

Kazakhstan

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Regulatory developments in Kazakhstan

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For the past several years the Government of Kazakhstan has made significant efforts to modify the existing legislative framework to align it with the realities of today's world, including such fields as securities market and investments, as well as currency control.

Currency control

Amendments were made to the Law On Currency Regulation and Currency Control with the view to simplify the course of transactions involving currency transfers from and to Kazakhstan.

The existing legislation provides for two various regimes of carrying on of qualifying currency transactions, being registration and notification of the relevant transaction with the National Bank of the Republic of Kazakhstan (NBRK).

Following the amendments, if a credit (loan) is extended by a non-resident to a resident of Kazakhstan for more than 180 days and the amount of the credit exceeds \$500,000 (previously \$300,000) the Kazakhstan resident entity must register the agreement with the NBRK.

Registration or notification of the underlying transaction will also be necessitated now if:

- the amount of the operation involving delivery of property to Kazakhstan and/or obligation of the resident for the return of the property to a non-resident, exceeds an equivalent of \$500,000 (previously \$300,000);
- the amount of the operation which provides for the transfer of property from Kazakhstan and/or right of the resident to require the return of the property to

Kazakhstan, exceeds an equivalent of \$100,000 (previously \$50,000).

Moreover, residents of Kazakhstan must notify the NBRK on derivatives transactions if the amount of payment by a resident to a non-resident and/or by a non-resident to a resident exceeds the equivalent of \$100,000.

Amendments were made on powers of the President of Kazakhstan for the imposition of the special currency regime, being measures related to the currency regulation and control in circumstances creating threat to the economic security and stability of the country's financial system. The legislation thus now provides that the special currency regime may include:

- requirement of non-interest deposit in the authorised bank or the NBRK;
- requirement of obtaining the special permit of the NBRK for currency operations;
- requirement of mandatory sale of the foreign currency realised by the residents; and
- restrictions of use of accounts in the foreign banks.

Combating money laundering

The Law On Combating Legalization (Laundering) Proceeds Obtained Through Illegal Ways and Financing Terrorism was adopted last year.

The law introduced a definition of Financial Monitoring, being a set of arrangements on collection, processing and analysis of information relating to operations with money and/or other property/income of a person who is a subject of the financial monitoring. Financial Monitoring extends upon various operations with varying value thresholds.

The new law also provides for a category called "a suspicious operation with money and/or other property", which may result in the engagement of the income gained through an illegal way into a legitimate turnover or cause the financing of terrorism and/or extremism. The new law provides that suspicious operations are subject to the Financial

Monitoring without reference to the value of the underlying transaction.

Among others, the law provides for the following features of the suspicious operation:

- operation with no obvious economical sense;
- actions directed on the evasion of the financial monitoring actions;
- operation viewed to be used for the financing of terrorism / extremism.

The law provides that banks, stock exchanges, insurance companies, saving pension funds, professional participants of the securities markets are authorised to audit financial transactions of clients and to report the outcome of the audit to the regulator, which in turn is empowered to suspend an operation which contains features of money laundering.

Restructuring of banks

In 2009 significant changes to the banking regulations of Kazakhstan dealing with the restructuring of debts of local banks were introduced.

Stages of the restructuring are as follows:

- bank's board of directors passes a decision on restructuring of the bank's debts;
- bank sends its decision on restructuring to the regulator;
- regulator and a bank enter into a written restructuring agreement;
- bank provides the regulator with a draft restructuring plan;
- bank files a request for the restructuring with the court;
- bank disseminates the notice of restructuring once the court decision on approval of restructuring becomes effective;
- bank convenes meeting of creditors covered by the restructuring plan to negotiate and approve the plan;
- if the restructuring plan is approved by creditors representing at least 2/3 of all debts to be restructured, the bank sends the approved plan to the regulator (while the approved plan is mandatory for all the

creditors covered by the restructuring plan);

- bank submits the restructuring plan to the court for approval;
- upon approval of the restructuring plan by the court, the bank proceeds with the implementation of the plan; and
- termination of the restructuring proceedings by the decision of the court upon the application of the regulator (including for the completion of all measures provided for by the restructuring plan).

In accordance with the local legislation, once a court decision on commencement of the restructuring comes into force:

- (i) execution of the following shall be suspended:
 - a. previously adopted court decisions and arbitration awards on enforcement of obligations of a financial organisation where such obligations are subject to restructuring;
 - b. claims of creditors to a financial organisation where such claims are subject to restructuring, and are announced prior to the court's decision on commencement of the restructuring, and/or during the restructuring process.
- (ii) recovery of debt by forfeiting upon property of a financial organisation is not permitted.
- (iii) the bank has the right to:
 - a. suspend performance of transactions entailing the alienation (disposal) of property of the bank, entering into agreements providing for the lending by the bank and other financing operations creating a credit risk for the bank; and/or
 - b. suspend, whether in full or in part, performance of any obligations of the bank.

Financial and corporate

Recommended firms

Tier 1

White & Case

Tier 2

Baker & McKenzie
Bracewell & Giuliani
Dewey & LeBoeuf
Salans
SNR Denton

Tier 3

Aequitas
Macleod Dixon

Tier 4

Magisters
Michael Wilson & Partners

Kazakhstan has always been known to rely on its oil and gas sectors to float its economy, but observers have noticed attempts from the government to develop other areas. "The government is taking serious measures to make what the country produces. It is like Kazakhstan industrialisation," says a law firm partner. Agriculture, infrastructure and government public-private partnerships (PPP) projects are all potential areas worthy of attention.

The words of this practitioner best sums up the present-day picture: "The market will always be dominated by natural resources, but acquisitions in areas like banking, telecommunications and construction materials have also been active. Kazakhstan is becoming a truly diverse economy."

When it comes to the backbone of the country's energy sector, many believe that Asia is the fuel necessary to keep the engine running: "The continued success of Asia means the demand for energy will increase, and the Kazakhstan market will go up as a result and it will also bring more work for the top international firms," says a lawyer.

China, in particular, holds a critical position as this rapidly-growing country is one of the largest consumers of Kazakhstan's natural resources, and companies too are making significant investments into Kazakhstan. "The Chinese have effectively controlled all of the onshore oil producers," indicates a partner. One such recent example was the acquisition of Mangistaumunaigas (MMG) by CNPC Exploration and Development Company (CNPC E&D) together with KazMunayGas (KMG). The Kazakhstan-China oil pipeline, jointly owned by the China National Petroleum Corporation and KMG, and the central Asia-China gas pipeline demonstrate China's engagement in the country's energy production and transportation.

As one of the first countries to fall victim of the global financial crisis, Kazakhstan is slowly recovering from the blow. Although banks are still wary about lending and capital markets are still quiet, there is no lack of M&A activity. Commentators report a trend of international corporations acquiring local business or companies with local exposures for the consolidation of assets or as a quicker way to break into the market. The two prolific debt restructurings of BTA Bank and Alliance Bank are almost complete, and now firms are expecting smaller-scale work to provide another boost to business.

White & Case

"White & Case is one of the best law firms in Kazakhstan," says a banking counsel. "It is very strong and is definitely number one in the market. White & Case is a very successful

story," agrees a rival. Winning numerous accolades like these from peers and clients alike, White & Case maintains its dominant position in Kazakhstan and occupies the lone position in the top tier for yet another year.

This Almaty powerhouse suffered a tragic blow in June 2010 with the death of Yuriy Maltsev, while partner Walter Daniel left the firm in the same month. The duo starred in many high-profile projects; Maltsev in particular had a good working relationship with investment banks and was said to be "a major player on the Kazakh legal scene" before his passing, according to a client.

The office is now headed by two resident partners, Marat Ibragimov and newly-joined Michael Rayson, and Francis Fitzherbert-Brockholes, who splits his time between London and Kazakhstan.

Clients still have faith in White & Case despite these personnel changes: "These are indeed significant departures, and the firm will need to demonstrate that it continues to provide high quality Kazakh law advice," says an in-house counsel. "We intend to continue to work with the firm in Kazakhstan as we believe the office as a whole is a good team."

Many firms have been busy with bank restructuring since the new restructuring law is in place and White & Case's role is crucial to the debt restructuring of Alliance Bank and BTA Bank. Not only does it assume an advisory role to the two banks, but it also helped to lay the cornerstone of the drafting work with the firm assisting in this process of the legislation. While the effect of the departure of Maltsev and Daniel remains to be seen, Rayson has immediately made an impact since his joining in January by getting involved in these two projects.

Another highlight is the firm's work in advising a group of dealers, including Citigroup, Credit Suisse, HSBC, JPMorgan and the Royal Bank of Scotland, in relation to the update of the debt issuance programme from \$5 billion to \$7.5 billion by KazMunaiGaz Finance.

"The firm maintains high standards of quality and always provides thorough and rigorous advice, more so than many of its competitors," says up a client.

Leading lawyers

Marat Ibragimov

Baker & McKenzie

Although some commentators reflect that the firm is strongest in securitisation, which has been much affected by the global financial crisis, international firm Baker & McKenzie showcases a list of transactions that includes restructuring work, banking and loans, and

M&As to eurobond offerings to prove the breadth and depth of its practice. Backed by some strong client feedback, this boosts the firm up a tier this year.

"The level of service and advice has been consistently high," says an in-house client. "The team responds promptly and their advice is focused, commercially astute and pragmatic." The firm's extensive global network is a value-add for clients in addition to its professional services: "Its strongest features are a high professional team and worldwide presence, so you can get legal services almost anywhere and on any local legislation," says one.

The firm was boosted by the arrival of counsel Maxim Grekov from White & Case in 2009. He joined the team that acted on some of the firm's highlight transactions led by partner Curtis Masters.

"I have dealt mainly with Curtis Masters. I respect his analysis of the issues and quality of his legal advice," notes a client. "I also respect his adherence to the promised time schedule." Another recommends Masters as being "excellent, responsive and highly knowledgeable".

The team is advising the steering committee of creditors of BTA Bank, made up of 13 international banks and investment banks, in the restructuring of the bank's \$12 billion debt under the new restructuring legislation. In October 2009, it represented the state-controlled Kazakhstan Development Bank in a \$5 billion loan from Export-Import Bank of China, which is a state-to-state loan from China to Kazakhstan.

On the M&A front, the firm advised Kazakhtelecom on the sale of its 51% interest in Mobile Telecom Service, one of the largest local mobile operators, to Swedish-owned Tele2 in March 2010.

Two months after, JPMorgan and BNP Paribas engaged Baker & McKenzie as counsel to the joint lead managers in the \$500 million Eurobond offering by Kazatomprom, a state-owned atomic company. The offering is the first successful case of a simultaneous international and local bond offering conducted directly by a Kazakhstan issuer.

"B&M stands out among the other firms primarily due to its quality of work, speed of response and proactive feedbacks," says one client in the financial sector.

Leading lawyers

Curtis Masters

Bracewell & Giuliani

The Almaty office of Bracewell & Giuliani is best-known for its capacity in the capital markets space and competitors acknowledge its expertise: "It has been very active in capital

markets on the issuer's side," notes a competitor. Another agrees: "Bracewell is a good firm. It has been in the market for a long time and Greg has been very good. We often see it on eurobond issues."

Managing partner Gregory Vojack leads his team and continues to feature in many debt offerings this year. The most notable one was advising National Company Kazatomprom, a national atomic company, on a \$500 million offering of notes in accordance with Reg S/Rule 144A. This May 2010 transaction was the first ever dual listing on both the London and Kazakhstan Stock Exchanges from direct issuance by a Kazakhstan issuer.

Vojack is one of the chief architects behind the firm's deals. He often partners with colleagues from other offices on international offerings where he advises on Kazakh law and is held in high-regard by clients.

"Gregory Vojack and Kairat Serikpayev are actively working with us. We highly value their professional level, efficiency, and responsiveness in servicing clients," says an in-house client. A banking customer enjoys working with Vojack as well and describes him as an "energetic, dedicated professional, with a creative approach to every aspect of the legal process".

The Bracewell team developed a transaction structure that would allow banks to take advantage of provisions under the new Tax Code in Kazakhstan. This structure attracted ATF Bank and BankCenterCredit to instruct the team in their dealings for tax savings when they acted as guarantors in a substitution of notes.

Capital markets work aside, the firm represented Ufex Advisors Corporation in the sale of local oil and gas field operator Caspi Neft.

"We can give to B&G nothing less than the best recommendations," says a happy client. "B&G provides services at a high professional level."

Leading lawyers

Gregory Vojack

SNR Denton

"Denton Wilde Sapte is certainly top of class," says a client. "The firm has really good knowledge of local Kazakh law, and is good at translating that to Western languages which makes it easy for foreign clients to understand. It is also good at bridging the cultural gaps between Kazakhstan and western countries."

Experienced partner Joel Benjamin leads the banking and finance practice in Central Asia and is often assisted by attorney Adlet Yerkinbayev. "I would recommend Joel. He in

particular is very commercial-minded," notes a client.

The duo and their colleagues in London featured in one of the most high-profile works in Kazakhstan this year. They advised the creditors committee, made up of a number of international financial institutions, of Alliance Bank in the restructuring of the bank's debt. This was the first deal completed under the newly-adopted Kazakh legislation on bank restructuring which had features resembling ones in the UK and the US.

The Almaty team is cooperating with London on another deal to provide both Kazakh and English law advice to a private investment group. The work involves a proposed \$350 million secured financing by Credit Suisse and other lenders, and acquiring shares in a large Kazakhstan company.

Managing partner Marla Valdez is a respected oil and gas specialist in Kazakhstan and the firm considers energy, and technology and telecoms as two of its sector focuses. Its industry knowledge won the team mandates on counseling Tele2 to acquire a 51% interest in Mobile Telecom Service, a local mobile phone provider, and on advising sponsors on a proposed offering of shares of a holding company with gold mining assets in Kazakhstan on the Hong Kong Stock Exchange.

Denton runs a big office in Almaty and clients welcome this. "There is enough staff to address our concerns," says one. "I appreciate the personal touch."

A merger between Denton Wilde Sapte and US-based Sonnenschein Nath & Rosenthal was announced in June, and the name of the practice will become SNR Denton effective from September 30 2010. The merger is expected to further boost the firm's international network and it will be interesting to see how this could benefit its Kazakhstan practice.

Leading lawyers

Joel Benjamin

Marla Valdez

Dewey & LeBoeuf

"It is getting more and more active and is making a good effort in the market," notes a client. Dewey & LeBoeuf has had a very successful twelve months and has acted on many noteworthy transactions in Kazakhstan with a number of them in the oil and gas sector as it has a strong energy practice.

The firm's involvement in the share acquisition of Mangistaumunaigas (MMG) by Chinese oil company CNPC Exploration and Development Company (CNPC E&D) is particularly noteworthy and contributed

greatly to the firm's ascendancy into a tier two position.

"It is absolutely a good firm and one that focuses more on financial than corporate work," notes a competitor. "Dewey could be in tier two with the CNPC deal."

The team at Almaty supported their colleagues in Beijing and London in representing CNPC E&D to acquire shares of MMG. The transaction was valued at \$2.7 billion and highlighted China's quest for energy resources in Kazakhstan.

Managing partner Aset Shyngyssov heads up the Almaty office and is on many of the headline deals. "I normally work with Aset and his team and I am quite satisfied with them," says a client. "They understand the local law and the state authority procedure well, and possessing this knowledge enables them to follow our time frame closely when giving advice and suggestions."

Another client appreciates Dewey's effort to take an extra step to help: "The firm's services and advice were always highly effective, clear, and represented the state of the firm's full involvement in the bigger picture, and not just within the boundaries of our cooperation."

Dewey has been active in the capital markets as well. Twice it counseled National Company KazMunayGas (KMG) on the update of its MTN programmes and eurobond offerings in July 2009 and May 2010. The MTN updates were valued at \$5 and \$7.5 billion and the offerings at \$1.25 and \$1.5 billion respectively.

Bank restructuring has been one of the core areas of work for many firms and there is no exception for Dewey. It acted for the creditors of Temirbank and Alliance Bank in the debt restructuring of the two banks. Additionally, the firm is advising Ekibastuz GRES-2 and its shareholders as the borrower of a syndicated financing for the modernisation of Ekibastuz Power Station, the largest power plant in the country.

Leading lawyers

Aset Shyngyssov

Salans

With one of the biggest teams in Kazakhstan, Salans is able to offer a full package of services including dispute resolution, labour and employment, and intellectual property work. The firm is popular with companies and some market commentators note that Salans has a stronger corporate than financial practice. Others praise its expertise in the energy and natural resources sector.

However you look at it, the firm is one of the pre-eminent presences in Kazakhstan and

clients are certainly happy working with it. "I recommend Salans because they are experts in Kazakhstan law, they respond quickly, they are very efficient, and their advice is practical and easy to use," says one.

Over the past year, the team led by partner Abai Shaikenov has done a number of transactions for both corporate and financial institutions. "Abai Shaikenov is an oil & gas and corporate tax partner and I would not hesitate to consider him for future work," says a client. "He is very professional, proactive and timely."

One notable corporate transaction Shaikenov featured in was representing Korea National Oil Corporation in its acquisition of local oil developer Sumbe in December 2009. This deal involved complex structuring issues and governmental clearances matters, and highlights the increasing competition for natural resources among countries in the region.

The team has been equally busy with work in the financial area. Citibank AS (Turkey) entrusted it to provide advice on the restructuring of BTA Bank, Alliance Bank and Temirbank in which a range of financial instruments need to be restructured.

A rival notes that Salans has "a fantastic combination of internationally trained managers and local people". The firm demonstrated its international capability in Eurasian Bank's acquisition of the Russian Troika Dialog Bank on which Shaikenov worked with colleagues in Russia for Eurasian Bank.

Leading lawyers

Aigoul Kenjebayeva

Abai Shaikenov

Other ranked firms

New to the ranking this year, Canadian firm **Macleod Dixon** has six offices worldwide and has been stationed in the Kazakhstan legal market since 1994. The long history of its presence and its international connection are very much appreciated by clients.

"Macleod Dixon knows the local environment very well in terms of the way to do business, the timing, the time frame, and the budget," says a client. "The fact that it is an international practice makes it multi-cultural."

The firm has a renowned energy and mining practice and counts Condor Petroleum, AltynAlmas and Uranium One as some of its active clients. Managing partner Maxim Telemtayev acted for UrAsia Energy on the sale of its 17% equity to uranium and mining company ARMZ. A client praises Telemtayev of being "helpful and efficient" with "an extremely pleasant personality".

On the finance side, it often represents multilateral financial institutions in various

transactions. Partner Yerzhan Kumarov advised International Finance Corporation on a syndicated loan to Jambyl Cement Production Company and Mynaral Tas Company. Eurasian Development Bank also engaged Kumarov in a \$800 million financing of a construction project of a power plant in Ekibastuz while Industrial and Commercial Bank of China had him advise on a term loan facility to a Kazakhstan uranium company.

Commonwealth of Independent States (CIS) firm **Magisters** might seem a little low-profile to its peers given its office is in Astana instead of Almaty, but the firm is certainly making inroads into the market. It presents an impressive deal list with some high-value transactions since setting foot in the country in January 2009 and appears in the rankings for the first time.

In October 2009, the firm advised a coordinating committee of lenders on the restructuring of the Kazakh part of a \$10 billion debt. One month after, it acted as co-counsel alongside Clifford Chance to a syndicate of five banks on a \$500 million cross-border refinancing of debt of the Rolf Group, a Russian automotive group.

In terms of new money deals, Magisters is representing a consortium led by Italian road construction leader Impregilo on a \$1.1 billion toll road project in Kazakhstan. The consortium has been named preferred bidder for this private-public partnership (PPP) project which would involve the reconstruction of the 301km Almaty to Khorgos toll road.

"It provided very prompt and satisfying legal advice," says a client, who adds his impression of managing partner Marta Khomyak: "I dealt with Marta Khomyak who was very motivated and to the point. She knew what she was talking about and made a very capable impression."

With offices in Almaty and Baku, **Michael Wilson & Partners** (MWP) positions itself as a regional firm that is able to handle legal matters in Azerbaijan, Kazakhstan, the central Asian region and the Caucasus. Without formal ties to any international law firms, MWP enjoys the freedom of working alongside any firms that do not have an office in the region, such as Allen & Overy and Linklaters.

Led by director and managing partner Michael Wilson, the team has been busy with work in the financing sector. Some highlights include advising Merrill Lynch Commodities (Europe) on some financially settled over-the-counter commodity derivatives and metal trading activities in Kazakhstan, and advising Deutsche Bank on derivatives transactions with the local Alliance Bank and BTA Bank.

In the project finance space, Wilson acted as counsel to Eurasian Development Bank (EDB) on a number of projects where EDB

has provided credit line facilities to, such as the \$30.5 million loan for the construction of an Inter-Regional Power Transmission Line, \$25 million for a gas utilisation management project and \$18.8 million for the construction of a shipyard.

Leading lawyers: Michael Wilson

Other notable firms

A young local outfit founded in 2007, **Oris** is dedicated to advising foreign investors on financial and corporate matters with a sector focus on mineral resources. A client agrees with how the firm positions itself: “Oris should be chosen by someone who wants to get professional advice in Kazakh law for international deals.” The firm is expanding with the arrival of two senior associates in 2009.

Over the past 12 months, the team has been occupied by M&A work. Of note is its involvement in advising the Regional Financial Centre of Almaty and the Russian Trading System on the process of setting up the Eurasian Trading System, a commodities exchange and a joint venture between the Kazakhstan government and Russian investors.

On the capital markets side, the firm advised chisels producer VostokMashZavod on its listing and issue of bonds on Kazakhstan Stock Exchange.

The three partners at the firm, Amir Tussupkhanov, Arkadiy Kudabayev and Aituar Madin, all come recommended by clients. Tussupkhanov and Madin are both said to have a “client oriented policy” and can “operatively resolve any unforeseen setback (if any) without any prejudice of the general pace of the deal”.

One counsel singles out Madin for praise: “Aituar has specificity to provide sophisticated legal advice and has commercial understanding of business.”