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## Kyrgyzstan

Alexander Korobeinikov<sup>1</sup> and Alissa Inshakova<sup>2</sup>

### A. Legislation and rules

#### A.1 Legislation

International arbitration in Kyrgyzstan continues to be governed by the Law On Arbitration Courts (“Law”), as enacted on 30 July 2002, and to which no amendments have been made since 2004. The Law is mostly based on the UNCITRAL Model Law.

Provisions of the Law were challenged several times based on arguments that the Law and the main principles of arbitration proceedings contradicted the constitution. However, the Constitutional Court and the Constitutional Chamber of the Supreme Court consistently rejected such claims and showed their pro-arbitration position.

In addition, international commercial arbitration matters are also governed by:

- (a) The Code of Civil Procedure of the Kyrgyz Republic dated 25 January 2017, which, among other things, deals with the recognition and enforcement of arbitral awards; and
- (b) The Law of the Kyrgyz Republic On Investments into the Kyrgyz Republic dated 27 March 2003, which confirms the right of investors to bring their disputes with the Kyrgyz Republic (and its state agencies) to international arbitration.

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<sup>1</sup> Alexander Korobeinikov is a counsel in Baker McKenzie’s Almaty office and a member of Baker McKenzie’s International Arbitration Practice Group.

<sup>2</sup> Alissa Inshakova is an associate in Baker McKenzie’s Almaty office and a member of Baker McKenzie’s Dispute Resolution Practice Group.

It should be noted that during the discussion of the new Civil Procedural Code, the government proposed to include special rules in it for challenging arbitral decisions issued in Kyrgyzstan.

This proposal of the government was based on concerns that, even if local arbitral awards contradict public policy, they still cannot be set aside by local courts. The fact that the government raised such concerns shows that arbitration is being used in Kyrgyzstan more frequently, and the government would like to have additional rights to defend public interests. However, this proposal was rejected.

Also, in July 2017, the Kyrgyz Parliament adopted the new Mediation Law. Under the Mediation Law, parties have a right to execute a mediation agreement at any time prior to, or after the initiation of, legal proceedings. If the parties execute a mediation agreement during civil court proceedings, the court shall stay those proceedings until the mediation has been concluded.

Where the parties resolve the dispute through mediation, they may execute a settlement agreement that needs to be approved by the court and court proceedings will be terminated. If one of the parties refuses to comply with the terms of the settlement agreement approved by the court, the other party may seek to enforce the agreement in a state court.

Kyrgyzstan is a party to a number of bilateral and multilateral agreements that grant investors the right to arbitrate disputes over their investments in Kyrgyzstan. These treaties include the ECT dated 17 December 1994, as well as BITs and multilateral treaties executed with CIS countries and members of the Eurasian Economic Union.

It should be noted that while the Kyrgyz Parliament ratified the ICSID Convention in 1997, the Kyrgyz government still has not submitted the relevant documents to the ICSID. Therefore, as of today, the Kyrgyz Republic is not a party to the ICSID Convention.



## A.2 Institutions, rules and infrastructure

After adoption of the Law in 2002 and relevant sub-laws regulating the procedure of establishment and registration of arbitration institutions, the local Chamber of Commerce and Industry decided to establish the International Arbitration Court (IAC) for handling both domestic and international commercial disputes.

The IAC handles all types of commercial disputes between local and foreign companies, except disputes that are non-arbitrable under Kyrgyz law (e.g., disputes relating to the registration of rights over immovable property, challenges to decisions of state authorities, etc.).

Expedited procedures are available under the IAC Rules of Expedited Arbitration if parties agree to use these Rules.

The IAC Rules of Arbitration contain special rules for joinder of third parties. Specifically, under these rules, third parties can join the arbitration proceedings only if: (i) all parties to the arbitration proceedings agree; and (ii) the third party is a party to the arbitration agreement used to commence the arbitration proceedings. An application to involve a third party can be filed only before the statement of defense is filed.

## B. Cases

Recently, a number of investors began arbitration proceedings against Kyrgyzstan. Most of them relate to the expropriation of foreign and domestic investments by the Kyrgyz Government that came to power as a result of the April 2010 revolution.

As a result, the Kyrgyz Government decided to establish a special body, the Center of Representing the government in court proceedings. This center is responsible for handling any claims filed against the Kyrgyz Government or state authorities by foreign investors.

As a result of these efforts, the Kyrgyz Government managed to settle a number of disputes with foreign investors.

In March 2018, Kyrgyzstan managed to settle Kazakh BTA Bank's USD 75 million claim lodged in 2011 under the Kazakhstan-Kyrgyzstan bilateral investment treaty related to the expropriation of its 71% shareholdings and other investments in its Kyrgyz subsidiary bank.

Under the settlement agreement, without any admission of liability or payment by Kyrgyzstan, BTA has agreed to purchase shares of its subsidiary bank from Kyrgyzstan's State Property Management Fund.

#### **B.1 Kyrgyz courts refuse to enforce a domestic arbitral award due to breach of the procedure on the constitution of the arbitral tribunal**

In September 2018, the Kyrgyz Supreme Court upheld decisions of the lower courts rejecting the application for enforcement of an arbitral award issued by the IAC due to the breach of the provisions of the IAC Rules on the constitution of the arbitral tribunal.

In particular, the respondent argued that the sole arbitrator cannot be appointed by the IAC upon the claimant's request, because such an option is not stipulated in the IAC Rules. The claimant responded that the appointment of the arbitral tribunal by the IAC is allowed by the Law.

The Kyrgyz courts, including the Supreme Court, upheld the respondent's position and stated that the procedure of the appointment of a sole arbitrator was not in line with the parties' agreement. Therefore, the Supreme Court confirmed that the parties' agreement on the procedure for the constitution of the arbitral tribunal should prevail over statutory provisions and the breach of this agreement may lead to setting the award aside.



## B.2 Kyrgyz courts uphold request for interim relief within the framework of arbitration

In June 2018, the Kyrgyz Supreme Court upheld the decisions of the lower courts granting interim relief in the arbitration case.

This is one of the first cases where the Supreme Court confirmed the court's power to apply interim measures for the security of arbitration proceedings.