

COMMENTARY

How Chinese Miners Adapt to Kyrgyzstan's Legal Compliance

Negative public perception about Chinese expansion into Kyrgyzstan, along with an unpredictable regulatory environment, has profoundly shaped Chinese business practices inside Kyrgyzstan. Despite common perceptions about non-compliant Chinese companies, this contentious business environment has pressured Chinese companies to adhere and adapt to local laws.

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Preface

China Local/Global

China has become a global power, but there is too little debate about how this has happened and what it means. Many argue that China exports its developmental model and imposes it on other countries. But Chinese players also extend their influence by working through local actors and institutions while adapting and assimilating local and traditional forms, norms, and practices.

Carnegie has launched an innovative body of research on Chinese engagement strategies in seven regions of the world—Africa, Central Asia, Latin America, the Middle East and North Africa, the Pacific, South Asia, and Southeast Asia. Through a mix of research and strategic convening, this project explores these complex dynamics, including the ways Chinese firms are adapting to local labor laws in Latin America, Chinese banks and funds are exploring traditional Islamic financial and credit products in Southeast Asia and the Middle

East, and Chinese actors are helping local workers upgrade their skills in Central Asia. These adaptive Chinese strategies that accommodate and work within local realities are largely ignored by Western policymakers.

Ultimately, the project aims to significantly broaden understanding and debate about China's role in the world and to generate innovative policy ideas. These could enable local players to better channel Chinese energies to support their societies and economies; provide lessons for Western engagement around the world, especially in developing countries; help China's own policy community learn from the diversity of Chinese experiences; and potentially reduce frictions.

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Introduction

Fears of Chinese economic “expansion” into Kyrgyzstan have led to anti-mining protests, the closure of several Chinese projects, negative attitudes, and open public Sinophobia.¹ Despite this contentious environment, Chinese businesses have developed a wide range of strategies to navigate Kyrgyzstan's state institutions, political dynamics, and laws. These strategies include registration of companies under local names and with local partners, preference for direct negotiations with Kyrgyz parties over court litigation, and mobilization of local allies through both formal and informal arrangements.

This behavior of minimizing Chinese companies' visibility mirrors the characteristics of many Chinese entities in other nations where similar societal constraints threaten to impede foreign investment in general and China's in particular. This behavior is partly informed by the low trust in Kyrgyzstan's rule of law and state court system as an effective

conflict resolution mechanism.² Even if court verdicts vary on issues regarding labor conflicts and subcontracting, they tend to rule in favor of the Kyrgyz state concerning taxes, payments, and penalties, for example, noncompliance with environmental regulations. In addition, corruption remains endemic among judges.³ The lack of a fair legal structure in Kyrgyzstan pushes Chinese mining companies to solve issues with other parties directly, be they government agencies, local communities, or workers, sometimes outside of formal legal frameworks. As such, the extractive industry is perceived as a site in which the very notion of compliance is subject to varied interpretations by business actors, state regulators, and the court system.

Chinese Presence in Kyrgyzstan's Economy and Extractive Industries

After the collapse of the Soviet Union, the export of gold became the official driver of economic development in Kyrgyzstan.⁴ However, this extractive industry became implicated in large-scale corruption and severe environmental and social damage.⁵ During the second anti-government uprising in 2010, this situation resulted in open conflict between regime-backed mining companies and local communities in different parts of the country. Over the course of the most recent anti-government demonstrations in 2020, gold, coal, and other resources were an important part of political contestation.⁶ At least eight mining sites, including a Chinese company, were attacked throughout the country.⁷ In some cases, these attacks caused damage to property and equipment and led to the suspension of operations.

This nexus between political conflict and large-scale extractivism also led to an unclear regulatory environment, with implications for the state, affected communities, and the behavior of businesspeople in the sector. International businesspeople, investors, and companies often experience this environment in the form of regulations to which some

actors at certain times must strictly adhere to, while in other situations, such adherence is optional. The turmoil within Kyrgyzstan's fragmented political institutions, reflective of contradictory interests and values, became exacerbated by the chaos and disconnection of the COVID-19 pandemic. This environment also presents challenges to Chinese companies, which are major players not only in Kyrgyzstan's extractive sector but its economy writ large.

Prior to the COVID-19 pandemic, the largest Chinese assets in Kyrgyzstan included the Junda oil refinery and the Altyn-Ken gold-mining company.⁸ The Chinese government has also provided state budget loans to the Kyrgyz government for several large infrastructure projects, including the repair of the Bishkek thermal electric station (TETs), the Kemin-Datka electrical line, and the Bishkek-Osh road.

During the post-pandemic recovery period, and most importantly after the full-scale invasion of Ukraine that has occupied most of Russia's resources, the pace of Chinese investment seems to have increased.⁹ Today, Chinese investment has manifested in the construction of the China-Uzbekistan-Kyrgyzstan railroad; the construction of a large logistics center in Chüy province, worth approximately \$5 billion, and investment in hydropower and solar stations.¹⁰ China remains Kyrgyzstan's biggest trade partner reaching \$5.4 billion in total trade in 2024, which is a 42.5 percent increase from 2023 according to the Kyrgyz state committee on statistics; this does not account for another \$17 billion in the transshipment of goods that pass through Kyrgyzstan that are destined for other countries.¹¹ In the extractive sector, China's presence is significant, and Chinese companies are engaged in the mining of gold, loam, marble, coal, and other resources.

The authors conducted a series of interviews and developed three case studies showcasing the adaptability of Chinese entities within Kyrgyzstan's mining industry. Due to the sensitive nature of the Chinese economic presence, and to protect the individuals involved, the

interlocutors, institutions, and companies mentioned in the case studies have been anonymized. This includes Chinese businesses, private lawyers, as well as court judges and government agencies, who declined to publicly comment on their interactions with foreign investors.

Case Study One: A Chinese Loam Mining Company vs. the State Regulator

In the first case study, a loam mining company sued the main state regulator of the mining industry in court and won the case despite the company's alleged violation of a compliance procedure. The case involved a small loam mining company that has operated in Chüy province since 2016. The company is registered in the name of a Kyrgyz national but is in fact owned by Chinese entrepreneurs.

In 2020, the State Committee of Industry, Energy, and Mining of the Kyrgyz Republic (SCIEM) suspended and later revoked the company's license to extract loam. The company was sanctioned for failing to pay a license maintenance fee in time between 2019-2020. After sixteen months of unsuccessful attempts to engage and resolve the dispute with SCIEM, the company turned to the court system to have its license reinstated. In their administrative complaints to the Bishkek Administrative Court against SCIEM, the mining company built a case around the breach of procedures on the part of SCIEM.¹² The company claimed that SCIEM violated its access to transparent information and the right to respond to and appeal the decisions on the suspension and later revocation of the license. The company argued that due to the missed notification, its representatives were not informed about and consequently were not involved in the hearings organized by SCIEM on the question of the suspension of the license. Given these circumstances, the company requested the court to cancel SCIEM's decision and to renew the license. The lawsuit resulted in a court's ruling in favor of the company.

This case sheds light on both unusual and emblematic aspects of mining-related governance and disputes in Kyrgyzstan. On the one hand, it is an unusual example in which a Chinese business actor opts to engage with the court system. In our interviews, lawyers unanimously stressed that such lawsuits by Chinese actors are rare due to their strategy of keeping a low profile, their lack of trust in the local court system, and their preference for avoiding contact with the domestic legal system.¹³

On the other hand, the case also demonstrates the mundane and widespread workings of state bureaucracy in Kyrgyzstan, in relation to underfunding and understaffing of state institutions. Because of low salaries and frequent institutional restructuring, staff turnover and brain drain are real issues for government bodies. Civil servants do not manage to keep up with workload and procedural violations related to deadlines and the process of communicating and notifying business actors are common problems. However, these violations directly affect the possibility of regulatory compliance for the business actors that the state seeks to regulate. What we observed in interviews and research is that the regulator's inability to comply with its own regulations, thus undermining both its procedure to administer penalties, and coerce mining companies to comply with Kyrgyzstan's laws.

The Bishkek Court's decision in favor of the loam mining company came as a surprise to SCIEM. The government agency had expected that the court would take into consideration the company's failure to pay the license maintenance fee in due time in the first place. In our interviews with local lawyers, they confirmed that in most cases, the court supports the position of state regulators when payments to the state are concerned.

SCIEM's activities are embedded in a twofold institutional logic. In practice, SCIEM seeks to make sure that business actors comply with financial regulations to secure the flow of funds into the state's coffers.

On the other hand, SCIEM also aims to protect itself from anti-corruption measures conducted by other state bodies. Kyrgyzstan's government officials are often afraid to make decisions that could lead to accusations of corruption. This results in delays in decisionmaking at best and institutional paralysis at worst. Against this backdrop, the court's decision in favor of the Chinese loam mining company was unexpected and suspicious to all involved parties.

This aspect of suspicion and unpredictability was further underlined by the fact that in the official text of the court's decision, three out of four pages were copy-pasted from the administrative complaint produced by the company and only a short paragraph contains information on the position of the government agency. Thus, the court system appears to be neither a stable nor a reliable mechanism in shaping compliance for any of the actors involved.

Case Study Two: A Chinese Marble Mining Company, Sandwiched between two Government Agencies

In the second case, a marble mining company became sandwiched between two government agencies that were engaged in a bureaucratic turf war. In the process, the company faced the impossibility of complying with two contradictory sets of rules.

This case involved a Chinese firm that obtained a license to extract marble through an official auction in 2017. By selecting this company and finalizing a license agreement, the state regulator, SCIEM, gave the company access to the licensed territory and green-lit its mining operations. However, the company became ensnared in a scandal when it began removing valuable juniper trees in order to extract marble. The Chinese company wasn't acting unlawfully—they had applied with another state regulator—the State Agency for Environmental Protection and Forestry (SAEPF)—for permission to cut down trees in this area.

But the agency's new management suspended the permission under pressure by the local community who effectively mobilized protests against the logging and resulted in the protection of the juniper forest. In the meantime, as the license to extract marble was put into effect, the company received notifications from SCIEM about outstanding financial obligations.

As a result, the company found itself caught between two agencies, SCIEM and SAEPF, facing the impossibility of simultaneously fulfilling contradicting demands. Because the company could not log the trees, it could not start mining operations and generate income. In this stalemate, complying with the financial demands of one regulator meant noncompliance with the environmental regulations of the other. As the hierarchy of compliance between the two agencies remained unclear, the company's operations were suspended before they could begin. After a deadlock of more than five years, the company's lawyers advised their client to sell the license.¹⁴ Nevertheless, at the time of this research, the Chinese company has kept the license. According to the interview material, the company's lawyers succeeded in persuading SCIEM to defer the license retention fees, referring to "force majeure." This, however, is only a short-term solution, as in the absence of profit, the regulator is permitted to cancel the license at any time.

Once again, the case presents different expectations of compliance as perceived from a range of different actors involved. Once a company has secured a license and access to the licensed territory, it regards it as the host state's responsibility (in its totality of institutions) to facilitate operations. The company also assumes that the regulator in question—SCIEM—was in possession of information about endangered forest species in the area before putting the license on auction and inviting investors to bid.

The case also demonstrates that the two government agencies do not communicate with each other and lack the capacity to cooperate. They

also have divergent notions of compliance vis-à-vis affected communities.

Finally, this case shows that the company lacks information-gathering mechanisms, particularly in relation to the licensed territory and the affected local communities. The case reveals that the hierarchy of compliance is shaped by a fourth actor—the local community. Where the government appears to thrive in indeterminacy, society acts as a counterbalance and is able to hold the private sector accountable. By organizing largely peaceful protests, local communities in Kyrgyzstan have become a major force in monitoring and enforcing the compliance of mining companies in the field of environmental protection, labor policy, and corporate social responsibility. Against this backdrop, the failure to engage local communities at the early stages of decisionmaking is a strategic mistake made by many mining companies in Kyrgyzstan, including Chinese ones.¹⁵

Case Study Three: A Chinese Gold Mining Company Preparing for Court “just in case”

In a third case, a Chinese gold mining company was forced to navigate between different strategies of bargaining over compliance and possible avenues of resolving a dispute with the relevant government agency.

Between 2021 and 2022, structural changes in institutional and legislative frameworks related to mining governance began to show concrete implications for the finances and operations of mining companies in Kyrgyzstan.¹⁶ The case in point is a large Chinese gold mining company that became embroiled in a disagreement with SCIEM over its financial obligations vis-à-vis the state. In its efforts to contest payment claims, the company simultaneously pursued two strategies: It tried to resolve the conflict with the government agency directly, while at the same time preparing a lawsuit against the agency. The company's pursuit of two costly strategies underlines the indeterminacy of

compliance as the company remained uncertain which rules and regulations—formal and informal—to follow.

The initial dispute arose when a state regulator—the State Agency for Technical Oversight (TehNadzor)—calculated taxes related to the company's licensing potential of gold extraction. These calculations exceeded the company's own estimates. TehNadzor is concerned with oversight and the production of estimates that serve as a basis for SCIEM's decisions. Disagreeing with TehNadzor's evaluation and putting into question the professional character of the expert who conducted the initial oversight, the company decided to approach SCIEM directly. The company requested a new evaluation in the hope of a more “professional” assessment. Without a new evaluation, the company would have had to pay several hundreds of thousands of dollars in taxes. Suggesting a compromise, SCIEM agreed to create an audit commission that resulted in a new evaluation that came up with an amount several times smaller than the one initially calculated by TehNadzor.

As this went on, the company's lawyers had little trust that the state regulator would be able to resolve the dispute, knowing that anti-corruption policies, as discussed earlier, contribute to a vacuum in decisionmaking. Indeed, SCIEM was initially reluctant to accept the company's request to recalculate the taxes, since such reevaluations that favor companies could raise suspicion from law enforcement bodies. It took the company multiple efforts to make SCIEM act in this matter, asking for meetings to contest the previous decision and insisted on a new audit.

While attempting to settle the issue directly with the government agency, the company was also advised by its lawyers to prepare for a lawsuit. However, management thought a lawsuit against SCIEM would deteriorate the institutional relationship, which could endanger its standing in Kyrgyzstan. Accordingly, the strategy was to file a lawsuit

but to be ready to withdraw it if a resolution could be reached with the government agency. The Chinese company was hoping to bring the calculation of taxable gold closer to its own estimation without undermining the relationship with the chief state regulator. In the end, the company succeeded in concluding the negotiations without taking the issue to the court.

Conclusion

The contingent political, institutional, and legislative environment in the Kyrgyz mining sector produces competing signals that ultimately lead to confusion for businesses, which is not exclusively limited to Chinese companies. However, the Chinese actors have worked to adapt to this environment, developing a range of strategies that subscribe to a larger strategy of keeping a low profile and avoiding a direct confrontation with the domestic court system.

All the cases involved high degrees of indeterminacy for the companies and risks of falling out with the state regulator. Nevertheless, they reveal high adaptability among Chinese businesses. In the first instance, it seems like the company's strategy allegedly included reaching out to informal agreements next to catching up with formal procedures. In the third case, the company's strategy involved simultaneous preparation of a court case and engagement with the state regulator. This strategy, which most likely serves as blueprint for Chinese companies in Kyrgyzstan, promises to safeguard against heightened visibility and the risk of public backlash, as well as the pitfalls of the legal system prone to corrupt practices.

The second case highlights the risks of ignoring local community interests as this can lead to problems if not an inability to operate. It shows the need for Chinese, and other foreign investors, to add the capacity to engage local communities to one's strategic portfolio. An overreliance on direct links to central decisionmaking bodies has shown

limits in the past as local communities want to be included in early consultations and seek respect and justice. Chinese companies could thus improve and further ensure their presence by responding to environmental and social impacts from mining and involving local communities at early stages of extractive projects. In the past decades, local communities in Kyrgyzstan have become a major force in monitoring mining activities in affected areas and most likely will continue doing so.

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Notes

¹ [i] Shailoobek Kyzy, Aizat. 2021. "Discussing Sinophobia in Kyrgyzstan." *Central Asian Affairs* 8(1), pp. 58-82.

² The World Justice Project Rule of Law Index ranked Kyrgyzstan 101st out of 142 countries surveyed for rule of law in 2024, <https://worldjusticeproject.org/rule-of-law-index/>, accessed on July 1, 2025.

³ Corruption Perceptions Index 2022.

⁴ World Bank, MINING SECTOR DIAGNOSTIC – KYRGYZ REPUBLIC, <https://documents1.worldbank.org/curated/en/099081623044079341/pdf/P17582903fc8890509e870f396f978774e.pdf>

⁵ Wooden, Amanda. 2017. "Images of Harm, Imagining Justice: Gold Mining Contestation in Kyrgyzstan." In: Jalbert Kirk, Willow Anna, Casagrande David and Paladino Stephanie (eds.). *ExtrACTION: Impacts, Engagements, and Alternative Futures*. New York: Routledge, pp. 169-183; Ocaklı, Beril and Vincent Artman, 2023. "Resource Nationalism and Slow Violence In Kyrgyzstan", *The Oxus Society for Central Asian Affairs*, online: <https://oxussociety.org/wp-content/uploads/2023/04/Resource-Nationalism-Oxus-Reports-FINAL-2.pdf>, accessed 10 December 2024).

⁶ Doolotkeldieva, Asel. 2023. "Managing Gold Extraction Through Technocratic Discourse in Post-Socialist Kyrgyzstan" in Behzadi N.E, Doering, N. and Postar, S (eds) *Extraction/Exclusion: Beyond binaries in resource practice and knowledge*. Rowman and Littlefield: London.

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⁸ Open Democracy 2019. "Is Anti-Chinese Mood Growing In Kyrgyzstan?" 13 March 2019. [Online]. Available At: <https://www.opendemocracy.net/en/odr/anti-chinese-mood-growing-kyrgyzstan/>, accessed on July 1, 2025.

⁹ Kyrgyzstan's imports from China grew 2.7-fold in 2022 year-on-year, and by another 1.3 in 2023, see available data at Trade Map, <https://www.trademap.org>, accessed on June 30, 2025.

¹⁰ Amid Ukraine Fallout, China Pushes Ahead With Bold Kyrgyzstan Trade Vision, RFE/RL, 14 November 2024,

<https://www.rferl.org/a/china-kyrgyzstan-trade-vision-ukraine-impact-railway-investments/33196703.html>, accessed on June 30, 2025.

¹¹ “Kyrgyzstan surpassed Kazakhstan in the growth of trade turnover with China” (“Кыргызстан обошел Казахстан по росту товарооборота с Китаем”),

<https://economist.kg/ekonomika/2025/01/29/kyrgyzstan-oboshel-kazakhstan-po-rostu-tovarooborota-s-kitaiem/>, accessed on June 30, 2025.

¹² Bishkek Administrative Court is a first-instance court in Kyrgyzstan for administrative matters involving public authorities.

¹³ Information obtained in interviews with several lawyers working with mining companies and the state regulator, Bishkek, 2022.

¹⁴ Based on interviews with former lawyers of the marble extracting company, Bishkek, 2022.

¹⁵ Doolotkeldieva, Asel. (2020) “Regulating Corporate Social Responsibility (CSR) in Large Scale Mining in Kyrgyzstan”, OSCE Academy’s Policy Briefs, 1-11.

¹⁶ International Business Council. 2022. “IBC Mineral Resources Committee discusses changes to the draft Tax Code”, 13 December 2022: https://www.ibc.kg/en/news/ibc/6083_ibc_mineral_resources_committee_discusses_changes_to_the_draft_tax_code, accessed on June 30, 2025.

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