11th
Edition

2017-2018

The
Baker McKenzie
International
Arbitration Yearbook

Kyrgyzstan

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A. Legislation and rules

A.1 Legislation

International arbitration in Kyrgyzstan continues to be governed by the Law On Arbitration Courts (the "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

(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.

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

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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 with which 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 concluded.

Where the parties resolve the dispute through mediation, they may execute a settlement agreement that needs to be approved by the court and the 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 Energy Charter Treaty 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 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 (eg, disputes relating to 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 the parties agree to use these Rules.

The IAC Rules of Arbitration contains 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. The application to involve the third party can be filed only before the filing of the statement of defense.

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 government of Kyrgyzstan 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 Centre of Representing the government in Court Proceedings. This Centre is responsible for handling any claims filed against the Kyrgyz government or state authorities by foreign investors.

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

For example, in September 2017, the Kyrgyz government managed to settle the long-term dispute with Canadian miner Centerra Gold

relating to environmental and other charges imposed by the Kyrgyz government in connection with the operation of the biggest Kyrgyz gold deposit, Kumtor.

Under the settlement agreement, Centerra Gold will pay more than USD 50 million to the Kyrgyz government, which should be used for improving local infrastructure and medical treatment.

Therefore, although there are a number of ongoing investment arbitration proceedings against the Kyrgyz Republic, the government has become much more experienced in international arbitration and has taken effective measures to protect its position against claims of foreign investors in different arbitration proceedings and state courts.

Concerning local court practice, while recent court decisions relating to the enforcement or setting aside of arbitral awards are generally in line with international practice, it should be noted that the Kyrgyz courts do not have a wide range of experience with arbitration-related cases, and this lack of experience can lead to controversial decisions.

B.1 Kyrgyz courts confirm that disputes relating to the enforcement of the pledge arrangement are arbitrable

The Supreme Court of the Kyrgyz Republic reviewed the claim of two local individuals challenging the enforcement of the pledge arrangement securing the claimants' obligations arising out of the mortgage agreement with the respondent.

In particular, the claimants stated that the respondent should withdraw its notices on the commencement of the sale of the pledged assets and appointment of a manager to proceed with such sale.

The lower court dismissed the claim based on the fact that the pledge and mortgage agreements contained an arbitration clause covering all disputes arising out of these agreements.

The claimants appealed the lower court decisions, claiming that the subject of the claim relating to the enforcement of the respondent's

rights is stipulated in the law and, therefore, cannot be settled in arbitration.

The Supreme Court supported the decisions of the lower court, stating that the arbitration clauses in the pledge and mortgage agreements were valid and there were no statutory provisions that prohibited the settlement of such types of dispute in arbitration.

This decision of the Supreme Court showed that, generally, Kyrgyz courts take a pro-arbitration position.

C. Funding in international arbitration

We are not aware of any cases of the use of third-party funding in local arbitration proceedings.

Also, this issue is not regulated by local laws.

At the same time, the absence of any regulation on this issue allows the argument that third-party funding is not prohibited and, in theory, may be used in Kyrgyzstan.

However, we cannot exclude the risk that, in practice, the use of external funding may raise a number of issues relating to conflicts of interest and allocation of arbitration fees, etc., which should be clarified in local rules and court practice.