

NEW DEVELOPMENTS IN KAZAKHSTAN'S LAWS ON PROJECT FINANCE AND SYNDICATED LOANS

ALUMNI Partners wishes to highlight a number of important changes to Kazakhstan's laws with a potentially significant impact on the country's financial market and access to it for foreign banks in view of liberalisation of the syndicated loan regulatory framework.

Law of the Republic of Kazakhstan No. 97-VIII, dated 19 June 2024, "On amending and supplementing certain legislative acts of the Republic of Kazakhstan on minimising lending risks, protecting borrowers' rights and improving the regulatory framework for the financial market and enforcement proceedings" has introduced, with effect from 1 July 2024, amendments and additions to Law No. 126-III, dated 20 February 2006, "On project finance and securitisation" (**the "RK Law on project finance and securitisation"**).

1 BASIC CHANGES TO THE RK LAW "ON PROJECT FINANCE AND SECURITISATION"

The RK Law on project finance and securitisation has been amended with respect to syndicated loans and how relations between creditors' syndicate participants are regulated.

- **The range of potential creditors' syndicate participants has been widened**

Until 1 July 2024, creditors' syndicate participants included only:

- second level banks (all banks of the Republic of Kazakhstan other than the National Bank and the Kazakhstan Development Bank¹);
- Kazakhstan Development Bank; and
- International financial institutions².



With effect from 1 July 2024, creditors' syndicate participants additionally include:

- branches of non-resident banks in the Republic of Kazakhstan;
- Astana International Financial Centre (AIFC) banks;
- RK non-resident banks³.

Despite Kazakhstan actively attracting foreign investment, the restricted list of potential creditors' syndicate participants in effect prior to the amendments exerted a negative impact on the possibility of implementing projects involving foreign investors as syndicate members. Even banks operating directly in Kazakhstan (AIFC banks and branches of major foreign banks) could not participate in syndicated lending.

With effect from 1 July 2024, however, the range of potential creditors' syndicate participants has been extended. This opens up major opportunities for banks to participate in, among other things, big investment projects that require multi-modal lending owing to the amount of funding and allow risks to be reasonably spread within a syndicate.

- **Syndicated loan organiser**

A new concept has now been put in place: a "syndicated loan organiser". This party brings together syndicate participants and organises conclusion of a syndicated loan agreement without directly participating⁴. This amendment will regulate the role of the bank that initiates and performs a search for new syndicate participants for major projects. Having such an organiser improves the structuring of transactions where the borrower's funding requirement is higher than the current capacity of the creditors already belonging to the syndicate.

- **Soft law or standard provisions of a syndicated loan agreement drafted by a foreign professional organisation**

Laws of the Republic of Kazakhstan now provide directly for a syndicated loan agreement to be entered into using standard provisions drafted by a foreign professional organisation, understood as an international organisation, a

¹ Clause 3, Art. 3 of Law No. 2444, dated 31 August 1995, of the Republic of Kazakhstan "On banks and banking in the Republic of Kazakhstan".

² Clause 10-1), Art. 1 of Law No. 126-III, dated 20 February 2006, of the Republic of Kazakhstan "On project finance and securitisation" (as amended and supplemented as of 12 September 2022).

³ Clause 10-1), Art. 1 of Law No. 126-III, dated 20 February 2006, of the Republic of Kazakhstan "On project finance and securitisation" (as amended and supplemented as of 1 July 2024).

⁴ Clause 15-2), Art.1 of the RK Law on project finance and securitisation.

foreign body corporate or a foreign unincorporated organisation that establishes uniform rules and/or standards for financial markets and appears on a list approved by an authorised body⁵.

The current list includes:

- 1) the Loan Market Association (LMA);
- 2) the Loan Syndications and Trading Association (LSTA);
- 3) the Asia Pacific Loan Market Association (APLMA)⁶.

Parties can enter into a syndicated loan agreement incorporating standard provisions drafted by a foreign professional organisation if Astana International Financial Centre (AIFC) banks, non-resident banks of Kazakhstan, or international financial institutions provide at least two-thirds of the syndicated loan to the borrower⁷.

- **Converting several bilateral loans into a syndicate**

It is now possible to enter into a syndicated loan agreement if the borrower has already entered into (bank) loan agreements with a number of lenders⁸. Several bilateral loans may now be merged into a syndicate without refinancing. There being no refinancing requirement, merging loans into a syndicate is more appealing to both lenders and borrowers, as there is no need for any “new” money flow or current debt repayment.

- **Syndicated funding arrangement**

With effect from 1 July 2024, a syndicated loan agreement may be signed not only with participants but also professional organisers of creditor syndicates. In a syndicated funding arrangement, the syndicated loan organiser, acting on its client’s instructions, undertakes to provide services related to preparation for concluding a syndicated loan agreement subject to certain conditions (syndicated funding arrangement services) and the client undertakes to pay for these services⁹.

Such an arrangement must be made in writing, otherwise it will be null and void.

A syndicated funding arrangement speeds up the process substantially and makes it possible to focus on business rather than legal technicalities.

2 CHANGES TO THE REGULATORY FRAMEWORK FOR COORDINATING SYNDICATE PARTICIPANTS’ ACTIONS

Some amendments relate to the way syndicate participants’ interaction is coordinated on the basis of an agreement between them.

Creditors’ syndicate participants can enter into an agreement either before or after signing a syndicated loan agreement, including after issuing the loan itself. Among other things, such an agreement provides for:

- liability of creditors’ syndicate participants in the event of unilateral refusal by one or several syndicate members to perform their obligations under a syndicated loan agreement;
- the decision-making procedure relating to syndicated loan agreement performance;
- transfer to another party of receivables and other rights belonging to a creditors’ syndicate participant¹⁰.

3 OTHER AMENDMENTS

- **Agent bank’s role**

An agent bank now has the same rights as other syndicate members in decision-making, exercising its creditor rights and performing legally significant actions as creditor as per the syndicated loan agreement terms and conditions¹¹.

⁵ Clause 22, Art. 1 of the RK Law on project finance and securitisation.

⁶ Resolution No. 39, dated 19 July 2024, of the Board of the RK Agency for regulating and developing the financial market “On approving the List of foreign professional organisations”.

⁷ Clause 5, Art.14-1 of the RK Law on project finance and securitisation.

⁸ Clauses 1-1 and 2-1, Art. 14-1 of the RK Law on project finance and securitisation.

⁹ Clause 1-1, Art. 14-2 of the RK Law on project finance and securitisation.

¹⁰ Part 3, Clause 3, Art.14-2 of the RK Law on project finance and securitisation.

¹¹ Part 6, Clause 3, Art. 14-2 of the RK Law on project finance and securitisation.

- **Transfer of syndicate participants' rights and obligations**

If a syndicate participant's receivables transfer to another party, the powers set out in the syndicated loan agreement, including the rights to participate in decision-making, now persist¹².

These developments will affect significantly the way businesses enter into and perform syndicated loan agreements and will broaden the opportunities for foreign banks and their branches both in mainland Kazakhstan and on the AIFC territory.

ALUMNI Partners legal updates are a brief overview of new developments in law and law enforcement and should not be viewed as a legal opinion or advice.

If you have any questions or comments in relation to this legal update, please contact us and we will be happy to discuss them.



Anton Panchenkov

Partner

Head of Central Asia

ALUMNI Partners

+7 (771) 968-8-968

anton.panchenkov@alumnipartners.ru



Tatiana Parshak

Partner

Banking & Finance

ALUMNI Partners

+7 (495) 968-8-968

tatiana.parshak@alumnipartners.ru



Nikita Lysenko

Associate

Kazakhstan Office

ALUMNI Partners

+7 (771) 968-8-968

nikita.lysenko@alumnipartners.ru

¹² Part 7, Clause 5, Art. 14-2 of the RK Law on project finance and securitisation.