



EFFECTIVE BUSINESS MODELS in organization of drinking water supply and sanitation services in rural Tajikistan

A comparative policy analysis:
legislative, institutional, and economic perspectives

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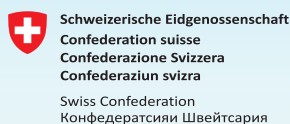


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EXECUTIVE SUMMARY

The organizational complexity of business models in **the drinking water supply and sanitation system**¹ are characterized by technical, social and natural peculiarities of this sphere. The main peculiarity is in that the choice of services to consumers is limited by the technically uniform water supply system. Consequently, there is no possibility to provide different by terms services on water supply. In conditions of Tajikistan this sector is burdened yet by inertial processes and customary practices of water consumption. In urban areas of the country, transition to the market economy took place more swiftly, but rural areas are still experiencing both social and economic impact of the transition period and also the institutional problems encountered while attempting to restructure relations in this sphere. As a result, it is extremely needed to reconsider the situation in rural areas and also to develop and introduce sustainable, long-term solutions in organization of the drinking water supply.

These and other factors have formed the basis of the various project approaches aimed at improving access to the safe drinking water and sanitation in rural areas by improving the sustainability of water supply and sanitation sector. The project is intended to help consumers and rural communities in building their capacity for management and operation of small water supply systems, enabling them to claim their rights for the water from the operators and regulatory authorities. At the same time their obligation to pay for the water was accentuated.

Researches on business models in the drinking water supply and sanitation systems were conducted by different organizations in different times in Tajikistan². The analysis in this report is intended to enrich these researches and complement them with more detailed legal assessment of advantages and disadvantages of possible models of organization of the rural drinking water supply, their institutional, economic and practical characteristics.

The following set of recommendations were done in result of the conducted analysis. These recommendations are disclosed in details in this report:

Recommendations on business models:

1. Social mobilization and development of the community-based water supply system

The legislation of the Republic of Tajikistan provides for various forms of citizens' associations for solution of common problems and meeting general needs and requirements. With an appropriate level of social mobilization and awareness-raising works, these forms of citizens' associations can become long-term institutional solutions for organization of the local community-based water supply. The most appropriate and simplest form of organization of the community rural water supply can become **co-operatives, both** non-commercial and also commercial ones that are regulated by the law "On cooperatives", as of July 22, 2013. The advantages of this form of management include the following:

- The nature of organization of the community drinking water supply is the most clearly reflected in this organizational-legal form - "an independent and voluntary association, duly registered and organized on the basis of membership of persons with the purpose to meet mutual economic, social, cultural and other needs, as well as their commitments through

¹ Hereinafter «the drinking water supply» here is considered activity on «drinking water supply and sanitation». Such provisional abbreviation was made by the author on the following grounds: 1) Usually these services are provided as a whole by the same organization of services only on «drinking water supply» are rendered; 2) for the convenience of reading and perception

² Report «Recommendations on application of the effective water supply methods in pilot Jamoats», April 2014, Deloitte Consulting LLP, USAID

joining their property (share contributions) and establishment of a democratically controlled organization of collective ownership»³.

- Relationships between the cooperative members, their liabilities, formation of the property, structure and governing bodies of cooperatives are detailed in the Law of the Republic of Tajikistan "On cooperatives". This facilitates using of this model in practice.
- This form allows to establish cooperatives on the commercial and non-commercial basis;
- Cooperatives can reduce their tax burden through building mutual relationships with its members for covering the cooperative's expenditures on the basis of membership fees (membership fees are exempt from taxes)⁴;
- Cooperatives can provide services both to members and also to non-members of cooperatives. Members can participate in the work of cooperatives getting more opportunities for accountability and transparency;
- Cooperatives can hold general meetings of its members, inviting only delegates if the number of members is large.
- This organizational-legal form is suitable both for small and also for relatively large centralized and non-centralized drinking water supply systems.

The following can be referred as disadvantages of cooperatives:

- Members of the cooperative bear the subsidiary responsibility for the debts of the cooperative. That is, members shall be liable by their property for debts of the cooperative if the organization is not able to cover its debts in case of bankruptcy.
- The number of members of the cooperative is naturally limited, since with more than 100 members, the very essence of a cooperative, as an association of persons with the purpose to meet joint (common) needs is lost. As well as the process of *personal labor and other participation* of members of the cooperative becomes complicated.

However, in view of advantages and disadvantages of all other possible forms for organization of rural drinking water supply, just cooperatives are the most acceptable option.

However, a significant development factor of this form is working on activation of the local population, social mobilization, primary legal, economic and technical education, because the sustainable development of such a management model is based on the active participation of citizens.

2. Introduction, development and expansion of the private management

Another potential factor of the sustainable development of this sphere is the professional management of water supply systems in rural areas based on the private entrepreneurial initiative.

Such initiatives can also be developed on the basis of communities, using the form of an **individual entrepreneur without formation of a legal entity**, from amongst of local residents⁵. Advantages of using this form: an optimal form for small centralized and non-centralized water supply systems that unites residents of a residential quarter or of a small Jamoat, from 50 to 200-300 households. It is a flexible and efficient solution based on the private initiative of one citizen, with a high degree of accountability to his/her clients, with a simplified system of taxation and with the possibility to hire employees. Ideally, this can be one of neighbors, similar to the food stalls nearby. Finally, the business orientation of such activities provides an

³ Article 1, the Law of the RT «On cooperatives» as of 22 July 2013

⁴ item 2, article 110 и item 1, article 294, Tax code of the RT, as of 17.09.2012

⁵ The Ukraine example, for more details see section 3 of this report

additional incentive both for the citizen engaged in the drinking water supply and also for his/her clients.

The following can be referred as disadvantages of this form:

- A citizen - individual entrepreneur shall bear the material liability for the damage caused in the result of his/her business at the expense of his/her property that may be insufficient to cover the substantial losses that may occur in the field of the drinking water supply;
- If the annual income of a private entrepreneur without formation of a legal entity reaches 500 thousand somoni, then such business should be reorganized into one of forms of commercial legal entities;
- An individual entrepreneur should have primary skills, knowledge and understanding of the sphere;
- A total absence of such a form in practice and its innovative nature will cause difficulties in obtaining authorization documents and in overcoming administrative barriers.

Also a form of a **limited liability company**, that is better known, can be applied. **Advantages** of such form are following:

- The form is known (familiar) to all participants of the sector and to the population, there is a practice of operating of such organizational-legal form, the legislative regulation in force;
- The taxation mechanisms are well in place, it is clear for what and to whom you should pay;
- More flexible requirements to participants: an association can be created either by one person or by several persons (but not more than 30 participants); both physical persons and also legal entities can be participants of the association; because of the gross neglect of his/her duties the participant can be excluded from the association; a participant may any time leave the association;
- More flexible system of the association control that allows to build a management structure more easily.

Disadvantages:

- The "Limited" liability reduces the reliability of services of the organization and also of the organization itself. It means that at slightest difficulties the organization can declare itself bankrupt. However, in fact its founders have nothing to lose except for their contributions.
- Almost total absence of practices of LLC operation in the drinking water supply sector.

Final recommendations⁶

Both of the abovementioned solutions can be applied only to those systems that are not state owned, as there is not available any clear mechanism on leasing state-owned systems or transferring them to the management of private organizations/ physical persons. Therefore it is necessary:

- to adjust the statutory regulations in the field of the drinking water supply in part of handing over for use and leasing of state-owned drinking water supply systems;
- to finalize and adopt the "Rules and regulations for leasing and placing water facilities into trust management".

⁶ The mentioned proposals on the legislation are annexed to the report

1. GENERAL ANALYSIS OF THE LEGISLATION OF THE REPUBLIC OF TAJIKISTAN ON ORGANIZATIONAL-LEGAL FORMS

All kinds of models, methods and types of management regardless of the industry sector, are reflected in the civil legislation of Tajikistan as organizational-legal forms of a legal entity or as management methods without forming a legal entity. Every business entity differs by characteristics that include a number of economic and institutional characteristics primarily in internal relations developed in the process of establishment and during further activities of the entity. These differences may be usually conditioned by forms of ownership, by the composition, participation in the work of the organization, by the nature of financial liabilities, by the income distribution and by other factors.

1.1. MANAGEMENT WITHOUT FORMING A LEGAL ENTITY

It became possible to engage in business without forming a legal entity at the end of the Soviet era along with the first steps of independence. It started from labor collectives of state enterprises. Without forming a legal entity they were becoming a subject of certain relations, playing a definite role in privatization and corporatization of their enterprises. The more sustainable forms that are actively working through present turned out to be citizens, engaged in individual labor activities with patent and dehkan farms. Dehkan farms are usually considered separately, in accordance with a special law "On dehkan farms" as of May 19, 2009. Of course, there are other forms in the law of Tajikistan, when certain economic activities can be carried out without forming a legal entity. These are the same labor collectives, which theoretically can conclude collective labor contracts with the employer. Another example, one of the recent forms, is a method of management of an apartment house. It is the direct management of apartments' owners⁷, when owners of apartments of one house can together act as one party of the contract on servicing of the house. However, these and other forms of activities without forming a legal entity are not spelled out in the law. The mechanism of their functioning and rules of participation in civil-law relations are not developed. As a result, these forms are almost not used in practice, or are used with exceptions.

As it was mentioned above, the most stable and assimilated form turned out to be citizens engaged in individual entrepreneurial activity. In order to engage in individual entrepreneurial activity, citizens should register, and further they can already act in legal relations equally with legal entities, except for certain standards, for example, when they have another procedure of bankruptcy, or other taxation. In general, depending on the income level and types of activities, the individual business also has two forms based: 1) on the patent and 2) on the certificate. Both kinds of activities are carried out without forming a legal entity, and the main differences are the following:

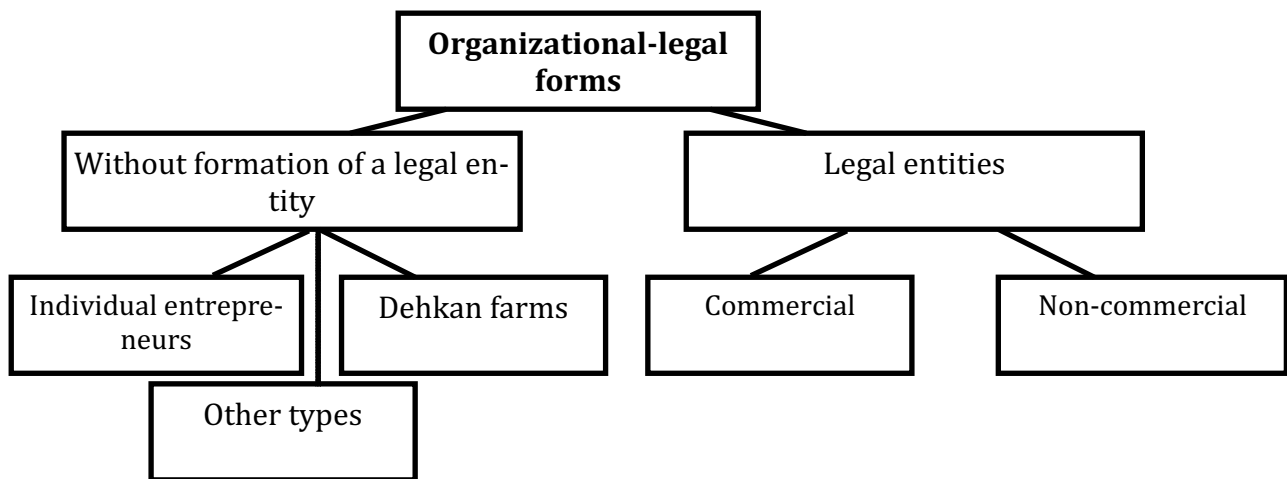
- *the income level*: with the annual income up to 100 thousand TJS – with the patent; with the annual income more than 100 thousand and up to 500 thousand TJS – with the certificate;
- *types of activities*: the resolution of the Government of the Republic of Tajikistan, № 361, as of August 3, 2013 has specified the operating list of 49 types of individual entrepreneurial activities carried out on the basis of patents, where also fixed tax rates for each type of activities are indicated. Those types of activities that are not included into this list can be realized on the basis of a private entrepreneur's certificate.

⁷ The Law of the RT "О содержании многоквартирных домов и товариществах собственников жилья", от 5 августа 2009 года

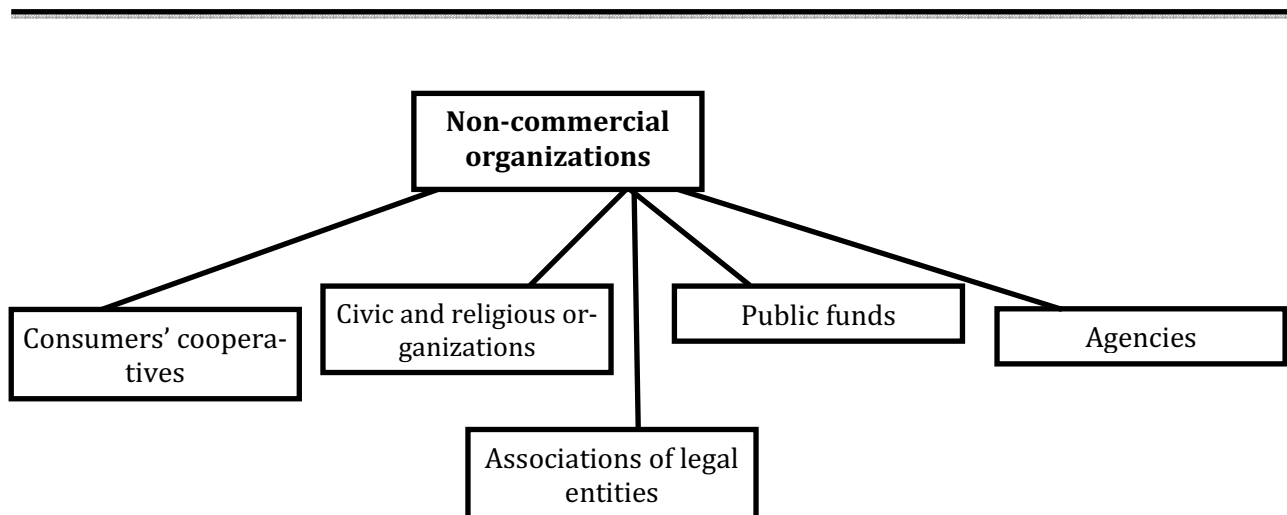
Other differences arise in the process of activities. *Taxation*: the sum for the patent includes two types of taxes at a fixed rate – income tax and social tax; entrepreneurs working with the certificate, pay tax under the simplified system as a turnover percentage.

Hiring of the personnel: individual entrepreneurs working with the certificate have right to hire employees, and citizens working with a patent cannot do it.

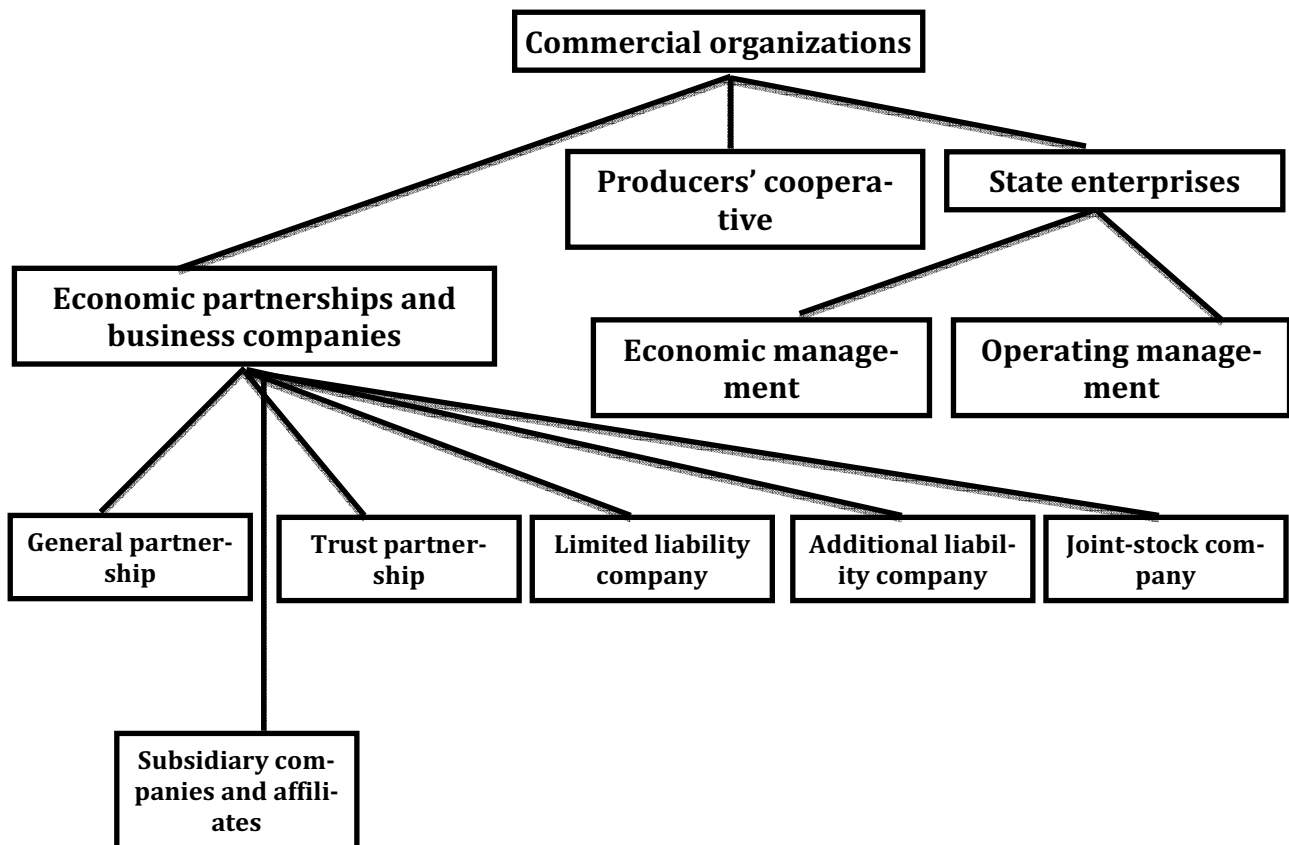
Another common form - dehqan farms, are created in the form of agricultural production artel (fellow dehqan farm) or in the form of individual or family farm, all these three forms without forming a legal entity. Dehqan farms are tied up to land and their registration is associated with obtaining of a certificate for the land use. Dehqan farms can join together into a production cooperative, or a business entity, and then they shall be registered as a legal entity.



Scheme 1. Organizational-legal forms



Scheme 2. Basic types of non-commercial organizations



Scheme 3. Basic types of commercial organizations

1.2. LEGAL ENTITIES

One of key participants of relations regulated by the civil legislation are legal entities. In accordance with the definition given in the Civil Code of the Republic of Tajikistan⁸, a legal entity is an organization that has a separate property in its ownership, economic or operational management and is responsible for its obligations with this property, may on behalf of itself acquire and exercise property and non-property rights, perform duties, act as a plaintiff and defendant in the court. Determination of the legal entity is of a controversial character, as it defines that the entity - "is an organization that has a separate property in its ownership, economic or operational management". But non-commercial organizations, as well as some commercial organizations in the beginning of their activities may have no property at all. Some non-commercial organizations may operate without any property even during several years of their existence.

The Civil Code of the Republic of Tajikistan defines basic forms for establishment of legal entities that differ by various characteristics. In addition to different classifications of legal entities defined in the Civil Code itself there are a number of other generally accepted classifications. For example, in accordance with the classification given in the Civil Code, as founders (participants) of the legal entity participate in formation of its property, they may have liability rights in relation to this legal entity or proprietary interests for its property:⁹

Legal entities in relation to which their members have liability rights, include:

- economic partnerships and associations;
- production and consumers' cooperatives.

⁸ Article 48, part I, Civil Code of the RT as of 30.06.1999

⁹ Article 48, part I, Civil Code of the RT, as of 30.06.1999

It means that founders bear responsibility for activities of the legal entity, established by them, with their property, and/or in the amount of their initial inputs.

Legal entities, in whose property their founders have proprietary interests, include:

- unitary enterprises, including subsidiary enterprises, and also institutions financed by the owner.

Legal entities, in whose property their founders (participants) do not have proprietary interests, include:

- public and religious organizations (associations);
- charitable and other public funds;
- associations of legal entities (associations and unions).

Further in the Civil Code, there is another more simple classification¹⁰ that is not based on a legally intricate features of legal relationships: it is division of organizations by the nature of their activities on commercial and non-commercial ones.

1.2.1. Commercial organizations

Organizations established with the purpose to gain profit and pursuing this goal after establishment are commercial organizations. The Civil Code of the Republic of Tajikistan provides a closed list of possible forms of business entities that can be created in the form of business partnerships and companies, cooperatives, state unitary and fiscal enterprises. Tajik legislation does not provide for other forms of business organizations. Each of given forms of commercial organizations, in turn, is divided into several sub-types that are also described in the Civil Code.

PRODUCTION COOPERATIVE

Keeping with its name, the production cooperative primarily is the association of citizens for the joint economic activities. More exactly it is characterized by its another name – artel. The cooperative form of management appeared in different countries along with development of capitalism in the 18th century, initially in the form of collective mills of rural farmers or associations of craftsmen. Initially, these associations were not of such a pronounced commercial character, rather it was a union of craftsmen's efforts. In present-day forms the production cooperatives are commercial organizations, whereas today the activities of producers' cooperatives has become more commercial. Methods of gaining profit and organization of activities in the production cooperative are substantially different from those used by other commercial organizations. In production cooperatives each member of the organization is obliged to participate in its activities by his/her personal labor. In fact, the profit is obtained on the basis of their own labor participation, not just the property participation.

in accordance with the Civil Code of the Republic of Tajikistan¹¹, a production cooperative (artel) is a voluntary association of citizens on the basis of membership, for the joint production or other economic activities (production, processing, sale of industrial, agricultural and other products, works, trade, consumer services, other services) based on their personal labor and other participation and joining of property shares by its members (participants).

Just this form has replaced many collective farms of the country, that also some time ago were based on the collective ownership and could be easily reorganized into agricultural production cooperatives, i.e. into a voluntary association of citizens for joint production activities.

¹⁰ Article 50, part I, Civil Code of the RT, as of 30.06.1999

¹¹ Article 118, part I, Civil Code of the RT, as of 30.06.1999

In addition to the Civil Code, activities of producers' cooperatives was regulated by the Law "On producers cooperatives" as of 2 May 2002, but with adoption of the new Law "On cooperatives" as of 22 July 2013, the previous one ceased to be in force. The current law of the Republic of Tajikistan "On Cooperatives" has incorporated issues of regulation of commercial and non-commercial cooperative associations of citizens, regardless of the areas and types of activities. The main difference of non-commercial cooperatives is in that services are provided primarily to its members, and the income received from provision of services to third parties, who are not members of the cooperative, is not distributed among members, but is directed for development of the cooperative. If a non-commercial cooperative starts to provide services mainly to third parties, then such an association should be reorganized as a commercial association.

Types of activities of co-operatives are not limited by the law. Cooperatives, both commercial and also non-commercial ones may carry out activities in the consumers', industrial, construction, housing, communal spheres, in the area of processing, marketing of products, procurement, provision of services, trade, agriculture, insurance, lending and other areas that are not prohibited by the legislation of the Republic of Tajikistan.

STATE ENTERPRISES

Prototypes of the first state-owned enterprises have appeared on the territory of the country still in Soviet times, when the state being the owner practically of everything, did not always cope with the management of its property. In view of this, there appeared an objective need to place a part of the property to the relatively independent management of state enterprises being established. The title 'unitary' means indivisible property, i.e. in fact the state property is given to a limited proprietary right that is not subject to division by shares and deposits, including between the employees of the company, i.e. the public property is given "for the turnover".

The Civil Code of the Republic of Tajikistan¹² defines two main types of commercial state-owned enterprises: **unitary enterprises** based on the right of business management and **state-run (fiscal) enterprises** based on the right of operational management. Right of the economic management is wider than the right of the operational management and is usually given to manufacturing enterprises.

The activities of state-owned enterprises is additionally regulated by a special Law "On state-owned enterprises", as of 24 February 2004. This law provides a more detailed distinction of mentioned types of state-owned enterprises. In particular, the state unitary enterprises are free to set a price for their products, based on the supply and demand, have more freedom in their productive activities and in operating expenses, and also they can distribute profits on their own in accordance with the Charter. State fiscal enterprises operating on the basis of the operational management are more closely tied up in their actions against the owner and should coordinate practically every step with him. In practice, state enterprises are established in the defense industry or in the penal-correctional system, as well as in other areas, where various factors confine freer circulation of funds and economic management. Another difference is in that only state unitary enterprises can create their subsidiary companies.

In the Civil Code¹³ two types of state (public) property are defined: republican and municipal, respectively allocated to the republican and municipal (local) legal entities. Accordingly, state unitary enterprises and state fiscal enterprises can be established by republican legal entities (by the government), and/or by municipal (local) legal entities (local executive authorities).

¹² Article 124, part I, Civil Code of the RT, as of 30.06.1999

¹³ Article 238, part I, Civil Code of the RT, as of 30.06.1999

Belonging to this or that form of the state property should be reflected in the title of the organization, "Republican" or "Municipal" enterprise.

BUSINESS PARTNERSHIPS AND ASSOCIATIONS

By today the most commonly used in practice organizational and legal forms of the Limited liability companies (LLC), Closed joint stock companies (CJSC) and Closed joint stock companies (CJSC) – these are varieties of business entities. Business entities also have roots in ancient times, but they were formalized and expressed more specifically in the Roman law. Historically, partnership agreements evolved from an agreement between brothers, for example, not to divide the property and continue to keep the household jointly after the death of their father. The inherited or family property became the basis of emerging associations. In fact, business partnerships and companies today also is unification of the property for getting profit in the future. If in production cooperatives labor and property are joined, in the economic associations and partnerships usually only property is joined, or more often simply cash inputs are joined. It is more correct to name them capitals.

In the civil legislation¹⁴ of Tajikistan economic partnerships and companies are defined as commercial organizations with a registered (joint-stock) capital of founders (participants) divided into shares (contributions). The property shaped on the account of founders' (participants') contributions as well as the property produced and acquired by economic partnership and company in the process of its activities, shall belong to it by the right of ownership.

Economic partnerships and business companies adhere to similar principles in development of their activities, which is based on unification of the property for gaining profit, but there are conceptual differences in the internal relationships between members of associations and members of companies. The main differences of the legal status of associations and companies result primarily from the concept that the partnership is a union of physical persons and the company is the union of capital. But there are also a number of other significant differences:

- Despite of possessing the legal personality, the partnership is treated as a contractual rather than a statutory union, as the basis for its creation and activity is the foundation agreement¹⁵ between the members of the partnership;
- The partnership is created for joint performance of entrepreneurial activities. Only individual entrepreneurs and commercial organizations can become full members of partnerships. There are no such limitations for business companies.¹⁶
- The number of participants in the partnership is usually small, and their relations are of personally trusting nature: decisions are made on the basis of mutual consent, there is no system of governing bodies, the affairs of the association (representative functions) are administered by participants themselves.
- The business company, in its turn, has a system of administrating authorities established by the foundation documents on the basis of the law: the company's administrative authorities make decision and administer affairs of the company on the basis of the powers conferred upon them by the law and on the basis of foundation documents of the company. For the executive and the everyday management of the Company third parties may be invited, that are not members (founders) of the company.

¹⁴ Article 69, part I, Civil Code of the RT, as of 30.06.1999

¹⁵ Article 73, part I, Civil Code of the RT, as of 30.06.1999

¹⁶ p. 4 Article 69, part I, Civil Code of the RT, as of 30.06.1999

Economic partnerships

Unlimited (general) partnership. A full partnership,¹⁷ is a partnership the participants of which (general partners), under the contract concluded between them are engaged in business activities on behalf of the partnership and in solidarity with each other are liable for its obligations by all the property belonging to them.

Trust partnership. A trust partnership¹⁸ (kommandit partnership) is a partnership where along with participation of members engaged in entrepreneurial activities on behalf of the partnership and bearing responsibility for obligations of the partnership with their property (general partners), there is one or more limited partners (kommandits), who bear the risk of losses related to activities of the partnership within the amount of their contributions, and do not take part in the entrepreneurial activities realized by the partnership.

Differences in types of partnerships. The main difference in the mentioned above types of partnerships is in the circle of participants. **A general partnership** is a union of equal participants who are jointly engaged in entrepreneurial activities and also are jointly liable for obligations with their assets. That is, if any such partnership meets losses, participants will be answerable for obligations with the partnership's property, by their contributions. If this property is insufficient, participants will be answerable with their property belonging to them on the right of ownership. In **a trust (limited) partnership** there are two types of participants: 1) general partners, whose legal status in respect of commitments is the same as in the full partnership, that is, in case of loss occurrence in excess of their deposits and assets of the partnership, they will be answerable with their property; 2) Kommandits (limited partners) are participants who contribute their share into the authorized capital of the partnership, and for the incurred losses they will be answerable with their contributions, but not with their property as general partners. However, in contrast to general partners kommandits (limited partners) do not participate in entrepreneurial activities. Moreover, limited partners don't have right to argue activities of general partners on management and administration of affairs of the partnership.

Business companies

Limited Liability Company¹⁹. A limited liability company is a company established by one or more persons, the registered capital of which is divided into shares in the size determined by the foundation documents; participants of the limited liability company are not liable for its obligations and bear the risk of losses related to the company's activities to the extent of the value of their contributions. Members of the company who have made contributions not in full, are jointly and severally responsible for obligations of the company to the extent of the value of each participant's unpaid contributions. The Limited Liability Company with the usual abbreviation LLC (in some CIS countries - CwLL) is the most popular organizational-legal form of business in the most of the former Soviet republics. Its popularity is in relation of participants to their obligations, which is expressed in its title - the responsibility of its participants is limited to the extent of their contributions, without pretending on their personal property as it is in other forms. In practice, it looks so: if the Company has incurred losses, the creditors can claim only for the property of the company, and among the participants the losses will be divided in proportion and to the extent of their contributions.

Additional Liability Company²⁰. Additional liability company is the company established by one or several persons, the registered capital of which is divided into shares in the size de-

¹⁷ Articles 72-86, part I, Civil Code of the RT, as of 30.06.1999

¹⁸ Articles 87-91, part I, Civil Code of the RT, as of 30.06.1999

¹⁹ Articles 94-104, part I, Civil Code of the RT, as of 30.06.1999

²⁰ Articles 105, part I, Civil Code of the RT, as of 30.06.1999

terminated by the foundation documents; participants of such company jointly and severally bear subsidiary liability²¹ for its obligations with their property in equal divisible size to the value of their contributions, determined by foundation documents of the company. In case of insolvency (bankruptcy) of one of its members, his/her liability for obligations of the company is divided among other participants in proportion to their contributions, unless any other order of liability distribution is not stipulated by the foundation documents of the company.

Differences between companies with the limited and additional liability. The main difference is the extent and limits of the liability of the Company members on its obligations. In the Limited liability company all losses are covered to the extent of participants' contributions. In the Additional liability company participants are liable to the extent their property, and in addition bear responsibility for the bankrupt participant. In practice, companies with the additional liability are considered as more reliable partners, and as a whole, such companies are more creditworthy than a Limited liability company is. However, in Tajikistan, there are practically no companies with additional liability, because in the first instance entrepreneurs do not want to put their property at risk in the unstable business and economic environment in Tajikistan, and secondly, there is practically no competition for credit resources and there is no need to prove their creditworthiness and increased reliability. Perhaps, that is why the legislative bodies, responding to business trends in Tajikistan, have issued a special law only for Limited liability companies.

The Law of the Republic of Tajikistan "On Limited Liability Companies" was adopted on 19 March 2002. This the law defines the legal status of a Limited liability company, rights and obligations of its participants, the order of establishment, reorganization and liquidation of the company. Article 15 provides for a minimum share capital in the amount of 500 somoni. In general, the law extends provisions of the Civil Code with respect to such companies. In accordance with provisions of the Civil Code²² "to companies with additional liability the rules of this Code on Limited liability companies shall be applied, as otherwise is not provided for in this article". It means that the Code norms regulating activities of Limited liability companies are applicable to companies with additional liability, except for special norms. For example, companies of both types are equally limited in the number of participants up to 30, as well as almost all the other norms defined in Articles 94 to 104 in the Civil code of the Republic of Tajikistan are applicable to both types of companies . However, this rule does not apply to norms of the law "On Limited Liability Companies". This law regulates only activities of Limited liability companies.

Joint-stock companies. The largest form of organization of economic activities in Tajikistan are joint stock companies. The Joint stock company the most clearly expresses the idea of unification of capitals, as the basis of the association are not participants, but shares. Participants are shareholders and they bear responsibility for activities of the company in the size of their shares.

In accordance with the Civil Code of the Republic of Tajikistan ²³, the Joint-stock company is a company the registered capital of which is divided into a certain number of shares; participants of the joint stock company (shareholders) are not liable for obligations of the company and bear the risk of losses related to the company's activities to the extent of the value of their shares. The legal status in respect of obligations of participants of the Joint-stock company is comparable with the status of a Limited liability company participants. Participants of both companies bear the risk of losses to the extent of their contributions, in the case of a joint stock company - to the extent of the value of shares of the participant, that is also a contribution.

²¹ Subsidiary responsibility – in a general sense it is a right for the unpaid indebtedness recovery from another liable party (person), if the first person cannot pay it (the author's note)

²² p. 3, Articles 105, part I, Civil Code of the RT, as of 30.06.1999

²³ Articles 106-115, part I, Civil Code of the RT, as of 30.06.1999

Joint stock companies are of two types: open and closed. According to its name, in the first case the company shares can be bought and sold openly, without notifying other participants - shareholders. In a closed joint-stock company shares may be redistributed only among the founders of the company, or among preliminary specified scope of persons. Open joint-stock companies have to publish every year annual reports, bookkeeping balance sheets, profits and losses account for the general public. In turn, closed joint-stock companies do not have such a fixed obligation.

There are also differences in these two types of companies in the number of participants and in the minimum amount of the authorized capital. These differences are regulated in a special Law "On Joint Stock Companies", as of March 5, 2007, replacing the old law that was in effect since 1991. The number of shareholders in a closed joint stock company may not exceed fifty participants²⁴, the number of members of the open joint stock company is not limited. The minimum charter capital of open joint stock company²⁵ shall be not less than five thousand somoni, and of the closed joint stock company - not less than one thousand somoni. In general, the law regulates activities of both types of joint stock companies, including general and specific norms for each type of the company, determining the legal status, the order of establishment, reorganization and liquidation of joint stock companies, rights and duties, protection of rights and interests of shareholders and of third parties, authorities and responsibilities of bodies and officials of joint stock companies.

SUBSIDIARY COMPANIES AND AFFILIATES

Subsidiary and affiliated commercial companies in fact are not a separate organizational-legal form, and are derivatives from other forms of business associations and companies. As it is determined by the Civil Code²⁶:

- A business company is recognized a subsidiary, if another (parent) business company or partnership in view of the majority equity holding or in accordance with the agreement concluded between them or otherwise, can influence decisions made by such company.
- A business company is recognized as an affiliate, if another (predominant, participating) company holds more than 20 percent of voting shares or 20 percent of the registered (charter) capital of a Limited liability company.

The main difference between these types of societies is 'dependence' of their management on the side of other business companies or associations, which have such powers in accordance with the prevailing participation in the registered capital (the size of contributions and/or shares), or by virtue of agreements in the foundation documents.

Subsidiary company. The subsidiary company is not liable for obligations of the parent company (partnership), but the parent company (partnership) has right to give binding instructions to its subsidiary company and is jointly and severally liable for transactions that were concluded on such instructions. Also in case of insolvency (bankruptcy) of the subsidiary company through the fault of the parent company (partnership), the latter shall bear the joint (subsidiary) responsibility for its debts. And for others losses and liabilities the subsidiary company shall bear responsibility by its own.

Affiliates. A business company possessing a larger per cent of voting shares of another joint-stock company or 20 percent of the registered (charter) capital of another Limited liability company, is in the dominant (participating) position in relation to it. The legislative bodies

²⁴ Article 6 Of the Law of the RT «On joint-stock companies» as of 5.03.2007

²⁵ Article 17 Of the Law of the RT «On joint-stock companies» as of 5.03.2007

²⁶ Articles 116-117, part I, Civil Code of the RT, as of 30.06.1999

have laid down a rule, in accordance with which the company that has become *predominant* shall immediately publish the information about it in the manner established by the legislation on economic societies. The limits of mutual participation of business companies in each other's registered capitals and the number of votes that one of these companies can use at a general meeting of members or shareholders of another company, shall be established by the law. However, neither the Civil Code nor any other special laws of the Republic of Tajikistan do not describe this procedure.

Norms concerning subsidiary companies and affiliates are also reflected in the Law "On Joint-Stock Companies" and in the Law "On Limited Liability Companies", but these rules do not extend or supplement the rules of the Civil Code of the Republic of Tajikistan, but simply repeat them.

1.2.2. Non-commercial organizations

Non-commercial organizations that existed in Soviet times after gaining independence in Tajikistan have acquired a new meaning and forms. More often, non-commercial organizations today in Tajikistan are associated with public associations that habitually are named non-governmental organizations (NGOs). This familiar term "non-governmental" were started to be used by donor organizations to such organizations in order to differentiate them first from government organizations. However, the sector of non-commercial organizations is determined much wider in the civil legislation and in addition, government organizations and/or organizations founded by governmental authorities may also act as non-commercial organizations.

In contrast to commercial organizations, a list of possible organizational and legal forms of non-commercial organizations is open in the Civil Code of the Republic of Tajikistan, which actually means that special legislative instruments may provide for establishment of any organizational and legal forms completely different from those indicated in the Civil Code of the Republic of Tajikistan. Legal entities ²⁷, that are non-commercial organizations, may be created in the form of consumers' cooperatives, public or religious organizations (associations), institutions financed by the owner, charitable and other funds, and also in other forms prescribed by law.

CONSUMERS' COOPERATIVES

Consumer Cooperative is one of the oldest varieties of cooperative associations in the world. Citizens joined their funds for acquiring deficient or expensive goods that purchasing them alone would be more expensive for them. The principle of Consumers' cooperatives just in this sense became the most frequent practice in the Soviet era. Practically all the trade in the territory of the former Soviet Union was realized through consumers' cooperatives. Gradually from trading and purchasing associations the consumers' cooperatives have overgrown into production associations, producing food products on the basis of local agricultural products (produced in private farms and purchased from the population), non-food items (from agricultural and other local raw materials). Closer to the end of the Soviet era, consumers' cooperatives have practically ceased to be citizens' associations for meeting material needs, and became relatively independent economic organizations. With gaining independence other trade subjects appeared and positions of familiar RayPO (District consumer societies), GorPO (City consumer societies), OblPO (Oblast consumer societies) weakened. Nevertheless they exist and work up to now based on the remaining strong and extensive commercial and indus-

²⁷ p. 3, Articles 50, part I, Civil Code of the RT, as of 30.06.1999

trial basis and large farms. Despite of historically strongly marked commercial character of consumers' cooperatives' operation in our country, however, the consumer cooperative is a non-commercial organization, since it is the union of citizens to meet their material needs, and not for gaining profit.

In the legislation of Tajikistan the organizational-legal form of consumers' cooperatives is not regulated widely enough. In accordance with the Civil Code²⁸ a consumer cooperative is a voluntary association of citizens on the basis of membership in order to meet the material (property) needs of the participants, through joining property (share) contributions by its members. Despite of its seeming simplicity, this organizational and legal form is quite contradictory and unusual in practice, in view of the following reasons:

- It is the only non-commercial organization, where it is allowed by law to share the profit gained in result of activities among its members. It is a kind of intermediate form between commercial and non-commercial organizations;
- This organizational-legal form is not only a form of the common consumer cooperation. Nevertheless, the Civil Code refers to a special Law of the Republic of Tajikistan "On consumers' cooperatives"²⁹, as to the law defining "legal status of consumers' cooperatives, as well as rights and obligations of their members"³⁰ actually regarding all types of consumers' cooperatives;
- The Civil code of the Republic of Tajikistan defines a cooperative as an association of citizens. In turn, the law of the Republic of Tajikistan "On consumers' cooperatives in the Republic of Tajikistan" allows also membership of legal entities in the cooperative as collective members³¹;
- The law of the Republic of Tajikistan "On Cooperatives" as of July 22, 2013 does not regulate the activities of consumers' cooperatives: 1) the term "non-commercial cooperative" in this law is not a form of consumers' cooperatives, as members of such cooperative cannot distribute profits among themselves; 2) in article 42, item 3 of the Law a reference rule to the Law "On consumers' cooperatives in the Republic of Tajikistan" is given;

In view of the limited and one-sided regulation by the law (a reference to the Law "On Consumers' Cooperatives"), application of this form of co-operatives in practice is difficult, though in fact housing construction, housing, dacha construction, garage building cooperatives are also consumers' cooperatives. The Law "On consumers' cooperatives in the Republic of Tajikistan" also does not sufficiently regulate rights and obligations of members of consumers' cooperatives, as well as the structure and management forms of a particular consumer cooperative.

SOCIAL (NON-GOVERNMENTAL) AND RELIGIOUS ORGANIZATIONS (ASSOCIATIONS)

This organizational-legal form is the most widely used form of a non-commercial organization in Tajikistan. In the Civil Code the general legal regulation is the same for religious and social organizations and the following definition is given³² "social (non-governmental) and religious organizations (associations) are voluntary associations of citizens, joined together in accordance with the procedure established by the law, on the basis of their common interests to meet the spiritual and other non-material needs". Distinctive features of this organizational legal form are the pronounced non-material nature of the organization and philanthropic direction of activities at large. The participants (members) of social and religious organizations

²⁸ Articles 128, part I, Civil Code of the RT, as of 30.06.1999

²⁹ The Law of the RT «On the consumers' cooperation» as of 13.03.1992

³⁰ Article 128, part I, Civil Code of the RT, as of 30.06.1999

³¹ Article 1 of the Law of the RT «On the consumers' cooperation» as of 13.03.1992

³² Article 129, part I, Civil Code of the RT, as of 30.06.1999

do not preserve rights to the property that they place to these organizations for possession, including membership fees. They are not liable for obligations of public and religious organizations where they participate as members, and these organizations are not liable for the obligations of its members. In addition to the Civil code of the Republic of Tajikistan activities of such organizations are also regulated by special laws. In the context of this analysis only **public associations** will be considered.

The law of the Republic of Tajikistan "On social associations" as of March 12, 2007 replaced the first edition of the Law as of 1998. By definition of article 5 of the current version of the Law "Public (non-governmental) association - a voluntary, self-governing, non-commercial association of citizens, joined together by common interests for realization of goals set out in the charter of the public association". The law provides for three types of organizational and legal forms of public (non-governmental) associations of citizens:

- **Public (non-governmental) organization** - a public organization founded, as a rule, on the basis of membership for joint activities of citizens joined for protection of common interests and achievement of the statutory objectives.
- **Social Movement** – it is a mass public association consisting of participants without membership, pursuing social and other socially useful purposes and supported by participants of the public movement. By its form, a social movement is practically identical to the previous form. The main difference is primarily in the scale of the organization, its mass character and absence of membership. It is not expressly stated, but at the same time, by the context, a social movement can exist for indefinite time without registration.³³
- **A public initiative** – this form of public association is regulated by a special law of the RT "On public initiatives organs", as of 5 January 2008. This type of public association is a community-based local organization solving problems of citizens in the community, usually within the boundaries of streets, neighborhoods and villages (mahalla). In contrast to previous types of public associations, accounting registration of the public initiative organ is done by the place of members' residence in the relevant Jamoat. If there is no Jamoat, village or town in the given administrative territorial unit, then the registration is carried out by the local state executive authority. This law and this form of the public association has granted the status and organizational-legal form to "mahalla" committees that existed for a long time spontaneously and informally.

Another difference between public (non-governmental) organizations (movements) is the process of their registration. Upon inuring of the Law "On registration of legal entities and individual entrepreneurs" as of May 19, 2009, actually all legal entities are registered by "one contact" principle³⁴, in accordance with uniform requirements and the grounds specified in the Law. One of exceptions in this law is the question of public associations' registration. Public (non-governmental) organizations and movements are registered by the Ministry of Justice and/or its regional offices. Bodies of public initiative pass the accounting registration, as it was stated above, in Jamoats, or in the local state executive body.

Among these three forms of public associations the most frequently used form is a **public (non-governmental) organization**. Almost all active civil society organizations working with donors on projects are created just in this form. This form has quite broad legal framework and can be applied in any sector and in any geographical coverage, from local to national organizations. The Law "On public associations" mainly regulates just this type of public associations, regulating issues with establishment, activities, reorganization and liquidation of public (non-governmental) associations.

³³ p. 3, Article 9, of the Law of the RT «On public associations» as of 12.03.2007

³⁴ Article 4, of the Law of the RT «About registration of legal entities and individual entrepreneurs» as of 19.05.2009

PUBLIC FUNDS

Public funds is a form of non-commercial organization that is more rarely used in practice in Tajikistan. In accordance with norms of the Civil Code of the Republic of Tajikistan³⁵ a public fund is a non-commercial organization without membership, founded by physical persons or legal entities on the basis of voluntary property contributions, pursuing charitable, social, cultural, educational or other generally useful purposes. The property passed to the Fund by its founders shall be the property of the Fund. The founders are not liable for the obligations of the Fund, founded by them and the Fund is not liable for obligations of its founders.

The main difference of a public fund is in that this organizational and legal form has no membership. Directions of activities and establishment purposes are also of a non-commercial nature. Like public (non-governmental) associations, public funds may engage in entrepreneurial activities. The profit gained by them is not distributed among the founders, and is used for the purposes of establishing a fund. In addition to that, public funds can establish business companies, or participate in their activities, though such a rule in relation to public (non-governmental) associations is not directly specified. Registration of a public fund is done on a non-preferential basis in accordance with provisions of the Law "On registration of legal entities and individual entrepreneurs».

Another important distinction of the public fund is the future of its assets upon liquidation. In accordance with item 3 of Article 131, item 1 of the Civil Code of the Republic of Tajikistan "In the case of liquidation of a public fund, its assets remaining after satisfying demands of creditors, shall be passed to persons specified in the charter of the Fund». The law does not specify what persons they are holds loose reins on making decision in the case of liquidation. The property passed to the fund by founders shall be the property of the Fund, and after liquidation, the Fund's assets, including property obtained in results of its activities may be handed to founders if they are "persons specified in the charter». The order of liquidation is described in more details in the Charter. The Fund is obliged to publish annual reports about using of its property.

AGENCIES

In accordance with definition in the Civil Code³⁶, the agency is an organization established by the owner for carrying out managerial, social, cultural or other non-commercial functions and financed by him/her in full or partially. The agency is the only type of non-commercial organization that is not the owner of its property because the property is provided to the agency on the basis of the operational management right³⁷.

Moreover, this organizational-legal form is the basic form of many state organizations in Tajikistan, where the owner of the solitary property of the institution is the state. Such agencies include: departments of state administration bodies, educational institutions (schools, high schools, pre-school institutions, colleges, libraries, etc.), culture and sports departments and institutions (stadiums, sport schools, theaters, museums, parks, etc.), social security institutions (orphanages, nursing homes, etc.), for example, prisons and colonies are also agencies. The foundation documents may include the Charter or general provisions about organization of this type. Specifics of the legal status of certain types of state and other agencies shall be determined by special laws, such as specifics of educational agencies shall be determined by laws on education etc.

³⁵ Articles 130-131, part I, Civil Code of the RT, as of 30.06.1999

³⁶ Article 132, part I of the Civil code of the RT as of 30.06.1999

³⁷ Articles 313-315, part I of the Civil code of the RT as of 30.06.1999

Organizational and legal forms of the government, the executive bodies of state power, ministries and departments, the courts and other government institutions are also similar with the agencies by the form and structure, but it is a disputable topic and the subject of ongoing debates. According to generally accepted standards, these organs are "non-typical" subjects of the civil turnover, endowed with all rights of legal entities.

As it was stated above, the agencies may be established by the owner, regardless of the form of ownership and organizational-legal form of the owner himself. The agency (institution) shall be responsible for its obligations by money resources being at its disposal. If these resources are not sufficient then the owner of the relevant property shall bear subsidiary responsibility for its obligations.

ALLIANCES OF LEGAL ENTITIES (ASSOCIATIONS AND UNIONS)

The last form of a non-commercial organization described in the Civil Code - the association of legal entities can be of three different forms:

- **Association of commercial organizations.** Commercial organizations with the purpose to coordinate their entrepreneurial activities, as well as for representation and protection of common property interests may agree among themselves to form alliances in the form of associations (unions)³⁸. Such associations cannot engage in entrepreneurial activities directly, as in this case they have to be transformed into a business company or partnership.
- **Association of non-commercial organizations.** Public and other non-commercial organizations, including agencies (institutions), may by their own form associations (unions)³⁹ of these organizations. There are no restrictions in the Civil Code of the Republic of Tajikistan on entrepreneurial activities for associations of non-commercial organizations.
- **Association of non-commercial and commercial organizations.** Article 50 of the Civil Code of the Republic of Tajikistan also allows the unification of commercial and non-commercial entities in the form of associations and unions. There are no special rules regulating this type of associations.

All three types of legal entities' associations except for the above indicated differences shall be regulated by common norms of the Civil Code of the Republic of Tajikistan. In accordance with these norms:

- The foundation documents of associations (unions) shall be the foundation agreement, signed by the members and its Charter;
- Members of the Association do not lose their rights of the legal entity and preserve their independence;
- The Association shall not be liable for obligations of its members, but members of the association shall bear the subsidiary⁴⁰ responsibility for its obligations in the amount and in the manner provided for by foundation documents of the association.

The Civil Code of the Republic of Tajikistan also has norms regulating rights and obligations of members of associations (unions).

³⁸ p. 1, article 133, part I of the Civil code of the RT as of 30.06.1999

³⁹ p. 2, article 133, part I of the Civil code of the RT as of 30.06.1999

⁴⁰ Subsidiary, i.e. additional responsibility. For example, additional responsibility of persons that equally with debtor are answerable to the creditor for the proper performance of obligations in cases provided for by the legislation or by an agreement, *the author's note*

OTHER TYPES OF NON-COMMERCIAL ORGANIZATIONS

As it was mentioned above in the civil code of the Republic of Tajikistan an open list of non-commercial organizations is given. In various special laws of the Republic of Tajikistan there are other organizational legal forms of non-commercial organizations. For example:

- **The Chamber of Commerce and Industry.** The provisions of the association (union) of legal entities shall not apply to Chambers of Commerce and industry (CCI). Chambers of Commerce and industry are a separate organizational-legal form of non-commercial organizations, though they are created with similar objectives. Chambers of Commerce and industry are created in accordance with the Law "On Chambers of Commerce and industry", as of 22 May 1998. It should be mentioned that not only legal entities, including commercial organizations, but also individual entrepreneurs, physical persons and their associations can be members of Chambers of Commerce and industry. Chambers of Commerce and industry have right to engage in entrepreneurial activities. Though there are no restrictions on the number of established Chambers of Commerce and industry in the country, however, there is one such association in the country.
- **Water Users Association.** For regulation of the joint use of irrigation waters, on 22 November 2006 the Law of the Republic of Tajikistan "On water user associations" was adopted. This law also contains provisions for special organizational-legal form of water user associations, which does not directly fit into any of the forms specified in the Civil Code. This is an association of legal entities and individual entrepreneurs for satisfying needs in the irrigation water. The main function of water users' associations is to receive and distribute water for irrigation among its members. Such associations are established among dekhkan farms and agricultural enterprises using a single system of irrigation and general water sources. The water users' associations may be founded by legal entities, individual entrepreneurs, businesses that have plots of irrigated lands. Water Users Association does not provide membership for physical persons.
- **Homeowners' Partnership.** It is a special organizational and legal form for unification of owners of apartments of a multi-family dwelling, with the purpose to organize servicing of their common property: roofs, basements, load-bearing walls and structures, porches etc. By the structure and style of activities it is comparable with a consumer cooperative, but members of the Homeowners' partnership do not share the profits among themselves, and spend it for the maintenance and servicing of the common property. The order of establishment, management, powers, rights and duties of the Homeowners' association and its members, as of a non-commercial organization shall be regulated by the Law of the Republic of Tajikistan "On maintenance of apartment buildings and on Homeowners' Associations" as of August 5, 2009

1.3. "NON-TYPICAL" ORGANIZATIONAL AND LEGAL FORM OF A LEGAL ENTITY

All three branches of state management: the executive, judicial and representational branches have a special position among the organizational and legal forms of legal entities. All three branches and organizations created within frames of these branches, such as the courts, Parliament, local Majlices, executive authorities, ministries, government agencies and services, as well as their territorial departments have all the attributes of a legal entity specified in the Civil Code⁴¹ - A legal entity is an organization that has a solitary property in its ownership, economic or operational management and is responsible for its obligations with this property, can on behalf of itself acquire and exercise property and non-property rights, incur obligations, can act as a plaintiff and defendant in the court. But in the Civil Code there is not given a

⁴¹ Article 48, part I, Civil Code of the RT, as of 30.06.1999

detailed description of their organizational and legal forms. By general concepts, the organizational and legal form of state administration bodies is the most similar to such form of non-commercial organizations as an agency⁴², but in spite of the similarity, it is not the agency in its pure form.

The generally accepted name of such legal entities is "public legal formations". Details of organizational-legal forms of state administration bodies are regulated by the Constitution of the Republic of Tajikistan and the relevant special normative legal acts, as well as in relevant regulations and decrees of the government. In the context of this study, state administration bodies will not be considered, since they cannot directly engage in organization of the drinking water supply, as well as in any other commercial activity. They establish state unitary enterprises or institutions for this purpose. There is no direct ban in the legislation for state administration bodies on engagement in commercial activities. But there is also no permission or the order for such participation. The logic of such "non-participation" is in that initially the public authorities determine the "rules of the game" (adopt laws, regulations, decisions, orders, etc.) for commercial organizations, so they cannot themselves take part in this "game" on equal terms.

Among public-legal formations the self-government authorities stand apart. They are not state authorities, but nevertheless they are one of forms of public-legal formations, as they have certain authoritative powers defined by the law. Their activities are regulated by the Law "On self-government authorities in settlements and villages" as of August 2009. Local self-government authorities in settlements and villages also cannot directly engage in entrepreneurial activities.

⁴² Article 132, part I of the Civil code of the RT as of 30.06.1999

2. CHARACTERISTICS OF POSSIBLE BUSINESS MODELS IN THE SPHERE OF THE DRINKING WATER SUPPLY IN THE CONTEXT OF TAJIKISTAN

The organizational - legal forms described in the first section are common and can be used practically in all spheres of economic activities, but the specifics of relationships and infrastructure specifics in the sector of the drinking water supply and sanitation, as well as some legal provisions in special legislative instruments may restrict the use of certain models. In addition to legal restrictions there are also some institutional, traditional, economic and other reasons, restricting application of certain organizational and legal forms.

2.1. SPECIFICS OF THE DRINKING WATER SUPPLY IN RURAL AREAS

2.1.1. Legal specifics

Restrictions on the use of various organizational and legal forms, as well as advantages and disadvantages of such an application are determined primarily by special laws in the sector of the drinking water supply, as well as by relevant by-laws, decrees and orders issued by the government, ministries and departments. The main special laws in the field of the drinking water supply in Tajikistan are the Water Code and the Law of the Republic of Tajikistan "On Drinking Water and the Drinking Water Supply».

THE WATER CODE OF THE REPUBLIC OF TAJIKISTAN was adopted as of 10 November 2000 (amended in 2006, 2008 and 2009). The objectives of the Water Code are "regulation of economic relations in consumption and protection of water resources, providing the legal basis for supporting and development of water consumption and protection of water resources; definition of basic principles, directions for consumption and protection of water resources». In general, the Code regulates the entire spectrum of relations arising in the water sector: using of water resources for agricultural and industrial needs, hydropower, drinking, medical, sanatorium and resort purposes etc. In terms of norms concerning activities on the drinking water supply - the Code contains a number of **general norms** which relate not only to the drinking water supply, but also to all types of water consumption as well as a number of **special norms**, combined in a separate chapter 9 "Using of water objects for drinking, domestic and other needs of the population".

General norms

Below rules of a general nature (excerpts from articles) in any way affecting the choice of the organizational-legal form and models for the drinking water supply, and also comments on these standards are given.

Article 1. Basic Concepts

- **water resources management activities** – activities of citizens and legal entities associated with using, restoration and protection of water objects;
- **permission for special water using** - permission for using water objects, issued by the authorized state organs regulating the use and protection of water resources.
- **drinking water supply** - activities aimed at meeting requirements of physical persons and legal entities in the drinking water;
- **special water consumption** – using of water by applying constructions and technical devices;

- **Primary water users** - physical persons and legal entities for whom water objects are provided for the solitary use;

Comments: These are some terms used in the Water Code, defining concepts that are of importance for the subject of this study. Following the given rules, legal entities and physical persons *can engage in water management activities with availability of a permission for the special water resources management*. At the same time they are the *primary water users*, as they receive water objects for the solitary use that is called the *special use* while using facilities and technical devices. Finally, a broad concept – the *drinking water supply* – it is an activity aimed at meeting requirements of physical persons and legal entities in drinking water. In general, following these norms, any physical persons or legal entities of any organizational-legal form may be engaged in the drinking water supply with availability of a permit for special use. The following norms of articles may have other limitations.

Article 6. Competence of the Government of the Republic of Tajikistan in the field of regulation of water relations

- Regulation of issues related to the paid-for water consumption, implementation of pricing policies, fixing tariffs and incentives;

Comment: Among functions and competences of the Government this point is directly related to aspects of the paid-for water consumption. The government not only shapes, but also pursues a policy of pricing, issues of incentives and tariffs for drinking water suppliers in any form of ownership. The Government can do it either directly through resolutions or through its bodies, ministries and departments, agencies and services.

Article 23. General and special water consumption

1. There are distinguished two types of water consumption: general water consumption without using any facilities or technical devices influencing water conditions and special water consumption with the use of such facilities or devices. In some cases water consumption without using facilities or technical devices that affect water conditions can also be referred as special water consumption.

Comments: Activities on organization of the drinking water supply is a special water consumption.

Article 26. Types of water consumption differing by the basic intended use

1. Water objects are provided for use subject to compliance with legal requirements and conditions for meeting drinking, domestic, medical, resort, recreational and other needs of the population, of agricultural, industrial, energy, transport, fisheries and other public needs, as well as for using simultaneously for multiple purposes.

Article 27. Water users

Water users can be any physical persons or legal entities regardless of the form of ownership that operate on the territory of the Republic of Tajikistan and observe requirements of water legislation of the Republic of Tajikistan.

Article 31. Economic conditions of providing water objects for using

The special water consumption in the Republic of Tajikistan is carried out on a fee paid basis.

Comment: In accordance with Article 4 of the Water Code, *water objects* include: "rivers, lakes, glaciers, snow and other surface sources, and areas of concentration of groundwaters, including therapeutic, mineral and thermal waters». Norms of given articles determine that *water objects* can be provided for using, including for drinking needs of the population. Water users, in turn, can be any physical persons or legal entities, without limitation, subject to *compliance with requirements of the water legislation*. *Special water consumption is based on the fee paid basis*, implying both relationships between water users and the Government, expressed in payment of the royalty⁴³ for water, and also the subsequent payment fees for drinking water by consumers.

Article 32. Permission for the special water consumption

The special water consumption in sectors of the economy is realized on the basis of permissions issued by the authorized state bodies regulating consumption and protection of water resources. Where necessary, permissions shall be coordinated with the authorized state organ on sanitary inspection, as well as with other concerned agencies.

Article 33. Permission for special water consumption issued by local executive authorities

1. Permission on using ground waters, not used for the centralized water supply, by construction of shaft wells, closed filter wells and catchment of springs, operating without forced lowering of the water level, on the territory villages, settlements and cities shall be issued by executive authorities on the local level, jamoats of settlements and villages.

Comment: As it was mentioned above, any physical persons or legal entities regardless of the form of ownership and organizational-legal form may engage in the special water consumption. But for this purpose they have to get permission for special water consumption to be issued by the authorized state bodies. The exceptions are small drinkingwater supply systems that operate without forced lowering of the water level - "natural flows". In this case the permission shall be issued by local executive authorities or by jamoats.

Special norms

Article 54. Centralized water supply system for the population

1. When using water objects for meeting drinking, domestic and other needs of the population within the centralized water supply system, legal entities that have utility and drinking water supply systems in their operational management or ownership, have right to take water from water supply sources in accordance with the issued permission for special water consumption and provide it to consumers.

Article 57. Proprietary rights for the drinking water supply systems

1. Centralized and non-centralized drinking water supply systems can be republican, municipal property or the property of legal entities.

3. Centralized and non-centralized drinking water supply systems cannot be privatized.

⁴³ «Роялти - плата за ... право пользования природными ресурсами в процессе добычи полезных ископаемых и (или) переработки техногенных образований» - ст. 17. Tax code of the RT, as of 17.09.2012

4. Physical persons and legal entities can possess water supply system, constructed by their own in accordance with current regulations and legislation of the Republic of Tajikistan.

Comments: The Water Code does not provide clear separate definitions of centralized and non-centralized water supply systems. But by the Code's context, the non-centralized water supply – it is the direct use of water objects for meeting drinking water needs on terms of general or special water consumption. That is, the citizens take water by their own, e.g. with buckets, for consumption, from rivers, springs, aryks (general water consumption), or from wells and stand-pipes on streets (special water consumption). In the centralized water supply system legal entities that have drinking water supply systems in their operational management or in ownership and have a permission for special water consumption can take water from water sources and provide it to consumers.

In article 54 the legislative body has admitted the norm, which being literally applied can confine rights of all state unitary enterprises engaged in the centralized drinking water supply, as the article states that only those legal entities can engage in the centralized drinking water supply that have drinking water supply systems in their *operational management or ownership*. While all state unitary enterprises are created only on the right of the *economic management*⁴⁴, that is, in fact, this type of organizational form is not specified in the article 54. The more recent Law "On drinking water and drinking water supply" has some other norms in respect of centralized drinking water supply systems that will be described in the section below. It should be mentioned that the vast majority of state economic entities in the drinking water supply systems have been established just in the organizational-legal form of state unitary enterprises, and accordingly the property is assigned to them on *the right of economic management*. This rule is also in contradiction with the more recent Law "On state enterprises" as of February 28, 2004, where one of the possible types of activities for the state unitary enterprises are indicated "economic activities in the sphere of electricity, water, heat and gas supply"⁴⁵.

Article 57. Proprietary rights for the drinking water supply systems

1. Centralized and non-centralized drinking water supply systems can be republican, municipal property or the property of legal entities.

3. Centralized and non-centralized drinking water supply systems cannot be privatized.

4. Physical persons and legal entities can possess water supply system, constructed by their own in accordance with current regulations and legislation of the Republic of Tajikistan.

Comment: The Water Code allows that centralized and non-centralized water supply systems can be the property of the state and also the property of legal entities. But the state water supply systems cannot be privatized. Therefore, the only possibility for legal entities and physical persons to have a water supply system in the property is to construct it in accordance with regulation requirements.

Article 60. The guarantees of the drinking water supply in case of malfunctioning the centralized and non-centralized systems of the drinking water supply

2. Physical persons and legal entities can establish on a voluntary basis non-governmental organizations on the joint water supply.

⁴⁴ Article 124, part I of the Civil Code of the RT, as of 30.06.1999

⁴⁵ Article 20 of the Law of the RT «About state enterprises» as of 28.02.2004

3. Non-governmental organizations on the joint water supply are established for improving the sustainability of the water supply systems of one community or a group of communities with participation of all or the part of the population with the purpose to construct a new network, rehabilitate the existing water supply network, keeping it in operating state, financing and operation of the public service network.

4. The State supporting non-governmental organizations on joint water supply promotes their formation.

Comments: The law provides regulations supporting establishment and development of non-governmental organizations on the drinking water supply. However, there is no practical application of this norm, since it is not clear enough what kind of organizational-legal form the legislative body had in mind. The law of Tajikistan does not have a separate concept of a "non-governmental organization". All non-governmental organizations, both commercial and non-commercial ones can be equally attributed to this concept. *The state support* referred to in point 4 of this article, still remained declarative, as again types of such support are not disclosed, it is unclear to whom and how such support should be provided.

THE LAW "ON DRINKING WATER AND DRINKING WATER SUPPLY" adopted on 29 December 2010 regulates relationships in the field of drinking water and its supply and establishes state guarantees for provision of drinking water to the population is a special law for the sphere of the drinking water supply.

In case of contradiction of norms of this Law to norms of the Water Code, provisions of the Law "On drinking water and drinking water supply» shall be applied. This statement results from provisions of Article 70 of the Law "On normative legal acts" of the Republic of Tajikistan as of March 26, 2009, according to which: "1. Normative legal act of one level has a stronger legal force in relation to the normative legal act of the same level in case of contradictions in the following cases: - if this normative legal act on the same regulation subject was adopted later in relation to the other legal act;" The second part of this article establishes another rule - "if the regulation subject of this normative legal act is special in relation to the other legal act that is common». The Code – it is a codified legal act, a kind of code of regulating laws and in fact it should have more legal force, but the law "On normative legal acts" of the Republic of Tajikistan does not fix this regulation and codes in fact are equated to simple laws. Therefore, on both grounds given in article 70 of the Law "On normative legal acts", the law of the Republic of Tajikistan "On drinking water and drinking water supply" is the law of stronger legal force than the Water Code, because: 1) the Law "On drinking water and drinking water supply" was adopted later than the Water Code. 2) Subject of regulation of the Law "On drinking water and drinking water supply" is special in its field, in comparison with the Water Code, which is common for the water sector.

Norms of the Law of the Republic of Tajikistan "On drinking water and drinking water supply" related to the subject of this study and comments to them:

CHAPTER I. GENERAL PROVISIONS

Article 1. Basic Concepts

- **drinking water supply** - activities aimed at meeting requirements of physical persons and legal entities in the drinking water;

- **sources of the drinking water supply** - natural waters (surface and underground waters), that are used or can be used for the drinking water supply after appropriate processing or without it;

- **a centralized system of drinking water supply (water pipes for the general usage)** - a set of facilities and constructions for taking water, preparing, storage and supply of drinking water to the places of its consumption, open for the public use by physical persons and (or) legal entities;

- **non-centralized system of drinking water supply for the general usage** - devices and constructions for water withdrawal and preparing (or without preparing) drinking water without delivering it to places of consumption, open for general use by physical persons and (or) legal entities;

- **autonomous drinking water supply systems** - devices and constructions for water withdrawal and delivering (or without delivering) drinking water to the place of consumption, that is in a private use (a separate building, a private farm, a summer cottage or any other single object);

- **drinking water supply system** - a term used for identifying all systems (centralized, non-centralized, autonomous and drinking water supply systems on transport) with availability of general standards;

- **reliability of drinking water supply systems** – capacity of the system to provide a certain mode (uninterrupted, hourly, on schedule) of drinking water supply to consumers in accordance with established standards of drinking water supply and regulatory requirements to the quality of drinking water;

- **organizations of the drinking water supply** - legal entities that exercise administration of centralized or non-centralized drinking water supply systems;

Comment: some given above specifications give a more clear definition of concepts of the centralized and non-centralized drinking water supply, that are distinguished by *delivering of the drinking water supply to the place of consumption* and without delivering. However, these definitions also do not provide a clear separation of these concepts. For example, by context it is not clear what is the place of water consumption – an apartment, a yard or a water-pipe for several houses in the mahalla. The importance of these concepts for the purposes of this study is in that the norms on using, ownership and disposal of these systems are presented below in the Law and often are decisive for choosing of the model and of the organizational-legal form.

The term "drinking water supply organizations" does not put any limitations on the organizational and legal forms, and defines them as organizations managing centralized or non-centralized systems of the drinking water supply. Though the primary goal of such organizations should be defined as provision of drinking water to the population, rather than management of systems.

Article 5. Competence of the Government of the Republic of Tajikistan in the field of the drinking water supply

The following is in the competence of the Government of the Republic of Tajikistan in the field of the drinking water supply:

- determination of the authorized state body in the field of the drinking water supply;

Article 6. Competence of the authorized state body in the field of the drinking water supply:

The following is in the competence of the authorized state body in the field of the drinking water supply:

- organization of setting of norms and measurement of the drinking water consumption;
- development and approval of tariffs for the water supply services, norms and operating procedures of the drinking water supply systems in coordination with relevant authorities.

Comment: In contrast to the Water Code, the Law introduces the concept of the authorized body in the field of drinking water, one of functions of which is development and approval of tariffs for services on the drinking water supply. By resolution of the Government of the Republic of Tajikistan as of December 31, 2011, # 679 the SUE KMK, State Unitary Enterprise "Khojagii manziliyu communal (Housing maintenance and utilities)" was appointed as an authorized body in the sphere of the drinking water supply. In accordance with the Law "On state-owned enterprises", as of February 12, 2004, the "State Unitary Enterprise is a commercial organization without right of ownership to the property assigned to it by the owner". Authorization of the commercial organization, which itself is engaged in the drinking water supply, for development and approval of tariffs for services that will be uniform for other market participants, as well as other rules in this area, definitely will be a competitive advantage and in fact is inadmissible. Moreover, regulation is a function of state bodies, and not of commercial structures established by the State, and the state unitary enterprise is such. Finally, it goes against norms of the Law "On state enterprises" as of February 28, 2004, where in the article 9 it is stated: "assignment of the state control or licensing functions by the founder or by the competent authority to state enterprises is not allowed".

Article 7. The competence of the local executive state authorities in the field of the drinking water supply

The competence of local executive bodies of state authority in the field of the drinking water supply include:

- approval of the purpose-oriented programs and action plans for establishment, maintenance and development of water supply systems;
- implementation of organizational works on provision of physical persons and legal entities with drinking water in accordance with norms of the drinking water consumption.

Comment: The local executive bodies in accordance with the law approve purpose-oriented programs and plans for the creation, maintenance and development of water supply systems, which means taking control over these actions of the drinking water supply organizations.

Article 8. Forms of ownership of the drinking water supply system

1. Drinking water supply systems may be in the state (republican and municipal) ownership, and also in the property of physical persons and legal entities.
2. Transferring of the right of ownership or changing of the form of ownership of centralized or non-centralized drinking water supply systems is allowed upon condition that functioning of these systems will not be disturbed.

Comment: If in the Water Code privatization of drinking water supply systems is forbidden categorically (article 57, item 3), the Law "On drinking water and drinking water supply system" allows transferring of the right of ownership and changing the form of ownership, upon condition that functioning of these systems will not be disturbed.

Article 9. The centralized systems of drinking water supply

1. Centralized systems of drinking water supply are the basis for provision of the uninterrupted supply of drinking water to consumers and are considered as objects of vital importance.

4. The centralized drinking water supply system shall be managed by the authorized state body.

5. The owner of the centralized drinking water supply system can manage the centralized systems of the drinking water supply by its own, or pass them under the contract for the economic use or operational management to legal entities.

Comment: The norms of this article, in particular items 4 and 5 contradict each other. In item 4 it is determined that *a centralized system of drinking water supply is administered by the authorized state body*. The given term "centralized system of provision of the drinking water supply" is different from the given above term "the centralized system of the drinking water supply». It is not clear what exactly had the legislative organ in mind, but in the original language, in Tajik⁴⁶ in both cases it is written the same "the centralized system of the drinking water supply». Consequently, the legislative bodies had in mind the following "- a set devices and constructions for withdrawal, preparation, storage and distribution of the drinking water to places of consumption, open for the general use by physical persons and (or) legal entities"⁴⁷. That is, by context any centralized system of the drinking water supply is implied regardless of the form of ownership and sizes of the centralized water supply systems. Consequently, the authorized organ (as it was stated above, the such in Tajikistan is the SUE KMK) takes control over all centralized water supply systems, since the norm does not provide for any exceptions. But the rules of item 5 determine that the owner can manage on his/her own or can transfer control on the right of economic control or operational management to legal entities. Item 4 contradicts to item 5, and also item 4 contradicts to rules of article 6 of this Law, as the competence of the authorized body does not include function "management of the drinking water supply system". If to apply rules of item 4 in practice, it means that all centralized water supply systems should be managed by the authorized state body, regardless of the right of ownership for it.

Article 10. Non-centralized and autonomous systems of the drinking water supply

1. Non-centralized and autonomous drinking water supply systems are established with the purpose to provide consumers with drinking water if there are no centralized water supply systems.

3. The owners of non-centralized drinking water supply systems and drinking water consumers (physical persons and legal entities) use water objects as sources of drinking water in the order prescribed by the legislation of the Republic of Tajikistan.

4. Owners of non-centralized drinking water supply systems can directly exercise management of these systems or can delegate the right for management to other physical persons and legal entities.

Comment: In contrast to centralized water supply systems there are no limitations in issues of non-centralized systems management. The relevant owner can manage these systems on his/her own and can delegate his/her powers to other physical persons and legal entities.

Article 12. State regulation of development of the drinking water supply

3. Activities of persons providing consumers with drinking water out of centralized and non-centralized water supply systems are regulated under the laws of the Republic of Tajikistan

Comment: In accordance with the norms of this article regulation is realized in accordance with the current legislation, that is, in accordance with general rules of this law and relevant

⁴⁶ «Шабакҳои мутамаркази таъмини оби нӯшокиро мақомоти ваколатдори давлатӣ идора мекунад»

⁴⁷ Article 1, The Law of the RT « About drinking water and drinking water supply», as of 26.03.2009

provisions of other laws. However, the term "regulation" is not laid bare. In the generally accepted market understanding, regulation in this sphere means activities of the state aimed at ensuring the public interests in conditions of the economic freedom and environment, so that interests of particular groups, regions, monopolies, entrepreneurs or physical persons were not infringed. In this context, the regulation in this sphere is realized by the authorized body, which in Tajikistan is the SUE KMK⁴⁸. Also in accordance with norms of item 4, article 9 of the Law "On drinking water and drinking water supply" it is the organ "governing the centralized system of the drinking water supply».

OTHER NORMATIVE LEGAL ACTS

The specificity of the drinking water supply also touches upon a number of other legal acts and spheres. For example, permission for special use is issued by the Committee for environmental conservation; issues of the land plot surrounding the water object are settled in the Committee on land management. Also there are specific issues concerning geological aspects of construction and architecture, as well as important aspects of sanitary-epidemiological nature. The analysis showed that all these and other specific aspects in the drinking water supply are of an administrative nature and do not directly affect the organizational-legal form of the drinking water supply organization, so they are not considered in the context of this study.

2.1.2. Property issues

Legislation in some issues concerning the ownership and management of the drinking water supply systems is either limited to usual traditional norms, or it insufficiently regulates some aspects. Sometimes there is simply no law enforcement practice in such matters. One of the main limitations of more traditional and institutional plan is the issue of ownership and management of drinking water supply systems. The vast majority of existing centralized water supply systems today is owned by the state, or is the property of former collective and state farms. Drinking water supply systems in cities and urban areas, rural centers and urban-type settlements are the state property. In rural areas these systems either are in the ownership of the former collective farms' legal successors or have been passed to the state, or simply were left abandoned. This fact that the centralized water supply systems are owned by the state, traditionally restricts all other legal forms, except for the state unitary enterprises and state government agencies, which usually are established by the state for transferring its assets into the economic and operational management. The law does not limit transferring of state drinking water supply systems for using to any other organizational and legal forms. But such practice does not exist, as well there is no any mechanism for handing over these systems for using or management, as it allowed by the law *ex facto*.

In addition to traditional forms of handing over the state property for using and management, the law also provides for other possibilities, practically not applied to the state-owned property in Tajikistan. In particular, in accordance with the Civil Code of the Republic of Tajikistan, the property (including the state property) can also be handed over to any legal entity for rent (*property lease*)⁴⁹,)*, or *placed into the trust management*⁵⁰. However, in Tajikistan there is no practice of such transferring of property, moreover of the state property. In CIS countries the mechanism of leasing and/or trust management of the state property is regulated additionally by sublaws that determine basic rules and details of transferring of the state property mainly

⁴⁸ Resolution of the Government of the RT as of 31 December 2011, № 679

⁴⁹ Articles 624-692, Civil Code of the RT, part II, as of 11.12.1999

⁵⁰ Articles 943-957, Civil Code of the RT, part II, as of 11.12.1999

to physical persons. In some cases, there are even special rules for leasing and passing of water supply systems to the trust management, for example in Kazakhstan⁵¹.

As a result the predomination of the state ownership on the centralized and non-centralized systems of the drinking water supply systems, inadequate regulation of issues of transferring of the state property and long-standing practices significantly limit participation of organizations of non-governmental organizational-legal forms in providing services on drinking water supply to the population.

2.2. ANALYSES OF POSSIBLE BUSINESS MODELS AND ORGANIZATION OF SERVICES ON DRINKING WATER SUPPLY IN TAJIKISTAN

As it was mentioned in previous sections, practically any organizational-legal form in Tajikistan can engage in provision of services on the drinking water supply. The specificity of certain legal forms, context and situation on the local level, capacity and scales of drinking water supply systems, the issues of ownership for the drinking water supply system may limit or, on the contrary, expand the effectiveness of application of this or that organizational-legal form. Below is given the analysis of advantages and disadvantages of the applicable basic legal forms in terms of legal, institutional, economic and other factors. For the convenience, analysis is divided into management without formation of a legal entity, into commercial and non-commercial legal entities.

2.2.1. Management without formation of a legal entity

The main applicable model for provision of services on the drinking water supply from amongst management forms without formation of a legal entity given above in section 1.1 of this report, is **an individual entrepreneurship on the basis of the certificate**. The first form of individual entrepreneurship on the basis of a patent is not applicable in the rural drinking water supply system, as activities on this form are carried out strictly according to the list approved by the Government of Republic of Tajikistan, # 361, as of August 3, 2013. Entrepreneurial activities under the certificate has no restrictions on types of activities.

Advantages

The optimal form for small centralized and non-centralized water supply systems covering the residential quarter or small Jamoat, from 50 to 200-300 households. It is a flexible and efficient solution based on the private initiative of one citizen, with a high degree of accountability to his/her clients with a simplified system of taxation, with the possibility to hire employees. Ideally, this can be one of neighbors, similar to the food stalls nearby. Finally, the business focus of such activities provides an additional incentive both for a citizen engaged in the drinking water supply and also for his/her customers.

Disadvantages

- A citizen - individual entrepreneur shall bear the material responsibility for the damage impaired in result of his/her entrepreneurial activities at the expense of his/her property, which may be insufficient to cover the substantial losses that may arise in the field of the drinking water supply;

⁵¹ "Rules of leasing and placing water facilities under the trust management" approved Resolution of the Government of the RK as of 2 June 2004, N 613

- If the annual income of a private entrepreneur without formation of a legal entity reaches 500 thousand somoni, then such business should be reorganized into one of forms of commercial legal entities;
- An individual entrepreneur should have basic skills, knowledge and understanding of the sphere;
- Complete absence of such a form in practice, its non-traditional nature will generate barriers in obtaining permissive documents and overcoming administrative obstacles.

Another possible form of organization of the drinking water supply with the use of this method of management can be a **dehkan farm**. This particular type of management without formation of a legal entity has replaced the collective and state farms, splitting the former large agricultural farms into small farms. Of course, the main purpose of dehkan farms is farmery, but depending on the situation on the local level, on location and size of the farm land and, the most important, availability of an appropriate system of the drinking water supply, the dehkan farm can also engage in the drinking water supply in the rural area.

Provision of services on the drinking water supply by dehkan farm in areas of compact settlement of members of the same dehkan farm, or members of the Association of dehkan farms can be more effective than participation of an outside organization. All major production problems can be solved together. Services on the drinking water supply can also be provided to other citizens, who live on the relevant territory, but are not members of dehkan farm. Given the size of dekhkan farms, it would be more effective to engage in the drinking water supply being a part of the association of dehkan farms.

But as it was already mentioned above, the dehkan farms in Tajikistan are usually small and do not have the necessary institutional and technical capacity to provide services on the drinking water supply. Another aspect is that there is practically no present-day practice of such kind in Tajikistan that will also complicate the administrative and permissive process.

2.2.2. Commercial legal entities

PRODUCTION COOPERATIVE

The production cooperative can be provisionally named a commercial association based on the personal labor or other participation of each of its members. The Law "On Cooperatives" as of July 22, 2013 extended the possibilities of organizing activities being a part of this organizational-legal form. In accordance with Article 4 of the Law, cooperatives, both commercial and non-commercial ones may operate in the consumer, industrial, construction, housing, communal spheres in the areas of processing, marketing of products, procurement, services, trade, agriculture, insurance, credit granting and in other areas, not prohibited by the legislation of the Republic of Tajikistan. Despite of the fact that the cooperative in fact is an expanded form of the labor artel (labor team), however, this form may be used for providing services on the drinking water supply. Moreover, just the form of co-operatives is the best legal form for organization of the community-based drinking water supply in the countryside.

Advantages

- The organizational-legal form most clearly reflecting the essence of organization of the community-based drinking water supply - "an independent and voluntary association, duly registered and organized on the basis of membership of persons with the purpose to meet common economic, social, cultural and other needs, as well as their aspirations by

combining property (share contributions) and establishment of a democratically controlled organization of joint ownership”⁵².

- Relationships of cooperative members, their liabilities, property formation, structure and management bodies of cooperatives are spelled out in details in the Law of the Republic of Tajikistan "On Cooperatives", that facilitates using of this model in practice.
- The form of cooperatives allows to create cooperatives on the commercial and non-commercial basis;
- Cooperatives can reduce their tax burden by building relationships with members for covering the costs of cooperative on the basis of membership fees (membership fees are exempt from taxes)⁵³;
- Cooperatives can provide services both to members and non-members of cooperatives. Members can participate in activities of the cooperative receiving more opportunities for accountability and transparency;
- Co-operatives can hold general meetings of members; if their numbers is large, they can invite only delegates.
- This organizational-legal form is suitable both for small and also for relatively large centralized and non-centralized drinking water supply systems

Disadvantages

- Members of the cooperative bear the subsidiary (joint) responsibility for the debts of the cooperative. That is, members shall be answerable with their property for debts of the cooperative that the organization is not able to cover itself in case of bankruptcy.
- The number of members of the cooperative is naturally limited, since with more than 100 members the very essence of a cooperative as an association of persons for meeting joint needs is lost. And also the process of personal labor or other participation of members of the cooperative becomes complicated.

STATE ENTERPRISES

Currently, state-owned enterprises in accordance with the laws of Tajikistan are practically the only form of organization of economic activities that allows to get the state property for using. Other non-state legal forms, as it was indicated above, either are restricted by the law or are not regulated in details. The state-owned enterprises, as it was mentioned in the previous section, can be established in two forms: state unitary enterprises with the right of economic management and government fiscal enterprises with the right of the operational management. There are no special restrictions in the legislation for using of any of these forms for organization of a drinking water supply. But traditionally the form of an unitary enterprise is used, as it is more flexible in economic terms. Moreover, this kind of activities is directly indicated in the open list of activities for the state unitary enterprises⁵⁴. Therefore, despite of that legal norms regarding the right of using the centralized water supply systems ⁵⁵, are not clear enough and are not directly indicating such opportunity for the state unitary enterprises, nevertheless almost all state organizations on the drinking water supply system are created just in this form.

⁵² Article 1, The Law of the RT «On cooperatives» as of 22 July 2013

⁵³ item 2, article 110 and item 1, article 294, the Tax code of the RT as of 17.09.2012

⁵⁴ Article 20, the Law of the RT «About state enterprises» as of 28.02.2004

⁵⁵ Article 54, Water code of the Republic of Tajikistan as of 10.11.2014

The form of the state unitary enterprises by itself was originally established as a more efficient, relatively independent form of economic activities based on the state property. But with being introduced deeper into the market economy this form laid bare its disadvantages too.

Advantages

- The form is familiar to all the participants and to the population, there is a practice available, the legislation adequately regulates their establishment and functioning;
- Availability of the state control, indivisibility ("unitarity"); responsibility of the State as a founder gives certain guarantees upon occurrence of losses and financial problems and inspires confidence to the population;
- The State Unitary Enterprise is supported on the account of incomes from its own activities, so the governing body should be interested in improving their operations and increasing the level of their income;

Disadvantages

- The State unitary enterprise is inflexible institute, difficult to be managed in market relations. Bureaucracy, formal and informal preferences and the excessive state control will never allow the unitary enterprise to become a full participant in market relations, seeking out competitive advantages. The absence of such an "entrepreneurial" motivation directly affects the quality of services, efficiency of the enterprise;
- State unitary enterprises, particularly in the housing sector – are "social" absorbers, therefore the state, in order to avoid the social consequences, may prohibit through its agencies to raise prices for services of unitary enterprises, even when it is absolutely necessary;
- The level of transparency and accountability of state unitary enterprises is extremely low, because of the lack of precise legal requirements on disclosure of the information, and also as a whole due to the state nature and "administrative behavior" of these enterprises in relation to its clients;
- The population refers to "public" enterprises not as to "sellers" of any services, but as to the government branches.

ECONOMIC PARTNERSHIPS AND BUSINESS COMPANIES

Despite of the apparent diversity and a number of business partnerships and companies in practice in Tajikistan only two forms of economic societies are mainly used.

Economic partnerships. None of forms of economic partnerships is not used in practice in Tajikistan, as the form assumes the personal-confidential character of relationships between the founders and the participants' liability for obligations by their property. These conditions make the partnership more reliable from a legal point of view, but from a practical point of view, it discourages entrepreneurs. Moreover, another norm laid down in the membership structure of the partnership, makes this form difficult for application in practice. Only individual entrepreneurs and commercial organizations can become members of the association, so the partnership can be established by already successful businessmen who want to join forces in such a personally-confidential character. Therefore, even if theoretically economic partnerships are quite possible models of management in the sector of rural drinking water supply, in practice they should not be even considered in the light of the current level of the business development.

Business companies. As it was mentioned in previous sections of the report, business companies are most commonly used organizational and legal forms in the business.

One of forms of business companies is almost never used in practice - companies with additional liability. By its very name – the additional liability is a subsidiarity obligation of participants to cover jointly losses of one of the participants at his/her insolvency. With the maturity level of business and of market relations in Tajikistan, this form is becoming unattractive and is not used. In view of the same fears, this form will not have any practical application in the sector of the drinking water supply.

Joint-stock companies. There is no yet stock market in Tajikistan. Single shares issued by some joint-stock companies do not have any market value, they are not put up for public sale, do not have the original market sense of shares and securities. In many cases there are no even any formally issued shares. Basically, present joint-stock companies are the former state-owned enterprises, reincorporated as a joint-stock company in the process of privatization straight after gaining independence. The process of establishment and operation of joint-stock companies is complicated by itself and made more complex by the need to issue shares, to register them. Application of this organizational-legal form currently in the drinking water supply system is inadvisable primarily because of the lack of the securities market, as well as because of the insufficient degree of investment attractiveness and the rate of capitals' turnover in the sector of the drinking water supply.

The most popular form of organization of business in Tajikistan is a **Limited liability company**. As it was mentioned earlier, this form suggests the limited liability of participants (founders), that makes it popular and the most used in the sphere of private entrepreneurship. This form is also convenient and applicable for the drinking water supply system.

Advantages

- This form is also familiar to all participants of the sector and to the population, there is such practice, the legislative regulation is in force;
- The taxation mechanism is well in place, it is clear what for and to whom you should pay;
- More flexible requirements to participants: an association can be created as by one person and also by several persons (but not more than 30 persons); both physical persons and also legal entities can be participants of the association; a participant because of the gross neglect of his/her duties can be excluded from the association; a participant may any time leave association;
- More flexible system of the association control that allows to build a management structure more freely.

Disadvantages

- A "limited" liability reduces reliability of services of the organization and also of the organization itself.
- There is almost no practices of LLC operation in the drinking water supply sector.

SUBSIDIARY COMPANIES AND AFFILIATES

As it was mentioned in the relevant section of this report, subsidiary companies and affiliates are not a separate category, but they simply are derivatives from other forms of business companies and economic partnerships. Their main difference is in that they are "dependent"

on companies (partnerships) that have majority equity holding or can influence decisions made by its subsidiary either in accordance with the contract or otherwise. Accordingly, all advantages and disadvantages of different types of business partnerships and companies are projected onto their subsidiary companies.

2.2.3. Non-commercial legal entities

CONSUMERS' COOPERATIVES

Despite of certain advantages of the organizational-legal form of consumers' cooperatives, traditionally such cooperatives were established and are still established in the field of consumer cooperation within the frames of the Law "On consumers' cooperatives"⁵⁶. The cooperative form for the community drinking water supply in the rural area can be applied on the basis of the Law "On cooperatives" as of July 22, 2013 as it was described earlier in this section.

SOCIAL AND RELIGIOUS ORGANIZATIONS (ASSOCIATIONS)

Religious organizations, despite of that the legislation does not directly place restrictions on their activities, nevertheless due to their specificity they are not considered in the context of this study.

According to the Law of the Republic of Tajikistan "On social associations" as of March 12, 2007, such organizations can be established in three forms: social organization, social movement and public initiative organ.

Social movement as a mass public association, because of its specificity is inappropriate for organization of economic activities. Moreover, in the framework of a social movement usually less material goals, than the rural drinking water supply, are pursued.

Non-governmental organization. The most commonly used form of organization of social activities is a non-governmental organization. This organization is established on the basis of membership for the joint activities of citizens, united by common interests with the purpose to achieve goals set forth in the charter of the social association. Operating currently sporadic "Drinking water users association" or "Committees" (in Kanibadam), despite of their names, are also non-governmental organizations. In accordance with the Law "On water user associations" such associations are established only for using water for irrigation purposes⁵⁷, therefore associations of the drinking water users have been established in the organizational-legal form of social associations.

Advantages

- A flexible form that allows citizens to unite without restrictions practically for any purpose, not prohibited by the legislation, is a convenient form in organizational terms for the community rural drinking water supply;
- Ideally, the structure of non-governmental organization allows members to participate directly in the management of the organization, to be elected and elect, to take control over revenues and expenditures of the organization;
- The costs on maintenance of a drinking water supply system may be approved as membership fees, and in this case such incomes are not taxed⁵⁸;

⁵⁶ The Law of the RT «On the consumers' cooperation» as of 13.03.1992

⁵⁷ The Law of the RT «About water users' associations», 22 November, 2006

⁵⁸ Item 2, article 110 and item 1, article 294, Tax code of the RT as of 17.09.2012

Disadvantages

- The issue of taxation for non-governmental organizations in practice causes difficulties, as the mechanism of taxation of such organizations on all incomes except for grants, is almost never applied in practice;
- The issue of the number of members in the non-governmental organization is unlimited, but in practice, with a large number of members (more than 100), it is difficult to realize mechanisms of participation of all members on annual meetings of the members, and also in activities of the organization.
- As the practice of establishment of social associations for the drinking water supply has shown, at provision of services to several thousands of customers, this form does not correspond to its rules originally laid down in the law. The membership structure does not cover all potential water users, with the majority of them contracts on the drinking water supply are concluded;
- Commercial activities of non-governmental organizations are not adequately regulated by the legislation, as well as their relationships on provision of paid services with citizens who are not members of the organization. As a result this form is unstable and cannot consistently perform operations without external aid and assistance.

A public initiative organ. This form of public association is a local social association, carrying out its activities at the level of mahalla. In contrast to non-governmental organizations, the organ of public initiative has no membership, and registration is done in Jamoats. Despite of a more simplified form of registration and establishment, the Law, regulating activities of public initiatives⁵⁹, does not directly indicate the possibility of engagement in entrepreneurial activities. Article 5 of the Law has a provision that the Mahalla council (executive body of such organizations) *"organizes and takes control over provision of the population with electricity, gas, drinking water and other types of public services"*, i.e. possibly it only organizes provision of services and does not provide them by its own. In general, the law does not prohibit, but at the same time it does not indicate directly and does not regulate properly the possibility of provision of services for the drinking water supply, that will create some difficulties in practice.

PUBLIC FUNDS

It is a rarely used in practice form of non-commercial organizations without membership. The process of establishment and registration of this form is easier in practice than establishing of a public organization. Organization of such organizational-legal form may engage in entrepreneurial activities, but the mechanism of such activities is not regulated by law. It is not reasonable to establish a public fund only for purposes of the drinking water supply because initially objectives of establishment of such organizations were "charitable, cultural, educational or other generally useful" objectives. And pursuing these goals, citizens or legal entities make voluntary property contributions to established funds. As a result, in practice, it is difficult to attract such organizations for the purpose of organization of the drinking water supply.

AGENCIES

The specific form of non-commercial organization mainly established by state bodies. Usually these are libraries, schools, hospitals and other social and cultural institutions. There are practically no agencies established by private owners in Tajikistan. This form can be used in

⁵⁹ The Law of the RT «About public initiative organs» as of 5 January 2008

practice for the purposes of organization of the drinking water supply if such an organization is established by Jamoat, a local non-governmental organization or a public initiative organ. However, establishment and operation of such an organization is poorly regulated by the law.

ASSOCIATIONS OF LEGAL ENTITIES (ASSOCIATIONS AND UNIONS)

This form of a non-commercial organization is specific, as it is established for addressing common problems of several commercial and/or non-commercial organizations. Therefore, such a model, though there are no direct prohibitions, however cannot be a long-term form of organization of activities on the drinking water supply.

OTHER TYPES OF NON-COMMERCIAL ORGANIZATIONS

Examples of other types of non-commercial organizations described in the section above are usually also of a specific, sometimes purely sectoral nature, but they can also potentially be used for the purpose of organization of the drinking water supply. For example, the partnership of homeowners in the apartment house can also organize supply of drinking water for the owners of apartments in this building. But this solution is suitable only for multi-family dwellings, which are rarely located in rural areas, and usually already have their own infrastructure of the drinking water supply, assigned to a concrete supplier of drinking water. Finally, their main task is organization of the maintenance and operation of the common property of multi-family dwellings - roofs, basements, porches, etc.

3. REVIEW OF SOME MODELS OF DRINKING WATER SUPPLY SYSTEMS ON EXAMPLES OF FOREIGN COUNTRIES

Most of water supply systems in the world are in the public, i.e. in the state form of ownership, especially in urban areas. But their management can be exercised not only by specially established state-owned commercial organizations. It is possible to transfer management under the agreement (the contract) to private organizations, various types of community-based organizations and cooperatives and even to physical persons. Despite of the seeming diversity of forms and models of organization of the drinking water supply in the world, despite of differences in the legislation between countries, however, they can be provisionally divided into three different approaches from the perspective of management: 1) Models created and established by the state; 2) Models based on the private management; 3) Models based on the community-based or cooperative management. The current process of globalization has brought management approaches closer in the sector of the drinking water supply, conditioning the use of a particular model by market laws.

3.1. STATE MANAGEMENT MODELS

These management models include various types of commercial organizations established by the state for the subsequent transfer of the state property into their economic management. The practice of establishment of state-owned commercial enterprises in the sphere of public services (electricity, gas and water supply, sewerage, waste management, etc.) is spread throughout the world. Regardless of the specifics of organizational-legal forms, these organizations are independent from the state financially. Using the state property handed them over for use, they cover all their expenses by their own. Their usual name abroad is -- public utilities and these are public (state) enterprises. The word "public" in this context has a dual meaning: 1) the 'public' and the 'state' in the legal language are usually synonyms; 2) Publicity also implies openness of such organization.

Currently, the state (public) companies in the field of housing and communal services (energy, drinking water, natural gas, waste management, etc.) are most common in the United States. State-owned enterprises in the United States are required to provide annually to the public (to place on the site) details of their production, capacities, received incomes and incurred expenses as well as the tariff calculation and the contents of its components⁶⁰. These requirements are given in the relevant laws on disclosure of the information and on activities of public enterprises. Activities of state-owned companies are under the constant monitoring by the public in the form of different public advisory committees and boards. Of course, it is not a direct and total control, but it is the effective public monitoring with the deliberative vote⁶¹. All meetings of the Boards/Committees are open for participation of the population. Agenda, venue and time of the meetings are posted on the supplier's website in advance. Public enterprises in the US are non-commercial organizations, they do not include profit in the cost of their services. Usually tariffs include the prime cost of services plus, if necessary, development costs or costs on putting secondary powers into operation. Therefore, it is not difficult to keep track of their financial activities, such as the difference between the costs of production and received incomes. But in addition to requirements on transparency, on mandatory participation of citizens, their activity is controlled by state audit organizations, by the city administration. Any decision of a state enter-

⁶⁰ Sample of the information on tariffs of the company American Water <http://www.amwater.com/customer-service/rates-information.html>

⁶¹ Sample of the structure and details of councils (Boards) in the company Seattle Public Utilities <http://www.seattle.gov/util/MyServices/Water/CommunityAdvisoryCommittees/index.htm>

prise goes through several stages of discussion and subsequent approval, also at the level of the municipal administration/city council. The schedule of meetings in the city council is also determined in advance, as well as the proposed agenda of each meeting. Meetings of the City Council are open to the public, they can be watched in real-time mode (on-line) through the Internet. Any changes in activities of state-owned enterprises go through all these stages of discussion, where the supplier must provide substantial arguments for the planned changes.

Public enterprises in countries of Southeast Asia have their own specificity. For example, in Hong Kong, department on water supply within the Hong Kong government is engaged in water supply issues. Being in fact an administrative subdivision, nevertheless this Department is an independent state commercial organizations on water supply issues.

On the territory of CIS countries also different solutions have been adopted, but most of them are state-owned enterprises in the form of the state unitary enterprises. Pluses and minuses of state unitary enterprises are described in previous sections.

3.2. COMBINED MODELS BASED ON THE PRIVATE MANAGEMENT

In contrast to the United States in the EU countries the majority of drinking water supply systems either are privatized, particularly in the UK, or handed over to private companies under public-private partnership agreements, contracts of trust management, rental or leasing contracts. Passing to public-private partnership and leasing is a disputable tendency, which caused a lot of censures and criticism in the EU countries. Nevertheless, in February 2014 the EU Directive 2014/23 was adopted that regulates questions of public-private partnership contracts, contributing to the further development and spreading of contracts on concessionary management of state property.

Even China, that for the long time was not letting private initiatives into the state-owned enterprises on providing services of the water-, electricity- and gas supply, on communications and transport, following the EU example, announced about its interest in handing over natural monopolies for concession to private companies. The process officially started in 2012.

The main point of the model based on the private management is in that drinking water supply systems, remaining in the state ownership, are handed over to private companies on the basis of contract for temporary (long-term) use and management. Advocates of this model believe that management by a private company, which in the first place will be aimed at profit-making, will contribute to expanding of market processes and the subsequent recovery of the company. A private company, pursuing the goal of taking profit will accordingly improve its services, improve collection of water, optimize the water accounting, reduce losses and leakages, change the cost structure of the company in towards reducing and optimization of costs. According to them, state-owned companies will always have much weaker incentives to reorient company to the rails of the market economy. Agreements for the private management can be in the form of concessions, management and lease contract (leasing).

Another combination of the model based on the private management, is privatization and subsequent private management, when a private owner hands over water supply facilities for the management or establishes a special organization for this purpose.

In the CIS countries there are different examples of placing publicwater supply systems under the private management, as well as complete privatization of objects, sometimes by foreign investors.

Armenia. One of the most successful examples of private management is Armenia, where 100 percent of the urban population is served by private operators today, at that some of these companies are foreign. The first contract on management was signed already in in 2000⁶². By

⁶² For more information, see «Overview of the private sector participation in the water supply and sanitation sector in EECCA countries. The Institute of urban economics, Moscow, 2010

results of the tender, a contract was signed with the Italian company A-Utility on management of water supply and wastewater systems of Yerevan for the period of 5 years. Realization of this agreement had some difficulties, but the gained experience was later used.

A competition was organized for the right to conclude a contract for leasing of the water infrastructure in Yerevan. At the initial stage 7 operators from Germany, France, Britain and Italy expressed their interest. Two of them (Veolia Water and SAUR) submitted proposals. As a result, in June 2006 between the State Committee of Water Resources, specially created company "Water of Yerevan" and the company Veolia Water the contract of leasing of the water supply system of Yerevan was signed.

The main distinguishing features of leasing of the water supply and wastewater systems in Yerevan are as follows:

- The operator had to create a separate private company to which water supply and sanitation systems would be leased for 10 years;
- The company-lessee has a full authority to use the leased property and shall be responsible for the management, operation, maintenance and servicing of all water supply and wastewater systems in the service area, which includes Yerevan and 32 neighbouring rural settlements;
- The company-lessee takes a full financial responsibility for collection of payments and makes all necessary expenses;
- The operator assumes the responsibility for implementation of the investment programme, financed on account of funds provided by various donor organizations.

In result of management of water supply and wastewater systems in Yerevan by private operators, significant improvements are observed. The number of consumers equipped with metering devices has reached 95%. As a result, since 2004 the water supply has become more stable and the volume of the metered water consumption decreased, but at that the unaccounted water expenditures increased (i.e. leakages and/or commercial losses). Over the period of 2000-2009 the duration of water supply in Yerevan increased by 3-4 times, at average up to 18-19 hours a day, electricity consumption dropped by more than 50%, the collection rate of payments increased by 4-5 times (from 20% to 85-95%).⁶³

Based on the positive experience with leasing of the water infrastructure and by results of conducted public tenders currently all the major regional water supply and sanitation systems have been leased to Western and local private companies.

Other post-Soviet countries

Russian Federation⁶⁴

In the Russian Federation there are also many examples of leasing public water supply systems to private companies, but in contrast to Armenia, they are leased to domestic companies. Today, about 20 percent of the urban population is served by private operators. Another difference from Armenia is in that a private operator is chosen not on a competitive basis, but directly by decision of the owner of the water supply system, at that often contracts are of a long

⁶³ Gagik Khachatryan (2009). Overview of the private sector participation in the water supply and sanitation sector in Armenia

⁶⁴ Sources: OECD (2004). Overview of Domestic and International Private Companies Operating in the Water Utilities Sector in Russian Federation. – Paris: OECD.

Marusevich R.A., Sivaev S.B., Khomchenko D.U. State-private partnership in the municipal economy. - M.: Foundation «Institute of urban economics, Moscow», 2006.

Sivaev S.B. Private industry in the municipal sector: development practice. – M.: Foundation «Institute of urban economics», 2008.

term nature (for 49 years). This fact often puts in doubt the objectivity of the choice. Admittedly, after leasing of systems to private operators results of enterprises' activities got improved, but there is no convincing evidences of it.

The largest private operator in Russia is the Limited Liability company "Rosvodokanal». Under the LLC "Rocvodokanal" management there are working water channels in 8 regions of Russia, as well in Lugansk region of Ukraine, with a total served population more than 7.5 million people. Agreements on which subsidiary companies of the LLC "Rosvodokanal" are working in Russia, are long-term lease agreement concluded without conducting a tender.

Georgia⁶⁵

The first attempts on implementation of private management in the water supply sector were done in 2001, when one of terms for receiving the World Bank' credit for recovery of "Tbilisvodokanal" was a requirement to enter into a lease agreement with a leading private operators in the field of water supply and sanitation. The competition was held and the first contract was signed, but for various reasons later it was suspended. One of reasons was a public outcry against leasing of the water supply system of Tbilisi to a foreign organization. The next attempt of reorganization was already done through the sale of "Tbilisvodokanal" in a package together with other objects. By results of the competition, the company was bought out by the Swiss company Multiplex solutions⁶⁶. The Swiss company made a commitment to pay 85 million 662 thousand USD for facilities and also invest money into their rehabilitation and further development of activities in the aggregate for the sum of \$350 million. Multiplex Solutions made a commitment not to increase in 2008-2009 tariffs for the water supply for physical persons that in 2007 made up 2.4 lari (about 1 euro) per month for the each family member, and to keep it in 2010-2013 at the level of 2.95 lari (about 1.23 euros). Obligations of the company include providing of the twenty-four-hours water supply, maintaining a high quality of the drinking water, etc. Thus, the population and the Georgian authorities opted privatization of the water supply than leasing it. Changing of the owner resulted in some positive changes. Today, about 25 percent of the urban population is served by a private operator, and the water supply facilities have been privatized by the same operator.

Kazakhstan⁶⁷

In Kazakhstan, the domestic private sector is widely represented by enterprises of the drinking water supply systems serving small cities. Almost 40% of water supply systems in such cities have been placed under the private ownership and, as a result - are served by the private business. Owners in such cases as a rule are local entrepreneurs. Many cases of privatization have been associated with the bankruptcy process. The prices paid for assets often was very low. In rural areas, such type of private sector participation in the water supply and sanitation is prevailing, when farms operating in the village, by default take over responsibilities for operation and maintenance of the water supply systems.

⁶⁵ Sources: OECD (2007c). Promote Achieving the Millennium Development Goals on Water Supply and Sanitation in Georgia through Extending the Financial Strategy for WSS to Rural Areas and Facilitating Related National Policy Dialogue. Interim Report.

OECD (2008b). Financial Strategy for the Urban Water Supply and Sanitation Sector in Georgia. Document 2.

UNDP (2006). Review of the national policy, legislative and institutional environment necessary for the establishment of municipal public private partnerships (PPPs) for public service delivery and local development in the Europe and CIS region. Caucasus.

USAID (2009). Georgia Water Utility Sector Reform Program. Final Report.

⁶⁶ <http://www.regnum.ru/news/906122.html>.

⁶⁷ For more information, see «Overview of the private sector participation in the water supply and sanitation sector in EECCA countries. The Institute of urban economics, Moscow, 2010

Privatization of the drinking water supply systems gave contradictory results. Though there were some successful cases, there also were cases of de-privatization - returning of the privatized systems into the state ownership. Several times in Kazakhstan were made attempts to attract the international private sector through making contract for management of water and wastewater treatment plants (water canals) in Karaganda, Temirtau, Kokshetau and later in Almaty. But all these projects did not receive support from the state and municipalities on various stages of implementation.

3.3. COMMUNITY-BASED WATER SUPPLY SYSTEMS

The urban water supply system in the entire world is usually of more pronounced commercial character than the rural system. In more traditional rural societies it is advisable to apply such forms and models of management in the water supply system that are based on participation, involvement of citizens and have a more close contact between suppliers and consumers. Provisionally, such a model of the drinking water supply can be named a community-based model where the water supply is organized by small cooperative forms established on the local level. The possibility of participation, the nominal involvement of villagers into the management of the water supply system are important prerequisites for sustainable development of the water supply systems in rural areas, as villagers traditionally get used to take water for free from natural sources. Organizational - legal forms of community-based organizations can be named differently: from the water users' associations to cooperatives, committees, associations and societies, but the general essence is a voluntary association of citizens for meeting their common needs and requirements in the drinking water. Different countries have a different impact on organization of the community-based water supply. For example:

Brazil, State of Ceara⁶⁸

About 20 million of rural residents in Brazil do not have access to the clean drinking water and sanitation; only about 28 percent of the rural population have access to centralized water supply system. State companies actively developing the water supply systems in urban areas of Brazil avoid rural areas and small towns, where the level of profitability and paying capacity is respectively lower. In this regard, the Government of the State of Ceará has developed and launched a program on the integrated system of rural water supply and sanitation (ISRWS - or SISAR in the original language). ISRWS is a federation of registered non-commercial community-based organizations for the water supply and sanitation. These community-based organizations, as associations of citizens, residents of the community, were created (or reorganized from any already existing non-governmental organizations) for construction and ongoing operation and maintenance of the local water supply and sanitation systems. Localization of community organizations was usually delineated geographically by the village, a part of the village, or by the water supply system. Members of the community contributed 10 percent of the cost of the water supply system, the remaining 90 per cent were covered by the State Company for Water Supply and Sanitation of the State of Ceara from different sources (budgets of all levels, loans, grants, etc.). At the lack of financial opportunities in the community, the residents could perform works for that amount. Immediately after construction and starting up of the system, several local residents, members of the community organization, received training on skills on operation and maintenance of the system, reporting and assessment of charges. Juristically the system remains the property of the state, and

⁶⁸ More detailed information on the site of the Global water partnership: <http://www.gwp.org/en/ToolBox/CASE-STUDIES/Americas--Caribbean/Brazil-An-innovative-management-model-for-rural-water-supply-and-sanitation-in-Ceara-State-411/>

ISRWS - Federation of community organizations - gets systems for management under contracts.

ISRWS, as the Federation of community organizations, is the next stage of technical and economic management of community-based management systems. If on the level of communities the maintenance is almost on the philistine (petty-minded) level, at the level of ISRWS the maintenance is provided already at a higher technical level. Such services include: maintenance of systems, supply of the necessary materials and tools to member organizations, monitoring of the water quality, training of members of community organizations, developing and approval of water tariffs. Water tariffs consist of two components: the cost of delivery of the cubic meter of water to the consumer, as well as costs on maintenance and operation of the system.

The organizational structure of the ISRWS: Federation, the highest governing body of which is the General Assembly, the executive bodies - Administrative and Financial Councils. The General Meeting consists of representatives of member organizations (one representative from each community organization - member).

As a whole, the proposed structure is a combined two-level option of the private management of the water supply system with involvement of local residents through their community organizations. The water supply system is placed under the ISRWS management, and through the Federation – to the community-based organizations for using and operation. This approach proven itself excellent in the state. However several years ago, before the state of Ceará, the same approach was not successful in other states of Brazil.

Ukraine

Within the frames of the Swiss-Ukrainian project DESPRO in rural areas of Ukraine (from 2007 to 2009 - the first stage, from 2010 to 2012 - the second stage) there were implemented a number of initiatives on development and implementation of various types of the community-based self-government of water supply systems. The main forms of self-government in rural areas of Ukraine became the service cooperatives and community-based entrepreneurs:

Service Cooperatives

- Service Cooperative – an association of local residents for the purpose of operation and maintenance of the water supply systems. It is a traditional cooperative form of association of citizens, for meeting their common needs and requirements. In general, service cooperatives provide services to its members, all the costs on maintenance and operation of water supply systems are distributed proportionally among members and are paid in the form of membership fees. Cooperatives do not supply water under contracts, but simply provide water to its members.

Community enterprises/associations

- Another form of the community-based water supply is through involvement of the individual entrepreneurship. One of the local residents gets registered as an individual entrepreneur and by his/her own and if necessary with assistance of the hired staff, performs operation and maintenance of the water supply systems and supplies drinking water to local residents under contracts.

According to the Ukrainian legislation the local community organizations cannot alone by their own engage in water supply, therefore for this service cooperatives were established or

registration of the individual entrepreneur was initiated. Both forms assume participation of local residents, as it was originally intended to build these forms on social mobilization and involvement of local residents. However, cooperatives assume greater participation of residents than activities of the individual entrepreneur. Depending on the situation, the water supply system was constructed from anew (if there was no such), and could be transferred to the cooperative for ownership, or to the local community organization. If such system already existed, after renovation, it could be transferred to the trust management, leased, or passed to ownership of the cooperative, or of the local community organization.

3.4. APPLICABILITY OF MODELS IN CONDITIONS OF TAJIKISTAN

State management model

The vast majority of water supply systems in modern Tajikistan are managed by state-owned commercial organizations established in the form of state unitary enterprises. Advantages and disadvantages of these models are described in the sections above. But another significant negative side of their application in Tajikistan is an extremely low degree of openness and transparency of their activities, poor accountability, weak market incentives for the development, their excessive politicization and dependence on government agencies. Also such form does not practically assume participation of the community in the decision-making process, as there are weak two-way communications and, as a result, lack of trust of the population.

Models based on the private management

Private management, possibility of leasing to private companies, attracting of leading foreign companies is complicated by the lack of legislative regulation of this form. The legislation of Tajikistan does not prohibit this form directly, but it does not have an order of application of such a form. Leasing, trust management, concession are adequately regulated by the legislation, but they have never been applied in relation to water supply systems. At the same time, private management has its own risks, in particular, such management immediately entails tariffs increase and "tightening" of the general frames of relations with consumers. Therefore, the application of private management should be considered from all points of view, the potential social risks should be reduced, the process of transferring to the private management should be based on open competitions.

Community-based management model

In certain forms, formal and informal, the community-based organization of water supply comes around in practice in Tajikistan, however this form is poorly regulated. There will be not many difficulties with application of this form, in case if system is constructed on the account of donor funds and transferred to the community organization, but leasing, transferring for use or trust management is practically impossible for the reasons stated above.

4. PROPOSALS ON IMPROVEMENT OF THE LEGISLATION IN TERMS OF PROVIDING OPPORTUNITIES FOR THE PRIVATE MANAGEMENT OF WATER SUPPLY SYSTEMS

These proposals are divided into three sections: the proposals on making amendments and modifications to the Water Code, to the Law of the Republic of Tajikistan "On drinking water and drinking water supply". Also the working version of the bylaw "Rules for leasing and trust management of drinking water supply systems» is proposed. Proposals are aimed at the possibility of involving the private sector for managing the water supply systems owned by the state in order to expand the choice of management methods and more efficient organization of the water supply, as well as harmonization of approaches in the Water Code and the Law "On drinking water and drinking water supply».

4.1. WATER CODE

The current edition:

Article 54. Centralized water supply system of the population

1. When using water objects for drinking, domestic and other needs of the population within the centralized water supply system, legal entities that have economic and drinking mains in their operational management or ownership, have right to take water from the water sources, in accordance with the issued permission for special water consumption, and provide it to consumers.

Suggested wording:

Article 54. Centralized water supply to the population

The centralized system of drinking water supply (water line in general use) – is a set of devices and constructions for collection, preparation, storage and supply of drinking water to places of its consumption, open for the general use by physical persons and (or) legal entities (Determination of the Law "On drinking water and drinking water supply").

While using water objects for drinking, domestic and other needs of the population within the centralized water supply system, legal entities that have economic and drinking mains in their *operational management, economic management, leasing, ownership, trust management or on other grounds provided by the law*, have right to take water from water sources in accordance with permission issued for special water consumption and *provide it on a contractual basis to physical persons and legal entities*.

Item 2 of Article 54 further is in the numbering order, instead of 2 - 3.

COMMENT:

The suggested amendments introduce the concept of centralized water supply in accordance with the definition in the law "On drinking water and drinking water supply", and also expand the ways of organization of the centralized water supply: *in the operational management, economic management, leasing, ownership, trust management or on other grounds provided by the law*, leaving open the list of such methods.

The current edition:

Article 57. The right of ownership for systems of the drinking water supply

1. Centralized and non-centralized drinking water supply systems can be the republican or municipal property or the property of legal entities.
3. Centralized and non-centralized systems cannot be privatized.

Suggested wording:

1. Drinking water supply systems may be in the state (republican and municipal) property, and also the property of physical persons and legal entities.
2. Transferring of the right of ownership or changing of the form of ownership of centralized or non-centralized systems of drinking water supply systems may be allowed, upon condition that functioning of these systems will not be disturbed.

COMMENT:

Replace with the principles contained in Article 8 of the Law "On drinking water and drinking water supply" as more flexible and meeting requirements of an open market development.

4.2. THE LAW "ON DRINKING WATER AND DRINKING WATER SUPPLY"

The current edition

Article 9. The centralized water supply systems

4. The centralized drinking water supply system is managed by the authorized state body.
5. The owner of the centralized drinking water supply system can independently (by his/her own) manage the centralized drinking water supply systems or transfer them to legal entities under the contract for the economical use or operational management.

The suggested wording

To exclude:

The owner of the centralized drinking water supply system can independently (by his/her own) manage the centralized systems of drinking water supply or transfer them under the contract to legal entities for the economic use, *operational management, leasing, trust management, or on other grounds provided by the law.*

COMMENT:

Items 4 and 5 of the article contradict each other. Item 4 determines that *a centralized system of the drinking water supply* is managed by the authorized state body. The given term "the centralized system of provision of the drinking water supply" is different from the given above term "the centralized system of the drinking water supply». It is not clear what the legislative bodies had in mind, but in the original language, in Tajik⁶⁹, it is written in both cases the same "the centralized system of the drinking water supply». Hence the legislative body had in mind the following: "- a set of devices and constructions for collection, preparation, storage and

⁶⁹ «Legal norms»

supply of drinking water to the places of consumption, open for the general use by physical persons and (or) legal entities”⁷⁰. That is, by context any centralized system of drinking water supply is implied, regardless of the form of ownership and size of centralized water supply systems. Consequently, the authorized organ (as it was stated above, such agency in Tajikistan is the SUE KMK) manages all centralized water supply systems, since the norm does not provide for exceptions. But norms of item 5 determine that the owner can manage on his/her own, or transfer management on the right of economic management or operational management to legal entities. Item 4 contradicts to item 5, and contradicts to norms provided in article 9 of the Law, therefore it is recommended to exclude it. This article is also supplemented by an open list of possibilities to transfer water supply systems for using or management.

⁷⁰ Article 1, The Law of the RT « About drinking water and drinking water supply », от 29.12.2010

ANNEXES

1. The rules for leasing of drinking water supply systems and passing them for trust management

(Based on Rules adopted by the Resolution of Government of the Republic of Kazakhstan as of June 2, 2004 N 613)

1. General Provisions

1. These Rules on leasing and transferring drinking water supply system to the trust management (hereinafter - Rules) determine the order of leasing and transferring state-owned systems of centralized or non-centralized drinking water supply to the trust management (hereinafter - the drinking water supply system), without the purchase option right.

2. In accordance with the legislation, the drinking water supply systems can be leased or transferred to the trust management for a period of five to forty-nine years, depending on terms of operation of water supply systems, taking into account the depreciation norms, subject to approval by the competent authority in the sphere of the drinking water supply (hereinafter - the authorized body).

3. In case if the drinking-water supply system is designed to provide drinking water to more than 2,000 users, then leasing of drinking water supply systems and transferring to the trust management shall be done through open tenders.

4. The mandatory requirement for leasing of the drinking water supply systems and transferring them to the trust management is their further use for the designated purpose.

Using of drinking water supply systems not for the designated purpose shall be the basis for termination of the lease or trust management contract by decision of the lessor (lease provider) or by the trustor.

For leasing or passing drinking water supply systems to the trust management the following requirements are set:

- for delivery of water to certain categories of water users at subsidized rates (reduced by the amount of subsidies);
- for ensuring saving of the technological cycle.

2. Leasing of water supply systems

5. Leasing of water supply systems shall be on a remuneration basis.

Estimated rates of rental charges for drinking water supply systems shall be defined and approved by the lessor:

- for objects of the republican property in coordination with the competent authority, the state body authorized for disposal of the republican property, the competent authority responsible for supervision and regulation of activities in the sphere of natural monopolies and competition protection (hereinafter the anti-monopoly authority);
- on objects of the communal property – with departments of communal property administration in oblasts (cities and districts), the anti-monopoly authority and territorial departments of the authorized body.

6. The enterprise-owner of the property acts as a lessor of drinking water supply systems that are in economic or operational management of republican and municipal state-owned enterprises.

7. Decision about leasing of the water supply systems that are in the republican ownership shall be made based on results of the conducted tender, in coordination with the authorized organ and state bodies in charge for disposal of the republican property and with the anti-monopoly authority.

8. Decision about leasing of the water supply systems that are in the municipal ownership shall be made based on results of the conducted tender, in coordination with the executive state government bodies of oblasts (cities and districts), the anti-monopoly authority and territorial subdivisions of the authorized body.

9. The tender commission acts as an organizer of the tender.

10. The tender commission on leasing of water supply systems, that are in the republican ownership, shall be formed by the lessor with inclusion of representatives of the authorized body, of state bodies in charge for disposal of the republican property, of the anti-monopoly authority and other relevant central and local executive bodies into the commission.

Composition of the tender commission on handing over of the drinking water supply systems that is in the municipal property shall be formed by the Lessor with inclusion of representatives of executive authorities of oblasts (cities and districts), of the anti-monopoly authority and of the territorial subdivision of the authorized body.

11. Physical persons and legal entities who have submitted the application and other documents included in the tender documents shall be allowed for participation in the tender on leasing of drinking water supply systems.

12. Requirements to the tender documentation, the procedure of preparing, conducting of the tender and registration of the tender results on leasing of drinking water supply systems shall be defined in accordance with the legislation.

13. That participant whose proposals meet all requirements provided in the tender documentation and who undertakes to fulfill terms of the tender shall be the winner of the tender.

14. On the basis of the report (minutes) on the tender results the Lessor concludes a lease agreement with winner of the tender with inclusion of obligations on fulfillment of the tender terms into the contract.

In case if the winner of the tender refuses to enter into a lease agreement on terms of the tender, the tender commission shall determine the winner from amongst of other participants of the tender (if the number of remaining participants is not less than 2 persons), whose bidding proposals offer contract terms to the tender initiator that are the best after terms suggested by the tender's winner or makes decision about conducting a new tender.

3. Transferring of drinking water supply systems to the trust management

15. The founder of the trust management of drinking water supply systems that are in the republican ownership shall be the body in charge for disposal of the republican property, and founders of the trust management of drinking water supply systems that are in the municipal ownership – oblast (city, district) administrations of the municipal property.

16. Transferring of drinking water supply systems, that are in the republican ownership, to the trust management shall be done by decision of the state body in charge for disposal of the republican property, based on the tender results, in coordination with the anti-monopoly authority, and transferring of the drinking water supply systems that are in municipal ownership – in coordination with the executive authorities of oblasts (cities and districts), with the anti-monopoly authority and territorial subdivisions of the authorized body.

17. Tender Commission for conducting of the tender shall be established:

- on objects of the republican property – by the state body in charge for disposal of the republican property;
- on objects of the municipal property – by oblast (city and district) administrations of the municipal property.

18. The tender commission shall include representatives of the state body in charge for disposal of the republican property, or oblast (city and district) administrations of the municipal property, of the authorized body, of the anti-monopoly authority, of the enterprise-owner of the property, as well as of other concerned central and local executive bodies.

19. The Chairman of the Tender Commission shall be the representative of the state body in charge for disposal of the republican property, or of the oblast regional (city, district) administration of the municipal property. The Chairman of the Tender commission shall:

- 1) develop and approve rules and regulations of his/her work;
- 2) make decision on the date of conducting the tender;
- 3) determine the tender terms and criteria for selection of the winner;
- 4) determine the amount of the guarantee fee;
- 5) publish the announcement (notification) about conducting of the tender;
- 6) conduct a tender;

20. Meetings of the tender commission shall be duly constituted if at least 2/3 of the committee members are present on the meeting.

Decisions of the tender commission shall be adopted by a simple majority votes of the committee members being present; in case of an equality of votes the vote of the Chairman of the commission shall be decisive.

21. Informational announcement about a tendering process for transferring of water supply systems to the trust management shall be published not later than 15 days prior to the announced date of the tendering process in periodic printed publication in the state (Tajik) and Russian languages, and shall include the following information:

- 1) the tender terms and criteria for selection of a winner;
- 2) a brief description of the object of the tender;
- 3) the date, time and venue of the tender;
- 4) deadlines for accepting applications for participation in the tender;
- 5) the procedure for registration of participation in the tender;
- 6) the amount of the guarantee fee and bank details for making payment (the size of the guarantee fee cannot be changed after publication of the informational announcement).

22. The tender documentation shall be submitted as a set by the participant's bid in the manner determined by the tender commission.

23. The tender documentation shall include the following sections:

- 1) information about the object of the tender;
- 2) requirements on the content of the application and documents submitted along with the application;
- 3) the terms and procedure of the tender processing;

4) the application form for participation in the tender.

24. Registration of the tender participants shall be started from the date of publication of the announcement about the tendering process and comes to end one day prior to the tendering process.

25. After publication of the announcement about the tendering process, the tender commission provides a free access for everyone to the information about the tender objects and terms.

4. The tendering process for transferring water supply systems to the trust management

26. The legal entities wishing to participate in the tendering process for transferring water supply systems to the trust management provide the following documents within the time limits set:

1) an application for participation in the tender with the Bidder's consent to participate in the tender and his/her commitment to fulfill terms of the tender and conclude the relevant agreement;

2) documents confirming his/her financial and technical capacities, his/her qualifications;

3) a business plan for organization of water supply systems operation and providing services to water users;

4) copies of foundation documents (Founders agreement and Charter) and a copy of the taxpayer certificate (notarized copies in case if originals are not submitted for verification) - for legal entities;

5) information from the tax authority about the absence of tax debts;

6) copy of the payment document confirming payment of the guarantee fee.

27. Applications shall be accepted and persons wishing to take part in the tender will be registered only upon submitting of a complete set of required documents.

28. The reasons for refusing to register a person as a tender participant are the following:

1) submission of an incomplete set of required documents;

2) having tax liabilities to the state budget;

3) submission of documents with violation of requirements established by the tender terms.

29. The tenderer (bidder) has right to:

1) participate in the tender in person or through his/her representatives on the basis of the properly executed power of attorney;

2) get an additional information for free, get clarification on drinking water supply systems offered for tender;

3) pre-examine drinking water supply systems;

4) apply to the court in case of violation of his/her rights;

5) withdraw his/her application for participation in the tender, notifying the tender commission about it in writing within three working days before the tendering process.

30. If at the time of the deadline for receiving applications (except for the third and subsequent tenders) there is registered not more than one application, the tender shall be declared void.

31. On the day of holding of the tender, at the meeting members of the committee open envelopes with bidders' proposals and announce their proposals.

Before opening envelopes, members of the Commission verify their continuity (being sealed), that is reflected in the minutes of the Tender commission's meeting.

Bidders or their authorized representatives shall be present at opening envelopes and announcement of proposals.

32. After opening envelopes and announcement of proposals the tender commission recesses for deliberation and evaluation of proposals.

Tenderers (or their representatives) shall not be present at discussion and evaluation of proposals.

Results of the competition shall be summarized in a period of not more than ten calendar days from the date of opening of envelopes with bids.

33. The winner of the tender shall be recognized the participant meeting the criteria for the winner selection, and whose proposals, by the commission's decision, meet all the requirements contained in the tender documents and are the best in terms of fulfilling the tender terms.

34. The criteria for selecting the winner of the tender for transferring drinking water supply system to the trust management are the qualifications of the winner, his/her technical and financial capacity for maintenance and operation of the water supply system.

35. The tender commission shall draw the report (minutes) of opening of envelopes, with detailed specification of reasons for rejection of the bid application not meeting requirements set out in item 26 of these Regulations. In this case, a written notification about rejection of the bid application, stating the reasons, shall be sent to the tenderer within two working days. After signing of the report (minutes) by all the members of the tender commission, the report (minutes) shall be placed on the Internet site of the authorized body and sent to all bidders within three working days.

5. Presentation of the tender results

36. Conclusion of the tender commission, which determines the winner of the tender, or any other decision on results of the tender shall be documented in report (minutes) signed by all members of the commission.

The report (minutes) determining the winner of the tender shall also be signed by a person who have won the tender.

37. The report (minutes) shall contain the following information:

- 1) composition of the Commission;
- 2) the tender terms;
- 3) the criteria according to which the winner was selected;
- 4) information on bidders and their proposals;
- 5) the winner of the tender;
- 6) obligations of parties on signing of a trust management contract.

38. A copy of the report (minutes) on the tender results shall be given to the winner within three working days from the date of signing of the report (minutes) on the tender results. It is a document certifying his/her right for concluding a contract of trust management.

39. On the basis of the report (minutes) on the tender results, the trust management agreement shall be signed with the winner (hereinafter - the contract) at terms that meet offers, declared at participation in the tender.

40. If the winner refuses to conclude an agreement on terms that meet offers declared for participation in the tender, the tender commission shall decide on the winner from amongst of the remaining bidders (if the number of remaining bidders is not less than two) or make a decision about a new tendering process.

41. The guarantee fee shall be not returned in the following cases:

1) if the tenderer refuses from his/her offer or changes it before the expiration of the tendering process;

2) to the winner of the tender in case if he/she refuses to sign a relevant agreement on terms that meet offers, declared at participation in the tender.

In all other cases, the guarantee fees shall be returned not later than 10 business days after completion of the tendering process, and if the money are received on account after the tendering process, within 10 bank working days from the date of their receipt.

42. The contract with the successful tenderer shall be concluded not later than 10 calendar days from the date of signing of the tender report (minutes).

2. The list of basic normative-legal acts of the Republic of Tajikistan used at writing of this report

- The Civil Code, part I, as of 30.06.1999
- The Civil Code, part II, as of 11.12.1999;
- The Water Code of the Republic of Tajikistan, adopted on November 10, 2000;
- The Tax Code of the Republic of Tajikistan as of 17.09.2012;
- The law of the Republic of Tajikistan "On drinking water and drinking water supply" adopted on 29 December 2010;
- The law of the Republic of Tajikistan "On maintenance of multi-family dwellings and Homeowners' Associations" as of August 5, 2009;
- The law of the Republic of Tajikistan "On Cooperatives" as of July 22, 2013;
- The law of the Republic of Tajikistan "On state-owned enterprises" from 28.02.2004;
- The law of the Republic of Tajikistan "On Joint Stock Companies" as of 05.03.2007;
- The law of the Republic of Tajikistan "On water users' associations", as of November 22, 2006;
- The law of the Republic of Tajikistan "On consumers' cooperatives in the Republic of Tajikistan", as of 13.03.1992;
- The law of the Republic of Tajikistan "On Public Associations" as of 12.03.2007;
- The law of the Republic of Tajikistan "On public initiative bodies" as of January 5, 2008;
- The law of the Republic of Tajikistan "On registration of legal entities and individual entrepreneurs" as of 19.05.2009;
- Resolution of the Government of Tajikistan as of December 31, 2011, under the # 679.

3. The comparative table on some recommended models of management on the rural drinking water supply

Organizational and Legal Form	Advantages / Disadvantages
<p>Individual entrepreneurship on the basis of the certificate</p>	<p>Advantages It is an optimal form for small centralized and non-centralized water supply systems covering a residential quarter or a small jamoat, from 50 to 200-300 households. It is a flexible and efficient solution based on the private initiative of one citizen, with a high degree of accountability to his/her clients, with a simplified system of taxation and with the possibility to hire employees.</p> <p>Disadvantages</p> <ul style="list-style-type: none"> • Individual financial responsibility covered on the account of their property; • Limitations for application of this form on incomes - with an income of over 500,000 TJS per year, the business should be reorganized into one of forms of commercial legal entities; • An individual entrepreneur should possess basic skills, knowledge and understanding of the sphere; • A total absence of such a form of practice
<p>Cooperatives (based on the Law "On cooperatives» as of 22 July 2013)</p>	<p>Advantages</p> <ul style="list-style-type: none"> ▪ The organizational-legal form most clearly reflecting the essence of organization of the community drinking water supply - "an independent and voluntary association, duly registered and organized on the basis of membership of persons to meet common economic, social, cultural and other needs, as well as their aim to establish a democratically controlled organization of joint ownership by joining property (share contributions)". ▪ In the Law of the Republic of Tajikistan "On Cooperatives" there are spelled out in details relationships of cooperative members, their liabilities, property formation, and structure and management bodies of cooperatives that facilitate using of this model in practice. ▪ The form of cooperatives allows to establish cooperatives on the commercial and non-commercial basis; ▪ Cooperatives can reduce their tax burden by building relationships with members for covering costs of cooperative on the basis of membership fees; ▪ Cooperatives can provide services both to members and not members of cooperatives. Members have more opportunities to participate in activities of the cooperative receiving more opportunities for accountability and transparency; ▪ Co-operatives can conduct general meetings of members; if their numbers is large, they can invite only delegates. ▪ This organizational-legal form is suitable both for small and also for relatively large centralized and non-centralized drinking water supply systems. <p>Disadvantages</p> <ul style="list-style-type: none"> • Members of the cooperative bear the subsidiary responsibility for the debts of the cooperative. That is, members are liable by their property for debts of the cooperative if the organization is not able to cover them in case of bankruptcy. • The number of members of the cooperative is naturally limited, since with more than 100 members, the very essence of a cooperative as an association of persons with the purpose to meet joint needs is lost. And also the process of <i>personal labor and other participation</i> of members of the cooperative becomes complicated.
<p>State unitary enterprise</p>	<p>Advantages</p> <ul style="list-style-type: none"> • The form is familiar to all the participants and to the population, there is a practice available, the legislation regulates their establishment and adequate functioning; • Availability of the state control, indivisibility ("unitarity") of the enterprise; responsibility of the State as a founder gives certain guarantees upon occurrence of losses and financial problems and inspires confidence to the population; • The State Unitary Enterprise is supported on the account of incomes from its own activities, so the governing body should be interested in improving their operations and increasing the level of their income;

	<p>Disadvantages</p> <ul style="list-style-type: none"> • The State unitary enterprises are not so flexible that is needed for market relations. Bureaucracy, formal and informal preferences and the excessive state control will never allow the unitary enterprise to become a full participant of market relations, seeking competitive advantages; • State unitary enterprises, particularly in the housing sector – are "social" absorbers, therefore the state in order to avoid the social consequences, may not allow through its various institutions to raise prices for services of unitary enterprises, even when it is absolutely needed; • The level of transparency and accountability of state unitary enterprises is extremely low, because of the lack of precise legal requirements on disclosure of the information; • The population refers to the "public" enterprises not as to "seller" of any services, but as to a branch of the government.
<p>Limited liability company</p>	<p>Advantages</p> <ul style="list-style-type: none"> • This form is also familiar to all participants of the sector and to the population, such practice is available, the legislative regulation is in force; • The taxation mechanism is well in place, it is clear for what and to whom you should pay; • More flexible requirements to participants: an association can be created as by one person and also by several persons (but not more than 30); both physical persons and also legal entities can be participants of the association; the participant can be excluded from the association because of the gross neglect of his/her duties; a participant may any time leave the association; • More flexible system of the association management that allows building a management structure more freely. <p>Disadvantages</p> <ul style="list-style-type: none"> • A "limited" liability reduces reliability of services of the organization and also of the organization itself. • Almost total absence of practices of LLC operation in the sector of the drinking water supply.
<p>Social (non-governmental organization)</p>	<p>Advantages</p> <ul style="list-style-type: none"> • A flexible form that allows citizens to unite without restrictions practically for any purpose, not prohibited by the legislation, is a convenient form in organizational terms for the community-based rural drinking water supply; • Ideally, the structure of social organization allows members to participate directly in the management, to be elected and elect, to take control over revenues and expenditures of the organization; • The costs on maintenance of a drinking water supply system may be approved as membership fees, and in this case such incomes are not taxed; <p>Disadvantages</p> <ul style="list-style-type: none"> • The issue of taxation for non-governmental organizations in practice causes difficulties, as the mechanism of taxation of such organizations on all incomes except for grants, is almost never applied in practice; • The issue of the number of members in the social (non-governmental) organization is unlimited, but in practice, with a large number of members (more than 100), it is difficult to provide participation of all members on annual meetings of the members, and also in activities of the organization. • As the practice of establishment of social associations for the drinking water supply has shown, at provision of services to several thousands of customers, this form does not correspond to its rules originally laid down in the law. The membership structure does not cover all potential water users, and with the most of them contracts on the drinking water supply are concluded; • Commercial activities of social organizations are not adequately regulated by the legislation, as well as their relationships on provision of paid services with citizens who are not members of the organization. As a result this form is unstable and cannot consistently perform operations without external aid and assistance.