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Mining for Norms: International Extractivism, Chinese Business, and the Indeterminacy of Compliance in Kyrgyzstan

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ABSTRACT

In this article, we show how the study of compliance provides significant insights into the political and social tensions that shape Chinese business conduct in Kyrgyzstan's extractive industry and beyond. Drawing on interviews and analysis of legal documents, we first examine disputes between Chinese mining companies and Kyrgyz state institutions. These disputes demonstrate how the mundane workings of government bureaucracy foster a legal environment in which compliance is indeterminate. We argue that this indeterminacy—defined here as a social setting in which an action is neither predictably compliant nor noncompliant—provides a useful framework for analyzing interactions between mining companies and the state. We then move on to discuss how the establishment of international arbitration courts in Kyrgyzstan can be seen as an attempt to create new forms of compliance beyond this indeterminacy. We argue that looking at compliance through the lens of indeterminacy and examining ways of overcoming or managing it challenge the binary of compliance vs. noncompliance that continues to dominate social science literature on the subject. Finally, we maintain that the indeterminacy of compliance and the creation of new institutions both emerge from a legal environment that is shaped by broader political debate.

1 | Introduction

Social science literature on various aspects of compliance has been on a steady rise over the past decade (see, e.g., Berglund 2021; Merry 2010; Van Rooij and Sokol 2021a; Sampson 2021). The COVID-19 pandemic and related public health interventions, affecting vast numbers of people around the world, have further accelerated scholarly interest in the concept (Rollason and Hirsch 2021). The main focus of this literature, spanning from anthropology to socio-legal studies, has been the relationship between governing institutions or corporate actors and individuals, and the ways in which people choose to follow or disregard a given set of regulations. The nexus between rules and behavior, that is, the question of “how people respond to rules” and,

conversely, “how people's responses...shape the meaning and functioning of such rules” (Van Rooij and Sokol 2021b, 3), has been well researched. The literature analyzing this nexus has operated under two main assumptions. First, it has assumed the possibility of identifying a clear set of rules that people can comply with. It has, secondly, involved a focus on synchronous processes of interaction that puts less emphasis on continuous diachronic political change. This article addresses and problematizes these assumptions by focusing on Chinese involvement in Kyrgyzstan's extractive industry and commerce.

In Kyrgyzstan's post-independence period, which began in 1991, successive governments have proclaimed the mining sector a motor of economic development. However, as in many places

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elsewhere, the extractive industry has also been widely blamed for large-scale corruption and for severe violations of environmental regulations (Collier 2010; Wooden 2017). Often perceived as a source of illegal elite enrichment and environmental harm, mining companies have attracted public criticism (Eratov 2018). In the wake of Kyrgyzstan's second anti-government uprising in 2010, this resulted in open conflict between regime-backed mining companies and local residents in various parts of the country. Since then, wealth resulting from mining has continued to be closely associated with national politics, and has therefore been affected by reoccurring political crises. In the course of the most recent anti-government protests in 2020, gold, coal, and other mining products were at the heart of political debate (Doolotkeldieva 2024). This intersection of political conflict and extractivism has had a direct impact on mining governance and on the behavior of businesspeople—many of whom are Chinese—in the mining sector. Political crises have also directly affected the workings of state institutions at central and local levels, caused disruptions in administrative procedures, produced changes in regulations and legislative frameworks, and, as staff have been replaced on a large scale, erased contacts in government agencies that mining companies had been cultivating for years. This fast-changing social, political, and legal context is part of a deeper historical process of change in which former Soviet and post-independence administrative structures overlap and conflict, in business in general and in the mining sector in particular (24Kg 2022).¹

In the following, we analyze compliance in commercial environments in Kyrgyzstan with a focus on Chinese companies and individuals, using four different, but closely interrelated case studies. The first three explore Kyrgyzstan's mining sector, which has been central to the country's economy since the 1990s and is increasingly shaped by Chinese business interests (Yau 2022). Prior to the COVID-19 pandemic, the sector's largest Chinese-held assets included the Djunda oil refinery and the Altyn-Ken gold mining company, as well as various smaller mining projects (Open Democracy 2019). The Chinese government also provided loans to the Kyrgyz government for several large infrastructure projects, including the repair of the Bishkek thermal electric station, the Kemin-Datka electrical line, and the Bishkek-Osh road. During the post-pandemic recovery period and, most importantly, with Russia's full-scale invasion of Ukraine, the pace of Chinese investment in Kyrgyzstan seems to have increased. Today, China plans the construction of a China-Uzbekistan-Kyrgyzstan railroad worth approximately \$5 billion, the construction of a large logistical center in Chui Province, and investment in hydropower and solar stations. China is Kyrgyzstan's biggest trade partner, reaching \$5.5 billion in trade turnover in 2024, according to the Kyrgyz state committee on statistics.² This enhanced economic presence is welcomed by Kyrgyz elites, while others are torn between conflicting development interests on the one hand and fears of dependence on China on the other. Based on the public perception of Chinese businesses and the Chinese state as inseparable (Peyrouse 2022), there are major concerns about China's long-term strategy for Kyrgyzstan and widespread suspicions that Chinese companies do not respect domestic rules.

This article therefore adds nuance to discussions around China's role in Central Asia and other sites in the Global

South concerning the country's increasingly hegemonic economic role (Brautigam 2022; Reeves 2015), entanglements between the Chinese state and Chinese businesses (Dave and Kobayashi 2018; Oya and Schaefer 2023), and China's co-optation of domestic elites (Isaksson and Kotsadam 2018; Umarov 2021). The extractive industry in Kyrgyzstan in particular has long been marked by ongoing processes of political transformation that have resulted in an unclear regulatory environment (Ocaklı et al. 2020; Ocaklı and Niewöhner 2022). Businesspeople, investors, and companies often experience this environment in the form of regulations that certain actors at certain times must adhere to strictly, while in other situations, such adherence is optional. In other words, in practice, as we will show in detail in this article, processes of compliance and noncompliance are not opposites, but are often copresent in one and the same social setting. The case studies that we present challenge the idea of compliance as defined by binary behaviors (complying vs. non-complying). We aim to instead highlight compliance as a process that is shaped by historical and political change.

Against this backdrop, we argue that the concept of indeterminacy, perceived through a social scientific lens (Alexander and Sanchez 2019; Derrida 1981; Jansen 2016; Ringel 2014), is especially useful in analyzing this process. Indeterminacy allows scholars to think beyond the binary of compliance vs. noncompliance. For instance, Alexander and Sanchez (2019, 1) note that indeterminacy constitutes a “third term” that challenges the classificatory order that is “central to the modern bureaucratic state.” However, we propose that indeterminacy can also be productive in describing and analyzing those same bureaucratic procedures. If an action in response to an assumed law is neither predictably compliant nor noncompliant, then this social situation can be described as indeterminate—much in the way Derrida (1981) interprets Plato's *pharmakon* as both poison and medicine, or a category holding multiple meanings at once. Indeterminacy thus refers to a condition in which compliance with rules and regulations is uncertain and unpredictable. It may arise from conflicting laws, ambiguous regulations, inconsistent enforcement, or overlapping jurisdictions, constituting at once both opportunity and obstacle.

The four case studies analyzed here shed light on various sources of indeterminacy—clashes between institutions, a dearth of information, a lack of trust, as well as the building of new institutions. In the first case, a Chinese-owned loam mining company failed to fulfill its financial obligations to the Kyrgyz state when communication channels became unreliable in the course of the COVID-19 pandemic; nevertheless, the company won a court case against a state regulator that had not complied with its own regulations. In the second case, a marble mining company was caught between two government agencies in a state of conflict, and had to face the impossibility of complying with two contradictory sets of rules. In the third case, a gold mining company with doubts about both the state court system and attempts to resolve a dispute directly chose to pursue both avenues simultaneously.

While an indeterminate view allows for an analysis of compliance as a process rooted in concrete social interactions (Van Rooij and Sokol 2021b), it does not suggest an endpoint. There is a multiplicity of meanings that emerge from contradictory,

overlapping, and fast-changing regulations in Kyrgyzstan as a result of rapid political change and disruption. While some institutions thrive in these environments, others seek to overcome them. In the fourth case study, we examine these other institutions, using the example of international arbitration courts in Kyrgyzstan, and two such courts that have, in recent years, expanded their cooperation with Chinese counterparts. The development of arbitration courts can be seen as a reaction to the continuing indeterminacy and factual impossibility of compliance. These courts are at an early point in their development, and they have an ambiguous status in Kyrgyzstan's regulatory environment. Even though they are sanctioned in the context of international contracts, their practical acceptance remains unclear. Nevertheless, they propose ways beyond indeterminacy, and they serve as a meeting point of international, and in particular Chinese, legal expertise. These initiatives embody a form of legal pluralism that carries and is carried along by processes of economic globalization (Tamanaha 2016, 470). From this perspective, we interpret the development of new legal institutions as linked to both an uncertain regulatory environment and to the emerging interests of Chinese businesspeople in Kyrgyzstan.

The data presented in this article is the result of ethnographic research and collection of legal documents in Kyrgyzstan throughout 2022. The topics of resource extraction and Chinese economic interests are politically sensitive issues in Kyrgyzstan and challenging for social scientific research. Government bodies relevant to resource governance abstain from providing official information on Chinese entities, which is why we did not manage to secure access to court documentation or obtain official commentary from government regulators or Chinese companies. Our main sources of information were documents produced by private lawyers, state institutions, and, in one case, by a court. For all of the case studies presented, we received information and legal documents from external legal advisers who were either directly or indirectly involved in the cases. We sought commentary on the documents from lawyers, arbitrators, businessmen, government officials, scholars, and representatives of institutions that are active in the mining sector. This provided us with a better understanding of the underlying processes of compliance and noncompliance. We designed this twofold methodological approach in order to enhance our understanding of bureaucratic interactions, institutional logics, and the roles of formal and informal actors. In addition, we conducted 11 semi-structured interviews with our interlocutors, which we then coded and analyzed.³ We cross-checked information obtained from different sources where possible, for example, by comparing views of legal advisers and government bodies, as well as seeking additional news coverage.

In most instances, the sensitivity of the cases discussed requires anonymization of our interlocutors and the institutions and companies they work for. This is true for court judges and government agencies who have abstained from public commentary on their interactions with foreign investors, and this is especially important in cases involving Chinese companies, as they often face extremely negative attitudes in public discourse in Kyrgyzstan (Shailoobek Kyzy 2021). For this reason, we do not name the Chinese companies discussed in this article, nor the lawyers that have provided legal advice to them.

Finally, the analyses presented here build on Doolotkeldieva's long-term observation of the mining sector in Kyrgyzstan, including visits to mining communities, participant observation at mining-related social protests, and interviews with mining actors. The latter include a wide range of research participants such as gold mining executives, environmental NGOs, local anti-mining activists, and state bodies. These observations help us situate Chinese business conduct, legislative frameworks, and institutional responses in the broader sociopolitical environment of mining in Kyrgyzstan.

2 | Suing the State: A Chinese Loam Mining Company Takes on a Government Agency

In this first case study, a mining company sued the industry's main state regulator and won the court case, despite the company's alleged violation of a compliance procedure. The case involved a small loam mining company that has operated in Chui province since 2016. As a former government official conveyed to us, this company is registered in the name of a Kyrgyz national, but is in fact owned by Chinese investors. This practice is common among smaller Chinese businesses due to widespread negative public attitudes toward Chinese entities. This negative sentiment has led to anti-mining protests and the closure of several Chinese projects in recent years.

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 being sanctioned for failure to pay license retention fees in time for the 2019–2020 period. After 16 months of unsuccessful attempts to resolve the dispute, the company turned to the court system to have its license reinstated. It should be noted that SCIEM is the main government agency entitled to regulate mining sector licenses with regard to various violations, as per the Law on Subsoil of the Kyrgyz Republic (established in 2012, amended in 2018). For mining entities operating in Kyrgyzstan, compliance in the extractive industry means compliance with SCIEM.

In their complaint against SCIEM to the Bishkek administrative court, the mining company built a case around a procedural breach on the part of the regulator. The company claimed that SCIEM denied the company access to transparent information, as well as the right to respond to and appeal the agency's decisions. According to the complaint, the agency's notification via official surface mail was sent out too late, and it did not reach the company's legal address due to disruptions in state mail services caused by the COVID-19 pandemic. It seems that, for this government agency, the pandemic did not constitute a force majeure that might excuse a party for failing to perform. 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 regarding the suspension of their license. Moreover, based again on late notifications, the company failed to file an appeal against SCIEM's decision to cancel the license before the legally established deadline. The company noted that, at the time of the license cancellation, the license retention fees had already been paid, and the company had fulfilled its financial

obligations to the Kyrgyz state. Given these circumstances, the company asked the court to cancel SCIEM's decision and renew the license. The court ruled in favor of the company, restored the company's right to appeal SCIEM's decision despite the missed deadline, and canceled SCIEM's decision to revoke the company's license.

This case illustrates both unusual and more emblematic aspects of mining-related governance and disputes in Kyrgyzstan. On the one hand, it is unusual for a Chinese business to engage with the court system. As lawyers unanimously stressed in our interviews, such lawsuits are rare, due to Chinese actors' strategy of keeping a low profile and their lack of trust in the court system (Erie 2021). On the other hand, the case also demonstrates the mundane and widespread workings of state bureaucracy in Kyrgyzstan. Procedural violations related to deadlines and the process of communicating with businesses are common among government agencies. These violations directly affect the ability to comply for the actors that the state seeks to regulate. What we can therefore observe here is that the regulator's inability to comply with its own regulations undermines both its own procedures and the very foundation of compliance for mining companies in Kyrgyzstan.

The 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 retention fees in due time. As lawyers confirmed in our interviews, in the majority of cases, courts support the position of state regulators when payments to the state are concerned. It is important to mention that SCIEM's activities are embedded in a twofold institutional logic. On the one hand, SCIEM seeks to ensure that businesses comply with financial regulations in order to secure the flow of funds into the state's coffers. On the other hand, SCIEM aims to protect itself from anti-corruption measures conducted by other state bodies.

The extractive industry, and in particular the business of licensing, is considered an especially corrupt sector of governance in Kyrgyzstan (Wooden 2013; Doolot and Heathershaw 2015). In 2019, after public criticism by the Security Council, a body that provides the president with information, analysis, and advice on issues pertaining to national security (President.kg 2019), SCIEM and its regulation of mining entities became subject to closer scrutiny by law enforcement agencies.⁴ The fear of legal consequences thus led SCIEM officials to adhere strictly to rules and regulations and to leave no room for interpretation by the security services. Accordingly, as we were told in an interview with a former SCIEM department head and a former SCIEM legal specialist, the agency was forced to stick to its initial decision to revoke the loam mining company's license in order to avoid accusations of collusion by law enforcement agencies.

Demanding compliance from mining companies has thus become part of an institutional logic of self-protection which, as specific acts of compliance get overshadowed by bigger inter-institutional dynamics, creates multiple meanings of compliance for businesses. As Haines (2011) argues, the ways in which compliance gets institutionalized in specific contexts

reflect the values, hierarchies, and debates among a given society. The turmoil within Kyrgyzstan's fragmented political institutions, reflective of contradictory interests and values, was exacerbated by the chaos and disconnection of the COVID-19 pandemic. In the long run, the collision of various institutional logics contributed to an overall increase in lawsuits. Pressured by anti-corruption policies, SCIEM came to perceive court cases as a way to resolve disputes by shifting the responsibility to the court system.

From the perspective of Chinese mining companies, this was not necessarily a positive development, since Kyrgyz judges are often described as lacking specialized mining knowledge as well as geological and other required expertise.⁵ Moreover, lawyers point to the lack of impartiality in the court system. While court rulings vary on issues such as labor conflicts and subcontracting, they are predominantly issued in favor of the Kyrgyz state where taxes and payments are concerned. In addition, corruption remains endemic among judges (Transparency International 2022). Against this backdrop, the court decision in favor of the Chinese loam mining company was unexpected and suspicious to all involved parties. This unpredictability was further underlined by the fact that, in the official text of the court's decision, three out of four pages were a copy-paste of the administrative complaint originally produced by the company, and only a short paragraph contained information on the government agency's position. Thus, the court system is neither a stable nor a reliable mechanism in shaping compliance for any of the actors involved.

As this case illustrates, the very notion of compliance is subject to varied interpretations by businesses, state regulators, and the court system. As Haines (2021, 95) notes with respect to compliance in contested spaces, "an explicit hierarchy of obligations may exist" but "such rules may not be present and even when they are, they are unlikely to resolve the contested nature of public value." From the perspective of SCIEM, mining companies in Kyrgyzstan must know and adhere to the rules, even if these are unclear or difficult to access, and the unforeseen disruptions caused by the COVID-19 pandemic are not legitimate grounds to permit more flexibility. This, we hypothesize, is linked to the anti-corruption policy exerted upon SCIEM by other state bodies. Anticipating prosecution and seeking to shift responsibility away from themselves, SCIEM experts opted to transfer contentious cases to an overloaded court system.

In theory, license agreement terms and mining regulations are readily accessible in order for companies to keep informed about their financial and other obligations. Mining companies also receive yearly calculations of various tax-related and other payments due. The regulator maintains that delayed notifications do not exempt mining companies from knowing the law and fulfilling their obligations. However, in practice, small and medium-sized mining companies, including Chinese ones, often do not have the relevant legal expertise or structural capacity to navigate the Kyrgyz market. Rather, mining companies expect favorable conditions and guidance to be provided by both the regulatory regime and the court system. When they are not, rules and procedures become indeterminate, and it becomes unclear which rules must be strictly adhered to and which must not.

3 | A Regulatory Stalemate: A Chinese Marble Mining Company and Conflicting Demands

In this second case study, a marble company became caught between two government agencies engaged in a turf war. In the process, the company faced the impossibility of complying with two contradictory sets of rules. This case involved a Chinese firm which succeeded in obtaining a license to extract marble through an official bid in 2017. In selecting this company and finalizing a license agreement, the state regulator, SCIEM, gave the company access to a licensed territory and signaled a green light to begin operations. However, only 2 years later, the company got caught up in a much-publicized scandal when it began to cut down valuable juniper trees in order to extract marble. The planned deforestation came to the attention of members of the local community, who mobilized protests against the company. The juniper tree became a central focus of debate between the company and the local community for years to come.

Earlier, the company had applied to another state regulator—the State Agency for Environmental Protection and Forestry (SAEPF)—for permission to cut trees in this area, but the agency's new management, under pressure from the local community, suspended the case. In the meantime, as the license to extract marble was put into effect, the company was notified by SCIEM about outstanding financial obligations. As a result, the company found itself unable to simultaneously fulfill contradicting demands. As long as SAEPF withheld permission to cut the trees, preventing the Chinese company from extracting marble and making a profit, SCIEM's demands that the company begin paying licensing fees could not be met.

In this stalemate, compliance with the financial demands of one regulator meant noncompliance with the environmental regulations of the other. As the hierarchy between the two agencies remained unclear, the company's operations were suspended before they could begin. After a deadlock of more than 5 years, the company's lawyers advised their client to sell the license in order to overcome this untenable indeterminacy.⁶ Nevertheless, to date, the Chinese company has kept its license. In the meantime, its lawyers succeeded in persuading SCIEM to defer the license retention fees, citing force majeure. This, however, is only a short-term solution, because when there are no profits, the regulator is permitted to cancel the license at any time.

The case presents different expectations of compliance as perceived by the range of various actors involved. Once the company secured a license and access to a licensed territory, it regarded facilitating operations as the host state's responsibility. The company also assumed that SCIEM was in possession of information about valuable forest species in the area before putting the license on auction and inviting investors to bid. The case demonstrates that the two government agencies do not communicate with each other and lack the capacity to cooperate. They have different notions of compliance and different relations with affected communities. In line with our findings, Ocaklı et al. (2020) make note of the institutional uncertainty surrounding mining governance in Kyrgyzstan and the lack of coordination among state agencies. This case also shows that the company lacks information-gathering mechanisms,

particularly in relation to knowledge of the licensed territory and the affected local residents.

The hierarchy of compliance is also shaped by a fourth actor: the local community. Where the government appears to thrive in indeterminacy, society has to counterbalance this and hold the private sector accountable. Having little *de jure* institutional weight, local communities in Kyrgyzstan have nevertheless become a *de facto* major force in monitoring and enforcing the mining companies' compliance with environmental protection standards, labor policies, and corporate social responsibility policies. By organizing protests (largely peaceful but at times violent), residents in affected areas have been central to extralegal mining governance. Failure to engage local communities at the early stages of decision-making is a strategic mistake made by many mining companies in Kyrgyzstan, including Chinese ones (Doolotkeldieva 2020). This case moreover illustrates the failure on the part of companies to make adequate evaluations of environmental and social effects (Furstenberg 2015), which would have the potential to prevent or mitigate conflicts with these local communities.

This case exemplifies a view of compliance as a “set of means” which serves specific actors to “accommodate themselves to others in their collective life” (Rollason and Hirsch 2021, 13). It thereby underlines that the indeterminacy of compliance is shaped not only by formal actors, rules, and regulations, but also by actors whose role might not be formalized or institutionalized. Local communities are directly involved in parallel compliance measures through politicization, mediatization, and pressures on government and corporate bodies (see, e.g., Boteeva 2023; Ocaklı and Artman 2023; Wooden 2018). They have been effective watchdogs over decades of large-scale extraction endeavors, leading to the shutdowns of Andash, Taldy Bulak, and many other mining projects in the past.

This calls into question assumptions about the availability of information and whether it is possible to assess the totality of factors that determine compliance. Because the involvement of various actors in the extractive industry is so unclear, mining companies must take into account a range of factors in weighing cost to benefit (Khanna 2021). Many companies, including Chinese ones (Erie 2021, 103), admit that they have had to change their approach to local residents, from having zero engagement initially to eventually incorporating local communities into their risk assessments. For small and medium-sized companies, attempts to manage the complexity of these variables are often difficult. The Chinese marble company came up against the impossibility of complying with one set of regulations without violating others. Nevertheless, the company continues its attempts to stay within the confines of the law.

4 | Preparing for Court Just in Case: Anticipating Disagreement for a Chinese Gold Mining Company

In this third case study, a gold mining company was forced to navigate between different strategies of resolving a dispute. Indeterminacy emerged from the company's interaction with a government agency and from the uncertainty of whether to solve the issue with the agency directly or to seek a solution

via the state court system. The case concerns a large Chinese company that exploits several gold deposits and got into a disagreement with SCIEM over its financial obligations to the state. In its efforts to contest payment claims, the company pursued two strategies simultaneously. One was to attempt to resolve the conflict with the government agency directly. The second was to engage in an undesirable lawsuit. The company's pursuit of two costly strategies at the same time exemplifies the indeterminacy of compliance, as the company remained uncertain which rules and regulations—formal and informal—to follow.

Between 2021 and 2022, structural changes in institutional and legislative frameworks related to mining governance (IBC 2022) began to show concrete implications for the finances and operations of mining companies in Kyrgyzstan. The dispute in question arose when a state regulator produced tax estimations based on the company's licensing potential for gold extraction. These calculations far exceeded the company's own estimates and indicated that the company would have to pay several hundred thousand dollars in taxes. Disagreeing with the evaluation—and questioning the “professionalism” of the expert who conducted it—the company decided to approach SCIEM directly to request a new assessment.

The company's lawyers had little trust that SCIEM would be able to resolve the dispute, knowing that anti-corruption policies—as discussed earlier—contribute to a vacuum in decision-making. Government officials are often afraid to make decisions that could lead to accusations of corruption, resulting in decision-making delays at best and institutional paralysis at worst. In this case, SCIEM was initially reluctant to grant the company's request, since such reevaluations raise the suspicion of law enforcement bodies. It took the company multiple attempts to persuade SCIEM. The company engaged tirelessly with the agency, over multiple meetings in which they contested the previous decisions and insisted on a new audit. Suggesting a compromise, SCIEM agreed to create an audit commission, which resulted in a new evaluation that came up with an amount several times smaller than the initial one.

In the meantime, while attempting to settle the issue directly with SCIEM, the company was also advised by its lawyers to prepare for a lawsuit. In the eyes of the company's management, this was a big risk—a lawsuit would deteriorate the company's relationship with the chief state regulator—so a strategy was devised to file a lawsuit but remain ready to withdraw it if a resolution could be reached. The reluctance of the company's management to engage with the state court system could also be partly attributed to a recently lost lawsuit. The company had unsuccessfully attempted to dispute in court the payment of royalties. As lawyers participating in our study explained, state courts in Kyrgyzstan tend to rule against mining investors in such disputes. As mentioned earlier, the ambition to replenish the state's coffers goes hand in hand with the perceived incompetence of judges. The lawyers we spoke to described the alliance of prosecutors, judges, and the tax agency as one that views mining companies as “cows” that should be “milked.”⁷ As former legal advisers for the gold mining company told us in 2022, in light of the company's recent experiences with the court, there was uncertainty as to which strategy could create a condition of compliance.

With little trust in the state court system as an effective conflict resolution mechanism, lawyers typically advise mining companies to solve issues directly with the relevant parties, be they government agencies, local communities, or workers. However, these parties are often incapacitated by complex institutional logics and informal rules. Rules of enforcement and nonenforcement embedded in predictable patterns of influence and trade-offs with government agencies—important aspects of compliance worldwide (Haines 2021, 96)—remain largely unclear.

In the case presented here, the Chinese company hoped to bring the calculation of taxable gold closer to its own estimate without undermining their relationship with an important government agency. One could argue that the company's size and connection to the Chinese state, Kyrgyzstan's largest external creditor, should give it more leverage in disputes with the Kyrgyz state regulator. However, although this leverage can sometimes play a role, it is not normally relied upon in mundane interactions with the host state; rather, it is invoked in extraordinary cases of political turmoil involving physical attacks on Chinese mining projects, suspension of operations, and damage to property, such as the anti-government protests in autumn of 2020. In addition, there is a logic of self-protection between competing government bodies. Institutional deadlocks can only be avoided by activating the highest echelons of power in Kyrgyzstan's presidential administration and the Chinese government—an extraordinary measure, unavailable to many. As the Chinese company's legal advisers told us, even a large company such as theirs lacked the knowledge and information-gathering systems necessary to navigate such an uncertain legal environment.

5 | New Institutions: Creating Compliance Through International Arbitration

Thus far, we have focused on cases that demonstrate how indeterminacy complicates or even renders impossible any clear-cut understanding of compliance in the mining industry in Kyrgyzstan. As we have shown, encounters between companies and state institutions occur in an environment in which the notion of compliance is always slippery, as rules change and contradictions arise. In the final case that we present here, we would like to shift this optic and demonstrate how indeterminacy can prompt the creation of alternative institutions and regulations. This creation of new institutions with new “normative systems” (Tamanaha 2016, 470) in relation to compliance does not necessarily resolve the problem of indeterminacy. On the contrary, as we will show, reliance on Chinese soft power (Erie 2023) may even increase a sense of indeterminacy in the long run.

In the following, we discuss the establishment of international arbitration courts in Kyrgyzstan as part of a longer history of legal changes since the country gained independence in 1991. Throughout this history, the increasing presence of Chinese actors and business interests has led, at least partially, to the legal sector's steady reorientation toward the Chinese language and toward institutions based in China. This development also reflects processes of transformation that have been ongoing since the late 1990s. There are currently two international arbitration courts in Kyrgyzstan, both of which, in keeping with international

standards, are private enterprises. The International Court of Arbitration (ICA) has worked in Kyrgyzstan for over 20 years. The Bishkek International Court of Arbitration for Mining and Commerce (BICAMC) was founded more recently in reaction to the presence of Chinese companies in Central Asia. In the summer of 2022, we conducted interviews with representatives from these two arbitration courts, reviewed internal documents available at the courts, and gathered publicly available information on their activities.

BICAMC, officially founded in 2019, is located in a residence in the outskirts of Bishkek. It is headed by its executive director, Sun Li, and its chairman, Kurmanbek Turdushov, who we interviewed in July 2022. The arbitration court had just recently taken on its first dispute. To date, there is scant research on institutions like BICAMC. Erie (2023, 58) interprets BICAMC as a manifestation of “Chinese soft power of law”—part of a larger story of “how those involved in the international commercial dispute resolution industry in the PRC view China as a torchbearer of economic law and development.” As Erie (2023) shows, there are important synergies between the China-Africa Joint Arbitration Center, the Thai-Chinese International Arbitration and Mediation Center, and BICAMC. However, the case of BICAMC in particular reveals this Chinese-driven approach to arbitration around the world as a multifaceted process.

This became apparent during our interview, in which Executive Director Sun Li repeatedly mentioned the challenges of the legal environment in Kyrgyzstan as a driving factor behind their work. Mr. Li is neither a legal professional, nor a Chinese citizen (though he is ethnically Han Chinese and grew up in Harbin). As a businessman with a Russian passport and decades of experience in trade across Russia and Central Asia, he called the foundation of BICAMC “accidental” (*sluchaino*) and something that “no one had ever planned.” He related how he and Mr. Turdushov initiated the establishment of the arbitration court based on his personal need for legal alternatives in an environment in which no one knows what the rules exactly are. Mr. Li has also expressed this view in a public statement on BICAMC’s website, which reads (in Chinese, Russian, and English):

“Unstable politics, the inefficiency of national courts, and judicial corruption have led to a decline in government credibility. Subsequently, companies and investors in China and Central Asia cannot effectively resolve their problems through the national judicial system for a long time when their commercial interests are violated. When contractual obligations are violated by state bodies (ministry, agency, departments), where they are parties to the contract, it is impossible to achieve a fair resolution of the dispute from the national judicial system.” (Li 2023)

Both in this statement and in our interview, Mr. Li emphasized that BICAMC follows the 1958 New York Convention on international arbitration,⁸ demonstrating to clients that the court’s verdicts are internationally recognized and follow the industry standard. By providing services in Chinese for Chinese

companies and businesspeople, BICAMC aims to open up an officially recognized pathway of dispute resolution outside the framework of the Kyrgyz legal system. Mr. Li’s ambition is to offer thereby a way out of the dilemma of compliance that emerges from the indeterminacy of rules imposed on foreign investors by Kyrgyz state agencies. Thus, international arbitration services like BICAMC target Chinese companies, but they draw on a problem that also affects other foreign companies and businesspeople in Kyrgyzstan. As pathways to compliance remain indeterminate for everyone, Chinese actors and influences are just part of a larger process.

The International Court of Arbitration in Affiliation with the Chamber of Commerce and Industry of the Kyrgyz Republic (ICA) has been at the forefront of this endeavor for over two decades. ICA chairman Shamara Maichiev has been involved in the court since its founding, and he told us in a July 2022 interview that the aim since the beginning had been to attract foreign companies active in Kyrgyzstan. He stated that, since 2004, his court has considered 1400 disputes, of which 60% resulted in final awards. At the time of our interview, the court was working on 79 cases involving actors from 13 different countries, including Russia, Kazakhstan, and Tajikistan, as well as China (with 8 cases). This emphasis on the former Soviet space is reflected in ICA’s services being offered in Russian and English. However, as Mr. Maichiev also underscored, ICA has firm ties with arbitration courts in Shenzhen, Guangzhou, and Harbin, and these collaborations have brought even greater linguistic expertise to the roster of ICA’s listed arbitrators, many of whom are based in China.

Moreover, cooperation with BICAMC has been close—Mr. Maichiev is one of BICAMC’s co-founders and serves on its advisory board. Li and Turdushov are also listed as arbitrators for ICA. The representatives of both ICA and BICAMC used the term “friendly competition” to describe the two courts’ relationship. Mr. Li, drawing on his long-standing experience in Eurasian markets, makes a restaurant business analogy. He told us that a street with multiple and diverse types of restaurants naturally attracts more customers and that, ultimately, both courts would like to entice more foreign companies to opt for international arbitration. One feature of this endeavor is an emerging orientation toward Chinese business and legal expertise, but this does not come at the expense of pre-existing institutions such as ICA. It is in fact a continuation of a much longer process of seeking alternatives to the legal system provided by the state, which is also demonstrated by an increasing ambition to move the process of arbitration to virtual spaces. Both ICA and BICAMC have used the COVID-19 pandemic—with China’s three-year-long Zero-COVID strategy—as an opportunity to develop processes and acquire equipment for online arbitration. While BICAMC’s overall development has been hampered by the pandemic and results remain to be seen, ICA is already highly active and, as they report, successful in the field.

The advent of BICAMC and ICA indicates that the practice of compliance goes beyond merely negotiating, making legible, and following rules. In an environment in which indeterminacy dominates, the creation of institutions that can bypass this indeterminacy is a central part of establishing compliance. Yet, while attempting to create compliance, further possibilities of

indeterminacy develop. The strong backing of such endeavors by Chinese capital, institutions, and expertise favors the interests of Chinese companies that often prefer to avoid domestic legal systems (Erie 2021). As the history of the ICA shows, this process predates the presence of Chinese actors in Central Asia, and should be seen as part of a broader engagement of foreign companies and investors in Kyrgyzstan. Yet, over the past decade, Chinese actors have strongly risen in importance for the Kyrgyz economy and, accordingly, more attention has been paid to the needs of and opportunities offered by Chinese companies (van der Kley 2020). The fact that BICAMC explicitly mentions mining in its name is no coincidence. Extractive industries in Kyrgyzstan are closely linked with China, and the sector's environmental impact and contentious role in society make it vulnerable to disputes. In his public statement, BICAMC's executive director argued that clear rules and an "effective commercial dispute resolution mechanism" are a precondition to "develop and expand" cooperation with China and Central Asian states (Li 2023). Yet, as Mr. Li and Mr. Maichiev told us, a vast majority of foreign companies, businesspeople, and investors, including Chinese ones, avoid getting involved in any sort of legal procedure at all. Rather, they pursue informal agreements in order to attempt to weather corruption and political change, and to prevent getting bogged down in lengthy court proceedings. In this pluralistic and often confusing setting of norms, rules, and resolutions, international arbitration is a key component in the broader context of the indeterminacy of compliance in Kyrgyzstan.

6 | Compliance and Avoidance in an Indeterminate Legal Environment

The cases presented in this article examine the possibility of compliance in an indeterminate legal environment from four different perspectives. The cases from Kyrgyzstan's mining sector demonstrate the extent to which extractivism in the country is shaped by this indeterminacy. These cases thereby offer a view of compliance and noncompliance as embedded within larger, changing historical and political landscapes, rather than as merely a result of narrow interactions between economic actors, governing institutions, and the law. On the one hand, this has broad implications for the study of compliance in Kyrgyzstan's extractive industry, as many of the legal processes and debates that we observed in the course of our research are not limited to Chinese companies. On the other hand, the perception of a company as being Chinese does play an important role in Kyrgyzstan; Chinese companies often grapple with a hostile public perception, and the pressure to find ways to comply and to not stand out is high.

We have argued that indeterminacy emerges from various institutional and political processes, including competition between state agencies, anti-corruption measures, unexpected political changes, transforming bureaucracies, and disruptions in communication. In the first case study, a mining company disobeys regulations, but efforts to make the company comply through law enforcement are hindered by corruption within state institutions. In the second case, indeterminacy results from competing interests between two government agencies, with a mining

company caught in the middle. The third case demonstrates the multiple avenues to compliance, and the uncertainty of determining the "most compliant" pathway. These three cases thus recall what Khanna (2021, 14) identified as one of the core understandings of compliance, namely, compliance as a process that "involves gathering information about the thing(s) with which [one] wish[es] to comply and [the] responses to that information." In all of these cases, this process of information gathering is hampered, or there are, in fact, different sets of information that are contradictory. In short, in all three cases, compliance is rendered indeterminate and the costs and benefits of different courses of action become impossible to assess.

The fourth case, on international and partially Chinese-driven arbitration in Kyrgyzstan, is closely linked to the preceding ones. In a legal environment that Chinese actors deem uncertain and unstable, there is a demand for solutions that promise to create compliance, or that at least bypass Kyrgyzstan's state courts. Looking at two international arbitration courts in Kyrgyzstan—one specifically set up for Chinese clients—we argue that the establishment of such institutions can be seen as a result of indeterminacy. These courts attempt to provide Chinese investors with a sense of what compliance might look like beyond the contradictory regulations of government agencies and outside Kyrgyzstan's state legal system.

This fourth case also illuminates further aspects of compliance. One of these relates to van Rooij and Sokol's (2021b, 2) observation that, globally, compliance has become "an industry complete with its own professional organizations and is creating an ever-growing stream of jobs." The establishment of profit-oriented international arbitration courts in Kyrgyzstan is part of this development. The indeterminacy of compliance in Kyrgyzstan not only restricts Chinese companies within a straitjacket of contradictory norms and institutions, it also pushes local and Chinese actors alike to pursue alternative pathways. However, this search for alternatives does not necessarily arise from an aspiration to comply. As Erie (2021, 114) shows with reference to various comparable cases around the world, the avoidance of state legal systems is widely preferred by Chinese actors, and the creation of "inter-hub networks" and "enclaves of legal modernity which concentrate [Chinese] state resources—including human capital and legal services" often "disadvantage onshore courts and other domestic legal institutions."

In Kyrgyzstan, it is too early to tell whether international arbitration courts will become viable solutions on a large scale for Chinese businesses. Since Chinese investors entering the Kyrgyz extractive industry tend to lack structural capacity and legal expertise, it remains to be seen whether international arbitration courts will be a feasible avenue for them, or if they will instead resort to illicit and informal methods of conflict resolution. Avoidance of state legal systems can be linked to the low status and capacity of many companies, independently of their origins. Not only Chinese entities are advised to bypass state courts, but other mining entities too. However, as Erie (2021) emphasizes, this avoidance indeed reflects structural characteristics of Chinese business conduct abroad. As all four examples presented in this article illustrate, there are strong incentives for Chinese companies in Kyrgyzstan to look for alternative

pathways that allow them to avoid the indeterminate legal environment.

That being said, the indeterminacy of compliance has concrete implications for public interests, environmental protection, and labor rights, as well as international business climate rankings which Kyrgyz authorities aspire to enhance. One of these implications is environmental degradation, with often devastating outcomes for glaciers, forests, potable water, and flora and fauna that continue to serve as sustenance to vulnerable social groups (Tiainen et al. 2014). Government oversight of such environmental impacts is uneven; government agencies are more likely to react where public outcry is visible, or when state revenue is at stake. A notorious example of discretionary environmental protection is the destruction of glaciers near the Kumtor gold mine. In 2017, the Kyrgyz parliament adopted amendments to the Water Code that legalized mine production at two glaciers, Davydov and Lysiy (Eshalieva 2021). This dynamic could push corporate actors to abandon their ambitions of compliance in the hope that state regulators will not notice environmental violations, especially in remote or uninhabited areas. Where local communities are present and well-organized, there may be pushback against such violations. Yet communities are merely informal regulators, and they do not have the structural capacity to bear the disproportionate weight of an indeterminate legal environment.

Moreover, mining companies are often advised to resolve their issues directly with stakeholders in order to prevent escalation and the involvement of state regulators and courts. This strategy is employed widely in labor conflicts, where improvements in safety and work conditions, as well as wage increases, can be achieved between corporate bodies and labor representation without the involvement of a third party. This often boosts workers' leverage over companies where work collectives are well organized. But in contexts of weak self-organization, an indeterminate legal environment can push corporate actors to ignore labor demands. As a result, there is a mix of success and failure in addressing labor demands in Kyrgyzstan's extractive industry. As our cases highlight, the rules and regulations in resource governance are still far from effective, despite the industry's importance to Kyrgyzstan's official development program and its far-reaching implications for domestic institutional coherence and international rankings of business-friendly environments.

Finally, the indeterminacy of compliance hinders public interests in Kyrgyzstan, as resource extraction is an official economic driver, and China is one of the sector's largest investors. The lack of institutional coherence, the weakness of law enforcement, and the absence of institutional capacity among local institutions impede the needs and rights of communities affected by mining and of the public at large. The lack of transparency in institutional regulations fosters corruption among government officials, courts, judges, and mining companies. Overall, this leads to the loss of public control over how revenue from extraction is generated and distributed. While some actors in the industry have relative power and agency, and small concrete steps can be made, indeterminacy is a structural issue. Some foreign investors and Kyrgyz business associations lobby government bodies for more transparency and coherence; some mining entities engage with local communities more than they have done in the

past. Yet, local institutions continue being torn between the needs of aggrieved communities and profit-oriented companies. As we noted in the introduction, we see this indeterminacy as being embedded in the broader political and historical conditions of Kyrgyzstan's political economy.

7 | Conclusion

Chinese mining companies and other Chinese businesses in Kyrgyzstan coexist alongside a multitude of enterprises, both local and international. Thus, an analysis of compliance needs to take into account both the context of the Kyrgyz economic, regulatory, and legal environments, as well as features specific to Chinese business practices. The indeterminacy of compliance, we argue in this article, emerges precisely from the interplay of these various elements.

Against this backdrop, an important question for future research would be to explore what role indeterminacy plays in other contexts in Eurasia and beyond where Chinese actors engage with, or attempt to avoid, domestic legal systems. A focus on how the constellations of indeterminacy transform over time in various contexts appears crucial to this question. Based on the four cases analyzed in this article, we propose that it would be beneficial to attend to the following aspects in particular:

1. How has the regulatory environment developed over time? What are the histories of specific regulators and how do they relate to one another? Do they operate under a common framework, or do they pursue individual agendas with contradicting sets of regulations?
2. How does the nature of the regulatory environment under an authoritarian regime transform in response to Chinese investments? Does political signaling make a concrete difference in securing clear rules of the game for investors? This research direction seems particularly relevant for Eurasia, where various political regimes have "hijacked" state bureaucracies in their dealings with big investors.
3. What is the status of foreign companies and other business actors in public opinion and among the bureaucratic class? Do Chinese entities have a particularly negative or positive image, and does this image differ from that of companies of other national origins? Do Chinese companies engage in shaping a more positive image among political elites and the general public, or do they tend to adopt a low-profile strategy?
4. Do Chinese companies work amicably with regulators and engage with the domestic legal system, or do they pursue paths of avoidance? Alternatively, is there any indication that they pursue some or all of these avenues at the same time?
5. How do the strategies and tactics of Chinese entities in domestic environments relate to their size, their connection to the Chinese state, and their investment type?
6. Are Chinese actors actively creating new legal institutions? If so, to what end do they create them, who funds them, and how do they relate to the domestic legal system?

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Conflicts of Interest

The authors declare no conflicts of interest.

Data Availability Statement

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

Endnotes

¹In this article, we focus specifically on licensing and mining-related payments and taxes. This sphere is where we observed a relatively high degree of interaction between government agencies, mining companies, and the court system, as it closely involves legislation, monitoring, and enforcement. However, other areas affected by extraction, such as the environment and local livelihoods, also suffer from weak law enforcement or a lack of regulation. For instance, according to the current Minister of Ecology, only 30% of mining entities, or 66 out of 1543, were examined for environmental protection practices in the past 10 years (24Kg 2022).

²The Kyrgyz authorities count only those goods that enter and stay in the country, while Chinese customs authorities record all goods “exported” to Kyrgyzstan even if they only transit through the Kyrgyz territory. Thus, Chinese statistics typically show much higher numbers—\$22.7 billion for 2024.

³The partially anonymized list of key sources includes the following individuals: 1. Former legal specialist for SCIEI #1; 2. Former legal specialist for SCIEI #2; 3. Former legal adviser for a Chinese marble extraction company; 4. Former legal adviser for a Chinese gold extraction company #1; 5. Former legal adviser for a Chinese gold extraction company #2; 6. Former head of the resource policy department at SCIEI; 7. Corporate Social Responsibility specialist #1; 8. Corporate Social Responsibility specialist #2; 9. Representative of the International Business Council; 10. BICAMC Executive Director Sun Li and Chairman Kurmanbek Turdushov; 11. ICA's Chairman Shamara Maichiev.

⁴Based on interviews with several lawyers who represented Chinese companies in court and in disputes with government agencies; Bishkek, 2022.

⁵Based on interviews with several lawyers working with mining companies and the state regulator; Bishkek, 2022.

⁶Based on interviews with former lawyers for the marble extraction company; Bishkek, 2022.

⁷Based on interviews with several lawyers that represented both Chinese and other companies; Bishkek, 2022.

⁸Kyrgyzstan signed the so-called 1958 New York Convention—officially the Convention on the Recognition and Enforcement of Foreign Arbitral Awards—in December 1996.

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