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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 accor-

dance 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	Bracewell & Giuliani Denton Wilde Sapte Salans
Tier 3	Baker & McKenzie Dewey & LeBoeuf Michael Wilson & Partners

Kazakhstan has not been immune to the double-hammerings of first the credit crunch in early 2008 and the subsequent global economic collapse after Lehman's default last autumn. Market perception of risk on the country's assets took a hit with its lifeblood oil sector suffering as global oil prices sharply weakened this year. Banks curtailed lending to Kazakh players, external funding was reduced and domestic liquidity tightened.

Market development has been very slow and there have been few large deals for the law firms this past year. Commentators are not optimistic of the situation changing anytime

soon, since credit growth remains at a crawl and global commodity prices are still weak.

One bright spot is that foreign direct investment into the country's main energy-generating projects is steady. "The big deals are not coming back anytime soon," says one practitioner. "But it's not so bad because I have noticed a pick-up, and we are seeing a number of small transactions out in the market."

The most high-profile legal work for the law firms are in the domestic M&A market, with government-sponsored capital injections and the precedent-setting financial restructurings of two of the country's key banks, Alliance Bank and BTA Bank.

Another highlight for regulatory development was the recent completion of Kazakhstan's new restructuring law, which had experts from White & Case Almaty assisting on its drafting. Commentators have noted a shift in work towards financial restructurings and deal amendments, and pin the reason for this partially on the financial crisis.

White & Case

Standing alone once again in the top tier is Almaty financial and corporate law powerhouse White & Case. "They have the number one capital markets practice here and a unique focus on capital markets and finance work," says a competitor.

Though not the biggest shop in town, the team has undergone a slow and steady expansion with the addition of two new fee-earners. Clients favour the firm for financial work and appreciate its deep bench of experience. "I trust them as they are the leading firm for the finance markets and have done many complex deals," notes one client. "Yuriy [Maltsev] is very good and professional, he can handle everything without me needing to worry."

Maltsev and Walter Daniel head the team, which takes pride in its crucial involvement in nearly every debut project in the Kazakh market; for example, the firm acted on the first sovereign Eurobond. This past year only two were issued and White & Case advised on both.

The team features in every large transaction in the country, including the precedent-setting restructurings of two Kazakhstan banks – Alliance Bank and BTA Bank. These high-profile cases are critical to the market for their *do or die* workouts, with Maltsev and his team acting for each bank. Of note is the firm's recent involvement in drafting Kazakhstan's new restructuring law which showcases its position at the forefront of the legal space and its role as a trusted advisor to the government.

Another highlight is the firm's work for the Republic of Kazakhstan through its holding fund to provide capital injections to two domestic banks, totalling \$500 million. Additionally the team is acting for the dealers in relation to KazMunayGas' upgrade of its global MTN programme from \$3 billion to \$5 billion, and its issuance of \$1.5 billion of notes.

Leading lawyers

Yuriy Maltsev

Bracewell & Giuliani

Noted for its forté in the capital markets space, Bracewell & Giuliani maintains a robust workflow this year acting on a series of MTN programmes. Managing partner Gregory Vojack remains a leading presence in the market with peers and clients alike acknowledging his wealth of experience: "Greg has been here a long time and he knows how to do things in central Asia," says a rival. Another admits: "Greg has the lion's share of bond work."

One client has flattering words for Vojack: "I like working with him because he has done many Eurobond and different debt offerings. He is very hands-on, responsive and organises the team well."

Core strengths of the firm span beyond capital markets into finance, energy projects, restructuring and liability management. Key clients are domestic Kazakh financial institutions, global investment banks, state-owned companies, international agencies, private sector issuers and numerous energy businesses. These include Merrill Lynch, JPMorgan Chase, the World Bank, KaztransOil and KazTransGas.

In the M&A market, the Bracewell team advised purchaser SBV V Kazakhstan on its \$51 million acquisition of shares of a group of Kazakhstan companies that produce and sell bottled mineral water and beverages.

Vojack and his team also featured in three MTN programme transactions. Twice the firm counselled Eurasian Development Bank on its issue of tenge-denominated notes under a \$3.5 billion Euro MTN programme valued at KT15 billion (\$99.5 million) and on the update of its other \$3.5 billion Euro MTN programme.

Last summer the firm acted for KazMunayGas Finance as issuer and KazMunayGas as guarantor on the establishment of a \$3 billion Global MTN programme in accordance with Reg S/Rule 144A. This was the largest emerging-market corporate bond ever done in the jurisdiction's history.

Leading lawyers

Gregory Vojack

Denton Wilde Sapte

"They are quite active in the market with good partners," comments a rival. "I see them quite a bit on the other side." Denton Wilde Sapte has a long-established track record in the Almaty market for its banking and finance, capital markets and M&A work. "This is one of the better recommended international companies in Kazakhstan," says a banking client. "They have an excellent team, which is working with the clients professionally."

Leading lawyer Joel Benjamin has been a fixture in Almaty for over 15 years and frequently features in the market's most prominent deals. His solid reputation as a go-to lawyer in Kazakhstan is one reason work continues to roll-in to Denton Wilde. "Joel Benjamin gives accurate and commercial advice based on his experience in the market," says a financial client. "He pays attention to detail and is generally pleasant and trustworthy to deal with."

Another client agrees: "I will use Joel because of his experience, professionalism and understanding of the client's demands."

In addition to a strong finance practice, the firm boasts a top-notch energy practice with leading oil and gas specialist Marla Valdez heading the office as managing partner. The Almaty branch of Denton Wilde Sapte is part of the largest international firm network in central Asia and it counts the region's top corporates and financial institutions as clients.

Showcasing the team's command of the M&A market, Benjamin and his team worked for the acquirers who purchased the International Bank of Almaty and acted for ENRC (Eurasian Natural Resources Corporation) on its \$200 million acquisition of a 25% interest in Shubarkol Komir, a domestic thermal coal producer. Alnair Capital also mandated the firm on its \$500 million purchase of a 25% stake in Kazkommertsbank.

In the capital markets sector, Benjamin advised the underwriter of the proposed offering of global depository receipts on the LSE by a holding company with businesses in central Asia. The team is also representing the creditors of Alliance Bank in its restructuring.

Leading lawyers

Joel Benjamin
Marla Valdez

Salans

Salans has largest number of practitioners on the ground in Kazakhstan and has been a steadfast presence in the market for 15 years. Commentators note the firm's focus on financing transactions, but its oil and gas practice is also highly-regarded, with Almaty partners Aigoul Kenjebayeva and Abai Shaikenov winning plaudits from the market for their work. "Those two are very fine lawyers in their specialties; Aigoul for oil and gas and Abai for projects," says one competitor. "Salans is probably one of the leading oil and gas firms here and I'd recommend them for that."

"Salans has a big and long-time experience serving pharmaceutical companies in Kazakhstan," says a corporate client. "They have high-level qualified employees, an excellent reputation, well-thought-out management, and membership in several international organisations. All of these assist in our great relationship with them as our legal counsel."

Salans' financial and corporate capabilities are notably bolstered by its successful industry-specific groups such as tax, antitrust, litigation, real estate, and employment. An additional resource for Kazakhstan clients is the firm's second office in Atyrau which is managed by Shaikenov. This office is primarily Kazakh language-oriented for its domestic clients.

This year the team featured in numerous high-profile deals including advising BP on its sale of an interest in a foreign company to Lukoil. This interest provides the buyer with an indirect stake in the Tengiz oil field and the CPC (Caspian Pipeline Consortium) pipeline. Kenjebayeva also led a team for Max Petroleum on the financing for its petroleum operations in the country.

In the M&A market, the team is advising Lactalis Group on its acquisition of two Kazakhstan dairy companies.

Leading lawyers

Aigoul Kenjebayeva
Abai Shaikenov

Other notable firms

Ukrainian firm **Magisters** predicts there will be a shift in business activity from Almaty to Astana, so it recently entered the Kazakhstan market by opening up an office in the latter city last January.

Litigation and arbitration specialist Marta Khomyak heads the team as its managing partner. Prior to the move, Khomyak was based in Kiev. The fledgling office focuses on infrastructure, projects, M&A, real estate and arbitration work. "Communication with Magisters was smooth and their reply to our question was precise and detailed," says one financial client.