

Kazakhstan

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Kazakhstan's commercial laws and court system

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The legal system of Kazakhstan is based on civil law and founded on statutory legislation (the civil code), which provides for a hierarchy of legal acts. Within the hierarchy, international treaties ratified by Kazakhstan take priority over all other laws of the country, except for the constitution. Accordingly, although court judgments may have persuasive power, they are not binding and cannot therefore be considered as primary sources of law. In other words they do not set precedents, as court decisions do under common law.

When creating its new civil code, Kazakhstan adjusted traditional models to the specific requirements of its economic evolution. The legislative intent was to guide the country's transition from a managed economy to a market economy. Initially the new law provided incentives to privatize property and to establish ownership rights. The civil code details property rights and regulates the legal relationships between business parties, involving such commercial necessities as contracts, loans, security interests and equity capital. While the civil code sets forth the general principles, specific rules for business conduct are created in laws that are subordinated to the civil code.

The civil code has been frequently amended as the economy develops. This demonstrates the importance that Kazakhstan places on reflecting market efficiency in its laws. Corporate law has evolved over time to give corporate or limited liability entities the ability to raise debt or equity capital in the markets efficiently. The protection afforded to minority shareholder rights promotes the raising of equity capital.

The civil code consists of a general part, enacted in 1995 (the General Part) and a special part, enacted in 1999 (the Special Part). The General Part sets forth the basic principles underlying such concepts as legal entities, property and terms, general principles of transactions and obligations between parties. The Special Part considers contracts in detail and contains provisions to resolve legal conflicts. Unlike France and Japan, Kazakhstan does not distinguish commercial law from civil law in its legislation.

The Civil Procedural Code, adopted in 1999, regulates the trial process in the adjudication of civil disputes. The judicial system differentiates court jurisdictions in civil, administrative and criminal matters. A basic understanding of civil procedural law requires a review of Kazakhstan's judicial system.

Kazakhstan has a hierarchal court system in which the Supreme Court is superior to local courts. Local courts comprise district, regional and *oblast* courts. District and regional courts are trial forums, but the *oblast* courts can conduct both trial and appellate proceedings. The system also includes specialist economic, administrative and military courts, which have the same status as district or regional courts.

At the time of writing there are intensive discussions on the proposed creation of a new specialized court for the Almaty Regional Financial Centre. The draft law is being discussed by both parliament and the constitutional council, the latter of which is the supreme authority that interprets the Constitution. The specialist court in the Almaty Regional Financial Center would resolve disputes over financial transactions that take place in the new financial zone.

Jurisdiction and judicial procedures of each court are determined by civil, administrative and criminal codes of procedure. Depending on the jurisdiction, cases are handled by one judge at the trial level, or by three or more judges in the appellate and supervisory courts.

The judicial system of Kazakhstan is not based on case law and, therefore, precedent cannot be used to predict the outcome of a case by considering judgments previously rendered by courts. However, certain court practices may be taken into account by a judge in settling a dispute.

Recently, Kazakhstan has started to develop an active system of arbitration tribunals and intermediate courts that are not included in the system of state courts. Arbitration tribunals and intermediate courts have become more widespread since Kazakhstan adopted laws on commercial international arbitration and on intermediate courts in December 2004. The law of civil procedure in Kazakhstan gives any citizen the right to refer any dispute to the intermediate court, provided that the parties have previously entered into an agreement for intermediate settlement. If there is an arbitration agreement between the parties, a dispute may be referred to arbitration, provided that at least one of the parties is not a resident of Kazakhstan.

The new law on arbitration has brought greater certainty to the procedure under the New York convention for enforcement of arbitral awards. Provided one of the parties to a dispute is a non-resident of Kazakhstan, the application of an arbitral award that is rendered under the procedures of the treaty and the new law on arbitration will be enforced without a review of the merits by a Kazakhstan court.

The civil procedure code defines types of disputes that fall under the exclusive jurisdiction of state courts and cannot be taken to arbitration.

tration. These include:

- title to real estate located in Kazakhstan;
- contract claims against carriers;
- divorce between a citizen of Kazakhstan and a foreign citizen or a stateless person, if both spouses are resident in Kazakhstan; and
- special proceedings provided by the code of civil procedure.

As part of the ongoing legal and judicial reform, the Constitution provides for the possibility of jury trials with respect to criminal proceedings. The Supreme Court is considering the procedures for the implementation of such jury trials. Administration of justice in Kazakhstan is based on the constitutional principles of independence of judges, equality of all before the law and court, the adversary nature of the process and equal treatment of the parties. Such provisions apply both to citizens and non-residents.

Over the past 11 years Kazakhstan's legislation has become more predictable as ongoing amendment continues to promote the development of a market economy. However, those considering doing business in Kazakhstan should consult with a legal advisor to consider all the possible risks. As the legal system develops in this emerging market, uncertainty and contradictions between laws still remain. However, Kazakhstan's evolving legislation is on the right track to promote foreign investment.

Banking

Recommended firms

Tier 1

White & Case

Tier 2

Baker & McKenzie
 Bracewell & Giuliani
 Denton Wilde Sapte
 LeBoeuf Lamb Greene & MacRae
 Salans

Capital markets

Recommended firms

Tier 1

Baker & McKenzie
 Bracewell & Giuliani
 White & Case

Tier 2

Denton Wilde Sapte

Tier 3

LeBoeuf Lamb Greene & MacRae
 Salans

Mergers and acquisitions

Recommended firms

Tier 1

Denton Wilde Sapte
 White & Case

Tier 2

Baker & McKenzie
 Bracewell & Giuliani

Tier 3

LeBoeuf Lamb Greene & MacRae
 Michael Wilson & Partners
 Salans

Project finance

Recommended firms

Tier 1

Denton Wilde Sapte
 White & Case

Tier 2

Baker & McKenzie
 Bracewell & Giuliani

Tier 3

LeBoeuf Lamb Greene & MacRae
 Salans

Baker & McKenzie

Baker & McKenzie maintains its position as a foremost Kazakhstan legal advisor this year, and has underlined its intent to continue along this route by the appointment of the "very well known and respected" Farkhad Karagussov (former general counsel of Halyk Savings Bank in Kazakhstan) in June 2006. The banking department is headed up by the "impressive" Curtis Masters, who is highly recommended by clients and rivals. In one noteworthy deal Masters and associate Igor Kolupayev advised Mizuho Bank on a \$60 million loan to Kazatomprom in connection with uranium export.

Capital markets are a particularly strong area for Baker & McKenzie, and the firm regularly acts as international counsel to underwriters. Recent deals include advising ABN Amro on residential mortgage loans receivables of Bank TuranAlem's mortgage affiliate worth \$150 million, the first RMBS securitization in Kazakhstan, and acting for the Ambac Assurance Corporation on Kazkommertsbank's diversified payment rights securitization worth \$150 million. In another highly innovative deal, Baker & McKenzie acted as Kazakh counsel to Credit Suisse Securities and ING Bank in connection with the offering by Bank TuranAlem of hybrid Tier I capital perpetual securities valued at \$400 million. This groundbreaking deal took advantage of new Kazakh legislation expanding the ways in which banks raise capital.

The firm has also expanded its mergers and acquisitions department this year by hiring Irina Kim as an associate, taking the number of lawyers dedicated to M&A to six. The team recently acted as Kazakh counsel to Lukoil Overseas in its acquisition of Nelson Resources, a large Kazakh oil producer, for

\$2 billion, and advised TransMeridian Exploration on its acquisition of a 50% interest in Caspi Neft, another Kazakh oil company, worth \$285 million. Other prominent M&A deals included acting for the China Gold Corporation in relation to the establishment of a joint venture in gold mining operations, guiding Mittel Steel Temirtau through its acquisition of Orken, a Kazakh mining company, and acting for Orix in its acquisition of a 45% interest in BTA Leasing.

Baker & McKenzie has closed several large project finance deals over the last year too, including recently advising Mizuho Bank as lender on a pre-export financing of uranium from Kazatomprom worth \$60 million and acting for Raiffeisen Leasing Kazakhstan in an oil tanker financing deal valued at \$14 million.

Leading lawyer

Curtis Masters

Key contact partners

Alexander Korchagin
Curtis Masters

Bracewell & Giuliani

Bracewell & Giuliani's Kazakh operation continues to be extremely active in the capital markets, in a country which is growing in terms of capital markets and financing transactions. Clients consider it "a firm that always aims to build lasting relationships," and recommend leading lawyer Greg Vojack for his "charming personality, trustworthiness, reliability and experience".

Recent debt capital markets deals saw the firm advise Bank TuranAlem on its \$2 billion medium-term note programme arranged by Credit Suisse, a hybrid Tier I capital share preference with Credit Suisse First Boston and ING worth \$400 million, and a Rule 144A tranche from Credit Suisse and ING valued at \$300 million.

Elsewhere, the firm advised Bank Center Credit on a \$250 million Regulation S bond issue and \$100 million issue of hybrid Tier I capital (both arranged by Citibank), and acted on bond issues by, among others, Astana Finance, ATF Bank, the Halyk Bank of Kazakhstan and the JSC Temir Zholly National Railway Company.

Leading lawyer

Gregory Vojack

Key contact partner

Gregory Vojack

Denton Wilde Sapte

Denton Wilde Sapte continues to assert itself as one of the leading financial law advisers in Kazakhstan and has been on a recruitment drive over the last year hiring three associates, Victoria Simonova, Zhanar Abdullayeva and Adlet Yerkinbayev, to its banking practice.

Among the year's banking highlights the firm acted as counsel to ABN Amro in connection with an Islamic financing (under a *murabaha* agreement) for Bank Center Credit, and acted for the European Bank for Reconstruction and Development in connection with its \$100 million loan to Kar-Tel, which operates the K-Mobile cellular phone system in Kazakhstan.

There has been something of an explosion in capital markets work in the country recently, and Denton Wilde Sapte has been actively involved. On the deal front, the firm acted for the issuer in connection with KazakhGold's offering of global depositary receipts on the London Stock Exchange, and at the time of writ-

ing was acting on an initial public offering and two high-profile eurobond issues whose details were confidential. Other capital markets clients include KMG E&P and the Eurasian Bank.

There has also been a high level of M&A work in Kazakhstan over the past year, and the firm's department is especially well-regarded, with Marla Valdez and Joel Benjamin being recommended by peers for their work. Recent transactions include acting for a major European bank in connection with its proposed acquisition of a 50% interest in one of Kazakhstan's largest banks, and advising one of the top three cement firms in the world on its acquisition of a number of Kazakh production and distribution companies, a complex deal that involved the due diligence of multiple companies and an acquisition structure involving both Kazakh legal entities and foreign companies in multiple jurisdictions.

Other standout M&A matters saw Denton Wilde Sapte represent Sumitomo and the Kansai Electric Company in the acquisition of an interest in a Kazakhstan uranium producer, and act for a potential acquirer in connection with its bid for the purchase of PetroKazakhstan. At the time of writing the firm was advising a potential acquirer in connection with its bid to acquire Nations Energy.

In a noteworthy project finance deal, meanwhile, the firm acted for Investec in connection with its \$75 million secured project financing of gold producer Varvarinskoye JSC.

Denton Wilde Sapte also has an office in Tashkent, in neighbouring Uzbekistan, its four lawyers ensuring that the firm is able to provide advice on regional finance deals beyond Kazakhstan.

Leading lawyers

Joel Benjamin
Marla Valdez

Key contact partner

Joel Benjamin

Salans

Despite market perception that Salans' financial capability is not quite as strong as it used to be, the firm has been fairly active over the past 12 months, showing that it is still a player.

Recently Salans acted for the Kazakh division of a major international bank when the bank needed verification that its model loan documentation complied with Kazakh law, and provided Wachovia Bank National with a legal opinion on a credit facility it was intending to grant to Bank TuranAlem, one of the fastest growing full financial service companies in Kazakhstan and the country's second-largest commercial bank in Kazakhstan.

Elsewhere, the firm acted in connection with a joint venture in Kazakhstan for the marketing and sale of liquefied petroleum gas, offered legal advice on consumer lending and mortgage lending in Kazakhstan to a Turkish bank, and undertook a refinancing of an oil and gas group project finance deal with a major European bank.

From among the team, competitors state that leading lawyer Aigoul Kenjebayega has a "very good reputation" in project finance.

Leading lawyers

Aigoul Kenjebayega
Abai Shaikenov

Key contact partner

Aigoul Kenjebayega

White & Case

White & Case is universally considered to be one of the market leaders in Kazakhstan by clients and peers, an opinion reflected in its top-tier ranking across the board. One client commented on the firm's "speed of delivery and excellent attention to detail".

Competitors and market observers speak particularly highly of leading lawyer Yuriy Maltsev, one interviewee describing him as being "absolutely superb across all sectors". Maltsev specializes in investment transactions and has been involved in many of the largest privatizations in Kazakhstan; he also advises issuers and underwriters on international securities offerings, including bond and equity issues by leading local banks and corporates, as well as mainsteam banking and syndicated lending work. Clients are also quick to mention Francis Fitzherbert-Brockholes, commenting on his "vast knowledge and experience" of capital markets in Kazakhstan. The firm lost leading lawyer Peter Szytk this year, but moved senior associate Michael Rayson across from the firm's Moscow office to compensate.

Over the last year there have been several initial public offerings of Kazakhstan state-owned companies, and White & Case had a major share of this work. Among the year's highlights, the firm acted for joint-lead managers JP Morgan, ING Bank and UBS on Kazkommertsbank's \$100 million hybrid Tier 1 capital issue, the first by any bank from the former Soviet Union, advised Kazakhtelecom, the country's leading telecommunications company, on its acquisition of a controlling interest in three local telecommunications operators for \$220 million, and guided Oriel Resources, a UK-listed company specializing in the exploration and development of minerals and metals in eastern Europe, through its acquisition of a Kazakhstan chrome deposit.

Other noteworthy transactions for White & Case included its representation of CSFB as lead manager in ATF Bank's debut eurobond issue worth \$200 million, acting for Citigroup as lead manager and sole bookrunner in Bank Center Credit's \$200 million Regulation S debut eurobond issue, and advising West LB and JP Morgan as joint-lead managers of a \$300 million securitization of KKB's diversified payment rights (DPR). The deal was wrapped by Ambac, marking the first public DPR transaction in Kazakhstan to feature a monoline insurer.

The firm's impressive client list also includes ABN Amro, Central Asian Industrial Holdings, the International Finance Corporation, Lehman Brothers, Merrill Lynch, Meridian Securities, Philip Morris, Raiffeisen Bank, Shell Capital, UBS, Visor Investment Solutions and West LB.

Leading lawyer

Yuriy Maltsev

Key contact partner

Yuriy Maltsev