legislation of the Kyrgyz Republic.

3. Organizations shall have the right to appeal to court with a motion to protect rights and legal interests of businesses and to protect an indefinite circle of businesses.

### **Article 22. Final Provisions**



1. The present Law shall enter into force three months after it is officially published.
2. The Government of the Kyrgyz Republic and authorized bodies shall, by the time the present Law enters into effect:
  - bring their normative legal acts into compliance with the present Law;
  - adopt other normative legal acts required to implement the present Law.
3. The Government of the Kyrgyz Republic shall, within six months once the present Law enters into effect, submit to Jogorku Kenesh of the Kyrgyz Republic, in an established manner, draft laws to amend legislative acts of the Kyrgyz Republic pertaining to the adoption of the present Law and submit for Jogorku Kenesh's approval the list of authorized bodies conducting inspections of businesses.

President of the Kyrgyz Republic

Passed by Jogorku Kenesh of the Kyrgyz Republic on March 27. 2007