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New securitisation rules

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Kazakhstan's bank regulatory authority, the FMSA, has adopted a set of new prudential rules regarding bank securitisations (FMSA rules). Unlike the country's law on securitisation, the FMSA rules are applicable to both domestic and cross-border securitisations. The FMSA rules, which took effect on April 28 2008, set forth the criteria for banks' capital relief in true-sale securitisation transactions. They essentially adopt the relevant Basel II rules and, therefore, are a welcome clarification to the impact of a securitisation on the capital adequacy requirements for Kazakhstani banks. There are, however, several differences from Basel II.

Operational requirements

FMSA approval
The FMSA rules require written approval from the FMSA in order for a bank to realise capital relief from a securitisation. The originator bank must demonstrate to the FMSA that the other operational requirements in the FMSA rules have been satisfied. Basel II contains no such approval requirement.

Control of SPV
The FMSA rules go further than Basel II in clarifying the limits on indirect control of an SPV transferee. Under the FMSA rules, the originator bank may not own any of the SPV's voting shares and may not elect a majority of the members of the SPV's board of directors or management board or otherwise determine the decisions of the SPV.

Repurchase option
Under Basel II, the ability to repurchase from the transferee the transferred credit risk exposures (or the obligation to retain the risk of the transferred exposures) is deemed evidence of the originating bank's effective control of the credit risk exposures. The bank must hold regulatory capital against such exposures. The FMSA rules state, in contrast, that the ability to repurchase credit risk exposures does not affect the bank's right to capital relief, provided that the repurchase is at fair market value.

Legal opinion
In contrast to Basel II, the FMSA rules do not require an opinion from qualified legal counsel as long as the transferred exposures have been isolated from the originating bank and are beyond the reach of the transferor and its creditors (a true-sale opinion). We believe that the FMSA wanted to prevent Kazakhstani banks from opinion shopping for a true-sale opinion from counsel with insufficient experience and then relying on such an opinion as a basis for capital relief in cases where it is otherwise questionable whether the bank retains effective or indirect control over the transferred exposures.

Treatment of securitisation exposure

Capital deduction threshold
Under the FMSA rules, securitisation exposures having a rating of less than BB- by Standard & Poor's (or the equivalent by another rating agency), or a rating of BB- on the national credit rating scale by Standard & Poor's (or the equivalent) must be deducted from the originator bank's capital. The threshold under Basel II is higher, at B+. Also, the FMSA rules do not mention short-term exposures. In contrast, Basel II requires certain short-term exposures to be deducted.

Deduction of unrated securitisation positions
The FMSA rules change in several respects the Basel II exceptions to the general treatment of unrated securitisation positions. For example, Basel II provides that unrated securitisation positions must be deducted from capital (with certain exceptions). The deduction of unrated securitisation positions under the FMSA rules, however, depends upon the implied credit rating assigned by the originator bank in accordance with FMSA guidelines. Basel II does not allow for such implied ratings.

Servicer liquidity facility
The FMSA rules differ from Basel II with respect to the eligible servicer liquidity facility in several respects. For example, unlike Basel II, in order for a 0% credit conversion factor to be available, the FMSA rules clearly require that: (i) the servicer's entitlement to full reimbursement of advances must be unconditional; and (ii) the criteria applicable to eligible liquidity facilities must be satisfied.

Financial and corporate

Recommended firms
Tier 1
White & Case
Tier 2
Baker & McKenzie
Tier 3
Bracewell & Giuliani
Denton Wilde Sapte
Tier 4
Dewey & LeBoeuf
Michael Wilson & Partners
Salans

Kazakhstan's real-estate sector has felt the brunt of global credit problems. With the price of foreign debt rising, cross-border finance deals are falling by the wayside, and the issuance of notes, previously a mainstay of the country's economy, is becoming less and less common. "It is unclear when regular debt capital markets work will be back to the full scale," says one local lawyer.

Instead, Kazakh borrowers are increasingly looking to syndicates of local banks to meet their funding needs. The search for alternative finance has also led to an unexpected surge in derivatives transactions under the Isda Master Agreement.

Meanwhile, transactions are still going strong. Oil-and-gas deals remain prevalent in the market as foreign investors look to diversify their portfolios into the stable commodities sector.

But there are limits: a recent merger approach from Russian rival Metalloinvest for Kazakhmys, the country's mammoth copper-mining company, is likely to meet with a protectionist *impasse*. The government, which already owned 15% of Kazakhmys, recently purchased further newly-issued shares in the company. The move tallies with government activity in the oil-and-gas sector: in July 2008, the state took a majority stake in oil producer MangystauMunayGaz, buying out Indonesian company Central Asia Petroleum.

White & Case

Clients and peers hold Yuriy Maltsev, a partner at White & Case, in high regard for financing work in the country. "He's very good in finance, no question about that," remarks a rival. The firm yet again graces the first-tier position for another year.

One client praises Maltsev for his deep technical knowledge experience of both local and international business situations, adding: "Yuri is very well-connected, which is helpful." Another client says: "He's very good, very practical and very pragmatic."

The firm acted on Zhaikmunai's $100 million GDR listing in London, one of the first by a limited partnership. The deal required a change in law in the Isle of Man, as well as approvals by the Kazakh authorities. Merrill Lynch International and WestLB retained the firm to advise on a third note issuance, totalling $500 million, under the DPR securitisation programme of Kazkommerts DPR Company.

On the private-equity and M&A side the firm assisted Tau Capital on issues relating to its investments in Kazakhstan with fundraising amounting to $250 million. A significant transaction for the firm was acting for principal shareholders of the JSC ATF Bank on the $2.2 billion sale of a majority shareholding in ATF to UniCredit. The firm also advised Kazakhmys on its takeover bid for Eurasia Gold, valued at $260 million.

The firm boasts a strong hydrocarbons joint-venture and project finance practice. JSC Atoll engaged the firm's practice in its proposed $6 billion financing of an ethane extraction unit and integrated petrochemicals complex in Kazakhstan. The firm's client portfolio includes many well-known names such as Deutsche Bank, Goldman Sachs, Morgan Stanley, IFC and Shell Capital.

Leading lawyers
Yuriy Maltsev

Baker & McKenzie

Baker & McKenzie has been kept busy with Isda-based derivatives transactions for international banks, having completed seven such deals in 2008 at the time of writing. Also in the capital markets, the firm advised ING Bank as underwriter of the paper producer Kazakhstan Kagazy in relation to its $273 million IPO on the London Stock Exchange.

In addition, the firm was involved in a few Kazakh private-equity deals. For example, it acted for the purchaser of a former factory site in Istanbul, and represented Goldman Sachs in relation to its private-equity investment into the pipeline manufacturer Kazstroyservice. Among its work in privatisation, the firm advised EBRD in relation to its $50 million investment in a state pension fund.

The key lawyers at the firm are Curtis Masters, John Connors and Azamat Kuatbekov. Both Connor and Kuatbekov specialise in mining law and oil-and-gas law. Masters has particular expertise in derivatives, securitisation and private equity.

Leading lawyers
Curtis Masters

Denton Wilde Sapte

Denton Wilde Sapte ended 2007 with a highlight deal, acting for ENRC, a metals and mining conglomerate, on its IPO on the London Stock Exchange and subsequent listing on the Kazakhstan Stock Exchange, raising $2.8 billion.

ING bank also sought the firm's services on the $100 million IPO of GDRs of Zhaikmunai on the London Stock Exchange. Moving to the debt side, the firm acted for JP Morgan and UBS in relation to a $500 million issuance of Eurobonds by a Kazakh bank through its Dutch finance subsidiary. It also acted for Dresdner Bank and Citigroup as underwriters of a $700 million Eurobond offering by JSC Halyk Bank Kazakhstan.

Denton Wilde Sapte is especially active in the oil-and-gas sector, and was this year involved in Roxi Petroleum and WH Ireland's acquisition of equity interests in two Kazakh holding companies, as well as Roxi Petroleum's placement of £65 million shares on the London Stock Exchange. In addition, the firm represented CTC Media on its acquisition of a stake in a Kazakh TV channel for an undisclosed amount.

Partner Joel Benjamin is named as a leading partner by rivals and clients for his long experience in Kazakhstan.

Leading lawyers
Joel Benjamin

Michael Wilson & Partners

The middle of last year saw Michael Wilson & Partners acting for Marubeni Corporation and Tepco in their acquisition of an indirect participatory interest in the Kharassan-1 and Kharassan-2 uranium deposits in Kazakhstan for an undisclosed amount.

Name partner Michael Wilson comes in for praise from clients, particularly in deals requiring tough negotiation. "He is well-connected and the people in Kazakhstan are little apprehensive in tangling with him," says one client.

Citibank consulted the firm as arranger of a second ECGD loan facility, valued at $28.6 million, to Kar-Tel guaranteed by VympelCom. Michael Wilson also had a role on one of the highest-profile international deals, advising RBS on local aspects of its global consortium takeover of ABN Amro.

Leading lawyers
Michael Wilson

Salans

"They will supply you with good, fast information," says a client of Salans, adding that he would always go to the firm for independent external opinions.

One of the key deals for the firm this year was its service as counsel to UniCredit on its closing acquisition of shares in ATP Bank worth $2.2 billion. A second notable mandate was advising EBRD in relation to a loan to Kar-Tel, valued at $130 million.

Various international banks, such as ABN Amro, have retained the firm for counsel on Kazakh deals. For JP Morgan Chase, the firm advised on Isda-based investment issues under Kazakh law. Morgan Stanley also consulted the firm in relation to its $290 million loan to Bank TuranAlem.

Kazakhstan is plentiful in natural resources, and Salans has positioned itself well for deals in this sector. The firm recently acted for Kazakhmys in relation to its $1.5 billion acquisition of Ekibastuz power plant and coal producer Maikuben West. The firm also represented the Cameco Corporation in relation to setting up and operating a uranium conversion facility in Kazakhstan.

Although real-estate investment has experienced a dip in central Asia, the firm provided advice to Kazemir Aktau City Development in relation to real-estate projects on the coast of the Caspian Sea.

Leading lawyers
Abai Shaikenov