

ACCOUNTABLE MINING

**CORRUPTION RISKS
IN MINING AWARDS SYSTEM
OF THE KYRGYZ REPUBLIC**

Transparency International's Accountable Mining Programme

Transparency International Kyrgyzstan is one of the 5 new chapters participating in Transparency International's Accountable Mining Programme. The Programme is coordinated by TI Australia. The Accountable Mining Programme complements existing efforts to improve transparency and accountability in extractive industries by focusing specifically on the start of the mining decision chain: the point at which governments grant and award mining permits and licences, negotiate contracts and make agreements.

Research Phase of the Programme (2018-2020) is about understanding the problem by identifying and assessing the corruption risks in the process and practice of awarding mining licences, permits and contracts. This national report presents the main findings from the corruption risk assessment in Kyrgyz Republic.

With an understanding of the nature and causes of corruption risk, national chapters will develop and implement solutions to tackle priority corruption risks in the Advocacy phase of the programme. They will work with key stakeholders from government, the mining industry, civil society and affected communities to improve transparency, accountability and integrity in the decisions about approving mining projects.

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EXECUTIVE SUMMARY

Corruption Risks in Mining Awards System of the Kyrgyz Republic aims to identify and analyse governance risks associated with the process for granting mineral exploration licence in the Kyrgyz Republic.

This assessment is conducted by Transparency International Kyrgyzstan (TI Kyrgyzstan). The assessment adapted the Mining Awards Corruption Risk Assessment (MACRA) tool provided by Transparency International to consider the local circumstances. The study examined the provision of the right to use subsoil on the basis of a license, since this method is used for vast majority of all mining projects in the Kyrgyz Republic.

The desk study comprising literature review and development of process maps served as the baseline. The research is primarily based on semi-structured interviews with 29 representatives of key stakeholders from government institutions, local authorities, mining industries and associations, civil society organizations, research centers and individual experts. This assessment also went through four focus group discussions with various stakeholder groups, to discuss the identified risks depending on their likelihood of occurrence and the expected potential impact. A validation workshop was subsequently held, involving a selection of representatives of industry and the government to ensure that the assessment fits within the local context and reflects the actual situation in mining sector of the Kyrgyz Republic.

The risk assessment identified, that the mining awards process for granting subsoil use license contains 14 risks covering 7 contextual (CF) risk, 3 process-design (PD) risks, 1 process-practice (PP) risk, and 3 mining related approvals, of which 2 Environmental and Social Impact Assessment (ESIA) and 1 community consultations (CC) risks. These risks reflect gaps in the field of disclosure before and after the award of the contract, the evaluation process, and in the field of public consultation, but most of the risks relate to the context in which the awarding of mineral rights is carried out, which indicates the need for full-scale reforms in the country's governance system as a whole.

In order to mitigate these risks, this study recommends the development of a more reliable regulatory framework with the provisions of regulatory acts governing licensing of subsoil use in line with each other and the exclusion of regulatory gaps in them, both in terms of granting the right to use subsoil and in terms of strengthening transparency and accountability requirements.

The risks were presented and discussed with key stakeholders at a validation seminar in December, 2019 at the State Committee for Industry, Energy and Subsoil Use.

INTRODUCTION

MINERALS IN KYRGYZSTAN

The mining industry is an important part of the Kyrgyz Republic's economy, largely due to gold mining. According to the recent report of Extractive Industries Transparency Initiative (EITI) for 2015-2017, the contribution of mining sector to GDP was about 10 percent, to industrial production - more than 50 percent, and to the export more than 40 percent. The industry employs more than 18 thousand people¹.

The State Balance of Mineral Reserves includes about two hundred fully explored deposits of mineral reserves or those in the process of active exploration. These balance reserves practically exhaust the range of minerals of Kyrgyzstan, which are of commercial at present. With a relatively small territory, Kyrgyzstan has a significant mineral resource base for many types of minerals, but special attention is given to reserves of gold, rare and rare-earth metals, as well as non-metallic mineral resources, the development of which can significantly increase the country's GDP and tax revenues to the state budget².

Of greatest interest are numerous gold deposits, which have acquired economic importance as a result of a significant increase in world prices. Today's balance reserves of gold should be considered large for a country with a population of six million. In addition to deposits recorded by the State Balance of Mineral Reserves, there is a significant number of preliminarily estimated deposits, which are a potential provision for reserve growth for almost all types of mineral raw materials. Many of them currently do not meet market requirements in terms of reserves and forecast resources or in the quality of raw materials, but due to the general depletion of reserves in the world they will be in demand in the future. To evaluate them, large investments are needed.

For example, a real increase in gold reserves is possible due to the exploration of insufficiently studied deposits. Prospective resources that are unconventional for Kyrgyzstan: silicon, aluminium raw materials, iron, graphite, etc. deserve attention. For most non-metallic minerals that are used in natural condition or as raw materials for the production of building materials, there is the possibility of an increase in proven reserves in large quantities.

Second in economic importance after gold mining is the coal mining industry. However, due to concerns about environmental pollution and climate change, it is anticipated that Kyrgyzstan will focus on the use of renewable energy sources and reduce coal consumption.

Kyrgyzstan also has significant reserves of high-quality drinking water. Mineral resources, except groundwater, are not replenished, and their rational use is the most important task in any country.

REFORM IN THE SECTOR

The Kyrgyz Republic, in cooperation with the international community, is making significant efforts to further transform and diversify its economy, strengthen environmental protection and ensure the benefits of subsoil use for the population.

In recent years, a number of significant changes have been made in ensuring transparency of the subsoil use sphere³. Thus, electronic interactive maps of the subsoil have been launched, one with an indication of reserves and their detailed location, and the other with an indication of the areas for which licenses for the right to use subsoil have been issued, and an electronic database has been put in place, where applications for mining

¹ <http://www.gkpen.kg/index.php/home1212-6>

² Medium and Long Term Mining Sector Development Strategy of the Kyrgyz Republic. 2014

³ Corruption Prevention in the Education, Extractive and Police Sectors in Eastern Europe and Central Asia. OECD 2017

awards are registered.

The powers to issue subsoil use rights and control functions were divided - now they are carried out by different state bodies. State regulation in the field of subsoil use is carried out by an authorized state body⁴ in the field of subsoil use - the State Committee for Industry, Energy and Subsoil Use (SCIESU)⁵ of the Kyrgyz Republic, which is responsible for the development and implementation of state policy in the field of subsoil use. SCIESU is also responsible for the protection of subsoil and technical safety assessment at subsoil use facilities during the design process. Environmental issues are the responsibility of the State Agency for Environmental Protection and Forestry (SAEPF)⁶ under the Government of the Kyrgyz Republic. Control over the implementation of legislative requirements and other regulatory acts, as well as the obligations arising from the document granting the right to use subsoil, in terms of technical safety and environmental protection, is carried out by the State Inspectorate for Ecological and Technical Safety (SIETS)⁷ under the Government of the Kyrgyz Republic. SCIESU and SAEPF are involved in the process of issuing subsoil use rights, while the SIETS is included in the interaction with subsoil users after they acquire the right to use subsoil.

Instead of the Direct Negotiation Rule, the right to use subsoil on the basis of open access to mineral resources according to the First Filed Application Rule ("first come, first served" principle) was introduced. Coordination with the local authorities of the contribution of mining enterprises to local development was envisaged by providing a Social Package for the affected areas. The tools of financial regulation have been introduced in order to counter speculation in the secondary market of mineral rights.

All these changes are reflected in the new Law On Subsoil (2018)⁸, which is the main legal act regulating relations arising from the use of subsoil between the state and individuals and/or legal entities. It defines the order of state legal regulation, the competence of state

authorities, local state administration and local self-government, the rights and obligations of individuals and legal entities, as well as liability for violation of the law.

In addition to the Law On Subsoil, there are a number of other laws and by-laws that directly and indirectly affect the subsoil use system. There are normative legal acts adopted in accordance with this law regulating specific issues, such as the granting of subsoil use rights or the provision of land for these purposes. Relations associated with the use and protection of land, water bodies, flora and fauna, atmospheric air arising from the use of mineral resources and not regulated by this Law are regulated by the relevant laws of the Kyrgyz Republic. In general, the legislative framework regulating the sphere of subsoil use in the Kyrgyz Republic is quite developed and modern.

Kyrgyzstan also joined the Extractive Industries Transparency Initiative in 2007 and even managed to receive the award for Progress in the Implementation of Beneficiary Ownership Law in 2017⁹. In the same year 2017, the Kyrgyz Republic joined the Open Government Partnership and the National Action Plan adopted in the frame of this partnership contains an obligation to ensure the regular publication of the mining industry relevant data at the license level with the necessary detailed explanations¹⁰.

However, despite the significant efforts being made, in Kyrgyzstan, as in many other countries of the world¹¹, there are acute problems associated with low management efficiency and corruption in this important sector of the country's economy. Issues of corruption in the field of subsoil use are constantly reflected in publications in the press, discussed at government meetings and even were submitted to the Security Council¹².

Deficiencies in the legislation still leave room for ignoring the requirements of transparency, accountability and integrity in the field of licensing of subsoil use and environmental protection, and sometimes do not even contain such requirements. There are also problems

⁴ Due to the frequent change of titles of state bodies in the Kyrgyz Republic, the normative acts of the Kyrgyz Republic usually use such a phrase to avoid the need to amend the normative act in case of a change in the title of the state body. Hereinafter the report uses this term to reflect on the relevant state body.

⁵ GR KR No.401 of July 15, 2016 Regulation on the State Committee for Industry, Energy and Subsoil Use of the Kyrgyz Republic

⁶ GR KR No.123 of February 20, 2012 Regulation on the State Agency for Environmental Protection and Forestry under the Government of the Kyrgyz Republic

⁷ GR KR No. 136 of February 20, 2012 Regulation on the State Inspectorate for Environmental and Technical Safety under the Government of the Kyrgyz Republic

⁸ Law of the Kyrgyz Republic No.49 of May 19, 2018 On Subsoil

⁹ <https://eiti.org/kyrgyz-republic>

¹⁰ <https://www.opengovpartnership.org/members/kyrgyz-republic/>

¹¹ Managing Fraud, Bribery and Corruption Risks in the Mining and Metals Industry. Ernst & Young Global Limited (2015)

¹² On Measures to Ensure Security in the Field of Subsoil Use of the Kyrgyz Republic the decision of Security Council of the Kyrgyz Republic dated 30/01/2019

with the practical implementation of existing legal requirements. For example, compliance with licensing conditions and environmental requirements is practically not monitored¹³.

The legislation does not yet contain requirements for the inclusion of anti-corruption provisions in subsoil use agreements and their application in the activities of mining companies. The corruption whistleblowing is not developed, even despite the adoption of the law on protection of whistleblowers on corruption cases¹⁴ and the legislative guarantee of the remuneration for informing the case.

The interests of local communities, in particular rural women, who are among vulnerable¹⁵ groups, are still very poorly taken into account when conducting consultations with the local population due to the selective participation of representatives of local communities in such consultations. Both men and women are not aware well enough of their rights to participate in such consultations.

In view of the above, TI Kyrgyzstan considers it timely to conduct this study, which may help to identify the priority issues of concern in the sphere of mining awards and thereby assist in better planning of work to improve management in the sphere of subsoil use.

PURPOSE OF THE RISK ASSESSMENT

This corruption risk assessment was conducted as part of Transparency International's Accountable Mining Programme. The aim of this study is to identify the systemic, regulatory and institutional vulnerabilities to corruption in awarding mining and mining-related licences, permits and contracts and to assess the specific corruption risks created by these vulnerabilities. This report presents the main findings from the study and the results of the corruption risk assessment.

SCOPE

In order to develop mineral resources, the subsoil in the Kyrgyz Republic is provided for use for the following purposes:

- geological prospecting;

- exploration work;
- development of mineral deposits, including the withdrawal and use of groundwater;

The right to use subsoil in the Kyrgyz Republic arises on the basis of a license, state registration, concession agreement or production sharing agreement¹⁶.

The regulatory framework for subsoil use is quite developed in the Kyrgyz Republic; it is based on fairly modern and high-quality legislation and is carried out by state bodies with appropriate functions.

The Kyrgyz Republic uses state registration - a decentralized award mechanism for artisanal mining and extraction rights for sand and gravel materials and loams for construction purposes in areas not related to tender and auction objects. State registration is the only type of subsoil use right that is issued by local authorities. These types of concessions are not included in the scope of this study.

The procedure for granting subsoil use rights on the basis of concession agreements and production sharing agreements is determined by separate laws of the Kyrgyz Republic. The use of such methods of granting the right to use subsoil is very limited in the Kyrgyz Republic and, therefore, is also not considered in this study.

The vast majority of all mining projects in the Kyrgyz Republic operate on a licensing basis, which is why the following chapters of this study will discuss ways of allocating licenses, obligations imposed on license holders, and administrative framework challenges.

All rights and obligations are the same for any license holder, regardless of the extracted resource, type of organization or source of investment. Licenses for the right to use subsoil may be granted through tenders, auctions, and under the First Filed Application rule.

Any license includes two licensing agreements: for Design of Works and for Conduct of Works. After obtaining a License Agreement for the Design of Works, the licensee must develop and gain an approval for a Technical Project for the development of the field, which includes assessments of technical safety, environmental impact and subsoil safety and obtain the right to use the land. Based on the above documents, a

¹³ Interview I1

¹⁴ Law of the Kyrgyz Republic No. 19 of January 28, 2019 On the Protection of Persons Reporting Corruption Offenses

¹⁵ Beijing + 25: National-Level Review of the Kyrgyz Republic https://www.unece.org/fileadmin/DAM/Gender/Kgz_Beijing_25_Review_English_Final.pdf

¹⁶ Law of the Kyrgyz Republic No.49 of May 19, 2018 On Subsoil, Chapter 3

License Agreement for Conduct of Works is issued, only after obtaining of which it is possible to start work under the license.

In addition, although the Law on Subsoil requires the development and provision of a social package for affected areas only for the tender fields of mineral deposits, in practice, local communities present such requirements to all users of the subsoil.

In this regard, the study examined the issues of assessments of technical safety, environmental impact and subsoil safety, as well as obtaining the right to use the land and developing a social package.

METHODOLOGY

MACRA TOOL

The analysis in this report uses the research method contained in the Mining Awards Corruption Risk Assessment (MACRA) Tool (Nest 2016). The MACRA Tool was created by an independent expert engaged by Transparency International to provide a consistent, clear and robust methodology for identifying and assessing corruption risks in the participating countries in the Accountable Mining Programme.

The first part of the risk assessment involves data collection and analysis. The MACRA Tool guides users to create a map of the awards process as set out in law, official guidelines and policy. It also directs users to collect information about the practices in implementing the process and about relevant contextual factors. Users then analyse these three aspects of mining awards – the process, practice and context – to identify vulnerabilities to corruption. Vulnerabilities are systemic, regulatory, institutional or other weaknesses that create risks of corruption, that is they create opportunities for corrupt conduct to occur or to pass undetected and thereby undermine the lawful, compliant and ethical awarding of licences, permits and contracts. The second part of the tool instructs users to identify and assess the specific corruption risks created by these vulnerabilities. The tool contains a list of 80 common risks relating to five different risk factor categories – corruption risks originating in: 1. the process design (PD), 2. process practice (PP), 3. contextual factors (CF), 4. environmental and social impact assessment (ESIA), and 5. community consultation (CC).

Users can adopt or modify the common risks, or create a new risk that better fits their circumstances. Users then assess each corruption risk by analysing evidence of the likelihood of it occurring and of its potential impact. The final stage is risk prioritisation. The chapter's priority risks are those corruption risks the chapter will seek to mitigate or manage. The results of the risk assessment are the primary input into this determination, but other matters such as the national chapter's capacity to take action, the resources required and potential for stakeholder collaboration are also important considerations.

The MACRA Tool builds on Transparency International's experience with corruption risk assessment in other fields such as National Integrity Systems and other mining and extractive sector instruments, indices and resources. Experts from multilateral institutions, major international non-governmental organisations and industry bodies provided valuable feedback in the development of the MACRA Tool.

METHODS

The MACRA tool guides users in creating a map of the licensing process, as required by law, official guidelines, and policies. It also instructs users to collect information on practices in implementing the awards process and on relevant contextual factors. Users then analyze these three aspects of licensing — the process, the practice, and the context — to identify vulnerabilities to corruption.

In the Kyrgyz Republic the first phase of the study was devoted to the adaptation of the general risk assessment framework to Kyrgyz context and the development of detailed step-by-step models of various schemes for issuing licenses in accordance with relevant law.

At the second phase, desk studies and interviews were conducted to identify vulnerabilities, defined as systemic, regulatory, and institutional or other weaknesses of the process that lead to corruption risks. These risks reflect opportunities for corrupt behavior that can occur or pass undetected and thereby undermine

the legal and ethical award of licenses. In order to find out the opinion of interested parties in areas where mining companies operate, part of the interviews was conducted in the regions of Jalalabad, Osh, Naryn and Issyk-Kul provinces where mining is carried out.

A total of 23 semi-structured interviews were conducted with 29 individuals, of which 3 were from civil society organizations, 6 from research centers or individual experts, 9 from government institutions, 3 from local authorities and 8 from extractive industries and associations.

Making information on respondents publicly available could have affected their professional relations and further careers¹⁷ and some respondents, particularly from public bodies and businesses, refused to be mentioned by name or position. Therefore, it was decided to refrain from providing more detailed information on interviewees or their work. When quoting interviewees, whether the respondent is from a Government Institution (G) or representative of industry/association (A) is only revealed.

In coding applicants, the acronym for a particular stakeholder group was used together with an assigned number. For example: Representatives of Government institutions were coded G and each applicant assigned a number, like G1, G2,...Gn. The same approach is then repeated for the other groups.

	Total	Female	Male
Civil society organizations	3	2	1
Research centers/Individual experts	6	2	4
Government institutions	9	3	6
Extractive industries/Associations	8	1	7
Local authorities	3	-	3
Total	29	8	21

Finally, vulnerabilities were assessed in accordance with the risk classification contained in the MACRA tool. A total of nineteen vulnerabilities were revealed, which resulted in fourteen different corruption risks identified by MACRA methodology.

The MACRA Tool contains a total of 81 common risks related to the three different categories of risk factors in licensing: the context [contextual factors (the CF)], the process [the corruption risks that arise in the process design (PD) and in the process practice (PP)] and mining related approvals [Environmental and Social Impact Assessment (ESIA) and community consultations (CC)]. Corruption risks identified in this assessment were encoded in accordance with this classification.

The identified vulnerabilities and the resulting risks were discussed during four events, focus group discussions with various stakeholder groups: businesses, public servants and local communities one in capital city and three in regions. The purpose of these exercises was to discuss the identified risks depending on their likelihood of occurrence and the expected potential impact.

For risk prioritization, in accordance with the methodology, each risk was rated on a scale of 1 to 5 in terms of likelihood and impact. For likelihood, "1" is categorised as most unlikely and "5" is categorised as most likely that governance risk occurs:

Likelihood Score:	1	2	3	4	5
Meaning:	Most unlikely	Unlikely	Possible	Likely	Most likely

For impact, it is measured on a scale of "1" as insignificant and "5" as catastrophic:

Impact Score:	1	2	3	4	5
Meaning:	Insignificant	Minor	Moderate	Major	Catastrophic

¹⁷ Wiles, Rose; Charles, Vikki; Crow, Graham & Heath, Sue. Researching researchers: Lessons for research ethics. *Qualitative Research*, 6(3) (2006), 283-299.

The total risk score of each of the risks calculated by multiplying the score for likelihood and impact (likelihood x impact = total score) and indicates the significance of risk, and considers both likelihood and impact scoring¹⁸.

A validation workshop was subsequently held, including a selection of representatives of industry (3) and the government (5) to review preliminary research project findings.

Based on this report in the March 2020 the event on the prioritization of risks with key sector stakeholders will be held, to determine the corruption risks on which TI-Kyrgyzstan will work further at the advocacy phase of the project. Results of assessment of the risks are an initial contribution to this work, but other factors such as the ability of a national chapter to take action, the resources required and the potential for co-operation with stakeholders, are also important factors.

¹⁸ MACRA Tool p.51

THE AWARDS PROCESS, PRACTICE AND CONTEXT

LICENSE GRANTING MECHANISMS

As in most countries, the subsoil of the Kyrgyz Republic belongs to the people. The state manages resources and grants the rights to geological prospecting, exploration and exploitation to private companies, sometimes in partnership with state-owned mining companies or providing a share in the project to the state. The Kyrgyz Republic relies mainly on a licensing regime for granting rights to search, explore and extract minerals. In the regime of licensing, a well-developed legal framework regulates the rights and obligations of the state and private entity. All major obligations associated with the project are clearly defined in the laws and regulations and therefore apply uniformly to all companies.

The principle of equality before the law increases transparency and ensures a stable investment climate in which all license holders operate within the same legal framework. Consistency in the application of laws and regulations greatly simplifies enforcement and monitoring. A private entity acquires the right to search, explore or extract within the time period established in accordance with the law, however, legally, the subsoil remains belonging to the people.

Depending on the types of works, licenses are issued for the following terms: for geological prospecting - up to 3 years, followed by renewal up to 2 years, for exploration - up to 4 years, followed by renewal up to 3 years and for development of mineral deposits - up to 20 years with subsequent extension until the depletion of mineral reserves, and for the selection and use of groundwater - up to 10 years with the possibility of subsequent extension.

Types of work	The timing	Renewal
Geological prospecting	up to 3 years	1 time to 2 years
Exploration	up to 4 years	1 time to 3 years
Development	up to 20 years	until depletion
Groundwater withdrawal and use	up to 10 years	up to 10 years

Obtaining a license entails the issuance of a License Agreement for the Design of Works, in accordance with which it is necessary to draw up and submit to the licensor a Technical Project with positive expert opinions on industrial, environmental safety and subsoil protection, as well as a copy of the consent and / or certificate for the temporary use of the land . After all the conditions of the License Agreement for the Design of Works are fulfilled, the licensor issues the following License Agreement for the Conduct of Works in accordance with the Technical Project. Work under the license is permitted only if these two license agreements are in place.

There are three mechanisms that are used to distribute mining licenses in the Kyrgyz Republic, which will be discussed in this section.

FIRST FILED APPLICATION RULE

The First Filed Application (better known as a first-come, first-served) rule is a common method of allocating licenses worldwide. In accordance with this mechanism, a license is granted to the first applicant for a designated area, which is available for granting rights to work with minerals, and which meets the regulatory requirements of the government. This method is commonly used for fields with limited geological information and therefore has a higher development risk. Although this system is simple and allows to distribute a larger

number of licenses than in other modes, such as auctions or tenders for granting rights to work with minerals, it requires the government to establish the right incentives or obligations to prevent long-term leases and attraction of unqualified investors. The system must be protected from external interference, it must be simple and rapidly developing in order to stimulate investment.

To obtain the right to use subsoil under the rule of First Filed Application, it is necessary to submit an application to the authorized state body for subsoil use. An application is submitted in the state (Kyrgyz) or official (Russian) language, on a special form in the shape approved by the authorized state body for subsoil use¹⁹.

The application must be accompanied by:

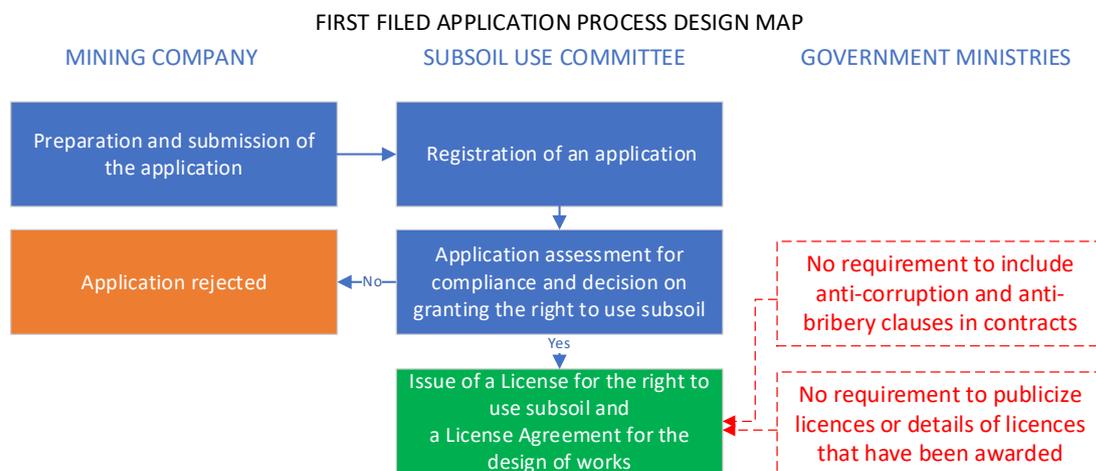
- certified copy of the state registration of the legal entity or individual entrepreneur;
- a document certifying the right to represent the applicant: a copy of the decision on the appointment of the head of the legal entity certified by the seal of the applicant or another document on the establishment of a collegial or sole executive body; or a proxy to represent the interests of the applicant in the event of filing an application for a license by a representative;
- the consent of the authorized state body for water resources to obtain the rights to use subsoil and to conduct work in the riverbeds or on the banks of rivers and other basins of water;
- the consent of the authorized state body for emergency situations to obtain rights to use subsoil and to conduct work in the riverbeds or on the banks of rivers and other basins of water;
- a certificate from the tax service about the absence of tax debt of the applicant;
- information about the beneficiaries of the company, with the exception of the companies that have been listed on the stock exchanges (in the case of listing of the company on the stock exchanges, an official supporting document is submitted).

Applications are accepted by the authorized state body for subsoil use and recorded in the Information System Subsoil with the assignment of a serial number, and are duplicated in the journal of applications with the date and time of their reception.

The authorized state body on subsoil use shall make a decision on granting or refusal to grant the right to use the subsoil according to the First Filed Application rule in the form of an order within 10 working days of receipt of an application. On the basis of the decision to grant the right to use subsoil under the First Filed Application rule, a license and a license agreement are drawn up.

Applicants who have been granted or denied the right to use subsoil under the First Filed Application rule shall receive a letter within 10 working days — an extract from the decision.

In accordance with the new Law on Subsoil adopted in 2018, all licenses and license agreements for the right to use subsoil, except those granted under the First Filed Application rule, must be posted on the website of the authorized state body for subsoil use. Information, including the name of the licensee, the geographical



¹⁹ GR KR of November 29, 2018 Regulation on the Procedure for Licensing Subsoil Use

coordinates of the license area, the date of application for the license, the date of issue of the license, the validity and type of license, information about the beneficiaries, as well as the type of mineral should be published on the website of the authorized state body for subsoil use and be updated within 10 days from the date of issuing a new license or making changes to the current license.

AUCTION

The Kyrgyz Republic uses public auctions to allocate licenses for the exploration and development of mineral resources for subsoil fields, the Register of which is approved by the authorized state body for subsoil use. The inclusion in the Register of auction fields of mineral resources is carried out in accordance with the criteria set forth by the Government Regulation²⁰ and reflected below:

Type of mineral	Mineral subspecies	Type of work	Forecast Resources	Tested and recorded by the State balance of mineral reserves
Coal		Development		Less than 30 million tons
		Exploration	Category P1	
Gold	vein gold	Development		Less than 10 tons
	placer gold	Development		All
	rest	Exploration	Category P1	
Metals:		Development		Small reserves
		Exploration	Category P1	
Non-metallic raw materials		Development		All
		Exploration	Category P1	
Hydrocarbon feed		Development		Small reserves
		Exploration	Category P1	

The basis for the auction is the decision taken by the organizer on conducting of the auction, which provides for the terms of the subsoil object for auction. The auction conditions, depending on the type of use of the subsoil, the degree of exploration of the subsoil object and other factors, contain: general information about the subsoil object; geological characteristics of the subsoil object; basic requirements for using the subsoil object; starting price of the auction object; the size of the fee for participation in the auction and the guarantee fee, as well as payment details for their payment and the auction step.

An announcement of an upcoming auction containing information about the object and data for submitting documents must be published in the media and on the auction organizer's website no later than 45 calendar days before the date of the auction. In addition to the announcement, the conditions of the auction and the basic requirements are posted on the auction organizer's website.

To participate in the auction, the applicant personally or through a proxy at least 3 working days before the date of the auction submits an auction application to the authorized state body for subsoil use with the necessary documents:

- a certified copy of the state registration of a legal entity or individual entrepreneur;
- a document certifying the right to represent the applicant: a copy of the decision on the appointment of the head of the legal entity certified by the seal of the applicant or another document on the establishment of a collegial or sole executive body; or a proxy to represent the interests of the applicant in the event of filing an application for a license by a representative;
- a document confirming the payment of the guarantee fee;
- a document confirming payment of the fee for participation in the auction.
- a tax service certificate on the absence of tax debt

The auction is carried out by an auction commission of at least 5 people, created by order of the auction

²⁰ GR KR dated November 29, 2018 № 561 On Issues of Licensing the Right to Use Subsoil

organizer.

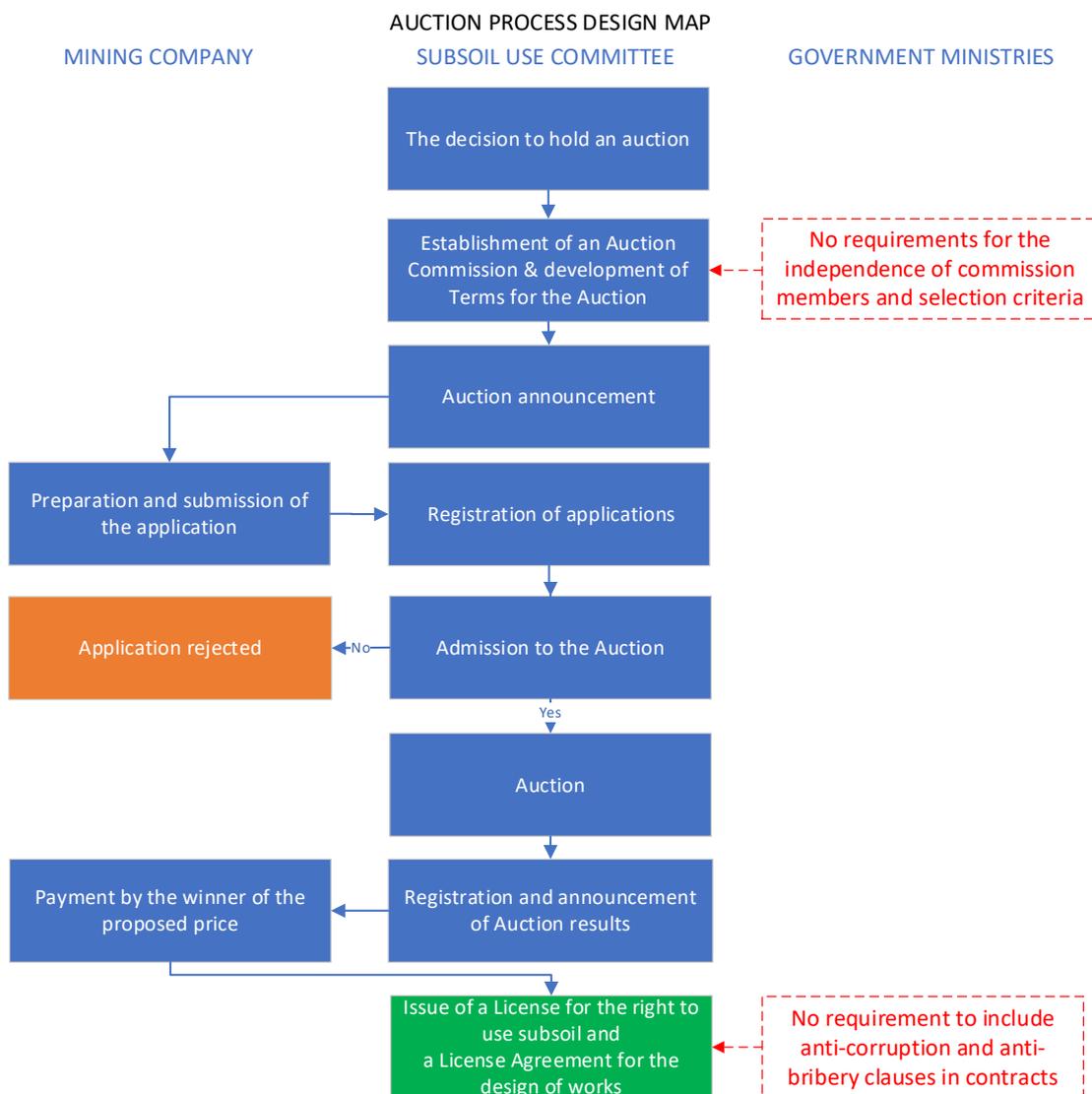
The auction commission is composed of: representatives of the auction organizer; representatives of interested ministries and departments; a representative of the local state administration of the administrative-territorial unit in whose territory the object of the right to use subsoil is located; Head of the executive body of local self-government of the administrative-territorial unit in whose territory the object of the right to use subsoil is located.

On the day of the auction, but before the registration of its participants, the auction commission reviews the submitted auction bids in order to verify compliance with the order and conditions of the auction (for each subsoil object if several objects are put up for auction).

Registration of bidders (or their representatives) of the auction is carried out in the registration sheet of bidders in the prescribed form and they are given plates with assigned registration numbers. Registration of participants ends ten minutes before the auction.

The auction is held in an open form. The results of the auction are recorded in the protocol on the results of the auction, which is the basis for issuing a license to the winner of the auction. To obtain a license, the winner must pay the price he has proposed for the right to use subsoil within five banking days after signing the auction protocol. A license for the right to use subsoil is issued by the authorized state body for subsoil use within 5 business days from the receipt of documents on payment of the full cost of the subsoil object.

The auction organizer must publish the information on the issuance of a license for the right to use the subsoil of the object to the winner of the auction within a month.



COMPETITIVE RESOURCE TENDER

In the Kyrgyz Republic, tenders are announced and held for each subsoil field of national importance by the decision of the Government. The Register of subsoil fields of national importance to be put up for tender is approved by the Government of the Kyrgyz Republic²¹ on the proposal of the authorized state body for subsoil use in accordance with the criteria set forth by Government Regulation²² and reflected below.

Type of mineral	Subspecies of minerals	Type of work	Tested and recorded by the State balance of mineral reserves
Coal		Development	30 million tons and more than 30 million tons
Gold		Development	more than 10 tons
Metals (*)		Development	Large and medium deposits
Non-metallic raw materials	Facing stones, limestone for cement production, gypsum, wollastonite, quartzite	Development	Large deposits
Hydrocarbon feed		Development	Large and medium deposits

To conduct the tender, the Government of the Kyrgyz Republic shall form a tender commission consisting of at least 7 members. The chairman of the commission is appointed by the Government of the Kyrgyz Republic, and the secretary of the commission, who does not have the right to vote, is appointed by the authorized state body for subsoil use. The commission includes:

- 1) representatives of parliamentary factions of the Jogorku Kenesh of the Kyrgyz Republic. Each faction defines one representative;
- 2) representatives of state executive bodies and state institutions determined by the Government of the Kyrgyz Republic;
- 3) the heads of the representative and executive bodies of local self-government of the administrative-territorial unit in whose territory the subsoil use facility is located or their deputies.

The decision of the tender commission is made by an open vote by a majority of votes of the members of the tender commission present at the meeting. In case of an equality of votes, the vote of the chairman of the meeting of the tender commission shall be decisive. Members of the tender commission who disagree with the decision of the tender commission have the right to express in writing their opinion, which must be attached to the minutes of the meeting of the tender commission.

The conditions and procedure for the tender, the criteria for determining the winner are developed by the tender commission and approved by the Government of the Kyrgyz Republic.

The tender is held in two stages. At the first stage, the selection of documents conducted. At the second stage, programs, proposals, economic and financial abilities of the organization and other conditions determined by the tender commission are considered.

To take part in the tender, a tender application is submitted in the form determined by the working body of the tender commission. The tender application must contain information about the applicant, the place and type of use of the subsoil. The following documents are attached to the tender application:

- copies of constituent documents and certificates of state registration of a legal entity together with copies of a document on the appointment of the executive body of the organization;
- for a foreign legal entity - a legalized extract from the state register or another document certifying that it is an active legal entity under the laws of its country. Constituent and other documents submitted by a foreign

²¹ GR KR dated July 3, 2019 No. 339 On Approval of the Register of Subsoil Fields of National Importance

²² GR KR dated November 29, 2018 № 561 On Issues of Licensing the Right to Use Subsoil

organization must be apostilled and their notarized translation in the state and/or official languages must be submitted.

- for an individual - a copy of the passport and certificate of registration as an individual entrepreneur; for a foreign individual - a copy of the passport and a notarized translation thereof into the state or official language;
- proxy for the representative, drawn up in accordance with the requirements of the legislation of the Kyrgyz Republic, if the person acts through his representative;
- a document confirming payment of the guarantee fee and fee for participation in the tender;
- information about the purchase of a package of geological information;
- certificate of the tax service about the absence of tax debt to the budget.

The tender application and documents attached to it shall be submitted to the working body at least one working day before the date of the tender, in two copies, by special delivery.

Based on the results of the consideration of documents, the tender commission makes a decision on admission or refusal of admission to the second stage of the competition. The decision of the tender commission is drawn up in a protocol and signed by the members of the tender commission present at the meeting. Participants of the tender are notified of decisions made within 3 business days.

To participate in the second stage of the tender, the following documents shall be submitted to the tender committee in a sealed envelope, within the time period established by the tender committee:

- a field development program with integrated technical and economic calculations for capital investments, operational costs and project profitability;
- exploration program;
- confirmation of the financial ability to conduct exploration and mining operations;
- a proposal on the deadline for putting into operation of the enterprise after obtaining a license for the right to use subsoil with the aim of developing mineral deposits;
- a proposal on the use of modern technologies for exploration, production and processing of minerals at the tender site;
- a proposal on the application of a set of measures to ensure industrial and environmental safety, protection of mineral resources and the rational use of minerals;
- a proposal on a method for the restoration of disturbed lands;
- a proposal (with the participation of foreign legal entities and individuals in the tender) on the ratio of attracted domestic specialists and workers of the total number of employees;
- a social package in accordance with the Law of the Kyrgyz Republic «On Subsoil»;
- bidding on the right to use subsoil.

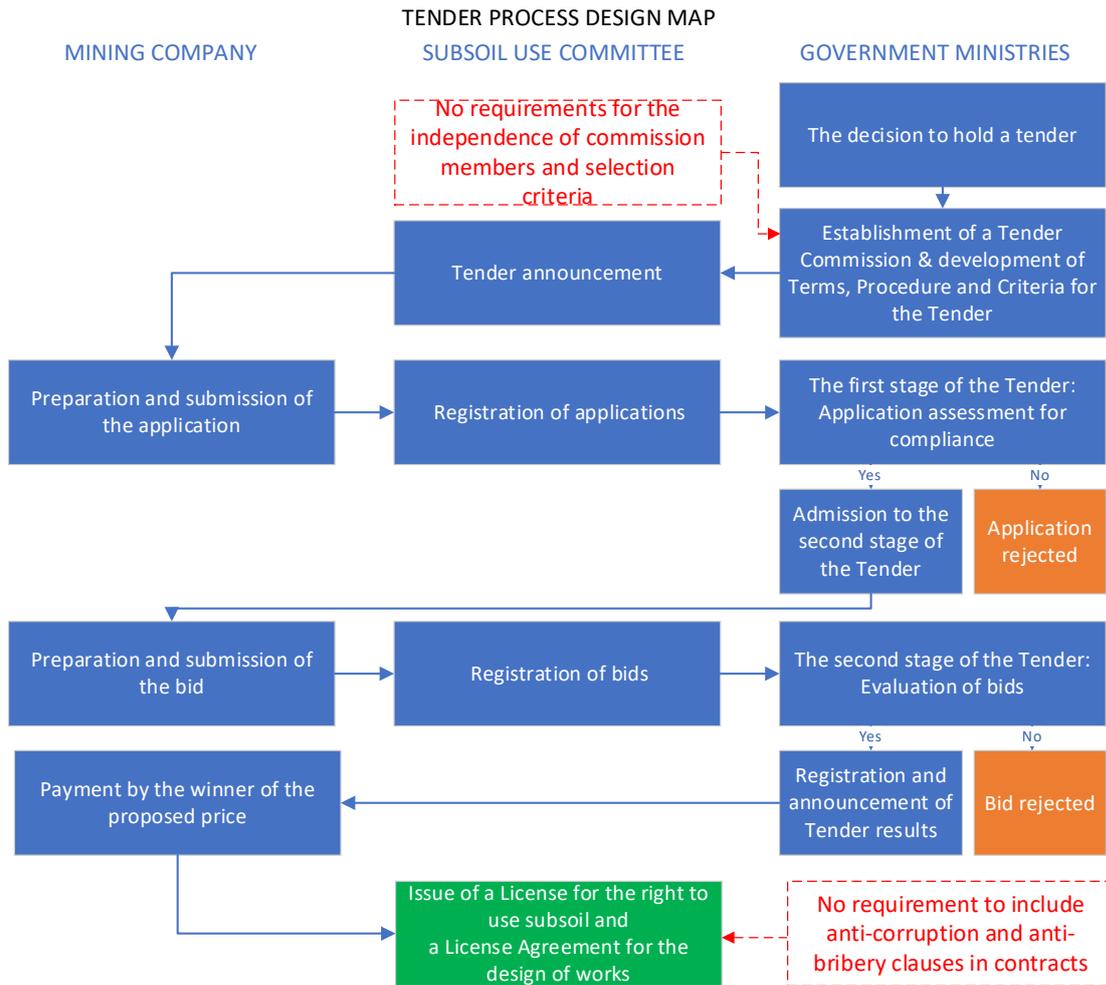
The tender commission at its meeting opens the sealed envelopes. Applicants or their trusted representatives, representatives of the public and the media can attend all meetings of the tender committee, as well as at the opening of sealed envelopes.

Tender applications and attached materials are evaluated by the tender commission on a point system. The procedure for evaluating materials on a point system is determined by the tender commission. The decision to recognize the winner of the tender in accordance with its terms is made by the tender commission based on the results of the points scored. The decision of the tender commission is drawn up in a protocol that is signed by the members of the tender commission present at the meeting.

The fee for granting the right to use the subsoil of the tender object is subject to transfer to the republican budget income within 5 banking days. The amount of the fee for the provision of the right to use subsoil is determined as the difference between the total price for the right to use the subsoil of the tender object, the amount of the bonus and the cost of a package of geological information about the subsoil.

The guarantee contribution made by the winner of the tender shall be counted against his payment for the right to use the subsoil object. The guarantee fee paid for participation in the tender shall be returned to all

applicants and bidders who have not become winners of the tender, with the exception of cases established by the terms of the tender.



PRACTICE AND VULNERABILITIES

In accordance with the new Law On Subsoil adopted in 2018, all licenses and license agreements for the right to use subsoil, except those granted under the Rule of the First Filed Application, must be posted on the website of the authorized state body on subsoil use. Information, including the name of the licensee, the geographical coordinates of the license area, the date of application for the license, the date of issue of the license, the validity and type of license, information about the beneficiaries, as well as the type of mineral should be published on the website of the authorized state body for subsoil use and be updated within 10 days from the date of issuing a new license or making changes to the current license²³.

The management of the authorized body also stated that despite the absence of such a requirement in the law, the licenses granted under the Rule of the First Filed Application are also regularly published on the website of the body.

Vulnerability 1: No publication of licenses or license agreements.

The Internet site contains the following data: number, date of issue and license validity period, name, contact, registration and tax data of the subsoil user, as well as name, location, coordinates, type of mineral, type of subsoil use and size of the object’s area, and in some cases, the number and duration of the License Agreement. However, despite the requirement of the law, licenses and license agreements are not published there²⁴. In this regard, access to data on social and environmental obligations, the work program is limited.

²³ Law of the Kyrgyz Republic No. 49 of May 19, 2018 «On Subsoil» Article 41

²⁴ <http://open.gkpen.kg/Licenses/Licenses/LicensesList?isLicense=True>

Issue of a License for the right to use subsoil and a License Agreement for the design of works

Licences or details of licences that have been awarded are not always public

Vulnerability 2: Data on licenses or license agreements is not disaggregated by the method of licensing

Opportunities for analyzing data on licensing are also limited due to the lack of data disaggregation by the method of licensing.

Номер лицензии/ заявки, дата выдачи, срок действия	Название объекта	Недропользователь	ИНН/ОКПО	Месторасположение объекта, область, район	Номер и срок действия ЛС	Вид полезного ископаемого	Вид недропользования	Полезное ископаемое	Размер площади	Контактные данные недропользователя	ГПФ	Открытый бюджет	Координаты
6485СР от 2020-02-25 до 2024-01-25	Ограниченный участок "Зал"	ОсОО "Толубай"	01410201410022 / 20815130	Лейлекский р-он, айыл аймак временно не определен		Уголь	Разведка	Бурий уголь	16.39 га	(0777029002, Саымбаев А (по доверенности), Укитов И (Директор))		Открытый бюджет Информация о недропользователе	Открыть координаты
6487СР от 2020-02-25 до 2024-01-25	площадь проветривания угля "Чаты"	ОсОО "Бирис-Кен"	01408201910306 / 29342184	Ат-Башинский р-он, айыл аймак временно не определен		Уголь	Разведка	Каменный уголь	5977.60 га	185161-3308-000 (, Кутубаев ТТ (по доверенности))		Открытый бюджет Информация о недропользователе	Открыть координаты
6486СР от 2020-02-25 до 2024-01-25	Площадь Семиз	ОсОО "Никитик Береке"	02012201910049 / 30585411	Узенский р-он, айыл аймак временно не определен		Уголь	Разведка	Каменный уголь	2324.83 га	187988-3310-000 (, Кулжигитова УС (по доверенности))		Открытый бюджет Информация о недропользователе	Открыть координаты
6489СР от 2020-02-25	участок "Каччыгай"	ОсОО "НурЗамЭко"	00511201910031 / 30582423	Узенский р-он, айыл аймак		Уголь	Разведка	Каменный уголь	273.15 га	186974-3310-000 (, Сооромбаев АО (по доверенности))		Открытый бюджет Информация о	Открыть координаты

In general, the resource malfunctions, restricting access to particular pages, for example, during visits of the web-site by the research team, there was accessible only the first sheet in the Applications tab²⁵, the same situation was observed with the Licenses tab earlier, but at the moment mostly sheets are accessible, although the problem has not been completely resolved - some sheets are still unopenable.

Corresponding corruption risk: Risk 1 (PD19). What is the risk that the licences or details of licences etc. that have been awarded will not be publicly available?

Vulnerability 3: No independent members in Tender or Auction commissions required.

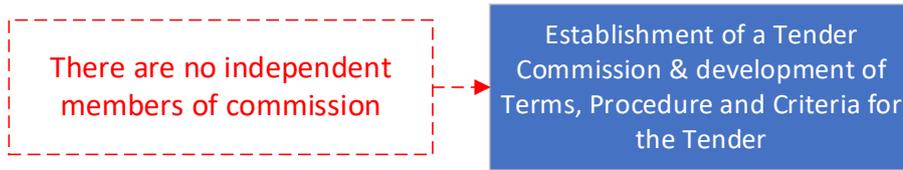
As indicated above, the formation of tender and auction commissions is carried out by the government and the authorized body, respectively, and the procedure does not involve the inclusion of independent members in such commissions. Only representatives of the state, such as deputies of parliament, employees of state bodies or institutions, as well as representatives of local governments, can be members of tender and auction commissions²⁶.

Vulnerability 4: No qualification requirements for members of Tender or Auction commissions

The law also does not provide for the presentation of any qualification requirements to commission members. Although the meetings of the tender and auction commissions are open to the public and the media, the law does not provide for the appointment of competent independent experts to participate in the tender and auction commissions to reduce corrupt interference in decisions.

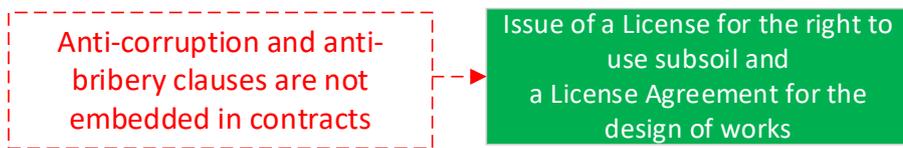
²⁵ <http://open.gkpen.kg/Licenses/Licenses/LicensesList?isLicense=False&isForest=False&page=2>

²⁶ Law of the Kyrgyz Republic No. 49 of May 19, 2018 On Subsoil Articles 23 and 24



Corresponding corruption risk: Risk 2 (PD7). When tender assessment panels are used in the awards process, what is the risk that people appointed to the panel are not independent, e.g., because they have been carefully chosen by the government to create a specific desired outcome?

Vulnerability 5: No requirements to include anti-corruption and anti-bribery provisions in the license agreement. The legislation also does not contain requirements to include anti-corruption and bribery provisions in license agreements, which, although they do not guarantee that corruption will never occur, their inclusion may be a deterrent than general anti-corruption laws. This signals that the government is focused on this problem in the mining industry, and this may simplify the termination of the agreement or the application of fines²⁷.



Corresponding corruption risk: Risk 3 (PD24). What is the risk that anti-corruption and anti-bribery clauses will not be included in mining contracts?

OBLIGATIONS RELATED TO OBTAINING A LICENSE

In accordance with the requirements of Kyrgyz law, after obtaining a license with a License Agreement for the design of works, the licensee must submit a Technical Project with positive expert opinions on industrial, environmental safety and mineral protection, as well as a copy of the consent and/or certificate for the temporary use of the relevant land plot.

After fulfilling all the conditions of the License Agreement for the design of works, the authorized state body in the field of subsoil use issues the following License Agreement for works in accordance with the technical project. License Agreements for the design of works and for the implementation of works in accordance with the Technical Project are an integral part of the license.

Technical Projects for the relevant work are subject to examination for compliance with the requirements of industrial, environmental safety and subsoil protection. Projects for the selection and use of groundwater are subject to examination for compliance with environmental safety requirements. The expertise of Technical Projects is carried out by authorized state bodies or independent experts. A subsoil user, instead of a state expert examination, has the right to apply for an independent expert examination of his technical project in terms of industrial safety and mineral resources protection, but only if the work is not associated with a violation of the integrity of the earth's surface and its subsoil²⁸.

Authorized state bodies carrying out examinations are required to ensure that all foreseen examinations are carried out within 3 months for subsoil objects of national importance and within one month for all other subsoil objects. Work without a Technical Project that has received all the necessary positive expert opinions and without a License Agreement is prohibited.

ENVIRONMENTAL IMPACT ASSESSMENT

The Kyrgyz environmental assessment system requires a positive conclusion from the state environmental

²⁷ MACRA Tool, p.78

²⁸ Law No. 151 of May 8, 2009 General technical regulation on ensuring environmental safety in the Kyrgyz Republic Art.15

review of Technical Projects for all types of mining activities. The state environmental review is carried out by the State Agency for Environmental Protection and Forestry on the basis of the environmental impact assessment (EIA) report submitted as part of the Technical Project. The EIA report is prepared by the licensee at his own expense.

Environmental requirements are indicated in the following regulations:

- The Law of the Kyrgyz Republic General Technical Regulations for Ensuring Environmental Safety in the Kyrgyz Republic dated May 8, 2009;
- Law of the Kyrgyz Republic “On Environmental Expertise” of June 16, 1999;
- Forest Code of the Kyrgyz Republic of July 8, 1999;
- Water Code of the Kyrgyz Republic of January 12, 2005;
- The Law of the Kyrgyz Republic On Production and Consumption Wastes of November 13, 2001, etc.

The EIA report, among other things, should include measures to reduce, minimize and/or compensate for the environmental impact, action plans for the prevention and elimination of the consequences of natural disasters, as well as a program of local environmental monitoring within one year after the start of activities. The EIA documentation is approved by the initiator of the project and submitted as part of the project documentation to the state environmental review. Before submission of the EIA reports to the state environmental review, companies should conduct public consultations with the population living in the areas of the planned works.

INDUSTRIAL SAFETY REQUIREMENTS

In accordance with the Law of the Kyrgyz Republic On Industrial Safety of Hazardous Production Facilities, objects where:

- mining, mineral processing, and underground work are underway;
- hazardous equipment and mechanisms are used,
- obtained, formed, processed, used, stored, transported, destroyed, flammable, combustible, oxidizing, explosive, toxic and radioactive substances are sold,
- landfills of mining and metallurgical production containing substances hazardous to human life and the environment are being buried

relate to hazardous production facilities.

Industrial safety is an area in which well-established standards and norms operate, and its provision is possible only if all the characteristics of the facility undergo a special examination.

Industrial safety requirements are indicated in the following regulations:

- Law of the Kyrgyz Republic On Industrial Safety of Hazardous Production Facilities
- Law of the Kyrgyz Republic On the Basics of Technical Regulation in the Kyrgyz Republic
- Law of the Kyrgyz Republic On Industrial Explosives
- Law of the Kyrgyz Republic On Coal

And other rules, norms, instructions in the field of security in the controlled industry, according to the list of regulatory documents in force in the Kyrgyz Republic.

The examination determines the extent to which the test object meets these requirements. The following are subject to industrial safety expertise:

- project documentation for the construction, expansion, reconstruction, technical re-equipment, conservation and liquidation of a hazardous production facility;
- technical devices used at a hazardous production facility;
- buildings and structures at a hazardous production facility;
- industrial safety declaration and other documents related to the operation of a hazardous production

facility.

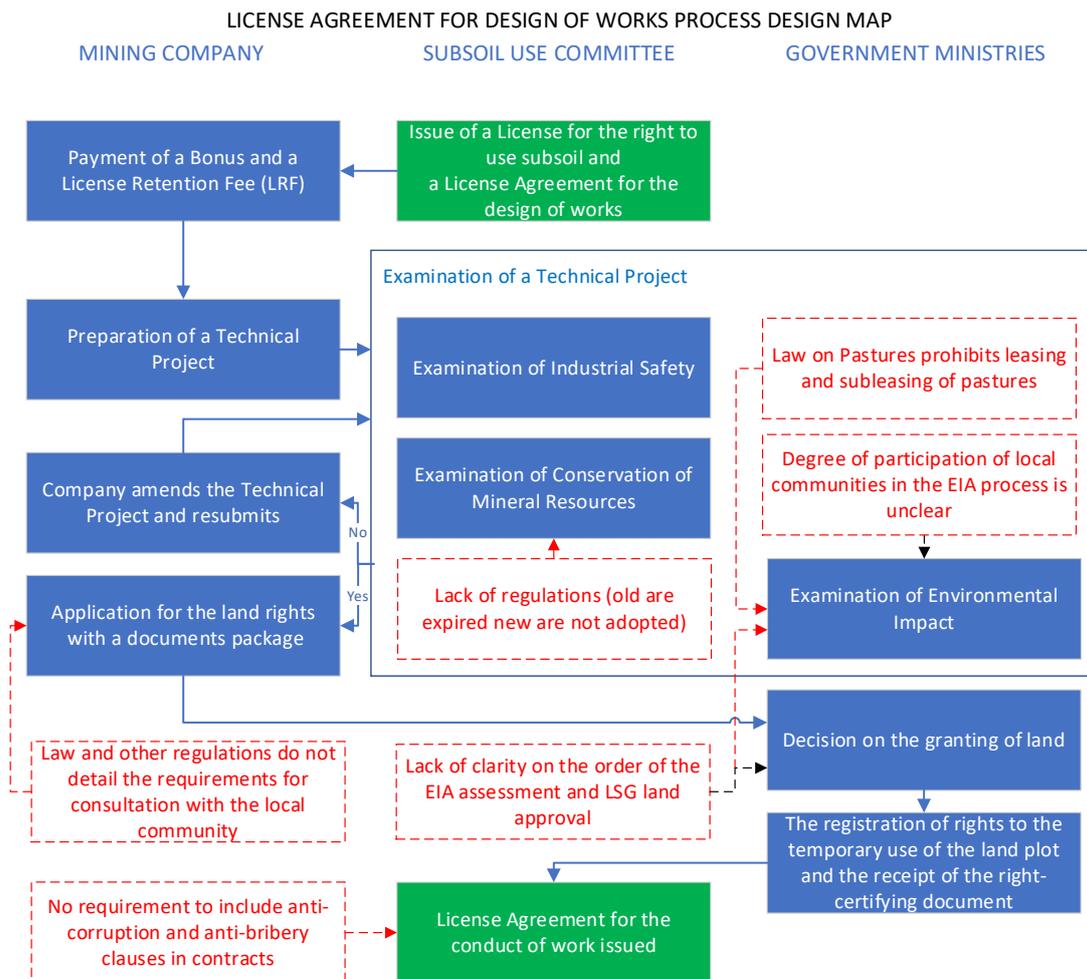
- mining development plan

SUBSOIL PROTECTION REQUIREMENTS

Kyrgyz law provides requirements for subsoil protection. In accordance with these requirements, measures to ensure the maximum, cost-effective extraction of minerals from the subsoil, as well as useful components in the processing of mineral raw materials, should be considered during the development of a Technical Project.

The requirements for the protection of subsoil are outlined in the Law of the Kyrgyz Republic No. 49 of May 19, 2018 «On Subsoil», according to which subsoil users must ensure the most complete extraction from the subsoil of the reserves of the main and associated minerals and associated components and the prevention of excessive losses of useful minerals, selective mining and spoilage of reserves of deposits.

However, in accordance with the Law No. 241 of July 20, 2009, On Normative Legal Acts, normative acts of the Soviet period ended their action on December 31, 2009. Since that time in Kyrgyzstan, there is no legitimate normative act on the standards for such losses. In February 2015, the State Agency for Geology and Mineral Resources submitted a draft regulation On the Procedure for Harmonizing the Standards for Mineral Losses During Mining and Processing, Technologically Related to the Adopted Scheme and Technology for Developing the Field²⁹, but its adoption was rejected. At the same time, the legislation provides for criminal³⁰ and administrative³¹ liability for non-compliance with the requirements of the legislation on the protection of mineral resources.



²⁹ Stategeology brought up for discussion the procedure for agreeing on the standards of mineral losses during mining. www.tazabek.kg/news:385874?f=cp

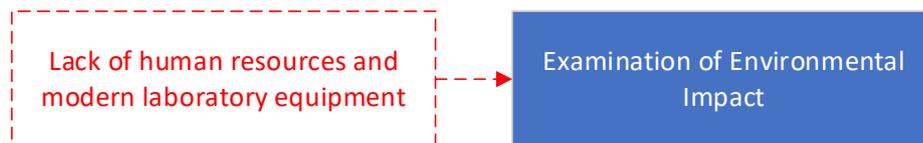
³⁰ Penal Code Article 292

³¹ Code of the Kyrgyz Republic On Violations Chapter 24

PRACTICE AND VULNERABILITIES

Vulnerability 6: Lack of capacity of state bodies to environmental monitoring.

In practice, environmental protection is not fully ensured due to the limited capacity of state bodies (lack of human resources and modern laboratory equipment) to carry out environmental monitoring and control of compliance with legislative standards, including the requirement for annual monitoring by the companies themselves. Due to the lack of staff and a significant number of subsoil use objects (more than 2000 licenses), SAEPF, whose functions include the examination of EIA documentation, does not always have the opportunity to carefully study project's measures to prevent and minimize negative environmental impacts. In fact, in some cases, the environmental protection system is limited to payments by mining companies for environmental pollution (including fines for exceeding emission standards and pollutant emissions)³². This fact is compounded by a low level of trust in government bodies. For example, the confidence index in the SAEPF was 24.9, which is lower than the national average indicator (26.5) for the first half of 2019³³. The recent detention of the head of this agency with bribe³⁴ supplements doubts about the accuracy and veracity of the EIA reports.



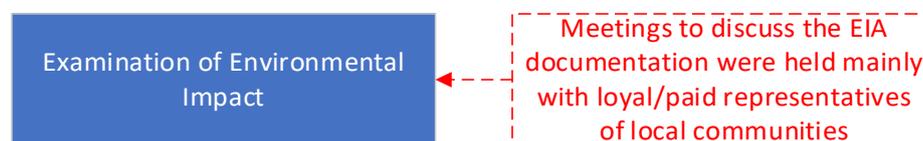
Corresponding corruption risk: Risk 4 (ESIA2). What is the risk there is no verification of the accuracy or truthfulness of EIA reports?

Vulnerability 7: Selective attraction of representatives of local communities to discuss EIA.

Before submitting the EIA reports to the state environmental impact assessment, companies should conduct public consultations with the population living in the areas of the planned works. However, the degree of participation of local communities in the EIA process remains unclear, since in accordance with the Regulation "On the Procedure for Conducting an Environmental Impact Assessment", taking into account public opinion consists of placing the EIA documentation in the offices of local government bodies and companies to collect written comments and suggestions, and not obligatory meetings with local communities and building a consensus³⁵. In addition, the Regulation does not contain requirements for the inclusion of all groups of the local population in the consultation process. In practice, this led to the fact that meetings to discuss the EIA documentation were held mainly with loyal representatives of local communities³⁶. In particular, there were cases of manipulation when companies hired people to participate in hearings and paid monetary rewards for expressing support for the project. This, in turn, as practice shows, leads to a confrontation with the local population³⁷.

Vulnerability 8: No requirements to publicize EIA report.

Neither the Law on Subsoil nor the Law on Environmental Expertise contains requirements for the publication of information on environmental impact assessment.



Corresponding corruption risk: Risk 5 (ESIA3). What is the risk that EIA reports will not be publicly available once finalised?

³² Improving Resource Governance in the Kyrgyz Republic: 12 Priority Issues for the Mining Sector. NRG1 2017

³³ Confidence Index of the National Statistical Committee of the Kyrgyz Republic <http://www.stat.kg/ru/indeks-doveriya-naseleniya/>

³⁴ State and Municipal Service Magazine. https://www.mkk.gov.kg/public/images/file_library/2019081223363011.pdf

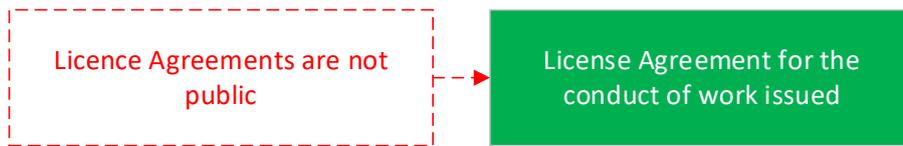
³⁵ GR KR No. 60 of February 13, 2015 Regulation on the procedure for environmental impact assessment p.15

³⁶ Interviews with local communities' representatives in the regions: Chui, Jalalabad and Talas regions.

³⁷ Talas: ready to kill nature for 11 kg of gold - residents ask for help. Article in online media dated 3/7/18. <https://ru.sputnik.kg/analytics/20180703/1040001016/dobycha-zoloto-miting-konflikt-kr.html>

Vulnerability 9: Related data for monitoring of compliance with license and license agreements terms is not public.

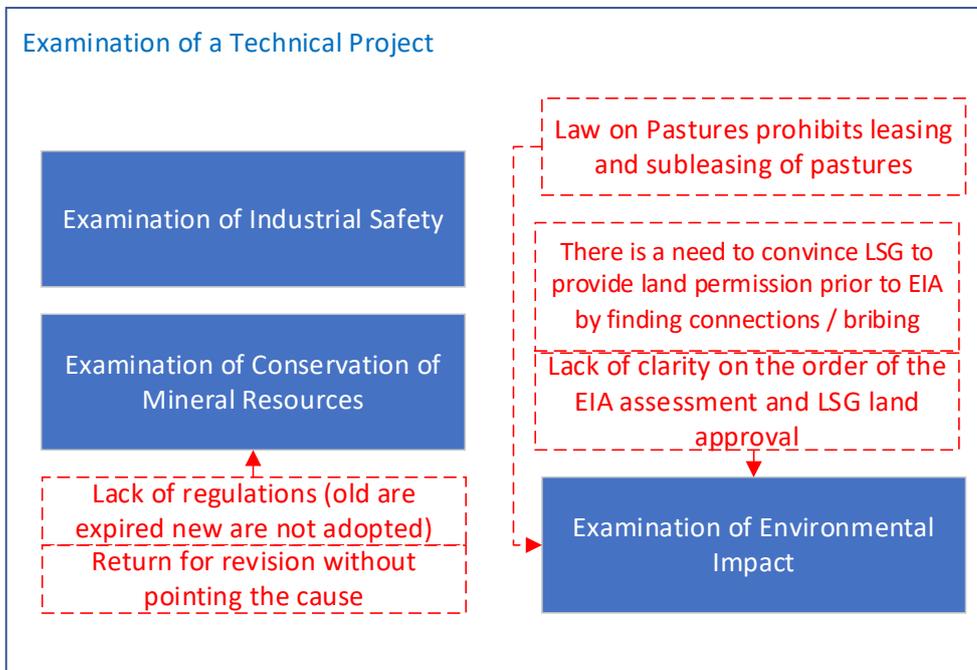
As noted above, License Agreements for the design and production of works are integral parts of a subsoil use license. The legislation provides for the requirement to place a License and License Agreements for the right to use subsoil provided through a tender or auction on the website of the authorized state body for subsoil use³⁸. However, in practice, the Internet site contains some informational data only, such as the number, date of issue and validity of the license, name, contact, registration and tax data of the subsoil user, as well as name, location, coordinates, type of mineral, type of subsoil use and size the area of the facility and, in some cases, the number and duration of the License Agreement³⁹. In this connection, access to data on social and environmental obligations, possible measures to support women⁴⁰ and other vulnerable groups, and the work program is limited, which in turn adversely affects the implementation of informal monitoring of compliance with license conditions. Formal control by authorized state bodies is inadequate and is due to the low potential of state bodies and the corruption component.



Corresponding corruption risk: Risk 6 (PP18). What is the risk that there will be inadequate monitoring of compliance with mining licence or permit obligations and licence- and permit- holders that breach their licence conditions and contracts can escape prosecution or other sanctions?

Vulnerability 10: Contradictory legislation.

There are also contradictions between the regulations governing the procedure for assessing the environmental impact and granting the right to the temporary use of the land, which creates the basis for extortion by officials. So, in order to obtain the right to use a land plot for the development of mineral deposits and the construction of infrastructure when using subsoil, the subsoil user must provide, among other things, a copy of the Technical Project with a positive expert opinion on environmental review to the authorized body⁴¹, while



³⁸ Law of the Kyrgyz Republic No. 49 of May 19, 2018 «On Subsoil» Article 41

³⁹ <http://open.gkpen.kg/Licenses/Licenses/LicensesList?isLicense=True>

⁴⁰ Rural women are among vulnerable groups. Beijing + 25: National Review, Kyrgyz Republic p.18 https://www.unece.org/fileadmin/DAM/RCM_Website/Kyrgyzstan.pdf

⁴¹ para. 11&23 of the Regulation On the procedure for the provision of land for subsoil use, Government Resolution #810 dated 15.12.17

the environmental review procedure involves obtaining approval documents of relevant specially authorized bodies of state control and local government bodies⁴², which also includes documents on the right to use the land. Also, if the land or part of it, is under pastures, this creates a problem in obtaining the right to use this land, since the Law on Pastures prohibits leasing and subleasing of pastures⁴³. The lack of state-approved standards for mineral losses during mining and processing is also a corruptive factor in the development and implementation of measures to protect the subsoil.

Corresponding corruption risk: Risk 7 (CF-KR1). What is the risk of contradictions and deficiencies in the laws governing subsoil use?

CONTEXTUAL ANALYSIS

POLITICAL FACTORS

The Kyrgyz Republic is a secular, unitary state with a mixed form of government⁴⁴. Although official sources declare a parliamentary form of government, the constitution does not specify a form of government, the de facto form of government is mixed. The Parliament of the Republic - the Jogorku Kenesh - is the highest representative body that exercises legislative power and control functions. The President is the head of state and Commander-in-Chief of the Armed Forces, heads the Security Council, personifies the unity of the people and state power, and conducts foreign and personnel policies.

Parliament determines the structure and composition of the government, with the exception of members of the Government - heads of state bodies in charge of defence and national security, as well as their deputies, who are appointed and dismissed by the President.

Most parties between the elections are passive. As of 2019, 243 political parties were registered in the republic⁴⁵. According to the results of the 2015 elections, 6 political parties passed to the Jogorku Kenesh which numbers 120 seats: SDPK «(38),» Respublika-Ata Zhurt «(28),» Kyrgyzstan «(18),» Onuguu-Progress «(13), Bir-Bol (12) and Ata-Meken (11).

Although Parliament, the President and the Government periodically declare their commitment

to combating corruption, 90% of the population consider corruption to be a serious problem and two-thirds that the state does not make enough efforts to combat corruption⁴⁶. According to the Transparency International Corruption Perceptions Index for 2019⁴⁷, Kyrgyzstan ranks 126th with 30 points out of 100 and is among the highly corrupt countries.

Despite the adoption of legislative acts to ensure transparency and accountability of the activities of state bodies and employees, their quality remains weak, and proper implementation is not ensured.

When adopting new laws, the existing normative acts are not always brought into line with new acts⁴⁸. This creates opportunities for officials to use these contradictions to exert corruptive pressure on citizens and entrepreneurs who refer to them⁴⁹.

Vulnerability 11: High level of corruption in judiciary and law enforcement.

The judicial system and law enforcement agencies, called upon to oversee the implementation of legislation, have been among the most corrupt according to surveys for many years⁵⁰. Judicial dependence remains a pressing issue⁵¹.

Vulnerability 12: Property rights are not adequately protected.

Companies are wary of extortion of rents,

⁴² para. 6 Of the Regulation On the procedure for conducting state environmental impact assessment in the Kyrgyz Republic, Government Resolution #248 dated 7/05/2014

⁴³ Article 15, the Law On Pastures dated 26/01/09

⁴⁴ Constitution of the Kyrgyz Republic

⁴⁵ The Central Electoral Commission <https://www.shailoo.gov.kg/media/gulina/2019/04/12/11-2019.pdf>

⁴⁶ https://www.iri.org/sites/default/files/february_2019_kyrgyzstan_poll.pdf

⁴⁷ <https://www.transparency.org/cpi2019>

⁴⁸ Law On Subsoil and Law On Environmental Expertise

⁴⁹ Interview I2

⁵⁰ https://www.transparency.org/research/gcb/gcb_2015_16/0

https://www.iri.org/sites/default/files/2018-2-5_iri_poll_presentation_kyrgyzstan.pdf

⁵¹ Implementation of the principle of independence of judges in the Kyrgyz Republic, Article dated 15/03/2018 by Center for Political and Legal Studies <https://center.kg/article/151>

nationalization or expropriation by government officials or other individuals with political ties. They are also concerned about the possibility of breach or non-fulfilment of contractual obligations or concession agreements without fair compensation⁵².

**Corresponding corruption risk: Risk 8 (CF12).
What is the risk of mining rights being expropriated (confiscated)?**

Vulnerability 13: Safety of whistleblowers is not ensured.

The recently adopted Law on the Protection of Persons Reporting Corruption Violations due to a high degree of distrust of the state and, in particular, the justice system, as well as the lack of adequate support from the state and financial means⁵³ to ensure the safety of protected persons does not work. Civil servants very rarely report violations of the law⁵⁴, and those who report may be prosecuted⁵⁵.

**Corresponding corruption risk: Risk 9 (CF17).
What is the risk that people with knowledge of corruption in the awards process will not make a report?**

Vulnerability 14: Weak system of Asset Declaration.

Despite the adoption of laws on the declaration of income in 2004 and 2017, mechanisms in the field of verification of declarations still work very poorly. Among civil servants, there is a conflict of interest when officials or their relatives own property, significantly exceeding the value of their income⁵⁶, as well as being in the field of activity of the body in which the official works, in particular in the mining industry⁵⁷.

**Corresponding corruption risk: Risk 10 (CF16).
What is the risk that senior public officials or politicians will not declare assets, shares or income related to mining interests?**

Vulnerability 15: The possibility of obtaining additional advantages.



The legislation does not spell out rules for restricting and controlling commercial activities after leaving the civil service. An employee after termination of service within one year cannot only apply to the interests of third parties at the place of his previous work on issues within his competence and act on behalf of an individual or legal entity on issues related to his jurisdiction during his term of service, which will give additional benefits to this

⁵² Private Sector Assessment, ADB, 2013. <https://www.adb.org/sites/default/files/institutional-document/34056/files/kyrgyz-republic-private-sector-assessment-update.pdf>

⁵³ Consolidated report of the Action Plan of the state bodies of the Kyrgyz Republic on the implementation of the State Strategy of the Anti-Corruption Policy of the Kyrgyz Republic for 2015-2017 (p. 21)

⁵⁴ Report on the implementation of the action plan of the Ministry of Justice of the Kyrgyz Republic on combating corruption for 2017 <http://minjust.gov.kg/ru/content/893>

⁵⁵ https://rus.azattyk.org/a/kyrgyzstan_anara_mambetalieva/29450519.html,

https://kaktus.media/doc/378795_gostehinspekciia:_anara_mambetalieva_ystroila_nesankcionirovannyu_sidiachyu_zabastovky.tml,

https://kaktus.media/doc/378844_yvolennaia_sotrydnica_gosekotehinspekci_nazvala_imena_treh_korrcionerov_v_vedomstve.html,

https://kaktus.media/doc/380553_press_sekretaria_iz_gostehinspekci_vosstanoviat_v_doljnosti_a_nekotoryh_chinovnikov_yvoliat.html

⁵⁶ The Dubai Partnership <https://www.occrp.org/en/plunder-and-patronage/the-dubai-partnership>

⁵⁷ State Security – Zilaliyev found \$900 thousand, gold deposits and expensive offices. Article published by on-line media dated 10/12/2018 <https://ru.sputnik.kg/incidents/20181210/1042362352/gknb-zilaliyev-arrest-ugolovnoe-delo-genprokuratura-imushchestvo.html>



individual or legal entity⁵⁸.

Corresponding corruption risk: Risk 11 (CF-KR2). What is the risk of conflicts of interest of individuals moving between positions of public office and jobs in the same sector in the private or voluntary sector, in either direction?

ECONOMIC FACTORS

The economy of the Kyrgyz Republic has traditionally been based on livestock and agriculture. Mining industry developed during the Soviet period of the country's history and today is an important part of the economy with a

contribution of about half of industrial production and a one-tenth of GDP.

Geological data used in the provision of subsoil use rights are in most cases based on surveys conducted during the Soviet Union. Over the years of independence, due to the limited budget, large-scale geological exploration was practically not carried out, and at the expense of investors only two gold deposits were explored and accounted for in the State Reserves Committee: Shambesay and Chaarat⁵⁹.

The dynamic development of the mining industry is a priority for Kyrgyzstan; together with energy, it can become the basis of an economic recovery. Kyrgyzstan adopted the Strategy for the Sustainable Development of the Industry for 2019-2023⁶⁰, according to which the development of the mining and metallurgical industries is one of the priority areas.

This Strategy focuses on enhancing the role of local governments in licensing the extractive industries. In the future, diversification of new deposits, new types of non-metallic materials and rare earth metals is required, considering the interests of the state, local community and subsoil user, taking into account national and international practice. For the development of the industry, it is necessary to create conditions for increasing the degree of processing of raw materials within the country and increasing the sustainability of the development of the mining industry.

The state adheres to the principles of a market economy and is making efforts to increase investment attractiveness⁶¹. Formally, the legislation provides equal conditions for starting and running a business for both local and foreign entrepreneurs. In fact, local contacts and support are necessary to obtain the right to use the subsoil and continue working without the intervention of local politicians and even crime⁶².

According to international surveys, the Kyrgyz Republic is considered a country with the relative ease of doing business⁶³ and a relatively free economy⁶⁴. High levels of corruption and a dependent judiciary reduce the country's investment attractiveness for business.

The business climate in Kyrgyzstan is relatively

⁵⁸ The Law of the Kyrgyz Republic On State Civil Service and Municipal Service dated May 30, 2016 No. 75 of Art. 22

⁵⁹ Actual issues in the field of subsoil use. IBC 2018

⁶⁰ <http://cbd.minjust.gov.kg/act/view/ru-ru/157190>

⁶¹ <http://kabar.kg/news/v-pravitel-stve-obsudili-mery-po-povysheniui-investitcionnoi-privlekatel-nosti/>

⁶² Interview I2

⁶³ <https://www.doingbusiness.org/en/rankings>

⁶⁴ <https://www.heritage.org/index/ranking>

unattractive for investors since the most significant obstacle to safe and efficient mining is not the tax regime, but the high political risk and other difficulties of doing business in the country⁶⁵.

The largest investor in the mining industry of Kyrgyzstan is Canada, whose investments account for 48% (Kumtor), investments are also made by Russia, China, Kazakhstan, the UK and other countries⁶⁶.

The interests of mining companies in cooperation with the state on various problems of subsoil use in Kyrgyzstan are represented by various associations, such as the Kyrgyz Mining Association, the Association of Subsoil Users, the Association of Coal Mining Enterprises, the International Business Council, the Association of Geologists and Miners, etc.

Inadequate qualifications, lack of career opportunities for public servants, low salaries and weak oversight bodies to prevent corruption weaken the governance system, as well as reduce public confidence in government institutions⁶⁷.

Vulnerability 16: Low level of wages.

According to official figures, the level of wages in Kyrgyzstan is one of the lowest in the CIS. Employees of state bodies receive an average of 1.7 times less than in the private sector as a whole and more than two times less than in the field of mining in particular⁶⁸.

Corresponding corruption risk: Risk 12 (CF4). What is the risk that salaries of cadastre (or equivalent) agency staff are less than a living wage?

Vulnerability 17: Lack of staff quantity and capacity.

Low salaries in government agencies in general, and in particular those involved in the interaction with companies in the extractive industry, create an environment for staff turnover. This, in turn, leads to such negative consequences as a lack of staff quantity and professionalism⁶⁹.

Corresponding corruption risk: Risk 13 (CF6).

What is the risk that cadastre agency staff do not have the skills to perform their job and / or will be unable to cope with the workload of the agency?

SOCIAL FACTORS

Prior to independence, a relatively equal distribution of income and a high and stable level of employment, as well as the free provision of most social services, provided a basic standard of living. Despite the constant growth of GDP, the proportion of people living below the national poverty line is still relatively high - in 2018, 22.4% of the population were poor, of which 72% were rural people. 91.8% of people have access to safe water, and 31.5% have access to sanitation. Life expectancy was 67.5 years for men and 75.6 years for women in 2018. Literacy is 99.5%. Inequality is growing, especially between urban and rural areas⁷⁰.

Kyrgyzstan has a Gender Inequality Index (GII) value of 0.353. This means that the country has experienced a loss of potential human development equivalent to 35 percent, owing to disparities between female and male achievements, empowerment and economic status. However, Kyrgyzstan has more positive outcomes in particular dimensions (notably women's political participation and education levels), compared with the average for the European and Central Asian regions combined⁷¹.

Advanced gender legislation in the Kyrgyz Republic is based on the constitutional provision of equality of rights and opportunities for women and men and non-discrimination on the grounds of sex. It involves the rule of international law in national legislation and the Law of the Kyrgyz Republic On State Guarantees of Equal Rights and Equal Opportunities for Men and Women (2008)⁷². At the legislative level, women have the same rights as men in relation to land ownership and ownership of other agricultural resources.

Although land, housing and property assets are mainly registered in the name of men (father, husband, son, etc.), there is no significant

⁶⁵ An Economic Evaluation of Gold Mining Tax Regimes in the Kyrgyz Republic, NRGI, 2018, <https://resourcegovernance.org/sites/default/files/documents/economic-evaluation-of-gold-mining-tax-regimes-kyrgyz.pdf>

⁶⁶ Which country invests in Kyrgyzstan the most? This is not China and not Russia https://kaktus.media/doc/396689_kakaia_strana_investiryet_v_kyrgyzstan_bolshe_vseh_eto_ne_kitay_i_ne_rossia.html

⁶⁷ In-depth, https://www.kg.undp.org/content/kyrgyzstan/en/home/ourwork/democraticgovernance/in_depth.html

⁶⁸ In Kyrgyzstan, the average salary of \$ 233 is almost the worst indicator in the CIS. Short review, <https://economist.kg/2019/08/17/v-kyrgyzstane-srednyaya-zarplata-233-eto-pochti-hudshij-pokazatel-v-sng-kratkij-obzor/>

⁶⁹ Interview I1, I2

⁷⁰ Human Development Report, <http://hdr.undp.org/en/countries/profiles/KGZ>

⁷¹ Gender Equality, Social Protection and Rural Development: A Look from Eastern Europe and Central Asia. FAO. Budapest 2016

⁷² Law of the Kyrgyz Republic On State Guarantees of Equal Rights and Equal Opportunities for Men and Women dated 04 August 2008, No. 184

difference between men and women on how income should be distributed in the family. 71% of women and 74% of men believe that the decision should be taken jointly⁷³.

Recent decades in Kyrgyzstan have been marked by an increase in local interest in issues of transparency and accountability at the local level. Of particular interest is the mining industry.

According to sociological studies, the majority of local residents surveyed have a negative attitude to the activities of mining companies and the mining industry as a whole⁷⁴. In most conflict areas, the local population even demanded the establishment of a long-term moratorium on the development of deposits⁷⁵. In order to reduce conflicts between the local population and mining companies, in 2012-2014, the legislation on the distribution of income has been introduced. Today, Kyrgyz law provides for various ways for the mining industry to participate in the development of local communities.

For example, companies make payments for the development and maintenance of local infrastructure⁷⁶, which makes up 2% of the gross income of mining companies. 20% of this non-tax payment is transferred directly to the budget of the ayil aimak, on the territory of which the subsoil development site is located, and the remaining 80% goes to the republican budget for further redistribution between all administrative-territorial units through the regional and regional Funds for regional development⁷⁷. Also, such funds are deducted at 3% of the total price for tender objects and license retention fees.

Aiyl aimaks can subsequently receive funding from the Regional or District Development Funds on a competitive basis by submitting project applications not only for the construction and maintenance of infrastructure, but also for the creation of enterprises together with private investors in order to develop infrastructure.

Also, in relation to deposits of national importance, the Subsoil Law requires the development of a social package - an agreement between the company and the local government on the

minimum amount of investment in order to promote the socio-economic development of the region - in the form of training, employment and the construction of social infrastructure. In practice, not only companies developing tender fields, but much smaller fields are faced with the requirements of local authorities to provide additional benefits on the ground⁷⁸. However, the Law on Subsoil and other normative acts do not detail the requirements for compiling a social package. On the one hand, this means that local communities and local governments have a certain share of freedom in establishing requirements that may not be feasible for companies, and on the other hand, that local communities can receive fewer benefits than they could, in particular due to insufficient knowledge and / or limited information and protection from the consultation process by local authorities.

Vulnerability 18: Lack of awareness / knowledge of the local population.

Some people see no benefits from mining and believe that mining will disrupt their traditional way of life. Speculators sometimes exploit these people by getting them to take part in local protests that benefit the speculators, and politicians have supported the protesters to further their own interests. Local leaders – lacking the requisite expertise – have made the situation worse by making primitive estimates of the value of the region's mineral wealth⁷⁹.

Vulnerability 19: Low level of confidence in the authorities.

Exaggerated claims have encouraged the idea that the country's mineral riches should not be transferred to foreigners⁸⁰. The local population believes that government bodies issue licenses and permits to companies through corrupt practices, and that revenues from the mining sector are not transparently and unfairly distributed⁸¹.

The number of social conflicts between the local population and companies engaged in the search, exploration and development of minerals is growing, the main reasons for which are the belief

⁷³ Gender in Society Perception Study. UNFPA, NSC 2016. P.49

⁷⁴ Extracting Sentiments: The Effect of Mining Exploration and Extraction on Eight Communities in the Kyrgyz Republic, Oxus International, EFCA, USAID, 2012.

⁷⁵ Talas province <http://www.tazabek.kg/news:349134> и <https://rus.azattyk.org/a/24916280.html> and Issyk Kul province <https://rus.azattyk.org/a/29895783.html>

⁷⁶ Code of the Kyrgyz Republic On Non-Tax Revenues dated August 10, 2018

⁷⁷ GR KR No. 633 of November 10, 2014 Regulation on the procedure for the formation of regional development funds

⁷⁸ Interview I3

⁷⁹ Mining, Development and the Environment in Central Asia: Toolkit Companion with Case Studies. Ed. J. Hughes. University of Eastern Finland. 2012. https://epublications.uef.fi/pub/urn_isbn_978-952-61-0934-3/urn_isbn_978-952-61-0934-3_highquality.pdf (accessed: 01.28.2020)

⁸⁰ Ibid

⁸¹ Medium and Long-Term Strategy for the Development of the Mining Industry of the Kyrgyz Republic. p. 52

of local communities that the development of deposits adversely affects public health, distrust of the activities of mining companies and government agencies. Conflicts take on an organized character and are often accompanied by violent acts⁸². This is explained by the low level of public confidence in the authorities and the poor explanatory work of local authorities.

Corresponding corruption risk: Risk 14 (CC2). Assuming consultation with communities or landholders is required, what is the risk that negotiations for landholder or community agreements can be manipulated and their free, prior, informed consent will be ignored?

TECHNOLOGICAL FACTORS

In 2018, Kyrgyzstan adopted its own Digital Transformation Concept Digital Kyrgyzstan 2019-2023, which was approved by the Security Council⁸³ and then 2019 was declared by the President as the Year of Regional Development and Digitalization of the country⁸⁴. The concept contains the main approaches to creating the conditions for the development of a digital economy, introducing new digital technologies in public administration, creating digital public services, centers of competence, innovation clusters, new opportunities for the country's population and conditions for an economic breakthrough, taking into account international experience in introducing digital innovations.

As part of the implementation of the Concept, it is planned to create a unified digital platform, "Digital Kyrgyzstan", which will include a unified identification system, a unified electronic messaging system, a unified digital payment system, Tunduk electronic interagency interaction system, a portal and a mobile application of electronic public services, as well as a unified state data center. The Open Data Kyrgyzstan open data portal was launched in November 2019⁸⁵ and contains 17 data sets on the use of mineral resources in Kyrgyzstan⁸⁶, including data on issued subsoil use licenses.

SCIESU very often criticized, one of the reasons for which is a weak staffing potential due to staff turnover and low wages. The Strategy for the Sustainable Development of Industry of the Kyrgyz Republic for 2019-2023⁸⁷ defines one of its priorities as the strengthening of the role of state bodies responsible for industrial policy, including the strengthening of their institutional and human potential, as well as the need to ensure the training of qualified personnel.

The main educational institution engaged in training personnel for the industry is the Kyrgyz State University of Geology, Mining and Natural Resources Development, which trains engineering personnel in 15 areas and 27 specialties⁸⁸. In addition, some universities⁸⁹ have departments for the training of specialists in mining. Education at foreign universities is also available as part of various cooperation programs⁹⁰.

The mineral resource base of Kyrgyzstan has been studied in sufficient detail during the Soviet Union. The geological and mineralogical service of the country was founded in 1938. With regard to minerals important for future technologies, Kyrgyzstan has the opportunity to resume production activities at the Aktuzsky MMC within the same ore field. The primary object for realizing the rare metal potential is the Aktuz orefield, which has no analogues in the Eurasian Economic Community in terms of the concentration of yttrium-earth lanthanides, developed infrastructure, and technological development of the full production cycle of rare-earth metals of increased consumer demand⁹¹.

⁸² Minister T. Sariev noted the main problems of the development of the mining industry and investment attractiveness. <http://mineconom.gov.kg/ru/post/1796> (accessed: 01.28.2020)

⁸³ Decision of the Security Council of the Kyrgyz Republic of December 14, 2018 No. 2

⁸⁴ Decree No. 1 of January 11, 2019 UP On Declaring 2019 the Year of the Development of Regions and Digitalization of the Country. <http://Cbd.Minjust.Gov.Kg/Act/View/Ru-Ru/430001?Cl=ru-ru>

⁸⁵ <http://ict.gov.kg/index.php?r=site%2Fproject&pid=457&cid=24>

⁸⁶ <https://data.gov.kg/organization/state-com-natural-resources?page=1>

⁸⁷ <http://cbd.minjust.gov.kg/act/view/ru-ru/157190>

⁸⁸ <http://ksmu.kg/>

⁸⁹ https://www.krsu.edu.kg/index.php?option=com_content&view=article&id=31&Itemid=146&lang=ru

⁹⁰ <https://studyinrussia.ru/actual/articles/kak-grazhdaninu-kirgizii-postupit-v-rossiyskiy-vuz/>

⁹¹ Melentyev G.B., Vorobev A.E., Shamshiev O.S. The rare-metal potential of Kyrgyzstan: status and prospects Vestnik RUDN 2015 2015 №4 <https://cyberleninka.ru/article/n/redkometallnyy-potentsial-kyrgyzstana-sostoyanie-i-perspektivy>



RESULTS – THE RISK PROFILE AND RISK ASSESSMENT SCORES

After the identification of vulnerabilities and corresponding risks, each risk was assessed by analyzing the evidences about the likelihood and impact of the risk. In accordance with the methodology, each risk was rated on a scale of 1 to 5 in terms of likelihood and impact. For likelihood, “1” is categorised as most unlikely and “5” is categorised as most likely that governance risk occurs:

Likelihood Score:	1	2	3	4	5
Meaning:	Most unlikely	Unlikely	Possible	Likely	Most likely

For impact, it is measured on a scale of “1” as insignificant and “5” as catastrophic:

Impact Score:	1	2	3	4	5
Meaning:	Insignificant	Minor	Moderate	Major	Catastrophic

The total risk score of each of the risks calculated by multiplying the score for likelihood and impact (likelihood x impact = total score) and indicates the significance of risk, and considers both likelihood and impact scoring.

In addition to scoring exercises Validation workshop was conducted to ensure that the assessments are consistent with the local context and reflect the actual situation of Kyrgyz Republic’s mining sector.

RISK 1

(PD19)

What is the risk that the licences or details of licences etc. that have been awarded will not be publicly available?

Probability (4) The requirement of legislation on the placement of all licenses and license agreements for the right to use subsoil⁹², except those provided under the Rule of the first application, on the website of the authorized state body for subsoil use is not implemented in practice. The website contains the following data: number, date of issue and license validity period, name, contact, registration and tax data of the subsoil user, as well as name, location, coordinates, type of mineral, type of subsoil use and size of the facility, and in some cases the number and Duration of the License Agreement. However, despite the requirement of the law, licenses and license agreements are not published there. In this connection, access to data on social and environmental obligations, the work program is limited. Thus, the details of the issued licenses and license agreements are not published in full, as required by law, only a part of the data is available, therefore, the likelihood of this risk is quite high.

⁹² Law of the Kyrgyz Republic No. 49 of May 19, 2018 «On Subsoil» Article 41

Impact (5) The lack of transparency in the details of the license (for example, the coordinates of the license area, date of issue, license validity period, social and environmental obligations, work program or product being manufactured) creates opportunities for manipulating data on the licensee's social and environmental obligations and, therefore, allows companies to bribe officials to ignore this activity⁹³. Licenses are supposed to mean small negotiations and simply include the terms of the law and the terms of the tender / auction, but their publication (or at least the publication of key information) would increase transparency and trust, as well as provide key information to supervisors and to citizens⁹⁴. Thus, supervisor bodies and citizens do not have enough data to ensure accountability of the government, local authorities and companies. The publication of insufficient data, especially in the field of environmental protection, is one of the reasons for the ongoing conflicts in areas of subsoil use between the local communities and mining companies⁹⁵.

RISK 2

(PD7)

When tender assessment panels are used in the awards process, what is the risk that people appointed to the panel are not independent, e.g., because they have been carefully chosen by the government to create a specific desired outcome?

Probability (5) According to the established procedure, only representatives of the state, such as deputies of parliament, employees of state bodies or institutions, as well as representatives of local self-government bodies can be members of tender and auction commissions. The law also does not provide for the presentation of any qualification requirements to commission members. On the other hand, participation in the composition of such commissions is unpopular due to the frequent cases of attracting members of the commissions in various investigative actions by law enforcement agencies⁹⁶. In this connection, the likelihood of this risk is very high.

Impact (4) Although the meetings of the tender and auction commissions are open to the public and the media, the law does not provide for the appointment of authoritative independent experts, in particular representatives of professional industry associations⁹⁷, to participate in the tender and auction commissions to reduce corrupt interference in decisions. Lack of competence or impartiality does not allow members of the commission to timely identify and respond to manifestations of corruption in the course of a tender / auction⁹⁸, so there are cases when different companies seem to be participating in the tender or auction, but the beneficiary is common. This is not to say that licensing through a competition or auction is never based on virtues due to biased and politicized groups, but there are cases and therefore the impact is quite high.

RISK 3

(PD24)

What is the risk that anti-corruption and anti-bribery clauses will not be included in mining contracts?

Probability (5) The legislation does not contain any requirements for including anti-corruption and bribery provisions in mining contracts. Representatives of most local and foreign companies contacted by the authors of this and another⁹⁹ reports said that they did not have the policy to combat corruption or bribery, and that such a document was not needed because they had never dealt with corruption.

⁹³ MACRA Tool, p. 77

⁹⁴ Improving Resource Governance in the Kyrgyz Republic: 12 Priority Issues for the Mining Sector. NRG 2017

⁹⁵ National Action Plan on building of the Open Government in the Kyrgyz Republic for 2018-2020

⁹⁶ Interview G1

⁹⁷ Mining industry - locomotive of industrial production of the Kyrgyz Republic article by the Chair of Association of Geologists and Mining Professionals Mr. O. Duisheev in Fabula Press 02/10/18 https://m.gezitter.org/economics/73534_gornorudnaya_otrasl_lokomotiv_promyshlennogo_proizvodstva_kr/

⁹⁸ 11 friends of Atambaev. We explain and verify Baysalov's investigation about ex-president. Article in online media dated 4/4/18. <https://kloop.kg/blog/2018/04/04/11-druzej-atambaeva-pereskazyvaem-rassledovanie-bajsalova-ob-eks-prezidente/>

⁹⁹ Improving Resource Governance in the Kyrgyz Republic: 12 Priority Issues for the Mining Sector. NRG 2017

The representative of one company said, that the inclusion of such clauses in their contracts with local suppliers may affect their sustainable work as there is no chance to find a local supplier with own anti-corruption and anti-bribery policies.

Impact (3) Kyrgyz legislation has anti-corruption regulations, such as the Anti-Corruption Law, the Conflict of Interest Law, the Law on Declaration of Income and Expenses, the State and Municipal Service Law and others, but the inclusion of anti-corruption and bribery provisions in the contracts does not require. Being open and transparent, companies can also facilitate monitoring by others. Companies can also play a role by monitoring their employees. Due diligence practices may include the requirement for a variety of documentation (financial reports, independent reviews, references, etc.), the requirement for a party to sign the anti-corruption certification and conduct detailed interviews to assess the integrity of the company. The UN Global Compact¹⁰⁰ also recommends the inclusion of anti-corruption provisions in joint venture contracts. These provisions allow for the termination of contractual relations in cases where the company or its senior management is found guilty of corruption. While other anti-corruption norms and mechanisms are available at the state level and impact is not very vital, the existence of such provisions could be an additional deterrent.

RISK 4

(ESIA2)

What is the risk there is no verification of the accuracy or truthfulness of EIA reports?

Probability (3) In practice, environmental protection is not fully ensured due to the limited capacity of state bodies (lack of human resources and modern laboratory equipment) to carry out environmental monitoring and control of compliance with legislative standards, including the requirement for annual monitoring by the companies themselves. Due to the lack of staff and a significant number of subsoil use objects (more than 2000 licenses), SAEPF, whose functions include the examination of EIA documentation, does not always have the opportunity to carefully study design measures to prevent and minimize negative environmental impacts. The quality of the EIA report in this way largely depends on the choice of the consultant for its preparation. Considering that only certified companies can conduct such an assessment and that such companies value their reputation, it is assumed that the most important parts of the EIA comply with established requirements.

Impact (3) In fact, in some cases, the environmental protection system is limited to payments by mining companies for environmental pollution (including fines for exceeding emission standards and pollutant emissions). This fact is compounded by a low level of trust in government bodies. For example, the confidence index in the SAEPF was 24.9, which is lower than the national indicator (26.5) for the first half of 2019. The recent detention of the head of this agency with a bribe supplements doubts about the accuracy and veracity of state verification of EIA reports. Due to the limited capacity of state supervision and its impact on the quality of EIA, as well as the reputational restrictions for companies conducting the assessment, it can be expected that less significant environmental impacts will not be revealed during the assessment.

RISK 5

(ESIA2)

What is the risk there risk that EIA reports will not be publicly available once finalised?

Probability (4) The current legislation does not contain requirements for the publication of EIA reports. The degree of participation of local communities in the EIA process remains unclear, since in accordance with the Regulation on the Procedure for Conducting an Environmental Impact Assessment, taking public opinion into account consists of posting EIA documentation at the offices of local government

¹⁰⁰ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

bodies and companies to collect written comments and suggestions, and not mandatory meetings with local communities and consensus-building. In addition, the Regulation does not contain requirements for the inclusion of all groups, including those affected, of the local population in the consultation process. In practice, this led to the fact that meetings to discuss the EIA documentation were held mainly with loyal representatives of local communities. In particular, there were cases of manipulation when companies hired people to participate in hearings and paid monetary rewards for expressing support for the project. Only some companies, on their own initiative, post an EIA on their Internet sites¹⁰¹. Thus, the likelihood that the EIA reports will not be publicly available after their completion is quite high.

Impact (5) As practice shows, limited information leads to a confrontation with the local population. The main causes of conflicts are concerns about environmental damage, pollution and public health risks associated with mining, including noise, air pollution and concerns about contamination with toxic materials, as well as lack of awareness among local communities about the possible and potential consequences associated with the extraction of mineral deposits¹⁰². The lack of information on the environmental assessment prior to commencing and the consequences in the result of the works, on the recommendations and the results of the EIA creates difficulties in holding mining companies accountable for addressing environmental issues.

RISK 6

(PD24)

What is the risk that there will be inadequate monitoring of compliance with mining licence or permit obligations and licence- and permit- holders that breach their licence conditions and contracts can escape prosecution or other sanctions?

Probability (4) Although the legislation establishes a requirement to place a license and license agreements for the right to use subsoil, provided through a tender or auction on the website of the authorized state body for subsoil use¹⁰³, the conditions of licenses in Kyrgyzstan are not publicly available. The website contains only some information data, such as the number, date of issue and license validity period, name, contact, registration and tax data of the subsoil user, as well as the name, location, coordinates, type of mineral, type of subsoil use and size of the property's area and in some cases, the number and duration of the License Agreement. In this connection, access to data on social and environmental obligations, the work program is limited, which in turn adversely affects the implementation of informal monitoring of compliance with license conditions. Formal control by authorized state bodies is inadequate due to the low capacity of state bodies and the corruption component.

Impact (4) State monitoring and enforcement are weak and non-compliant individuals or companies can escape punishment, for example, by bribing investigators or judges¹⁰⁴, this creates a culture of impunity, and they can dishonestly comply with license conditions to which they have no intention of compliance¹⁰⁵. Mining projects reveal breaches on significant issues, but there are very few clear statistics and information on holding them to account.

RISK 7

(CF-KR1)

What is the risk of contradictions and deficiencies in the laws governing subsoil use?

¹⁰¹ www.alliance-altyn.kg

¹⁰² Mining Conflict Management Guide, Kyrgyz Republic. EFCA Kalikova & Associates 2017

¹⁰³ Law of the Kyrgyz Republic On Subsoil Law. Article 41 paragraph 6

¹⁰⁴ IRI (81% of people pointed that corruption is a very big issue, 41% of people pointed that Judiciary is very corrupted, 43% - somewhat corrupt) https://www.iri.org/sites/default/files/february_2019_kyrgyzstan_poll.pdf

¹⁰⁵ A Chinese company illegally mined minerals in Kyrgyzstan for 13 years. Article in online media dated 21/3/18. <https://economist.kg/2018/03/21/kitayskoy-kichi-chaarat-nezakonno-prodlevali-litsenziyu-13-let-podyad/>

Probability (4) There are also contradictions between the regulations governing the procedure for assessing the environmental impact and granting the right to the temporary use of the land, which creates the basis for extortion (expecting bribes) by officials. For example, to obtain the right to use a land plot for the development of mineral deposits and the construction of infrastructure when using subsoil, the subsoil user must provide, among other things, a copy of the technical project with a positive expert opinion on environmental impact assessment to the authorized body, while the environmental impact assessment procedure involves obtaining documents coordination of relevant specially authorized bodies of state control and local governments, which also include documents on the right to use the land. And if the land or part of it is under pastures, this creates a problem in obtaining the right to use this land, since the Law on Pastures prohibit leasing and subleasing of pastures¹⁰⁶. The lack of state-approved standards for mineral losses during mining and processing is also a corruption factor in the development and implementation of measures to protect the subsoil.

Impact (4) Most often, among legal factors contributing to the development of corruption, experts call the low quality of legislation, expressed in the presence of legislative gaps, contradictions between regulatory legal acts, including legislative ones, regulating a similar circle of public relations, lack of proper regulation of many issues, or vice versa their excessive regulation¹⁰⁷. Conflicts of the legislative act with other regulatory legal acts prevent the correct application of the law and create opportunities for the application of the norm that is beneficial in a particular case¹⁰⁸.

RISK 8

(CF12)

What is the risk of mining rights being expropriated (confiscated)?

Probability (4) Property rights are not adequately protected. There are cases of change of ownership of some mining fields under pressure¹⁰⁹. The situation is exacerbated by the low degree of independence of the judiciary in Kyrgyzstan. It was established that judges made deliberately illegal decisions in the interests of certain criminal groups involved in raider seizure of real estate and deposits of foreign investors¹¹⁰. The Kyrgyz Republic is currently facing a series of investment claims valued at the US \$ 925 million, most of which are related to the mining sector and relate to direct and indirect expropriation¹¹¹.

Impact (5) Companies are wary of extortion of rents, nationalization or expropriation by government officials or others with political ties. They are also concerned about the possibility of breach or non-fulfilment of contractual obligations or concession agreements without fair compensation. There is a systemic uncertainty regarding property rights, which is a deterrent to attracting foreign investment in such a resource-demanding industry like mining.

RISK 9

(CF17)

What is the risk that people with knowledge of corruption in the awards process will not make a report?

Probability (4) Despite the adopted law on the protection of persons who have reported corruption offences due to a high degree of distrust of the state and, in particular, the justice system in Kyrgyzstan, there is a big problem with the protection of applicants. In practice, there is no effective protection

¹⁰⁶ Article 15, the Law On Pastures dated 01/26/09

¹⁰⁷ Khludeneva Natalya Igorevna Corruption factors in environmental legislation // Journal of Russian Law. 2015. No.6

¹⁰⁸ Talapina E.V., Yuzhakov V.N. Methodology of the primary analysis (examination) of normative legal acts on corruptionogenicity. - Moscow: Center for Strategic Research, 2007

¹⁰⁹ Interview II

¹¹⁰ Seven judges of the Kyrgyz Republic were investigated on suspicion of corruption. Article in online media dated 22/2/19. https://rus.azattyk.org/a/kyrgyzstan_judges_corruption_crime/29785344.html

¹¹¹ Mining Arbitration in Central Asia, Global Arbitration Review, 2019.

of whistleblowers and the current legislation contains only a general framework for the protection of witnesses, victims and other participants in criminal proceedings¹¹². The report on the plan for the implementation of the State Strategy for Anti-Corruption Policy for 2015-2017 noted the failure to build effective mechanisms of state protection for participants in criminal proceedings, due to the lack of adequate support from the state, lack of financial resources to ensure the safety of protected persons. In practice, public sector workers very rarely report violations of the law. So, for example, from the report of the Ministry of Justice it follows that in the journal of facts of incitement of employees to commit corruption offences, for the entire period of 2017, only 1 entry was made at the request of a MoJ employee. In 2018, the press secretary of the State Inspectorate for Environmental and Technical Safety published information on systematic financial and personnel violations on a social network, staged a rally against corruption in the office of the head of the department and was fired. Due to the fact that this case was publicized in the media, a commission was established in the President's office to study these issues, as a result of which the commission decided that the decision to dismiss was made in violation of applicable law, and the complaints regarding violations of the law partially confirmed.

Impact (5) Encouraging employees to report wrongdoing (to «blow the whistle»), and protecting them when they do, is essential for corruption prevention in both the public and private sectors. Employees are usually the first to recognize wrongdoing in the workplace. Empowering them to speak up without fear of reprisal can help authorities both detect and deter violations¹¹³. If potential whistleblowers think they will be (a) ignored, or (b) targeted and persecuted for complaining about corruption, reporting is unlikely to occur. Formal whistleblower protections can encourage whistleblowers. If the corruption whistleblowing mechanism does not work, a culture of impunity will grow, which in turn will lead to the rooting and systematization of corruption.

RISK 10

(CF16)

What is the risk that senior public officials or politicians will not declare assets, shares or income related to mining interests?

Probability (4) According to the new law adopted in 2017¹¹⁴, all officials are required to submit their declarations to the State Tax Service (STS), which is responsible for verifying the completeness and reliability of the information. However, there are some doubts about the effective work of the STS on declarations, due to the fact that the tax service, by its nature, pursues the task of replenishing the budget, and it does not have the task of conflict of interest or illicit enrichment. Currently, the STS has access only to the databases of the State Registration Service and the effectiveness of checking the declarations of officials is doubtful in the absence of electronic registers and databases that would be accessible to the inspection body in an interdepartmental interaction mode, and not according to the request-response principle¹¹⁵. The amount of information on the Declaration of Assets in Kyrgyzstan to be published is insufficient. The publication of only generalized data without a detailed breakdown of the declared articles significantly limits the possibilities of civilian supervision and is unreasonable in light of the significant public interest in accessing the information on income, assets, financial liabilities and expenses of officials.

Impact (4) When governments require a declaration of wealth and business interests, it helps identify and manage conflicts of interest that can lead to corruption in the award process, and creates a psychological deterrent to corruption by requiring government officials and politicians to lie if they want to hide extractive interests industry. Among civil servants, there is a conflict of interest, there are cases when officials or their relatives own property significantly exceeding their income in value, as well as being in the field of activity of the body in which the official works, in particular in the mining industry. Thus, the risk that senior government officials or politicians will not declare assets, shares or income related to mining interests is high enough, which, in turn, reduces the possibility of holding them accountable.

¹¹² Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan, p. 40

¹¹³ <http://www.oecd.org/governance/ethics/whistleblower-protection/>

¹¹⁴ Law On the Declaration of Income, Expenses, Obligations And Property of Persons Holding or Holding Public and Municipal Posts of August 2, 2017 No. 164

¹¹⁵ Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan, pp. 36 - 37

RISK 11

(CF-KR2)

What is the risk of conflicts of interest of individuals moving between positions of public office and jobs in the same sector in the private or voluntary sector, in either direction?

Probability (3) The legislation does not spell out rules for restricting and controlling commercial activities after leaving the civil service. An employee after termination of service within one year cannot only apply to the interests of third parties at the place of his previous work on issues within his competence and act on behalf of an individual or legal entity on issues related to his jurisdiction during his term of service, which will give additional benefits to this individual or legal entity. Some representatives of parliament are simultaneously owners or even employees of private enterprises¹¹⁶. Instances of a massive migration of civil servants to private companies and vice versa are limited but exist¹¹⁷.

Impact (4) An unhealthy relationship can develop between the private sector and the government, based on the provision of mutual privileges to the detriment of the nation and may lead to the seizure of regulatory bodies. The perception of government favoritism towards certain interest groups can equally cause distrust and damage the country's reputation. Such suspicions of bias can reduce citizens' confidence in government, which usually happens when it comes to politicians, political parties, and government officials. Perceptions of injustice can also hurt a country's economy by turning business away from bidding on government contracts, investing in a country, or participating in government-sponsored programs¹¹⁸. There are cases of public officials moved to the governing bodies of big mining companies¹¹⁹.

RISK 12

(CF4)

What is the risk that salaries of cadastre (or equivalent) agency staff are less than a living wage?

Probability (3) In 2017, the Ministry of Finance, together with the State Personnel Service and the Ministry of Labor and Social Development, conducted a study of the private sector wage market and the existing salary system with other payments and allowances for all positions of state and municipal employees, according to which wages are still low and uncompetitive¹²⁰. According to official figures, the level of wages in Kyrgyzstan is one of the lowest in the CIS. Employees of state bodies receive an average of 1.7 times less than in the private sector as a whole and more than two times less than in the field of mining in particular. Although the salaries of junior staff are relatively low, the salaries of key decision-makers are adequate.

Impact (4) Low public wages in developing countries lead to reduced public sector efficiency and productivity and create incentives and opportunities for corruption and misuse of public resources. But increasing wages without creating effective control and monitoring systems, as well as applying appropriate sanctions, is unlikely to affect corruption¹²¹. Low salaries can be an incentive to demand a bribe, to accelerate the receipt of money or gifts, especially if the salaries of their colleagues in the private sector are much higher. It is important to note that mining companies will be aware of any differences in pay and may target officials' complaints about wages. Servants of the authorized body are

¹¹⁶ Which of the deputies of the Jogorku Kenesh combines civil service and business. Article in online media dated 8/09/2019 https://kaktus.media/doc/397403_kto_iz_depytatov_jogorky_kenesha_sovmeshet_gosslyjby_i_biznes._spisok.html

¹¹⁷ Interview E1

¹¹⁸ Regulating the Revolving Door. TI Working Paper #6/2010

¹¹⁹ Profitable membership on Centerra's board of directors https://www.azattyk.org/a/centerra_gold_analysis_on_board_members_work/29965760.html
If Kumtor stops, there will be a political crisis in Kyrgyzstan https://www.azattyk.org/a/kyrgyzstan_politics_economy_kumtor_interview_muraliev/24727226.html

¹²⁰ Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan, p. 30

¹²¹ Low salaries, the culture of per diems and corruption. <https://www.u4.no/publications/low-salaries-the-culture-of-per-diems-and-corruption>

very inventive in creating situations pushing representatives of mining companies to offer some bribes or facilitation payments and gifts¹²².

RISK 13

(CF6)

What is the risk that cadastre agency staff do not have the skills to perform their job and / or will be unable to cope with the workload of the agency?

Probability (4) Low salaries in government agencies in general, and in particular those involved in the interaction with companies in the extractive industry, create an environment for staff turnover. This, in turn, leads to such negative consequences as a lack of staff quantity and professionalism¹²³. The work carried out by the State Committee for Industry, Energy and Subsoil Use to improve the efficiency of state policy and state regulation in the field of subsoil use, as well as to improve the management system of the state subsoil use fund, was found unsatisfactory at a meeting of the Security Council¹²⁴, and the materials prepared for this meeting were criticized¹²⁵.

Impact (3) Lack of skills or incompetence on the part of the personnel of the authorized body allows mining companies to take advantage of their ignorance and mistakes in order to involve them in corruption non-compliance with the rules or offer bribes or payments for assistance¹²⁶. Overfatigue and lack of resources slow down the licensing process, creating incentives for “money to accelerate receipt” and for manipulating officials with the process, working on selected applications. However, there is no information that indicates that the lack of skills/personnel in the authorized body had led to this type of corruption in the past.

RISK 14

(CC2)

Assuming consultation with communities or landholders is required, what is the risk that negotiations for landholder or community agreements can be manipulated and their free, prior, informed consent will be ignored?

Probability (4) The Subsoil Law and other regulations do not detail the requirements for consultation with the local community. Often, licenses are issued without taking into account the opinions of local residents. Public hearings, at which company representatives must inform people about their upcoming work, are held formally. They mainly involve interested parties¹²⁷. The population has practically no information. Mining companies establish contacts with local authorities, obtain a license, allocate land and, without giving any reason, start working. Residents often do not know what the company is doing, how much money the region receives from the development of a particular industry and where these funds are directed¹²⁸.

Impact (3) According to sociological studies, the majority of local residents surveyed have a negative attitude to the activities of mining companies and the mining industry as a whole. As practice shows, limited information leads to confrontation and conflicts with the local population¹²⁹. In most conflict areas, the local population even demanded the establishment of a long-term moratorium on the development of deposits. There are manipulations with the terms of the negotiations. Community interests are neglected, but not on a massive scale due to possible community strikes.

¹²² Interview I2

¹²³ Interview I3

¹²⁴ On Measures to Ensure Security in the Field of Subsoil Use of the Kyrgyz Republic the decision of Security Council of the Kyrgyz Republic. 30/01/2019

¹²⁵ Do officials not value investors well? <https://vesti.kg/geologiya/item/58611-chinovniki-nedostatochno-tsenyat-dostizheniya-investorov.html>

¹²⁶ MACRA Tool, p.68

¹²⁷ Interview E2

¹²⁸ Interview E3

¹²⁹ Mining: Permanent conflict. Article in online media dated 12/4/18. <https://rus.azattyk.org/>

IDENTIFIED RISKS

No	Identified Risk	Likelihood	Impact	Score
Risk 1	PD19: What is the risk that the licences or details of licences etc. that have been awarded will not be publicly available?	4	5	20
Risk 2	PD7: When tender assessment panels are used in the awards process, what is the risk that people appointed to the panel are not independent, e.g., because they have been carefully chosen by the government to create a specific desired outcome?	5	4	20
Risk 3	PD24: What is the risk that anti-corruption and anti-bribery clauses will not be included in mining contracts?	5	3	15
Risk 4	ESIA2: What is the risk there is no verification of the accuracy or truthfulness of EIA reports?	3	3	9
Risk 5	ESIA3: What is the risk that EIA reports will not be publicly available once finalised?	4	5	20
Risk 6	PP18: What is the risk that there will be inadequate monitoring of compliance with mining licence or permit obligations and licence- and permit- holders that breach their licence conditions and contracts can escape prosecution or other sanctions?	4	4	16
Risk 7	CF-KR1: What is the risk of contradictions and deficiencies in the laws governing subsoil use?	4	4	16
Risk 8	CF12: What is the risk of mining rights being expropriated (confiscated)?	4	5	20
Risk 9	CF17: What is the risk that people with knowledge of corruption in the awards process will not make a report?	4	5	20
Risk 10	CF16: What is the risk that senior public officials or politicians will not declare assets, shares or income related to mining interests?	4	4	16
Risk 11	CF-KR2: What is the risk of conflicts of interest of individuals moving between positions of public office and jobs in the same sector in the private or voluntary sector, in either direction?	3	4	12
Risk 12	CF4: What is the risk that salaries of cadastre (or equivalent) agency staff are less than a living wage?	3	4	12
Risk 13	CF6: What is the risk that cadastre agency staff do not have the skills to perform their job and / or will be unable to cope with the workload of the agency?	4	3	12
Risk 14	CC2: Assuming consultation with communities or landholders is required, what is the risk that negotiations for landholder or community agreements can be manipulated and their free, prior, informed consent will be ignored?	4	3	12

DISCUSSION OF RESULTS

This risk assessment identified that the process for license awards contains 14 governance risks comprising 7 contextual (CF) risks, 3 risks related to process design (PD), 1 risk of the process practice (PP), 2 risks of environmental assessment (ESIA) and 1 of community consultation (CC).

The scorings of likelihood are largely in line with expectations regarding the importance of a sound legal framework and appropriate accountability mechanisms. The risks scored with the highest likelihood of [5] (Risks 2 and 3) are both notable for the complete absence of any legal regulation or accountability, which makes them “almost certain” to occur. Risks scored as “likely” to occur [4] (Risks 5, 6, 7, 14) have a limited degree of legal regulation and accountability and are perceived overall as largely inefficient and characterized by substantial discretion, which can be abused, or (Risks 1, 8, 9, 10) are caused by lack of law enforcement culture or of a technical nature (Risk 13). Risks assessed as “possible” [3] were perceived as having limited regulatory or accountability mechanisms (Risk 11) or were of a technical nature (Risks 4, 12).

Impact assessment refers to possible negative consequences, which may also extend beyond the process of awarding mineral rights. Risks with the highest impact scoring [5], “catastrophic”, have a particularly strong negative impact on the transparency of the licensing process (Risk 1) and environment protection (Risk 5), and on the integrity of the overall process (Risks 8, 9), and also on the governance in the sector and the state as a whole. The effects of most risks, scored to have a “major” impact [4] (Risks 7, 10, 11, 12), also share this feature of impact on the overall integrity, which goes beyond the scope of the licensing process itself, there are also risks (Risks 2, 6) whose impact is limited to within the sector. The impact of risks scored to have a “moderate” impact [3] (3, 4, 13, 14) was perceived to have impacts that are limited by the licensing process itself and less of an impact on the sector as a whole.

GOVERNANCE RISK MATRIX

Likelihood	Almost Certain	5	10	R3 15	R2 20	25
	Likely	4	8	R13; R14 12	R6; R7; R10 16	R1; R5; R8; R9 20
	Possible	3	6	R4 9	R11; R12 12	15
	Unlikely	2	4	4	6	8
	Almost impossible	1	2	3	4	5
		Insignificant	Minor	Moderate	Major	Catastrophic
		Impact				

The total risk score of each risk can be considered to be an indicator of the significance of each risk, that takes into account both the likelihood and the impact scoring. The color code indicates this significance, with all risks being placed into the three most significant categories: from red to yellow and then blue. This classification system, provided by the TI MACRA methodology, emphasizes impact as a key factor of concern. The highest total points should not be considered as a single indicator for the purpose of prioritizing engagement to mitigate or prevent risk.

Colour:	Blue	Green	Yellow	Orange	Red
Risk level:	Very Low	Low	Moderate	High	Very High

The risks identified by the study are mainly related to the context. This reflects the fact that reforms in the industry have brought changes, but the presence of fundamental problems in the government's governance system has a significant impact on the state of corruption in the mining sector.

VERY HIGH RISKS

The identified very high risks are associated primarily with the openness of data on licenses and license agreements, the composition of competitive and auction commissions, the quality of work of authorized state bodies, as well as the problems of ensuring good governance in the country as a whole.

The 4 risks identified by the context analysis are manifested in connection with the weak implementation of the state anti-corruption agenda. This applies to the system of asset declaration of government officials, protecting of corruption whistleblowers, the collision of laws and the danger of expropriation of property.

In the process of granting the right to use subsoil, there are 3 risks associated with the provision of selective data on licenses and license agreements, the absence of independent members in the tender and auction commissions, and the lack of requirements for anti-corruption and anti-bribery provisions in subsoil use agreements.

One risk is associated with limited access to environmental impact assessment information.

And one of the very high risks exists in the field of supervision over the fulfilment of obligations under a license and license agreements and the liability of violators of such obligations.

HIGH RISKS

High risks were identified in relation to the problems of the capacity of the personnel of authorized body, as well as with public consultations.

Two of the high risks relate to difficulties in providing the authorized body with qualified employees / personnel due to the significant difference in salaries with the private sector and staff turnover.

One risk is connected to the possibility of manipulation during public hearings with local communities in the provision of land for subsoil use.

And the other one related to the possibility of moving government officials in the field of subsoil use regulation to mining companies and vice-versa.

MODERATE RISKS

The only moderate risks identified by the study concerns the danger of a lack of verification of the accuracy or reliability of the EIA reports due to the limited capacity of the state body.

PRIORITISATION OF RISKS FOR ACTION

To prioritize risks the following approach was used: based on the analysis, risks were identified that contained such characteristics as urgency, i.e. risks requiring urgent action; the degree of impact that can be obtained by addressing the risk, as well as the feasibility of the potential impact on the risk.

The degree of urgency was determined from the overall assessment in combination with the color (please refer to above Governance Risk Matrix) of the risk in question. The degree of impact was assessed based on the score of the impact of risk in combination with contextual factors. The feasibility of the action was determined taking into account the context, interest and support of stakeholders, as well as the availability of required resources.

As a result of the analysis, the following risks were selected for subsequent exposure by the Chapter:

Risk 1

(PD19): What is the risk that the licences or details of licences etc. that have been awarded will not be publicly available?

The overall score of this risk was among the highest (20), it was in red coloured zone and the impact of the risk was scored maximum – 5, as “Catastrophic”. In regards of feasibility this risk is also requires minor inputs to change the situation, as there is a legal requirement in place and a functional web platform which is already containing partial information. Addressing of this risk is also foreseen by the National Action Plan of the Kyrgyz Republic for Open Government Partnership Initiative.

Risk 2

(PD7): When tender assessment panels are used in the awards process, what is the risk that people appointed to the panel are not independent, e.g., because they have been carefully chosen by the government to create a specific desired outcome?

As there is no legal requirement this risk is certain to happen, it also in a red coloured zone of total risk scores, which is among the highest (20). Steps for mitigation of this risk require amendment of legislation and there are interested parties to advocate for change.

Risk 5

(ESIA3): What is the risk that EIA reports will not be publicly available once finalised?

The overall score of this risk was among the highest (20), it was in a red coloured zone and the impact of the risk was scored maximum – 5, as “Catastrophic”. As there is no legal requirement this risk is almost certain to happen with an exception of cases of voluntary publicized by some mining companies EIA reports. Steps for mitigation of this risk require amendment of legislation and there are interested parties to advocate for change.

Risk 7

(CF-KR1): What is the risk of contradictions and deficiencies in the laws governing subsoil use?

The risk is in a red coloured zone with the score of 16 and the impact of the risk is “major” – 4, the likelihood of the risk to happen is likely to occur with the exception of cases where adequate servants of public bodies mitigate these contradictions. Addressing of this risk requires minor resources from the state’s side, and moreover it is required by the legislation.

The next risk, which received one of the highest scores (20) and is also in the category of very high risks, was not included in the priority list, due to the difficulties in mitigating it in the near future.

Risk 9

(CF17): What is the risk that people with knowledge of corruption in the awards process will not make a report?

The final prioritization exercise will be held in March 2020 with key sector stakeholders who will identify the corruption risks that TI-Kyrgyzstan and partners will seek to mitigate or manage.

RECOMMENDATIONS

The application process directly involves three groups within the mining sector, namely local communities, mining companies and government / policy makers. Civil society also represents the interests of local communities. The following recommendations are designed for each of these groups.

1. RECOMMENDATIONS FOR LOCAL COMMUNITIES AND CIVIL SOCIETY

There is a critical need to educate local communities about their rights and the role they play in the application process. Community representatives cannot demand that rules and processes designed to protect their interests be upheld if they do not know or understand these processes. Thus, it is important that civil society form coalitions and partnerships to work together with community activists. This will ensure that initiatives such as workshops that educate communities about the stages of the application process, their role in the process and their rights, form the knowledge base for much needed change in the sector.

We also encourage local leaders to confront and report corruption and maladministration in their dealings with government and business representatives. This will help ensure that the revenues from mineral resources are truly at the disposal of the people and that the rights of local communities to land are adequately protected.

2. RECOMMENDATIONS TO THE GOVERNMENT

State bodies involved in the process of submitting and considering applications must urgently address a number of issues:

- Develop and introduce into legislation:
 - requirements for the publication of licenses and license agreements issued under the rule of the first filed application
 - requirements for the inclusion of independent members in the tender and auction commissions, as well as requirements for their qualifications
 - requirements for the mandatory publication of the EIA reports
 - standards for the protection of subsoil
- Conduct a detailed analysis of legislation and develop recommendations for harmonization and revision of regulations
- Provide measures of responsibility for non-compliance with the requirements for the publication of licenses and license agreements, and the requirements for the publication of EIA
- Raise awareness of integrity issues in the mining industry, both through government and non-government organizations and through the media
- Boost the technical capacity of state officials, as well as invigoration of existing resources with the involvement of individuals with expertise in the mining sector. New technological advancements could affect the policy and practice of awarding licenses
- Introduce systems for effective monitoring and assessment of compliance with the terms of license agreements and environmental impact limitations

3. RECOMMENDATIONS FOR MINING COMPANIES

Mining companies have a number of obligations in this regard, including:

- Holding fair and meaningful consultations that consider the needs of the community as a whole, are inclusive and transparent, and ensure that communities understand the nature and extent of the environmental and social impacts of the proposed mining activities. We urge mining companies to honor their social commitments to communities and to ensure that the commitments they make are in line with the needs of the community
- Ensuring that and maladministration do not taint application processes. Mining companies must contribute to change in the sector, not only because of the increasing cost of conducting operations in the Kyrgyz Republic due to perceptions of corruption and maladministration in the sector, but also because of the potential damage to their reputation and governance structures,
- Ensuring that they follow the correct legislative processes throughout the application process, and that the outcomes of this process are made fully transparent. Any requests for bribes and other corrupt activities should be reported to the relevant authorities and made publicly known.

Summary of the remaining risks and recommendations are as follow:

No	Identified Risk	Recommendations
Risk 1	PD19: What is the risk that the licences or details of licences etc. that have been awarded will not be publicly available?	<ul style="list-style-type: none"> • Introduce into the Law on Subsoil the requirement to publish licenses and license agreements for the rule of the first application. • Ensure publication of licenses and license agreements • Provide liability measures for failure to comply with the requirements for the publication of licenses and license agreements
Risk 2	PD7: When tender assessment panels are used in the awards process, what is the risk that people appointed to the panel are not independent, e.g., because they have been carefully chosen by the government to create a specific desired outcome?	<ul style="list-style-type: none"> • To introduce into the law the requirement to include independent members in the competitive commissions, as well as the requirements for their qualifications • To provide for the possibility of a random selection of civil servants for membership in such commissions.
Risk 3	PD24: What is the risk that anti-corruption and anti-bribery clauses will not be included in mining contracts?	<ul style="list-style-type: none"> • To introduce into legislation the requirement to include anti-corruption and anti-bribery provisions in license agreements • To promote the Charter of Business Against Corruption of the Chamber of Commerce and Industry, raise public awareness, attract media • Improve work with associations regarding the promotion of anti-corruption principles
Risk 4	ESIA2: What is the risk there is no verification of the accuracy or truthfulness of EIA reports?	<ul style="list-style-type: none"> • Increase SAEPF potential • To streamline the requirements for EIA, and in particular to bring into compliance the coordinate systems used by different government bodies • Provide unhindered access to the EIA for review and independent evaluation.
Risk 5	ESIA3: What is the risk that EIA reports will not be publicly available once finalised?	<ul style="list-style-type: none"> • Introduce into the legislation a requirement for the mandatory publication of an EIA • Provide liability measures for failure to comply with the requirements for the publication of an EIA

Risk 6	PP18: What is the risk that there will be inadequate monitoring of compliance with mining licence or permit obligations and licence - and permit- holders that breach their licence conditions and contracts can escape prosecution or other sanctions?	<ul style="list-style-type: none"> • Provide liability measures for improper performance of official duties by officials, as well as an unfair performance of obligations under a license by mining companies.
Risk 7	CF-KR1: What is the risk of contradictions and deficiencies in the laws governing subsoil use?	<ul style="list-style-type: none"> • Carry out a detailed analysis of the legislation and develop recommendations for harmonization and finalization of normative acts • Develop and introduce into the legislation standards for the protection of subsoil. • Raise awareness, attract media
Risk 8	CF12: What is the risk of mining rights being expropriated (confiscated)?	<ul style="list-style-type: none"> • Ensure openness and security of the change of ownership procedure
Risk 9	CF17: What is the risk that people with knowledge of corruption in the awards process will not make a report?	<ul style="list-style-type: none"> • Rework the Law on the Protection of Applicants on Corruption in terms of ensuring guarantees for the security of the applicant and provide for real and feasible measures to ensure its implementation (resources)
Risk 10	CF16: What is the risk that senior public officials or politicians will not declare assets, shares or income related to mining interests?	<ul style="list-style-type: none"> • Provide liability measures for improper fulfilment by officials of the requirements for declaring assets and conflicts of interest. • Ensure transparency of data regarding declarations of public servants • Train and engage youth representatives and active non-governmental organizations in evaluating the declarations of government officials
Risk 11	CF-KR2: What is the risk of conflicts of interest of individuals moving between positions of public office and jobs in the same sector in the private or voluntary sector, in either direction?	<ul style="list-style-type: none"> • Clarify and supplement the requirements of the conflict of interest legislation and provide for enforcement measures • Develop a bill and prescribe norms for restricting and controlling civil servants in commercial activities after leaving the civil service.
Risk 12	CF4: What is the risk that salaries of cadastre (or equivalent) agency staff are less than a living wage?	<ul style="list-style-type: none"> • Conduct a functional analysis of state bodies and the authorized state body in the field of subsoil use in particular. To consider the possibility of reducing the number of state bodies / employees, as well as outsourcing functions that are not characteristic of state regulatory bodies.
Risk 13	CF6: What is the risk that cadastre agency staff do not have the skills to perform their job and / or will be unable to cope with the workload of the agency?	<ul style="list-style-type: none"> • Conduct a functional analysis of state bodies and the authorized state body in the field of subsoil use in particular. Consider the possibility of automating work processes and increasing the potential of personnel of the authorized state body.
Risk 14	CC2: Assuming consultation with communities or landholders is required, what is the risk that negotiations for landholder or community agreements can be manipulated and their free, prior, informed consent will be ignored?	<ul style="list-style-type: none"> • Introduce into the legislation a requirement for the proper conduct of local public consultations and the publication of the materials of such consultations. • Introduce public policy technologies to engage communities.

CONCLUSIONS

The study revealed that the reforms carried out by the Government of the Kyrgyz Republic in recent years in order to eliminate management risks in the mining sector of the republic have brought some positive results. One of these results was the introduction of the First Filed Application rule instead of the direct negotiation rule to obtain a license. The adoption of the new Subsoil Law in 2018 and the relevant by-laws, as well as clear regulation of the choice of method for granting a license depending on the size and importance of a mineral deposit, have contributed to increasing the transparency and integrity of the process. However, the study identified 14 risks in the process of granting subsoil use rights. These risks reflect gaps in the field of disclosure before and after the award of the contract, the evaluation process, and in the field of public consultation. Moreover, most of the risks relate to the context in which the awarding of mineral rights is carried out, which indicates the need for full-scale reforms in the country's governance system as a whole.

It should be noted that the issues of bringing the provisions of regulatory acts governing licensing of subsoil use in line with each other and the exclusion of regulatory gaps in them are still relevant. The mining industry of the Kyrgyz Republic is an important sector of the economy, which currently accounts for about half of industrial production and a tenth of the country's GDP. This industry is important in the socio-economic development of Kyrgyzstan. The government is currently developing a concept for reforming the mining industry, which will be the basis of key changes in this area. Implementing these changes will require the participation of stakeholders, including financial and technical support.

ANNEXES

ANNEX I

BIBLIOGRAPHY

LAWS, DECREES, REGULATIONS IN CHRONOLOGICAL ORDER

- Constitution of the Kyrgyz Republic (2010)
- Code of the Kyrgyz Republic On Non-Tax Revenues (2018)
- Code of the Kyrgyz Republic On Violations (2017)
- Penal Code of the Kyrgyz Republic (2016)
- Water Code of the Kyrgyz Republic (2005);
- Forest Code of the Kyrgyz Republic (1999);
- Law of the Kyrgyz Republic On the Protection of Persons Reporting Corruption Offenses (2019)
- Law of the Kyrgyz Republic On Subsoil (2018)
- Law of the Kyrgyz Republic On the Declaration of Income, Expenses, Liabilities and Property of Persons Replacing or Holding State and Municipal Posts (2017)
- Law of the Kyrgyz Republic On State Civil Service and Municipal Service (2016)
- Law of the Kyrgyz Republic On Industrial Safety of Hazardous Production Facilities (2016)
- Law of the Kyrgyz Republic On Industrial Explosives (2015)
- Law of the Kyrgyz Republic On Normative Legal Acts (2009)
- Law of the Kyrgyz Republic On Pastures (2009)
- Law of the Kyrgyz Republic General Technical Regulation on Ensuring Environmental Safety in the Kyrgyz Republic (2009)
- Law of the Kyrgyz Republic On the Basics of Technical Regulation in the Kyrgyz Republic (2004)
- Law of the Kyrgyz Republic On Production and Consumption Wastes (2001)
- Law of the Kyrgyz Republic On Environmental Expertise (1999)
- Law of the Kyrgyz Republic On Coal (1999)
- The Decision of the Security Council of the Kyrgyz Republic On Measures to Ensure Security in the Field of Subsoil Use of the Kyrgyz Republic (January 30, 2019)
- The Decision of the Security Council of the Kyrgyz Republic On Measures for Digital Development of the Kyrgyz Republic (December 14, 2018)
- Presidential Decree On declaring 2019 the Year of the Development of Regions and Digitalization of the Country (January 11, 2019)
- Government Resolution of the Kyrgyz Republic On Approval of the Roster of Subsoil Fields of National Importance (July 3, 2019)
- Government Resolution of the Kyrgyz Republic On Issues of Licensing the Right to Use Subsoil (November 29, 2018)
- Government Resolution of the Kyrgyz Republic Regulation on the Procedure for the Provision of Land for Subsoil Use (December 15, 2017)
- Government Resolution of the Kyrgyz Republic Regulation on the State Committee for Industry, Energy and Subsoil Use of the Kyrgyz Republic (July 15, 2016)
- Government Resolution of the Kyrgyz Republic Regulation on the Procedure for Environmental Impact Assessment (February 13, 2015)
- Government Resolution of the Kyrgyz Republic

Regulation On the Procedure for Conducting State Environmental Impact Assessment in the Kyrgyz Republic (May 7, 2014)

Government Resolution of the Kyrgyz Republic Regulation on the Procedure for the Formation of Regional Development Funds (November 10, 2014)

Government Resolution of the Kyrgyz Republic Regulation on the State Agency for Environmental

REPORTS AND WEB RESOURCES

Protection and Forestry under the Government of the Kyrgyz Republic (February 20, 2012)

Government Resolution of the Kyrgyz Republic Regulation on the State Inspectorate for Environmental and Technical Safety under the Government of the Kyrgyz Republic (February 20, 2012)

The Strategy of Sustainable Development of the Industry of the Kyrgyz Republic for 2019-2023 (2019)

Report of Extractive Industries Transparency Initiative (EITI) for 2015-2017. <http://www.gkpen.kg/index.php/home1212-6> (accessed: January 28, 2020)

A Consolidated report of the Action Plan of the state bodies of the Kyrgyz Republic on the implementation of the State Strategy of the Anti-Corruption Policy of the Kyrgyz Republic for 2015-2017

Managing Fraud, Bribery and Corruption Risks in the Mining and Metals Industry. Ernst & Young Global Limited (2015)

Researching researchers: Lessons for research ethics. Wiles, Rose; Charles, Vikki; Crow, Graham & Heath, Sue. *Qualitative Research*, 6(3) (2006)

Human Development Report. UNDP. 2019. <http://hdr.undp.org/en/countries/profiles/KGZ> (accessed: January 28, 2020)

Public Opinion Survey Residents of Kyrgyzstan. IRI 2018. https://www.iri.org/sites/default/files/february_2019_kyrgyzstan_poll.pdf (accessed: January 28, 2020)

Corruption Perceptions Index 2019. Transparency International. <https://www.transparency.org/cpi2019> (accessed: January 28, 2020)

Global Corruption Barometer 2015/16/17. Transparency International. https://www.transparency.org/research/gcb/gcb_2015_16/0

(accessed: January 28, 2020)

Private Sector Assessment, ADB, 2013. <https://www.adb.org/sites/default/files/institutional-document/34056/files/kyrgyz-republic-private-sector-assessment-update.pdf> (accessed: January 28, 2020)

Report on the implementation of the action plan of the Ministry of Justice of the Kyrgyz Republic on combating corruption for 2017 <http://minjust.gov.kg/ru/content/893> (accessed: January 28, 2020)

Mining, Development and the Environment in Central Asia: Toolkit Companion with Case Studies. Ed. J. Hughes. The University of Eastern Finland. 2012. https://epublications.uef.fi/pub/urn_isbn_978-952-61-0934-3/urn_isbn_978-952-61-0934-3_highquality.pdf (accessed: January 28, 2020)

State and Municipal Service Magazine. https://www.mkk.gov.kg/public/images/file_library/2019081223363011.pdf (accessed: January 28, 2020)

The rare-metal potential of Kyrgyzstan: status and prospects. Melentyev G.B., Vorobev A.E., Shamshiev O.S. *Vestnik RUDN* 2015 2015 №4 <https://cyberleninka.ru/article/n/redkometallnyy-potentsial-kyrgyzstana-sostoyanie-i-perspektivy> (accessed: January 28, 2020)

Improving Resource Governance in the Kyrgyz Republic: 12 Priority Issues for the Mining Sector. NRGI 2017 https://resourcegovernance.org/sites/default/files/documents/nrgi_discussion_paper.pdf (accessed: January 28, 2020)

Mining Conflict Management Guide, Kyrgyz Republic, 2017 http://csr-ca.com/wp-content/uploads/2018/02/Investors-Guidebook_russian.pdf (accessed: January 28, 2020)

Talapina E.V., Yuzhakov V.N. Methodology of the primary analysis (examination) of normative legal acts on corruptionogenicity. - Moscow: Center for Strategic Research, 2007

Khudeneva N. I. Corruption factors in environmental legislation. *Journal of Russian Law*. 2015. No.6

Extracting Sentiments: The Effect of Mining Exploration and Extraction on Eight Communities in the Kyrgyz Republic, Oxus International, EFCA, USAID, 2012.

An Economic Evaluation of Gold Mining Tax Regimes in the Kyrgyz Republic, NRGI, 2018, <https://resourcegovernance.org/sites/default/files/documents/economic-evaluation-of-gold-mining->

tax-regimes-kyrgyz.pdf (accessed: January 28, 2020)

Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan. OECD. 2018

Sectoral corruption prevention in Eastern Europe and Central Asia. OECD. 2017

Regulating the Revolving Door. TI Working Paper. 2010. No.6

Low salaries, the culture of per diems and corruption. <https://www.u4.no/publications/low-salaries-the-culture-of-per-diems-and-corruption>

Mining Arbitration in Central Asia, Global Arbitration Review, 2019. <https://globalarbitrationreview.com/chapter/1194154/mining-arbitration-in-central-asia> (accessed: January 28, 2020)

The Ten Principles of the UN Global Compact. UN. <https://www.unglobalcompact.org/what-is-gc/mission/principles> (accessed: January 28, 2020)

Whistleblower protection. OECD. 2015. <http://www.oecd.org/governance/ethics/whistleblower-protection/> (accessed: January 28, 2020)

Medium and Long-Term Strategy for the Development of the Mining Industry of the Kyrgyz Republic. (2014) p. 52 <https://policy.asiapacificenergy.org/sites/default/files/Medium-term%20and%20long-term%20Strategy%20for%20the%20Development%20of%20Mining%20Industry%20in%20the%20Republic%20of%20Kyrgyzstan.pdf> (accessed: January 28, 2020)

Confidence Index of the National Statistical Committee of the Kyrgyz Republic <http://www.stat.kg/ru/indeks-doveriya-naseleniya/> (accessed: January 28, 2020)

Doing Business rankings. World Bank. 2019. <https://www.doingbusiness.org/en/rankings> (accessed: January 28, 2020)

Index of Economic Freedom. Heritage Foundation. 2020. <https://www.heritage.org/index/ranking> (accessed: January 28, 2020)

www.alliance-altyn.kg (accessed: January 28, 2020)

Open Data portal of the Kyrgyz Republic. SCIESU. <https://data.gov.kg/organization/state-com-natural-resources?page=1> (accessed: January 28, 2020)

Kyrgyz Republic Action Plan 2018-2020. Open Government Partnership. 2018. <https://www.opengovpartnership.org/members/kyrgyz-republic/> (accessed: January 28, 2020)

WORKSHEET A

Vulnerabilities (Complete at Steps 2A and 3A)	Resulting corruption risks... (Complete at Step 4)
Vulnerability 1: No publication of licenses or license agreements. Vulnerability 2: Data on licenses or license agreements is not disaggregated by the method of licensing	Risk 1 (PD19). What is the risk that the licences or details of licences etc. that have been awarded will not be publicly available?
Vulnerability 3: No independent members in Tender or Auction commissions Vulnerability 4: No qualification requirements for members of Tender or Auction commissions	Risk 2 (PD7). When tender assessment panels are used in the awards process, what is the risk that people appointed to the panel are not independent, e.g., because they have been carefully chosen by the government to create a specific desired outcome?
Vulnerability 5: No requirements to include anti-corruption and anti-bribery provisions in license agreement	Risk 3 (PD24). What is the risk that anti-corruption and anti-bribery clauses will not be included in mining contracts?
Vulnerability 6: Lack of capacity of state bodies to environmental monitoring.	Risk 4 (ESIA2). What is the risk there is no verification of the accuracy or truthfulness of EIA reports?
Vulnerability 7: Selective attraction of representatives of local communities to discuss EIA Vulnerability 8: No requirements to publicize EIA report.	Risk 5 (ESIA3). What is the risk that EIA reports will not be publicly available once finalised?
Vulnerability 9: Licenses and License agreements are not public.	Risk 6 (PP18). What is the risk that there will be inadequate monitoring of compliance with mining licence or permit obligations and licence- and permit-holders that breach their licence conditions and contracts can escape prosecution or other sanctions?
Vulnerability 10: There are contradicting articles in legal acts.	Risk 7 (CF-KR1). What is the risk of contradictions and deficiencies in the laws governing subsoil use?
Vulnerability 11: High level of corruption in judiciary and law enforcement. Vulnerability 12: Property rights are not adequately protected.	Risk 8 (CF12). What is the risk of mining rights being expropriated (confiscated)?
Vulnerability 13: Safety of whistleblowers is not ensured.	Risk 9 (CF17). What is the risk that people with knowledge of corruption in the awards process will not make a report?
Vulnerability 14: Weak system of Asset Declaration.	Risk 10 (CF16). What is the risk that senior public officials or politicians will not declare assets, shares or income related to mining interests?
Vulnerability 15: The possibility of obtaining additional advantages.	Risk 11 (CF-KR2). What is the risk of conflicts of interest of individuals moving between positions of public office and jobs in the same sector in the private or voluntary sector, in either direction?
Vulnerability 16: Low level of wages.	Risk 12 (CF4). What is the risk that salaries of cadastre (or equivalent) agency staff are less than a living wage?
Vulnerability 17: Lack of staff quantity and capacity	Risk 13 (CF6). What is the risk that cadastre agency staff do not have the skills to perform their job and / or will be unable to cope with the workload of the agency?
Vulnerability 18: Lack of awareness / knowledge of the local population Vulnerability 19: Low level of confidence in the authorities	Risk 14 (CC2). Assuming consultation with communities or landholders is required, what is the risk that negotiations for landholder or community agreements can be manipulated and their free, prior, informed consent will be ignored?

