

**KAZAKHSTAN**

## Kazakhstan litigation guide



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As the Republic of Kazakhstan's economic role in the world increases, its courts are striving to earn authority as a venue for dispute resolution. To this end, the RK Supreme Court has launched a programme monitoring judges, which assesses various aspects of their performance. This includes (i) the quality of their court documents, (ii) the percentage of their court decisions cancelled by higher courts, (iii) public opinion surveys regarding the reputation of individual judges, (iv) press criticism, and (v) judges' willingness to continue studying.

A judicial board uses the results of this monitoring to determine whether a judge should continue to serve. If this system continues for long enough, it will undoubtedly help to increase judges' expertise, improve the quality of court decisions, and increase the overall cost-effectiveness of civil procedure. It will also help to reduce corruption in the courts.

There is also continuing reform of civil procedure legislation and laws regulating arbitration in Kazakhstan.

### Judicial system and process

The judicial system is based on the *RK Law on the Court System and Status of Judges in the Republic of Kazakhstan*. It comprises the Supreme Court, oblast courts, and district courts. In addition to district courts of general jurisdiction, which are the first instance courts for criminal cases and

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civil cases (where at least one of the parties is an individual), there are economic and administrative district courts. The former considers business disputes, while the latter considers administrative cases. Disputes between participants in Almaty fall within the jurisdiction of the Specialised Financial Court.

Civil procedure is governed by the *Civil Procedure Code*, which was adopted in 1999. Since that time it has undergone certain major revisions, and an additional set of changes is under discussion. Court decisions can be obtained quite quickly in Kazakhstan. A first instance court must adopt a decision within two months. The parties have 15 days to appeal the decision of the first instance court. The appellate court must rule within one month of receiving the case from the first instance court. Thus, the total time to obtain an enforceable court decision in Kazakhstan is approximately four months. The appellate court ruling may be further appealed in supervisory proceedings within one year. It may take approximately two months for a supervisory level court to consider the case and make a ruling.

Parties to court proceedings may request interim relief (security measures) from the court, such as attachment of property, injunctions prohibiting certain actions, and order freezing assets.

### Arbitration

Kazakhstan law differentiates between local arbitral tribunals, which are governed by the *RK Law on Arbitral Tribunals*, and international arbitral tribunals, which are governed by the *RK Law on International Commercial Arbitration*. Both kinds of tribunals are non-state institutions and offer an alternative to the state courts for the resolution of disputes. Arbitration can determine disputes arising from civil agreements save those that are not arbitrable as a matter of Kazakhstan law.

There are several differences in the regulation of local and international arbitral tribunals. An international arbitral tribunal has jurisdiction over disputes where at least one of the parties is a non-Kazakhstan resident. An international arbitral tribunal may apply the law agreed by the parties, whereas a local arbitral tribunal may only apply Kazakhstan law.

Awards of both international and local arbitral tribunals may be set aside or their enforcement refused by Kazakhstan state courts upon the request of the party or third parties whose interests are affected by the award. The grounds for the setting aside/refusal of enforcement of arbitral awards are similar to those established by the New York Convention, and include procedural violations and contravention of 'public order'. In addition, a local arbitral award can be set aside if it violates Kazakhstan substantive law.

Arbitral awards are enforced in accordance with the *Civil Procedure Code*, which provides for 'mandatory enforcement of an award'. Upon request by one of the parties a Kazakhstan court issues a writ of execution, which should be executed in the same manner as a writ of execution in respect of a Kazakhstan court decision.

### Enforcement of foreign decisions and awards

In accordance with the Civil Procedure Code, decisions of foreign courts and arbitral tribunals are enforceable in Kazakhstan if so provided by law or by international conventions to which Kazakhstan is party. But this is on the principle of reciprocity. Kazakhstan has entered into several bilateral conventions on legal assistance in civil cases which provide for reciprocal recognition of foreign court decisions. Kazakhstan is a party to the 1958 New York Convention, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the 1965 European Convention on International Commercial Arbitration.

## Financial & Corporate

### RECOMMENDED FIRMS

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White & Case

#### Tier 2

Bracewell & Giuliani

Denton Wilde Sapte

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#### Tier 3

Baker & McKenzie

Dewey & LeBeouf

Magisters

Michael Wilson & Partners

## Energy & Natural Resources

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### White & Case

White & Case is Almaty's premier firm and offers the full range of corporate and financial legal services. Since opening up its office in 1992, the 10-lawyer practice has maintained its dominance across the transactional front with quality on-the-ground advice across local, English and US law. Additionally, the firm is able to tap into its global network of resources from more than 37 offices in 25 countries. Top-billed Yuriy Maltsev and Walter Daniel lead the team.

White & Case's specialty practice areas are capital markets, securitisation, M&A, and banking and finance transactions. It also enjoys a high profile in the oil and gas sector. More specifically, the team has an impressive track record advising on international equity offerings, domestic

debt offerings, syndicated loans, credit agreements, multilateral financings, structured financings, M&As, privatisations and joint ventures. The firm has featured in every notable deal in the jurisdiction. For example, it is advising JSC Alliance Bank and JSC BTA Bank on their precedent-setting restructurings. The team additionally acted for KazMunayGas on its global MTN programme update from US\$3 billion to US\$5 billion.

### Bracewell & Giuliani

Bracewell & Giuliani has been in Almaty since 1994 and opened up an Astana office in 2000. The firm maintains a strong presence on its financial and corporate offering, assisting major international and local financial institutions, global investment companies and state-owned company clients with their financing, transactional, and operational needs. Core practice areas of the firm are capital markets, financing, oil and gas exploration and development, and project finance. Some clients include the Eurasian Development Bank, JPMorgan Chase, Credit Suisse, the World Bank, JSC National Company KazMunayGas, and Merrill Lynch.

The 11-fee earner team, led by managing partner Gregory Vojack, has a deep bench of experience on various debt offerings, securitisation projects, derivatives transactions, M&As, and bilateral and syndicated lendings. A highlight transaction for the team involved advising SBV V Kazakhstan on its US\$51 million acquisition of shares of a group of Kazakhstan companies producing and selling beverages. In 2008, the firm advised issuer KazMunayGaz Finance and guarantor KazMunayGas on the establishment of their US\$3 billion global MTN programme.

### Denton Wilde Sapte

The Almaty office of Denton Wilde Sapte is part of a trio of offices that together form the largest international law firm presence in Central Asia. It was established in 1992 and has over 25 US and local lawyers. The firm is full-service, offering quality advice on a range of banking, financial and corporate matters. Its team frequently advises both domestic and foreign lenders, as well as borrowers of bilateral loans, syndicated loans, trade and project finance transactions. On the equity and debt capital markets front, the team has worked with issuers, underwriters and nominated advisers on both the London and Kazakhstan stock exchanges. Additionally, the firm has experience representing clients on domestic derivative transactions.

Denton Wilde Sapte's Almaty corporate practice is well-regarded for its M&A work, acting for acquirers and sellers in transactions that span an array of industries. These include banking, oil and gas, mining,

telecommunications and media. The firm boasts an additional strength with its energy, oil and gas practice, headed up by Marla Valdez. Leading lawyer Joel Benjamin is the firm's banking and finance head. Two highlights for the team this year were its role advising the acquirers of the International Bank of Almaty, and its representation of Alnair Capital on its US\$500 million purchase of a 25% stake in Kazkommertsbank JSC.

### **Salans**

Salans opened its Almaty doors in 1994 and the office consists of over 25 locally and internationally qualified lawyers, including three resident partners. All of its lawyers speak fluent English and Russian, and several speak Kazakh, French, Korean and Spanish. The team offers a diverse practice that handles national and international commercial and corporate law for both domestic and foreign investors, and private and public companies. In addition to its core financial and corporate practice, the firm also provides expert counsel in tax, antitrust, litigation, real estate, intellectual property, and labour and employment matters.

In addition to a mix of domestic and cross-border M&As, leveraged buyouts, and corporate restructurings, the team specialises in negotiating and preparing acquisition agreements along with preparing related financing documents. In particular, the firm has experience in obtaining various governmental approvals and consents from the Ministry of Energy and Mineral Resources, waivers of pre-emption rights of the Republic of Kazakhstan and consents for transfers of strategic objects.

The firm's oil and gas practice is well-regarded by the market and is led by partners Aigoul Kenjebayeva and Abai Shaikenov. A noteworthy deal the team worked on this year was advising MaxPetroleum on the local law aspects of the project financing for its petroleum operations in the country. Another highlight was representing Astana-Contract JSC on a shareholders' agreement with Kazyna Capital Management. The firm also operates an Atyrau office, which is managed by Shaikenov.

### **Baker & McKenzie**

Baker & McKenzie Almaty was established in 1995 and houses a team of 40. The firm is part of one of the most expansive global network of offices and specialises in a broad range of financial and corporate matters. It has a particularly strong track record on sophisticated cross-border financings, M&A transactions and construction projects. John Connors and Curtis Masters lead the team.

### **Dewey & LeBeouf**

Dewey & LeBeouf offers a team of 15 who have a deep bench of experience in corporate transactions. Opened in 1995, the firm's Almaty office focuses on bringing quality legal services in key sectors like oil and gas, banking and finance, mining and metals, power and infrastructure, and privatisation. Other areas the firm concentrates on include international trade, project finance, corporate law, bankruptcy, labour and employment, real estate and taxation. Aset Shyngyssov is the resident partner.

### **Magisters**

Magisters entered the Astana market in early 2009. Led by Marta Khomyak, the office has five lawyers who are locally and internationally qualified and is continuing to grow its offering. Major areas the practice covers include banking and finance, competition, restructuring, government relations, M&A, oil and gas, real estate and construction, litigation and arbitration, and white collar crime. The firm's clients include governmental and private institutions and foreign investors.

### **Michael Wilson & Partners**

Michael Wilson & Partners is a local firm which has two offices in the Central Asian region to service clients on their transactions. The firm's Almaty office was established in 1998 and is run by leading lawyer Michael Wilson. Its core practice areas are contracts, joint ventures and foreign investments, corporate finance and securities, general banking, project finance, intellectual property, privatisation, real estate, dispute resolution, tax, and labour and employment.