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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
AMENDING THE LAW ON NON-COMMERCIAL ORGANISATIONS
AND OTHER LEGISLATIVE ACTS
OF THE KYRGYZ REPUBLIC

(unofficial translation)

The Law of the Kyrgyz Republic
on Introducing Amendments and Changes into some
Legislative Acts of the Kyrgyz Republic”

Article 1.

To introduce into the Law of the Kyrgyz Republic "On Non-commercial Organisations" (the newspaper "Erkintoo" as of November 3, 1999 N86) the following amendments:

1. Article 2 shall be amended by items 4 - 9 as follows:

"Foreign non-commercial organization – is an organisation that does not seek profit as the main objective of its activity and does not distribute benefits among its members, is established outside the territory of the Kyrgyz Republic in accordance with the laws of a foreign country, whose founders (members) are not state bodies.

Foreign non-commercial organization operates on the territory of the Kyrgyz Republic through its representations - branches and local offices.

The structural units of foreign non-commercial organisations - branches and local offices of foreign non-commercial organisations that are subject to state registration and acquiring legal capacity on the territory of the Kyrgyz Republic from the date of entry of relevant information about their structural units in the manner prescribed by the Law of the Kyrgyz Republic on State Registration of Legal Entities, Branches (Local Offices) into the register of branches and local offices of international organisations and foreign non-commercial organisations.

Non-commercial organisation, which acts as foreign agent - non-commercial organisation established in the Kyrgyz Republic, which receives money or other property from foreign governments and their public authorities, international and foreign organisations, foreign citizens, persons without citizenship or their authorised representatives receiving funds and other property from the specified sources (except for the open joint-stock companies with state participation and their affiliates, hereinafter - foreign sources), and that is involved, among others for the benefit of foreign actors, in political activities carried out on the territory of the Kyrgyz Republic.

Non-commercial organisation is considered as participant in political activities carried out on the territory of the Kyrgyz Republic, if regardless of its goals and objectives stated in its articles of association, it is involved (including through financing) in organising and conducting political activities aimed at influencing the decisions of public authorities in order to change their policy, as well as influencing the public opinion for the abovementioned purposes.

Political activities do not include activities carried out in the field of science, culture, art, health, public health, social support and protection, and social support to the disabled, protection of motherhood and childhood, and the promotion of healthy lifestyles, physical culture and sport, protection of flora and fauna and charitable activities.”

Parts 4 – 8 shall be considered as parts 10 - 14.

2. Article 12 shall be amended by item 4 as follows:

"Materials published by the non-commercial organisation acting as a foreign agent, and / or distributed by it, as well as through media and / or using the" Internet "shall include a reference to the fact that these materials are published and / or distributed by non-commercial organisation acting as a foreign agent. “

3. Article 17 shall be amended as follows:

«Article 17. The openness of a non-commercial organisation»

Non-commercial organisation conducts accounting and statistical reporting in accordance with the legislation of the Kyrgyz Republic.

The annual financial statements of the structural units of foreign non-commercial organisations, unless otherwise provided by an international agreement of the Kyrgyz Republic, and the annual financial statements of a non-commercial organisation acting as a foreign agent, are subject to statutory audit.

Non-commercial organisation provides information on its activities to the authorized body in the field of statistics and tax bodies, and other persons in accordance with the legislation of the Kyrgyz Republic and the articles of association of the non-profit organisation.

The size and structure of a non-commercial organisations, as well as information about their property, its value, size and number of employees, remuneration of their labour, and the use of voluntary labour in the activities of non-commercial organisations cannot be considered as commercial secrets.

Non-commercial organisations are required to submit to the competent authority documents including a report on their activities, on the composition of their governing bodies, on the financial books and the use of other property, including from foreign sources; non-commercial organisations that act as a foreign agent, have to submit the auditor's report as well.

The documents submitted by non-commercial organisations that perform functions of a foreign agent must contain the following information for expenditure of funds and the use of other assets received from foreign sources, and their actual spending and use. The presentation of these documents (with the exception of the audit report) and the time they are submitted by the authorised body in the sphere of state registration.

Non-commercial organisations that received money and other property from foreign sources maintain separate records of income (expenses) received (made) in the income from foreign sources, and income (expenses) received (made) from other sources.

Non-commercial organisations that act as a foreign agent shall submit to the authorised body of documents containing a report of its activities on the composition of the governing bodies, every six months, documents for expenditure of funds and the use of other property, including from foreign sources, - quarterly and audit report - annually.

The structural units of foreign non-commercial organizations operating in the territory of the Kyrgyz Republic, annually, and non-commercial organizations that act as foreign agent - once every six months, provide the media or place on the "Internet" reports on its activities, including its founders, the composition of its property, sources of formation and information on spending.

The structural unit of a foreign non-commercial organisation in each year submit to the authorized body of the audit report received from the audit organization of the Kyrgyz Republic or the individual auditor, unless otherwise stipulated by international agreements of the Kyrgyz Republic.

Routine inspections of organisation acting as a foreign agent, held no more frequently than once a year.

The grounds for an unscheduled non-profit organisation that performs the function of a foreign the agent is:

- Deadline for a warning by an authorized body, previously issued to a non-commercial organization acting as a foreign agent, and expiry of the term to end the violation;

- Admission to the authority information from state bodies, local self-government of violating a non-commercial organisation acting as a foreign agent, the legislation of the Kyrgyz Republic in the sphere of its activity;

- The presence of the order (order) of the head of an authorised body, issued on the basis of the prosecutor's request to conduct unscheduled audits in the framework of his supervision of the execution of the laws on the submitted materials to the prosecutors and appeals.

The authorised body in the sphere of state registration exercise control over the compliance of the non-commercial purposes, with its statute, and the legislation of the Kyrgyz Republic. With respect to non-commercial organisations the authority may:

- Request the government non-commercial organization of their documents of title;

- request and receive information on the financial and economic activities of non-commercial organizations at the state statistical agencies, tax authorities and other bodies of state supervision and control, as well as to credit and other financial institutions;

- send their representatives to participate in the on-going activities of a non-commercial organization;

- Review the compliance of non-commercial organizations, including the disbursement of funds and property, purpose, with its statutory, in the manner prescribed by the authority;

- In the case of violation of the legislation of the Kyrgyz Republic or the commission by a non-commercial organisation or its structural unit of action contrary to the purposes stated in its articles of association, to issue to such organisation a written notice, indicating the violation and the period for its removal of not less than one month. Notice issued to a non-commercial organization, can be appealed to a higher authority or to a court;

- suspend the activities of non-commercial organisation acting as a foreign agent, who has not filed an application for inclusion in the register of non-commercial organisations acting as a foreign agent, for a period of not more than six months in accordance with the Law of the Kyrgyz Republic "On state registration of legal entities, branches (offices). The decision to suspend the activities of a non-commercial organisation may be appealed in court.

In the case of suspension of a non-commercial organisation it is prohibited to carry out mass actions and public events, use of bank deposits, with the exception of settlements on economic activity and employment contracts, compensation for losses caused by its actions, payment of taxes, fees and fines.

If within the prescribed period of suspension of a non-commercial organisation, it will submit to the authority a statement for inclusion in the register of non-commercial organisations acting as a foreign agent in accordance with the Law of the Kyrgyz Republic "On state registration of legal entities, branches (offices)," a non-commercial organisation can resume its activities after its inclusion in the registry.

In the case of not providing authorised body with information stipulated in this Article within the prescribed period, and in case the activity of the structural units of foreign non-commercial organisation which does not meet the goals stated in its declaration, and the information submitted in accordance with this Article is not in accordance with this Article, the relevant structural unit of a foreign a non-commercial organisation may be removed from the register of branches and representative offices of international organizations and foreign non-commercial organisations to address the authorised body in the sphere of state registration.

In order to protect the constitutional order, national defence and state security, morality, health, rights and freedoms of others, the authority may issue a structural unit of the foreign non-commercial organisation a motivated decision to ban the transfer of funds and other assets to specific recipients of these funds and other assets. "

Article 2.

The Law of the Kyrgyz Republic "On state registration of legal entities, branches (representations)" is completed with a following addition:

"Registration of legal entities with foreign participation, including performing functions of a foreign agent, branches (offices) of foreign legal persons and legal entities with foreign participation, including performing functions of a foreign agent, with the exception of legal entities, branches (offices) listed in the third paragraph of Part 2 of this article ";

Part 4 of Article 11, paragraph seven supplemented as follows:

"An application for inclusion in the register of non-commercial organizations non-commercial organizations acting as a foreign agent - for non-commercial organizations acting as a foreign agent."

Article 3.

Amend the Criminal Code with the following:

Change Article 259 as follows:

"Article 259. Creation of non-commercial organization, infringing on a rights of citizens"

(1) Establishment of a religious or public associations whose activities involve violence against citizens or otherwise causing harm to their health or leadership in such association, - shall be punished by a fine of two hundred to five hundred calculated indices or imprisonment for up to four years.

(2) Establishment of non-commercial organizations (including non-commercial organization that acts as a foreign agent) or a structural unit of a foreign non-commercial organizations whose work incites citizens to refuse to fulfil their civic duties or commit other unlawful acts, as well as leadership in such an organization or a structural unit - shall be punished by a fine of one hundred to four hundred calculated indices or imprisonment for up to three years.

(3) Participation in the activities of non-commercial organisations listed in paragraphs one and two of this article, as well as propaganda of acts provided by the first and second paragraph of this article - shall be punished by a fine of one hundred to three hundred calculated indices or by imprisonment for a term not exceeding two years".

Article 4.

(1) The Government of the Kyrgyz Republic in the three month period has to bring its regulations into conformity with this Law.

(2) The Government of the Kyrgyz Republic has to make suggestions to the Parliament in order to implement the provisions of this Law.

(3) This Law shall take effect upon the expiration of three months from the date of publication.

The President of the Kyrgyz Republic