

**Agency of the Republic of Kazakhstan on Regulation and Supervision of
Financial Markets and Financial Organizations**

**Improving Kazakhstan's
Doing Business ratings under Getting Credit and
Investor Protection indicators**

**Almaty
June 26, 2009**

Getting Credit

Protection of secured secured creditors

Problematic aspects:

- Absence of absolute priority of satisfaction of secured creditors in bankruptcy proceedings of the debtor;
- Stay on secured creditors' claims during rehabilitation of the debtor.

Reforms suggested by the World Bank concerning priority claim satisfaction for secured lenders

World Bank suggestions	Expert Team positions
<p>Exclusion of collateralized property from the bankrupt estate of the debtor to be liquidated.</p>	<p>Negative aspect: Interests of 1st and 2nd priority lenders - «social sphere» can be infringed upon.</p> <p>To provide protection of interests of «social sphere» <u>by means of expansion of functions of the Public Social Insurance Fund</u> .</p> <p>This issue needs to be further discussed with the Government, state agencies concerned and private sector.</p>

Collateral matters

Problematic aspects:

- Legal requirement for detailed specific description of the secured asset;
- Impossibility to include general description of debts and obligations in the security agreement between the parties which would secure all types of obligations and debts by means of indication of a maximum, rather than a certain sum;
- Unclear regulation by legislation of the transfer of rights on secured assets with regard to future assets or assets that will be acquired in the future, its tacit application to products, derivatives or replacement of original property.

Reforms suggested by the World Bank with regards to secured assets

World Bank suggestions	Expert Team positions
<p>To introduce amendments to:</p> <ul style="list-style-type: none">• Article 307 of the Civil Code, amendments to allow the transfer of non-possessory rights of pledge over the combined assets of a company without a specific description of the pledged assets;• Article 302 of the Civil Code, amendments to allow for a general description of the underlying debt obligation in security agreements;• Amend articles 309 (1), 314 (1) and 315 to allow for the automatic extension of the security interest over the future products, proceeds and replacements of the original asset. At present the law does not allow for automatic extension of the security interest over proceeds which can be detached from the original asset, requiring this to be expressly stated in the security agreement.	<p>The expert team supported these suggestions in principle.</p> <p>The proposal to consider the possibility to introduce «floating security» in Kazakhstan was submitted to the Government.</p>

**Protecting investors
measures taken to improve Kazakhstan's rating**

Indexes	Measures
<p><i>Disclosure index</i></p> <p><i>Director liability index</i></p> <p><i>Shareholder suits index</i></p>	<p>Currently adopting of amendments to article 76 of the Law on JSC, on publication of the explanatory note in addition to financial reports with information on related-party transactions</p> <p>The concept of the draft law On amendments and additions to certain legal acts on securities market and joint-stock companies was developed.</p>

Reforms suggested by the World Bank

- Decrease in the threshold for major transactions from 25 % to 10 % of assets of the company
- External audit of large transactions with related parties before the approval of transaction
- Approvals and notifications about major transactions with related parties (immediate notification on the web site or in mass-media)
- Mandatory approval of major transactions and transactions with related parties at extraordinary meeting of shareholders

Reforms suggested by the World Bank that were accepted by the expert team

1. Introduction of an amendment into article 62 of the Law on JSC to define the responsibility of directors and to ensure prudent company management.
2. Introduction of an amendment into article 66 of the Law on JSC to enable courts to cancel transactions with related parties if there is evidence that it caused damage to the company and that it could be concluded on better conditions if there were no conflict of interests.
3. Introduction of amendments into articles 63 and 74 of the Law on JSC to enable shareholders to file lawsuits related parties and claim compensation and return of income if there is evidence that the company incurred losses due to the transaction and that it could be concluded on better conditions if there were no conflict of interests.
4. Introduction of amendments into article 74 of the Law On joint-stock companies to enable shareholders to file lawsuits against interested organizations and claim compensation and return of income if there is evidence that the company incurred losses due to the transaction and that it could be concluded on better conditions if there was no conflict of interests.
5. Introduction of amendments into the RK Criminal Code to establish criminal liability of officials for conclusion of large transactions or transaction with related parties which resulted in large damage or other grave consequences for the company.
6. Introduction of amendments into article 63 of the Law on JSC to establish the responsibility of directors for transactions with related parties and disgorge personal gains obtained from such a transaction.

Thank you for your attention!

