20 August 2014

Kazakhstan National Bank Tightens Banking and Price Manipulation Rules

The amendments aim to strengthen the requirements for banks' net equity and charter capital as well as the price manipulation restrictions.

The Kazakhstan banking regulator—the National Bank of the Republic of Kazakhstan (NBK)—has adopted important amendments to its rules on prudential limits, which aim to strengthen the requirements for banks' net equity and charter capital as well as the restrictions related to price manipulation. Highlighted below are the key provisions of the amendments.

Prudential Limits

On 6 May, the NBK amended the prudential limits rules for all commercial (so-called "second tier") banks, including Islamic banks. According to the amendments, the minimum charter capital amount for a newly founded bank, as well as the net equity amount for an existing bank performing main banking operations, would gradually increase as follows:

- KZT30 billion (approx. USD165 million), from 1 January 2016
- KZT50 billion (approx. USD275 million), from 1 January 2017
- KZT75 billion (approx. USD412 million), from 1 January 2018
- KZT100 billion (approx. USD549 million), from 1 January 2019

Starting 1 January 2016, the minimum amount of net equity capital for a bank that performs only limited banking operations would be KZT10 billion (approx. USD55 million).

At the beginning of 2014, nonperfoming loans (NPLs) were at a high level (about 31% across all commercial banks). An NPL is defined as a loan with more than 90 calendar days overdue debt (principal amount and/or interest), excluding reserves. The NBK intends to force a reduction of this level of credit risk to support banks' competitiveness. The NBK has established a practice of making agreements with banks regarding specific measures to improve their loan portfolios. In addition, the NBK introduced new coefficient k11 (the maximum limit of NPLs in a bank's loan portfolio), which takes effect on 1 January 2016. Coefficient k11 should not exceed 0.10 and would be calculated as a ratio of NPLs to a bank's total loan portfolio.

Price Manipulation Restrictions

On 23 April, the NBK adopted new rules on the classification of transactions in organized or over-the-counter (OTC) markets that are aimed at manipulating the markets (the Manipulation Amendments). The Manipulation Amendments came into force on 15 July.

Overview

Manipulation on a securities market is defined as actions of securities market participants aimed at (i) establishing and/or supporting higher or lower prices for securities compared to fair market price, (ii) giving the appearance of trading with securities, and/or (iii) entering into transactions using insider information.

A list of transactions that are subject to monitoring and control for the purposes of manipulation includes, among other things, (i) sale and purchase transactions within five business days that did not result in a sufficient change (10% or more) in the securities volume held by the parties to the transaction and (ii) transactions entered on stock exchanges for pre-agreed prices that materially differ from prices at the securities market prior to the transaction.

A material difference in the price of stock exchange transactions should be evaluated as follows:

- For share transactions, a 30% transaction price deviation test, based on the average prices on the stock exchange
- For bond transactions, a 3% or more of yield to redemption deviation test, based on average market profitability

The Manipulation Amendments

The key provisions of the Manipulation Amendments are as follows:

- The Manipulation Amendments provide for separate procedures for recognizing transactions as manipulative on the organized and OTC markets. Transactions entered into on the organized market require an opinion of the Kazakhstan Stock Exchange's (KASE's) expert committee (previously, this was done by KASE's board of directors). For OTC transactions, KASE's expert committee opinion is optional. Note that such opinion does not have a binding effect for the NBK, which is the final authority to decide whether a transaction is manipulative or not.
- The list of transactions that are subject to monitoring (e.g., transactions where the seller and the purchaser are the same person acting on its own or via professional broker, sham transactions, etc.) was expanded. Currently, transactions that meet the material difference thresholds discussed above are also subject to monitoring and control.
- The list of exempt transactions was expanded. For instance, sale and purchase transactions were added to the list when they are closed on the stock exchange via the "open trade" method within five business days and did not change the securities volume held by the parties to the transaction by 10% or more, provided that the securities were included into the so-called "representative list of KASE".

Liability

Manipulative transactions may be challenged in court by any interested party. In addition, failure to comply with the restrictions related to manipulation may lead to administrative or, in some cases, criminal liability (e.g., fines or imprisonment). Criminal liability was added recently after the 10 June 2014 adoption of amendments to the Criminal Code.

Contacts

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