

Young ICCA Workshop in Bishkek, Kyrgyzstan: A Northeast and Southeast Asia Perspective

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Although Central Asia has geostrategic importance in Asia, the Middle East, and Europe as the heart of the 'Silk Road', the Kyrgyz Republic in Central Asia^[fn]Central Asia consists of 5 countries (Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan) and Kyrgyzstan is a landlocked nation bordered by China, Kazakhstan, Uzbekistan and Tajikistan.^[/fn] has remained relatively unknown, especially in international arbitration, as compared to other countries in this region.

On 27 May 2019, the first Young ICCA Skills Training Workshop was held at the American University of Central Asia in Bishkek, Kyrgyzstan. Faculty speakers from Moscow, Paris, Frankfurt, Malaysia, Hong Kong and Singapore, together with local experts, were invited to present on the topics: "How to draft arbitration clauses" and "How to start a career in international arbitration". The workshop also covered issues of enforceability of arbitration clauses and arbitral awards in the domestic courts of the Kyrgyz Republic.

Background: Some Features of Kyrgyz Arbitration Law and Practice

The Kyrgyz legal system is a civil law system which has features of French civil law and Russian Federation laws. The Law of the Kyrgyz Republic "On Arbitration Courts in the Kyrgyz Republic" (the "Kyrgyz Arbitration Law") was adopted in 2002. It is said that^[fn]See Kyrgyzstan, Nurbek Sabirov, Kalikova & Associates Law Firm, International Arbitration (First Edition) Published by Global Legal Group.^[/fn] the Kyrgyz Arbitration Law largely contains some elements of the UNCITRAL Model Law on International Commercial Arbitration (the "UNCITRAL Model Law"). However, the Kyrgyz Republic is not on the list of countries where the UNCITRAL Model Law is adopted. The Kyrgyz Republic has been a party to the New York Convention since 1997.

One of the features of the Kyrgyz Arbitration Law which drew my attention is that, in the Kyrgyz Republic, an arbitration award cannot be set aside by the court, though the competent court has the right to refuse enforcement of the arbitration award.^[fn]See Kyrgyzstan, Nurbek Sabirov, Kalikova & Associates Law Firm, International Arbitration (First Edition) Published by Global Legal Group.^[/fn] This means that in order to set aside an award, an award debtor is not entitled to raise issues to set aside the award at the court of the seat of arbitration, and there is nothing the award debtor can do but to wait until an award creditor initiates the enforcement action in a competent court. Therefore, parties

who select the Kyrgyz Republic as the seat of international arbitration should be aware of the fact that they will not be able to apply to the Kyrgyz courts to set aside any eventual arbitration award.

Another feature of the Kyrgyz arbitration practice is that, the Supreme Court of the Kyrgyz Republic appears to put quite a conservative and narrow interpretation on the enforceability and validity of an arbitration agreement. For example, it is a mandatory requirement for an arbitration agreement to state the name of the arbitration institution and not enough to refer only to arbitration rules. The Supreme Court of the Kyrgyz Republic ruled that the arbitration clause did not comply with the mandatory requirements of the Kyrgyz Law, because it did not contain the name of the arbitration institution, which was agreed upon by the parties for the settlement of their disputes and referred only to arbitration rules.[fn]See Arbitration Year Book 2017, Kyrgyzstan, Alexander Korobeinikov, Baker McKenzie's Almaty office.[/fn] Also, under the Kyrgyz Arbitration Law, in order for an arbitration agreement to be valid and enforceable, it must be in a written form and shall state that 'any' dispute between parties shall be settled in arbitration. Therefore, it would be advisable to give extra attention in drafting an arbitration clause when entering into a contract with a Kyrgyz party.

While the Kyrgyz Republic is a signatory state to the ICSID Convention since 1995, the Kyrgyz government has not ratified it. The Law of the Kyrgyz Republic on Investments (2003) stipulates national treatment for foreign investors and guarantees foreign investors the same protections and treatment as domestic nationals and companies. The Kyrgyz Republic is also a party to various international agreements, allowing foreign investors to protect their investments and to bring cases against the Kyrgyz Republic. The country has a number of bilateral and multilateral investment treaties including the Energy Charter Treaty.[fn]Roeline Knottnerus and Ryskeldi Satke, Kyrgyz Republic's experience with investment treaties and arbitration cases, Published by Transnational Institute Amsterdam, July 2017.[/fn]

The Kyrgyz economy largely relies on the export of gold and other minerals and tourism. Foreign direct investment in these sectors are supposed to boost its economic growth.[fn]Roeline Knottnerus and Ryskeldi Satke, Kyrgyz Republic's experience with investment treaties and arbitration cases, Published by Transnational Institute Amsterdam, July 2017.[/fn] Under this circumstance, it would be easy to face investment disputes relating to environmental and social issues in the host country. The Kyrgyz Republic has received quite a number of investment arbitration cases in relation to banking and financial services disputes, mining and environmental disputes.[fn]Roeline Knottnerus and Ryskeldi Satke, Kyrgyz Republic's experience with investment treaties and arbitration cases, Annex II, Published by Transnational Institute Amsterdam, July 2017.[/fn]

Northeast and Southeast Asia's Perspective

As a Korean qualified lawyer working in Singapore, I was wondering how both Korea and Singapore investors would approach Central Asia and what their strategies are. The Korean government is enthusiastically seeking a new economic growth engine through economic cooperation with Russia and the Eurasian countries. In particular, there is a growing need to expand the Eurasian trade network, based on a FTA with the Eurasian Economic Union ("EAEU").[fn]Report on the Korea-EAEU Industrial Cooperation Enhancement Policy, KIEP(Korea Institute for International Economy Policy) 2017.[/fn] In this regard, it is widely accepted in Korea that "New Northern Policy", which establishes a new framework for industrial cooperation between Korea and the EAEU, is strategically important.

Singapore has not yet signed an investment agreement with the Kyrgyz Republic while Malaysia has. Singapore is also negotiating a Free Trade Agreement with the EAEU, of which the Kyrgyz Republic is a member. ASEAN and the Eurasian Economic Commission have signed a Memorandum of

Understanding on Economic Cooperation. While China is actively engaging the Kyrgyz Republic with the 'One Belt One Road' project,^[fn]Roman Mogilevskii, Kyrgyzstan and the Belt and Road Initiative, University of Central Asia.^[/fn] Japan has bilateral investment agreements with Kazakhstan and Uzbekistan only.

From a Korean perspective, there would be a lot of opportunities to cooperate in Central Asia, considering activities of 'Koryo-saram' in the region and some aspects of cultural similarity to each other. For Korean businessmen, Singapore's interest in Central Asia would matter because a number of Korean companies have (and are considering to) set up regional headquarters in Singapore and are trying to cover Central Asia too.

Key Takeaway from the Event

At the last session of the event, Mr. Shamaral Maichiev from the International Court of Arbitration at the Chamber of Commerce and Industry of the Kyrgyz Republic emphasized to local practitioners that bringing positive changes in the Kyrgyz Republic is important in order to increase its investment attractiveness. Echoing his comments, I added some comments at the same session that lawyers who want to act globally should know their region first and then try to expand their activities worldwide.

In order for the Kyrgyz Republic to attract more foreign investment, it would be crucial for its arbitration law and practice to be more reliable, transparent and stable. Law and practice of international arbitration in the Kyrgyz Republic is in the process of development. In this regard, education of young practitioners who will be leading this country is essential.

The Young ICCA Skills Training Workshop in Bishkek has clearly demonstrated that international activities can be well-blended with local ones throughout the region. This event has also provided participants and speakers with the valuable chance to know more about the Kyrgyz Republic - not only about its breath taking natural environment, but also about the potential of the Kyrgyz legal profession in arbitration.