

TRANSPARENCY IS A KEY TO SOLVING CONFLICTS BETWEEN STATE AND BUSINESS

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Introduction

During the past few months, tension has grown surrounding a company that produces gold at the Kumtor mine. The company is the seventh largest in the world and third largest in the CIS. Politicians, who also initiate bills aimed at nationalizing mines and block the roads using a different group with different demands, are demanding an agreement between the Canadian CAMECO Corporation and the Kyrgyz government be reconsidered. Meanwhile, the company announced that it will suspend investment.

If we conduct a surface analysis, it is clear that the Kyrgyz government is mainly responsible for the situation. What is more important, experts say, is that the new authority continues to repeat significant mistakes of the old regime, thus projecting the same mistakes regarding other mines that are just now being processed.

Background of the problem: non-transparency in relations with investors

One of the main reasons for the current situation is a chronic lack of transparency in relations between the authority and investors. Since signing the first agreement on Kumtor mine processing in 1992, the Kyrgyz government has never made public the details or results any agreements with international investors. A secretive atmosphere became the reason to accuse authority of possessing a post-soviet mentality, a careless attitude toward the interests of ordinary

citizens, and, most notably, corruptibility of even the highest officials.

Experts offered a long list of issues on which greater transparency might have prevented the majority of today's tension. The list includes but is not limited to the following questions:

- On what grounds was the CAMECO Corporation chosen to process the mine? What were the alternate companies and what were the criteria for selection?
- What were the details of the signed agreement? Did the agreement contain articles on environmental protection? If so, what were the details?
- Why was there a decision to give up state profit shares of the sale of gold but not from gold itself? To what extent did the state and the company observe adopted obligations? What was the reason for changing the technical and economical feasibility study that increased cost of the project for over \$ 150 million?
 - <> What was the reason for the decrease in the state's share of the project when Kyrgyzstan's shares of Kumtor Operating Company were transferred to a newly founded international company, Centerra Gold Inc.? To what extent was it justified?

Absence of or unclear answers to these questions laid a strong foundation for distrust of both the government and the operator of the mine, and that distrust showed openly after the collapse of Akaev's regime. But the secretive atm-

osphere did not disappear after the March events. Instead, scandals followed, with the cancellation of Oxus Company's license, and the active involvement of local residents on issues of gold production began. Lack of transparency was the reason the population began searching for the "truth" on their own and, for certain politicians, was an opportunity to pick up personal dividends.

Status Quo and possible consequences

On March 26, 2007 the Kyrgyz Parliament adopted a bill entitled "On reconciliation of legislation with issues surrounding the processing and extraction of gold" after the first reading. The bill provides for the creation of a state corporation for the production and extraction of gold, as well as for the transfer of Kumtor, Jerooy, Taldy-Bulak Levoberejnny and other mines to the balance of the newly formed state corporation on gold extraction.

The bill is labeled as an attempt to nationalize the gold industry, but closer examination indicates more of an attempt to expropriate. Nationalization should mean that investment is returned. In the case of Kumtor, according to various calculations, the amount starts at \$200 million and could reach \$1 billion and the Kyrgyz government is not likely to repay such a sum.

Passage of the bill will bring negative consequences for country's economy. First, revenue from Kumtor comprises up to 7 per cent of the state budget and 37 per cent of all exports. Suspension operations will result in a sharply negative reaction, especially taking into account the difficult social and economic situations. Kyrgyzstan, in today's conditions, cannot independently process the mine and a new investors will inevitably be courted.

Second, the precedent of expropriation, or even an attempt to expropriate, will resonate loudly in the international business community. The country's investment rating will greatly suffer; investors will simply be scared to come to Kyrgyzstan with money. A fall in investment attractiveness is dangerous for Kyrgyzstan because there are no abundant natural resources, especially set against the backdrop of the neighboring markets of Kazakhstan, China and Tajikistan. A new lawsuit and threat of unfavorable decision for the country by the International Arbitration Court might also emerge, in addition to current lawsuit of Oxus Company against the government for \$300 million.

Conclusion

The problem is not in the attempt to reconsider the agreement in order to improve conditions for the state. Such revisions are probably necessary. It is no secret that starting in the 1990s officials were incompetent on issues of gold extraction when drawing up agreements with private investors and everybody remembers the legendary phrase of the Prime Minister Chyngyshev (who chaired the cabinet when the agreement was signed) that in Kyrgyzstan "only lazybones and fools do not steal."

Investors are, first of all, businessmen for whom profit is important. It is logical and expected that they have their own methods of lobbying and pressuring.

In this sense the agreements should be renegotiated if necessary, yet strictly within the legislation and in an atmosphere of transparency. All details of the agreements, amendments introduced up to this point, and justification for any renegotiation should be made public at the expert level for both the local and foreign public. Only transparency and a strong rationale can persuade the international community and business world that reconsideration is (or is not) needed and that the government will guarantee legality. This will be a good alternative to the road blocking and seizing foreign of investors' property that has so far been used to pressure businesses and the state.

Transparency and rule of law can also be a solution to the issue of protests. The presence of an open and fair authority will allow local residents and NGOs to find answers to their questions, while preventing politicians from manipulating the population for personal gain.

The state, in the person of its leader, should acknowledge that not only Kumtor is at stake but also other existing and potential mines in Kyrgyzstan, each of which fuels our economic development, increases the wealth of all people, and guarantees a prosperous future. The development and welfare of the country, as well as its economical and political sovereignty, depend on the state's policy, not the decision of an investor.