

# Kazakhstan

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Chamber of Commerce and Industry of Republic of Kazakhstan

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National Law Agency  
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### Thomas C O'Brien and Yerzhan K Kumarov Coudert Brothers Almaty

M&A transactions have become increasingly important in Kazakhstan. Asset-based M&A transactions are generally structured in two ways: (i) acquiring specific assets of a target company to avoid acquiring assets (and liabilities) that the acquirer does not need; or (ii) selling an enterprise as a property complex (an ongoing concern). At present, most companies appear to favour acquiring specific assets. Most deals, however, involve shares rather than assets.

Asset purchases require establishing ownership rights and other encumbrances (which can be difficult due to legal defects in titles and the absence of a single centralized registry for encumbrances). Share purchases, meanwhile, are more transparent because share registration is performed by an independent or internal share registrar. In asset deals the target may also be subject to various other requirements, such as corporate approvals, notices to creditors and authorized bodies. Creditors, mortgagees or other parties might also require contractual consents for a transfer of assets or change in control.

The Kazakhstan Joint Stock Company Law requires that a person or entity (independently or with affiliates) intending to acquire at least 30% of a target's voting stock must notify the target. The target can either offer to purchase the shares on better terms, or insist on the sale to another party offering a higher price. The buyer is required to publish an offer to buy to the other shareholders.

We provide below a general overview of M&A transactions in Kazakhstan and certain sectors of the economy. However, specific transactions should be structured depending on taxation, corporate and statutory approvals, foreign exchange or currency control and employment law, among other factors.

### Competition law

The Kazakhstan Anti-Monopoly Agency has to approve all merger, asset or stock transactions that might result in the acquirer having a high market concentration.

For stock and asset transactions, advance Agency consent is required for:

- the acquisition of voting equity in a target having a dominant market position when that person (or group) holds the rights to more than 20% of shares or interest;
- the acquisition of fixed and intangible assets of another entity, if the balance sheet value exceeds 10% of the total balance of all such assets; or
- the acquisition of rights permitting operational control of the target.

If the above transactions are performed by acquirers whose total balance sheet value exceeds \$375,000, the acquirer must notify the Agency within 15 days of the transaction. Agency consent is required only if the total balance sheet value of target assets exceeds \$746,000 or if the acquirer is reported as having a dominant market position, or controls the target.

Failure to obtain the proper consent might result in the divestiture of shares or assets, and the imposition of fines.

### Currency control

Kazakhstan exercises currency control over currency movements into and out of the country. Residents must register with the National Bank all movements of capital from non-residents to residents that exceed \$100,000 (or equivalent). The transfer of currency from residents to non-residents also requires a licence from the National Bank. Included under currency rules are investments, transfers of property and other property rights, import/export contracts and other credit transactions exceeding 180 days.

### Mineral resources

A recent amendment to the Subsoil Law gives a priority right to the state (above all other parties) to acquire a subsoil right or shares in a company that holds a subsoil right under terms no worse than those offered by other buyers. The amendment is broadly worded, subjecting most transfers of subsoil use rights and share acquisitions to this priority right. This statutory priority right might conflict with existing preemption rights of existing shareholders or participants. The scope of application of the amendment remains to be resolved. Other transfer consents may be required by legislation.

## Financial sector

Banking legislation requires Financial Supervision Agency consent to become a major participant that directly or indirectly owns 10% or more of the voting stock of a bank. The same consent is applicable for a bank holding (that is, where two or more entities jointly own, directly or indirectly, at least 25% of a bank's voting stock). Failure to obtain consent can result in the Financial Supervision Agency demanding: (i) that the voting stock be reduced to less than 10%; (ii) that the acquirer refrain from direct or indirect management of the bank (including voting); (iii) that the target bank or bank holding stop transactions between each other; or (iv) the imposition of other sanctions.

Banking law also restricts foreign entities from setting up domestic commercial banks. The charter capital of domestic banks with foreign participation must not exceed 50% of the aggregate (overall) charter capital of all domestic banks. Banking law also contains statutory requirements for mergers and reorganizations. Specific requirements apply to mergers and asset disposals of pension funds and insurance companies.

## 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

**White & Case**

Tier 2

**Bracewell & Giuliani**

Tier 3

**LeBoeuf Lamb Greene & MacRae**

Tier 4

**Baker & McKenzie**

**Denton Wilde Sapte**

**Salans**

## Mergers and acquisitions

### Recommended firms

Tier 1

**Denton Wilde Sapte**

**White & Case**

Tier 2

**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

**Bracewell & Giuliani**

Tier 3

**Baker & McKenzie**

**Salans**

**LeBoeuf Lamb Greene & MacRae**

\* Please note that Coudert Brothers, which previously featured prominently in these rankings, announced in August 2005 that it had taken the decision to disband

### Baker & McKenzie

Baker & McKenzie retains its status as a premier Kazakhstan financial adviser this year, boasting an enviable list of clients that includes Citigroup, ING and CIBC. The firm is able to conduct business in English, French and Uzbek, and recently hired graduate Timur Khasanov-Batirov to join the banking team. The head of the banking department is the renowned Curtis Masters, who comes highly recommended by clients and peers. In one noteworthy banking deal, Baker & McKenzie recently advised United, Uzbekistan's largest mobile phone operator, in relation to its \$30 million borrowing from the European Bank for Reconstruction and Development.

The firm has been busy in the capital markets area this year, representing the joint lead managers in respect of a \$100 million subordinated loan participation note offering by Kazkommertsbank, Kazakhstan's largest bank. This was the first eurobond offering by a Kazakh bank using this structure. The firm also acted for the joint-lead managers in relation to a \$400 million senior note offering by Kazkommertsbank, and represented the lead manager on a \$150 million eurobond offering by a Kazakh mining company. On the equity side, most recently Baker & McKenzie advised the CBIC in its capacity as lead manager of Centerra Gold's \$83 million initial public offering. Centerra owns the Kumtor gold mine in Kyrgyzstan.

The firm continues to work on a large number of high-value project finance deals, and in March 2005 added the esteemed Gulmira Utegenova from Coudert Brothers to the team as senior associate. The Almaty project finance team is comprised of one partner and two associates. It recently advised the Islamic Corporation for Development of the Private Sector in connection with financing customized Canadian oil exploration equipment valued at \$8 million. In another transaction, worth \$4.7 million, the firm advised Heineken International on the refinancing of the Dinal Brewery in Almaty, central Asia's largest brewery. On the \$5 million financing by the Kazakhstan Development Bank of the construction of a resin pipe factor in Astana, the firm advised Flowtite Engineering, a member of the Saudi Arabian Amiantit group of companies. And in another noteworthy project finance transaction, Baker & McKenzie represented the Japanese financing bank in relation to the \$20 million pre-export financing of uranium from Kazakhstan.

The firm's mergers and acquisitions department has increased its capacity this year, hiring Coudert Brothers' Aliya Mack as an associate. This hire brought the number of lawyers dedicated to mergers and acquisitions to six. The team recently acted for Degussa Chemicals in relation to its acquisition of a Kazakhstani construction supply company, acted for Samsung in connection with the \$100 million alienation of shares in a public joint-stock copper-making company, and represented RWE-Dea when it disposed of its participatory interest in a local oil producing company, in a deal worth more than \$100 million.

#### Leading lawyer

Curtis Masters

#### Key contact partners

Mariya Gekko

Alexander Korchagin

Curtis Masters

#### Bracewell & Giuliani

Bracewell & Giuliani (formerly Bracewell & Patterson) has experienced a steady flow of business this year, the firm's clients considering it "an established practice with a deep knowledge of the financial sector". It is also commended for possessing a "long track record of successful deals for Kazakh banks" and for being "one of most impressive local firms". From among the strong team, Gregory Voja comes highly recommended by clients. The finance and capital markets department has hired two new associates this year, bringing the number of lawyers dedicated to banking work to five.

Many of the firm's deal highlights of the past year were in the field of banking and capital markets. In August 2004 the firm advised JSC KazmunayGaz in relation to a crude oil sale agreement to the value of \$600 million. In a \$105 million facility agreement with the Food Contract Corporation, the firm advised Credit Suisse First Boston. In another noteworthy deal, in October 2004 the firm was involved in another credit facility granted to the Food Contract Corporation, this time forwarded by Natexis Banque Populaires (Bracewell's client) and

worth \$20 million. And in May 2004 the firm advised Société Générale when it granted a \$100 million committed loan and hedging facility to Petrokazakhstan Kukol Resources.

#### 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, Marla Valdez being especially recommended by her peers as one of the firm's star lawyers for mergers and acquisitions work.

Among the year's highlights, the firm advised Raiffeisen Zentralbank Österreich on a \$40 million syndicated loan to Bank Caspian, and acted for Société Générale on its \$20 million loan to the Food Contract Corporation.

The firm has been retained by a number of other leading international investment banks this year for capital markets and banking work. In December 2004 it advised ABN Amro and Lehman Brothers in relation to a \$1.1 billion bond issue by Tengizchevroil, and in March 2005 it acted for Citibank on its co-force supported \$8 million loan to KazakhtanCaspishelf, and represented Kegoc on a \$60 million loan provided to it by the European Bank for Reconstruction and Development (EBRD). Other lender-side instructions came from ABN Amro and JP Morgan in relation to their \$150 million bridging loan to Intergas Central Asia, and from the EBRD on its \$10 million loan to ATF Bank.

Meanwhile, Denton Wilde Sapte has continued to win instructions to act on a good number of mergers and acquisitions transactions over the past year. In one high-profile acquisition, the firm acted for Caspian Energy on its acquisition of a 50% interest in APC. The firm again advised Caspian Energy on its placing and listing on the Alternative Investment Market.

#### Leading lawyers

Joel Benjamin

Marla Valdez

Irina Voloboi

#### Key contact partner

Joel Benjamin

#### LeBoeuf Lamb Greene & MacRae

US firm LeBoeuf Lamb Greene & MacRae set up its Almaty office in 1995. The office, which works closely with the firm's Bishkek office, continues to be a leader in major corporate transactions in the central Asia and Caspian region. The firm recently represented the European Bank for Reconstruction and Development on the largest project financing deal to take place in Kazakhstan.

The firm acts as legal counsel across the country's key industry and legal sectors, such as oil and gas, privatization, banking and finance, mining and metals, and power and infrastructure.

Its impressive client list includes such high-profile companies as Exxon, Mobil and Murphy Oil.

**Key contact partner**

John Huhs

**White & Case**

White & Case continues to be viewed as a market leader in Kazakhstan by clients and peers, and has been involved in some of the largest transactions in the market this year. One client commended the firm for its “great credentials, and combination of local presence with international know-how”. Another market commentator praised the firm for its “good local knowledge and client-oriented approach” and peers suggest that “the firm deserves its position as a number-one practice”. Peers speak particularly highly of leading lawyer Yuri Maltsev, who is strong across the board but especially recommended for his banking and finance expertise, and his colleague Peter Szytk also comes in for considerable praise.

In July 2004 White & Case acted as a legal adviser to large oil and gas producer CNPC-Aktobemunaygas (on the instructions of a guarantor) in connection with its \$100 million eurobond issue. And in what was only the issue by a CIS corporate borrower to reach a double investment grade (the first being Gazprom’s asset-backed issue), White & Case represented Tengizchevroil as the issuer of \$1.1 billion limited-recourse bonds, and as the borrower of a \$3.3 billion *pari passu* partner loan, to finance the expansion of the Tengizchevroil oil project in Kazakhstan. *Euromoney* magazine named the November 2004 deal Europe’s emerging market corporate bond deal of the year.

The following month, the firm advised Kazakhstan China Pipeline on its \$300 million issue, the funds being raised to finance the construction of the Kazakhstan-China pipeline, a high-priority infrastructure project for both countries.

The choice mandates continued in 2005. In February Yuri Maltsev teamed up with a London team to act for Citigroup in its capacity as lead manager of JSC Bank CenterCredit’s debut bond issue, worth \$200 million. And two months later Maltsev was instructed again, this time by Credit Suisse First Boston, when the bank lead managed ATF Bank’s second bond issue worth \$200 million.

As well as the clients mentioned above, the firm’s impressive client list includes Commerzbank, Deutsche Bank, the European Bank for Reconstruction and Development, Hurricane Hydrocarbons, ING Bank, the International Finance Corporation, JP Morgan Chase, Kazkommertsbank, Merrill Lynch, Philip Morris, Raiffeisen Bank, Shell Capital, Société Generale, Tractebel, UBS, WestLB and Yukos.

**Leading lawyers**

Yuriy Maltsev

Peter Szytk

**Key contact partner**

Yuriy Maltsev