



**ENFORCEMENT OF FOREIGN JUDGMENTS
AND FOREIGN ARBITRAL AWARDS
IN KYRGYZSTAN**

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Issues regarding the jurisdiction for potential disputes are becoming an increasingly important part of contracts with foreign entities, with the inclusion of such provisions into contracts initiated mostly by the representatives of a foreign party. This is understandable, as for anyone investing in businesses outside of their own jurisdiction confidence in the enforceability of judgments made by courts in a foreign jurisdiction is extremely important.

Foreign entrepreneurs operating within Kyrgyzstan often refer to domestic lawyers with questions about the possibility and expediency of including an arbitration clause or prorogation clause into contracts with their Kyrgyz counterparts. Such clauses define which judicial authority and jurisdiction will govern any potential disputes related to a contract.

Without entering into too much detail about these two major legal concepts, it should be noted that there is a formal legal basis for the inclusion of both arbitration and prorogation clauses in Kyrgyzstan.

The next logical issue is the choice between two types of clauses, i.e. between two forms of dispute resolution. Amongst the many factors influencing the parties' decision on this matter, the most important is the feasibility of enforcing foreign judgments or arbitral awards within Kyrgyzstan.

The recognition and enforcement of foreign judgments and foreign arbitral awards by the Kyrgyz courts are established by the Kyrgyz Civil Procedure Code ("CPC"), under which foreign judgments are recognised and enforced in Kyrgyzstan if it is envisaged by the jurisdiction's laws or

international treaties, or based on the principle of reciprocity.

Foreign judgments are understood as judgments on civil cases, including cases involving economic disputes and other cases related to business and other economic activities, as well as sentences related to compensation for damage caused by a crime. With regard to foreign tribunals and international arbitrations, the legislator establishes that the recognition and enforcement of their awards are subject to the same rules as for the enforcement of foreign judgments.

The exception to this rule is Article 380 of the CPC, under which a law, international treaty or the existence of reciprocity in the recognition and enforcement of judgments are required for the recognition and enforcement of a foreign judgment.

The provision covering the requirement for the recognition and enforcement of foreign judgments is extremely important. What is actually required by the legislator for the enforcement of a foreign judgment?

1. A special law containing direct provisions providing for the possibility of executing a foreign judgment. There is no such law in Kyrgyzstan. All provisions existing in the domestic legislation are reference provisions: Article 380 of the CPC refers to some unspecified law; the CPC refers to Article 380; and the Kyrgyz Law on Enforcement Proceedings and the Status of Judicial Executors in Kyrgyzstan refers to international treaties and Kyrgyz legislation.

2. An international treaty. Kyrgyzstan is a party to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Minsk, 22

January 1993), and the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau, 7 October 2002). In accordance with these treaties, foreign judgments and arbitral awards shall be recognised and enforced according to the decision of the competent Kyrgyz court. The issue of the enforcement of judgments is specifically regulated by the Treaty on the Procedure of Settling Disputes with Regard to Carrying out Business Activities (signed in Kiev on 20 March 1992), and the ensuing treaty on the Procedure of Mutual Enforcement of Decisions of Arbitration, Business and Economic Courts in the countries of the Commonwealth of Independent States (signed in Moscow on 6 March 1998).

In accordance with Article 3 of the aforementioned treaty, a judgment by the competent courts of one Contracting Party that has entered into force shall be enforced in the territory of the other Contracting Party under the indisputable procedure.

Thus, the enforcement of judgments of the CIS countries that have signed this treaty has a well-founded regulatory framework. The enforcement of court decisions of other states requires bilateral agreements. Kyrgyzstan has currently signed treaties to this effect with Turkey (5 September 2006), China (4 June 1996), the United Arab Emirates (7 December 2014), and Latvia (10 April 1997).

3. Reciprocity between Kyrgyzstan and other countries regarding the enforcement of the judgments issued by each other's competent courts. The Kyrgyz courts shall address the issue: if a motion for the recognition and enforcement of a foreign judgment may be handled by the competent Kyrgyz court in the absence of a

relevant international treaty; if foreign state courts recognise the judgments of the Kyrgyz courts on the basis of reciprocity; or if there have been no negative decisions on the recognition and enforcement of judgments made by the Kyrgyz courts in the respective state. In practice, this means that when addressing a notion for the enforcement of foreign judgments by the Kyrgyz courts it will be checked whether there have been any cases of the recognition of the judgments of the Kyrgyz courts by the courts of the state where a judgment has been issued, or if such cases are excluded under the law of this state.

We could go one step further: with a view to creating positive precedents for the enforcement of judgments, it is necessary for someone to take the risk of using a prorogation clause, obtain a foreign judgment, and then submit a motion to the Kyrgyz court. In other words, a precedent is necessary here.

It's clear from the points outlined above that, by including a prorogation clause in a contract with the Kyrgyz party, if the foreign party is not a member of the Treaty on the Procedure of Settling Disputes with Regard to Carrying out Business Activities, it risks an unfavourable judgment on the issue raised above.

The practical conclusion of this theoretical outline is as follows: the recognition and enforcement of foreign judgments by the Kyrgyz courts should not be expected. In this case, the prorogation is overruled by the arbitration clause. The situation with the recognition and enforcement of foreign and international arbitral awards is different. Although the requirements of Article 380 of the CPC do not formally apply to these cases, there is the Law on Arbitration Courts in the Kyrgyz

Republic and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (adopted by Kyrgyzstan in 1997) that provides the full regulatory framework for the enforcement of arbitral awards. It would be wrong to assert that the enforcement of arbitral awards takes place completely smoothly as there are numerous cases when the Kyrgyz courts broadly interpret the grounds set forth in the CPC and prevent the enforcement of arbitral awards. However, it appears that even in such situations it is possible for the party requesting the recognition or enforcement of an award made by a foreign tribunal to prove its case.

The situation with the enforcement of foreign judgments seems to be a disappointing one.

Hopefully, in the near future Kyrgyzstan will sign the relevant treaties with the countries whose business actively enters the country's domestic market, requiring the appropriate legal protection.

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