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An Analytical Overview

LEGAL REGULATION OF NCO FUNDRAISING USING NON- CASH PAYMENT SYSTEMS IN THE KYRGYZ REPUBLIC¹

PREPARED FOR

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Legal Regulation of NCOs' Fundraising Activities Using Non-Cash Payment Systems in the Kyrgyz Republic / Written and compiled by Roza Salibekova.

This study is designed to inform private individuals and not-for-profit organizations about the key provisions of the Kyrgyz legislation that NCOs have to comply with in raising funds from legal and physical persons via non-cash payment facilities. Based on a comprehensive analysis of applicable Kyrgyz legislation, the study contains information of educational and practical value. Intended for a broad readership.

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Goals and Objectives

This study of the legal regulation of NCO fundraising activity using non-cash payment facilities in the Kyrgyz Republic (hereinafter, **the Study**) is based on a comprehensive analysis of the law of the Kyrgyz Republic (hereinafter, **KR**).

Its goal is to review and analyze applicable KR regulation on fundraising within the framework of NCOs' transactions with legal and physical persons that involve non-cash payment systems.

Its objectives include presenting the results of a legal analysis of the civil-law, banking/financial, and tax regulation of NCO fundraising.

The study is based on an analysis of applicable KR law and draws upon open-source materials.

Facts and Background

Intended for NCOs, this study aims to explain:

1. how various fundraising mechanisms work with the help of the Internet and electronic means; and
2. what legal consequences these various mechanisms have for NCOs (what is legal and what is not; how to use them in compliance with local legislation; tax consequences, etc.).

For the purposes of this study, crowdfunding is understood as attracting funds from the general public (an undefined circle of legal and physical persons) through donations or voluntary gratuitous contributions (hereinafter collectively, donations), using electronic means, to finance both specifically defined and general statutory activities of NCOs. "Crowdfunding" is not a legal term.

To achieve these goals, we have to consider the following fundraising mechanisms used by NCOs:

1. via the NCO's website – where donors pay directly to the NCO by credit or debit card;
2. through an intermediary – an online crowdfunding platform;
3. through a bank – where the latter accumulates funds in its account and transmits them to the NCO;
4. via a mobile service provider; or
5. via terminals
 - a. owned by organizations with a bank license, or

b. without one.

To this end, it is necessary to consider the following issues:

- the legality of fundraising by NCOs themselves and any of the above intermediaries passing collected funds on to the NCO;
- the legal relationship between the NCO and the intermediaries;
- the legal status of the funds received by an intermediary, including for taxation purposes;
- the legal status of the funds received by the NCO from intermediaries, their allocation to tax-exempt income; and
- the legal status of the intermediaries, the need of a license to carry out banking operations, the possibility of attracting funds from the general public on behalf of an NCO, legal responsibility regarding reporting on the use of funds raised, etc.

1. The Legal Regime of Local and Foreign Funding of NCOs

1.1. THE LEGAL STATUS OF FUNDRAISING IN THE KR

GENERAL PRINCIPLES

Let us consider the definitions of “fundraising” and “crowdfunding” available in open sources.

Fundraising is defined as collecting voluntary donations in cash or in other form and, as a rule, for purposes not related to making profit. Originally, it existed in the form of volunteers collecting donations on the street. Collecting funds via the Internet (crowdfunding) is very widespread today.²

“Crowdfunding” as a public/grassroots form of fundraising is a collective effort of individuals (donors, contributors) pooling their money or other resources on a voluntary basis, normally via the Internet, to support efforts of other individuals (owners or founders of a startup or project) or organizations (recipients).³

These two words are identical in that they denote fundraising on a voluntary basis. Whereas fundraising usually involves funding by legal persons (institutions, companies) both on- and off-line (using donation boxes,⁴ for example), crowdfunding as a form of fundraising is usually done by individuals online (using specialized Internet-based payment systems).

As social institutions of grassroots financing, fundraising and its variety crowdfunding have a long history in the KR and other Central Asian countries. In keeping with the ancient tradition of mutual assistance called *ashar*, socially useful projects enjoy government-level support and engagement from community and elders’ councils, *zhamaats* (local communities), local self-governance bodies, civil society organizations and associations and the like. NCOs in the KR have access to financial support from the government, private individuals, and other private donors and can earn it from their business activity.

At the same time, NCOs still have few effective mechanisms of funding using distance payments and other modern IT instruments. This is accounted for by the following key factors.

- I. Macroeconomic factors. The existing telecommunication facilities cannot meet the demand of the KR population, NCOs included, for modern information and communication technology. Based on an ISOC (Internet Society) survey, the KR Research for Social Studies cites these statistics

² <https://goo.gl/kghS8f>

³ <https://goo.gl/cE2gTu>

⁴ <https://goo.gl/vdRrkS>

(November 2015): while about 25% of the population has Internet access, only 20% are Internet users, and then most of them as mobile telephony subscribers; 75% have no access to the Internet at all. This is due to factors such as demand, accessibility, and the cost of external traffic, of which 80% is imported by Russia and Kazakhstan. Mobile broadband Internet is prevalent in the country; it covers 90% of the territory and 5.5% of the population. According to CAGR (Global Internet Penetration), Kyrgyzstan with its 23.4% penetration holds 119th place in 2018, well behind Russia (57th place with 61.4%), Kazakhstan (70th place, 54.0%) and Uzbekistan (100th place, 38.2%) and ahead of Tajikistan (143rd, 16.0%) and Turkmenistan (151st, 9.6%).⁵ While a lack of institutional support is obvious (a comparison with other Central Asian countries based on relevant international ratings points to a general similarity of the legislative and regulatory frameworks of their financial sectors), insufficient financial support from the government and income-generating sectors of the economy in conjunction with low investment attractiveness, corruption, macroeconomic and political instability, and the low penetration level of modern financial instruments have a dampening impact on the country's competitiveness on the regional wholesale and retail financial services market.

2. Legal factors. There is a tendency of restricting non-cash mobile payment payments in the KR. The National Bank of the Kyrgyz Republic (hereinafter, the NBKR) initiated a draft law of January 12 and Amendments to its Board's Resolution #15/6 On Approving the Provision On Electronic Money in the Kyrgyz Republic of March 30, 2016 (hereinafter, the **EM Provision**).⁶ According to the proposed language of items 8, 8-1, 9, 9-1 and 26-1), it shall be prohibited to add funds to an electronic wallet out of balance funds on the personal account of a subscriber of a telecommunication service, including by recovering advance payment for goods or services and adding the recovered amount to the e-wallet. It is proposed that the sources of increasing funds in an e-wallet be limited to bank accounts; cash-in terminals; e-wallet to e-wallet transfers; the systems of money transfers without opening an account; and agent networks. According to the regulatory impact analysis attached to the draft law,⁷ these restrictions are partly accounted for by the fact that adding funds to an e-wallet by "recovering an advance payment (or its part) previously entered in the subscriber's personal account makes it possible to speak about signs of banking operations and banking activity" and "a risk of

⁵ <https://goo.gl/ZR14Jw>; <https://goo.gl/57dYCG>; <https://goo.gl/dCsFwA>; <https://goo.gl/XCm44s>

⁶ <https://goo.gl/YjVnLr>

⁷ Regulatory Impact Analysis of December 15, 2017 attached to the draft resolution Amendments to NBKR Board Resolution #15/6 On Approving the Provision On Electronic Money in the Kyrgyz Republic of March 30, 2016 (a brief assessment)

funds accumulating on the personal accounts of the customers of telecom providers and other suppliers of goods and services having no license for banking operations...”. Competition between the banking sector and telecom operators in the payment services market is obvious: the linking of balance units to e-wallets for purposes of non-cash payment makes it possible for telecom operators to attract considerable capital as subscribers add funds into their personal accounts.⁸ In our opinion, the adoption of the law is going to restrict mobile non-cash payments.

A number of imperative norms regulate the disclosure of the composition and sources of funding, its territorial status, personal data on NCO staff (for example, faith organizations) and their numbers,⁹ which is due to the authorities’ concern about the threat of foreign financing of terrorist, extremist and separatist activity.

It should be said that in some instances the government has attempted to restrict NCOs’ activity in the KR, including foreign funding, by giving them the status, similarly to Russian legislation, of “noncommercial organizations performing the function of a foreign agent.” This status was introduced in the draft law of May 26, 2014 (introduced in the KR Parliament) On Making Amendments to Certain Legislative Acts of the Kyrgyz Republic (the Law of the RK on Noncommercial Organizations (hereinafter, **the NCO Law**), the Law of the KR On the State Registration of Legal Persons and Their Branches (Representative Offices), and the Criminal Code of the KR). According to the draft law, NCOs and NGOs were to report to authorized bodies on their activities and the size and structure of their revenues. Also, information on the size and composition of their property, the number and composition of employees, remuneration, and the use of free labor could not be the subject of a commercial secret. Let us note that these restrictive norms failed to pass the Parliament – the current NCO Law refers to “foreign noncommercial organizations.”¹⁰

Alongside that, it is important to underline a significant liberalization of the civil society of the KR: NCOs are taking part in the drafting of laws (including within the system of tripartism) and the work of government bodies and local councils (*kurultais*); community organizations and social net projects enjoy government support, and a variety of budget-funded programs is being implemented for the promotion of civil society and government-private partnership in the KR,¹¹ and so are

⁸ <https://goo.gl/KRb24F>

⁹ Item 2 Art. 1; Item 2 Art. 9; Items 1), 2) Item 1 Art. 11; Item 2 Art. 13; Item 4, 5, 6 Art. 17; Item 3, 4, Items 1), 2), 3), 4), Item 6, Item 7 Art. 26 of KR Law #282 On Freedom of Religion and Religious Organizations in the Kyrgyz Republic of December 31, 2008 (hereinafter, the **Law On Religion**)

¹⁰ Art. 1 of KR Law #111 On Noncommercial Organizations of October 15, 1999

¹¹ <https://goo.gl/cVp67t>

intergovernmental agreements¹² and strategic plans for improving NCOs' social sustainability, including within the framework of UN and OSCE programs. Government and private systems for electronic reporting, which use government standards to identify physical and legal persons and their civil transactions, among them commodity-money operations, using the electronic (digital) signature have been introduced into practice.¹³

On December 2-3, 2017, the KR saw its first innovation forum for NCOs, called Reboot. It was organized in the form of panel discussions and digital workshops on the world café principle by the Youth Development Institute and the Interbilim International Center (both community organizations) with the support of the Soros-Kyrgyzstan, FSDS and the Konrad Adenauer foundations and in cooperation with the Russian-based not-for-profit educational project Teplitsa for Social Technologies (LLC Social Enterprise for the Innovative Development of Organizations) and Russia's largest crowdfunding platform Planeta.ru (LLC Global Networks). A global platform to form an innovative ecosystem for the introduction of state-of-the-art technology in the activity of NCOs, the NCO forum was first launched by the international conference Development Stories: A Look from Within in June 2017, which took place within the framework of the P4I (Partnership for Innovation) program of the Civil Society Development Association ARGO with USAID support.

The Bishkek forum had six innovation platforms focusing, among other things, on the establishment of crowdfunding platforms as effective Internet-based fundraising instruments.¹⁴

It is a positive trend that crowdfunding is gaining popularity in the KR, as it enables physical and legal persons to collect voluntary donations centrally and globally using mobile technology. In the foreseeable future, the participation of physical and legal persons in such platforms and, as a result, the arising matters of their legal competence for such transactions may require that specific legislation be adopted for standard treatment of the parties and current legal relationships reviewed in compliance with the law.

The first crowdfunding platform (hereinafter, the **Service**)¹⁵ was launched in the KR in January 2018. It was preceded by the establishment in May 2016 of a specialized

¹² <https://goo.gl/kmx49X>

¹³ <https://goo.gl/f7Fy9V>, <https://goo.gl/r53CY2>

¹⁴ <https://goo.gl/1dNjza>

¹⁵ Note: Crowdfunding service <https://kopilka.kg/>. This service may be in its early development stage, but still its architecture does not provide for some typical functions such as the registration of the project designers, project editing and management, noncash money transfers using payment processing capacities of licensed payment systems. There is only a popup dialog message to the effect that money can be transferred using the banking information of the electronic e-wallet Elsom. The public contract, rules of use, confidentiality provisions, etc. are absent. Nor could we locate any mention about the registration of the service/its owner as a legal person or sole proprietor or any indication of their registration with tax authorities in the databases <https://goo.gl/PneviC> and

crowdfunding project to collect funds for the professional development and training of orphanage graduates.¹⁶ In the KR, services may be organized (hereinafter, **Service Organizers**) by noncommercial and commercial organizations providing their broker services to physical and noncommercial or commercial legal persons.

NCO law does not prohibit such activity by agents or subagents of payment organizations/payment system operators provided they act on the basis of a NBKR license (Section 2.1.1.).

At present, such services may finance various projects, including charitable and socially beneficial ones. NCOs may be part of crowdfunding services as project designers on conditions provided for by their agreements with the service organizer. Since KR law does not contain any specialized legal regulation of crowdfunding, this activity and parties thereto are the subject of general legislative regulation of civil-law transactions between KR legal entities.

1.2. THE LEGAL STATUS OF NCOS ENGAGED IN FUNDRAISING ACTIVITIES

GENERAL PROVISIONS

1.2.1. THE GENERAL LEGAL FRAMEWORK OF COMMERCIAL ORGANIZATIONS' FUNDRAISING USING INTERNET RESOURCES

According to KR law, commercial organizations (normally, those incorporated as business partnerships and associations) may establish Internet resources for fundraising.

Commercial organizations have the right to establish services, and as such they:

1. are not party to any financing transactions between the participants and the designers of the projects (commercial or noncommercial), nor are they responsible or accountable for obligations of the latter, but rather provide technical, organizational and information opportunities;
2. take part in transactions between parties to the service – users and designers of projects – on behalf of and as instructed by the project designers, performing the intermediary (agency) function as technical organizer of the collection of funds; and
3. act as payment agents or subagents collaborating with payment system operators/payment organizations, banks and organizations carrying out individual types of banking operations and render payment services, acting as payment service provider (subject to state registration and licensing with the NBKR).

<https://goo.gl/UGoZh9>. In this connection, it remains to be seen whether the said Internet resource is collecting funds on a legitimate basis.

¹⁶ Publis Foundation Oasis <https://goo.gl/8xv4J2> (<https://goo.gl/HrkFHc>, <https://goo.gl/b9fq51>)

Commercial organizations may create corporate websites and realize the results of their principal commercial activity.

Summing up, commercial legal persons may, for purposes of attracting funds, create services to perform intermediary (agency) functions within the framework of transactions between project designers and service users – attract funds in the interest of the project designers, as well as establish corporate websites and make commercial profit as remuneration for engaging in said activities (Section 2).

1.2.2. THE GENERAL LEGAL FRAMEWORK OF NCO FUNDRAISING USING INTERNET RESOURCES

According to KR law, noncommercial legal persons may establish Internet resources for fundraising.¹⁷

- i. Depending on the vector of an NCO's activity, i.e. its realization of:
 - a. in-house social objectives (the attainment of members' common goals where the NCO is not a political party) – these may be Internet resources created by:
 - i. public associations for the benefit of their members (for example, the Internet resource of an association of disabled persons created to assist with voluntary funding of social protection projects for the disabled¹⁸); or
 - ii. religious associations (for example, for the purpose of providing charitable aid or performing socially useful activity to fulfill the humanitarian needs of members of the same confession);¹⁹
 - b. external social objectives (social assistance to community) – in the form of public services created to give financial support to social projects and initiatives of commercial and noncommercial organizations (not related to the service organizer through any membership or property participation) that are limited to the organizational forms and goals of the Internet resource owner:

¹⁷ Under Item 2 Art. 161 of the KR Civil Code (hereinafter, jointly, KR Civil Code of May 8, 1996, #15 Part I, KR Civil Code of January 5, 1998, #1 Part II, "CC"), it is prohibited for foreign legal and physical persons to finance the activity of political parties, public associations pursuing political goals, and trade unions.

¹⁸ Public Organization (PO) Equality <https://goo.gl/4AGvVi>, PO MoveGreen <https://goo.gl/SdKKB5>, PO Resource Center for Senior Citizens <https://goo.gl/LeZiCs>

¹⁹ Item 3 Art. 15 Law on Religion; Religious Organization (RO) The Church of the Saint, Equal to the Apostles Great Prince Vladimir <https://goo.gl/JV4jb4>

- i. foundations;²⁰ or
- ii. establishments,²¹ organizations of legal persons or individual entrepreneurs in the form of an association or union;

NCOs are entitled to creating services and as such they:

1. are not party to any financing transactions between the participants and the designers of the project (commercial or noncommercial), nor are they responsible or accountable for obligations of the latter, but rather provide technical, organizational and information opportunities;
2. take part in transactions between parties to the service – users and designers of projects – on behalf of and as instructed by the project designers, performing the intermediary (agency) function as technical organizer of the collection of funds (Section 2.1.1.); and
3. act as payment agents or subagents collaborating with payment organizations, banks and organizations carrying out individual types of banking operations and render payment services, acting as payment service provider, and are not subject to state registration with the NBKR (Section 3).

NCOs are entitled to establishing corporate websites and as such may:

1. attract voluntary donations (i.e., assets received gratis);
2. collect entry and membership dues;
3. attract grants and humanitarian aid; and
4. realize products of business (entrepreneurial) activity to ensure the attainment of statutory goals.

Summing up, noncommercial legal persons may, for purposes of attracting funds, create services to perform intermediary (agency) functions within the framework of transactions between project designers and service users – attract funds in the interest of the project designers, as well as establish corporate websites without making commercial profit as remuneration for engaging in said activities (Section 2)

The legal responsibility, personality and capacity of legal persons in these or those civil-law transactions, as provided for by appropriate regulations, shall form their overall legal status.

²⁰ Non-cash transfers: Babushka Adoption Foundation <https://goo.gl/LwzuFX>, Public Foundation (PF) Elim Barsynby <https://goo.gl/VRvffX>, PF Helping Is Easy <https://goo.gl/5ySdZh>, PF Apake <https://goo.gl/GxZT5P>, PF Oasis <https://goo.gl/8xv4J2>, PF Bilimkana <https://goo.gl/GSbMeo>; bank transfers: PF Azaliya Helps Children <https://goo.gl/a3DcKj>, PF Photographers Union of Kyrgyzstan <https://goo.gl/RyBWtN>, PF Ashar Menen Plus <https://goo.gl/JPFGBY>, PF Roza Otunbayeva's Initiative <https://goo.gl/uBzHHG>,

²¹ Refal School <https://goo.gl/yUY9Nu>

The fundraising activity of NCOs is regulated by appropriate acts of Kyrgyz civil, banking and financial and tax legislation.

The main regulatory acts to establish the legal status and regulate the civil-law transactions of NCOs are the Civil Code (Part I, Part II) and the NCO Law.

A number of regulatory acts containing other related provisions will be quoted below on an as needed basis.

1. RK CC and Tax Code #230 of October 17, 2008 (hereinafter, TC) treat an NCO as a legal person if:
 - a. it does not seek to make profit as the main (statutory) goal of its activity; and
 - b. does not distribute earned net income to its members.²²
2. The potential goals of an NCO's activity include:
 - a. to keep, create, develop, disseminate and use cultural values and provide benefits of culture;²³
 - b. to render services in social rehabilitation or adaptation, medical assistance,²⁴ social welfare and protection for socially underprivileged persons, including families and children, senior citizens and persons with limited health capabilities, as well as services in the sphere of education, medicine, science, culture and sports;²⁵ and
 - c. to render services in the sphere of protection of the health and physical well-being of citizens, environmental protection, social entrepreneurship, poverty reduction, science, literature, the arts, tourism, and legal assistance.²⁶
3. Art. 153 TC distinguishes between two categories of NCOs based on their goals:
 - a) NCOs proper and b) charitable NCOs.²⁷
4. Some specific aspects of the legal regulation of certain organizational and legal forms of NCOs are covered by specialized regulatory documents.

As far as the form of ownership is concerned, NCOs are divided into:

- Nongovernmental – founded by individuals and nongovernmental legal persons: institutions, public associations (including self-governing

²² Item 1 Art. 85 CC; Item 11 Art. 153 TC

²³ Item 12 Art. 153 TC

²⁴ Item 37 Art. 167 TC

²⁵ Art. 252 TC

²⁶ Art. 5 KR Law #70 On State Social Order of April 28, 2017 (hereinafter, **the SSO Law**); Art. 1 KR Law #119 On Patronage and Charitable Activity of November 6, 1999 (hereinafter, **Charity Law**); and Item 1 Art. 153 TC

²⁷ Art. 5 of the Charity Law: "A charity is a nongovernmental (not-for-profit) organization established for the attainment of goals provided for by this Law by means of performing charitable activity in the interest of society as a whole or of individual categories of persons."

organizations such as unions of realtors, security market participants or employers, trade unions)²⁸, foundations (public, charitable foundations; extra-budgetary accumulation pension funds²⁹), associations of legal persons (water users, etc., unions),³⁰ consumer cooperatives (including housing, housing construction, garage, summer house, gardening, and housing owners cooperatives), financial cooperatives (credit unions)³¹, stock exchanges, microfinancing agencies, religious associations, bar associations, and auditors, accountants and tax advisors' chambers;³² and

- Governmental: founded by the state (government bodies³³ and local self-governance bodies³⁴).

An NCO's founding documents should define its scope and goals of activity as a legal person.³⁵ As NCOs have the right to produce income from their business activity as long as it meets their statutory goals,³⁶ it is very important that the statutory goals fit the subject and goals of its activities as they are defined in the NCO's by-laws. The legal criteria that directly refer the activities of an NCO to commercial or noncommercial law are not specified in the legislation, so the key requirement is that its business activity be consistent with its not-for-profit statutory activities. In other words, NCOs enjoy special legal and tax treatment and are entitled to perform only such activity as is recorded as not-for-profit in their founding documents, without producing direct income for their own benefit. In so doing, they are able to profit from entrepreneurial activities related to its core activities, as well as by receiving voluntary donations and other proceeds not prohibited by law, thereby indirectly ensuring that they can function and carry out those core activities.

Part I Art. 85 CC and comments thereto³⁷ define NCOs as “legal persons which do not pursue making profit as the main goal of their activity. The goal of an NCO is to solve social problems. Should a not-for-profit organization perform any entrepreneurial activity, any resulting income must be used for pursuing its objectives rather than distributed among the participants.” It follows that the performance of various social

²⁸ Art. 161 CC; Ch. 2 of the NCO Law; Art. 1 of Law #130 On Trade Unions of October 16, 1998

²⁹ Art. 162 CC; Ch. 3 of the NCO Law, Art. 2 KR Law #216 On Accumulation Pension Funds of December 11, 2013

³⁰ Item 4 Art. 85, Art. 165 CC; Art. 7 of the NCO Law

³¹ Art. 152 CC, Art. 248 CC; Item 1 Art. 3, Item 2 Art. 8 KR Law #122 On Associations of Owners of Residential and Nonresidential Space in Multi-Apartment Houses of July 9, 2013; Item 2 Art. 3 KR Law #70 On Cooperatives of June 11, 2004; Art. 1 KR Law #117 On Credit Unions of October 28, 1999

³² Item 3 Art. 2 KR Law #135 On Lawyers and Lawyering in the Kyrgyz Republic of July 14, 2014

³³ Item 1 Art. 83, Item 1 Art. 164, Item 3 Art. 231 CC KP; Art. 2 of the NCO Law

³⁴ Item 1 Art. 13 KR Law #101 On Local Self-Governance of July 15, 2011; Art. 10, Art. 16.1 of the Provision on Local Community Self-Government Bodies approved by Resolution #625 of the KR Government of October 10, 2001 (hereinafter, **the KRG Resolution**)

³⁵ Item 1 Art. 87 CC; Art. 10 of the NCO Law

³⁶ Item 3 Art. 85 CC; Art. 12 of the NCO Law

³⁷ Comments (practical guidelines) to Part I of the Civil Code of the Kyrgyz Republic ed. By N. Galimova

tasks (including charitable ones) informs the core (statutory) activity of an NCO which does not have making profit as its obligatory goal. Its entrepreneurial activity³⁸, that is, the results of its business/production operations (even in the case of a charitable NCO³⁹) in the form of noncommercial profit, is secondary to and functionally dependent on its core activity; together they make up a single interrelated whole. Based on this functional interdependence, international law uses the following criteria to distinguish between the core (statutory) and related (entrepreneurial) activities:

1. "Related and core activities are technologically linked: they either use common technology or make up a single production string, related activity being specific to the organization's core activity in the latter case. Being specific means that the results (products) of related activity are used either exclusively by the given NCO in its core activity or may also be used, and are, by other persons in an activity which is analogous to the core business of the given NCO.
2. The results or process of related activity are a means of performing core activity. Advertising may serve as an example of such functional connection.
3. An NCO's related activity makes it possible to meet the attendant needs of the individuals its core activity is addressed to, that is the needs which arise in the process of performing core activity; while it creates conditions for performing core activity, their satisfaction requires a different kind of activity to be performed."⁴⁰

According to the definition of noncommercial activity in Art. 2 of the NCO Law, an NCO's entrepreneurial activity is economic activity related to the organization's core business and the income from which is not distributed among the NCO's members (participants) but is used for attaining its statutory objectives. Entrepreneurial activity is subject to tax (Section 1.4.).

The NCO's diverse objectives and functions determine the ultimate recipient of economic benefits as well as the NCO's organizational and legal form. If the benefits are received by third parties (legal and physical persons) that are not party to the organization, the NCO may be established as an institution or foundation. If the benefits are intended primarily to fill the needs of the NCO's participants themselves, it may be established as an association or union. The organizational and legal forms of NCOs differ according to the objectives of their activities, the composition of participants, membership, procedure of the formation and disposition of property,

³⁸ Art. 1(4) CC: "entrepreneurial activity is independent, income-oriented activity pursued at one's own risk."

³⁹ Art. 7 of the Charity Law: "A charitable organization may perform entrepreneurial activity solely for the attainment of objectives it was established for, and in the form that is consistent with those objectives."

⁴⁰ Comments to the federal laws of the Russian Federation On Charitable Activity and Charitable Organizations and On Noncommercial Organizations. - Moscow: AIA-Print, 1996. P.78.

and the system of management and control, so different legal regulation procedures may apply in each particular case.

Bearing in mind that there are no special rules on NCO transactions involving payment systems, the latter are subject to effective legislative provisions on the civil-law regime (applicable to all legal persons), with due attention to the specific aspects of the legal status of transactions and sources of financing, as will be shown below.

Summing up, NCOs may perform such fundraising activities using payment systems as are within the scope of their legal capacity and statutory goals.

1.3. THE LEGAL REGIME OF NCO FUNDING SOURCES

GENERAL PROVISIONS

An NCO is entitled to have the following sources of funding in monetary and other forms:

1. contributions by founders (participants, members);
2. voluntary contributions and donations of property;
3. funds for specific purposes (grants, humanitarian aid);
4. dividend (income, remuneration or interest receivable on stock, bonds and other securities and deposits); and
5. revenue (income) from the sale of goods, works and services.

The word “property” covers an aggregate of things, rights of claim, and obligations (debts).

“Objects of civil-law rights include: things, including money and securities, and other property, including property rights; works and services; protected information, results of intellectual activity and equated means of individualization (intellectual property), as well as other tangible and intangible property.”⁴¹ In other words, a NCO’s property includes objects of both absolute (rights in rem – things and exclusive rights) and relative rights (rights in personam – claims or obligations).

Voluntary contributions and donations of property are funds received in cash or in kind that can be financially assessed, for purposes of carrying out the NCO’s core activities. Such property (things, money, claims) comes into an NCO’s possession on a non-repayable basis, that is, by way of gift. Under the gift agreement, one party (the giver) donates or undertakes to transfer to the other party (the gift recipient) some property or property right (claim) to itself or to a third person, or releases or undertakes to release it from a property obligation to itself or a third person.⁴²

⁴¹ Art. 22 CC.

⁴² Art. 509 CC

Unless prescribed by law, the terms and conditions of such an agreement are defined by the parties.⁴³ The parties at their discretion may stipulate a condition regarding the aim of giving funds (intended use).

That funds have come into an NCO's possession is confirmed by payment documents such as bank payments orders, cash receipts, property receipts and the like.

Non-cash payments also involve an aspect of property law such as the right of disposal (as opposed to the right of use) of physical and legal persons' non-cash financial instruments that are kept on settlement, deposit and other accounts with banks and other banking establishments. The right of disposal is the subject of a bank account contract⁴⁴.

Therefore, noncash financial instruments are objects of rights of claim in respect of a bank or the issuer of electronic money (bank obligations), enabling the right holder to claim payment.

Voluntary donations may come as:

1. patronage and charitable aid – disinterested (gratis or on a privileged basis) transfer of property (things, funds) for purposes of social support and protection of individuals and for other charitable purposes, provided that at least 98% of the charitable donation in cash must be used for charitable goals within 12 months.⁴⁵ Normally, such contributions are passed to NCOs on the basis of a contract by direct wire transfer from the donor to the NCO's bank account without resorting to a noncash payments system;
2. contributions for specific purposes – grants and humanitarian aid in the form of property and monetary assets allocated by states and international, foreign and domestic organizations. Normally, such contributions are passed to NCOs on the basis of a contract by direct wire transfer from the donor to the NCO's bank account without resorting to a noncash payments system
3. non-repayable transfer of assets,⁴⁶ including funds and property (according to its balance value), to charitable organizations as well as cultural and sports organizations irrespective of their form of ownership within one taxation year in an amount not exceeding 10% of the taxpayer's taxable income with the proviso that such assets are not used for the benefit of the taxpaying transferor.⁴⁷ For purposes of this study, we treat physical and legal persons'

⁴³ Item 4 Art. 382, Item 1 Art. 383 CC

⁴⁴ Art. 760, Art. 764 CC

⁴⁵ Goals and types of support within the framework of charitable activity are listed in Art. 1 of Charity Law

⁴⁶ Item 5 Ch. 1 of the Standard Main Assessment Terms and Principles approved by KRG Resolution #217 of April 3, 2006: "Assets are resources owned or controlled by a person or persons and from which future economic gain is expected."

⁴⁷ Art. 208 TC

assets being transferred on a non-repayable basis as voluntary donations in cash within the framework of non-repayable (gratis) transactions between a donor and an NCO using Internet resources and noncash payment systems.

NCOs may be grantees where states, governments of states, or organizations are grantors. Notably, the organizations may be international, foreign or state-run entities. TC defines the grant itself as assets donated by states and international, foreign and domestic organizations on a gratis basis.⁴⁸ In other words, we are speaking about co-funding contributions (stimulating grants) in addition to resources mobilized by local budgets, international organizations, and other entities.

Grants are included in the social and economic development program of the respective town or rural district (ayil aymak) and that of state social orders in compliance with applicable legislation on state social orders and municipal services with the participation of a grant board whose members include the respective state customer and NCO.⁴⁹ A contract is entered into with the NCO whose project is selected. Its obligatory provisions include the terms and conditions of transferring grant funds, the goals and performance indicators of the fulfillment of the project, the procedure, stages and schedule of reporting on the progress and results of the project, and financial reporting by the order contractor.⁵⁰

Summing up, NCOs have the right to obtain property and funds (including non-cash funds) by any of the above means as long as it is a voluntary donation (gift) within the framework of charitable, sponsor activity with or without conditions as to its intended use, and fits the goals of their statutory activity.

1.4. TAX TREATMENT

Objects exempt from income tax. Noncommercial statutory activity is exempt from income tax. All income received by the NCO from such activity is spent for statutory purposes. The sources of such income include:⁵¹

1. Membership dues – “assets provided by an NCO member in the amount and manner provided for by that NCO’s founding documents on the condition that such provision of assets is not reciprocated by the provision of goods, works or services to that member free of charge or at a price that is less than cost price”;⁵²
2. Admission dues – “assets provided by a person when entering a membership-based NCO in the amount and manner provided for by that NCO’s founding

⁴⁸ Part 6 Art. 153 TC.

⁴⁹ Part 3 Art. 21 Law on State Social Order

⁵⁰ Part 3 Art. 38 Law on State Social Order

⁵¹ Art. 189 TC;

⁵² Art. 189 (29) TC

documents on the condition that such provision of assets is not reciprocated by the provision of goods, works or services to that member free of charge or at a price that is less than cost price”;⁵³

3. Humanitarian aid – “assets provided gratis by states or organizations to the KR Government, a local self-governance body, a state-run or noncommercial organization or a needy individual in the form of food, equipment, gear, tools, medical supplies and medications, or other property intended to improve the living condition and everyday life of the population and prevent and eliminate the consequences of emergency situations of military, environmental and man-made character provided such assets are consumed and/or distributed on a gratis basis”;⁵⁴
4. Grant – “assets provided gratis by states or international, foreign or domestic organizations to the KR Government, local self-governance bodies, state-run or noncommercial organizations not engaged in the support of any political parties or candidates running in an election campaign”;⁵⁵
5. Assets received on a gratis basis, provided that they are used for statutory purposes.

Exemption from paying income tax does not free a tax payer from his/her obligation to submit their income tax declarations.⁵⁶

Objects subject to income tax. Subject to income tax is any economic activity as a result of which income (funds and other assets) has been obtained:⁵⁷

1. by a domestic organization or individual entrepreneur – from a source in or outside the KR;
2. by a foreign organization performing its activity through a permanent office in the KR – from a source in the KR.

Taxation subjects (tax payers) include:⁵⁸

1. domestic organizations;
2. foreign organizations performing their activities through a permanent office in the KR;⁵⁹
3. individual entrepreneurs;

⁵³ Art. 189 (4) TC

⁵⁴ Art. 153 (7) TC

⁵⁵ Art. 153 (6) TC

⁵⁶ 4. 2 Art. 212 TC

⁵⁷ Art. 185 TC

⁵⁸ Art. 184 TC

⁵⁹ Branches and representative offices of foreign and international organizations in the KR pay income tax even though they do not have the legal personality of a legal entity.

4. tax agents (organizations and individual entrepreneurs) paying income from a source in the KR to a foreign organization but which are not related to its permanent office in the KR.

“Economic activity” includes:⁶⁰

- entrepreneurial activity;
- activity under KR labor law;
- depositing funds into bank accounts; and
- purchase, transfer or sale of securities or a physical or legal person’s share in the authorized capital.

Charitable organizations’ income is exempt from tax.⁶¹ According to TC, charity is “voluntary activity aimed at the achievement of charitable goals ... by transferring assets to individuals and legal entities, rendering services, and performing works on a disinterested (non-repayable or privileged) basis or for payment not exceeding the cost incurred in the process of their realization.”⁶²

While the Charity Law imposes a number of restrictions on the expenditure of funds,⁶³ in practice charitable organizations cannot put these tax concessions to use since effectively none of them has sufficient turnover to be able to meet these requirements:

| | |
|--|--|
| <p>Restriction 1:</p> <p>A charity may not spend more than 2% of its annual expenditures on salaries for its administrative and managerial staff.</p> | <p>Exception 1:</p> <p>This restriction does not extend to remuneration for persons engaged in the implementation of charity programs.</p> |
| <p>Restriction 2:</p> <p>not less than 98% of a charitable donation in cash must be spent on charitable goals within one year from its receipt by the organization;</p> <p>charitable donations in kind are used for charitable purposes within one year from their receipt.</p> | <p>Exception 2:</p> <p>Both restrictions apply unless otherwise provided for by the charity or the charity program.</p> |

⁶⁰ Art. 21 TC

⁶¹ Item 1 Art. 212 TC

⁶² Art. 153 (1) TC

⁶³ Art. 9 and Art. 10 Charity Law

| | |
|--|--|
| <p>Restriction 3:</p> <p>At least 98% of the financial year's income from non-sale operations, the business enterprises the charity has set up, and its legitimate entrepreneurial activity should be used to fund charity programs.</p> | <p>Exception 3:</p> <p>Funding of charity programs includes “expenses on their material, technical, organizational and other support [required for the implementation of such programs], remuneration for persons engaged the implementation of charity programs, and other expenses related to the implementation of charity programs;</p> <p>In the process of implementing long-term charity programs, all funds received are used within the deadlines set by those programs.</p> |
|--|--|

In this study, we have limited ourselves to tax-exempt NCO income from voluntary donations, disregarding revenue from entrepreneurial activity. For this reason, we shall not consider other tax treatments such as the sales, supply, and value-added taxes.

Qualified experts in taxation and accounting should be invited to help keep separate books on taxable and tax-exempt income. Ideally, the account book in which tax-exempt income and expenses on statutory noncommercial activity are recorded, as well as the report on fulfilling the cost estimate submitted to tax authorities, should ultimately have a zero balance and show that all income has been spent in accordance with the organization’s statutory goals. Should the NCO fail to spend any of the funds it obtained from noncommercial activity, they will become taxable income. In addition, the NCO should carefully document all expenses related to noncommercial statutory activity and make sure that they are consistent with its statutory goals.

The form of the aforementioned cost estimate, including the manner of data presentation and the amount of detail, should be designed by the NCO based on the task at hand. Every line of the cost estimate must be supported by documents. In addition to founders’ contributions, admission and membership dues, and funding for specific purposes (grants and humanitarian aid), the revenues should indicate voluntary donations by physical and legal persons and contributions for specific purposes, which are the main sources of funding the NCO’s current expenses and its special-purpose programs and activities. The total amount of expenditure on these or other programs and activities is determined by calculus.

Income received by an NCO for specific purposes should be shown on accounts 3600 “Other current liabilities” (for funds to be used within 12 months) and 4200 “Deferred income”⁶⁴ (long-term funds). These two accounts show all NCO revenues related to its noncommercial activity. Subaccounts may be opened within two accounts to reflect “Voluntary contributions and donations from legal and physical persons” and “Revenues from legal and physical persons for specified purposes.”

Summing up, for voluntary contributions receivable through non-cash payment systems to be treated as exempt from income tax, they should be accompanied with documents proving that they were received for specified purposes and spent in accordance with the NCO’s business plan and statutory activity.

2. Legal Regulation of Non-Cash Payment Systems (Payment Systems)

2.1. PAYMENT SYSTEMS

GENERAL PROVISIONS

The main statutes regulating payment relations between payment market participants in the KR include: KR Law #21 On the Payment System of January 21, 2015 (hereinafter, **PS Law**) and KR Law #206 On the National Bank of the Kyrgyz Republic, Banks, and Banking Activity of December 16, 2016.

According to PS Law,⁶⁵ payment systems in KR (hereinafter, **PS**) fall into the following categories:

- I. Systemically important – 1) Gross Real-Time Settlements System – a PS which effects transfers connected with monetary obligations of participants in finance markets (the national monetary and hard currency markets and those of capital and securities) as well as transfers connected with the use of the monetary and credit policy centered in the NBKR and which is a hardware and software complex designed to centrally collect and process payment documents and messages, form and transmit outgoing e-payments and messages, and interact with trade and retail payments and other allied systems;⁶⁶ and 2) System for Package Clearing of Small Retail and Regular Payments – a PS effecting payments connected with physical and legal persons’ monetary obligations unrelated to their participation in national

⁶⁴ Instruction #231 for the application of a plan of accounts used in the accounting of the finance and economic activity of business subjects and NCOs (with the exception of budget organizations), approved by the KRG on October 7, 2010

⁶⁵ Item 7 Art. 17 PS Law

⁶⁶ Art. 18 PS Law; Item 3.2. Ch. 3 Provisions on Gross Real-Time Settlements System, approved by NBKR Board Resolution #29/3 of June 1, 2007

finance markets.⁶⁷ It is an aggregate of technology, rules, procedures and instruments with the help of which participants submit and obtain data or documents in respect of their payments through a clearing center, including a mechanism to determine participants' multilateral net positions for a final settlement and pass them to the gross real-time settlements system for the same purpose. NBKR operates systemically important payment systems (large-scale and retail PS);

2. Important – the System for Retail Payments on Settlements with Bank Debit Cards,⁶⁸ which includes: 1) a local payment system using bank debit cards – for settlements using local cards issued by one or more issuers in the territory of the KR; 2) an international system – for settlements using international cards issued and maintained in compliance with the rules of international payment systems and their operators' requirements. The system establishes certain rules for hard-currency setoffs in respect of card payments by and between the system's participants; and 3) the national interbank debit card payments system Elkart – for settlements by and between PS participants using correspondent accounts in NBKR and contracts;
3. Other – a PS which is neither systemically important nor important and through which payments are effected and funds transferred within KR in national currency in the course of cash and noncash payments, including: 1) systems for transferring funds with and without opening a bank account – for paying money to a client in another location; 2) systems for correspondent relations (transborder payments) via SWIFT or Telex; and 3) systems for payments in e-money.⁶⁹

All payments and transfers between PS participants are effected in Kyrgyz soms.⁷⁰

The payment service is provided on the basis of an agency contract between the provider of payment and settlement services – a bank – and legal entities (payment system operators / payment organizations, retail agents).⁷¹ The payment service provider provides the payment service only on the basis and in accordance with the terms of the client's instruction.

⁶⁷ Art. 19 PS Law; Ch. 2 Provision on the System for Package Clearing of Small Retail and Regular Payments, approved by NBKR Board Resolution #37/8 of December 15, 2005

⁶⁸ Art. 20 PS Law

⁶⁹ Art. 21, Art. 22 PS Law; Item 1.4, Provisions on Main Requirements in Respect of the KR Payment System Under System Emergencies, approved by Resolution of the NBKR Board #4/6 of January 28, 2009; Items 2.13, 2.14 Policy for Oversight of the KR Payment System, approved by Resolution of the NBKR Board #7/8 of March 23, 2006

⁷⁰ Art. 307 CC; Item 33-1 Ch. 2 Rules of Trade in Certain Types of Goods in the Territory of the Kyrgyz Republic, approved by KRG Resolution #560 On Improving Trade Activity in the Territory of the Kyrgyz Republic of September 30, 2014

⁷¹ Item 2 Art. 3 PS Law

The instruction in the form of an order can be presented in electronic form or on paper, through imprinting, by voice order. Non-cash settlements without opening an account are made upon the payment of cash funds by the paying customer to the sending bank by means of transfer to the payee's specified account. These settlements should not be related to any entrepreneurial activity.⁷²

2.1.1. PARTICIPANTS IN PAYMENT SYSTEMS

The payment service providers are: Interbank Processing Center (MPC), second-tier banks, organizations carrying out certain types of banking operations (hereinafter "**Non-banking organizations**"), payment system operators / payment organizations, retail agents and retail subagents.

1. NRBK ensures the efficiency, security and reliability of the banking and payment systems, exercises oversight of the KR banking system (including activity of banks and other entities) and the PS, contributes to the efficient, secure and reliable functioning of the PS, performs banking operations, emits paper and electronic money, issues licenses, registration certificates and other permits, maintains the registries of PS operators/payment organizations, and oversees the fulfillment by all PS participants of requirements in respect of organizational measures and software/hardware.

The operator of systemically important PS for large payments and retail clearing payments is ZAO Interbank Processing Center, of which the NBKR, the Central Treasury of the Ministry of Finance of the Kyrgyz Republic, and 18 of 24 operating commercial banks are participants. Currently, the shareholders of ZAO Interbank Processing Center include 14 commercial banks, OJSC Kyrgyztelecom and LLC United Instant Payments System (a controlling stake in the NBKR). The IPC performs the processing of payments and the preparation of net positions in the package clearing system and effects banking and settlement operations, including via the National Payment System using ELCART cards.⁷³

As of November 10, 2017, the register of payments systems and payment organizations included 19 legal entities.⁷⁴

2. BANK AND NON-BANK ORGANIZATIONS. Banks effect non-cash settlements pursuant to a NBKR license.⁷⁵ The list of non-bank organizations includes State Corporation Kyrgyz Post,⁷⁶ finance-credit organizations and credit unions (OAO

⁷² Item 10 Art. 4 PS Law

⁷³ <https://goo.gl/hSU5rR>

⁷⁴ <https://goo.gl/HCPwT6>

⁷⁵ <https://goo.gl/j1S5rt>; Item 1 Art. 3 PS Law

⁷⁶ Art. 9 KR Law #52 On Postal Communication of June 20, 2001

Financial Company of Credit Unions),⁷⁷ and microfinancing organizations,⁷⁸ which effect individual types of banking operations or retail banking services under agency agreements with a bank without opening an account for the client.

Banks and non-bank organizations may not act as payment organizations, agents or subagents but may provide payment services to clients, including under agency contracts with agents and subagents. Under such contracts, banks and non-bank organizations are jointly accountable to the client for obligations of their agents and subagents. Banks and non-bank organizations perform (or do not perform) payment services based on grounds stipulated by the laws on banks and banking, payment systems, and countering the legalization (laundering) of criminal income and the financing of terrorism.

3. PAYMENT SYSTEM OPERATORS/PAYMENT ORGANIZATIONS. Their activity is regulated by the PS Law, the Provision on Licensing the Activity of Payment System Operators and Payment Organizations approved by NBKR Board Resolution #71/11 of November 25, 2015 (hereinafter, **the Licensing Provision**) and the Provision on Regulation approved by NBKR Board Resolution #19/10 of March 25, 2015 (hereinafter, **the Regulation Provision**).

Payment system operators are commercial legal entities which ensure the functioning of the payment system, operate on the basis of a NBKR license, and provide services for the operation of the PS to its participants (banks, payment organizations, suppliers of goods and services) by entering into a contract of adhesion to the PS. PS operators are responsible for ensuring uninterrupted functioning of the system, timely processing of payments, and the integrity, security and confidentiality of information in the system. They bear liability for failure to render or for rendering inferior-quality payment services, keep a register of participants in the payment system, and assess and manage risks in the PS. At the same time, PS operators may act as payment organizations and as such are also subject to licensing by NBKR.⁷⁹ Any activity to render payment services without a NBKR license shall be illegitimate and subject to legal liability. Notably, the licensing requirement for payment organizations in effect from June 1, 2016 was introduced by the Provision on E-Money (hereinafter, **E-Money Provision**) and prolonged until October 1, 2017 (by NBKR Board amendment #19/1 of May 17, 2017). Some legal entities failed to receive their license.

Payment organizations may receive payment from physical and legal persons for the benefit of third parties such as suppliers of goods and services under an agency

⁷⁷ <https://goo.gl/gVRHtz>

⁷⁸ <https://goo.gl/5Gb4Q1>; Art. 15 (24) KR Law #195 On the License and Permit System in the Kyrgyz Republic of October 19, 2013; Item 1.5 Art. 16, Item 2 Art. 33 KR Law #124 On Microfinancing Organizations in the Kyrgyz Republic of Law of June 23, 2002

⁷⁹ Item 11 Ch. 3 Regulation Provision

contract by and between the payment organization and the service providers and a contract by and between the payment organization and the bank, and act as agents and subagents of banks and suppliers of goods and services. The payment organization has the right to render services such as non-cash payments and transfers, accepting and conducting payments and settlements for goods and services that are not the result of their activities, for the benefit of third parties via payment systems based on the information technology and electronic means and methods of making payments, receiving, processing and providing financial information (processing, clearing) in respect of third parties' payments and settlements to participants in the payment system or the given processing or clearing center.⁸⁰

For example, operators of e-money or instant payment systems, processing companies, mobile and other e-payment processing operators may operate as payment organizations.

Register of operators of local and international money transfer systems.⁸¹

4. E-MONEY ISSUERS – KR banks. The electronic money issuer provides e-money to an individual or an agent by exchanging e-money/international e-money presented by its holder to a bank, operator, agent or subagent/subagent of international e-money systems by converting it to cash or non-cash funds. Electronic money is a monetary value that is stored electronically on an electronic device (prepaid cards, virtual prepaid cards, and electronic wallet as electronic money instruments or carriers) and accepted as a means of payment within the e-money system by other system participants.

Electronic money agents are legal entities and sole entrepreneurs who exchange electronic money for cash or non-cash funds and distribute e-money under an agency contract entered into with a bank that has issued the e-money. The contract by and between the issuer and the agent sets forth the procedure and conditions for crediting cash received by the agent from individuals and the amount and method of remuneration to the agent.

5. AGENTS AND SUBAGENTS. Agents and subagents are legal entities who have entered into a subagency contract with agents/agents of international electronic money to effect operations for the distribution and repayment of e-money /international e-money.

According to Art. 843, 847 CC, one party (the agent) undertakes to perform, on behalf of the other party (the principal), legal and other acts for a fee, either in its own name, but at the expense of the principal or in the name and at the expense of the principal. For purposes of performing the contract, the agent may enter into a subagency

⁸⁰ Item 2 Ch. 1 Provisions on Regulation

⁸¹ <https://goo.gl/dow2Go>

contract with another person and still remain responsible to the principal for the actions of such subagent.

Agents may provide cash-receipt services for depositing the money in bank accounts, including those of third parties; cash-receipt services for effecting payment without opening a bank account for the sender; services for the sale (distribution) of e-money and debit cards, subject to the existence of an agency contract for any of the types of payment services authorized for banks and non-bank and payment organizations. The agent shall provide the bank, non-bank organization, or payment organization with information about the payment subagent it has engaged, which information is entered in the authorized payment agents register as stipulated by the contract between the parties. In entering into contracts with payment service providers which make non-cash payments, debit card payments and transfers, e-money payments and transfers by banks, non-bank organizations, payment organizations and other legal entities, the agents are required to comply with the service provider's PS operating rules.

6. CLIENT is the physical or legal person (or a local branch or representative office of the legal person) a payment service is provided to.

KR legislation provides for the possibility of rendering/arranging the rendering of payment services to NCOs for the purpose of their non-commercial funding by participating in a PS as subagents of payment service providers. In other words, an NCO may provide payment services if the proceeds of its activity (including entrepreneurial activity) are directed towards its statutory goals without making commercial profit in the form of a fee for those payment services (Section 1.2). Where an NCO arranges the rendering of payment services (e.g. through a charitable Internet resource) but receives no fee, the rules of an agency or suretyship apply.

In general, the experience of NCOs using Internet resources for non-cash PS to attract funding has been a success.

Summing up, a NCO may provide payment services as payment agents or subagents to raise funds for the attainment of its statutory goals.

3. Attracting Funding

GENERAL PROVISIONS

ORGANIZING A SERVICE OR A CORPORATE WEBSITE

NCOs have the right to organize services (see Section 1.2.2.) and corporate websites for fundraising via PS under agency contracts for payment services with payment service providers. The general legal grounds for this activity by NCOs are set forth in Section 1.2. *The Legal Status of NCOs in Fundraising Activities*. The main relationships

between the parties in transactions between the NCO and the payment service provider are shown in Table 1. *Service Organization*.

To organize a service or website, an NCO should:

1. enter into a hosting contract with a hosting service provider – a telecommunication operator or service provider. The hosting agreement may provide for the creation of a domain name and the extension by the provider of software, hardware and other support;
2. enter into an agency contract with a provider of payment services (using debit cards, e-money), stipulating a non-remuneration clause – no commission for the NCO for its payment services to clients (legal and physical persons) – and conditions as to the intended use of payments and transfers;
3. enter into a contract on undertaking to comply with PS rules determined by the PS operator. Terms of compliance with PS rules may be provided for by an agency contract for providing payment services (Item (ii));
4. ensure that the Internet resource allow for a user agreement such as a contract for the provision of services or personal security rules;
5. ensure that necessary information about payment services is provided to PS members and authorized bodies for taxation purposes stipulated by applicable financial monitoring; and
6. ensure service security.

Table 1. *Service Organization*

| Payment agent and/or Subagent | Grounds for Transaction | Payment Service Provider |
|--------------------------------------|--------------------------------------|--|
| NCO | Agency contract for payment services | Banks Non-bank organizations Payment organizations Agents |

Banks, non-bank organizations, payment organizations, e-money issuers and e-money system operators exercise financial monitoring of money operations to counter the legalization of criminal income.

3.1. PAYMENTS USING DEBIT CARDS

Matters pertaining to the issue, acquiring and use (distribution) of debit cards in KR are regulated by Provision On Bank Debit Cards in the KR, approved by NBKR Board Resolution #76/8 of December 9, 2015.

In the KR, banks provide both credit cards (used when a bank loans some funds to the holder pursuant to the bank account contract in the event that there is a shortage or lack of funds on the bank account) and debit cards used for direct debiting (writing off) of own funds within the balance of the holder's account. Also, depending on the PS rules, debit cards with overdraft in addition to regular debit cards may be used, providing the possibility of a short-term loan in order to make payments in excess of the amount available on the account, but within limits and on terms stipulated in the agreement by and between the bank and the cardholder ("debit and credit cards"). It is possible to issue pre-issued cards – no-name instant-issue cards that provide access to an account opened for a specific client and are intended to receive money transfers, obtain cash via peripheral devices, pay for purchases at retail outlets via cashless transactions, and conduct online transactions.

Cards may be released in both physical and electronic form (virtual cards, without a physical carrier) for making secure online purchases. In most cases, individuals are issued debit cards, since collateral on them is within the amount deposited on the client's current account. All payments using debit cards on the territory of the Kyrgyz Republic are expressed in the national currency, the som. However, there are no strict restrictions on the circulation of foreign currency in the KR. Banks and finance and credit institutions making settlements in foreign currency within the framework of foreign economic transactions with nonresident banks in the KR provide the NBKR with data that make it possible to record the purpose of foreign currency payments for compiling the payments balance of the Kyrgyz Republic.⁸²

The issuer may allow a cardholder to effect payments worth not more than 30 monthly calculation indexes (MCI) per one transaction without using the PIN. The issuer bears sole responsibility in this case.⁸³

Payments and transfers between participants of the interbank payment card system (banks) are made based on the processing done by the MPC – the processing center of the national payment system Elkart, which is intended to process transactions made using Elkart debit cards and those of other systems integrated with the MPC network. Resident banks are participants in the Elkart system and issue debit cards under a contract with the NBKR.

⁸² Instruction on Recording the Purpose of Bank Payments approved by NBKR Board Resolution #30/5 of November 25, 2001

⁸³ Item 33 Provision #76/8 On Bank Debit Cards in the KR of December 9, 2015

In addition to the national payment system operating on the basis of the MPC, the International Settlement System using debit cards processes banking transactions made with international cards issued and serviced in accordance with the requirements of the operators of these systems and the laws of the Kyrgyz Republic. The system establishes certain rules for mutual settlements in foreign currency between the system members using card payments.

These payment systems and cards issued by banks are integrated into the Card Settlement System and are divided into three types: local, national and international. Cards are issued and provided for use on the basis of an application from an account owner and the bank account contract with him or her. Debit and credit or credit cards can be issued under a mixed contract or a separate supplementary agreement specifying the possibility for the holder to obtain credit or overdraft, the procedure and terms and conditions, the manner of obtaining funds, the amount of commission charged, etc. Banks issue international payment cards (VISA and MasterCard) on the basis of a contract on participation in the international payment system and a contract with the system operator. Banks perform acquiring and settlement operations using debit cards of other banks or PS on the basis of a NBKR license.

Depending on the currency of the cardholder's bank account, it is possible to conduct currency exchange transactions when making non-cash payments and receiving cash in and outside the Kyrgyz Republic. Depending on the currency of the bank account, currency may be converted when crediting funds to the account or withdrawing an amount in cash. Cardholders can add cash and non-cash funds into their accounts through banking transactions and money transfers without opening an account. Bank cards can be attached to personal accounts of electronic PS and used to perform banking operations with electronic wallets. Any operations to credit or debit funds using a card are made from the cardholder's bank account. All activities related to issuing and distributing pre-paid cards as a form of electronic money are regulated by the EM Provision. Card payments are made to the beneficiary's bank account. Budget organizations, state agencies and local self-government bodies can use corporate debit cards issued by the Treasury of the Kyrgyz Republic on the basis of the Elkart national debit card system within the framework of the Budget Recipient Card pilot project.⁸⁴

Transactions within KR between banks issuing debit cards and acquiring banks (which receive payments and transfers from the debit card holders) make it possible to effect payments in the Elkart, VISA and MasterCard payment systems, all of which are registered with the NBKR. KR banks maintain routing standards for interbank communications registered with the NBKR payment system, which supports noncash settlements between PS participants' accounts via the Internet.

⁸⁴ Item 8, Temporary Provision on Debit Cards of the Central Treasury of the KR Ministry of Finance approved by NBKR Board Resolution #24/6 of May 30, 2014

Payment by card, made by the cardholder via a peripheral device, is an electronic payment document and is confirmed by the issuance of a check card containing, but not limited to, the following mandatory information:

1. number of the document and the time and date of the operation;
2. name or code of the trade outlet or the acquirer;
3. requisites of the debit cards as required by the PS security rules;
4. amount paid;
5. currency of payment; and
6. authorization code.

After making payment with the debit card, the cardholder receives a card check or a copy of the payment document (slip) generated concurrently with the payment. The card check can be sent in electronic form to the cardholder's e-mail address or telephone by means of short text and/or multimedia messages in accordance with the debit card issue contract.

This information can be used by the NCO in its tax report. Payment service providers provide electronic and paper payment documents.

Provisions on licensing and regulation specify suppliers of goods and services as end recipient of funds under agency agreements with payment organizations, including funds paid from debit cards, but nothing prohibits NCOs from acting on a gratis basis in the capacity of: a) beneficiary in such contractual relations; b) the agent or subagent of the payment organization, since precisely NCOs indirectly ensure that potential end recipients of funds – for example, beneficiaries of charitable assistance – receive those payment services. At the same time, NCOs may negotiate with payment organizations on non-payment of agency fees and gratuitous (or preferential – at the expense of the senders) use of PS instruments.

These assumptions do not apply to the activities of retail agents of banks providing banking services for which such retail agents must have a commercial legal entity form.⁸⁵ The Licensing and Regulation provisions do not contain any restrictions in respect of the commercial form of payment organizations' subagents. As a legal entity and a subagent of a payment organization, an NCO thus has the right to render settlement and money transfer services under a relevant contract.⁸⁶ Some NCOs using payment instruments of Kyrgyz-licensed PS for fundraising purposes have been listed above.

⁸⁵ Item 10, Ch. 2 Provision on the Main Requirements in Respect of Commercial Banks' Activity in the Process of Entering into An Agency Contract for the Provision of Banking Services, approved by NBKR Board Resolution #36/7 of May 26, 2010; Item 4. Ch. 1 Licensing Provisions

⁸⁶ Ch. 7 Regulation Provisions

3.2. PAYMENTS USING E-MONEY

Electronic money is a means of payment, stored electronically on an electronic device, including prepaid cards and an e-wallet.

On the request of and under contract with the organizer of a service or a corporate website, a supplier of electronic money registers it with a PS, provides the necessary software and other support for its functioning on an online resource (for example, payment processors), renders services for information and technical support, data processing and transmission, the development and use of databases and information resources, etc. The supplier of electronic either does its own processing or contracts the operator to perform the processing function in accordance with the requirements and rules of the e-payments system. The contract between the bank and the PS operator may also stipulate the conditions and responsibilities of the parties when working with the system and require the operator to provide a collateral (insurance deposits, bank guarantees, a reserve fund, etc.) for purposes of performing its obligations to third parties. A local or international operator of an e-money system needs a NBKR license. Participants in the NBKR e-money system report on all their e-money transactions.

Identification of owners of an electronic wallet by the bank begins with the amount of **150 MCI**.⁸⁷

The total monthly volume of transactions from unidentified electronic wallets should not exceed **300 MCI**.

The maximum amount of one transaction using electronic money for individual entrepreneurs and legal entities is **3,000 MCI**.⁸⁸

The maximum amount of e-money that can be repaid by a legal entity is **500 MCI**. If exceeded, withdrawal of funds from the electronic wallet is possible by funds transfer to the holder's bank account.⁸⁹

Banks can independently set such limits for all their e-wallet holders, including agents and acceptors, depending on the category of e-wallet holder, to reduce risks associated with e-transactions.⁹⁰

Any transaction involving e-money must be confirmed to the e-wallet holder, including by a payment check or any other document, text message, or e-mail.

We have left out matters of funding under contracts with banks and telecom operators owing to a lack of data. Nonetheless, the legislation of the Kyrgyz Republic provides for the possibility of concluding these agency contracts with a similar category of

⁸⁷ 1 Calculation Index (MCI) equals 100 som or approx. US\$1.45.

⁸⁸ Item 36 E-Money Law

⁸⁹ Item 58 E-Money Law

⁹⁰ Item 34 E-Money Law

providers of payment services. The theoretical and practical aspects of such legal relations were discussed in a similar study about the Republic of Kazakhstan.⁹¹

4. Conclusion

Some methods of fundraising with the help of non-cash payments systems (payment card transactions and e-money transfers) are already being used by Kyrgyz NCOs, which no doubt shows their legal validity and legitimacy.

Acting as an intermediary for payment services providers and supplying payment instruments on their online resources to raise funds from legal entities and individuals, NCOs act in compliance with the law as long as they do not charge agency fees. Therefore, NCOs have to make sure that there is no provision about their commission for indirectly rendered payment services in their agency contracts. Also, NCOs must spend at least 98% of the voluntary donations received in this way for statutory purposes, in accordance with individually developed cost estimates and target programs, attaching supporting documents (financial documents, bookkeeping reports, any information on contracts that is not classified as a commercial secret, receipts, etc.) and reflecting them properly in their single tax declaration, which will eventually make it possible to exempt such revenues from taxation.

Briefly summarizing the above, it can be concluded that although crowdfunding in Kyrgyzstan is in its formative stage, the country's not-for-profit organizations are using it even today, which shows that this instrument of community funding is effective and has good prospects.

⁹¹ Legal Regulation of NPO's Fundraising Activities Using Non-Cash Payment Systems in the Republic of Kazakhstan