

## **LAW OF THE KYRGYZ REPUBLIC**

### **On Service Inventions, Utility Models and Industrial Designs**

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

The present Law regulates relations arising between an employer and employee with respect to creation and use of service inventions, utility models and industrial designs.

Provisions of the present Law shall cover service inventions, utility models and industrial designs created at enterprises, institutions and organizations (hereinafter referred to as organization) of any forms of property.

#### **Article 2. Basic Notions**

For the purpose of the present Law the terms below shall have the following meaning:

An employer shall mean a legal or natural person, who has been granted the right to sign and terminate labor contracts with an employee according to the legislation.

An employee shall mean an author or authors (hereinafter referred to as author) of service invention, utility model and industrial design, who is in labor (service) relations with an employer (including by-job) pursuant to the legislation of the Kyrgyz Republic.

A successor of an employer shall mean legal or natural person, who has acquired the right to file an application for issuance of the preliminary patent, patent for service invention, certificate for service utility model or preliminary patent, patent for service industrial design (hereinafter referred to as protective document) or the right to receive protective document upon the filed application or the right to protective document.

Service inventions, utility models, industrial designs shall mean inventions, utility models, industrial designs, created by an employee during the period of labor (service) relations in accordance with the legislation of the Kyrgyz Republic in the result of performing their labor (service) duties, determined in job description or in the result of performing a certain assignment of an employer, fixed in the corresponding documentation, with which an employee was familiar prior to creation of service invention, utility model and industrial design.

#### **Article 3. Legislation of the Kyrgyz Republic on Service Inventions, Utility Models, and Industrial Designs**

The legislation of the Kyrgyz Republic on Service Inventions, Utility Models, Industrial Designs shall consist of the Civil Code of the Kyrgyz Republic, Patent Law of the Kyrgyz Republic, and the present Law, as well as other normative and legal acts of the Kyrgyz Republic.

#### **Article 4. Inventions, Utility Models, Industrial Designs not Recognized As Service Ones**

The following inventions, utility models, and industrial designs shall not be recognized as services ones:

- created by authors when performing works on the basis of concluded civil and legal contracts;
- created by employees, whose labor (service) duties or certain assignments do not include work on creation of inventions, utility models and industrial designs.

**Article 5. Rights to Service Inventions, Utility Models, and Industrial Designs**

1. An employer shall have the right to file an application and receive protective documents for service inventions, utility models, and industrial designs, unless it is otherwise stipulated by the contract between him/her and employees.

The copyright and other personal non-economic rights shall belong to the author. He/she shall have the right to remuneration.

2. The rights to inventions, utility models, and industrial designs stipulated in Article 4 of the present Law, shall belong to authors.
3. The right to inventions, utility models, and industrial designs created with the use of information, experience, material, technical and other means of an employer, but not in relation with performing labor (service) duties by an employee, unless it is otherwise stipulated by the labor contract between an employee and employer. In this case an employer shall have the right to use service invention, utility models, and industrial design in his/her own production, including payment of compensation to the owner of protective document, defined on a contractual basis.
4. In the event service inventions, utility models, and industrial designs are created by joint creative labor of several authors, including person, who is not an employee of an organization, where they are created, powers of such a person shall be determined by the contract, signed by this person with the organization and other authors.

**Article 6. Notification of an Employer on Creation of Service Invention, Utility Model, and Industrial Designs**

An employee, who created service invention, utility model, and industrial design shall be obliged to inform an employer thereof in writing within one-month period as of the date of creation of invention, utility model, and industrial designs. Notification should be signed by an employee and contain characteristics of the created object, sufficient for registration of an application for service invention, utility model, and industrial design. Notification shall be made in cases stipulated by points 3 and 4 of Article 5 of the present Law.

**Article 7. Processing of Notification on Creation of Service Invention, Utility Model, and Industrial Design**

1. Notification on creation of service invention, utility model, industrial design shall be registered by an employer as of the date of its filing. An employee shall be notified thereof in writing.
2. An employer shall be obliged to file an application with the State Agency of Intellectual Property of the Government of the Kyrgyz Republic (hereinafter referred to as Kyrgyzpatent) or to concede the right to file an application and receive protective document to other person, including the author of the created service invention, utility model, and industrial design, or to take a decision on keeping them in secret and inform the author about the decision in writing within four-month period as of the date of receiving the notification on creation of service invention, utility model, and industrial design.

If an employer or his/her successor fails to file an application with Kyrgyzpatent, fails to re-concede the right to file an application and receive protective document to the author or to other person, and fails to inform the author about the necessity to keep the service invention, utility model, and industrial design in secret within four-month period as of the date of notification, the author shall have the right to file an application with Kyrgyzpatent and receive protective document for his/her name. In this case an employer shall have the right to use service invention, utility model, and industrial design in his/her own production with payment of compensation determined on a contractual basis to the owner of protective document.

3. In the event the notification signed by an employee in compliance with Article 6 of the present Law does not contain data required for registering the application, this information may be requested during one month as of the date of receiving the notification. In this case the term

indicated in point 2 of the present Article shall be suspended and restored upon receipt of the requested data.

#### **Article 8. The Right of an Author to Remuneration**

1. An author of service invention, utility model, and industrial design, the right to which belong to an employer or his/her successor, if the indicated successor is not an author, shall have the right to remuneration. An employer shall be obliged to sign a contract with the author on amount and terms of payment of remuneration not later the expiration of the term stipulated in point 2 Article 7 of the present Law.

In case an employer avoids signing the contract on remuneration payment, the author shall have the right to bring suit to the court as to remuneration payment.

2. An employer shall pay an incentive remuneration to the author of service invention, utility model, and industrial design, the right to which belong to an employer or his/her successor, during one month as of the date of receiving the protective document. The amount of an incentive remuneration for one service invention, one service utility model, and one service industrial design regardless of the number of authors shall amount to not less than ten minimum wages, stipulated by the legislation of the Kyrgyz Republic as of the date of payment.
3. An employer shall pay to the author remuneration for using service invention, utility model, and industrial design during the validity term of the protective document, issued to an employer or his/her successor, in the amount and on the terms stipulated in the contract. In case of failure to reach an agreement the court shall make the ruling. If it is not possible to compare contribution of the author and the employer in creation of service invention, utility model or industrial design, the author shall have the right to one half of the profit, which the employer received or should have received.
4. Provisions of point 3 of the present Article shall be also applied when the employer uses service invention, utility model, and industrial design, with regards to which decision on keeping them in secret has been taken, or in case of non-receipt of protective document thereof for reasons depending on the employer, as well as when conceding rights to their use to another person.
5. Remuneration shall be paid to the author within the term not less than three months as of the end of each year, during which service invention, utility model, and industrial design were used, and not less than one month after receiving profit from licensing.

The owner of the protective document, who failed to pay remuneration in time, shall pay to the author for every day of arrears a fine in the amount of 0.5% of the amount due to payment.

6. If service invention, utility model and industrial design are not used by the employer and the right to the use thereof is not conceded to other person, willing and ready to use it during four years as of the date of issuance of the protective document for service invention or industrial design and during three years as of the date of issuance of the certificate for utility model, the employer shall pay remuneration, unless it is otherwise stipulated in the contract. Payment of remuneration in this case is of one-time nature and is made within three months upon expiration of the given terms. The amount of remuneration for one service invention, one service utility model, one service industrial design regardless of the number of authors shall constitute not less than ten minimal wages, determined by the legislation of the Kyrgyz Republic as of the date of payment.
7. In case of non-use of service invention, utility model, and industrial design with respect to which the employer has taken a decision on keeping their content in secret, the author shall be paid one-time remuneration not less than one year as of the date the decision is taken. The amount of remuneration for one service invention, one service utility model, and one service industrial design regardless of the number of authors shall constitute not less than twenty minimal wages, stipulated by the legislation of the Kyrgyz Republic as of the date of payment.

**Article 9. Right of an Author to Receive Protective Document for Service Invention, Utility Model, and Industrial Design**

1. In case of losing an interest in receiving the protective document upon filing an application for its issuance or in keeping the validity of the protective document, the employer or his/her successor shall be obliged to offer the author of service invention, utility model, and industrial design in a timely manner free cession of the right to receive the protective document or the protective document, accordingly.
2. If the employer or his/her successor concedes the protective document or the right to obtain it the author shall have an advantageous right to purchase the protective document or the right to receive it on the same terms. Provisions of the civil legislation of the Kyrgyz Republic on advantageous right to purchase shall be applied.

**Article 10. Invalidity of Terms of a Contract that Worsen the Situation of an Employee**

Terms of contract on service invention, utility model, and industrial design that worsen employee's situation, comparing with the present Law shall be deemed invalid.

**Article 11. Patenting of Service Invention, Utility Model, Industrial Design in Foreign Countries**

The right to patenting service invention, utility model, industrial design in foreign countries shall belong to an employer, if it is otherwise stipulated by the contract between an employer and an employee.

**Article 12. Secret Service Inventions, Utility Models, and Industrial Designs**

Service inventions, utility models, industrial designs, recognized by the state as secret shall be regulated by the legislation of the Kyrgyz Republic on secret inventions, utility models, and industrial designs.

**Article 13. Service Invention, Utility Models, and Industrial Designs Created When Implementing Works on State Order**

1. The right to file an application and to receive the protective document for service inventions, utility models, and industrial designs, created in the organization when implementing the contract funded at the expense of the state budget, shall belong to this organization, unless it is otherwise stipulated by the contract between the state customer and the organization.
2. The organization shall inform the governmental customer about all service inventions, utility models, and industrial designs created in the organization while implementing the contract.
3. Upon demand of the state customer, the owner of the protective document shall grant non-exclusive free license to use the service invention, utility model, and industrial design created when implementing contract for developing arms and defense technology financed at the expense of the state budget to the manufacturer of arms and defense technology for implementing state defense order for the whole effective term of the protective document.

Payment of remuneration to the employee shall be made at the expense of funds of the state customer.

4. Granting licenses for service inventions, utility models, industrial designs by the owner of the protective document to the third persons created when implementing the contract for developing arms and defense technology funded at the expense of the state budget shall be made upon the permission of the state customer.

**Article 14. Observance of Confidentiality**

An employee and an employer shall be obliged to refrain from any non-agreed disclosure of data on service invention, utility model, industrial design prior to the date of publication of data on issuance of the preliminary patent, patent for service invention, industrial design or data on issuance of certificate for utility model.

**Article 15. Liability for Non-observance of the Present Law**

Non-observance of requirements of the present Law with respect to notification of an employer by an employee about the service invention, utility model or industrial design created by him/her, as well as with respect to observance of confidentiality shall entail liability in compliance with the legislation of the Kyrgyz Republic.

In case an employer violates requirements of confidentiality the damage incurred by an employee shall be recovered by an employer in accordance with the civil legislation of the Kyrgyz Republic.

**Article 16. Dispute Settlement**

Disputes related to application of the present Law shall be considered according to the procedure established by the legislation of the Kyrgyz Republic.

**Article 17. On Effectuating the Present Law**

1. To effectuate the present Law as of the date of its publication (“Erkin Too” of August 13, 1999, # 66).
2. The Government of the Kyrgyz Republic should bring its normative and legal acts in compliance with the present Law.

President of the Kyrgyz Republic  
Adopted by the Legislative Assembly of the Jogorku Kenesh

A. Akaev  
June 15, 1999

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