

Kazakhstan

Chamber of commerce:

Chamber of Commerce and Industry
of Republic of Kazakhstan
26 Masanchi
480091 Almaty
Kazakhstan

Tel: +7 3272 67 78 23

Fax: +7 3272 50 70 29

Email: tpprkaz@online.ru

Website: www.ccikaz.kz

Professional body:

National Law Agency
Ministry of Justice
Pobeda str. 45
473000 Astana
Kazakhstan

Tel: +7 3172 39 12 13

Fax: +7 3172 32 15 54



Securitization in Kazakhstan: it is happening now

Sanzhar Serikpayev and Thomas Johnson
Denton Wilde Sapte
Almaty

Until recently, Kazakhstan's thirst for financing had been allayed mainly by simple external borrowing arrangements in which local businesses secured their obligations merely by pledging their assets. The flow of financings against such unsophisticated asset collateral has been rather substantial, this being partly promoted by the increasing import of capital goods, favourable oil prices and the strong-minded initiatives of former chairman of the National Bank of Kazakhstan, Grigory Marchenko. Now, with the local banks growing fast, and the banking system being widely regarded as unquestionably the best regulated in the former Soviet Union, Kazakhstan's financial market may well be viewed as possessing all the necessary know-how to diversify its financial products and prospects.

Having been progressively integrated in the international financial system over the last decade, Kazakhstan has been adopting and developing, with varying success, business solutions pioneered in the west. One such innovation for the Kazakhstan business environment has been transactions signifying the first steps towards the development of a securitization market.

The first signs of this development appeared almost a year ago, when the state-owned Kazakhstan Mortgage Company placed its first mortgage-backed securities with the view to attracting additional funds for the next stage in the development of mortgage lending by local banks where mortgage bonds have been secured by primary mortgages. To further support the new innovation, the National Bank of Kazakhstan made the mortgage-backed securities available for investment by pension funds and pension asset managers without having regard to the listing category of such securities.

The Kazakhstan Mortgage Company's securitization efforts have been followed by a long-awaited issue of mortgage-backed bonds effected by local commercial bank Lariba Bank. The importance of this issue – as well as other local business initiatives – is difficult to deny. A serious precondition to the development of the mortgage-backed securities segment in the banking sphere, and the attraction of pension assets that would lead to gradual reformation of the capital markets, is the issue of trustworthy market-oriented mortgage-backed securities.

It is hoped that the introduction of mortgage-backed bonds will solve several pressing problems. A new financial instrument has been made available to the overly liquid pension funds, and their purchase of the bonds will enable banks to accelerate their home mortgage lending. In turn, impetus is given to the housing construction market with knock-on benefits for employment and consumption.

Another remarkable example of securitization transactions, which have enjoyed strong government support, is the series of loan facilities extended by the European Bank for

Reconstruction and Development (the EBRD) to several local banks for the development of a warehouse receipt programme, within the framework of recent improvements to the grain legislation. Much like the mortgage-backed programmes, the warehouse receipts – negotiable paper originating from the commercial banks' sub-borrowers that ultimately entitles its owners to obtain satisfaction from the value of stored grain – has been used to collateralize external financing provided by the EBRD. In addition to these well-aired transactions, there have been other smaller attempts to boost Kazakhstan's grain market using the warehouse receipt structure.

Kazakhstan clearly has much to gain from the securitization process. The results might be immense and give impetus to further economic development, contributing not only to the banking sector but also to the residential real estate market, the construction industry, consumer goods market and so on, which would help Kazakhstan to reduce its dependence on industries involved in development of the country's mineral resources. Of course, those industries themselves may be used for the securitization purposes. Being high-liquidity commodities, oil, gas, metals and the like could be high-profile sources of future cashflow.

A great variety of goods in Kazakhstan are ready and able to be securitized. However, for securitization to be a real success depends on the presence of two things: a healthy securities market infrastructure and a high-quality legal framework.

The National Bank of Kazakhstan has a long record of improving securities regulation, and at this stage it could be said that the organizational skeleton for the circulation of securitization papers is in place. The main obstacle for the further development of the securitization market is the lack of adequate legislative support. Despite the promising outlook for securitization, local lawmakers have so far been having trouble keeping pace with market demands and, in contrast to Russia, a specific legal act to regulate securitization has yet to be adopted. It is very much hoped that this situation will change soon and that the securitization market will blossom further.

Banking

Recommended firms

White & Case

Coudert Brothers

Baker & McKenzie

Bracewell & Patterson

Denton Wilde Sapte

LeBoeuf Lamb Greene & MacRae

Salans

Capital markets

Recommended firms

White & Case

Bracewell & Patterson

Coudert Brothers

LeBoeuf Lamb Greene & MacRae

Baker & McKenzie

Denton Wilde Sapte

Salans

Mergers and acquisitions

Recommended firms

Coudert Brothers

Denton Wilde Sapte

White & Case

LeBoeuf Lamb Greene & MacRae

Michael Wilson & Partners

Salans

Project finance

Recommended firms

Coudert Brothers

Denton Wilde Sapte

White & Case

Baker & McKenzie

Salans

LeBoeuf Lamb Greene & MacRae

Baker & McKenzie

Baker & McKenzie's Almaty office suffered a blow last year, when in October 2003 partner Mark Lockwood left the firm. However, the US firm's presence in Kazakhstan remains intact, and the firm's visibility on some large and high-profile deals goes to show it is still a contender in the country's legal market.

On the finance side, in July 2003 Maria Gekko provided advice on behalf of the firm to the European Bank for Reconstruction and Development in connection with a \$20 million loan to three local banks for on-lending to private service providers and suppliers in the railway sector. The following month Gekko remained busy, this time acting for the International Finance Corporation on the \$5 million financing of the construction of the Astana Business and Shopping Centre. Meanwhile, in M&A the firm is advising Sadkora Energy on its acquisition of a Danish subsidiary of Nafta Moskva in a deal worth \$16 million. Curtis Masters, head of Baker & McKenzie's operation in Kazakhstan, is leading the team on this deal.

The firm has a decent insolvency practice, which over the past year has advised on the bankruptcy of Kar-Tel and on the bankruptcy and reorganization of OJSC Maikuben West Coalmine. Baker & McKenzie also provides general corporate advice to clients whose business dealings involve a Kazakhstani element; one such client is RWE-Dea Aktiengesellschaft fuer Mineraloel und Chemie, which the firm is advising on different aspects of Kazakhstan law (among these, the permissibility of derivative actions, fiduciary duties and title to ownership interest in an LLP) in connection with a Kazakhstani oil producing joint venture.

Key contact partner

Curtis Masters

Bracewell & Patterson

Bracewell & Patterson has enjoyed a presence in Kazakhstan since 1994. The market seems undecided about the correct placing of the firm among Kazakhstan's top firms; some comment that the firm is "not that prominent in the financial sector," while others disagree, reporting that, despite the low level of activity in the markets, Bracewell has a "strong niche advising on eurobond issues."

Either way, what is certain is that the firm acts for a number of international and local clients, and has worked on behalf of the issuers in eurobond offerings by Halyk Savings Bank of the Republic of Kazakhstan, KazTransOil and Bank TuranAlem. Bracewell & Patterson also acted as issuer's counsel on Hurricane Hydrocarbon's \$215 million debt issue, a transaction that has been noted as one of the most important capital markets deals in Kazakhstan over the past year. And the observation by some peers that the firm does "no project financing" is inaccurate, as the firm represented KazTransOil on the \$200 million financing of the Kenkiyak Pipeline construction project.

Leading lawyer

Gregory Vojack

Coudert Brothers

Thomas O'Brien runs Coudert Brothers' Almaty office, which now comprises two partners and five associates. The

expansion has been due to the relocation of associate Kenneth Mack and partner Roger Stark from the firm's Washington office in January and March 2004 respectively, and M&A specialist John Sheedy's move from the New York office as an of-counsel in 2003. Stark effectively replaced partner Jonathan Cahn, who moved to the firm's Moscow office in July 2004.

The firm continues to have an impressive across-the-board corporate and financial practice that makes it one of Kazakhstan's best firms. Among the year's stand-out finance deals, the firm won a role as special counsel to the European Bank for Reconstruction and Development on secured corporate loans, and also worked on drafting the new constituent document of a large bank operating in Kazakhstan to bring it into compliance with the requirements of the new JSC Law of Kazakhstan.

In the insolvency sphere, a team led by O'Brien advised an investment fund in acquiring rights from an insolvent company concerning a large Kazakhstan gas field, and O'Brien also provided advice on Kazakhstan bankruptcy law issues related to a proposed limited recourse financing.

With a client list that includes Total, Chevron Texaco, Marathon Oil Company and Yukos, it is not surprising that Coudert's M&A practice is considered one of the best in the country. At the end of 2003 the firm advised an investment fund on Kazakhstan law issues relating to the acquisition of rights in a large Kazakhstan gas field, as well as acting for Chevron Texaco in connection with the alienation of its interest in the North Buzach oilfield.

The project finance practice is also assured a top-tier ranking for its excellent work on some of the country's highest-profile deals. These have included structuring the \$15 million project financing for the construction of a new terminal at Almaty airport, providing advice on financing the expansion of existing upstream facilities for the \$2 billion Tengizchevroil project, acting for a US investment group on the \$1 billion construction of a metro and monorail project in Almaty, and advising Chinese National Petroleum Corporation on issues of project structuring and the \$3 billion financing of the construction of the Atasu-Alashkou-Dushanzi crude oil pipeline, which runs from Kazakhstan to China.

At the time of writing the firm continues to be as busy as ever, advising an international oil company in connection with its acquisition of interests relating to a petroleum property in Kazakhstan's portion of the Caspian Sea shelf, including due diligence on the existing operator, and acting for a Russian oil company on its acquisition of interests in a petroleum property in western Kazakhstan.

Key contact partner

Thomas O'Brien

Denton Wilde Sapte

Denton Wilde Sapte took on Cameron McKenna's Kazakhstan practice three years ago – the firm did not have a banking practice before this. Since poaching of-counsel

Joel Benjamin from White & Case's Almaty office, its strength in the finance sector has strengthened.

Although Denton's strongest areas of expertise are traditionally in project financing and M&A, the firm has also been increasing its visibility in trade financing and capital markets work, having recently advised on the Alternative Investment Market (AIM) listing of Petrokazakhstan. Some peers see this as a sign that the firm's focus is, if not shifting from energy work entirely, then perhaps widening to encompass a wider practice – although most in the market still stress that Denton “is an energy and natural resources specialist.”

Among recent highlights, the firm has provided local law advice in connection with a €27.4 million (\$31 million) loan by the French government to the Kazakhstan government in respect of the City of Almaty's water project, acted for KBC Bank on a financing agreement for a new oil production line, and represented Marubeni in respect of a loan to KazakhOil in connection with the \$235 million modernization of the Atyrau Refinery.

Salans

Salans has had a presence in Almaty since 1994, and in that time has built a respected practice that some consider to be “among the best” in Kazakhstan. The work the office had handled includes advising a European multilateral financial institution on numerous loans, investment projects and other matters in Kazakhstan, the Kyrgyz Republic and Turkmenistan, and acting for a western government-supported investment fund in connection with the privatization and modernization of the dairy industry.

Leading lawyer Aigoul Kenjebayeva is singled out by many peers for her expertise, being described by one as a “good lawyer with a high profile ... she is energetic and forceful.”

Leading lawyer

Aigoul Kenjebayeva

White & Case

Few would dispute White & Case's position at the top of tree in Kazakhstan, with a well-established practice that handles the full range of corporate and financial work. Manging partner Yuriy Maltsev is “without doubt one of Kazakhstan's best lawyers,” “well respected” and “able to work in all practice areas.”

In banking and capital markets work the market agrees that “White & Case deserves to be in tier one ... it is the clear leader”. In straight banking work the firm advised Deutsche Bank and Citibank as lead arrangers of a \$245 million syndicated term loan facility to OJSC Bank TuranAlem, and acted for Raiffeisen Zentralbank Oesterreich as lead arranger of a \$150 million trade finance facility to OJSC Halyk Bank of Kazakhstan. And in structured finance the firm played a key role advising on the

groundbreaking securitization programme for Halyk Savings Bank – the first securitization ever in Kazakhstan, and in the CIS region overall. Under the deal, Halyk Bank sold its future payment rights (arising from payments made to it from correspondent banks) to a special purchase vehicle in Jersey. The purchase was funded by a \$100 million facility underwritten by White & Case's client on the deal, WestLB.

The firm is equally strong on capital markets deals, a fact that has not gone unnoticed by peers and clients – one of which remarked that it “has higher level of activity ... it is the only international counsel for the lead managers.” Over the past year White & Case has advised JP Morgan and Credit Suisse First Boston as lead managers of Kazkommertsbank's \$500 million eurobond issue, acted for Merrill Lynch, ABN AMRO and the other managers in connection with Bank TuranAlem's \$225 million bond issue, and represented UBS in connection with the issue by JSC Development Bank of Kazakhstan of \$100 million-worth of eurobonds.

In M&A, White & Case works on “the most complicated deals,” and this again justifies its position in the top tier this year. The firm has, among other highlights, advised Russian oil company Yukos in the acquisition of a significant interest in the Fedorovsky exploration block, acted for the purchaser in connection with its acquisition of shares in Kyrgyztelecom, and represented a gypsum producer as it acquired the shares of a large Kazakhstan gypsum plant.

Lastly, in project financing White & Case teams have advised Credit Suisse First Boston in respect of financing a project relating to a Kazakhstan oil and gas producer, and worked for ABN AMRO on two projects: the financing of Food Contract Corporation, and the financing of one of Kazakhstan's grain producers.

Key contact partner

Yurij Maltsev

Leading lawyer

Yurij Maltsev