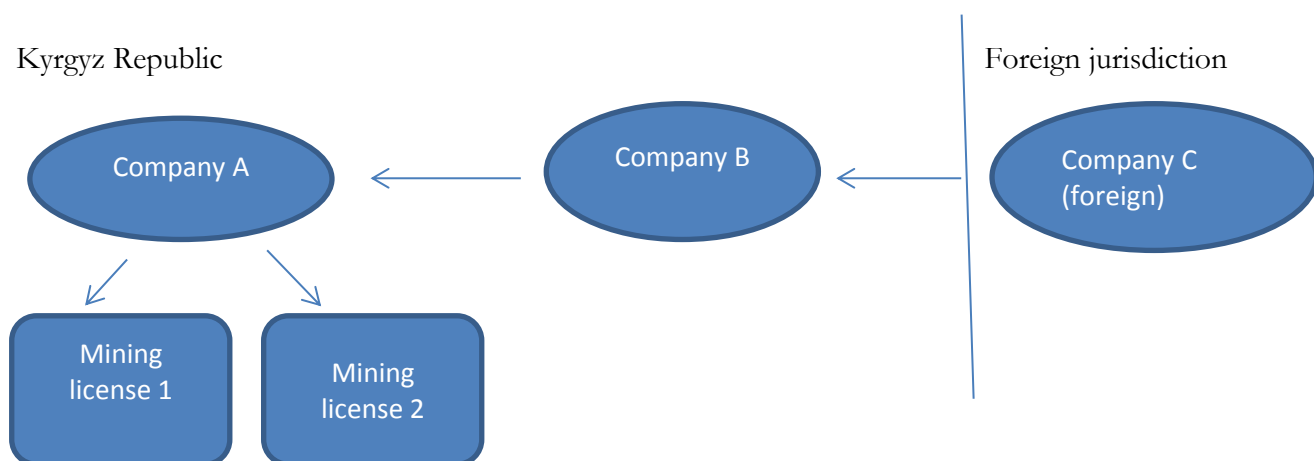


Strategic objects

The Law of the KR "On strategic objects of the Kyrgyz Republic" (hereinafter the "Law On strategic objects of the KR") No. 94 dated May 23, 2008 provides that in the event of an owner's intentions to sell a strategic object, which is in the municipal, private and other forms of ownership, the Government of the Kyrgyz Republic (hereinafter the "Government of the KR") has the preferential right to purchase the strategic object in accordance with a procedure provided by the legislation of the Kyrgyz Republic. Under the Decree of the Government of the KR "On approval of the list of strategic objects of the Kyrgyz Republic", a number of mineral deposits were qualified as objects of strategic importance for the economy, and of a high-risk (Category B "important facilities").

The question is whether this rule of law is applied in case of alienation of the shares of a company, which owns the subsoil rights to use deposits, which are strategic objects.

As an example please consider the following situation. For example, there is a local company "A", established by a company "B" registered in the KR, in which the sole founder is a foreign company "C", established abroad.



Company "A" owns 2 licenses for the development of two deposits that are strategic objects of the Kyrgyz Republic. Let us suppose that company "C" is selling 100% of its shares in company "B" to third parties. Will the above article 4 of the Law "On strategic objects of the KR" apply in this case and whether it is necessary to obtain the consent of the Government of the KR for the sale of shares?

The position of state authorities, namely the Ministry of Economy of the Kyrgyz Republic, with respect to this issue, is that for the purposes of protecting state interests it is important to know in whose "ownership, (or) use and (or) at disposal" the strategic object is. In the opinion of the Ministry of Economy of the KR, in the proposed scheme, the actual owner of subsoil rights to use the deposits is the foreign company "C" by owning 100% of shares in company "A" through 100% participation in company "B". As representatives of the state authorities believe, the disposal of shares in company "B" will lead to the actual change of the rightholder of licenses to strategic objects, and therefore may affect the state of national security. In this connection, they qualify the shares of company "C" in company "B" as strategic objects and oblige company "C" to comply with the requirements of Article 4 of the Law "On strategic objects of the KR", i.e. to obtain the consent of the Government of the KR for the sale of shares.

Despite the abovementioned position of the state authorities, we believe that in this situation there

is no need for the state to exercise its preferential right to purchase the strategic objects on the following grounds.

Having analyzed the Law "On strategic objects of the KR" we came to the conclusion that the strategic objects are differentiated in: 1) strategic objects that are property complexes (Property) and (2) strategic objects, which are owned by legal entities and the shares of which are qualified as strategic objects.

- 1) Inferring of the strategic objects as property complexes follows from Article 1 of the Law "On strategic objects of the Kyrgyz Republic", which defines a strategic object as the property of social and economic importance for the sustainable development of the society, the possession, (or) use and (or) disposing of which will have an effect on the state of the national security of the Kyrgyz Republic.

Such definition of the strategic object allows concluding that the preferential right of the state to purchase strategic objects from the owner will apply only in case of sale of the property, but not the property rights.

However, on the basis of the above-proposed scheme, the subject of the transaction will be the shares of company "B" which are not included into strategic objects defined in Article 1 of the Law "On strategic objects of the KR".

- 2) Notwithstanding the foregoing, in accordance with Article 2 of the Law "On strategic objects of the KR", the legislator also assumes that the shares (stakes, participation/ownership interests) in legal entities that own strategic objects, as well as shares (stakes, participation/ownership interests) of individuals and legal entities that have the ability to directly or indirectly determine or affect the decisions of legal entities that own strategic objects, can be attributed to strategic objects.

This provision of the law would have found application in the situation described above, provided that the key condition is complied, which is that the strategic object must be owned by a legal entity, which shares (participation share) can be qualified as strategic objects i.e. the deposits should be in the ownership of company "A".

This condition is missing in the proposed scheme, as the company "A" has only licenses for the development of two deposits, which are strategic objects. This grants company "A" only the right to temporarily use the property of the Kyrgyz Republic. Given that the state in order to exercise its preferential right to purchase strategic objects it is necessary that particularly the owner of the strategic object appears as a Seller, we can conclude that in the above case, there is no need to obtain consent of the Government of the KR for sale of shares in company "B".

Thus, the straightforward correct answer to our question is not available, as the Law "On strategic objects of the KR" does not clearly stipulate the rules, answering such questions. In this connection, the existing rules can be interpreted differently. What should be done in this case?

Despite our foregoing reasoning, we believe that we should take into account the state authorities' opinion. Thereby, in the above case, we would recommend to turn to relevant state authorities for clarifications, as well as to the Government of the KR to receive the state's refusal of its preferential

right to purchase the strategic object. The official written response of the state authorities and the Government of the KR will serve as a document on which you can refer to when dispute arises.

Besides, as an alternative, in this particular situation, we would recommend to consider the possibility of buying the shares of company "C" located abroad. Such deal would be outside the jurisdiction of the Kyrgyz Republic, but at the same time, the actual owner of the rights to develop the strategic objects would be the new buyer. Also, in such a way it would be possible to avoid the need to make amendment to the internal documents of the company "A" and Company "B", notification of the state bodies on made changes and introducing amendments to documents available to them.