The Pragma Corporation

Financial Sector Initiative

Nineteenth Quarterly Report

For the Period

February 22, 2005 – May 21, 2005

For the

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

GENERAL INFORMATION

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ALMATY, KAZAKHSTAN

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A. PROJECT OVERVIEW

I. PROJECT DESCRIPTION

The Pragma Team works with the Kazakhstan Stock Exchange (KASE), the National Bank of Kazakhstan (NBK), the Pension Regulatory Body/State Accumulation Pension Fund (SAPF), the Ministry of Labor and Social Protection, Ministry of Finance, pension fund asset managers, banks, and broker/dealers to implement the Financial Sector Initiative Project.

In September 2001, Mr. Rick Gurley, the CTO for the USAID/CAR Mission, approved the Work Plan that set forth the priorities of the Project *through its completion date*. In August, 2002 Dr. Lewis Tatem became the new CTO of FSI. During the eighth quarterly review, Dr. Tatem approved FSI's work plan though the remainder of the first option exercise, August 2003. In July, 2003 FSI reviewed its activities and received notification that USAID would exercise its option to have FSI continue. In late August, FSI and USAID mutually agreed on revised expected results. An updated work plan, reflecting expected results through the completion of the project in August 2005, has been submitted to USAID for approval *(See Attachment 1)*.

The priorities of the Project for this period are noted by component in the boxes below.

The project update for this quarterly report will correspond to the activities set forth in the action plan described below and reported by component.

II. SIGNIFICANT EVENTS AND ACHIEVEMENTS

- PRAGMA/FSI PROMPTS AFK REDRAFT OF MINFIN VERSION OF THE LAW "ON SECURITIZATION"
- PRAGMA/FSI FACILITATES CRITICAL REVIEW OF KAZAKHSTAN CENTRAL SECURITIES DEPOSITORY (CSD)
- PRAGMA/FSI FACILITATES FIRST MONETARY POLICY ROUNDTABLE AT NATIONAL BANK OF KAZAKHSTAN
- SECOND ANNUAL C-BONDS CONGRESS HELD IN ALMATY
- CORPORATE BOND ISSUANCE
- DRAFT AMENDMENTS TO LAW "ON INSURANCE" ESTABLISH MORTGAGE INSURANCE AS A SEPARTE INSURANCE CLASS
- MINISTRY OF LABOR PROPOSES TO ESTABLISH NATIONAL ANNUITY COMPANY

- PENSION ASSETS EXCEED KZT 542 BILLION (US$ 4.02 BLN)
- PRAGMA/FSI ASSISTS IN ORGANIZATION OF THE ASSOCIATION OF REALTORS OF KAZAKHSTAN (ARK)
- CONTRACT WITH CREDITINFO GROUP (ICELAND), WINNER OF THE RFP, SIGNED ON MARCH 18TH.
- GENERAL SHAREHOLDERS MEETING APPROVED DATABASE STRUCTURE IN APRIL 2005.
- SHAREHOLDERS FINALIZE CONTRACTS AND AGREE UPON EQUAL SHARES. INITIAL FUNDING AT US$ 210,000 CONFIRMED WITH SIGNED CONTRACTS.
- NBK REFUSED TO PROVIDE A LONG-TERM LOW COST LOAN TO THE FCB.
- NBK AND FSA, IN PRINCIPLE, AGREE THAT FCB MAY USE DATA IN CENTRAL CREDIT REGISTRY. LEGAL ISSUES NEED TO BE RESOLVED AND UNDER ANALYSIS. TASK FORCE CREATED.
- CREDIT BUREAU PROJECT CONTINUES TO CARRY OUT ACTIONS TO IMPLEMENT BUREAU
- NBK AND FCB SIGN AGREEMENT ON MARCH 15TH, 2005, WHICH STATES THAT FCB MAY USE NBK'S PREMISES TO HOUSE THE SERVER ROOM.
- FCB IN PROCESS OF REMODELING PREMISES RECEIVED FROM THE NBK.
- FCB NEARING COMPLETION OF NEGOTIATIONS WITH THE SUPPLIERS OF COMPUTER HARDWARE.
- CUSTOMIZATION OF SOFTWARE FOR DATA MANAGEMENT BEGUN.
- SIGNIFICANT GAINS IN MARKETING CREDIT BUREAU TO NON-FINANCIAL SECTOR

III. PROJECT EXECUTIVE SUMMARY

This Report provides details on the events and activities summarized below, as well as other events and activities regarding the USAID Financial Sector Initiative, as implemented by consultants for The Pragma Corporation (the Project), for the period from February 22, 2005 through May 21, 2005. The report is comprised of four components: Financial Instruments, Pension/Insurance, Mortgage, and Credit Bureau /Credit Rating Agency. Each component section of the report will have a summary with specific activity tasks identified and the status of each task with appropriate commentary, relevant attachments, and reference to administrative issues, if any.

Financial Instruments

Transfer of sponsorship of the draft law "On Securitization" to Ministry of Finance has created headaches and will probably delay its presentation to the Mazhilis. Pragma/FSI has, however, found a new ally in its struggle for clearer and stronger language in the law. The Association of Financiers has formed a working group on securitization composed of financial industry professionals most likely to actually use the law.

At the request of the Central Securities Depository, Pragma/FSI brought in a European Central Bank specialist to review depository procedures and operations in Kazakhstan. Mr. Jens Tapking's observations and recommendations are attached.

Excess liquidity in Kazakhstan's banking sector has severely distorted the government yield curve; virtually all yields on National Bank and Ministry of Finance securities are net negative. In an effort to better understand this phenomenon, Pragma/FSI assisted the NBK in organizing a Monetary Policy Roundtable, at which a specialist in monetary policy from the Czech National Bank discussed the NBK's conduct of monetary policy during the preceding two years. Mr. Oldrich Dedek's analytical paper is attached.

Also attached is Pragma Senior Advisor Steve Moody's paper, "Kazakhtan's Term Structure of Rates," which was published in the National Bank's *Economic Survey*.

C-Bonds, the premier Russian financial information agency, held its second annual Bond Conference in Almaty this year. Pragma Chief of Party Jack Pascal and Senior Advisor Steve Moody made presentations to the 250 assembled participants.

The fast pace of corporate bond issuance continues. At the end of the first quarter, cumulative corporate bond issuance in Kazakhstan stood at KZT 313 billion, or US$ 2.45 billion.

Insurance/Pension

The new draft law "On Insurance Activity," drafted by the Financial Supervisory Agency with the assistance of the Association of Financiers and Pragma/FSI, establishes mortgage insurance as a separate class of insurance. While seemingly a minor development in Kazakhstan's financial sector, this element of the insurance law will significantly strengthen both the insurance industry and the banking sector.

With the passage of the law "On Workers' Compensation," the Ministry of Labor has proposed to establish a national annuity company to compensate for the fact that domestic insurers have not yet developed adequate annuity products. In fact, however, there are very good reasons why domestic insurers aren't writing annuities. This report discusses the difficulty of designing annuity products for the local market.

At the end of the May 2005, total pension assets exceeded US$ 4.0 billion (KZT 542 billion).

Mortgage

During the quarter under review, Pragma/FSI continued its cooperation with the Arizona-Kazakhstan Partnership in developing the Association of Realtors of Kazakhstan. The ARK convened its first organizational meeting to elect officers, and Az-Kz consultant Jim Hogan

lectured the group on the curriculum and advanced courses to be offered by the Training Center.

Aleksandr Kopeikin of the Institute for Urban Economics, Moscow, continued his work with the Kazakhstan Mortgage Company in preparation for the government housing program.

At the end of June 2005, total mortgage lending in Kazakhstan's major banks amounted to KZT 193 billion.

Credit Bureau

From February 22, 2005 through May 21, 2005, FSI continued to initiate actions to develop a credit reporting system that would meet the needs of Kazakhstan. As reported in the 18th quarterly report, FSI focused on a) finalizing the First Credit Bureau of Kazakhstan's (FCB) shareholder structure – initial capital at US$ 210,000 (7 shareholders with equal shares), b) getting the shareholders to agree on international credit bureau operator's share of equity, c) persuading the insurance industry to share its data with the CB, and d) regulatory matters related to receiving a license from the FSA and compliance with data access and compliance requirements. In all these areas, FSI made major progress. In addition, FSI and the FCB continued in-depth technical analysis for data structures – formats and transfer requirements. This latter task demands much time and effort given the sizes of databases at each of the major banks in Kazakhstan.

A primary objective of USAID/Pragma has been to move the KCB forward in order to guarantee the long-term sustainability of the institution through capacity building, marketing, product/services development and public awareness. Capacity building was at the core of our activities during the quarter.

IV. PROJECT STAFFING

The following personnel were engaged in project activities this quarter:

- John K. Pascal, Chief of Party (from January 20, 2005)
- Stephen S. Moody, Resident Senior Advisor, Financial Instruments, Mortgage, Pension/Insurance
- Javier Piedra, Resident Senior Advisor, Credit Bureau
- Oldrick Dedek, Adviser, National Bank of the Check Republic
- Dr. Charles Becker, Consultant, Demography
- Jens Tapking, Securities Settlement Policy Expert, European Central Bank
- Alexander Kopeikin, Consultant, Mortgage Training
- Jim Hogan, Consultant, Arizona – Kazakhstan Partnership Foundation

V. ADMINISTRATIVE

John K. Pascal, FSI Chief of Party, was absent on leave March 19, 2005 through March 25, 2005.

LIST OF ATTACHMENTS

1. Work Plan
2. Quarterly Review

B. FINANCIAL INSTRUMENTS

I. COMPONENT DESCRIPTION

This Report provides details on the events and activities relating to the Financial Instruments Component of the USAID Financial Sector Initiative, as implemented by the Pragma/FSI Corporation, during the period from February 22, 2005 through May 21, 2005.

The primary purpose of the Financial Instruments Component is the development of new investment-grade instruments which fill financial needs unmet by the current commercial banking, corporate and municipal finance communities in Kazakhstan, and which expand the selection of corporate or municipal securities in which private Pension Fund asset managers may invest. Secondarily, the Financial Instruments Component is intended to extend the yield curve of the Kazakhstani corporate bond market by facilitating the issuance of longer maturities, and to upgrade the quality of new issues by introducing credit enhancement techniques, and by improving both bond indentures and investment memoranda.

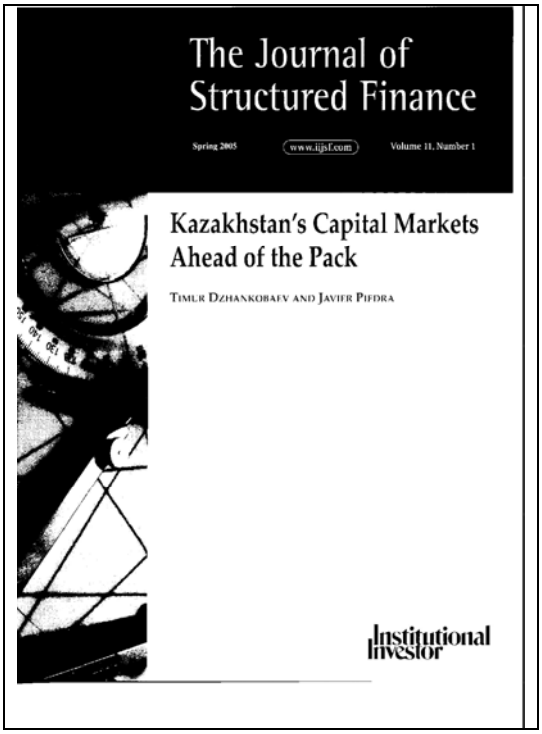
II. SIGNIFICANT EVENTS

- PRAGMA/FSI PROMPTS AFK REDRAFT OF MINFIN VERSION OF THE LAW "ON SECURITIZATION"
- PRAGMA/FSI FACILITATES CRITICAL REVIEW OF KAZAKHSTAN CENTRAL SECURITIES DEPOSITORY (CSD)
- PRAGMA/FSI FACILITATES FIRST MONETARY POLICY ROUNDTABLE AT NATIONAL BANK OF KAZAKHSTAN
- SECOND ANNUAL C-BONDS CONGRESS HELD IN ALMATY
- MINISTRY OF FINANCE LAUNCHES 15-YEAR BOND
- CORPORATE BOND ISSUANCE

III. EXECUTIVE SUMMARY

Securitization

On January 18, Pragma/FSI took part in a Government's Working Group meeting headed by Mr. Gani Uzbekov, Deputy Minister of Finance. Pragma presented its opinions on key issues of the legislation which were summarized in a document submitted to the MoF/ FSA. *(See Attachment 1.)* The aim was to alert the MoF and the FSA to major conceptual and technical discrepancies of the MoF/ FSA draft with the rating agencies' legal criteria and generally accepted practices of structured finance (securitization). Pragma left the working group meeting in full confidence that its objections and recommendations would be incorporated into the final draft before its submittal to the Mazhilis in April 2005. However, on March 15 Pragma received the draft Law the government delivered to the Mazhilis; it contained the same substandard provisions and major omissions Pragma had consistently tried to remedy in previous drafts.


The Journal of Structured Finance

Spring 2005 www.ijsf.com Volume 11, Number 1

Kazakhstan's Capital Markets Ahead of the Pack

Timur Dzhankobaev and Javier Piedra

Institutional Investor

To accelerate securitization learning curve with key constituencies, Pragma Advisor Timur Dzhankobaev published two articles on the technical and economic aspects of domestic securitization in the leading Russian publication "Securities Markets" (Moscow), #2, 2005, and "Securities Markets of Kazakhstan", #2 2005 respectively. *(See Attachments 2 and 3.)*

To prevent the delivery of substandard legislation to Parliament, Pragma enlisted the support of the Kazakhstan Association of Financiers (AFK). On April 8, AFK convened an extraordinary meeting of members representing key banks, brokerage firms, assets managers, and pension funds. Pragma prepared updated list of the differences and discussed it at the meeting. At the meeting it was decided that AFK should send a letter to FSA and MoF, offering to substitute the draft Law in the Parliament with the draft Law recommended by Pragma/AFK.

AFK subsequently held several meetings with key FSA officials on specific issues of the draft Law and the set of required changes to related legislation. Pragma prepared a detailed comparative analysis of the two drafts with commentaries on the differences which was presented AFK and FSA. Simultaneously, Pragma requested that Standard and Poor's (Moscow), the leading rating agency of securitizations in Europe, review the AFK draft and Pragma's comparative analysis. S&P praised the AFK draft as "covering all issues to be encountered in a securitization" and "being much ahead of similar efforts in Russia".

As a result of the deliberations during April/ May 2005, AFK and FSA arrived at a compromise draft. and submitted thE "consolidated version" to MoF. Pragma is of the view that the "compromise" version is better than nothing, and could be a positive signal for practitioners. The compromise draft is yet to be examined by S&P and other agencies that effectively set the industry standards.

Meanwhile, Pragma Senior Advisor Javier Piedra and Advisor Timur Dzhankobaev co-authored and published an article on domestic securitization and project finance in Kazakhstan in *The Journal of Structured Finance* (U.S.) Spring 2005 issue. *(See Attachment 4.)*

Central Securities Depository (CSD) Review

During the quarter under review, Pragma/FSI have facilitated a review of Kazakhstan's securities depository and registrar system, as requested by the CSD in October 2004.

During18-22 April 2005, an ECB-appointed advisor, Mr. Jens Tapking of the European Central Bank Securities Settlement Systems Policy Division, visited Kazakhstan and held a series of meetings with the CSD, various market participants, FSA and the Kazakhstan Stock Exchange (KASE). His final report and recommendations in accordance with the approved SOW is attached. *(See Attachment 5.)*

NBK Monetary Roundtable

On Friday, April 8, Governor Anwar Saidenov opened Kazakhstan's first Monetary Policy Round Table. The event was sponsored by USAID in cooperation with the National Bank of Kazakhstan. The featured speaker was Mr. Oldrich Dedek, former Deputy Governor of the National Bank of the Czech Republic, who had spent the previous four days reviewing NBK's conduct of monetary policy in Kazakhstan in the recent past. In attendance were representatives of the National Bank, USAID, the Ministry of Finance, the Financial Supervisory Agency, the Association of Financiers, and Pragma/FSI.

After brief welcoming comments by Gov. Saidenov and Mr. Mike Fritz, Acting Mission Director USAID/CAR, Mr. Dedek took the floor to present his observations and conclusions. *(See Attachment 6.)* In essence, Mr. Dedek had two substantive criticisms of the National Bank.

The first criticism was that NBK sector reports, statistics and analytical materials are in Kazakh or Russian. To broaden the availability of these reports and make the operations of the bank more transparent to a wider audience, Mr. Dedek recommended that NBK translate all its reports into English. Both Mr. Saidenov and Mr. Akishev agreed.

Mr. Dedek's second criticism had to do with the various instruments NBK currently uses to conduct monetary policy—primarily, the sterilization of foreign capital inflows. Mr. Dedek observed that a mix of instruments—short term deposits, repos and NBK notes—failed to send a clear signal of NBK's interest rate policy to market participants. Mr. Dedek noted that, in the Czech Republic, interest rates stabilized and began to respond to National Bank policy only after the CNB introduced the two-week certificate of deposit and began using it to the exclusion of all other instruments.

It should be noted, however, that conditions in Kazakhstan and the Czech Republic are not particularly comparable in this respect. The interest rate environment in the Czech Republic is much more heavily influenced by European Central Bank policy than is Kazakhstan by the policy of any of its neighbors. Indeed, since the major banks in the Czech Republic are all foreign (European) banks and the Czech Republic is a member of the EU, the ECB essentially sets the parameters for Czech National Bank policy. Thus, the instruments and rate structure that worked for the CNB will not necessarily work in Kazakhstan for the NBK. Still, Mr. Dedek's point is valid: coordination of the rate structure implied by NBK's various short-term instruments appears to be insufficient and, therefore, any policy signals NBK might be sending are mixed or, at least, not clear.

While Mr. Dedek did not address the specifics of NBK inflation targeting directly, his comments included several observations on NBK's conduct of monetary policy over the past four years which suggested he was not convinced of the appropriateness of IT in Kazakhstan under the current circumstances. It should be noted that the long term efficacy of inflation targeting has yet to be established anywhere; it has been practiced actively only since the early nineties and then by only a handful of countries (New Zealand, Canada, Sweden and the UK). Until the last two years, inflation performance in the IT countries appeared to be better than that of other OECD countries, though the better performance was not necessarily reflected by the "expectations premium" in yields on long term government bonds.

Mr. Dedek nevertheless praised NBK's annual policy statements for their clarity in setting forth inflation target ranges and the mechanisms NBK would likely employ to achieve its inflation objectives. In the current year, for example, NBK clearly states its intent to tighten

monetary policy (specifically, reserve requirements) in order to remedy the excess liquidity in the banking system.

Mr. Dedek did not go into the mechanics of inflation targeting at NBK, and in their subsequent comments both Gov. Saidenov and Mr. Akishev purposefully avoided the specifics of inflation targeting within the National Bank.

In his comments, Mr. Dedek made the point that the current excess liquidity in the Kazakh banking sector is in part the result of only partial sterilization of foreign capital inflows. He did not, however, criticize the NBK for its decision not to sterilize all of the inflows.

On the other hand, he did criticize Ministry of Finance for issuing too little long term debt, thereby exacerbating the net negative yield situation in the pension funds. Unfortunately, while of critical importance in Kazakhstan at the moment, this issue was largely avoided in subsequent discussion.

After a brief coffee break, the roundtable discussion resumed with the reactions of the National Bank, the Association of Financiers and others to Mr. Dedek's comments. Among the various comments and suggestions and questions which arose during the course of discussions, two stand out as particularly important.

The first was the observation by Meget Sartbaev of the Center for Marketing and Analytical Investigations that FSA prudential norms actually exacerbated the pension fund problem by requiring mark-to-market valuations of long term bonds in pension portfolios. Marking long term bonds to market under the current circumstance requires pension funds to report losses that would "reverse out" if future rates of inflation fell. If prudential norms allowed the pension funds to carry the bonds at cost and report only the automatic accrual of interest, the pension fund problem would at least in part go away.

Mr. Sartbaev's observation was only partially correct: mark-to-market valuation penalizes pension funds in Kazakhstan because, due to the shortage of financial instruments, the markets do not trade actively enough to accurately reflect bond price increases. In any event, the FSA representative responded that the agency was studying the problem to find a way that allows pension funds to reflect the capital gains on both long and short term bonds. Capital gains would offset losses reported on long term bonds whose yields are under the current rate of inflation.

The second important issue came about as a result of a question from Mr. Sartbaev: why does Kazakhstan need a law on securitization. In his response, the Pragma representative cited guidance for the judiciary and establishing regulations in law. The representative added, however, that if passed by Parliament in its present form, the draft Law on Securitization could turn out to be an embarrassment for Ministry of Finance, its official sponsor. The comment caught the attention of Gov. Saidenov and Mr. Akhanov, the Chairman of the Association of Financiers.

The roundtable turned out to be more engaging than most anticipated it would be. Discussion was forthright and, at times, lively, reflecting a broad range of opinions among the participants. Gov. Saidenov and Mr. Akishev were particularly pleased with the first roundtable, and both are in favor of sponsoring a second as early as May.

In connection with the NBK Monetary Policy Round Table, Pragma/FSI Senior Advisor Steve Moody prepared a paper entitled "Kazakhstan's Term Structure of Rates." The paper investigates the causes of net negative yields on virtually all government debt along the Kazakh yield curve. The paper has been published in *Securities Markets of Kazakhstan* (No. 4, February 2005) as well as in the National Bank's *Economic Survey* (No. 1, 2005). *(See Attachment 7.)*

C-Bonds Congress

Cbonds (www.cbonds.ru) is a Russian financial information agency, like Bloomberg or Reuters, whose exclusive domain is the financial markets of the countries of the former Soviet Union and Eastern Europe. It is the best source of information on the bond markets of these countries and, for that reason, has grown very quickly and become very popular. This year C-Bonds held its second annual bond congress in Almaty; there were more than 250 delegates from all over the CIS and Eastern Europe.

Among the featured speakers from Kazakhstan were Anwar Seidenov, Governor the Kazakhstan National Bank; Bolat Zamishev, Chairman of the Financial Supervisory Agency; and Azamat Dzholdesbekov, President of the Kazakhstan Stock Exchange. All addressed issues concerning the economics, regulation and trade of Kazakh corporate and government bonds.

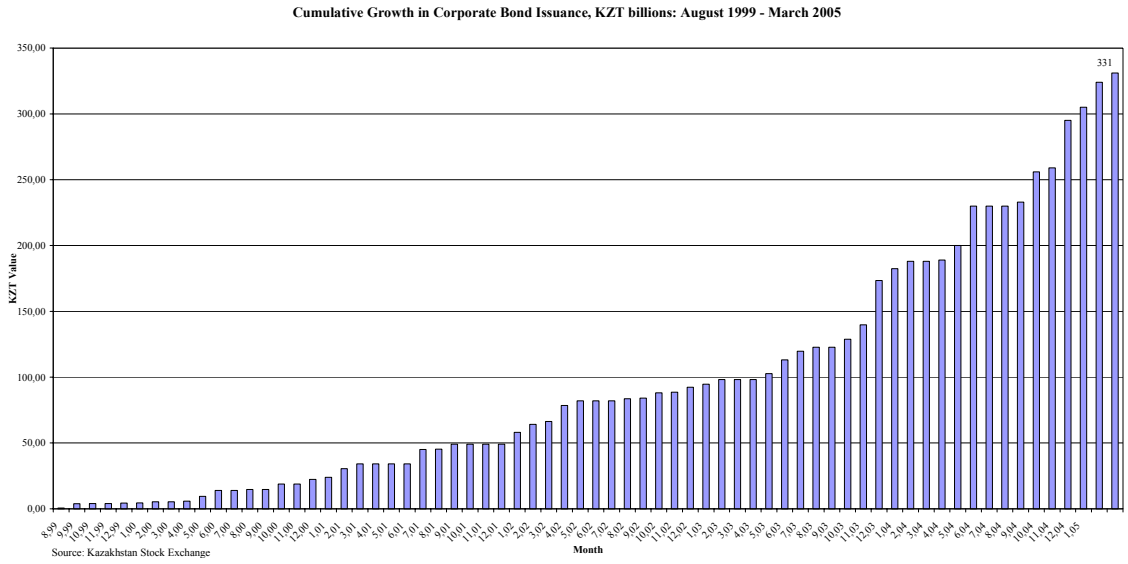
Pragma/FSI Chief of Party Jack Pascal participated in a round table discussion on the bonds markets of Uzbekistan. And Pragma/FSI Senior Advisor Steve Moody made a presentation analyzing Kazakhstan's corporate bond market. Mr. Moody's presentation is attached. *(See Attachment 8.)* Mr. Pascal's presentation is attached. *(See Attachment 9.)*

Corporate Bond Issuance

At the end of Q I, cumulative corporate bond issuance in Kazakhstan stood at approximately KZT 331 billion (US$ 2.45 billion). Last year's quick pace of issuance does not appear to have slowed.

Figure 2. Cumulative Corporate Issuance

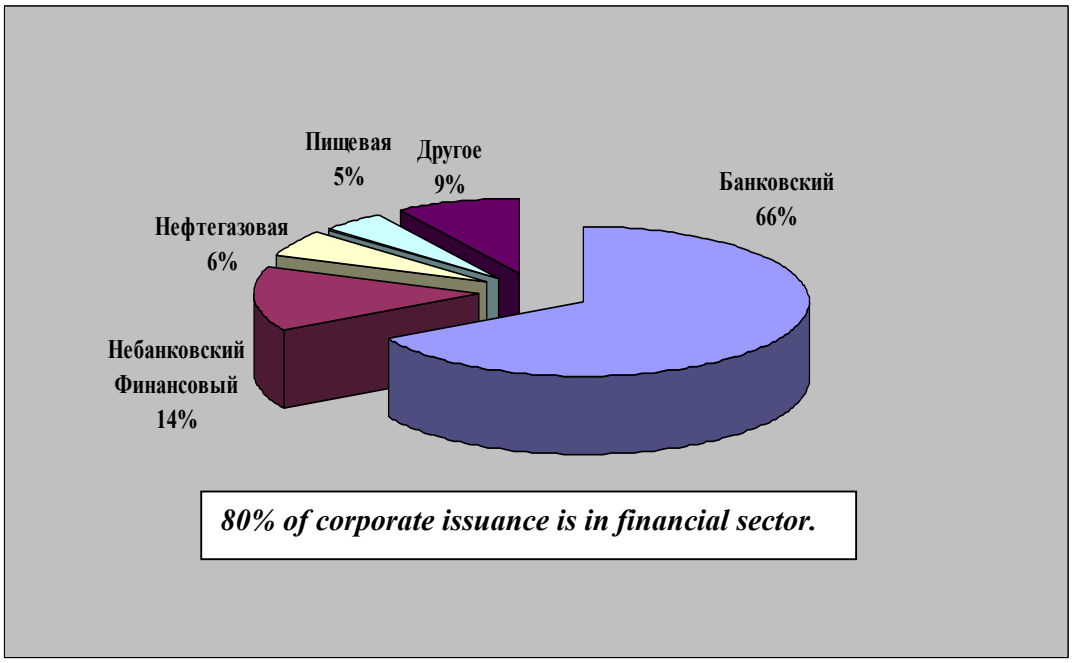
(09.99-03.05, monthly)



It is worth noting that, unsurprisingly, the Kazakh corporate market is dominated by financial issues. (See Figure 3, below.) Fully 66% of outstanding issues are bank issues; some 14% are mortgage-backed bonds, the bulk of which have been issued by Kazakhstan Mortgage Company. The high concentration of financial sector issues reflects, of course, the rapid development of the commercial banking sector as well as the relatively slow growth of the so-called "real sector"—manufacturing. The lack of diversification in Kazakhstan's bond market is a double-edged sword. On the one hand, since the banking sector is strong, the quality of outstanding issues would appear to be relatively high. On the other hand, if growth in the banking sector should slow, the high rate of growth in the bond market will also slow.

Figure 3. Corporate Issuance by Sector

(30 March 2005)



IV. ADMINISTRATIVE ISSUES

None.

V. DESCRIPTION AND STATUS OF TASKS

Task 1. Development of Financial Instruments

Defined Activity	Progress Made During Quarter/ Proposed Future Actions
• **Mortgage-Backed Security**	• SECURED DCA GUARANTEE ADMINISTRATOR • SECURED BONDHOLDER REPRESENTATIVE • SECURED LARIBA SHAREHOLDERS' RESOLUTION • PREPARED DRAFT BOND INDENTURE • SECURED MINISTRY OF JUSTICE RULING ON PROCEDURES FOR REGISTERING MASTER PLEDGE (MORTGAGE POOL) • DOCUMENTS SUBMITTED TO NBK AND NSC FOR FINAL REVIEW • BOND REGISTERED WITH NSC/NATIONAL BANK • BOND LISTED ON KASE • FIRST MORTGAGE-BACKED SECURITY PLACED BY SECONDARY MORTGAGE - MARKET FACILITY • LARIBA BANK MORTGAGE-BACKED SECURITY PLACED
• **Social Obligations Bond**	• IDENTIFIED PROSPECTIVE WATER PURIFICATION PROJECTS IN ATYRAU AND MANGISTAU OBLASTS • COMPLETED DRAFT LETTER OF INTENT BETWEEN OIL COMPANIES AND AKIMATS • COMPLETED PRESENTATION FOR OIL COMPANIES
• **Microlending Project**	• PERFORMED FINANCIAL ANALYSIS OF KCLF • DETERMINED STRUCTURE OF POTENTIAL BOND OFFERING • MADE PRESENTATION TO KCLF BOARD OF DIRECTORS • RESEARCHED KCLF LEGAL STATUS AND REREGISTRATION REQUIREMENTS • RESEARCHED KCLF BANKING LICENSE
• **Warehouse Receipts Project**	• GRAIN WAREHOUSE RECEIPTS REPLACED OLD SOVIET FORM PK-13 AS OFFICIAL CERTIFICATES OF OWNERSHIP OF GRAIN IN LICENSED KAZAKH ELEVATORS • MET WITH ACDI-VOCA CONCERNING POTENTIAL WAREHOUSE RECEIPTS PROGRAM IN KAZAKHSTAN • RESEARCHED STRUCTURE OF KAZAKH GRAIN MARKET AND OWNERSHIP OF PRIMARY GRAIN ELEVATORS

	• CONDUCTED SEMINARS ON GRAIN INSPECTION AND GRADING • PARTICIPATED IN WORKING GROUP TO DEVELOP CREDIT PROCEDURES USING GRAIN WAREHOUSE RECEIPTS • WAREHOUSE RECEIPTS REGS APPROVED BY PARLIAMENT • SEMINARS CONDUCTED INSTRUCTING GRAIN INSPECTORS IN THE ISSUANCE, MONITORING AND MAINTENANCE OF GRAIN • WAREHOUSE RECEIPTS RECORDSGRAIN ELEVATOR MUTUAL ASSURANCE SOCIETY REGISTERED WITH MINISTRY OF JUSTICE
• **Principal Protected Notes (PPNs)**	• INTRODUCED PPNs TO PENSION FUND ASSET MANAGERS • NATIONAL BANK AGREES TO THE PURCHASE OF PPNs BY PENSION FUNDS CSFB CALLS ON PENSION FUNDS

Task 2. Legal Reform

Defined Activity	Progress Made During Quarter/Proposed Future Actions
• **National Securities Commission Working Group**	• CONTRIBUTED DRAFT LANGUAGE AND COMMENTARY TO NEW UNIFIED NSC/KASE BOND REGISTRATION REGULATION • CONTRIBUTED DRAFT LANGUAGE AND COMMENTARY TO NSC MINIMUM REQUIREMENTS FOR BOND INDENTURES AND INVESTMENT PROSPECTUSES.
• **National Bank Working Group**	• AGREED WITH GOVERNOR OF NATIONAL BANK TO COORDINATE EFFORTS ON A COMPREHENSIVE REFORM OF BANKRUPTCY LAW, PLEDGE LAW AND RELATED ELEMENTS OF CIVIL CODE • INITIATED THE MERGER OF THE LEGAL COMPONENTS OF THE NBK FINANCIAL INSTRUMENTS AND MORTGAGE LENDING WORKING GROUPS • REVIEWED RESUMES AND CONDUCTED INTERVIEWS WITH APPLICANTS FOR ATTORNEY POSITIONS AT NBK • IDENTIFIED FOR NBK WORKING GROUPS THE PRIMARY DEFECTS OF EXISTING PLEDGE LAW • GAVE TESTIMONY BEFORE BUDGET AND FINANCE COMMITTEE ON NATIONAL BANK'S DRAFT LAW TO EXCLUDE PLEDGED ASSETS FROM BANKRUTCY ESTATE
• **Pledge Registration**	• HELD PRELIMINARY MEETINGS WITH BTI (REGISTRATION CENTER) ON PROCEDURES FOR REGISTERING MASTER PLEDGE OF MORTGAGE POOL • SECURED MINISTRY OF JUSTICE RULING ON PROCEDURES FOR REGISTERING MASTER PLEDGE (MORTGAGE POOL) • SECURED MINISTRY OF JUSTICE RULING ON ARTICLE 308 OF THE CIVIL CODE

• **Securitization**	▪ FORMATION OF FSA SECURITIZATION WORKING GROUP ▪ FIRST MEETING; PRAGMA PRESENTATION ▪ FIRST DRAFT OF LAW ▪ MINISTRY OF FINANCE WORKING GROUP FORMED ▪ FIRST MEETING OF MOF WORKING GROUP

3. Un-tasked Activities/Accomplishments

Defined Activity	Progress Made During Quarter/Proposed Future Actions
• **Bond Index**	• DEVELOPED CLEAN PRICE BOND INDEX AND PORTFOLIO PERFORMANCE INDICATOR • INDEX AND INDICATOR MADE AVAILABLE TO PUBLIC BY REUTERS NEW SERVICE • PUBLICATION OF PRAGMA/FSI INDEX METHODOLGY IN *RYNOK TSENNYKH BUMAG*
• **Atyrau Mortgage Lending Project**	• PROVIDED LEGAL AND FINANCIAL ANALYSIS ASSISTANCE TO ATYRAU OBLAST FOR LOCAL MORTGAGE LENDING PROGRAM

LIST OF ATTACHMENTS

1. Pragma/FSI comments on the draft law "On Securitization"
2. "Securities Markets"
3. "Securities Markets of Kazakhstan"
4. "Journal of Structured Finance"
5. Jens Tapking's CSD Report
6. Oldrich Dedek's Monetary Policy Paper
7. "Kazakhstan's Term Structure of Rates"
8. C-Bonds Conference Presentation

C. PENSION AND INSURANCE

I. COMPONENT DESCRIPTION

This report provides details on events and activities relating to the Pension and Insurance Component of the USAID Financial Sector Initiative (FSI), as implemented by the Pragma Corporation, during the period from February 22, 2005 through May 21, 2005.

The purpose of the Pension part of this component is to ensure that Kazakhstan's pension system provides a suitable income for retired, disabled, sole survivors and other Kazakhstani citizens no longer able to provide for themselves.

The objective of this part of the component is to develop a strong, competitive accumulation private pension system, which is well regulated and safeguarded against systemic risk, yet which provides an adequate income for old age pensioners and supports the development of the private financial sector. Specifically, the FSI seeks to establish an effective regulatory body to supervise all components of the accumulation pension system; to assist in the privatization or liquidation of the State Accumulation Pension Fund (SAPF); and to provide technical assistance to monitor, evaluate and respond quickly to specific issues that threaten the continued development of the accumulation system.

The purpose of the Insurance part of this component is to continue existing measures to assist the National Bank (NBK) in developing a strong Department of Insurance Supervision (DIS), and to assist increasingly in the development of the Kazakhstani insurance market and the insurance industry itself.

The major objectives of this part of the component are to continue existing measures to upgrade the legal and regulatory environment of the insurance industry to a level compatible with international standards of insurance commerce; to continue existing measures to strengthen the DIS so that it is able to effectively monitor Kazakhstan's insurance market by implementing improved regulatory and supervisory functions; to continue such training and education as may be appropriate to ensure that the DIS staff is able to implement its regulatory mission effectively; to assist in the development of the insurance market in Kazakhstan (including measures to attract foreign participation to the Kazakhstani insurance market and the provision of education to the public); and to assist in the development of the insurance industry in Kazakhstan (including the provision of training and education to the insurance industry).

The results sought from this part of the component are the development of efficient, reliable insurance regulation and supervision in Kazakhstan; a legal and regulatory framework in Kazakhstan's insurance sector consistent with international standards; the institutional infrastructure necessary to support life insurance activities (actuarial capacity, information systems, etc.); and the development of the private insurance market and industry in Kazakhstan (in particular, the life insurance market and industry).

II. SIGNIFICANT EVENTS AND ACHIEVEMENTS

- DRAFT AMENDMENTS TO LAW "ON INSURANCE" ESTABLISH MORTGAGE INSURANCE AS A SEPARTE INSURANCE CLASS
- MINISTRY OF LABOR PROPOSES TO ESTABLISH NATIONAL ANNUITY COMPANY
- PENSION ASSETS EXCEED KZT 519 BILLION (US$ 3.99 BLN)

III. EXECUTIVE SUMMARY

Mortgage Insurance
In March, the Association of Financiers working group on insurance completed a comprehensive rewrite of the law "On Insurance Activity" (No. 22 of 18 December 2000). Among the amendments and additions to the law is a reclassification of several types of insurance and the establishment of mortgage insurance as a separate class of insurance.

Pragma/FSI has been working for more than a year with FSA and AFK on the draft language establishing mortgage insurance as a separate class of insurance. Currently, the only company offering mortgage insurance is Kazakhstan Mortgage Guarantee Fund, which is wholly owned by Ministry of Finance.

The new law, currently in discussion in the Mazhilis, will effectively prohibit the use of other types of insurance—specifically, Civilian Indemnity Insurance (GPO)—as mortgage insurance as has been the case to the present. The danger of using GPO as mortgage insurance is that the rates for GPO are not actuarially calculated, paid premiums are co-mingled with other insurance companies funds, and the reserve requirements for GPO insurance is not separately determined. Of greater danger yet, the default risk inherent in mortgage lending were being transferred off the books of lending banks to the books of bank-affiliated insurance companies, meaning the risk remained on the consolidated balance sheet of the bank holding company. The new law, expected to be passed in the fall, will significantly strengthen in banking and insurance sectors. The draft law is attached. *(See Attachment 1.)*

State Annuity Company
Passage of the law on mandatory workers' compensation (RK Law 30-III, of 07.02.05) has created something of a quandary for the Financial Supervisory Agency. The law requires that workers made invalid by an on-the-job accident be compensated with an annuity to retirement (term annuity). Currently, none of Kazakhstan's thirty-six insurance companies offers either term or whole-life (pension) annuities. The Ministry of Labor and Social Services has therefore proposed to establish a State Annuity Company which will develop and market both term annuities, as required by the workers' compensation law, and pension annuities, one of two options pensioners have for receiving their pension accumulations in the private pension funds. The quandary FSA faces is how to operate the State Annuity Company in an environment which the insurance industry has not found conducive to annuity product development.

Essentially, there are three obstacles to developing annuity products in Kazakhstan at this time. The first is legal-accounting: as written, current Kazakh law does not allow an insurance company to expense annuity-related expenses (administrative, sales, investment transaction costs) against premium income. The second is demographic: the pool of potential annuitants is too small to allow insurance companies to adequately amortized its annuity-related costs or properly manage the associated mortality risks. The last obstacle is financial: pension accumulations are currently too little to permit reasonable monthly annuity payouts, and there are too few investment instruments of sufficient term.

Figure 1. Annuity Calculator
(Excluding Insurance Company Costs)

Annuity Calculator

Whole life annuity:
outstanding balance surrendered upon death of annnuitant

Input Assumptions

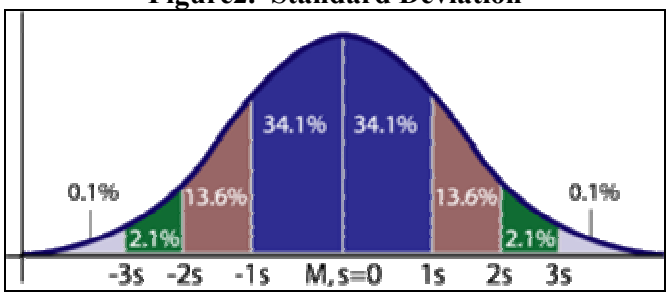
Sex (m/f)	m	Sex of annuitant
Age	64	Age of annuitant at retirement
	9	Life expectancy of annuitant at retirement (automatically calculated)
Rate	0,08	Average rate of return on ten-year investment
Forex	135	

USD Accumulations	USD Monthly Payout	in tenge
1000	13,34	1800,90
2000	26,68	3601,79
3000	40,02	5402,69
4000	53,36	7203,59
5000	66,70	9004,48
6000	80,04	10805,38
7000	93,38	12606,28
8000	106,72	14407,17
9000	120,06	16208,07
10000	133,40	18008,97
11000	146,74	19809,86
12000	160,08	21610,76
13000	173,42	23411,66
14000	186,76	25212,55
15000	200,10	27013,45
16000	213,44	28814,35
17000	226,78	30615,24
18000	240,12	32416,14
19000	253,46	34217,04
20000	266,80	36017,93

The legal-accounting obstacle can, of course, be overcome by changing the law. The demographic and financial problems, however, have no easy remedy.

The demographic problem arises from the simple fact that the population is small and the annual cohort of retirees with sufficient accumulations to warrant annuities is too small to qualify as a statistically valid sample of the population. The mathematical implication of statistically non-valid sample is that Standard Deviation will be non-standard; that is, insurance company actuaries cannot count on annuitants dying in accordance with rates established in Kazakhstan's Annuitant Mortality Tables. The small sample size simply invalidates calculated mortality rates.

Figure2. Standard Deviation

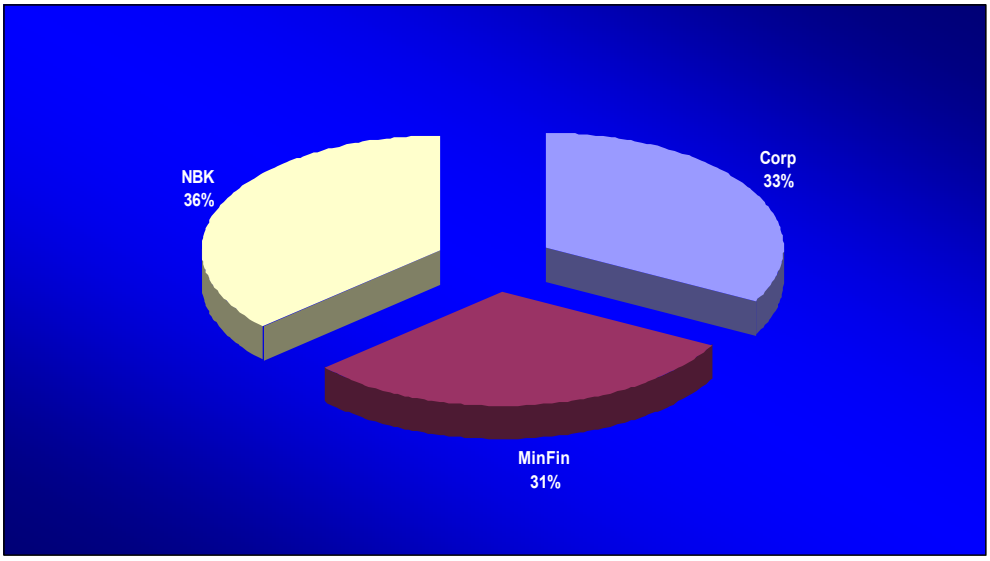


The profitability of an annuity product depends largely on the accuracy of projected mortality rates. In developed economies, insurance companies book an annual, actuarially calculated charge for annuitant mortality error—the percentage by which actual annuitant mortality drifts away from the mortality rates on which annuities have been priced. The small size of the Kazakh annuitant pool will also invalidate any calculation of mortality error, meaning the profitability of annuity products written for the current annuitant pool is more a matter of chance than of calculation. There is no estimate of when Kazakhstan's annual annuitant pool will be of a size sufficient to enable Standard Deviation and other actuarial calculations required for profitable annuity design.

The financial obstacles to developing annuity products in Kazakhstan are not as intractable as the demographic problem, but the challenges they pose aren't easily remedied either. The first problem is the low level of accumulations in pension funds to-date. The current average accumulation is KZT 80,000 (US$ 592). It is estimated, however, that no more than 3.5 to 4.0 million accounts are actually "active," so the average accumulation in active accounts is probably somewhat higher—on the order of KZT 138,400 (US$ 1,032). Now, according to the annuity calculator (Figure 1, above), a male retiring at age 64 with accumulations of US$ 1,000 would receive a monthly annuity payout of KZT 1800.90 (US$ 13.34). Not only is KZT 1800.90 significantly below the current minimum pension (KZT 6,200 as of 1 July 2005),[1] but it is also significantly below any reasonable insurance company cost threshold; that is, the amount of the payout is less than the company's associated processing and administrative costs. The accumulation required for an annuity payout equal to the minimum pension is approximately US$ 3,450; for an annuity payout equal to the current average pension, approximately US$ 5,000. And for an annuity payout equal to 60% of current per capita GDP (an estimate of so-called "sixty percent replacement") the accumulation required is US$ 10,000, or KZT 1,350,000.

[1] In accordance with RK Law "On the Republican Budget," No. 49-III of 16 May 2005.

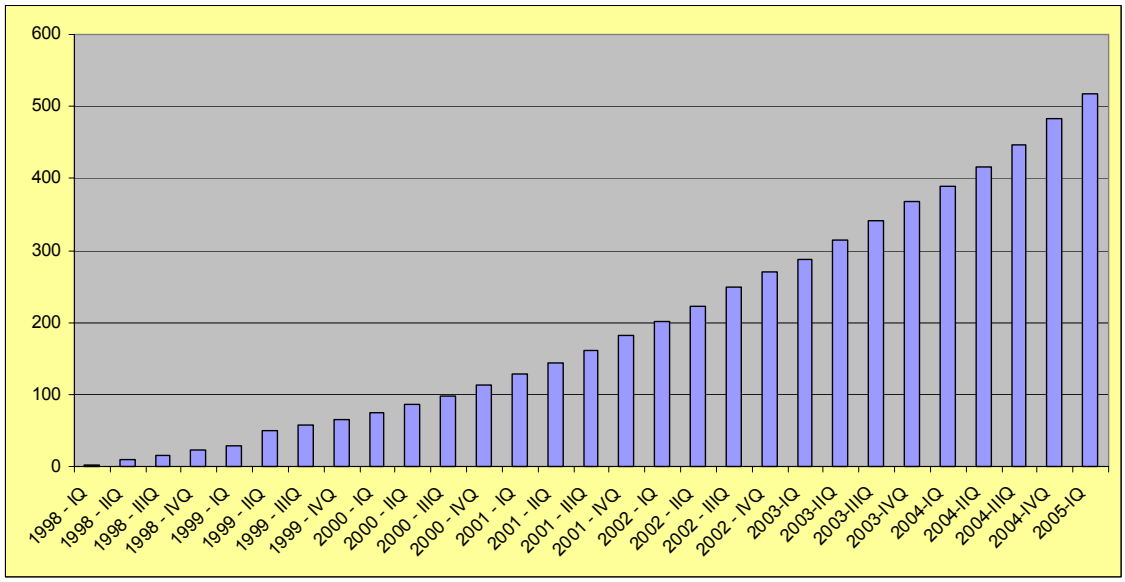
Figure 3. Structure of Outstanding Debt Issues
(1 July 2005)



The other financial problem inherent in designing viable annuity products for Kazakhstan is investment—the now infamous "shortage of financial instruments" problem. The entity writing the annuity takes on a long term, tenge-denominated liability; in theory, the entity should match that liability with an equally long term, tenge-denominated asset of extremely high quality paying interest at some positive real rate of return. The highest quality tenge-denominated instruments are Ministry of Finance bonds; the yields of virtually all of these bonds are net negative. Kazakhstan Mortgage Company mortgage bonds, classified as agencies, have a ten year term and are indexed to inflation, so their yields are real positive. They are only bonds in which insurance companies could invest to fund annuity products.

Pension Assets
At the end of the first quarter, assets in the private pension fund system totaled KZT 519 billion. *(See Figure 4, below.)*

Figure 4: Pension Assets
(Quarterly, 1998-2005, in billions of KZT)



IV. ADMINISTRATIVE ISSUES

None.

IV. DESCRIPTION AND STATUS OF TASKS

Task 1 Pension – Establishing an Effective, Efficient Unified Regulatory Body

Defined Activity	PROGRESS MADE DURING QUARTER/PROPOSED FUTURE ACTIONS
• **Prepare a strategy and timetable for achieving the establishment of a unified, independent regulatory body (within 30 calendar days of the start of the activity)**	• AS PART OF A LARGER MERGER OF REGULATORY BODIES, IN MID-OCTOBER, 2001 THE NBK OFFICIALLY TOOK CONTROL OVER THE STATE ACCUMULATION PENSION FUND.
• **Support political efforts to establish a unified regulatory body**	• PRAGMA/FSI'S INVOLVEMENT IN THIS AREA HAS BEEN DOWNGRADED FROM A PROACTIVE ROLE TO ONE OF ASSISTANCE.
Establish standardized (uniform) reports, methodologies, normative acts, and supervision • **Unified reporting** • **Common methodologies** • **Unified supervision**	• PRAGMA/FSI CONTINUED TO SUPPORT AND ACTIVELY PARTICIPATE IN MARKET ASSET VALUATION COMMITTEE ACTIVITIES. • PRAGMA/FSI CONTINUED ITS ANALYSIS OF THE COMMISSION FEE STRUCTURE FOR PENSION PLANS, BASED ON A VARIETY OF SCENARIOS. ▪ PRAGMA/FSI CONTINUED TO CONTRIBUTE TO A LEGAL WORKING GROUP ESTABLISHED TO IDENTIFY AND PROCESS REQUIRED AMENDMENTS TO THE PENSION LAW.

Task 2 Pension – Privatization or Liquidation of the State Accumulation Pension Fund

Defined Activity	PROGRESS MADE DURING QUARTER/PROPOSED FUTURE ACTIONS
• **Prepare a plan for eliminating the State Accumulation Pension Fund as a dominant market force (within 45 days of the start of the activity)**	• PRAGMA/FSI'S INVOLVEMENT IN THIS AREA HAS BEEN DOWNGRADED FROM A PROACTIVE ROLE TO ONE OF ASSISTANCE (SEE ABOVE).
• **Resolve technical issues related to the privatization of the SAPF** • **Clean up duplicate accounts** • **Prepare financial analysis** • **Prepare a preliminary design**	• PRAGMA/FSI'S INVOLVEMENT IN THIS AREA HAS BEEN DOWNGRADED FROM A PROACTIVE ROLE TO ONE OF ASSISTANCE (SEE ABOVE).
• **Strengthen political support for the privatization of the SAPF**	• ECONOMIC COUNCIL APPROVED PRIVATIZATION OF ALL OR PART OF SAPF IN OCTOBER 2003.
• **Build support from donors, international investors, etc.**	• PRAGMA/FSI COMPLETED VALUATION OF SAPF AS OF 1 JAN 04 IN FEBRUARY 2004.
• **Provide local counterparts with supporting analysis**	• PRAGMA/FSI INITIATED CONTACT BETWEEN NATIONAL BANK OF KAZAKHSTAN AND EBRD IN MARCH 2004

Task 3 Pension – Monitoring, Evaluation and Quick Response

Defined Activity	Progress Made During Quarter/Proposed Future Actions
• **Identify key threats to the pension system and develop a plan for monitoring them (within 30 calendar days of the start of the activity)**	• PRAGMA/FSI CONTINUES TO MAINTAIN A "WATCHING BRIEF" ON THREATS AND DEVELOPMENTS, USING MEDIA MONITORING AND PROFESSIONAL CONTACTS.
• **Improve record keeping**	• PRAGMA/FSI'S INVOLVEMENT IN THIS AREA HAS BEEN DOWNGRADED FROM A PROACTIVE ROLE TO ONE OF ASSISTANCE (SEE ABOVE).
• **Improve policies and supervision**	• SEE "*ESTABLISHING STANDARDIZED (UNIFORM) REPORTS, METHODOLOGIES, NORMATIVE ACTS, AND SUPERVISION*" PERFORMED PRELIMINARY LIQUIDITY ANALYSIS

Task 1 Insurance – Supervision / DIS Efficiency

Defined Activity	Progress Made During Quarter/Proposed Future Actions
• **Assess Department of Insurance Supervision (DIS) current procedures and practices, organizational structure, supervisory framework, use of information technology, staff capabilities and training needs within 60 days of start of contract date for production of User Guide to be established within 30 days of start of contract dates of other relevant areas**	• TASK WAS COMPLETED PRIOR TO QUARTER
• **Develop framework for upgrading supervisory procedures and practices within 60 days of start of contract**	• INITIAL FRAMEWORK WAS DEVELOPED PRIOR TO QUARTER
• **Implement framework date for production of User Guide to be established within 30 days of start of contract**	• TASK WAS COMPLETED PRIOR TO QUARTER
• **Develop and deliver DIS training based on TNA date for production of User Guide to be established within 30 days of start of contract dates of other specific areas** • **Identify foreign opportunities**	• TASK WAS COMPLETED PRIOR TO QUARTER
• **Develop and implement certification exams for relevant industry participants**	• AREAS (IF ANY) IN RESPECT OF WHICH CERTIFICATION EXAMINATIONS WILL BE REQUIRED ARE TO BE IDENTIFIED IN CONSULTATION WITH DIS • THIS IS A LONGER-TERM ISSUE AND IS CURRENTLY A LOW PRIORITY • NO ACTION TAKEN DURING QUARTER
• **Develop and implement dispute resolution regime**	• THIS WAS AN AREA IDENTIFIED DURING THE ASSESSMENT PHASE AS REQUIRING TRAINING • IMPLEMENTATION MAY FACE LEGAL DIFFICULTIES, INCLUDING AMENDMENT OF OTHER LEGISLATION • DIRECTOR OF THE DIS ADVISES THAT HE PREFERS TO KEEP

	THIS ACTIVITY INTERNAL, INFORMAL AND LOW-KEY, DUE PRIMARILY TO RESOURCE CONSTRAINTS • NO ACTION TAKEN DURING QUARTER

Task 2 Insurance – Legal Reform

Defined Activity	Progress Made During Quarter/Proposed Future Actions
• **Develop and pass legislation**	• FINAL DRAFTS OF LAWS FOR MOTOR VEHICLE AND COMMON CARRIER MANDATORY LIABILITY INSURANCE WERE TO BE SUBMITTED TO PARLIAMENT IN DECEMBER, 2001. HOWEVER, THE MAZHILIS REJECTED DRAFTS OF MANDATORY INSURANCE LAW DUE TO THE ABSAENCE OF AN INSURANCE INDEMNITY FUND EFFECTIVELY GUARANTEEING THE MANDATORILY INSURED AGAINST LOSS DUE TO FAILURE OF INSUROR • DEVELOPED PROPOSAL FOR MANDATORY INSURANCE INDEMNITY FUND
• **Develop and promulgate regulations**	• DRAFT REGULATION ON OPERATIONS OF INSURANCE AGENTS PREPARED AND SUBMITTED TO NBK AND ASSOCIATION OF FINANCIERS INSURANCE DIVISION • PRIOR TO THIS QUARTER, DRAFT REGULATION WHICH WOULD ALLOW INSURANCE COMPANIES TO CALCULATE THEIR OWN PREMIUMS FOR SOME TYPES OF MANDATORY INSURANCE WAS SUBMITTED TO NBK AND PARTIALLY ADOPTED
• **Assess rules and regulations within 60 days of start of contract**	• DISCUSSIONS CONTINUED ON HOW TO IMPLEMENT CUSTOMS BONDING INSURANCE • FURTHER ASSESSMENT WILL FOLLOW THE PROMULGATION OF ALL NECESSARY REGULATIONS UNDER THE NEW INSURANCE LAW
• **Develop short-term plan (approved by DIS) to reform rules and regulations within 60 days of start of contract date for production of User Guide to be established within 30 days of start of contract**	• THIS WILL FOLLOW COMPLETION OF THE ASSESSMENT OF THE RULES AND REGULATIONS (SEE PRECEDING BOX) • NO ACTION TAKEN DURING QUARTER
• **Develop and implement consumer protection measures, including trade practices and consumer disclosure requirements**	• NO ACTION TAKEN DURING QUARTER

Develop and implement rules for licensing: • **brokers** • **actuaries** • **auditors** • **companies** • **other relevant industry participants**	• THESE WILL BE SET OUT IN THE REGULATIONS CURRENTLY UNDER EXAMINATION BY THE NBK • ACTUARIAL LICENSING REQUIREMENTS IMPLEMENTED DURING PAST QUARTER
Develop and issue other required regulatory documents: • **guidelines** • **rulings** • **interpretation bulletins** • **best practices papers**	• THESE ARE LONGER TERM GOALS, AND REFLECT MATURITY OF THE SUPERVISORY PROCESS AND FINE-TUNING OF LEGISLATION AND REGULATIONS. THE DIRECTOR OF THE DIS HAS ACKNOWLEDGED THE EVENTUAL NEED FOR SUCH DOCUMENTS • DRAFTED LEGISLATION ENABLING MORTGAGE INSURANCE

LIST OF ATTACHMENTS

1. Draft law on "Amendments and Additions to the Law on Insurance Activity."

D. MORTGAGE

I. COMPONENT DESCRIPTION

This report provides details on events and activities relating to the Mortgage Component of the USAID Financial Protection Initiative, as implemented by the Pragma Corporation, during the period from February 22, 2005 through May 21, 2005.

The primary purpose of the Mortgage Component is to provide technical, advisory, and training assistance to banks and non-bank financial institutions willing to start mortgage lending market operations and to assist in developing mortgage origination, and to provide banks with the technical assistance necessary for securitization of mortgage pools in order to demonstrate how mortgage pools can be liquefied and proceeds re-lent. Further, it is to develop and support the legislative and regulatory framework for supporting the mortgage lending industry. A collateral activity, designed to increase mortgage origination as well as increased securitization, includes the introduction of National Mortgage Insurance. Other activities include the establishment of a uniform methodology for real-estate appraisal and the certification and licensing of real estate sales practitioners.

II. SIGNIFICANT EVENTS

- PRAGMA/FSI ASSISTS IN ORGANIZATION OF THE ASSOCIATION OF REALTORS OF KAZAKHSTAN (ARK)

III. EXECUTIVE SUMMARY

During the quarter under review, Pragma/FSI attorneys assisted in drafting the charter and other registration documents of the Association of Realtors Kazakhstan.

The ARK had not yet been registered with Ministry of Justice at the end of the quarter under review.

The overall objective of this project is to springboard the development of the real estate industry by assisting with the development of a cadre of real estate sales professionals. To this end and to continue work started under a subcontract agreement between Pragma/FSI and Az-Kz, activities were identified to move the Almaty Association of Realtors forward and expand their influence nationally. Among these was establishment as a national organization, create a Training Center to standardize knowledge within the profession, design a certification process to serve in lieu of a licensing requirement by the national government, offer courses to generate revenue for further development, exploration into a method for escrow, and identification of a government sponsor of legislation for the real estate sales industry.

On 10 March 2005, 65 delegates representing 45 companies gathered for the First Congress of Realtors of Kazakhstan. Jack Pascal Pragma's COP made a presentation at the conference on the importance of a national organization to the development of the mortgage industry in Kazakhstan.

At that meeting a majority agreed to establish the Association of Realtors of Kazakhstan (ARK). A number of attendees present requested more time to examine the founding documents so it was agreed a second formational meeting would be held on 31 March 2005.

Three individuals ran for president of the newly formed association and addressed the gathering outlining their platforms for leading the new organization. The attendees elected Zukhra Nazarova as President of the ARK and Alexander Kim as the First Vice President.

On March 29th Jim Hogan the first expert from the AZ-KZ project arrived in Almaty. Mr. Hogan is the president of the Hogan School of Real Estate in Tucson Arizona made a presentation on the role it serves in qualifying people to obtain real estate licenses in Arizona.

Mr. Hogan made a comprehensive presentation with about 30 representatives from real estate, appraisal, development companies, and educational institutions. The presentation was followed by a question and answer session and discussion which enabled the organizers to get feedback from the members on the structure of the Training Center, curriculum, and needed advanced courses.

On 4 April, a press conference was held at the Kazakhstan Press Club. Nazarova, Kim, Hogan, and Ablaikhan Samatdin (a prominent member of the Almaty Maslikhat and Vice President of ARK) spoke about the establishment of ARK, its goals and objectives, about the efforts of the Association to put together a certification process to ensure high professional standards and a code of ethics for the realtors of Kazakhstan. They also emphasized the need to work on developing legislation to protect the interests of the public and gave credit to USAID and The Pragma Corporation for funding activities. About 30 to 40 people were in attendance.

Kazakhstan Mortgage Company

Kazakhstan Mortgage Company continues to prepare for the addition of more than US$ 1.0 billion in mortgages from the government housing program over the next three years. The preparations include evaluation of the potential impact of the program on KMC's borrowing needs and the design of the specific bonds which will be issued.

To assist KMC in this effort, Pragma/FSI has continued its contract with IUE. Mr. Aleksandr Kopeikin spent two weeks with KMC looking specifically at cash management models and the various maturity spreads at which KMC estimates it will have to place new mortgage securities.

One unanticipated effect of the government housing program on KMC is that the company has so far this year suspended its issuance schedule. The housing program has hit snags on the construction side, and new housing is becoming available at a much slower pace than originally scheduled. As a result of the government's capital injection into KMC, the company is currently working down its cash inventory and, despite filing two shelf registrations this years, has yet to actually place an issue.

Outstanding Mortgages

According to Pragma's Mortgage Lending Survey, at the end of June 2005, outstanding mortgages in reporting banks stood at KZT 193 billion.

Динамика ипотечного портфеля казахстанских банков и ипотечных организаций (млн. тенге): II квартал 2005 г.

	Кредиты на приобретение жилья	
	Сумма	Кол-во
Казкоммерцбанк *		
Выдано за период:	8,135.50	2,461.00
Остаток на конец периода	37,068.12	
БТА Ипотека		
Выдано за период:	4,420.04	1,317.00
Остаток на конец периода	20,493.64	7,547.00
Банк ТуранАлем		
Выдано за период:	5,068.98	1,771.00
Остаток на конец периода	17,209.93	7,090.00
Народный банк Казахстана		
Выдано за период:	14,146.78	3,218.00
Остаток на конец периода	51,843.06	18,462.00
АТФ Банк		
Выдано за период:	3,485.70	1,167.00
Остаток на конец периода	13,353.40	5,654.00
Банк ЦентрКредит		
Выдано за период:	5,848.00	1,924.00
Остаток на конец периода	12,652.00	7,102.00
Астана-Финанс		
Выдано за период:	318.47	66.00
Остаток на конец периода	1,879.47	463.00
Texaka Банк (данные первого квартала)		
Выдано за период:	175.70	19.00
Остаток на конец периода	681.02	74.00
Альянс Банк		
Выдано за период:	2,260.00	475.00

Остаток на конец периода	4,350.00	1,195.00
Темирбанк		
Выдано за период:	2,095.60	935.00
Остаток на конец периода	4,851.20	1,064.00
КИК		
Выдано за период:	4,548.51	1,284.00
Остаток на конец периода	28,711.82	12,305.00
Итого выдано за период	50,503.28	14,637.00
Итого остаток	193,093.66	60,956.00

IV. ADMINISTRATIVE ISSUES

John K. Pascal, FSI Chief of Party, was absent on leave March 19, 2005 through March 25, 2005.

V. DESCRIPTION AND STATUS OF TASKS

Task 1 – Legal and Regulatory Reform

Defined Activity	Progress Made During Quarter/Proposed Future Actions
▪ **Assessment of rules and regulations for the mortgage sector**	▪ COMPLETED BY IUE
▪ **Work plan for reform of rules and regulations**	▪ COMPLETED BY IUE
▪ **Work plan for development of mortgage default insurance**	▪ COMPLETED BY IUE
▪ **Assessment of rules and regulations relevant to default insurance and recommendations for development of such a product, including relevant data collection**	▪ COMPLETED BY IUE AND UI
▪ **Implementation of work plan for reform of mortgage lending rules and regulations, including development of needed legislation**	▪ AN AMENDMENT NOW EXISTS THAT EXCLUDES REAL ESTATE COLLATERAL (PLEDGE) USED IN MORTGAGE BACKED-SECURITIES FROM BANKRUPTCY ESTATE CONSITUTING A MAJOR STEP IN THE REFORM OF BANKRUPTCY STATUATES.

Task 2 – Creating Fully Trained Mortgage Banking Personnel

Defined Activity	Progress Made During Quarter/Proposed Future Actions
▪ **Review of mortgage banking courses and materials developed by Housing Sector Reform Project**	▪ THIS WAS COMPLETED THROUGH CONSULTATION WITH PRAGMA/FSI'S COP AND IUE STAFF IN MOSCOW.
▪ **Framework for mortgage banking training developed**	▪ THIS WAS COMPLETED THROUGH CONSULTATION WITH PRAGMA/FSI'S COP AND IUE STAFF IN MOSCOW. THE FIRST MODULE OF COURSES WAS COMPLETED IN APRIL 2000. A REPEAT OF THESE COURSES WAS OFFERED IN MARCH AND APRIL 2002. DELIVERY OF ANOTHER CML COURSE BEGAN IN FEBRUARY 2003, IN COOPERATION WITH THE KAZAKHSTAN MORTGAGE COMPANY (KMC). PARTS TWO AND THREE WERE COMPLETED IN MARCH AND APRIL. ▪ 62 PERSONS HAVE NOW RECEIVED CERTIFIED MORTAGE LENDER (CML) DESIGNATION. CML TRAINING IS NOW OFFERED BY THE KMC WITH OVERSIGHT PROVIDED BY IUE.
Development of strengthened modules for: **1. Alternative mortgage instruments, including spreadsheet program for class use** **2. Features of different mortgage securities - "mortgage bank model" use of guarantees** **3. Adjust courses to Kazakh situation; develop local case studies** **4. Development of loan servicing simulation software**	• THE CML CURRICULUM WAS CUSTOMIZED TAKING INTO ACCOUNT 1, 2 & 3 AND KAZAKHSTANI PRACTICES, AND INCORPORATED INTO THE THREE MODULES COMPLETED IN APRIL 2000 FOR USE BY THE TRAINERS OF THE ALMATY BANK TRAINING CENTER (ABTC). THE CURRENT CURRICULUM WAS FURTHER UPDATED TO EMPHASIZE THE BENEFITS OF SECURITIZATION SINCE KAZAKHSTANI BANKS AS WELL AS THE KMC ARE NOW ISSUING MORTGAGE-BACKED SECURITIES. IT IS ESSENTIAL THAT PRACT-ITIONERS UNDERSTAND THE RELATIONSHIP BETWEEN PRIMARY ORIGINATION AND SECONDARY MARKET ISSUANCE ESPECIALLY AS IT RELATES TO UNDERWRITING STANDARDS FOR CONFORMING LOANS. ▪ TWO TRAINERS FROM THE ABTC ATTENDED AND COMPLETED COURSES I, II AND III, AND RECEIVED THE DESIGNATION OF 'CERTIFIED MORTGAGE LENDER'. SINCE THEN, MORTGAGE EXPERTS FROM IUE HAVE PROVIDED ONGOING TECHNICAL ASSISTANCE TO THE ABTC IN TEACHING, COURSE DEVELOPMENT AND CONTENT. DURING A FEBRUARY VISIT AND REVIEW OF MATERIALS AND INSTRUCTOR CONTENT KNOWLEDGE , IUE CONSULTANTS DELAYED DELIVERY OF ABTC'S CML MORTAGE TRAINING COURSE IN ORDER TO REFINE THE CURRICULUM AND TEACHING METHODS. THE COURSES WERE DELIVERED IN MARCH AND APRIL 2002. HOWEVER, IUE CONSULTANTS DO NOT FEEL THAT TEACHING STANDARDS ARE HIGH ENOUGH TO CONTINUE USING ABTC AS A PROVIDER. AFTER CONSULTATION, THE KAZAKHSTAN MORTGAGE COMPANY AGREED TO BEGIN PROVIDING CML COURSES AFTER APRIL 2003. THE NBK ALREADY REQUIRES A CML DESIGNATION FOR ANY BANK MORTGAGE DEPARTMENT EMPLOYEE DOING BUSINESS WITH THE KMC. FSI COMPLETED

	'TRAINING THE TRAINERS' FOR KMC AT THE END OF APRIL. THE KMC IS NOW CONTINUING THIS COURSEWORK- ENSURING SUSTAINABILITY OF MORTGAGE LENDING TRAINING. THE LOAN SIMULATION SOFTWARE CURRENTLY AVAILABLE HAS NOT BEEN UPDATED DUE TO THE EXPENSE INVOLVED AND USE BY BANKS OF MORE MODERN SYSTEMS. CONSEQUENTLY, THIS EFFORT HAS BEEN CURTAILED. RECOMMENDATIONS FOR SOFTWARE SPECIFICALLY DESIGNED FOR LOAN SERVICING AND CURRENTLY AVAILABLE IS CONTAINED IN THE FANNIE MAE REPORT TO THE KMC.

Task 3 – Develop Action Plans for Mortgage Lending Infrastructure and Implement Selected Plans

Defined Activity	Progress Made During Quarter/Proposed Future Actions
• **Formation of independent appraisal association**	▪ THE KAZAKHSTAN SOCIETY OF REAL ESTATE APPRAISERS IS NOW FUNCTIONING AS A REGISTERED LEGAL ENTITY. ITS FORMAL NAME IS THE UNION OF APPRAISERS. FSI CONTINUES TO SUPPORT EDUCATIONAL ACTIVITIES AND IS CONTINUING COOPERATIVE ACTIVITIES WITH THE ARIZONA-KAZAKHSTAN PARTNERSHIP.
• **Formation of professional real estate brokers association.**	▪ THE ALMATY ASSOCIATION OF REALTORS WAS FORMED IN THE SPRING OF 2002. SINCE THEN FSI HAS SUPPORTED THEIR PROFESSIONAL DEVELOPMENT FUNDING SEMINARS AND EDUCATIONAL TRIPS THAT EMPHASIZE ETHICS IN SELLING PRACTICES AND TRANSPARENCY IN REAL ESTATE TRANSACTIONS. DURING THE QUARTER AND IN COOPERATION WITH THE RUSSIAN GUILD OF REALTORS, FSI FUNDED AND PARTICIPATED IN A SEMINAR DEDICATED TO THE USE OF ETHICS IN PROFESSIONAL PRACTICE. FOLLOWING THE AFORESAID ROUNDTABLE, FSI IS DISCUSSING WITH POTENTOIAL COUNTERPARTS A PLAN FOR CERTIFICATION AND LICENSING OF REAL ESTATE SALES PERSONS.
• **Devise or adjust methodology for appraisal of property that is being mortgaged**	• FSI IN COOPERATION WITH THE KMC AND THE BANKS HELD A ROUND TABLE ON HOW TO IMPROVE COORDINATION. DURING DISCUSSION, MANY PARTICIPANTS HIGHLIGHTEFD THEIR LACK OF CONFIDENCE IN THE EMPLOYMENT OF A STANDARDIZED APPRAISAL METHODOLOGY. CONSEQUENTLY, FSI ORGANIZED A SEPARATE MEETING WITH THE CHAMBER OF APPRAISERS AND A REPRESENTATIVE OF THE BANKING COMMUNITY, BTA MORTGAGE. AS A RESULT, A MEMO OUTLINING OUTSTANDING ISSUES DISCUSSED WAS PREPARED BY FSI AND DISDRIBUTED TO EACH FOR COMMENT. A FOLLOW-UP MEETING IS PLANNED ON HOW BEST TO ADDRESS THESE DEFICIENCIES. THE LACK OF A UNIFORM METHOFOLOGY IN APPRAISING REAL ESTATE HAS LED BANKS TO USE FOREGO USING INDEPENDENT APPRAISERS AND EMPLOY THEIR OWN. DURING THE NEXT QUARTER, FSI IS HOLDING ANOTHER ROUNDTABLE WHEREBY THE MARKET PARTICIPANTS WILL TRY AND ARRIVE AT A COMMON APPRAISAL APPROACH. • DEVELOPMENT OF LEGAL DOCUMENTS INCLUDING THE MASTER POLICY WHICH GOVERNS THE RELATIONSHIP BETWEEN THE KMGF AND THE BANKS AND ORGANIZATION OF THE FUND IS NOW COMPLETE.

▪ **Establish methods and terms of mortgage risk insurance**	• FSI/UI CONSULTANTS ALSO ANALYZED NBK CAPITAL RESERVE REQUIREMENTS FOR MORTGAGE LENDING AND PREPARED A DRAFT MEMORANDUM FOR NBK CHAIRMAN GOVDERNOR MARCHENKO WITH SUGGESTIONS FOR LOWERING THESE REQUIREMENTS ON MORTGAGES HAVING KMGF GUARANTEES. THESE RECOMMENDATIONS WERE GIVEN TO THE NEW KMFG CHAIRMAN PRIOR TO SUBMISSION TO GOVERNOR MARCHENKO. WITH THE ESTABLISHMENT OF THE NEW AGENCY FOR REGULATION, FSI MET WITH ITS NEW CHAIRMAN, MR. ZHAMISHEV TO BRIEF HIM ON THE MATTER.
▪ **System of registration of real estate rights and transactions**	▪ AN ANALYSIS OF THE OVERALL PROPERTY REGISTRATION SYSTEM WAS COMPLETED. THE ANALYSIS NOTED FEW IMPEDIMENTS TO THE ESTABLISHMENT OF TITLE INSURANCE BE IDENTIFIED. FSI ANTICIPATES THAT THE PRIVATE SECTOR WILL SOON OFFER TITLE INSURANCE.

Task 4 – Rules and Procedures of Retail Mortgage Lending

Defined Activity	Progress Made During Quarter/Proposed Future Actions
Assessment of: ▪ **Bank internal rules and procedures for retail mortgage banking** ▪ **External rules and regulations for retail banking**	▪ COMPLETED AS PART OF THE IUE ASSESSMENT. ▪ COMPLETED AS PART OF THE IUE ASSESSMENT.
▪ **Work plan to establish rules and procedures for retail mortgage lending**	▪ COMPLETED AS PART OF THE IUE ASSESSMENT. RESULTS WERE REFLECTED IN UPDATED CML COURSEWORK.
▪ **Standards for mortgage underwriting, loan documentation rules, mortgage contracts**	▪ THIS WAS UPDATED FOR INCLUSION IN CML COURSEWORK THAT WAS COMPLETED IN APRIL 2002. THE CURRICULUM WAS UPDATED TO REFLECT DEVELOPMENT OF THE SECONDARY MORTGAGE MARKET IN KAZAKHSTAN.

LIST OF ATTACHMENTS

None.

E. CREDIT BUREAU/CREDIT RATING AGENCY

I. COMPONENT DESCRIPTION

Credit Bureau

This report provides details on events and activities relating to the Credit Bureau/Credit Rating Component of the USAID Financial Sector Initiative, as implemented by the Pragma Corporation, during the period from February 22, 2005 through May 21, 2005.

The objective of this activity is to establish a Credit Bureau and rating agency capacity in Kazakhstan. A Credit Bureau serves as a financial intermediary between the lender and the borrower in order to stimulate, in the first instance, the SME and retail markets within a free market competitive economic system.

Both academic research and international experience demonstrate that private Credit Bureaus help to develop a solid middle class and produce both short and long term benefits to an economy by empowering the citizens in any country with greater mobility, greater opportunity, and, in the long run, by providing individuals with greater resilience against economic shocks. A Credit Bureau provides products, services, convenience, security, acknowledgment, accessibility, and low costs to all individuals in society. The result is increased access to credit across the income spectrum, greater purchasing power for individuals and the improved transparency of small businesses. It is Kazakhstan's clear understanding of the link among data sharing, the credit markets and economic develop that explains the NBK's extraordinary cooperation at all levels of this project.

The practical definition of a Credit Bureau, for design and implementation purposes in Kazakhstan, is one of an impartial entity that will store all past and present credit transactions entered into by a particular legal or physical person, and one that will indicate the manner in which the subject of the credit profile repaid the obligation to the respective creditors. The Credit Bureau will also contain demographic information on the subject to ensure proper identification, information that is pertinent to their creditworthiness, and an indication of the overall risk relating to an applicant as regards the repayment of newly established credit, such as inquiries by other parties with a permissible purpose. The Credit Bureau will provide an avenue for the verification or validation of any information that may be questioned or disputed by the subject of the credit profile. A Credit Bureau serves both parties in a credit transaction and is an excellent tool to reduce risk and facilitate and accelerate the approval process.

Rating Agency

The rating agency part of this component is central to the development of financial markets and for making effective financial intermediation possible in Kazakhstan. Lenders and market participants need to be able to assess risk in order to engage in credit relationships. Moreover, free economies require the open transfer of information among market participants. An informed market also leads to improved

prudential lending in traditionally volatile markets, thus stimulating economic growth and development for a larger segment of the population.

The objective of the rating component remains to develop the capabilities for providing valuation services and credible financial information for judging risks inherent in financial instruments in Kazakhstan over the medium term. Other medium term objectives are to develop risk analysis capabilities, to build the confidence and serve the needs of both domestic and international investors by providing them with analysis, advice, and database resources, to enhance investment transparency, and also to prepare for delivery of financial and investment information by offering a range of products and services that meet the credit risk management needs of financial institutions and investors.

II. SIGNIFICANT EVENTS

- CONTRACT WITH CREDITINFO GROUP (ICELAND), WINNER OF THE RFP, SIGNED ON MARCH 18TH.
- GENERAL SHAREHOLDERS MEETING APPROVED DATABASE STRUCTURE IN APRIL 2005.
- SHAREHOLDERS FINALIZE CONTRACTS AND AGREE UPON EQUAL SHARES. INITIAL FUNDING AT US$ 210,000 CONFIRMED WITH SIGNED CONTRACTS.
- NBK REFUSED TO PROVIDE A LONG-TERM LOW COST LOAN TO THE FCB.
- NBK AND FSA, IN PRINCIPLE, AGREE THAT FCB MAY USE DATA IN CENTRAL CREDIT REGISTRY. LEGAL ISSUES NEED TO BE RESOLVED AND UNDER ANALYSIS. TASK FORCE CREATED.
- CREDIT BUREAU PROJECT CONTINUES TO CARRY OUT ACTIONS TO IMPLEMENT BUREAU
- NBK AND FCB SIGN AGREEMENT ON MARCH 15TH, 2005, WHICH STATES THAT FCB MAY USE NBK'S PREMISES TO HOUSE THE SERVER ROOM.
- FCB IN PROCESS OF REMODELING PREMISES RECEIVED FROM THE NBK.
- FCB NEARING COMPLETION OF NEGOTIATIONS WITH THE SUPPLIERS OF COMPUTER HARDWARE.
- CUSTOMIZATION OF SOFTWARE FOR DATA MANAGEMENT BEGUN.
- SIGNIFICANT GAINS IN MARKETING CREDIT BUREAU TO NON-FINANCIAL SECTOR

III. EXECUTIVE SUMMARY

From February 22, 2005 through May 21, 2005, FSI continued to initiate actions to develop a credit reporting system that would meet the needs of Kazakhstan. As reported in the 18th quarterly report, FSI focused on a) finalizing the First Credit Bureau of Kazakhstan's (FCB) shareholder structure – initial capital at US$ 210,000 (7 shareholders with each shares), b) getting shareholders to agree on Creditinfo's share of equity, c) persuading the insurance industry to share its data with the CB, and d) regulatory matters related to receiving a license from the FSA and compliance with data access and compliance requirements. In all these areas, FSI made major progress. In addition, FSI and the FCB continued further technical analysis for data structures – data formats and transfer requirements. This latter task demands much time and effort given the size of databases at each of the major banks in Kazakhstan.

During the quarter, JSC «Alliance Bank», JSC «ATF Bank», JSC «Bank TuranAlem», JSC «Bank CenterCredit», JSC «Kazkommertsbank», JSC «Narodny Bank of Kazakhstan» and JSC «TsesnaBank» reconfirmed their continuing participation in the credit bureau and agreed in principle to allow not only additional local shareholders but a foreign shareholder to take an equity position in the FCB. The size and related contractual details continue to be worked out although it appeared that shares would continue to be divided equally amongst all shareholders.

Preliminary discussions with shareholders indicate that Creditinfo, which has offered to invest up to ½ of the required capital, will be limited to a minority stake but equal to the other shareholders. As reported in the 18th quarterly, the remaining financial gap after initial capitalization of US$ 210,000 is projected to be approximately US$ 1,500,000. The Credit Bureau is making efforts to raise the remaining capital of US$ 1, 290,000 from its existing shareholders. It appears that Creditinfo will be the only foreign shareholder.

In this connection, the NBK refused to provide the FCB with a long-term low cost loan. The NBK did not see the need for financial support from the government. While the NBK has refused to provide the FCB with a loan, Pragma thinks that this decision was not counter productive to efforts to develop a credit bureau.

Below follows a brief description of Pragma's related activities during the period:

- Pragma, the Association of Financiers, and Creditinfo set up task force to address technical issues in connection with data structure at the various banks. Technical IT specialists mainly represent the task force.
- Pragma legal staff assisting FCB is all contract negotiations between the banks and Creditinfo.
- Separate meetings organized and conducted with risk management departments from each of the shareholder banks. Work flow and needs assessment analyzed.
- Preliminary version of the database structure designed. This work was coordinated with Creditinfo, FSA, the NBK and the Informatization Agency. Upon final agreement among stakeholders, first draft of database structure was sent to participating banks.

- General shareholders meeting approves contract with Creditinfo on March 18th, 2005.
- FSA decides to assist insurance companies in working with the FCB, i.e., sharing their data with the credit bureau.
- Agreement with NBK so that FCB may use its premises to house the server room signed on March 15th, 2005.
- General shareholders meeting approval database structure in April 2005.
- In April 2005, FCB continues efforts to access, in accordance with the law, the Central Credit Registry of Russia.
- In May 2005, FCB signs contract with the NBK to use its premises for the server room.
- Task force establish in May 2005 to determine how the FCB can interface and access the data in the Credit Registry of the NBK. The Central Registry contains historical data; one of the main questions facing Pragma lawyers is to determine how to gain access in a manner consistent with the law.

Technical analysis continued to present challenges given the different data structures and databases. The entire credit bureau concept centers on the data collection, storage, and dissemination of credit-related payment history and demographic information. The cornerstone of the data collection focused on the "data acquisition" module. This module was being customized to accept electronic transmissions from the shareholders of the credit bureau – that was the focus of efforts. Additional modules including the search, input and output modules were also being custom built in order to facilitate – in a timely manner – the dissemination of data to credit bureau customers.

Much of the work undertaken from a technical perspective aimed to produce in the first instance a Credit Report acceptable to the market. The credit report would be followed by other products and services as well as by a standard report for the insurance industry.

Work directed at the inclusion of the NBK Credit Registry is technically feasible and will improve the quality of credit reports. From a technical perspective, banks have already formatted transfer files, have processes in place for file creation and validation and have a communication network established to transfer the data. Our analysis revealed that there is considerable usable information and work flow characteristics that the banks are already carrying out. The specifics of the system are under construction.

As reported in the last quarterly report, it is highly likely that, because of Pragma's ongoing discussions with the FSA and with the insurance industry, the credit bureau database will eventually manage insurance related information. Insurance companies have proprietary databases of their policyholders. While technical analysis was focused on banks, the FCB, Creditinfo and Pragma analyzed how best to construct the database in order to include the following databases for insurance:

- A database of all policies issued by all insurance companies
- A database of all accident occurrences
- A database of life and disability claims
- A database of all fraud transactions and fraud customers

Analysis continues to determine how best to develop these products and services given the likelihood that the FCB will manage an insurance database.

FSI continued discussions with relevant parties regarding the development of credit scoring products and other services, such as fraud detection for the banking. FSI underscored that a Credit bureau must offer its clients expert services and products to help detect potential fraud from new and existing clients.

With respect to credit scoring, Pragma continued to provide advise in collaboration with Creditinfo to the FCB. Credit scoring is an increasingly popular tool in the credit card, mortgage, banking, leasing and credit granting industries. Pragma again explained to banks and to the FCB that credit scoring is the process whereby a numeric score/value is assigned to the credit profile, of a credit applicant, indicating the likelihood of that applicant defaulting on a new loan, within a specific period of time. A custom-designed computer matrix generates the score. The existing data in a credit profile is run through the computer matrix, giving different weights to elements in that file (e.g. ratio of balances to high credit; number of times late within the past 12 months; number of existing revolving balances; etc.). The score that is produced, based upon a pre-set scale (average consumer), factors in loan history, current activity, recent trends, and borrowing patterns of the particular applicant and measure it against the average consumer profiled in the database. Credit scoring is not the same as decision tools, which have a broader definition in the industry.

By way of background, in a number of markets, risk-based scoring is the basis on which a number of bank and mortgage "automated approval systems" have been developed in order to remove much of the time and effort involved in issuing approval to applicants. Assuming the score reflects the probability of default or an applicant's repayment capacity, the credit approval and pricing process is simplified, saving, in the long run, both time and financial resources.

In Kazakhstan, the credit bureau management team, most likely, would need to design and build a country specific model. Such a credit-scoring model should not be restricted to the FCB – and in this connection, the Kazakhstan Mortgage Company and others have requested assistance from FSI. In principle, we have advised that the credit bureau might consider charging a price of US$ 0.50 per score although pricing differs from market to market. Given the fact that the database would need time to build historical information and the fact that credit scoring relies on historical information, it is anticipated that sales would begin no sooner than in the 3rd year from start of operations. At the same time, however, a credit score should never replace the lender's independent risk assessment of the borrower; rather a credit score is a valuable tool in the credit decision.

Kazakhstan's new private Credit Bureau will strengthen the primary mortgage, auto, retail, and credit card markets. It will accelerate the securitization of consumer receivables. It will help empower the middle class with greater mobility, greater opportunity, and, in the long run, provide greater resiliency to economic shocks – conditions for the development of a stable democracy in a more secure economic environment.

There was no change to FSI's report last quarter regarding the establishment of a rating agency in Kazakhstan.

IV. ADMINISTRATIVE MATTERS

During the quarter, Mr. Javier Piedra, Senior Advisor, coordinated the Credit Bureau Component of the FSI.

V. DESCRIPTION AND STATUS OF TASKS

Task 1 – Credit Bureau

Defined Activity	Progress Made During Quarter/Proposed Future Actions
PHASE I • **Complete a feasibility study on the possibility of establishing a Credit Bureau in Kazakhstan** • **Analyse the legal environment for the creation of a Credit Bureau**	• COMPLETED - FOR DETAILS SEE 6TH QUARTERLY REPORT
PHASE II • **Develop a Credit Bureau in Kazakhstan** • **Develop and Distribute a business plan and a detailed operations/technical implementation plan** • **Design a marketing and PR campaign** • **Develop the legislative package and actively resolve any legal issues** • **Work toward drafting a Credit Bureau law.**	**COMPLETED** • ALL MAJOR TASKS COMPLETED • KAZAKHSTAN CREDIT BUREAU PROJECT IN IMPLEMENTATION PHASE
PHASE III • **Establish a Credit Bureau in Kazakhstan** • **Create a credit reporting system** • **Construct a data base**	**COMPLETED OR UNDERWAY** • KAZAKHSTAN CREDIT BUREAU PROJECT IN IMPLEMENTATION PHASE • CONTINUED CAPACITY BUILDING OF FCB STAFF. • CONTRACT WITH CREDITINFO GROUP (ICELAND), WINNER OF THE RFP, SIGNED ON MARCH 18TH. • GENERAL SHAREHOLDERS MEETING APPROVED DATABASE STRUCTURE IN APRIL 2005. • SHAREHOLDERS FINALIZE CONTRACTS AND AGREE UPON EQUAL SHARES. INITIAL FUNDING AT US$ 210,000 CONFIRMED WITH SIGNED CONTRACTS. • NBK REFUSES TO PROVIDE A LONG-TERM LOW COST LOAN TO THE FCB. • NBK AND FSA, IN PRINCIPLE, AGREE THAT FCB MAY USE DATA IN CENTRAL CREDIT REGISTRY. LEGAL ISSUES NEED TO BE RESOLVED AND UNDER ANALYSIS. TASK FORCE CREATED.

	• CREDIT BUREAU PROJECT CONTINUES TO CARRY OUT ACTIONS TO IMPLEMENT BUREAU • NBK AND FCB SIGN AGREEMENT ON MARCH 15TH, 2005 WHICH STATES THAT FCB MAY USE NBK'S PREMISES TO HOUSE THE SERVER ROOM. • FCB IN PROCESSING OF REMODELING PREMISES RECEIVED FROM THE NBK. • FCB NEARING COMPLETION OF NEGOTIATIONS WITH THE SUPPLIERS OF COMPUTER HARDWARE. • CUSTOMIZATION OF SOFTWARE FOR DATA MANAGEMENT BEGUN. • SIGNIFICANT GAINS IN MARKETING CREDIT BUREAU TO NON-FINANCIAL SECTOR • CUSTOMIZATION OF SOFTWARE FOR DATA MANAGEMENT BEGUN. • SIGNIFICANT GAINS IN MARKETING CREDIT BUREAU TO NON-FINANCIAL SECTOR

Task 2 – Credit Rating Agency

Defined Activity	Progress Made During Quarter/Proposed Future Actions
• **Create conditions and interest favorable to establishing a credit rating agency in Kazakhstan by holding second credit ratings training.** • **Identify credit agency willing to establish office in Kazakhstan**	• NO SIGNIFICANT CHANGE SINCE THE 11TH QUARTERLY REPORT.

LIST OF ATTACHMENTS

None

OVERVIEW ATTACHMENTS

The Pragma Corporation Workplan: Financial Sector Initiative in Kazakhstan January 19, 2005

Description of Activity		Time Period (in Months)																																																											
	Staff	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
Mobilization																																																													
1. Transition to new Project	MF, DL																																																												
2. Establish Reporting Relationships	DL																																																											
3. Field team of resident advisors	MF, DL																																																											
Demobilization																																																													
1. Develop disposition plan	MF, DL																																																											
2. Preparation of Final Report	DL																																																											
Insurance																																																													
1. Supervision / DIS Efficiency																																																												
A. Conduct an Assessment of Department of Insurance Supervision																																																												
i) Procedures and practices	ST																																																											
ii) Organizational structure	ST																																																											
iii) Supervisory framework	ST																																																											
iv) Use of information technology	ST																																																											
v) Staff capabilities and training needs	ST																																																											
vi) Identification of other areas requiring improvement	ST																																																											
B. Develop framework for upgrading supervisory procedures	RW/ST																																																											
C. Implement framework																																																													
i) Develop manuals and written procedures	RW/ST																																																											
ii) Develop risk-based supervisory framework	RW/ST																																																											
iii) Assist Unified Financial Superviser in implementing risk-based supervisory framework, if and as requested, in accordance with EU standards	RW/SM																																																											
D. Training																																																													
i) Develop training program, based on TNA	RW/ST																																																											
ii) Deliver training, based on TNA	ST																																																											
2. Legal																																																													
A. Develop and draft voluntary insurance law	RW																																																											
B. Assess existing insurance rules and regulations	RW																																																											
C. Develop and implement other insurance regulatory documents, as required	RW/SM																																																											
D. Assist in amending voluntary insurance laws and regulations, as required	RW/SM																																																											
E. Assist in identifying, drafting and amending mandatory insurance laws and regulations, as required, using intenrational standards of practice	RW/SM																																																											
F. Assist in drafting and amending insurance-related laws and regulations, as required	RW/SM																																																											

MF = Mohammad Fatoorechie DL=David Lucterhand, SM=Steve Moody PP=Paul Pieper, RW=Richard Webb, PB=Paul Backer, JP=Javier Piedra, SMl=Sally Merryl, DW=Douglas Whitley, RR=Rebecca Richards, CB=Chris Barltrop,ST=Short Term Advisor

Description of Activity	Time Period (in Months)																																																												
	Staff	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
G. Assist in development of insurance indemnity fund law; rules and regulations in accordance with international standards of practice	SM					■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■											
I. Assess feasibility of consolidation and review of insurance-related Court decisions	RW/SM					■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■											
E. Assess barriers to foreign participation	RW				■	■	■																																																							
3. Actuarial Matters																																																													
A. Assist in establishing Society of Actuaries	RW/SM	■	■	■	■	■	■	■									■	■	■																																										
B. Assist in developing Society of Actuaries (e.g. standards, continuing education, disciplinary procedures, international contacts, memberships and affiliations, etc.)	RW/SM								■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
C) Assist DIS in establishing and maintaining the Actuarial Center																																																													
i) Arrange administrative matters (workplan, budget, resources, equipment,location, etc.)	RW/SM				■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■																																										
ii) Establish and maintain actuarial database (including development of scope and format of various types of data)	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
iii) Develop actuarial library	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
iv) Develop actuarial tables	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
a) Analysis	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
b) Research	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
c) Modeling	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
d) Information and consulting services	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
e) Training to system users	SM																■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	░	░	░	░	░	░	░	░
E Develop and deliver actuarial training																																																													
i) Basic (2 courses per year)	ST							■			■																																																		
ii) Advanced (3 courses per year)	ST															■			■				■					■					■				■		■						■	■				■											
iii) Curriculum development and examination setting	ST																	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■											
iv) Continuing education, as required	ST																	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■											
F. Transfer training responsibilities to local universities over time	RW/SM							■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■											
4. Insurance Industry Development																																																													
A. Conduct assessment of Kazakhstani insurance industry and market, including																																																													
i) Current state of industry development	ST																■	■																																											
ii) Current capacity of industry	ST																■	■																																											
iii) Current state of regulation	ST																■	■																																											
iv) Current impediments to growth of industry	ST																■	■																																											
v) Areas for industry growth	ST																■	■																																											
vi) Current opportunities for foreign insurance companies	ST																■	■																																											
vii) Industry training needs	ST																■	■																																											
B. Prepare report based on assessment, including recommendations on	ST																	■																																											
i) Potential growth areas within the insurance market	ST																	■																																											
ii) Steps to be taken to encourage growth in these areas	ST																	■																																											
iii) Steps to be taken to improve the regulatory environment	ST																	■																																											

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Description of Activity	Staff	Time Period (in Months)
iv) Steps to be taken to remove impediments to growth of industry	ST	
v) Steps to be taken to encourage participation by foreign insurers	ST	
vi) Identification of international sources of assistance	ST	
C. Commercial Use of Annuities Seminar	ST	
i) Assist in development and use of annuities	ST	
D. Assist EBRD in conducting diligence activities for investment in Kazakhstani insurance companies	DL/SM	
5. Other		
A. Establish insurance guarantee fund		
i) Seek Agency approval	RW	
ii) Assist Agency to develop and implement methodology for risk assessment and pricing according to international standards of practice	RW/SM	
iii) Revise rules for life and non-life insurance including solvency in accordance with EU standards		
B. Assist National Bank of Kazakhstan in connection with development of consolidated financial sector supervision, if and as requested	RW/SM	
C. Assist industry in establishing Association of Insurors.		
Pension		
1. Establish unified independent regulatory agency		
A. Facilitate a political decision on unification	RW	
B. Assist in the final design of the unified regulatory body, if and as requested by NBK	RW/ST	
C. Provide assistance and support for the staff of the Agency, if and as requested	RW/ST/SM	
2. Privatize or liquidate SAPF		
A. Support preparation of the SAPF for privatization (cleaning accounts, etc.)	RWST	
B. Develop a privatization strategy, if and as requested	RW/ST/SM	
C. Provide technical support for privatization, if and as requested	RW/ST/SM	
i) Complete valuaion of SAPF	DL/SM/ST	
3. Improve systems supporting the accumulation pension system		
A. Design a comprehensive data reporting system for pension regulators	RWST	
B. Implement a comprehensive data reporting system for pension regulators, if and as requested	RW/ST	
C. Establish a plan for improved recordkeeping for the accumulation pension system	RWST	
D. Support implementation of improved recordkeeping, if and as requested	RW/SM	
4. Research and methodolgy		
A. Develop valuation methodology for pension assets	RWST	
B. Participate in valuation activities	RW/SM	
C. Promote acceptance by government of uniform accounting standards	RW/ST	
D. Develop uniform methodologies for calculating investment returns	RWST	

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E. Amend uniform methodologies for calculating investment returns, as required	RW/ST																																																												
F. Analyze changes to commission structures	RWST																																																												
G. Perform monthly pension system liquidity analyses	SM/TA																																																												
H. Assist The World Bank in pension study	SM																																																												
5. Legal																																																													
A. Assist in amending pension law and regulations, as required	RW/SM																																																												
B. Develop and implement other pension regulatory documents, as required	RW/SM																																																												
C. Assist in drafting and amending pension-related laws and regulations, as required	RW/SM																																																												
D. Assess feasibility of consolidation and review of pension-related Court decisions	RW/SM																																																												
6. Other																																																													
A. Assess feasibility of establishing association of pension contributors	RW																																																												
Mortgage																																																													
1. Legal and Regulatory																																																													
A. Review, develop revise and/or amend legislation re: foreclosure and mortgage lending	SM/ST																																																												
B. Review real estate registration system and recommend changes to accommodate mortgage bond issuance	PB/SM																																																												
2. Develop mortgage origination																																																													
A. Promote the use of mortgage insurance (KMC and banks)	DL/SM/ST																																																												
B. Provide on-site technical assistance to design “FHA like” facility	DL/SM																																																												
1) Complete fesability study	DL/SM/SM/DW																																																												
2) Complete business plan	DL/SM/SM/DW																																																												
3) Assisting operational set-up of KMGF	DL/SM/SM/DW																																																												
a) Complete Insurance policy	DL/SM/SM/DW																																																												
b) Complete operational forms	DL/SM/SM/DW																																																												
c) Complete organizational planning	DL/SM/SM/DW																																																												
d) Develop marketing plan	DL/SM/SM/DW																																																												
e) Commence marketing	SM/DW/AM/GS																																																												
C. Training Bank Personnel/Potential Investors																																																													
1) Review IUE training materials and methodology for applicability to Kazakhstan	DL/ST																																																												
2) Develop and administer formal training program to financial institutions interested in mortgage lending	DL/ST																																																												
3) Provide on-site technical assistance	DL/ST																																																												
4) Develop rules and procedures for retail mortgage lending	SM/DL/ST																																																												
3. Activity Plans																																																													
A. Develop society of appraisers	DL/SM																																																												
1) unified methodology for real estate appraisal																																																													
B. Develop Mortgage Term Life Insurance	DL/RW																																																												

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C. Assess viability of reverse mortgages	DL/RR/CB																																																												
D. Develop Kazakhstan Association of Realtors	DL/ST																																																												
E. Develop title insurance	PB/SM/ST																																																												
1) Complete assessment	DL/ST																																																												
2) Conduct industry seminar	DL/ST																																																												
3) Provide industry technical assistance	DL/ST																																																												
F. Develop commission for real estate regulation																																																													
1) Rules and regulations																																																													
2) Certification standards																																																													
3) Licensing procedures																																																													
Financial Instruments																																																													
1. Regulatory reform																																																													
A. Develop bond regulation to include the promotion of default remedies and disclosure.	ST/SM																																																												
B. Participate in Agency legal reform working groups	PB/SM																																																												
1) Remedy pledge law deficiencies	ST/SM																																																												
2) Remedy deficiencies in bankruptcy law to accommodate MBS's	PB/SM																																																												
3) Install institution of bondholder representative	PB/SM																																																												
C. Develop KASE requirements for risk disclosure	PB/SM																																																												
D. Assist NBK in developing rating regulations for pension fund investment	DL/SM/ST																																																												
E. Institutionalise use of SPVs	SM/TJ																																																												
2. Corporate Finance and Investment Banking																																																													
A. Assist SMEs in raising capital	DL/SM																																																												
B. Assist financial institutions in issuing mortgage-backed bonds	DL/SM																																																												
1) Identify potential issuers	DL/SM																																																												
2) Train and assist banks in preparing for bond issuance	DL/SM/ST																																																												
3) Structure issues with necessary credit enhancements	DL/SM/ST																																																												
4) Promote mortgage-backed securities to investors	DL/SM																																																												
C. Design and develop other new financial instruments																																																													
1) Asset-Backed Securities	DL/SM																																																												
2) Development of warehouse receipts	DL/SM/ST																																																												
a) Regulations	DL/SM/ST																																																												
b) Indemnity Fund	DL/SM/ST																																																												
c) Bank Lending	DL/SM/ST																																																												
2) Social obligation bond (SOB)	DL/SM																																																												
3) Principal Protected Notes	DL																																																												
4) Promote Equity Issuance and Trade	DL/SM/ST																																																												
3. Assist Kazakhstan Mortgage Company																																																													
A. Assist Kazakhstan Mortgage Company to become liquidity facility	DL/SM/ST																																																												
B. Provide on-site technical design assistance	DL/SM/ST																																																												
1) Complete risk and duration analysis																																																													
C. Assist in designing mortgage-backed security																																																													
D. Standardize mortgage loan documentation	DL/SM/ST																																																												

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		Time Period (in Months)																																																												
E. Provide technical assistance in implementing GOK housing initiative																																																														
4. Other																																																														
A. Assist Central Depository to improve operations in accordance with EU and US best practices	DL/SM/ST																																																													
B. Assist NBK/GOK in Restructuring Long Term Government Yield Curve.	DL/SM/ST																																																													
1) Assist NBK/GOK in formation of monetary policy strategies.	DL/SM/ST																																																													
Credit Bureau/Rating Agency																																																														
Phase I - Feasibility Study - Determine whether or not to estabish CB																																																														
1) Analyze the legal and regulatory environment	JP																																																													
2) Review methods of extending credit (Banks/Merchants/Other)	JP																																																													
3) Determine feasibility and best method for bank participation	JP																																																													
4) Government's view and NBK participation	JP																																																													
5) Analyse best approach for structuring, establishing and operating	JP																																																													
a) Produce cost benefit and breakeven analysis	JP																																																													
Phase II - Development Stages																																																														
1) Define business plan and operations plan for Credit Bureau	JP																																																													
2) Design marketing and PR campaign	JP																																																													
3) Develop Package describing financial needs	JP																																																													
4) Develop legislative package and actively resolve legal issues	JP																																																													
5) Contact Investor "Groups"	JP																																																													
Phase III - Marketing & Implementation Plan																																																														
1) Legal/Regulatory	JP																																																													
a) Draft, Negotiate & Monitor Legislation	JP																																																													
i) Review of Civil and Banking Law	JP																																																													
ii) Detailed Discussions with Government Ministries and Informatization Agency	JP																																																													
iii) Majalis and Senate sign-off on Draft CB Law																																																														
iv) Technical Legal Issues	JP																																																													
2) Monitor Data Disclosure Laws, Privacy and Confidentiality of Information	JP																																																													
a) Draft and Monitor Regulations related to various ministries	JP																																																													
3) Consolidate Interests of Strategic Investors and interested parties (Secure buy-in)	JP																																																													
a) Refine Business Plan	JP																																																													
i) Review with domestic banks and other local investors	JP																																																													
ii) Review with Credit Bureau operators and specialists	JP																																																													
iii) Review with IFC and other strategic international investors	JP																																																													
iv) Review with Bankers' Association and Central Bank	JP																																																													

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v) Develop and Sign Memorandum of Understanding																																																													
4) Targeted Marketing Activities and Material	JP																																																													
a) Regional Credit Bureau Conference	JP																																																													
b) Formalize Financial Sector Participation	JP/JA																																																												
c) Formalize Participation of Public Record Holders	JP																																																												
d) Validate CB Product Offerings & Services	JP/JA																																																												
i) Convince potential subscribers to become participants, including insurance	JP																																																												
ii) Launch seminars on CB Product Offerings and Services	JP/JA																																																												
iii) Develop participation of Insurance Industry	JP																																																												
e) Develop Non-financial Sector Participation	JP																																																												
i) Educate retailers, SMEs and utilities (providers)	JP																																																												
ii) Educate public to benefits	JP																																																												
5) Develop Company Contacts (separate shareholder, data access, confidentiality, and operator agreements)	JP																																																												
a) Develop and execute data sharing agreements	JP																																																												
b) Develop government data agreements	JP																																																												
6) Source Technical Assistance	JP/TA																																																												
a) Develop and Implement Plan	JP																																																												
b) Network Infrastructure Design	JP/TA																																																												
c) Software Design, System Components, Database	JP/TA																																																												
d) System Development	JP/TA																																																												
e) Develop and Refine Operating Manuals	JP/TA																																																												
f) Technical Implementation	JP/TA																																																												
g) Launch Pilot Project and refine	JP/TA																																																												
h) Provide Tech. Assistance & Training	JP/TA																																																												
E. Develop domestic ratings capabilities	DL/JP																																																												
Social Policy Initiative																																																													
A. Develop social protection system analytical papers	PP/ST/RW																																																												
B. Develop concept paper for Kazakhstan's social protection policy	PP/ST																																																												
Reporting, Monitoring and Evaluation/Team Building																																																													
A. Weekly meetings	All																																																												
B. Team Building	All																																																												
C. Quarterly review	MF/DL																																																												
D. Plan revision	MF/DL																																																												

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ОТ АМЕРИКАНСКОГО НАРОДА

FSI

Quarterly Review (Month 56) Financial Sector Initiative Kazakhstan

April 07 , 2005

Presented by:
The Pragma Corporation

Implemented by The Pragma Corporation

FSI is about Building Investment Capacity and Wealth in Kazakhstan By Developing:

- Financial instruments for domestic Investment
- The mortgage industry inclusive of the primary and secondary Mortgage market
- The insurance industry and consolidation of private pension funds
- A Credit Bureau for Kazakhstan

Over the past five years USAID/Pragma Initiative Created Significant Financial Sector Capacity:

- **Institutions:** Credit Bureau, KMGF, KMC, Insurance Indemnity fund, National Actuarial Center
- **Associations:** Kaz Association of Realtors, Chamber of Appraisers, Society of Actuaries, Association of Asset Managers, Association of Insurers, Association of Financiers
- **Products:** Structured instruments, Bonds, Mortgage backed securities, Warehouse receipts
- **Services:** Mortgage lending, Insurance, Actuaries
- **Processes:** Legal remedies (draft and a technical assistance), Regulatory training, Financial engineering, Pension reporting

Current Activities

Financial Instruments

- Pragma/FSI consults with National Bank and Ministry of Finance on the Term structure of rates
- At NBK Governor Saidenov's invitation and with USAID sponsorship a series of monetary policy roundtables will be launched by the Project

Insurance

- Consultants work on mortality tables
- Actuarial courses continue

Current Activities Cont'd…..

- **Mortgages**
  - Association of Realtors Kazakhstan (ARK) is established
  - FSI/AZ-KZ designs and prepares a certification program for real estate professionals to ensure compliance with world standards of practice.
  - FSI begins development of profit/loss model for Kazakhstan mortgage company and mortgage guarantee fund

- **Credit Bureau/Credit Rating Agency**
  - Credit Bureau is established with 7 commercial banks
  - **CreditInfo** is selected as the operator of the Credit Bureau and begins work
  - Data collection and testing started

Follow-on and extra-contractual tasks scheduled until end of contract

- Work with Actuarial Society on training and Actuarial Center on mortality tables
- Provide technical assistance to Kazakhstan Central Securities Depository
- Hold second monetary round table
- Ongoing administrative/legal support to Credit Bureau
- Continued support for KMC and KMGC
- Working with MOF, Association of Financiers, commercial and investment banks on passage of the Securitization Law
- Secured pro bono consulting from S&P to review the draft Law on Securitization
- Continuing certification program for real estate brokers and sales persons
- TA to Association of Financiers on title insurance
- Respond to requests for additional TA to the financial sector .

What has been created?

$3.95 Billion of investment capacity was created with Pragma/FSI TA

- **Residential Mortgage origination reaches $1.2 billion and has the potential of reaching $2.0 billion during the life of the project;**
- **376 million mortgage-backed bonds now in circulation**
- **Corporate bond issuance reaches $2.0 billion (cumulative) since its launch in October 1999. At it present rate of growth, it has the potential of reaching $2.5 billion (cumulative) through the life of the project;**
- **Bank lending against grain warehouse receipts of $250 million, with an additional potential of $250 million during the life of the project;**
  - **+ $1.20 Billion (05), + $2.50 Billion (05)*, + $250 Million (05)= Total $3.95 Billion* or 8.7% of forecast GDP (2005 $45 Billion**)**

* KASE
** Ministry of Economy

The Capacity includes $8.45 billion of active Investment Capital in Kazakhstan

$3.95 billion + $4.5 billion of pension funds under management bringing the

total non-bank investment capacity to $8.45 billion or

18.77% of GDP

Creating a Sustainable Actuarial Society of Kazakhstan

Sources of funding for Sustainability :

- Membership fees. The society currently has 50 active members
- Fee based training and testing
- Grants

Continued FSI support through July 05:

- Install paper based examination system to replace the current examination system
- Training of trainers
- Develop sustainability plan for the Society (FSI/EDP)
- Develop standardized grant proposals

Creating Sustainable Capacity

Pension reform

- Now under a single unified regulator (Financial Supervisory Agency)
- EBRD is willing to support the privatization of SAPF and would consider taking an equity stake
- EBRD looking for a private pension fund manager

Pragma / FSI has created sustainability for the pension system through the development of

- Corporate bonds
- Grain Warehouse Receipts
- Mortgage Securities
- Passage securitization law

Creating Sustainable Capacity Pensions continued…

Securitization law:

- We estimate that the passage of the law would bring one billion dollars of new securities to the market immediately.
- 500 million asset backed securities and
- 500 million mortgage backed.
- In addition we expect to see another 500 million of asset backed commercial paper in the SME development sector.
- Project finance

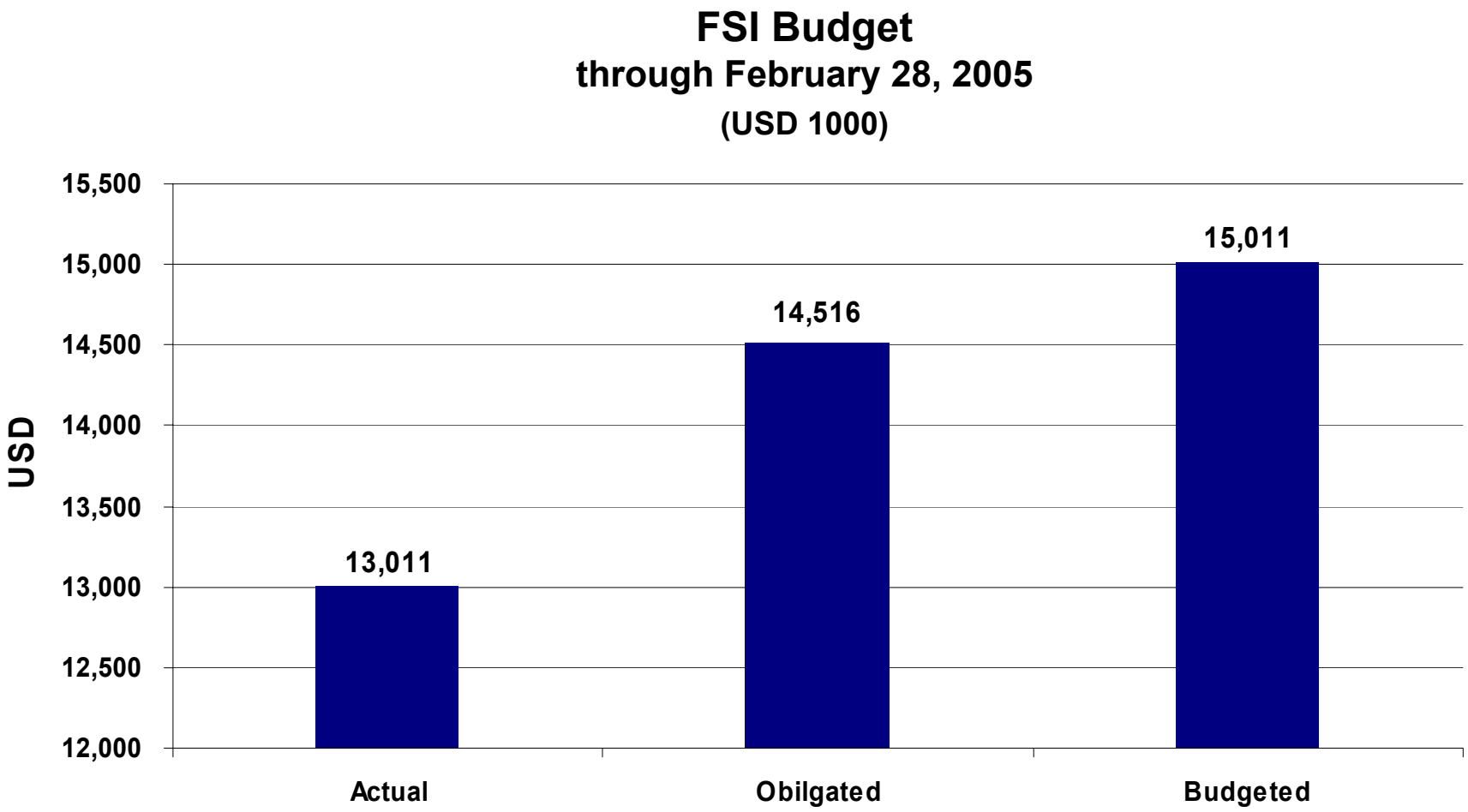
The Yield Curve and its Importance for Kazakhstan

Basic assumption:

The Government yield curve is a snap shot of rates and issuance maturities; It profiles the most secure investments available domestically

Based on current yields in the market:

Pension funds and banks are losing money on government securities. Yields are below the rate of inflation due to excess liquidity in financial market


FSI Budget
through February 28, 2005
(USD 1000)
USD
15,500
15,000
14,500
14,000
13,500
13,000
12,500
12,000
13,011
14,516
15,011
Actual
Obilgated
Budgeted

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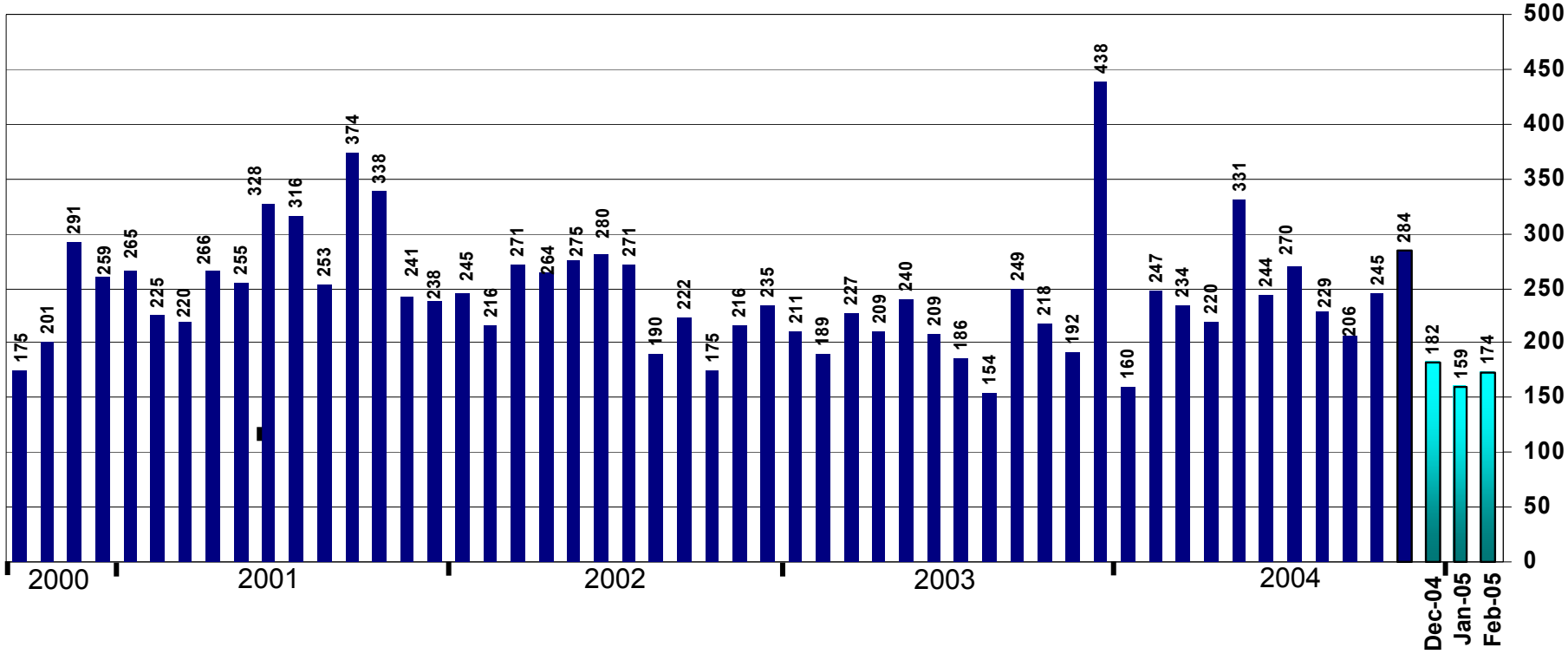
FSI

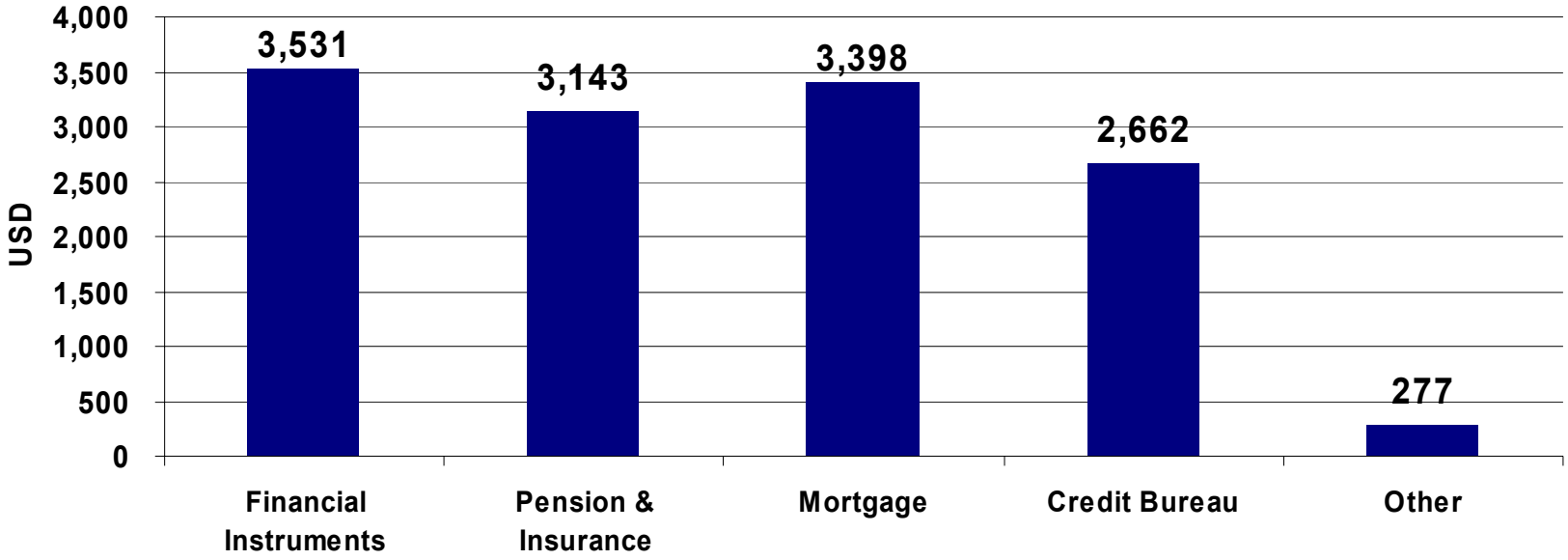
Cumulative Project Expenditure
By Month through February 28, 2005
(USD 1000)



Total Expenditure: $13,011,094
Average Monthly Expenditure: $240,984

March 2005

Cumulative Project Expenditure
By Component through February 28, 2005
(USD 1000)



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FSI

Deliverables and Extra-contractual Accomplishments

Formation of New Instrument Types	Pension System	Strenthen Pension Regulation	Insurance Legal Regulatory Framework	Effective, Efficient Insurance Supervision	Actuaries	Mortgage	Extraordinary Related Results
Agencies			Companies Offering Life/Annuity Products				Actuarial Center
			Industry Consolidation				Restructured Government Yield Curve
Non-Bank MBS	Privatize State Accumulation Fund	Train Personnel of the Unified Regulatory Body	Laws Adopted	IAIS Compliance		Mortgage-Backed Securities	Insurance Indemnity Fund
Bank MBS	Transparent Record-Keeping	Merge Existing Regulatory Bodies into a Single Unit	Licensing Brokers and Actuaries	Training	Database	Mortgage Origniation	PMI
Warehouse Receipts	Mark-to-Market	Encourage Government Decision to Unify Regulation	Consumer Protection	Implementation of Assessments Conclusions	Society of Actuaries	Training and Documentation	Credit Bureau
Corporate Bonds	Information Systems	Design Unified Pension Regulator	Assessment	Assessment	Trained Actuaries	Legal & Regulatory	KMGF
							Pledge Law

FINANCIAL INSTRUMENTS ATTACHMENTS

DRAFT LAW OF THE REPUBLIC OF KAZAKHSTAN "ON SECURITISATION"
COMPARATIVE ANALYSIS & COMMENTARIES TO THE RECOMMENDED AND THE OFFICIAL DRAFTS

Recommended draft	Official draft[1]
Preamble	**Preamble**
This Law sets out legal foundations and conditions for securitisation in the Republic of Kazakhstan, establishes special requirements for the establishment and activities of special purpose vehicles, assignment of receivables, and issuance of securities by special purpose vehicles in a securitisation transaction, as well as determines procedures and measures of statutory regulation for securitisation.	This Law sets out legal foundations and conditions for securitisation in the Republic of Kazakhstan, establishes special requirements for the establishment and activities of special purpose vehicles, assignment of receivables, and issuance of securities by special purpose vehicles in a securitisation transaction, as well as determines procedures and measures of statutory regulation for securitisation.
Section I. General Provisions	**Section I. General Provisions**
Article 1. Main Definitions Used In This Law:	**Article 1. Main Definitions Used In This Law:**
1) **affiliated entities** – physical or legal persons (except government authorities carrying out delegated statutory control and supervision functions) that can directly and/or indirectly determine decisions and/ or cause to determine decisions taken by each other (either of them), including by force of contract;	1) **affiliated entities** – physical or legal persons (except government authorities carrying out delegated statutory control and supervision functions) that can directly and/or indirectly determine decisions and/ or cause to determine decisions taken by each other (either of them), including by force of contract;
2) **future receivables** – receivables arising after the conclusion of the contract of assignment;	2) **future receivables** – receivables arising after the conclusion of the contract of assignment;
3) **segregated assets**[2] – assigned receivables and proceeds from these receivables as well as other rights and financial assets arising out of investing proceeds from segregated assets and any ancillary security;	3) **segregated assets** – assigned receivables and proceeds from these receivables as well as other rights and financial assets arising out of investing proceeds from segregated assets and realisation[3] of any ancillary security;

[1] Latest official draft based on consensus reached by professional market associations, the financial regulator, and the MoF at a meeting on May 28, 2005. This draft should replace the draft that is currently in the *Mazhilis* (the Lower House of the Parliament). However, we believe that further changes are required in line with the recommended draft, that may be introduced during the next working session of the *Mazhilis* in September 2005.

[2] Segregated assets in accordance with this Law include the assigned receivables and any proceeds from them, as well as:

- financial instruments and proceeds from them, in which SPV invests between periodic payments to investors;
- cash reserve and any other form of overcollaterilisation;
- new receivables that SPV acquires from the originator in accordance with predetermined criteria;
- proceeds from guarantees, letters of credit, netting agreements that SPV acquires prior to issuance of asset-backed bonds as credit/ liquidity enhancements or hedges;
- rights under pledge, insurance, credit default swap agreements, etc., that SPV enters into, or inherits, prior to issuance of asset-backed bonds.

4) **debtor** – legal entity that has existing or future monetary liability to the originator;	4) **debtor** – legal entity that has existing or future monetary liability to the originator;
5) **ancillary security** – security of bonds issued by special purpose vehicle that is ancillary to the assigned receivables and consists of rights and financial assets arising out of transactions entered into by special purpose vehicle prior to issuance of bonds;	5) **ancillary security** – security of bonds issued by special purpose vehicle that is ancillary to the assigned receivables and consists of rights and financial assets arising out of transactions entered into by special purpose vehicle prior to issuance of bonds;
6) **bonds of special purpose vehicle** – bonds under which the liability of the issuer is secured by segregated assets in accordance with this Law;	6) **bonds of special purpose vehicle** – bonds under which the liability of the issuer is secured by segregated assets in accordance with this Law;
7) homogeneity of receivables – conformity of receivables with some common criteria as defined in the bond prospectus;	**7) homogeneity of receivables** – conformity of receivables with some common criteria as defined in the bond prospectus;
8) **originator** – legal entity that assigns receivables in a securitisation transaction;	8) **originator** – legal entity that assigns receivables in a securitisation transaction;
9) **proceeds from receivables** – proceeds from debtors in cash;	9) **proceeds from receivables** – proceeds from debtors in cash;
10) **receivables** – monetary claims arising out of ordinary activities of the originator;	10) **receivables** – monetary claims arising out of ordinary activities of the originator;
11) **segregated accounting in the special purpose vehicle** – exclusion of segregated assets, bonds issued by special purpose vehicle (including accrued coupon) from the balance sheet of special purpose vehicle as legal entity;	11) **segregated accounting in the special purpose vehicle** – exclusion of segregated assets, bonds issued by special purpose vehicle (including accrued coupon) from the balance sheet of special purpose vehicle as legal entity;
12) **securitisation transaction** – acquisition by special purpose vehicle of receivables and issuance of bonds secured by segregated assets in accordance with this Law;	12) **securitisation transaction** – acquisition by special purpose vehicle of receivables and issuance of bonds secured by segregated assets in accordance with this Law;
13) **securitisation** – receivables financing through issuance of bonds secured by segregated assets in accordance with this Law;	13) **securitisation** – receivables financing through issuance of bonds secured by segregated assets in accordance with this Law;
14) **own assets of special purpose vehicle** – assets, liabilities, equity, and profit (loss) received (incurred) by special purpose vehicle as legal entity upon termination of securitisation transaction. Own asset of special purpose vehicles do not include segregated assets, bonds (including accrued coupon) of the special purpose vehicle;	14) **own assets of special purpose vehicle** – assets, liabilities, equity, and profit (loss) received (incurred) by special purpose vehicle as legal entity upon termination of securitisation transaction. Own asset of special purpose vehicles do not include segregated assets, bonds (including accrued coupon) of the special purpose vehicle;
15) **special purpose vehicle** – legal entity established in accordance with	15) **special purpose vehicle** – legal entity established in accordance with

[3] Highlighted in grey are the remaining differences between the recommended and the official draft, i.e. clauses that, in our opinion, fall short of the accepted standards and practices of securitisation.

this Law with the sole purpose of carrying out one or more securitisation transactions;	this Law with the sole purpose of carrying out one or more securitisation transactions;
16) **existing receivables** – receivables arising upon or before the conclusion of the contract of assignment;	16) **existing receivables** – receivables arising upon or before the conclusion of the contract of assignment;
17) **supervisory authority** – state body authorised for regulation and supervision of financial markets and financial organisations.	17) **supervisory authority** – state body authorised for regulation and supervision of financial markets and financial organisations.
Article 2. Securitisation Legislation of the Republic of Kazakhstan	**Article 2. Securitisation Legislation of the Republic of Kazakhstan**
1. The legislation of the Republic of Kazakhstan on securitisation is based on the Constitution of the Republic of Kazakhstan and comprises the Civil Code of the Republic of Kazakhstan, the present Law and other normative legal acts of the Republic of Kazakhstan. 2. The legislation of the Republic of Kazakhstan on securities markets governs the relations in connection with securitisation transactions unless otherwise provided in this Law. 3. This Law applies unless otherwise provided in the international treaties ratified by the Republic of Kazakhstan.	1. The legislation of the Republic of Kazakhstan on securitisation is based on the Constitution of the Republic of Kazakhstan and comprises the Civil Code of the Republic of Kazakhstan, the present Law and other normative legal acts of the Republic of Kazakhstan. 2. The legislation of the Republic of Kazakhstan on securities markets governs the relations in connection with securitisation transactions unless otherwise provided in this Law. 3. This Law applies unless otherwise provided in the international treaties ratified by the Republic of Kazakhstan.
Section II. Special Purpose Vehicle	**Section II. Originator and Special Purpose Vehicle**
Article 3. Establishment and Activities of Special Purpose Vehicle	**Article 3. Originator**[4]
1. Special purpose vehicle can be established by the originator or another person and shall be incorporated as joint-stock company or limited liability partnership. Capital of special purpose vehicle shall be paid up in cash. 2. Special purpose vehicle's registered company name must carry the words "special purpose vehicle". It is allowed to use abbreviation "SPV" for special purpose vehicle. Special purpose vehicle's registered company name shall not carry words corresponding to the registered company names of the originator or founders of the special purpose vehicle. 3. Proceeds from the assigned receivables and other segregated assets shall be used by SPV exclusively on servicing bonds issued by the SPV to	1. The originator shall be the legal entity of which the founders have fully paid up charter or share capital in accordance with its articles of incorporation. 2. The originator is allowed to engage simultaneously in one or more securitisation transactions. 3. The originator shall produce auditor's report for the last year preceding the securitisation transaction. 4. Requirements to the originator assigning future receivables shall be set by a normative legal act of the supervisory authority.

[4] We are neutral to this text as long as it doesn't obstruct sound practices of securitization.

acquire these receivables, or paying of expenses in connection with the securitisation transaction[5]. 4. Specials purpose vehicle may invest proceeds from segregated assets between periodic payments under the bonds as determined in its bond prospectus.	
Article 4. Voluntary Reorganization and Liquidation of Special Purpose Vehicle	**Article 4. Establishment and Activities of Special Purpose Vehicle**
1. Voluntary reorganization or liquidation of special purpose vehicle is subject to approval by the supervisory authority. Terms and procedures for obtaining permission for voluntary reorganisation or liquidation of special purpose vehicle shall be established by the supervisory authority. 2. Permission is granted by the supervisory authority provided that either of the below applies: 1) bonds redemption report of special purpose vehicle's has been approved; 2) bondholders' register of the special purpose vehicle has been closed due to the bonds' default. 3. The supervisory authority can reject to grant permission for voluntary reorganisation or liquidation of special purpose vehicle on the following grounds: 1) failure to submit, or submission of incomplete set of documents designated by normative legal acts of the supervisory authority; 2) non-compliance of the submitted documents with the requirements of the legislation of the Republic of Kazakhstan. 4. The supervisory authority reviews the documents submitted for voluntary reorganisation or liquidation of special purpose vehicle and notifies the special purpose vehicle of its decision in writing within 30 calendar days from the date of the submission of documents. In case of the decision to reject to grant permission for voluntary reorganisation or liquidation of special purpose vehicle, the supervisory authority notifies	1. Special purpose vehicle can be established by the originator or another person and shall be incorporated as joint-stock company or limited liability partnership. Capital of special purpose vehicle shall be paid up in cash. 2. Special purpose vehicle's registered company name must carry the words "special purpose vehicle". It is allowed to use abbreviation "SPV" for special purpose vehicle. Special purpose vehicle's registered company name shall not carry words corresponding to the registered company names of the originator or founders of the special purpose vehicle. 3. Proceeds from the assigned receivables and other segregated assets shall be used by SPV exclusively on servicing bonds issued by the SPV to acquire these receivables, or paying of expenses in connection with the securitisation transaction. 4. Within the period prior to redemption of bonds SPV can invest proceeds from segregated assets, on its own account or through professional securities market participant licensed for asset management, into financial instruments in accordance with the list determined by the supervisory authority and as provided in the bond's prospectus[6].

[5] This clause sets up principle of destination of cash flows from the assigned receivables.
[6] Article 4.4 contradicts to the Article 10.1 of the official draft "Management of the Assigned Receivables". For more details, see note 13 below.

the special purpose vehicle accordingly in writing stating the reasons for the rejection.	
Article 5. Audit of Special Purpose Vehicle	**Article 5. Voluntary Reorganization and Liquidation of Special Purpose Vehicle**
Special purpose vehicle must conduct an audit of its annual financial statements by an organisation entitled to conduct such audit in accordance with the legislation of the Republic of Kazakhstan on auditing.	1. Voluntary reorganization or liquidation of special purpose vehicle is subject to approval by the supervisory authority. Terms and procedures for obtaining permission for voluntary reorganisation or liquidation of special purpose vehicle shall be established by the supervisory authority. 2. Permission is granted by the supervisory authority provided that either of the below applies: 1) bonds redemption report of special purpose vehicle's has been approved; 2) bondholders' register of the special purpose vehicle has been closed due to the bonds' default. 3. The supervisory authority can reject to grant permission for voluntary reorganisation or liquidation of special purpose vehicle on the following grounds: 1) failure to submit, or submission of incomplete set of documents designated by normative legal acts of the supervisory authority; 2) non-compliance of the submitted documents with the requirements of the legislation of the Republic of Kazakhstan. 4. The supervisory authority reviews the documents submitted for voluntary reorganisation or liquidation of special purpose vehicle and notifies the special purpose vehicle of its decision in writing within 30 calendar days from the date of the submission of documents. In case of the decision to reject to grant permission for voluntary reorganisation or liquidation of special purpose vehicle, the supervisory authority notifies the special purpose vehicle accordingly in writing stating the reasons for the rejection.
Section III. Segregated Assets, Accounting and Financial Reporting under Segregated Assets	**Article 6. Audit of Special Purpose Vehicle**
Article 6. Segregated Assets	Special purpose vehicle must conduct audit of its annual financial statements.

1. Segregated assets in a securitisation transaction are separated from own assets of special purpose vehicle, as well as from any other assets related to any other securitisation transaction, or to any other person[7]. 2. From the date of the statutory registration of the prospectus of bonds issued by special purpose vehicle in accordance with this Law any recourse on segregated assets can be made only to protect rights of the holders of these bonds or to cover expenses of this securitisation transaction.[8]	**Section III. Characteristics of Securitisation Transactions[9]**
Article 7. Accounting and Financial Reporting for Segregated Assets	**Article 7. Objects of Securitisation[10]**
1. Special purpose vehicle maintains accounting records and provides financial reports separately for its own and segregated assets, bonds (including the accrued coupon) of the special purpose vehicle as determined in the legislation of the Republic of Kazakhstan. 2. The balance of segregated assets serving as security for obligations under the bonds after approval by the supervisory authority of the report of redemption of such bonds is transferred to the profit (loss) account of the special purpose vehicle. 3. Accounting rules for segregated assets shall be determined by the normative acts of the National Bank of the Republic of Kazakhstan.	Receivables that are objects of a securitisation transaction must be homogenous.
Section IV. Assignment of Receivables in a Securitisation	**Article 8. Segregated Assets**
Article 8. Contract of Receivables Assignment in a Securitisation	1. Segregated assets in a securitisation transaction are separated from own assets of special purpose vehicle, as well as from any other assets related to any other securitisation transaction or to any other person. 2. From the date of the statutory registration of the prospectus of bonds issued by special purpose vehicle in accordance with this Law any

[7] Introduces principle of segregation that ring-fences the assigned receivables and ancillary security and insulates segregated assets from any legal recourse, including bankruptcy, except on the part of bondholders and the parties engaging in ancillary transactions in a securitisation. Principle of segregation is made effective by introducing corresponding changes to the Civil Code and bankruptcy legislation.

[8] This moment sets forth special consequences of the Law in respect of the assigned debtors, general creditors, and the liquidator of the originator.

[9] The official drafters preferred to lump up key elements of the Law in one Section III "Characteristics of Securitisation Transaction. We, on the contrary, attempted to deal with the legal institutes specific to this Law, i.e. segregation, receivables assignment, and issuance of SPV bonds, separately in Sections III, IV, and V respectively for the sake of clarity and consistency of the text.

[10] Homogeneity of receivables is covered in Article 8.3 of the recommended draft.

	recourse on segregated assets can be made only to protect rights of the holders of these bonds or to cover expenses this securitisation transaction.
1. Under the contract of assignment of receivables in a securitisation the originator assigns or commits to assign existing or future receivables towards its debtors that arise from the relations between the originator and the debtor, and the special purpose vehicle acquires these receivables by transferring to the originator proceeds in cash from placement of bonds secured by these receivables. 2. The receivables subject to assignment in a securitisation transaction shall be defined in the contract of assignment between the originator and the special purpose vehicle so as to be able to identify the existing monetary claim as on the moment of conclusion of the contract, and the future monetary claim – no later than on the moment when it arises. 3. The receivables subject to assignment in a securitisation transaction must be homogenous.	**Article 9. Contract of Receivables Assignment in a Securitisation**
Article 9. Assignment of Future Receivables	1. Under the contract of assignment of receivables in a securitisation the originator assigns or commits to assign existing or future receivables towards its debtors that arise from the relations between the originator and the debtor, and the special purpose vehicle acquires these receivables by transferring to the originator proceeds in cash from placement of bonds secured by these receivables. 2. The originator shall collect proceeds under the assigned receivables unless the contract provides otherwise[11]. 3. The receivables subject to assignment in a securitisation transaction shall be defined in the contract of assignment between the originator and the special purpose vehicle so as to be able to identify the existing monetary claim as on the moment of conclusion of the contract, and the future monetary claim – no later than on the moment when it arises. 4. The contract of receivables assignment in a securitisation must be concluded in writing in conformity with the requirements of the Civil

[11] Under the prevailing concept, bondholders' representative (BHR) delegates servicing function to the originator. This is made effective by introducing corresponding changes to the securities market legislation expanding BHR's functions beyond administration of collateral.

	Code of the Republic of Kazakhstan. 5. As a result of assignment of receivables in a securitization transaction the SPFE acquires the right to all proceeds from debtors under these receivables, and the originator is not liable to SPFE if proceeds from the assigned receivables are less than the amount paid by the SPFE to the originator for the assigned receivables.[12]
Future receivables assigned in a securitisation transaction are transferred to the special purpose vehicle after the monetary claim itself arises that is the subject of receivables assignment under the contract. No additional contract is required in the future to assign the future receivable when it arises. If assignment of a monetary claim is subject to a certain event, it becomes effective after this event.	**Article 10. Management of the Assigned Receivables[13]**
Section V. Issuance of Bonds of Special Purpose Vehicle	1. The originator, or another person that is licensed[14] by the supervisory authority for such operations, can serve as managing agent for the assigned receivables.
Article 10. Prospectus of Special Purpose Vehicle Bonds	2. The managing agent manages the segregated assets on the basis of a trust management agreement for the segregated assets.
In addition to the requirements of the securities market legislation, the prospectus of special prupose vehicle bonds shall contain information in respect of: 1) the originator, special purpose vehicle, assigned receivables, and special purpose vehicle bonds; 2) the persons responsible for arranging issuance and placement of special	3. Apart from other terms stipulated by legislative acts of the Republis of Kazakhstan, the trust management contract for segregated assets must contain: 1) terms, procedures and timing of proceeds under the receivables that are part of the segregated assets, as well as the procedure of control over compliance with them;

[12] Par. 4, 5 are covered elsewhere in the Civil Code.

[13] Management agent is extraneous to the accepted securitisation model, where SPV is set up as a legal person. It confuses classic asset management with servicing and reinvestment (treasury) functions, duplicates and plays down BHR that is central to the accepted securitisation model. Under this model, SPV reinvests proceeds from segregated assets between periodic payments to the bondholders, which is in line with the prevailing practices and saves on additional agency costs in an otherwise expensive transaction. Besides, this contradicts to the SPV ability to invest the proceeds between periodic payments to bondholders on its own account, which was agreed and accepted in the Article 4.4 of the official draft.

[14] The official draft explicitly refers to it as the license for asset management, see Article 4.4. However, reinvestment is more of an SPV treasury function which is limited by the prospectus.

purpose vehicle's bonds; 3) bondholders' representative and other persons entitled to collect and recover payments under the assigned receivables; 4) terms on which special purpose vehicle may invest proceeds from the assigned receivables between periodic payments to service the bonds; 5) any ancillary security in the securitisation transaction; 6) any costs in connection with the securitisation transaction and the terms on which special purpose vehicle may deduct these costs from proceeds from the assigned receivables in the securitisation transaction; 7) projected profit from the transaction and its distribution; 8) any affiliated parties in the securitisation transaction.	2) procedure of interaction of managing agent with transaction participants, including for entering into ancillary security transactions; 3) procedure of reconciling accounts with the custodian bank of the value, changes, and composition of the segregated assets; 4) procedure of information disclosure to the bondholders, their representative, and the supervisory agency; 5) other provisions. 4. Trust management contract for segregated assets can be terminated unilaterally in the following cases: 1) at the initiative of either party to the contract; or 2) in the case of revocation of management agency license by the supervisory authority for the respective type of professional activity on the securities market. The initiator of trust management contract for segregated assets must notify the other party to the contract thereof in writing 30 calendar days prior to the date of termination. In the case of revocation, suspension of the management agency license for the respective type of professional activity on the securities market, the managing agent must notify special purpose vehicle thereof in writing within 3 days. The trust management contract for segregated assets is deemed terminated after completion of the procedure of reconciliation of the transferred assets of the special purpose vehicle to the new managing agent in accordance with the procedure as determined by the supervisory agency.
Article 11. Credit Rating	**Article 11. Assignment of Receivables in a Securitisation**
The supervisory agency may require special purpose vehicle bonds to be rated and set up the criteria to the entity providing such a credit rating.	1. Existing receivable is deemed to be transferred to the special purpose vehicle given the concluded contract from the date of statutory registration of the issuance of bonds[15]. 2. Future receivables assigned in a securitisation transaction are transferred to the special purpose vehicle after the monetary claim itself arises that is the subject of receivables assignment under the contract. No

[15] This confuses assignment with special consequences of assignment under this Law in respect of originator's third parties (segregation principle).

	additional contract is required in the future to assign the future receivable when it arises. If assignment of a monetary claim is subject to a certain event, it becomes effective after this event. 3. From the date of the statutory registration of the prospectus of bonds issued by special purpose vehicle in accordance with this Law any recourse on segregated assets can be made only to protect rights of the holders of these bonds or to cover expenses of this securitisation transaction[16].
Article 12. Cash Flow Servicing in a Securitisation Transaction	**Article 12. Accounting and Custody of Segregated Assets[17]**
Collection and recovery of payments under assigned receivables, cash flow services and money transfers in a securitization transaction shall be provided by bondholders' representative. Bondholders' representative may delegate its functions to a third party, including the originator.	1. Segregated assets of special purpose vehicle are accounted for and kept under custody with custodian bank in accordance with custody contract. 2. Custody contract is made up between the custodian bank, the special purpose vehicle, and the management agent. 3. The standard form of a custody contract is designed and approved by the supervisory agency. 4. The custodian bank must block (leave unexecuted) the orders of the management agent in case of non-compliance of the latter with the legislation of the Republic of Kazakhstan, immediately notifying the supervisory authority and the special purpose vehicle thereof. 5. The procedure of performing by the custodian bank of control over placement of assets of the special purpose vehicle is determined by the supervisory authority. 6. Custodian bank shall inform the special purpose vehicle of the balances of its accounts on a monthly basis. 7. Only one custodian contract with one bank must be concluded at the same time. 8. Custody contract may be terminated unilaterally: 1) on the basis of a dicision to this effect by the executive body of the

[16] This is the key segregation principle of the Law, which is covered in a separate Section III of the recommended draft, and should not, in our opinion, be part of the text dedicated to receivables assignment.

[17] Custody concept is extraneous to securitisation. It confuses custody with legally enforceable segregation principle and duplicates, if not plays down, BHR. Custody for the *ex lege* segregated assets will inflate agency costs in an otherwise expensive transaction, and may undermine its economic rationale.

	special purpose vehicle, or; 2) on demand of the managing agent, or; 3) of the custodian bank. The initiator of termination of the custody contract must notify the parties to the contract 30 days prior to the designated date of termination. The custody contract shall be deemed terminated after the completion of the procedure of transfer of assets of the special purpose vehicle to a new custodian bank in accordance with the procedure determined by the supervisory authority.
Section V. Statutory Regulation of Securitisation Transactions	**Article 13. Accounting and Reporting Under Securitisation Transactions**
Article 13. Competence of Supervisory Agency	1. Special purpose vehicle maintains accounting records and provides financial reports separately for its own and segregated assets, bonds (including the accrued coupon) of the special purpose vehicle as determined in the legislation of the Republic of Kazakhstan. 2. The balance of segregated assets serving as security for obligations under the bonds after approval by the supervisory authority of the report of redemption of such bonds is transferred to the profit (loss) account of the special purpose vehicle. 3. Accounting rules for segregated assets shall be determined by the normative acts of the National Bank of the Republic of Kazakhstan. 4. Accounting treatment of the assets of special purpose vehicle as well as transactions with its bonds shall be determined by the legislation of the Republic of Kazakhstan.
1. State regulation of securitisation transactions is carried out by the supervisory agency. 2. The supervisory agency: 1) conducts state registration of special purpose vehicle securities in accordance with this Law; 2) supervises and monitors special purpose vehicle activities; 3) adopts mandatory normative legal acts, including requirements to the directors of special purpose vehicles, documentation for voluntary reorganization or liquidation of special purpose vehicles;	**Article 14. Issuance of Special Purpose Vehicle Bonds**

4) issues permissions for voluntary reorganization or liquidation of special purpose vehicles; 5) exercises control over activities of liquidation commissions of special purpose vehicles; 6) issues written orders to comply with securities markets and securitisation legislation; 7) performs other functions and powers in accordance with legislative acts of the Republic of Kazakhstan. 3. The supervisory authority keeps a record of special purpose vehicles in a special register for the purpose of monitoring their activities. 4. To exercise its powers under this Law the supervisory authority adopts normative legal acts that are mandatory for the originator, special purpose vehicle, bondholders' representative, and the parties providing ancillary security in a securitisation transaction.	
Section VII. Concluding Provisions	1. In addition to the requirements of the securities market legislation the prospectus of special prupose vehicle bonds shall contain: 1) The company name and the legal address of the originator, custodian bank, managing agent, special purpose vehicle, and the person providing collection of payments under the assigned receivables; 2) the type of activities, rights and obligations of the originator in a securitisation transaction; 3) description of the receivables, terms, procedures and timing of proceeds from the receivables that are part of the segregated assets, as well as the procedure of control over compliance with them; 4) procedure of investment of segregated assets; 5) expenses of the securitisation transaction and the terms on which the special purpose vehicle may deduct those expenses from segregated assets; 6) any affiliated parties in a securitisation transaction; 7) prior experience of securitisation on the part of the originator and any third parties; 8) the size, composition, and forward analysis of growth of the segregated assets securing the securitisation transaction;

	9) any information on additional security; 10) the terms and procedures of early redemption of bonds; 11) homogeneity criteria of the receivables. 2. The integral part of the prospectus of bonds of special purpose vehicle shall be the auditor's report of the originator for the last year, the receivables assignment contract in the securitisation transaction between the originator and the special purpose vehicle. 3. When segregated assets under the bonds of special purpose vehicle are receivables of foreign debtors, or if the originator is the legal person non-resident of the Republic of Kazakhstan, the prospectus of bonds of special purpose vehicle shall also contain information regarding the special characteristics of the legislation and foreign exchange regulations of the country of which the originator is the resident, that can affect the receivables or the activities of the originator. 4. For review and approval of reports of placement and redemption of bonds of special purpose vehicle, the reporting shall be provided that reflects the securitisation transaction and the issuance of special purpose vehicle bonds in accordance with the procedure and the form as determined by the supervisory authority. 5. Bondholders' representative for the special purpose vehicle bonds shall not be affiliated with the originator. 6. Liabilities of the special purpose vehicle before bondholders shall be met from all its assets, including segregated assets and the own funds.
Article 14 Liability for Violation of Securitisation Legislation	**Section IV. Concluding Provisions**
The persons violating securitisation legislation of the Republic of Kazakhstan shall be held liable in accordance with the legislation of the Republic of Kazakhstan.	**Article 15. Liability for Violation of Securitisation Legislation**
Article 15. Enactment	The persons violating securitisation legislation of the Republic of Kazakhstan shall be held liable in accordance with the legislation of the Republic of Kazakhstan.
This Law comes into force from the date of its official publication.	**Article 16. Enactment**
	This Law comes into force from the date of its official publication.

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директор по корпоративным финансам,
программа по развитию финансового сектора,
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(Ред.) В первом параграфе вместо «играющие особую роль международных финансовых организаций» читать «при особой роли международных финансовых организаций».

СТРУКТУРНАЯ ФОРМА ФИНАНСИРОВАНИЯ В КАЗАХСТАНЕ: РЕФОРМА ЗАКОНОДАТЕЛЬСТВА И ПРАКТИКА ПРИМЕНЕНИЯ

Благоприятная внешнеэкономическая конъюнктура и накопление избыточных ресурсов в Казахстане создали в настоящее время «окно возможностей» для максимизации эффекта от применения структурной формы финансирования[1]. Благодаря изменению законодательства и практики применения секьюритизации Казахстан как страна с удобной юрисдикцией может занять самостоятельную нишу на рынках капитала.

Структурная форма финансирования имеет неисчерпаемый потенциал в условиях развивающихся и переходных экономик прежде всего как источник более дешевого заемного капитала и способ управления рисками. Однако при этом считается, что основным источником подобного финансирования являются международные рынки капитала, играющие особую роль международных финансовых организаций и что структуры финансирования создаются с использованием оффшорных юрисдикций преимущественно англосаксонской системы права. И это не случайно, поскольку из-за низкого уровня институционального развития, традиционной ориентации на внешние рынки долгового капитала и слабости внутренних финансовых рынков, а также относительной новизны структурной формы в странах гражданской системы права у большинства развивающихся государств нет внутреннего рынка структурного финансирования.

К исключениям относятся Индия, Гонконг, Южная Корея, Малайзия, Индонезия, Таиланд, Южная Африка и страны Латинской Америки, где существует ограниченный внутренний структурный рынок, хотя в последнее время делаются шаги

в сторону его универсализации и расширения.

В Казахстане в результате проведения последовательных реформ в финансовом секторе, экономике и законодательной сфере и формирования за последние несколько лет объемных внутренних источников капитала имеется уникальное сочетание условий для органичного развития структурной формы финансирования **внутри страны**. Главным предназначением структурной формы финансирования, на наш взгляд, должна стать ее роль как наиболее адекватного рыночного механизма, способного экономически эффективно перераспределять растущие внутренние инвестиционные ресурсы в капиталоемкие базовые отрасли и инфраструктуру[2].

В последнее время структурные инструменты, обеспеченные экспортными поступлениями, включая первую в стране секьюритизацию активов[3], становятся все популярнее среди казахстанских эмитентов структурного долга на международных рынках капитала. **Вместе с тем именно внутренний рынок может дать импульс для более активного применения структурной формы финансирования в Казахстане.**

Первым шагом в этом направлении должно стать создание законодательных основ для **секьюритизации** универсальных типов активов, включая активы реального сектора[4]. После этого планируется подготовить законодательные основы для **проектного финансирования** и **структур частно-публичного сотрудничества**[5], базирующихся на технике проектного финансирования. Секьюритизация обеспечит платформу для рефинансирования активов проектно-финансовых компаний (специальных юридических лиц) на рынке капитала и придаст проектному финансированию необходимую ликвидность, что откроет качественно новые возможности для реализации проектов «с нулевого цикла» (*green-field projects*) за счет частного сектора на основе проектного финансирования.

Структурная форма финансирования за счет внутреннего рынка капитала, банковского сектора, институтов развития позволяет решать вопросы, касающиеся рыночных механизмов и способов финансирования капиталоемких проектов в ключевых для жизнеобеспечения страны отраслях, в которых возможны непрерывные, предсказуемые и стабильные денежные потоки (жилищно-коммунальный сектор, городская и социальная инфраструктура, транспорт и телекоммуникации, электроэнергетика, нефтедобыча и горнодобывающая отрасль), а также определяет роль и участие государства в этом процессе.

Внедрение структурной формы финансирования позволит расширить границы инвестиционных возможностей в Казахстане и перейти к качественно новому этапу развития финансового сектора страны.

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Напротив, отсутствие адекватных современным условиям форм финансирования будет и впредь способствовать излишней концентрации рисков в финансовой системе, препятствовать реализации проектов в реальном секторе экономики и привлечению к нему накопительного сектора казахстанского финансового рынка.

СОЗДАНИЕ ОСНОВ СТРУКТУРНОЙ ФОРМЫ ФИНАНСИРОВАНИЯ: СИНТЕЗ КАЗАХСТАНСКОЙ МОДЕЛИ

До сих пор казахстанское законодательство не различало структурную форму, вследствие чего единственной альтернативой для казахстанских компаний было создание оффшорных структур финансирования в удобных иностранных юрисдикциях. Однако гражданско-правовая система Республики Казахстан не содержит непреодолимых препятствий для адаптации структурной формы внутри страны точно так же, как и в других странах гражданской системы права.

Так, всем юридическим критериям структурного финансирования отвечает опыт европейских стран, в последние годы успешно адаптировавших в гражданской системе права классические элементы **секьюритизации**, изначально присущие англосаксонским юрисдикциям благодаря институту траста. Наиболее удачной считается **итальянская модель** секьюритизации, которая соответствует отраслевым стандартам[6], удобна в применении и предусматривает возможность секьюритизации универсальных типов активов, т. е. активов как финансового, так и нефинансового сектора. Принятие итальянского Закона № 130 «О секьюритизации» от 30 апреля 1999 г. послужило тому, что к концу 2003 г. объем внутреннего рынка секьюритизации вырос с 0 до 40 млрд долл. США (2-е место в Европе после Великобритании – страны классической англо саксонской юрисдикции)[7].

В практике структурного финансирования особое место занимают отраслевые стандарты. Под таковыми понимаются критерии рейтинговых агентств, национальное и международное законодательство и судебная практика, национальные

[2] На это же обращают внимание Всемирный банк в своем отчете о новых приоритетах для казахстанского финансового сектора (см.: *The World Bank. Joint Economic Research Program. Priorities for Financial Sector Reform: Selected Issues and Options*, 2004. 12 ноября. http://www.worldbank.org.kz/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/KAZAKHSTANEXTN/0,,contentMDK:20280820~pagePK:141137~piPK:141127~theSitePK:361869,00.htm, а также ЕБРР в (*Transition Report* 2004: *Infrastructure*. 2004. 9 ноября.), говоря об необходимости активизации участия частного сектора (*Private Sector Participation*) в инфраструктурных проектах в странах действия ЕБРР.

[3] Halyk Savings Bank of Kazakhstan (Народный сберегательный банк Казахстана). 2003. Октябрь. *LIBOR* + 3,5%; *US$100m*. 5 лет. *Baa2 Moody's* (выше казахстанского суверенного рейтинга).

[4] *Законопроект «О секьюритизации» подготовлен рабочей группой при Агентстве Республики Казахстан по регулированию и надзору за финансовыми рынками и финансовыми организациями (АФН), созданной по решению Национального банка Республики Казахстан в декабре 2003 г. Ожидается, что законопроект поступит на рассмотрение в парламент Казахстана в начале 2005 г.*

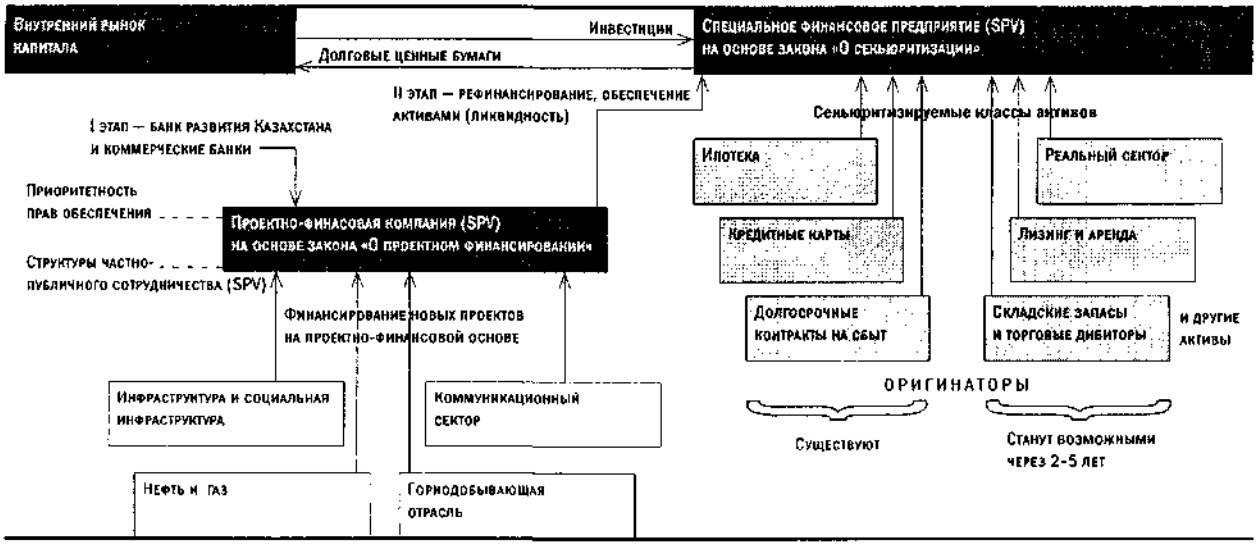
и международные стандарты финансовой отчетности, государственное регулирование и общепринятая отраслевая практика[8].

Отраслевые стандарты в области структурного финансирования могут по форме различаться в разных странах под влиянием, например, особенностей гражданского или обычного права (*modus operandi*). Но, по сути, они унифицированы гораздо больше, чем это может показаться на первый взгляд, и фактически представляют собой единое обособление уступленных активов (*segregation*). Финансирование производится под обеспечение активов, выделенных в пользу инвесторов, вкладывающих в долговые инструменты специального юридического лица, *«без обращения либо с ограниченным обращением взыскания»* (*non-recourse/limited recourse*) на первоначального владельца активов, именуемого «оригинатор», или «спонсор», который является получателем экономической выгоды от финансирования.

Таким образом, при подготовке **казахстанского законодательства** о секьюритизации мы опирались на отраслевые стандарты структурного финансирования, внешние источники права и прецеденты в этой области, и прежде всего на итальянскую модель, а также на действующее казахстанское законодательство.

Казахстанское законодательство о секьюритизации упростит практику в области **проектного финансирования** и придаст последнему необходимую ликвидность, так как позволит рефинансировать активы проектно-финансовых компаний (специальных юридических лиц) и соответственно банков — участников проектно-финансовых синдикатов на рынке капитала за счет секьюритизации будущих денежных потоков по долгосрочным контрактам на сбыт продукции (*trade receivables*) проектно-финансовых компаний.

Рисунок 1. ПОТЕНЦИАЛ РАЗВИТИЯ СТРУКТУРНОЙ ФОРМЫ ФИНАНСИРОВАНИЯ В КАЗАХСТАНЕ



образный свод правил (*modus vivendi*), которым надлежит руководствоваться как в процессе разработки национального законодательства и регулирования в этой области, так и в практике применения структурной формы. Каждая структурная сделка уникальна, тщательно и всесторонне исследуется рынком и становится частью глобальной отраслевой практики. В этом смысле отраслевые стандарты структурной формы финансирования экстерриториальны и обязательны к применению.

В основе структурной формы финансирования лежит **уступка прав требования** на основании *«купли/продажи»* (*outright transfer*, или *true sale*) или *«с целью создания обеспечения»* (*transfer by way of security*) специальному юридическому лицу (*special purpose vehicle, SPV*), функции которого ограничены законом и условиями сделки, а также юридичес-

Потребности современной финансовой отрасли нашли отражение в проекте Конвенции Комиссии ООН по международному частному праву (ЮНСИТРАЛ) «Об уступке прав требования в международной торговле»[9]. В частности, проект Конвенции обеспечил юридическое признание трансграничных и иностранных прав требования. Значение Конвенции ЮНСИТРАЛ для Казахстана состоит в том, что присоединение к ней стран региона позволит эмитентам из этих стран использовать преимущества казахстанского законодательства в области структурного финансирования и структурную форму как естественную основу регионального рынка, что совпадает с целями создания в Казахстане регионального финансового центра. С этой точки зрения законодательство Республики Казахстан в области структурного финансирования должно быть **совместимым с положениями ЮНСИТРАЛ**.

Задачу реформирования законодательства в области проектного финансирования, близкого к законодательству о концессиях, предстоит решать на следующем этапе проекта. Законодательные изменения должны быть направлены на создание внутри страны структур обеспечения, необходимых для финансирования на условиях «без обращения/с ограниченным обращением взыскания» на активы спонсора и для расширения действия проектного финансирования в область проектов социальной инфраструк-

[8] Укрепление отраслевых стандартов в течение 2001—2004 гг. после серии корпоративных скандалов в США и Европе, когда корпоративное мошенничество в гигантских масштабах проводилось под видом структурного финансирования, в частности, выразилось в ужесточении требований к специальным юридическим лицам и к регулированию

туры, а также предусматривать создание **структур частно-публичного сотрудничества** там, где особенности проекта диктуют необходимость разделения рисков проекта с государством.

В результате будут созданы адекватные современному уровню развития и потребностям экономики страны, основанные на рыночных принципах и отраслевых стандартах правовые, организационные условия для реализации проектов в капиталоемких базовых и инфраструктурных отраслях за счет средств частного сектора при участии государства и государственных организаций (рис. 1).

Предполагается, что реформа законодательства и практики применения структурной формы финансирования в Казахстане позволит:

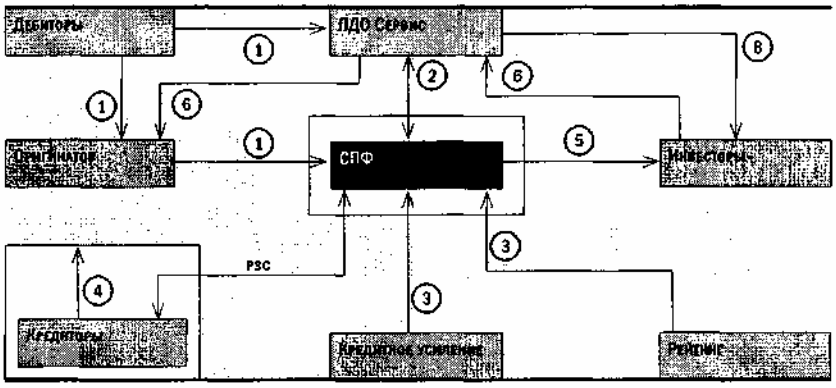
- проводить сделки на основе секьюритизации и проектного финансирования внутри страны;
- обеспечить защиту инвесторов в соответствии с международными стандартами в этой отрасли;
- укрепить государственное регулирование данного сектора;
- заложить основы для частно-публичного сотрудничества в области проектного финансирования;
- стимулировать дальнейшее развитие законодательства и практики доверительно-трастовой деятельности, производных инструментов;
- открыть новые возможности региональной кооперации в финансовом секторе на основе удобного казахстанского законодательства и поднимет казахстанский финансовый рынок на качественно новый уровень развития.

РЕФОРМА ЗАКОНОДАТЕЛЬСТВА И ПРАКТИКИ СЕКЬЮРИТИЗАЦИИ В КАЗАХСТАНЕ

При секьюритизации риски активов обеспечения дифференцируются от рисков их оригинатора, что достигается средствами обычного права благодаря институту траста, но требует **специального законодательства о секьюритизации**, предназначенного для достижения той же самой цели средствами гражданского права. Согласно отраслевым стандартам секьюритизации риски активов обеспечения (будущих денежных потоков по правам требования) должны быть отделены не только от рисков их оригинатора, но и от рисков специального юридического лица, приобретающего эти активы за счет средств от выпуска ценных бумаг, обеспеченных активами.

Риск (рейтинг) ценных бумаг, обеспеченных активами (*asset-backed securities, ABS*), таким образом, перестает быть зависимым от рисков (рейтинга) их оригинатора. За исключением кредитного усиления, риски активов полностью переходят к держателям облигаций специального юридического лица, т. е. финансирование осуществляется на условиях «без обращения взыскания» на продавца активов (оригинатора).

Рисунок 2. ТИПОВАЯ СДЕЛКА СЕКЬЮРИТИЗАЦИИ НА УСЛОВИЯХ «КУПЛИ/ПРОДАЖИ»



Ценные бумаги, обеспеченные активами, к которым относятся, в частности, бумаги, обеспеченные ипотекой (*mortgage-backed securities, MBS*), отличаются от любых других видов ценных бумаг тем, что в их основе лежит **уступка прав требования** (*assignment of receivables*) на будущие денежные поступления по этим правам требования. Так, они отличаются от применяемых в Казахстане ипотечных облигаций (*mortgage bonds*)[10], схожих с немецкими *Pfandbriefe* и англосаксонскими *covered bonds*, поскольку в их основе лежит **залог**.

Другими словами, облигации, обеспеченные залогом, не предусматривают отделение рисков обеспечения от рисков заемщика, не диктуют более высокий рейтинг и **не** являются источником внебалансового финансирования[11]. Характерно, однако, что более высокий рейтинг такие инструменты могут получать при использовании элементов секьюритизации (*structured covered bonds*). Эти инструменты наиболее применимы и популярны в странах, где эмитенты, как правило, имеют собственный инвестиционный рейтинг уровня *AAA*, таких как немецкие земельные банки, и где существует благоприятное залоговое право.

ЗАКОНОПРОЕКТ «О СЕКЬЮРИТИЗАЦИИ»

Классические элементы секьюритизации одинаковы независимо от типа юрисдикции, что предопределяет единообразие отраслевых стандартов секьюритизации в мире.

Схематически сделка секьюритизации на условиях «купли/продажи» (*true sale*) на основе казахстанского законодательства выглядит следующим образом (рис. 2)[12]:

1. Оригинатор уступает права требования по обязательствам своих дебиторов **специальному финансовому предприятию** (СФП).

2. СФП заключает соглашение с **представителем держателей облигаций** (ПДО)[13] и с сервисной компанией, обслуживающей сбор и поступление денежных средств от дебиторов по уступленным правам требования.

3. Сделка получает внешнее кредитное усиление и рейтинг.

4. С момента государственной регистрации ценных бумаг, обеспеченных активами (или в иной момент в зависимости от особенностей юрисдикции), возникает специальный режим закона «О секьюритизации» (РЗС), который предусматривает ограждение уступленных активов от обращения на них взыскания и фиксацию взаимоотношений оригинатора с его общими

[10] Ипотечные облигации Лариба-банка, Казахстанской ипотечной компании, БТА-ипотека, банка «ЦентрКредит».
[11] Moody's Investor Service. «European Structured Covered Bonds: Moody's Rating Approach», 2003, April 10.

кредиторами по поводу уступленных прав требования.

5. СФП выпускает ценные бумаги, обеспеченные активами (правами требования).

6. Оригинатор получает справедливое возмещение за уступленные права требования.

7. Дебиторы продолжают платежи по своим обязательствам, переведенным в СФП.

8. Представитель держателей облигаций/ платежный агент обслуживает денежные потоки от дебиторов и связанные с ними платежи в пользу инвесторов в ценные бумаги СФП в соответствии с условиями выпуска.

Наиболее удачной считается итальянская модель секьюритизации, которая соответствует отраслевым стандартам, удобна в применении и предусматривает возможность секьюритизации как финансового, так и нефинансового сектора.

Казахстанский законопроект «О секьюритизации» является синтетическим законодательством, модифицирующим действующее законодательство в части: 1) особого юридического статуса СФП; 2) создания специального режима выделенных активов; 3) особенностей уступки прав требования; 4) особенностей выпуска ценных бумаг СФП; и 5) особенностей регулирования. Например, отношения по поводу **уступки прав требования**, регулируются общими положениями гл. 19 ГК Республики Казахстан, тогда как законопроект «О секьюритизации» регулирует **особенности** этих отношений в связи с секьюритизацией.

Для обеспечения юридической действительности казахстанского законодательства о секьюритизации в системе гражданского права страны с учетом действующих отраслевых стандартов были предложены изменения и дополнения в некоторые казахстанские законодательные акты, включая ГК Республики Казахстан[14].

Особенность казахстанского законопроекта состоит в том, что регулирующий орган (АФН) наделен законом «О секьюритизации» и иными законодательными актами широкими полномочиями для установления требований к сделке и в дополнение к общепринятым требованиям раскрытия информации об эмитенте, оригинаторе и сделке применяет также **контроль отсутствия материального конфликта интересов** и **непрерывный контроль в отношении всех участников сделки, наделенных фидуциарными полномочиями**. Последние два критерия стали императивными в США при регулировании сложных сделок структурного финансирования в дополнение к традиционному для *SEC* принципу раскрытия информации[15]. Те же самые критерии изначально были заложены в итальянском законодательстве о секьюритизации (регулирование Банка Италии), на основе которого создавался казахстанский законопроект, в котором специальное юридическое лицо является регулируемой финансовой организацией, именуемой в Казахстане специальным финансовым предприятием, или СФП (*special purpose finance enterprise, SPFE*).

Казахстанский законопроект «О секьюритизации», на наш взгляд, отвечает всем принятым в отрасли требованиям к сделке, обеспечивая как адекватную защиту инвесторов, так и универсальность активов, пригодных для секьюритизации, т. е. активов как финансового, так и нефинансового сектора.

Максимально возможная защищенность инвесторов в финансовые инструменты, созданные на основе закона «О секьюритизации», достигается путем особых благоприятных последствий уступки прав требования в отношении дебиторов оригинатора и третьих лиц по сравнению с обычной уступкой. То есть с момента государственной регистрации облигаций СФП **права требования**, приобретаемые им, а также поступления по этим правам и **иные права и активы**, являющиеся составной и неотъемлемой частью условий выпуска ценных бумаг СФП, выгода по которым предназначена в пользу инвесторов в эти ценные бумаги, либо возникающие в процессе управления денежными потоками в сделке секьюритизации, отделены от каких-либо иных активов (*segregated*) и ограждены от взыскания со стороны любого лица, за исключением держателей облигаций (*ring-fenced*). Законодательно обеспечивается действительность уступки как существующих (*existing receivebales*), так и будущих прав требования (*future receivables*, или *future flows*). Таким образом, достигается необходимая гарантия прав требования, приобретаемых СФП, от банкротства оригинатора (*bankruptcy remoteness*), что является основным критерием секьюритизации.

СФП может быть создано как оригинатором, так и третьими лицами, включая представителя держателей облигаций, но все ключевые решения в его деятельности принимаются с участием независимого директора, назначаемого представителем держателей облигаций. Соблюдение этого требования позволяет исключить так называемую *фактическую консолидацию* СФП с оригинатором и обеспечить соответствие принятым в отрасли юридическим критериям секьюритизации[16].

Деятельность СФП законодательно ограничена, кроме того, СФП является **финансовой организацией** и подлежит регулированию со стороны финансового надзорного органа. Поступления по правам требования в сделке секьюритизации законодательно защищены целевой направленностью (*destination prinicple*) их использования. Соблюдение этого принципа призвана обеспечить особая фидуциарная структура сделки, включающая СФП, представителя держателей облигаций и другие обслуживающие сделку стороны. Обслуживающие сделку стороны, как правило, являются лицензированными профессиональными организациями, чаще всего доверительно-трастовыми подразделениями банков. В зависимости от особенностей сделки фидуциарные функции может выполнять и оригинатор (инкассо поступлений по правам требования).

Законопроект уточняет **раздельный учетный режим** активов СФП в связи

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Приводимая статья директора программы *USAID* по развитию финансового сектора Казахстана Т. Джанкобаева о работе над пакетом законопроектов о структурных формах финансирования, и прежде всего секьюритизации, может быть интересной для российской аудитории с нескольких точек зрения.

Во-первых, для читателей, не слишком искушенных в вопросах секьюритизации, статья может служить своеобразным «линбезом», поскольку в сжатом виде излагает ключевые моменты этой формы финансирования, такие как создание специального финансового предприятия (СФП), ограждение рисков переводимых в него активов от рисков оригинатора (*ring-fencing*), «удаленность» банкротства СФП (*bankruptcy remoteness*) и т. д. Статья содержит также полезные ссылки на труды ведущих международных специалистов по данной проблематике.

Во-вторых, в статье проводится важная мысль об актуальности создания правовых условий для внутренней (в противовес оффшорной) секьюритизации. Оффшорная секьюритизация (к которой относятся и недавние сделки Газпрома и РОСБАНКА) при всей ее важности пригодна лишь для привлечения финансирования под валютные активы, генерируемые за пределами страны. В то же время потенциал для внутренней секьюритизации, в том числе в национальной валюте, огромен как в Казахстане, так и (в еще большей степени) в России.

В условиях нехватки и дороговизны традиционного кредитного финансирования внутренняя секьюритизация может стать эффективным методом финансирования российскими предприятиями долгосрочных инвестиционных проектов. С точки зрения *инвестиционного сообщества*, подобный *механизм* может дать новый привлекательный инвестиционный инструмент в условиях их явного дефицита.

Прав автор и в том, что возможность секьюритизации является важным условием финансирования общественно значимых проектов на основе частно-публичного партнерства, необходимость внедрения которого уже давно обсуждается.

Из прочих преимуществ секьюритизации как метода финансирования, справедливо отмеченных автором статьи, хотелось бы остановиться на наличии строгого многостороннего контроля, способствующего снижению кредитных рисков и повышению эффективности использования средств, на всем протяжении реализации таких проектов.

Приходится с грустью отмечать, что секьюритизация, похоже, может стать еще одной областью экономических реформ, где сравнение прогресса России и Казахстана будет явно не в нашу пользу (их других таких областей можно назвать реформы банковской системы, ЖКХ, переход на международные стандарты бухучета и т. д.). Поэтому хотелось бы, чтобы долгие дискуссии специалистов о необходимости создания условий для секьюритизации привели бы к целенаправленной работе по созданию пакета новых законов и поправок к уже существующим (гражданское законодательство, закон о банкротстве и т. д.). Следует обратить внимание и на опыт соседей, у которых прохождение через парламент законопроектов, разработанных рабочей группой при казахстанском Агентстве по регулированию и надзору за финансовыми рынками и финансовыми организациями, ожидается уже в скором времени.

Кроме того, хотелось бы отметить, что за рубежом *КРМG* и другие крупные аудиторско-консалтинговые фирмы активно занимаются комплексной поддержкой проектов по секьюритизации благодаря наличию у них квалификации в необходимых областях работы (финансовая экспертиза, налоговое и правовое структурирование, контакты с ведущими игроками на рынке, аудит, текущий контроль, общее управление проектом и т. д.). Мы заинтересованы в том, чтобы в подобных проектах участвовала и Россия, соответственно, готовы всячески содействовать становлению института секьюритизации, в том числе делиться со всеми заинтересованными сторонами нашим международным опытом. ■

с проведением сделки секьюритизации, тем самым максимизируется защищенность выделенных активов от гипотетического банкротства СФП или третьих лиц, не смешивая (*non-commingling*) активов.

Налогообложение СФП производится на **нетто-основе**, т. е. после завершения очередной сделки секьюритизации (погашения ценных бумаг СФП). Решены вопросы, связанные с НДС при уступке прав требования в сделке, а также вопросы прав на взаимозачет встречных требований (*offsetting rights*). Для стимулирования инвестиций в ценные бумаги, обеспеченные активами, необходимо также учитывать возможность предоставления льгот при налогообложении инвесторов в структурные инструменты, исключения же признания убытков при секьюритизации нестандартных кредитов.

Уточняются и усиливаются требования при регистрации облигаций СФП и иные регулирующие требования к сделке секьюритизации. Например, законопроект вводит критерий **однородности** (*homogeneity*) активов (прав требования), который является главным критерием *секьюритизируемости* активов. Под однородностью понимается однородная экономическая природа секьюритизируемого актива, обеспечивающая ему *непрерывность, стабильность и предсказуемость* будущих денежных поступлений (денежных потоков).

Предполагается, что на уровне нормативно-правовых актов будут определе-

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ны меры пруденциального регулирования в отношении оригинатора (в случае если оригинатором является банк или небанковская финансовая организация) и отдельных категорий инвесторов, вкладывающих в облигации СФП. Также будут определены порядок обслуживания денежных потоков в сделке секьюритизации, а также положение внешнего и внутреннего кредитного усиления как части особенной структуры сделки секьюритизации. За основу государственного регулирования сделок секьюритизации в Казахстане будут приняты минимальные необходимые стандарты, стимулирующие развитие отрасли.

С помощью казахстанского законопроекта «О секьюритизации» возможно осуществление не только секьюритизации на основе «купли/продажи», т. е. с окончательным переходом прав требования по уступке к специальному финансовому предприятию, но и **(потенциально)** так называемой «синтетической» секьюритизации с уступкой прав требования «с целью обеспечения исполнения обязательств».

ЗАКЛЮЧЕНИЕ

Национальные законодательства о секьюритизации повсеместно развивались исходя из **прагматичных соображений** и с учетом индивидуальных особенностей каждой страны. Например, в Италии ключевым активом секьюритизации, ее сверхзадачей при разработке национального законодательства о секьюритизации были нестандартные кредиты (*non-performing loans*), в Бангладеш проект Всемирного банка по внедрению секьюритизации внутри страны осуществляется для рефинансирования микрокредитов, а повсеместно секьюритизация служит основой вторичного рынка

Казахстанское законодательство о секьюритизации изначально разрабатывалось как универсальное, прежде всего ради создания условий для секьюритизации долгосрочных контрактов на сбыт (*trade receivables*) проектно-финансовых компаний (проектно-финансовая секьюритизация) и в контексте развития других структурных форм. Такой подход открывает качественно новые возможности для экономики и финансового сектора страны:

- существенно расширятся границы возможностей для притока инвестиций в капиталоемкие базовые отрасли и инфраструктуру за счет внутреннего рынка капитала, с учетом современных представлений об управлении рисками и на основе международных стандартов финансовой деятельности в этой области. Одновременно за счет снижения уровня рисков и дисинтермедиации снизится стоимость финансирования и максимизируется использование более дешевого долгового капитала на условиях *«без обращения/с ограниченным обращением взыскания»* на оригинатора активов/спонсора проекта;

- будут созданы условия для эффективного взаимодействия государства и институтов развития, эмитентов и в конечном счете инвесторов в ценные бумаги, выпущенные на структурной основе, в рамках прозрачных структур финансирования, находящихся под контролем рынка капитала посредством системы фидуциарных отношений;

- казахстанский фондовый рынок, в том числе и пенсионные фонды, получит неисчерпаемый источник новых финансовых инструментов и канал перераспределения пенсионных накоплений и других избыточных финансовых ресурсов системы в ключевые отрасли казахстанской экономики, включая социальные объекты, на исключительно рыночных основах и в представлениями об организации финансирования;

- предполагается, что внедрение структурных форм финансирования будет способствовать дальнейшему укреплению конкурентных позиций казахстанского банковского сектора и рынка капитала, а финансовый рынок в целом приобретет более современную и завершенную форму.

Внедрение структурной формы финансирования и принятие следующем году закона «О секьюритизации» было названо в качестве первоочередных задач по дальнейшему развитию финансового сектора страны в выступлении Президента Республики Казахстан **Н. А. Назарбаева** на IV Конгрессе финансистов Казахстана 15 ноября 2004 г. Существенную поддержку проекту оказал Всемирный банк, указав в своем последнем страновом отчете на развитие секьюритизации и других форм коллективной организации финансирования (*collective investment schemes*) в качестве одних из основных приоритетов дальнейшего развития финансового сектора Казахстана[17]. ■

Облигации, обеспеченные залогом, не предусматривают отделение рисков обеспечения от рисков заемщика, не диктуют более высокий рейтинг и не являются источником внебалансового финансирования.

Секьюритизация для рынка

Проект по созданию правовых условий и внедрению практики структурного и проектного финансирования в Казахстане был одобрен Национальным Банком в сентябре 2003 года. Специально созданная рабочая группа по подготовке законопроекта «О секьюритизации» приступила к работе в январе 2004 года при вновь созданном Агентстве Республики Казахстан по регулированию и надзору финансового рынка и финансовых организаций (АФН). В ее работе участвовали специалисты АФН, Корпорации Прагма, Ассоциации финансистов Казахстана, представители профессиональных участников рынка и потенциальные организаторы и эмитенты структурного долга (Казахстан Темір Жолы, Банк развития Казахстана). Законопроект в основном был готов в мае 2004 года.

Вместе с тем новизна и сложность концепции секьюритизации и структурного финансирования, необходимость обеспечить законопроекту соответствие жестким отраслевым стандартам потребовали дополнительного времени для согласования основных положений законопроекта.

Законодательство о секьюритизации в соответствии с ним (сделка секьюритизации) и состоит из режима «выделенных активов», ограничения правоспособности специального финансового предприятия (специального юридического лица в сделке секьюритизации), особенностей выпуска и обслуживания ценных бумаг, особенностей уступки прав требования, а также основ отраслевого регулирования.

Сделка секьюритизации (выпуск ценных бумаг, обеспеченных активами) на основании закона «О секьюритизации» отличается от иных гражданско-правовых сделок. Выпуску обеспеченных активами ценных бумаг предшествует создание особенной структуры обеспечения, в основе которой лежит уступка прав требования оригинатором специальному финансовому предприятию и создание дополнительного обеспечения в зависимости от качества (рисков) денежных потоков по уступленным правам требования. Как следствие, в сделке секьюритизации невозможно исчерпывающе на законодательном уровне определить круг участников сделки, права и обязанности сторон, требования к оригинатору.

Инвесторов в сделке секьюритизации в первую очередь ность оригинатора. К числу последних могут принадлежать финансовые организации, организации реального сектора, государство и специальные юридические лица.

Все эти и иные вопросы в настоящее время рассматривает рабочая группа, созданная распоряжением премьер-министра Республики Казахстан в сентябре 2004 года. Разработчиком законопроекта назначено Министерство финансов. В декабре 2004 года был утвержден план законодательных работ на 2005—2006 годы, в соответствии с которым законопроект в феврале 2005 года должен быть направлен на согласование в Министерство юстиции и, наконец, в апреле 2005 года быть представлен в Мажилис парламента Казахстана.

Надеемся, что на данном решающем этапе разработчики законопроекта смогут найти выверенное решение, которое бы позволило проводить секьюритизацию на основе удобного казахстанского законодательства и способствовало развитию практики структурного финансирования в Казахстане. В приводимой далее статье говорится о преимуществах секьюритизации и других структурных формах финансирования для казахстан-

Применение структурной формы финансирования в Казахстане

ТИМУР ДЖАНКОБАЕВ,
ДИРЕКТОР ПО КОРПОРАТИВНЫМ ФИНАНСАМ,
ПРОГРАММА ПО РАЗВИТИЮ ФИНАНСОВОГО СЕКТОРА,
КОРПОРАЦИЯ ПРАГМА/ ЮСАИД

В условиях благоприятной внешнеэкономической конъюнктуры и накопления избыточных ресурсов в Казахстане в настоящее время существует «окно возможностей» для максимизации эффекта от применения структурной формы финансирования. Благодаря изменению законодательства и практики применения секьюритизации Казахстан как страна с удобной юрисдикцией может занять самостоятельную нишу на рынках капитала.[1]

Структурная форма финансирования как способ организации хозяйственной деятельности до сих пор считается социальной инновацией, хотя масштабы ее применения вышли далеко за пределы ограниченного круга пользователей, каким он был еще в начале 1990-х годов. Сусирования в мире во всех формах должен был представлять собой «тот или иной вид секьюритизации активов»[2], понимаемый в широком смысле как любая структурная сделка, в результате которой финансирование происходит за счет средств рынков капитала.

И если до сравнительно недавнего времени структурное финансирование было прерогативой англосаксонских юрисдикций, то начиная со второй половины 1990-х годов страны гражданской системы права, прежде всего в Европе, предприняли радикальные меры по реформированию законодательства ради создания условий для секьюритизации на основе национальных гражданско-правовых юрисдикций, стремясь максимально использовать преимуще-

Следуя европейской модели, Казахстан стремится планомерно и последовательно внедрять структурную форму финансирования внутри страны с учетом особенностей национальной экономики и ее финансового сектора, а также с учетом глобальных тенденций в области структурного финансирования и задач развития страны как регионального финансового центра.

Применение структурной формы финансирования в Казахстане обусловлено качественно новыми возможностями, которые она предоставляет как инструмент реализации стратегических финансовых и организационных решений для организаций финансового и нефинансового сектора и государства, как способ мобилизации значительных финансовых ресурсов для финанси-

структуре, как качественно новый способ управления рисками. Кроме того, структурное финансирование открывает качественно новые перспективы для развития фондового рынка. По оценке участников рабочей группы при АФН по разработке законопроекта «О секьюритизации» в ближайшие два года объем данного рынка в Казахстане может составить, как минимум, **1 млрд долларов США**.

Инструменты реализации стратегических финансовых и организационных решений

Рост ипотечного кредитования, лизинговых операций и прочих секьюритизируемых активов, с одной стороны, и необходимость управления рисками, ликвидностью и регулируемым капиталом, с другой, стимулируют поиск банками и небанковскими **финансовыми организациями** способов *внебалансового финансирования*, каким является секьюритизация. Проектное финансирование существенно расширяет границы эффективного использования банковского капитала внутри страны. Структурное финансирование является одним из способов реструктуризации портфелей нестандартных кредитов и поощряет переход банков к более современным формам деятельности.[4] «Особое значение секьюритизации, структурному финансированию и производным инструментам придает даже не объем этого рынка, а та роль, которую они играют в новом понимании, измерении и управлении финансовыми рисками. Благодаря этим инструментам стало возможно разделять сложные и непрозрачные риски, совмещенные в традиционных инструментах, и управлять ими независимо друг от друга и, как правило, более эффективно. В этом смысле секьюритизация, структурное финансирование и производные инструменты фундаментально отличительными чертами корпоративных банковских услуг и финансирования».[5]

Интерес **корпоративного сектора** к структурной форме объясняется его растущими потребностями в альтернативном источнике финансирования, способном обеспечить доступ к долгосрочному и более дешевому капиталу. При секьюритизации и проектном финансировании отделение рисков секьюритизируемых или проектных активов от рисков оригинатора активов или спонсора проекта снижает стоимость заимствования, а использование долга в структуре капитала может превышать 90%. Кроме того, в зависимости от особенностей и стратегии хозяйственной деятельности компании становится возможным максимально приблизить структуру финансирования к структуре ожидаемых будущих денежных потоков и использовать дорогой акционерный капитал на тех направлениях, которые в наибольшей степени в них нуждаются, то есть более эффективно *управлять балансом*.

Структурная форма позволяет организовывать и проводить **государственную поддержку** программ жилищного строительства, студенческих кредитов, строительства объектов социального назначения (школы, больницы, дороги, мосты) на рыночной основе при участии частного сектора. Это становится возможным благодаря разделению с частным сектором ответственности за финансирование и управление проектами при создании структур частно-публичного сотрудничества (т.н. процесс *приватизации инфраструктуры*), обособлению рисков и снижению стоимости капитала. Структурная форма является альтернативным источником финансирования государственных программ как при выпуске *обеспеченного* государственного долга в рамках структур частно-публичного сотрудничества, так и при финан-

Структурная форма финансирования способствует пониманию новой роли казахстанских институтов развития, прежде всего **Банка развития Казахстана** (БРК), как организаторов структурного и проектного финансирования, предоставляющих усиление кредитоспособности и ликвидности. Банки развития, как правило, не обладают достаточно высокими собственными рейтингом и капиталом, чтобы самостоятельно обеспечивать дешевые заемные средства в необходимом объеме для финансирования капиталоемких проектов. Поэтому современная роль банков развития в странах с развивающейся и переходной экономикой заключается в обеспечении доступа к рынкам капитала, снижении стоимости и увеличении сроков финансирования для экономически эффективных компаний и проектов, которые самостоятельно не в состоянии получить такое финансирование ввиду избыточных рисков и, соответственно, высокой стоимости капитала.

Удовлетворение инвестиционного спроса в базовых отраслях и инфраструктуре

Структурная форма финансирования отвечает на вопрос эффективного, с учетом риска и доходности, перераспределения внутренних сбережений и избыточных ресурсов финансовой системы для удовлетворения отложенного инвестиционного спроса в базовых и инфраструктурных отраслях, накопленного в период недоинвестирования в 1990-е годы, а также для расширения существующих и создания новых мощностей. С этих позиций правы те, кто сегодня критикует растущий экспорт капитала из Казахстана. Проблема заключается в отсутствии адекватного рыночного механизма перераспределения растущих внутренних инвестиционных ресурсов, включая

отрасли и инфраструктуру. Таким механизмом является структурная форма финансирования, специально предназначенная для мобилизации значительных капитальных ресурсов, превышающих возможности отдельных инвесторов, а иногда и государства, для финансирования капиталоемких проектов.

В результате проекты в таких отраслях, как жилищно-коммунальный сектор, городская и социальная инфраструктура, транспорт и телекоммуникации, электроэнергетика, нефтедобыча и горнодобывающая отрасль, а при создании структур частно-публичного сотрудничества также и в образовании и здравоохранении, получат доступ к долгосрочному долговому финансированию (*permanent financing*) на рынке капитала при участии государства, разделяющего ответственность за финансирование и управление проектами с частным сектором. Вместе с тем структурное финансирование не является панацеей и, на что обращается внимание ниже в статье, ограничителем ее применения являются все те же рыночные принципы, так как решение об инвестировании принимает более эффективный рынок капитала.

Казахстанская модель развития финансового сектора опирается на ускоренное развитие рынков капитала. Пенсионная реформа, стимулирование страхового сектора и инвестиционных фондов работают на **накопление** инвестиционных активов. Изменение законодательства и практики применения структурной формы финансирования в Казахстане направлено на **размещение** накопленных средств во внутренние активы в широком круге отраслей, включая социально-ориентированные проекты.

Кроме того, в отсутствие современных форм *коллективной организации финансирования* внутри страны, таких как проектное финансирование, банковский капитал ищет применение за рубежом в странах с более высокими рисками, цена при этом

ны также неоднократные неудачные попытки создания в Казахстане специализированных инвестиционных фондов с участием иностранного капитала. Причина — не в отсутствии инвестиционных возможностей, а в отсутствии адекватных потребностям рынка инструментов инвестирования, какими являются структурные инструменты.

Структурная форма финансирования поможет расширить возможности инвестирования внутри страны для накопительного сектора финансового рынка, инвестиционных фондов, банковского посредничества и государственного сектора, разрядит проблему т.н. дефицита финансовых инструментов, в значительной мере упразднит необходимость стерилизации «избыточных» ресурсов финансовой системы и их размещения в зарубежные активы и внесет существенный вклад в ускорение структурной реформы путем наращивания инвестиций в базовые отрасли и инфраструктуру.

Управление рисками

Суть структурной формы составляет финансирование под обеспечение денежных потоков от пула выделенных активов, а не под общий кредитный риск заемщика, который может быть избыточным, а заемщик не в состоянии получить приемлемый кредитный рейтинг. Структурная форма финансирования предлагает **новую парадигму в области управления рисками. Инвесторы** в продукты и инструменты, в основе которых лежит структурная форма финансирования, приобретают *дискретные и прогнозируемые* риски базового актива (прав требования), отделенные от активов и рисков заемщика. При этом «структурирование», то есть выделение рисков при помощи уступки прав требования, внешнее усиление, в том числе за счет участия государства, институтов развития, специализированных организаций по страхованию кредитных рисков и внутреннее усиление кредитоспособности обяз-

различным уровням и типам рисков в зависимости от их инвестиционных предпочтений. **Банки** и небанковские финансовые организации получают доступ к внебалансовому финансированию, возросшей ликвидности, ускоряют оборачиваемость капитала и увеличивают его доходность при сокращении уровня балансовых рисков, что важно для соблюдения нормативов достаточности капитала.

Снижение рисков благодаря отделению обеспечивающих активов от активов и рисков заемщика является основой снижения стоимости финансирования при структурной форме. Но, главное, расширяются возможности для *экономически эффективного размещения* капитала, учитывающего риск и доходность инвестирования внутри страны, прежде всего для банков. Как правило, в условиях высоких темпов экономического роста, характерных сегодня для Казахстана, все большее количество заведомо неконкурентоспособных предприятий могут достигать точки безубыточности, что в отсутствие здоровых альтернатив и при высокой конкуренции в банковском секторе стимулирует банковское кредитование таких предприятий. Кумулятивный эффект экспансии банковского кредита и концентрации рисков в период высоких темпов экономического роста неизбежно ведет к болезненной коррекции в период изменения рыночной конъюнктуры и провоцирует системные экономические кризисы. Опасность такого сценария налицо: по опубликованным данным, даже в условиях роста, «доля стандартных кредитов в совокупном банковском портфеле в последнее время неуклонно снижается и сейчас занимает примерно 60%, тогда как недавно она составляла 71%. На долю сомнительных кредитов приходится сегодня примерно треть портфеля».[6] Наличие структурной формы могло бы в значительной степени разрядить эту проблему путем открытия новых возможностей для

базовые отрасли и инфраструктуру и *отраслевой диверсификации рисков* при условии внедрения форм *коллективной организации финансирования*, таких как проектное финансирование.

Благодаря структурной форме становится возможным более равномерное распределение рисков внутри финансовой системы и общее снижение их уровня.[7] Уровень рисков снижается, помимо прочего, благодаря нейтрализации субъективного фактора (решение о целесообразности инвестирования и его условиях, в конечном счете, принимает рынок капитала) при реализации структурных сделок и благодаря встроенной системе *многостороннего независимого институционального контроля* за денежными потоками (особая фидуциарная структура секьюритизации, статус специального юридического лица как финансовой организации, подлежащей регулированию финансового надзорного органа, в соответствии с казахстанским законопроектом «О секьюритизации»). В связи с этим структурное финансирование особенно актуально в странах с развивающейся и переходной экономикой как рыночный механизм перераспределения ресурсов частного сектора и государства в капиталоемкие отрасли и инфраструктуру, минимизирующий коррупцию и неэкономное расходование ресурсов (*waste*).

Развитие фондового рынка

Современный уровень и темпы институционального развития в Казахстане создают все необходимые предпосылки для успешного внедрения структурной формы финансирования внутри страны. Создание первого в стране кредитного бюро и Фонда гарантирования ипотечных кредитов свидетельствует о растущей глубине и зрелости структуры рынка и объективно ориентирует рынок потребительского кре-

мер, способствует то, что казахстанский финансовый сектор перешел на международные стандарты финансовой отчетности, под надзором АФН внедряются международные стандарты управления рисками, банковского пруденциального регулирования и корпоративного управления, что напрямую влияет на поддержание высоких организационных и операционных стандартов *первичного* андеррайтинга активов финансового сектора.

В результате внедрения практики структурного финансирования активизируется *вторичный* рынок долга и расширяется использование национальной валюты, развивается деятельность профессиональных участников фондового рынка, возрастает интерес к рынку со стороны иностранных портфельных инвесторов и профессиональных организаций. Новый импульс для развития получат широко используемые при структурном финансировании производные инструменты и доверительно-трастовая деятельность. Развитие производных инструментов (*e.g., credit default swaps*) является условием развития т.н. «синтетической» секьюритизации, в свою очередь секьюритизация активно использует инструменты *хеджирования* рисков, связанных с будущими денежными потоками от секьюритизированных активов.

Для накопительного сектора казахстанского финансового рынка, в первую очередь пенсионных фондов, структурная форма финансирования является наиболее адекватной формой долгосрочных инвестиций в базовые и инфраструктурные отрасли и способом диверсификации рисков. При этом, благодаря фидуциарной структуре секьюритизации и классического проектного финансирования, повышается прозрачность (встроенный многосторонний институциональный контроль за денежными потоками), подотчетность (государственное регулирование плюс независимый контроль со стороны

принимает рынок капитала) гового финансирования.

В конечном счете в резу те применения структурной мы финансирования час вкладчики пенсионных фо могут быть уверены в том их пенсионные накопления в ный конкретный момент ра ют на улучшение условий их и качества жизни в сфере мунальных услуг, путей сообщ ния, городской и социально фраструктуры, связи. При риски инвестирования в с турные инструменты миним ны, а их кредитный рейтинг таточно высок, поскольку обеспечены денежными по ми от выделенных активов кьюритизация), свободным рисков строительства и заве ния проекта, которые несут ки — участники проектно-фи сового синдиката (проек финансирование).

В свою очередь банки — стники проектно-финансо синдиката финансируют п за счет краткосрочных средс же частных лиц, которые временно являются вкладчи банков, и рефинансируют участие в проектно-финанс синдикате после заверш строительства и сдачи объе эксплуатацию путем секью зации долгосрочных контр на сбыт (*trade receivables*) ектно-финансовой комп (специального юридичес лица).

Секьюритизация и проек финансирование могут ста новой для сотрудничества к станских и иностранных пр цов и покупателей финанс активов, продуктов и инстр тов, активизировать деятель профессиональных участ рынка, включая инвестицио банки, рейтинговые аген компании по страхованию дитных рисков и пр., в р будущего **регионального нансового центра** на о удобного казахстанского за дательства. Временный нед ток внутренней экспертизы

ких услуг либо активизацией соответствующей деятельности иностранных банков на месте по структурированию инструментов секьюритизации и проектно-финансовому консультированию.

Заключение

Национальные законодательства о секьюритизации повсеместно развивались исходя из **прагматичных соображений** и с учетом индивидуальных особенностей каждой страны. Например, в Италии ключевым активом секьюритизации, ее сверхзадачей при разработке национального законодательства о секьюритизации были нестандартные кредиты (non-performing loans), в Бангладеш проект Мирового банка по внедрению секьюритизации внутри страны осуществляется для рефинансирования микрокредитов, а повсеместно секьюритизация служит основой вторичного рынка ипотеки.

Казахстанское законодательство о секьюритизации изначально разрабатывалось как универсальное, прежде всего ради создания условий для секьюритизации долгосрочных контрактов на сбыт (*trade receivables*) проектно-финансовых компаний (проектно-финансовая секьюритизация) и в контексте развития других структурных форм. Такой подход, на наш взгляд, открывает качественно новые возможности для экономики и финансового сектора страны:

- Существенно расширятся границы возможностей для притока инвестиций в капиталоемкие базовые отрасли и инфраструктуру за счет внутреннего рынка капитала, с учетом современных представлений об управлении рисками и на основе международных стандартов финансовой деятельности в этой области. Одновременно за счет снижения уровня рисков и дисинтермедиации снизится стоимость финансирования и максими-

на условиях «без обращения/с ограниченным обращением взыскания» на оригинатора активов/спонсора проекта.

- Будут созданы условия для эффективного взаимодействия государства и институтов развития, эмитентов и в конечном счете инвесторов в ценные бумаги, выпущенные на структурной основе, в рамках прозрачных структур финансирования, находящихся под контролем рынка капитала посредством системы фидуциарных отношений.
- Казахстанский фондовый рынок, в том числе и пенсионные фонды, получит неисчерпаемый источник новых финансовых инструментов и канал перераспределения пенсионных накоплений и других избыточных финансовых ресурсов системы в ключевые отрасли казахстанской экономики, включая социальные объекты, на исключительно рыночных основах и в соответствии с самыми современными представлениями об организации финансирования.
- Предполагается, что внедрение структурных форм финансирования будет способствовать дальнейшему укреплению конкурентных позиций казахстанского банковского сектора и рынка капитала, а финансовый рынок в целом приобретет более современную и завершенную форму.

Внедрение структурной формы финансирования и принятие в следующем году закона «О секьюритизации» было названо в качестве первоочередных задач по дальнейшему развитию финансового сектора страны в выступлении Президента Республики Казахстан Н.А. Назарбаева на IV Конгрессе финансистов Казахстана 15 ноября 2004 года. Существенную поддержку проекту оказал Всемирный банк, указав в своем последнем страновом отчете на развитие секьюритизации и других форм *коллективной организации финансирования* в качестве одних из основных приоритетов дальнейшего развития финансового сектора Казахстана.[8]

■

[1] Т.Джанкобаев, «Структурная форма финансирования в Казахстане: реформа законодательства и практики применения». «Рынок ценных бумаг Казахстана», № 8, 9. Алматы, 2004.
Т. Джанкобаев, «Структурная форма финансирования в Казахстане: реформа законодательства и практика применения», «Рынок ценных бумаг», № 2, 2005, Москва.

[2] Sheryl A. Gussett, «Bankruptcy Remote Entities in Structured Financings», AM. BANKR. INST. J., Mar. 15, 1996, at 14.

[3] E.g., Закон № 130 «О секьюритизации» от 30.04.99 (Италия); Закон «О секьюритизации» от 09.03.04 (Люксембург); Закон «О секьюритизации» № 453 от 05.10.01 (Португалия); Закон «О финансовом обеспечении» от 01.08.03, существенно изменивший закон 88-1201 от 23.12.88 (Франция); Королевский Указ 926/1998 «О секьюритизации активов» (Испания); Закон о секьюритизации, декабрь 2002 года (Норвегия); регулируется законом «О надзоре за кредитной системой» (Нидерланды); в Германии, Дании, Швеции, Финляндии, Бельгии нет специального законодательства, практика секьюритизации — в удобных оффшорных юрисдикциях, в т.ч. в Италии и Люксембурге. В странах Восточной Европы и России — единичные сделки с созданием структур секьюритизации в удобных оффшорных юрисдикциях.

[4] *Joseph F. Sinkey, Jr.*, «Strategic Uses of Securitization and Structured Finance», Asset securitization and Structured Finance for Financial Institutions, Terry College of Business, University of Georgia, 21 Oct. 1998.

[5] Ibid. Оценка «Группы тридцати».

[6] Известия-Казахстан, 01.06.04.

[7] При отсутствии т.н. «избыточного инвестирования» (overinvestment), которое возникает в случае

Kazakhstan's Capital Markets Ahead of the Pack

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Final Author Copy

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In keynote speeches to the Fourth Annual Congress of Kazakhstan's Association of Financiers in November 2004 in Almaty, Kazakhstan, both Kazakhstan president Nursultan Nazarbaev and World Bank president James Wolfensohn stressed the importance of domestically based structured finance.[1] In this connection, draft securitization legislation, which is currently in a governmental working group headed by the Ministry of Finance, is slated for a first reading in Kazakhstan's *Mazhilis*[2] in April 2005. If adopted in its current draft, the law "On Securitization" ("the Law") will dramatically extend Kazakhstan's fast-paced economic reforms—the most effective so far of any country in the Commonwealth of Independent States (CIS)—and, if President Nazarbaev gets his way, lay the foundations for a regional financial center in Almaty.

This article argues that the passage of Kazakhstan's new Law "On Securitization," as is expected in the second quarter of 2005, will not only ignite domestic (rather than foreign) jurisdiction asset-backed security (ABS) issuance and project finance—thus tapping pent-up, on-shore investment demand—but also redirect private investment flows into productive sectors of the economy heretofore largely ignored by both domestic and foreign investors. We further argue that this Law, if approved by the Parliament in its present form, i.e., without any material changes, will lead to the development of a robust capital market, launch the Kazakh tenge-denominated ABS market, and be a basis for long-term sustainable economic growth.

Furthermore, Kazakhstan's Law, in our opinion, will be benchmark legislation for civil code countries such as Russia, Ukraine, and much of Eastern Europe, which are currently struggling to put together the right legal "formula" for asset securitization and other forms of structured finance. That's in part why international investment banks, accounting firms, and multilaterals, both in and beyond the region, are keeping a close eye on developments here.

FORMULA FOR SUCCESS

Modeled on Italy's ground-breaking Law No. 130/1999 (April 1999) concerning securitization of medium- and long-term assets,[3] Kazakhstan's draft Law will 1) provide the legal basis to set up onshore securitization vehicles through a limited purpose companies or special purpose vehicles ("SPVs"); 2) allow for the legal enforceability of assignment of existing and future receivables; 3) set up a special regime for segregation and "ring-fencing" of assigned receivables, thus protecting those assets (and future flows) from any legal action, including bankruptcy (legally enforceable segregation); 4) require a third-party fiduciary representative[4] to monitor the SPV and its disposition of securitized assets and their associated cash flows; and 5) grant the securities market regulatory authority extra powers to regulate structured finance transactions.

A LAW AT THE RIGHT TIME AND IN THE RIGHT PLACE: OVERVIEW OF KAZAKHSTAN'S ECONOMY

It is critically important to understand that Kazakhstan's draft Law was not some idea dreamed up by a bunch of "fee-hungry" consultants who, working in a vacuum, were able to convince some influential government officials of its importance when in fact such legislation would have been misplaced and well ahead of its time—maybe in some other country, but not in Kazakhstan. Rather the Law arose as a result of real market needs, the government's recognition of those needs, and the call from market players for legal clarity under Kazakhstan's civil code legal system.

Unlike many other oil-rich countries, Kazakhstan has performed economically, and its performance has been consistent over the past several years. With average real growth of more than 10% each year since 1999, Kazakhstan is the envy of other CIS countries. Fiscal, monetary, and external accounts are under prudent stewardship in the view of the International Monetary Fund. In September 2004, the IMF officially stated: "Executive Directors commended Kazakhstan for continued prudent macroeconomic policies, which, supported by high oil prices and increasing foreign investment, have led to strong economic performance, broad-based economic growth, and the rapid accumulation of international reserves and assets in the National Fund. Directors commended the authorities for their continued progress with financial sector reforms. . . ."[5]

This view is further confirmed in that Standard & Poor's, Moody's, and Fitch all currently rate Kazakhstan as "investment grade"—an accomplishment that few transitional economies can tout, particularly if they are oil exporters. In that regard, it should also be noted Kazakhstan's banks and financial institutions already report using International Accounting Standards and Kazakh commercial banks are frequent visitors to Eurobond markets.

ACCUMULATION OF SAVINGS IN AN INCREASINGLY SURPLUS ECONOMY

Kazakhstan is awash in cash, mostly from oil export receipts, but it lacks adequate financial tools to invest those funds in productive sectors of the economy. Currently, capital market activity is confined to unsecured corporate and bank bond issuance.

The Law will allow the market for the first time to issue securitized or structured debt, providing an efficient outlet for the redistribution of surplus funds into capital-intensive core industries and infrastructure, thus helping the country to maintain internally generated real economic growth over the long term. Kazakhstan understands that its cash surpluses cannot be managed solely by investing offshore, or by simply going on a less than fully thought-through local "modernization" spending binge à la Venezuela. The Law will improve allocative decisions, remove impediments to internal growth, as well as reduce waste and other forms of inefficient allocation of financial resources. This is good developmental policy.

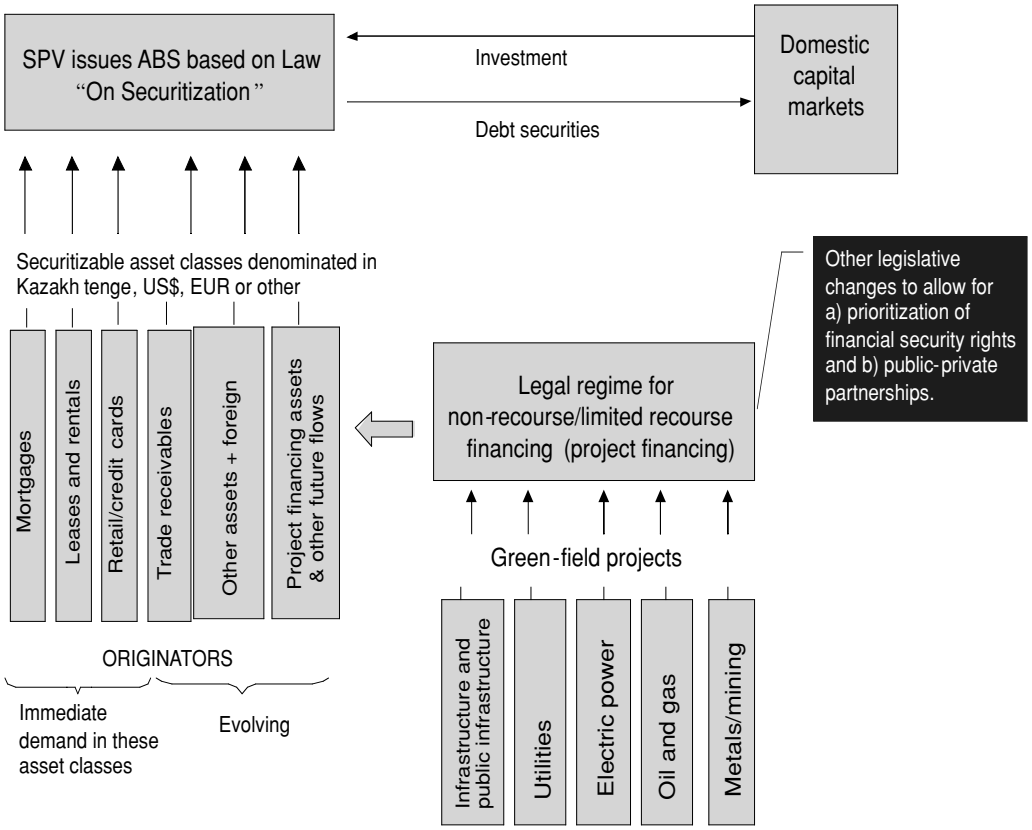
Kazakhstan's Law is the right measure at the right time given that economic fundamentals are substantially in place and that the government is actively seeking ways to better manage its petroleum wealth, further strengthen the competitiveness of its non-oil economy, ensure the long-term financial viability of its pension system, and stimulate prudential growth in the leasing, mortgage and retail sectors.

The demand for the new instruments that Kazakh securitization will spawn is captive: Kazakhstan's private pension fund system now manages assets approaching US$4 billion, more than half of which have been invested in government debt—debt, by the way, that a government in surplus does not need to issue. Further, like Norway, Kazakhstan in 2000 created a strategic oil fund whose accumulated reserves will soon exceed US$5 billion and, at current crude prices, are growing faster than anyone ever guessed they would.

There are already more than US$1 billion in residential mortgages outstanding, and mortgage bonds issued by commercial banks and the Kazakhstan Mortgage Company total only US$300 million. This represents a first step in the unfolding process within the country to create the conditions for true securitization. Currently, the mortgage bonds are synthetic bullets (i.e., not securitizations) with an average maturity of about 10 years. As maturities lengthen, the need arises for self-amortizing instruments that allow originators to lay off pre-payment risk and free up regulatory capital. And Kazakh leasing companies are crying out for balance sheet relief. Without an ability to access new non-traditional sources of funding, the growth of leasing is limited and the industry risks stagnating.[6]

Bank retail portfolios are booming and beginning to move from a secured to an unsecured basis as occurred in the United States in the 1960s. The banks realize that there is a huge potential market for securitizing

EXHIBIT
Potential for Structured Finance in Kazakhstan



consumer assets that would include credit cards, car loans, and loans to small businesses. Continued growth of unsecured retail lending will encourage loan portfolio repackaging and refinancing. Unsecured lending in the retail markets is expected to accelerate dramatically over the next few years, following the establishment of Kazakhstan's first private credit bureau in the fourth quarter of 2004—another sign of market maturity, i.e., of an understanding that unsecured lending requires credit skills—a *sine qua non* for retail securitization going forward.[7]

Bank and non-bank financial intermediaries are actively looking for a proper legal basis that will help them find alternative options to manage their portfolios, liquidity, and capital. Structured financing will broaden the financial sector's frontier for efficient use of banking capital inside the country and offer a new paradigm for bank asset risk management. Investors in projects and instruments based on structured forms of finance will be better able to identify, isolate, and redistribute risks into discrete and predictable "buckets" based on the underlying assets.

Another key driver for the passage of this Law is the corporate sector's need to find a better mix of financing options to maximize the value of the firm. Structured forms of finance will improve the corporate sector's ability to obtain "permanent financing"—funding that matches asset life—leading to a better ability to manage capital structure, pricing, and cash management.

We expect that this Law and other related legislative initiatives currently underway will encourage the expansion of the overall capital markets and result in activities as described in the Exhibit.

Finally, as the market in structured finance grows, Kazakhstan recognizes that the Law will not only further develop local deal capacity, but will also increasingly attract investment banks, rating agencies, and credit risk insurers to Kazakhstan.

THE NECESSITY FOR A "LAW ON SECURITIZATION": CIVIL LAW AND COMMON LAW TRADITIONS

Kazakhstan legislation does not prohibit, but neither does it recognize, structured forms of finance. Because of this "gray" area in Kazakhstani civil law, structured forms of finance as a "product" have not been able to move forward in practice despite the demand for such services within the country. In the 1990s, several European countries faced similar problems, and had to pass legislation to address the mismatch between the law and the practice of securitization. Conversely, in the United States and in other countries regulated by common law, structured forms of finance arose organically with laws and regulations for the most part following. This requires some explanation.

The differences between common law and civil law traditions are significant at the conceptual level[8] and explain in part why the development of securitization in the United States has been faster than in continental Europe. "[C]ommon law jurisprudence sets out a new specific rule to a new specific set of facts and provides the principal source of law, while civil law jurisprudence applies general principles, and is only a secondary source of law or explanation."[9] The basis of common law is case law and judicial interpretation of law. It tends to be highly fact-specific and fact-sensitive. Conversely, civil law tends to contain long and detailed codifications of the law, and relies mainly on generalizations.

Under civil code, the final arbiter in disputes tends to be the body of systematically organized law, with its compendium of regulations and provisions—often, by the way, contradictory in Kazakhstan. Furthermore, civil law contains mandatory provisions that cannot be derogated—for example provisions in the law that deal with public policy or the fundamental rights of all citizens. This "higher law" may take precedence over certain terms and conditions to which parties in a contract have already agreed. Conversely, in common law jurisdictions, the details in a contract tend to be explicitly outlined, as determined by the parties themselves. This latter approach tends to provide greater certainty as to outcomes in the event of dispute or non-performance of contractual obligations, because governing terms and conditions therein were agreed to *a priori* and not left to interpretation by a higher set of provisions in the law. Therein lies the fundamental difference between civil law and common law.

THE ITALIAN AND KAZAKHSTAN EXPERIENCES

By 2000, most continental European countries had "updated" their legislation so that it would conform more closely to the generally accepted guidelines of structured finance as practiced in Anglo-Saxon trust law countries.[10] In this connection, reforms in Italian legislation probably have been the most successful from the investor/issuer point of view, notwithstanding certain deficiencies in the law. Since passage of Italy's Law No. 130/1999 "Securitization" (April 1999), the Italian structured finance market has issued over €100 billion in transactions, and has become the European market leader in several asset classes.[11]

Kazakhstan needs new legislation for the same reasons that a new law was needed in Italy. "The development of an Italian market for securitization was prevented mainly by the fact that—prior to the adoption of [Law No. 130/1999]—all securitization transactions had to be carried out through SPVs established outside Italy, in the absence of Italian legislation regulating such entities and authorizing all aspects of their activity."[12] Law No. 130/1999 essentially clarified what was not clear in law and recognized that monetary claims, whether existing or future, transferred to a SPV in Italy, would in fact be separated not only from the originator's balance sheet and risks, but also from the risks of the SPV itself, which acquired those assets.

Some specific features addressed in Kazakhstan's Law follow:

1. The effective date when segregation and ring-fencing of the securitized asset pool becomes enforceable is the date of official registration of the prospectus with the financial regulatory authority.
2. As in Italy, transaction cash flows would be governed by the principle of "destination," i.e., the SPV would service the securities it issues exclusively and would pay costs related to the securitization transaction only. In other words, the Law considers the SPV as a conduit between the assets and the investors, and its legal or financial capacity to act is limited by the Law and subject to regulation by the financial regulatory authority.
3. The originator, the bondholder's representative, or any third party can establish a SPV within Kazakhstan. Legislation requires the appointment of an independent director to the SPV and/or other means to avoid effective consolidation of the SPV with the

interest of the originator or a third party, i.e., the SPV would operate at "arm's length."

4. The SPV is taxed on a net basis, i.e., after redemption of the securities issued by the SPV.[13]
5. The draft Law clarifies the off-balance-sheet accounting treatment for securitized assets, i.e., keeping separate accounting records to facilitate the application of non-commingling requirements.

Sectors covered by the new legislation would include all industries and projects capable of generating stable and predictable future cash flows. The Law as such does not define (nor should it) who can issue an ABS. Rather, the issuance criteria hinge mainly on market factors such as the quality of the pool of assets (volume, rates, as well as default probability, delinquency, and prepayments history), enhancements, external rating (if required), information (on company and collateral), encumbrances, market position, and internal systems (origination, servicing, and collection). Issuers certainly would have to take other factors into account before going to market.

In our opinion, Kazakhstan's Law, just like Italian legislation ("Law 130/1999"), will pass the "criteria test" set out by major rating agencies such as Standard & Poor's.[14] Moreover, the Law takes into consideration recommendations made by the European Securitization Forum with respect to Italian legislation. Under the proposed Kazakh draft, for example, segregated assets include not only securitized cash flows but also all other rights and assets available to the SPV arising from the management of cash flows in a securitization transaction. Also, in preparing the Law, the drafters reviewed the substance of, and the recommendations made, in the 2002 Sarbanes-Oxley Act (U.S.), and the implications of recent amendments to IAS 32 *(Financial Instruments: Disclosure and Presentation)* and IAS 39 *(Financial Instruments: Recognition and Measurement)*, and to GAAP 46FIN,[15] as well as to recent Securities Exchange Commission regulations for ABSs.

The Law, we further believe, is compatible with UNCITRAL's 2001 *Draft Convention on Assignment of Receivables in International Trade*[16] in connection with the assignment of existing and future receivables.

Changes to Kazakhstan's civil code and other legislation[17] have been prepared in order to bring the entire "legal regime" into conformity with the Kazakh civil law system. Changes to these acts are expected to become effective simultaneously with the adoption of Kazakhstan's Law on Securitization.

PRUDENTIAL MEASURES: ROLE OF KAZAKHSTAN'S FINANCIAL SUPERVISORY AGENCY

The role of the Financial Supervisory Agency (FSA) would be clearly outlined and prominent in the Law—but not obtrusive. The local market would take the lead in originating and structuring deals but the FSA, as "gatekeeper," would ensure accountability by all market participants. The FSA would keep an eye on deals in order to ensure compliance with minimum best practice guidelines throughout the life of any deal.

The FSA's gatekeeper function would be similar to that of the Bank of Italy's role in Italy—a formula that has received considerable praise from the market and industry watchdogs. At the insistence of the FSA, the Law contains general disclosure requirements for the issuer and the originator in order to ensure 1) absence of material conflict of interests and to maintain 2) ongoing control over the transaction and its fiduciary agents. The two latter criteria are imperative for regulation of complex structured finance transactions. The FSA has taken note of recommendations recently made in the U.S. and in other countries with respect to its oversight functions.[18]

Kazakhstan's draft Law thus recognizes that disclosure by the parties alone (i.e., sole reliance on issuer/originator information in a substantially self-regulated market) is not sufficient to protect investors and the financial system from dubious transactions, particularly when the market is in its early stages of development and has limited absorptive capacity for deals gone sour. That, we think, is good public policy.

CONCLUSION

The passage of the Law, given that the market is currently on stand-by to execute securitization deals, will no doubt lead to the development of a more disciplined and efficient capital market in Kazakhstan. It is expected that whole new classes of financial instruments and innovative financial techniques—starting with mortgage and lease backed securities—will materialize over the short term, thus providing outlets for "investment-thirsty" pension funds and for accumulated reserves in Kazakhstan's oil fund. In time, potential ABS issues could take the form of assets backed by credit card receivables, future trade receivables, and various types of non-performing loan portfolios. What is important is that all these potential transactions could be issued directly through SPVs in

Kazakhstan under local law and true-sale criteria rather than using, for example, U.K. or Luxembourg law.

We estimate that the demand for traditional MBS and future flow ABS transactions in Kazakhstan over the next two years could reach US$1 billion. Each year thereafter, the market could absorb an additional US$1 billion, assuming current levels of economic growth; and a large percentage of these transactions will be denominated in Kazakh tenge. Moreover, sources of additional investment would include capital inflows from Europe, the United States, and elsewhere in the form of dedicated funds or other private investment.

With passage of the Law, Kazakhstan's development institutions, such as the Development Bank of Kazakhstan, will be in a better position to team up more effectively with the private sector, thus increasing the volume, scope, and penetration of their investment dollars. These local developmental institutions would, in essence, serve as levers to "energize" deals—an activity more in line with their roles. The outcome would accelerate the process of modernization and replacement of costly capital-intensive assets. The Law is good news for the ADB, EBRD, and World Bank.[19]

The Government of Kazakhstan recognizes that the Law is an "investment in the future." The Law will create favorable conditions for increased employment and, at the same time, for building the country's "intellectual capital" base—a point that both President Nazarbaev and World Bank president Wolfensohn agree upon. Are these not the real issues? The law will establish an industry-tested mechanism that offers businesses, large and small, greater opportunity, and, in the long run, greater resiliency to economic shocks.

Because Kazakhstan is a relative newcomer to the capital markets, the country has benefited from the recent securitization debate in academia and in the press. Kazakhstan is keen to implement state-of-the-art legislation that incorporates prudential measures and standards that protect both investor and issuer, but that at the same time recognizes market efficiency in allocating capital and the role of government.

President Nazarbaev and former Central Bank governor Grigori Marchenko have often iterated their intent to integrate Kazakhstan's financial markets into the European Union's sphere of influence. Kazakhstan's securitization legislation represents a well-thought-out concrete strategy—indeed a bold step—to fuel an already well managed economy. While a proper legal framework is only the first step in developing a securitization market in Kazakhstan, it is an all-important step. If the Law is passed without material changes in its present form, the capital markets will respond positively and Kazakhstan will be one step closer to integrating its markets into those of Europe.

Editor's Note: *Timur Dzhankobaev, Director of Corporate Finance, and Javier Piedra, Senior Advisor, work in Kazakhstan for U.S.-based international development consultancy The Pragma Corporation, where they are responsible for implementing the U.S. Agency for International Development (USAID)'s Financial Sector Initiative in Kazakhstan. The opinions expressed herein are those of the authors and do not necessarily reflect the views of the U.S. Government or of the USAID.*

ENDNOTES

[1]Structured finance, as used in this article, is broadly defined and means "a technique whereby certain assets with more or less predictable cash flows can be isolated from the originator and used to mitigate risks (e.g., transfer of foreign exchange, contract performance, and sovereign risk), and thus secure a credit." UNCTAD definition.

[2]Lower House of Parliament. After the *Mazhilis* signs off on the law, it goes to the Senate for its review and then for presidential signature.

[3]Under Law No. 130/1999, assets means "monetary claims whether existing or future."

[4]Kazakhstan codified in law the concept of bondholders or fiduciary representative in amendments to its Securities Market legislation in 2001.

[5]For the full text, see "Extract from Public Information Notice (PIN) No. 04/106 September 20, 2004," International Monetary Fund, Washington D.C. IMF Concludes 2004 Article IV Consultation with the Republic of Kazakhstan.

[6]We believe this is a problem that the Ukrainian leasing market will soon be facing.

[7]"The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience," Dr. J. M. Barron, Dept. of Economics, Purdue University, and Dr. Michael Staten, Credit Research Center, Georgetown University; Jappelli, Tullio, and Pagano, Marco, "Information Sharing, Lending and Defaults: Cross-Country Evidence" (2002), *Journal of Banking and Finance,* Vol. 26, pp 2017-2045.

[8]The authors do not attempt to provide a full explanation of these differences. For a comprehensive review see: "Mixed Jurisdictions: Common Law vs. Civil Law (Codified and Uncodified)," by William Tetley, Q.C., Professor of Law, McGill University, Montreal (Canada), *Revue de Droit Uniforme* (*Uniform Law Review*), Vol. 3, 1999, pp 591-619 (Part I) and Vol. 4, 1999, pp 877-907, http://www.unidroit.org/english/publications/review/main.htm.

[9]Ibid.

[10]See "Securitization Overview," *International Tax Review,* June 2000 for a summary of securitization in a number of regions and countries around the world.

[11]Moody's *International Structured Finance Special Report: 2004 Review and 2005 Outlook, January 2005,* "Italian Structured Finance Market; Record Issuance in 2004; Similar levels expected in 2005 as market awaits implications of Covered Bond Legislation."

[12]Maurici, Fabrizia, Graham & James LLP, "The Italian Securitization Law," *The Securitization Conduit,* Vol. 2, No. 2 & 3, 1999, http://www.asset-backed.com.

[13]Tax regimes vary from country to country, often change and, in Kazakhstan, should be carefully analyzed.

[14]Standard & Poor's, *Legal Criteria for Structured Finance Transactions,* April 2002, and *Legal Issues in Italian Asset-Back Securitizations,* November 2004.

[15]Financial Accounting Standards Board (FASB), Interpretation No. 46, *Consolidation of Variable Interest Entities.*

[16]"Receivables Financing," *Draft Convention on Assignment of Receivables in International Trade,* UNCITRAL, Thirty-fourth session. Vienna, 25 June–13 July 2001.

[17]*Civil Code, Bankruptcy Act, Company Act, Securities Act, Tax Code, Banking Act* and *Financial Markets Supervision Act*.

[18]For example, material presented in Securities Update: "SEC Adopts Final Rules for Asset-Backed Securities." Mayer, Brown, Rowe & Maw, January 2005.

[19]*The World Bank*. Joint Economic Research Program. "Priorities for Financial Sector Reform: Selected Issues and Options." 12.11. 2004; http://www.worldbank.org.kz/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/KAZKHSTANEXTN/0,,contentMDK:20280820~pagePK:141137~piPK:141127~theSitePK:361869,00.html.

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Final Approval Copy

External Advisor Report on Securities Settlement in Kazakhstan

Prepared by Jens Tapking, European Central Bank[1]

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[1] The views expressed in this report are the views of Jens Tapking and not necessarily those of the European Central Bank. Substantial input and support was provided by Marc Bayle, European Central Bank.

Introduction

In September 2004, the European Central Bank (ECB) received a request from Pragma Corporation/USAID to review the securities settlement infrastructure of the Republic of Kazakhstan. The request was initiated by the Central Securities Depository (CSD) of Kazakhstan which had asked Pragma Corporation/USAID for help. The ECB agreed to provide assistance and appointed Mr. Jens Tapking, member of staff of the ECB, to carry out the project. A detailed Scope of Work (SOW) was produced that specifies the aim and scope of the project.

According to the SOW, the project has been focused on an assessment of Kazakhstan's depository-registrar system in order to bring it more in line with international standards. However, other aspects of the activities of the CSD related to the smooth settlement of securities transactions, the operational reliability of the CSD and transparency of risks when Kazakhstan's financial infrastructure is used have also been addressed.

From 18 to 22 April 2005, Jens Tapking visited Almaty, the financial centre of the Republic of Kazakhstan, and interviewed representatives of the Central Securities Depository (CSD), the Kazakhstan Stock Exchange (KASE), the Financial Supervisory Agency (FSA), the National Bank of Kazakhstan (NBK), two banks, a brokerage firm and an independent registrar firm. Almost all interviews were extremely productive. In general, staff members of financial institutions in Kazakhstan proved to be very skilled and professional and showed a strong motivation to boost the development of financial markets in Kazakhstan.

Section 1 provides a brief description of Kazakhstan's market infrastructure for securities. Section 2 presents an overview of the assessment results. The detailed assessment results and recommendations how to address the main weaknesses and to bring Kazakhstan's financial market infrastructures closer to international standards can be found in Section 3.

Annex A provides details of the depository, registration and settlement landscape in Kazakhstan and complements Section 1. It is essential for all readers who are not familiar with this landscape. The Scope of Work for the project can be found in Annex B. Annex C provides short descriptions of the securities depositing and registration landscape in Finland, Germany, France, the UK and the US. The complete list of institutions that have been interviewed is in Annex D.

1. Kazakhstan's securities market infrastructure[2]

Overview

The financial markets infrastructure of Kazakhstan comprises the CSD, currently 19 independent registrar firms, the Kazakhstan Stock Exchange (KASE), brokerage firms, national and international custodian banks, the National Bank of Kazakhstan (NBK) and the Kazakhstan Interbank Settlement Centre (KISC). The Financial Supervision Agency (FSA) is the sole financial regulator in Kazakhstan.

[2] For a more detailed description, see Annex A.

The CSD is a non-for-profit joint stock company (JSC). Shares in the CSD are not listed. Dividends are not paid, i.e. all profits are retained. 50% of the shares in the CSD are held by the NBK, 25.55% by the KASE, 16.67% by 14 banks and 7.78 by 7 brokerage firms. It was established in 1997. The 19 independent registrars are smaller companies that are in charge of registration and primary depositing of corporate securities. Before 2003, they were owned by banks and issuers of corporate securities. A law that came into force in 2003 required them to be independent JSCs.

The KASE is a non-for-profit JSC. Shares in the KASE are not listed. Dividends are not paid, i.e. all profits are retained. 21.95% of the shares in the KASE are held by the NBK and the rest by various banks and brokerage firms. The KASE maintains a trading platform for derivatives, but with rather limited activities as there does not seem to be demand for derivatives trading in Kazakhstan. There is no central counterparty clearing house in Kazakhstan.

The KISC is the payment system of Kazakhstan. It is operated by the NBK.

Securities registration, depositing and settlement arrangements

In Kazakhstan, almost all securities issues are fully dematerialized. Only a few smaller corporate securities issues exist in physical paper form. All issues administered by the CSD are fully dematerialized. According to Kazakh law, all securities held on accounts with another entity are held under custody.

Kazakhstani *public sector securities* are safe-kept, held and settled very much like securities in the direct holding systems of for example Finland (APK) or Sweden (VPC) (see Annex C, Section C1 for more details). All public sector securities issued in Kazakhstan are primarily deposited in the CSD and are held on accounts of CSD participants with the CSD. The securities accounts of domestic CSD participants are fully segregated into sub-accounts, one sub-account for each client of the respective CSD participant and one for the own holdings of the CSD participant. Only foreign CSD participants do not have to segregate their clients' holdings into sub-accounts. (See Sections A.2.1 and A.2.2 of Annex A.). When interest payments are to be settled, then the CSD receives the total interest payment on its cash account with the central bank and redistributes them to its participants. The CSD participants then pass the payments on to their clients.

For *corporate securities*, safekeeping and settlement in Kazakhstan looks quite different. For each corporate security issue, there is a so-called registrar that acts as primary depository.[3] There are currently 20 registrars in Kazakhstan, 19 *independent registrars* and one *registrar operated by the CSD*. For most corporate securities, one of the 19 independent registrars is used. The registrar operated by the CSD is used only for currently two securities issues. The CSD has securities accounts with these registrars (including that operated by the CSD itself) so that investors can hold securities that are primarily deposited in a registrar with the CSD or a CSD participant. However, beneficial owners can also hold securities directly on accounts with the registrar. Typically less than 0.1% of shares in corporate bonds or stocks that are primarily deposited in one of the 19 independent registrars are held on accounts with the CSD! As all trades on the Kazakhstan Stock Exchange (KASE) are to be settled in the CSD, it is clear that corporate securities are relatively little traded on the KASE.

[3] The term "registrar" appears to be misleading as the main function of these so-called registrars is to act as primary depository.

A particular characteristic of securities markets in Kazakhstan are the so-called lost shareholders. In the 1990s, company shares were often given to employees of the respective companies who held them on their accounts with registrars. Due to a lack of experience with financial assets, these shareholders often did not exactly know what to do with their shares. In many cases, these shareholders left the country in later years without providing their new addresses to the registrars. These shareholders are now lost in the sense that the registrars cannot contact them. Some lost shareholders may once re-emerge and claim ownership rights in their shares. Others may remain lost for ever.

As for public sector securities, securities accounts with the CSD for corporate securities are fully segregated. However, the CSD is not involved in the settlement of corporate actions (dividend or interest payments). In case of corporate actions, the CSD is obliged to pass available information on the identity of beneficial owners on to the registrar. The registrar then provides all information to the issuer and the issuer transfers dividend and interest payment directly to the beneficial owners.

The standard settlement cycle for all KASE trades is T+0. All trades, including those concluded outside of the KASE, are settled in real-time on a gross settlement basis (DvP model 1). There are no securities lending and borrowing program, no self-collateralizing repo arrangement[4] and no queuing arrangement[5] in Kazakhstan. There is a relatively high fine on fails imposed by the KASE which ensures that fail rates are very low. (See Section A.4.1 of Annex A for more information.)

2. Assessment overview

The overall assessment of the securities registration, depositing and settlement infrastructure, especially the CSD, is positive in particular in term of safety. This impression was also confirmed by the interviewed institutions that unanimously expressed the view that the CSD is working well. Several important aspects of this infrastructure seem to be organized in a way that appropriately answers Kazakhstan's financial markets' needs. In particular, the principle of direct holding structure (i.e. full segregation of all individual holders in accounts within the CSD) and the principle of real-time gross settlement of securities transactions are to be mentioned here.

Besides these positive observations, three main areas of improvements for the securities settlement infrastructure of Kazakhstan have been identified and are presented in this report: (i) the depository-registrar system; (ii) the financial and operational soundness of the CSD; (iii) the international attractiveness of infrastructure arrangements.

Optimizing the depository-registrar system

The securities depository landscape, i.e. the sum of institutions that are used to safe-keep securities in physical or dematerialized form, is essential for the efficiency, stability and safety of

[4] A self-collateralizing repo means that a buyer of securities that are eligible as collateral for central bank credit receives the securities even if he does not have enough funds on his cash settlement account. However, the securities would upon receipt automatically be provided as collateral to the central bank and the central bank would grant a credit to the buyer, enabling him to transfer the payment to the seller.

[5] Queuing means that settlement instructions that cannot be executed due to uncovered positions are queued until settlement is possible rather than immediately cancelled.

all financial markets. Securities markets can work properly only if this landscape is organized in a stable and efficient way.

All major securities markets worldwide have implemented a common principle with respect to securities depositing, the principle of a single primary depository, i.e. a CSD.[6] The main advantage of a single primary depository is its cost-efficiency. Economies of scale and network externalities suggest that it is costly to maintain many primary depositories with small volumes of securities under custody.

The CSD of Kazakhstan acts as the sole primary depository for all public sector securities. However, for corporate securities, issuers can choose among 20 primary depositories, 19 independent registrars and the CSD. With a view to cost-efficiency, it might be advisable to substantially reduce this number of primary depositories. More specific arguments against the current depository landscape for corporate securities will be described in Section 3.1 below.

It should however be emphasized that an institution that acts as single primary depository has a monopoly position that it could abuse in one way or the other against the interests of other market participants. It is, therefore, important to implement regulatory/oversight and governance arrangements that ensure that the primary depository does not abuse its strong position.

Detailed strategies to optimize the depository-registration system of Kazakhstan are presented in Section 3.1.

Increasing the financial and operational soundness of the CSD

As the CSD is essential for Kazakhstan's financial markets, it is crucial to ensure that it is safe and that it works properly. Major risks that it is exposed to are financial risks and operational risks. Financial risks can lead to financial distress and eventually to an insolvency of the CSD, implying major disruptions of financial markets in Kazakhstan. Operational risks can significantly disrupt the systems of the CSD. Section 3.2 looks at issues related to the financial and operational soundness of the CSD.

Upgrading the international attractiveness of infrastructure arrangements

The president of Kazakhstan has announced two major objectives for financial markets in Kazakhstan: Kazakhstan should become a regional financial centre and Kazakhstan's financial institutions, including the CSD, should be at "EU standards" by 2007. Both objectives indicate the willingness of Kazakhstan to attract international investors.

In this respect, it is important to adopt trading and settlement arrangements not only for the needs of domestic, but also of international investors. In this respect, typically international investors face the problem that securities and funds transfers across borders are less efficient than transfers within a country. When upgrading infrastructural arrangements, Kazakhstan's authorities should take that into account.

A second important aspect for international investors is the level of transparency with respect to the market infrastructure and the risks when using this infrastructure. International investors will invest in Kazakhstan only if they are fully aware of all risks that they would face.

[6] In a few countries, there are two CSDs, one for public sector securities and one for corporate securities.

Possible measures to upgrade the international attractiveness of Kazakhstan's market infrastructure are presented in Section 3.3.

3. Detailed assessment and recommendations

3.1 Recommendation on optimizing the depository-registrar system

Reforming the depository-registration system

As mentioned above, the current depository-registrar system in Kazakhstan is complex and costly for the market infrastructure. Several detailed arguments against the way *independent registrars* are currently used as primary depositories in Kazakhstan can be mentioned.

(i) **Unavailability of securities during period of transfer of activities from one registrar to another:** the 19 independent registrars are relatively small companies that may easily go bankrupt. Whenever a registrar has to be closed, the issuers of securities that have been primarily deposited in the registrar need to appoint a new registrar. The securities holdings then need to be transferred from the old to the new registrar. In the transition period, trading in these securities has to be suspended, implying a disruption of financial markets with potentially significant economic losses for investors.
In the past few years, many registrars disappeared because regulatory capital requirements for financial firms, including registrars, were increased to prevent them from going bankrupt. Those registrars that could not meet the new requirements had to be closed.

(ii) **Lack of independence of registrars from major market players:** as mentioned above, the 19 independent registrars are relatively small companies. It may be relatively easy for major issuers or investors to exert undue influence on particular registrars. There are rumors that fraud may have occasionally taken place. For example, issuers or investors may have pressed registrars for temporarily transferring securities from one account to another without approval from the account holders to, for example, change voting right.

(iii) **Lack of efficiency in the transfer of securities:** the transfer of securities from an independent registrar to the CSD or back is cumbersome and should be avoided. Communication between independent registrars and the CSD is very much based on fax machines and paper work due to the lack of technical equipment on the side of registrars. Communication between beneficial owners and registrars requires that the beneficial owner appears at an office of the registrar. Accordingly, the transfer of securities from one account with a registrar to another account with the same registrar is not less cumbersome. This problem may again be related to the fact that the independent registrars are very small companies with a lack of resources to develop efficient and automated procedures.

(iv) **Lack of DVP:** even if registrars were technically more sophisticated, securities transfers from registrars to the CSD and back or from one account with the registrar to another may still be risky and inefficient as such transfers are always free-of-payment transfers. Independent registrars are not linked to the payment system so that delivery-versus-payment is not possible.[7]

[7] See Annex A, Section A.5.2.

(v) **Lack of trading eligibility for corporate securities:** it would be desirable to concentrate trading of corporate securities on the KASE. That would increase price transparency and concentrate liquidity in one market place. The existence of independent registrars may however limit trading of corporate securities on the KASE as all KASE trades have to be settled in the CSD. And as mentioned above, less than 0.1% of shares in corporate securities are held with the CSD rather than directly on accounts with the respective registrar. Thus, more than 99% of shares cannot be traded on the KASE. In principle, all shares should be readily available for trading on the KASE.

Based on the above assessment, four different options for reforms are now discussed which could be used to address the above points:

Option 1: Strengthening the independent registrars. In order to address the first three arguments above, one could try to financially strengthen the independent registrars while they keep their function as primary depository for corporate securities. Regulatory capital requirements could be further increased which may further reduce the number of independent registrars. At the same time, registrars could be allowed to merge with large banks.
However, this strategy alone would certainly not help to solve the problems indicated in the arguments (iv) and (v). To address also the latter two arguments, two *alternative sets* of complementary measures could be taken:

> *Option 1a: Increasing the scope of the activities of independent registrars.* Independent registrars could be obliged to organize the settlement of the cash leg and to offer settlement of KASE trades. The registrars would then need to offer the same functions as the CSD. Kazakhstan would then end up with a rather complex settlement market infrastructure composed of a number of competing securities settlement systems. As the European example shows, this is not a very efficient situation for the development of financial markets within a single currency area.[8] Investors would possibly need to have accounting relations with several settlement systems, implying high fixed cost of settlement and fragmentation of security holdings for investors. Securities transfers from one settlement system to the other via links would frequently be required, possibly reducing the safety and efficiency of settlement due to problems of interoperability of different settlement systems.
>
> *Option 1b: Reducing the scope of the activities of independent registrars.* Instead, measures could be taken that ensure that securities primarily deposited in a registrar are to the greatest extent possible held with the CSD rather than directly with the registrar. For example, laws or regulations could be put in place (implicitly or explicitly) requiring that all beneficial owners must hold all their securities (through a borker or bank) with the CSD. That would mean that only the CSD would have an account with the registrars and all settlement activities would be concentrated in the CSD. However, the CSD would still not be involved in the issuance of new corporate securities unless the issuer decides to use the registrar operated by the CSD.

Option 2: Abolishing the independent registrars. Alternatively, the independent registrars could be abolished all together (rather than made financially sound). The CSD would then be the only primary depository for corporate securities. The registrar operated by the CSD could be kept or abolished as well:

[8] In Europe, there is at least one CSD in each country. This fragmentation of the settlement landscape has been a major problem for financial markets in the European Union. Supported by public authorities and market participants, a consolidation process has fortunately started in the last couple of years that will probably reduce the number of settlement systems significantly.

Option 2a: Keeping the registrar operated by the CSD. If the registrar operated by the CSD is kept, then it would be the only registrar for corporate securities and all corporate issuers would need to use it. The securities account relations (as depicted in Figure 1 of Annex A) would remain as they are with the only exception that the registrar is always the one operated by the CSD. Beneficial owners could still hold securities directly with the registrar (operated by the CSD) or indirectly with a nominee through the CSD.

Option 2b: Abolishing also the registrar operated by the CSD. If the registrar operated by the CSD is abolished as well, then the securities account relations for corporate bonds would be the same as for public sector bonds (i.e. as depicted in Figure 2 of Annex A).

As indicated, Option 1a does not seem to be efficient and safe. We therefore need to consider only the three options 1b, 2a and 2b now.[9]

Option 1b potentially has the advantage that it would allow issuers to choose among different competing registrars (primary depositories), one operated by the CSD plus one or more independent registrars. Competition for issuers may increase market efficiency as it could trim down prices. Another argument in favor of Option 1b was put forward in one of the interviews: Misconduct of a registrar may result in claims against that registrar that could lead to a situation of financial distress for the registrar (or its operator). If an independent registrar is used as primary depository, then the CSD is protected against such claims.

However, Option 1b may be difficult to implement as it may be difficult to ensure that securities are mostly held with the CSD rather than directly with independent registrars. Moreover, compared with Options 2a and 2b, Option 1b would result in a still relatively complicated securities depositing and settlement infrastructure as there would still be several entities involved, implying relatively high fix costs and requiring interoperability of different entities. Finally, there are currently no industrialized countries (including the EU member states and the US) with *several* competing primary depositories[10] so that Option 1b may result in a very particular situation that may be difficult to sell to international investors.

Options 2a and 2b have the advantage that they would result in a very simply depositing and settlement infrastructure for corporate securities that is relatively similar to the infrastructure of most industrialized countries. However, they may have the disadvantage that they do not allow issuers to choose among competing registrars (primary depositories), but grant a monopoly position to the CSD not only as settlement system, but also as only primary depository. Especially issuers and issuers' agents fear that the CSD may misuse such a strong position.

[9] One other strategy has also been discussed: The CSD would be the only primary depository, but independent registrars would be kept and would have an account with the CSD (rather than vice versa). Thus, the independent registrars would act as custodian banks. However, this would imply that the CSD instead of the independent registrars would be the service provider to the issuers. The independent registrars would loose their main source of revenues and could not survive, unless they merge with banks or issuers. This is currently prohibited. This strategy must therefore be discarded. (See however Annex C, Section C3, on registration in France. In France, registrars have accounts with the CSD. But the French registrars are no independent companies, but operated by the issuer or an agent of the issuer. Moreover, accounts with the CSD are not fully segregated into sub-accounts and the French CSD does not have any information on the identity of beneficial owners so that there may be a need for a registrar in France, but not in Kazakhstan.)

[10] The only exception might be the markets for Eurobonds as there are currently several banks that act as primary depositories for such bonds. However, this arrangement for Eurobonds is currently under revision and will soon be abolished.

Moreover, with Options 2a and 2b, the CSD would be exposed to any type of claims resulting from misconduct in its function as primary depository.

However, it should be possible to address these two arguments against Options 2a and 2b in an appropriate manner. We will discuss in below that an adequate corporate governance approach should have the potential to ensure that the CSD, which is a non-profit entity owned to a large part by its users, could not misuse a monopoly position. And we will discuss in Section 3.2 possible measures to strengthen the financial soundness of the CSD. For these reasons, Options 2a and 2b may seem to be superior compared with Option 1b.

Option 2a may have the advantage over Option 2b that it would allow beneficial owners to hold securities directly with the registrar (operated by the CSD). This may be important with a view to so-called lost shareholders (see Section 1 and Section A.2.1 of Annex A). The holdings of lost shareholders could be transferred to the registrar operated by the CSD when the independent registrars are abolished. As lost shareholders do not pay any fees, it might not be possible to force participants of the CSD to act as service provider for lost shareholders.

However, there may be ways to tackle the existence of lost shareholders in a more efficient way. For example, a special purpose entity, for instance financed with public funds, could be set up with an account with the CSD that is used only for holding of lost shareholders. All holdings of lost shareholders would be transferred to this entity. These holdings could even be sold by this entity to ensure that they can be traded. If a lost shareholder re-emerges within a certain number of years, he would get the proceeds from selling his shares.[11] If such a solution is possible, the registrar operated by the CSD would be redundant and Option 2b might seem superior to Option 2a as Option 2b would be a very simple solution which would resemble many of the continental European systems.[12] It may also be seen as an advantage of Option 2b that it would imply that the arrangement for corporate securities would be the same as that for public sector securities.

Recommendation 1:

It is recommended to establish a high level group to review in details the various options to reform the depository-registration system. The NCB, CSD, KASE, Financial Supervision Agency, banks and brokers should be represented in this group. In particular Options 2a and 2b should be considered, provided that it can be ensured that the CSD does not misuse its monopoly position and that its financial soundness is strengthened.

Improving the CSD governance

As discussed above, options 2a and 2b would grant the CSD a de facto monopoly position for issuance, custody and settlement activities in Kazakhstan. These options therefore appear favorable only if appropriate governance arrangements are in place. Especially banks that act as agents of issuers or are themselves issuers fear such a monopoly position of the CSD as it could reduce incentives for the CSD to strive for efficiency.

The CSD is a non-for-profit joint stock company (JSC). Shares in the CSD are not listed, but can in principle be traded outside the KASE. Only professional financial market entities can hold

[11] A similar solution was used in France when all securities were dematerialised in the 1980s and the shareholders of some bearer shares in paper form could not be found.

[12] It would resemble direct holding systems like those of Sweden and Finland if the principle of full segregation of accounts with the CSD into sub-accounts is maintained. It would resemble indirect holding systems of countries like France, Germany and Italy if the principle of full segregation is abolished.

CSD shares. Dividends are not paid, i.e. all profits are retained. Currently, 50% of the shares in the CSD are held by the National Bank of Kazakhstan (NBK), 25.55% by the KASE, 16.67% by 14 banks and 7.78 by 7 brokerage firms. It has a paid up capital of 18 million Tenge (106500 EUR). By new laws and regulations, the paid up capital has to be increased now to 50 million Tenge so that the CSD will have to issue new shares.

To ensure that the CSD meets the needs of all of its users, it is important that all user groups (custodian banks, brokers, the NBK, the KASE, issuers' agent banks) are appropriately represented when CSD shareholders take decisions. Given the currently very high share of the NBK in the CSD, and given the concerns banks may have against abolishing independent registrars and thus creating a monopoly position for the CSD, one may argue that the NBK should sell some of its CSD shares, possibly to banks and brokers. The banks and brokers could then use their shares in the CSD to ensure that the CSD does not misuse a possible monopoly position.

The NBK has indicated that it may be ready to reduce its share in the CSD in favor of banks and brokers, provided that it gets an appropriate price for its shares. Several parties have indicated that profit-oriented banks may not be very keen to buy shares in the CSD as it retains all profits. The only motive for such banks to buy CSD shares would then be to influence the CSD.

However, if the banks are not ready to invest an appropriate amount of money to buy CSD shares that they could use to ensure that the CSD does not misuse its monopoly position, then these banks reveal that their concerns are not too serious. A take-it-or-leave-it offer of CSD shares from the NBK to banks and brokers at an appropriate price therefore seems to be a fair way to ensure a good shareholder and corporate governance structure for the CSD.

As the CSD shares are not traded, it is not straightforward to determine the appropriate price for CSD shares. However, there are several established methods to determine the price of a company for which a market price does not exist. And international investment banks offer professional support for such an exercise.

The amount of shares that the NBK should offer remains to be determined. It may however seem to be reasonable to allow banks and brokers to have at least as many voting rights as the KASE and the NBK together, i.e. up to 50%. That would mean that the NBK should offer at least 25.55% in the CSD so that it would certainly keep 24.45%. It would keep more than 24.45% if the banks and brokers are not ready to buy the full 25.55% at offer.

Recommendation 2:

It is recommended to set up a high level group on governance of the CSD to carefully address the concerns some market players may raise if Option 2a or Option 2b is taken. The NCB, CSD, KASE, Financial Supervision Agency, banks and brokers should be represented in this group. In particular, the group should consider an offer to banks and brokers to buy shares in the CSD from the NBK as described above.

It should be noted that the NBK may need approval from the Financial Supervision Agency of Kazakhstan for selling CSD shares so that this recommendation is also directed to the Financial Supervision Agency.

3.2 Recommendations to strengthen the financial and operational soundness of the CSD

Financial soundness:

The CSD is already a systemically very important institution in Kazakhstan. Its systemic importance would be further increased if Option 2a or Option 2b is taken. As indicated in Section 3.1, these options therefore appear favorable only if the CSD is a financially sound institution that could cope with financial shocks like liability claims resulting from misconduct of the CSD.

The CSD currently holds reserves of currently 20 million Tenge (a "Reserve Fund" of 10 million Tenge and an "Insurance Fund" of 10 million Tenge), i.e. about 118000 EUR, to cover possible claims against the CSD. The CSD is not insured by an insurance company against such claims.

Recommendation 3:

The CSD is recommended to ensure a better protection against claims resulting for example from misconduct of the CSD. In particular insurance with a recognized insurance company should be considered. This recommendation is particularly relevant if Option 2a or 2b of Section 3.1 is taken, but should also be considered if the independent registrars are not abolished.

Operational reliability

As the CSD plays a critical role in the financial markets of Kazakhstan, it is important that it is operationally reliable. All weaknesses with regards to operational reliability should be addressed.

For example, the CSD makes only one information backup per day (in the evening). Thus, if its IT system breaks down a few minutes before the backup, information of a full business day are lost. In the EU, most CSDs now produce backups in real time, and often store the backup files at second sites in reasonable distance from the main data storage facility. The CSD and the KASE are planning to set up a joint backup centre that may allow more frequent backups. This initiative is very positive.

Moreover, the CSD maintains a second site at the premises of the NBK that could be used if the main site cannot be used for example due to a fire. However, the resumption time for the second site is estimated to be almost a full day. This seems to be rather long. In Europe for example, standard resumption times for second sites of CSDs are now 4 hours or less.

Recommendation 4:

The CSD is recommended to backup information more frequently. The CSD is recommended to consider whether the resumption time for its second site could be reduced at reasonable costs.

3.3 Recommendation on upgrading the international attractiveness of the infrastructure arrangements

Beside the reforms proposed above which will certainly result in a greater attractiveness of the financial market in Kazakhstan, some other measures could be taken to facilitate internationally active investors to come and invest in Kazakhstan's market.

Settlement efficiency:

The standard settlement cycle for all KASE trades is T+0. This is in principle positive as a very short cycle means that it is not very likely that one party in a trade is declared bankrupt between trade execution and settlement. Thus, counterparty credit risk is reduced.

However, there are no securities lending and borrowing program, no self-collateralizing repo arrangement[13] and no queuing arrangement[14] in Kazakhstan. Given the short settlement cycle, it is therefore impossible to send sell or buy orders to the KASE before the respective securities or funds are held on the investor's securities and cash settlement accounts. Thus, to avoid settlement fails, pre-funding is required. There is a relatively high fine on fails imposed by the KASE which ensures that fail rates are very low. (See Section A.4.1 of Annex A for more information.)

Sophisticated international investors however often wish to for example buy without Tenge on their cash settlement accounts as they may wish to hold as little currency as possible and to hold Tenge only if they know that they certainly need them.

The KASE is currently considering whether it should switch to a settlement cycle of T+2 for selected securities. Although this would be a measure that is very simple to implement, a settlement cycle of T+0 is in principle very good as explained above. The CSD is considering the introduction of net settlement. However, it is unclear if net settlement would be an appropriate approach given the relatively low trading and settlement volumes in Kazakhstan. Furthermore, net settlement creates unwinding risk.[15] To eliminate unwinding risk, additional, possibly costly and complicated, measures would need to be taken (for example guarantee funds, other collateral arrangements, settlement limits).

Another measure that is easy to implement is queuing. However, queuing means postponement of settlement, i.e. the settlement cycle would not be T+0 for all trades anymore. Furthermore, queuing implies that in particular the party with sufficient funds faces uncertainty with respect to the moment of settlement. For that reason, queuing should be limited to a few hours.

More sophisticated measures would be a securities borrowing and lending program (to allow selling without sufficient funds on the securities settlement account) and a self-collateralizing repo arrangement (to allow buying without sufficient funds). It should however be noted that a

[13] A self-collateralizing repo means that a buyer of securities that are eligible as collateral for central bank credit receives the securities even if he does not have enough funds on his cash settlement account. However, the securities would upon receipt automatically be provided as collateral to the central bank and the central bank would grant a credit to the buyer, enabling him to transfer the payment to the seller.

[14] Queuing means that settlement instructions that cannot be executed due to uncovered positions are queued until settlement is possible rather than immediately cancelled.

[15] Unwinding risk is the risk that one participant with a negative net position cannot settle because his position is uncovered, implying that all or at least some of the provisional securities and funds transfers involving that participant must be deleted and the net positions of the other participants have to be recalculated.

securities lending and borrowing program may not work very well in a relatively illiquid, narrow market like Kazakhstan. And self-collateralizing repos require that the securities involved are eligible as collateral for central bank credit. Furthermore, self-collateralizing repos would not help brokers as brokers cannot get credit from the central bank.

Recommendation 5:

It is recommended to consider the full range of measures that could allow selling and buying without sufficient securities and funds, including queuing, a securities lending and borrowing program and a self-collateralizing repo arrangement.

Transparency of risks in using the market infrastructure

It is currently relatively difficult to get information on the CSD or financial markets of Kazakhstan in general, at least in English. This might be a problem if Kazakhstan's financial markets aim at attracting foreign investors. It would be desirable to ensure that all rules, regulations, laws governing securities markets, including securities depositing and settlement, are publicly available, preferably electronically on the internet and also in English.

With a view to the CSD, it would be desirable to produce an English website of the CSD. The website should give access to the rule book of the CSD and the annual reports, provide information on due diligence and other aspects of the business of the CSD and could also be used to publish basic statistics on Kazakhstan's financial markets in general and the CSD in particular. Furthermore, the CSD should definitely complete the BIS disclosure framework questionnaire.[16] The current initiative to better the English language skills of CSD staff is very positive.

Recommendation 6:

The CSD is recommended to publish a wide range of information electronically on its website, in Russian, Kazakh and English.

Use of international standards such as ISIN codes and numbering agent

Kazakhstan currently uses national securities identification numbers (NSIN) rather than ISIN codes. In order to get closer to international standards, it may be useful to switch to ISIN codes.

Recommendation 7:

Replace NSIN codes by ISIN codes to move closer to international standards.

The Financial Supervision Agency currently acts as numbering agent. This might be reasonable especially as long as there are 20 different primary depositories in Kazakhstan. If the independent registrars are abolished (see Section 3.1), it could be considered if other institutions, for example the CSD, could act more efficiently as numbering agent. In this light, it should be emphasized that especially for short-term papers, it is important that the numbering agent is

[16] See www.bis.org.

efficient. Given the spontaneity with which they are issued, a swift issuance of ISIN codes for short-term papers is of course essential.

Annex A: Operational aspects of securities settlement in Kazakhstan

A.1) General points

The financial markets infrastructure of Kazakhstan comprises the CSD, currently 19 independent registrar firms, the Kazakhstan Stock Exchange (KASE), brokerage firms, national and international custodian banks, the National Bank of Kazakhstan (NBK) and the Kazakhstan Interbank Settlement Centre (KISC). The Financial Supervision Agency (FSA) is the sole financial regulator in Kazakhstan.

The CSD is a non-for-profit joint stock company (JSC). Shares in the CSD are not listed. Dividends are not paid, i.e. all profits are retained. 50% of the shares in the CSD are held by the NBK, 25.55% by the KASE, 16.67% by 14 banks and 7.78 by 7 brokerage firms. It was established in 1997.

The 19 independent registrars are smaller companies that are in charge of registration and primary depositing of corporate securities (see below). Before 2003, they were owned by banks and issuers of corporate securities. A law that came into force in 2003 required them to be independent JSCs.

The KASE is a non-for-profit JSC. Shares in the KASE are not listed. Dividends are not paid, i.e. all profits are retained. 21.95% of the shares in the KASE are held by the NBK and the rest by various banks and brokerage firms. The main financial instruments traded on the KASE are corporate securities, public sector securities (including government securities, municipal bonds, public agency securities like those issued by the Kazakhstan Development Bank), repos and foreign currencies. The KASE maintains a trading platform for derivatives, but it has hardly been used as there does not seem to be demand for derivatives trading in Kazakhstan. There is no central counterparty clearing house in Kazakhstan.

The KISC is the payment system of Kazakhstan. It is operated by the NBK.

A.2) Holding securities

In Kazakhstan, almost all securities issues are fully dematerialized. Only a few smaller issues exist in physical paper form. All issues administered by the CSD are fully dematerialized. Only securities administered by the CSD are discussed in this report.

According to Kazakh law, all securities held on accounts with another entity are held under custody. Thus, if the entity with which the securities are held goes bankrupt, then the account holder will not lose any securities.

The system of accounts in which corporate securities are held and the system of accounts in which public sector securities are held are different. In the next subsection, the accounting system for holding corporate securities in Kazakhstan, including corporate bonds and equities, is

described. Thereafter, we discuss the accounting system for holding Kazakh public sector securities.

A.2.1) Holding corporate securities

Registrars

For each dematerialized corporate securities issue, there is a (single) so-called "registrar". Currently, there are twenty firms that have a license to act as registrar: the CSD (since 2004) and 19 independent registrar firms.

The registrar is in principle what in other countries would be called the primary depository. The registrar for a given corporate securities issue does not have securities accounts with other institutions, but other institutions have securities accounts with the registrar. And the sum of shares held on accounts with the registrar must equal at all times the total number of shares issued.

The issuer of a corporate security can either appoint one of the 19 independent registrars or the CSD as registrar for the issue. Currently, the registrar operated by the CSD is used for only one corporate bond issue and only one equity issue (or – to be more precise – one (pension) investment fund). For all other corporate securities issues, one of the 19 independent registrars is used.

All registrars, including the registrar operated by the CSD, are regulated by the FSA.

Depository

The CSD does not only act as registrar, but also as "depository" for corporate securities. The term depository does not refer in the context of corporate securities to what is normally called primary depository, as the primary depository is the registrar as explained above. It refers to what in other countries would be called settlement system. The CSD as corporate securities depository has securities accounts with the registrar, even if the registrar is the CSD itself. And the sum of shares held on accounts with the CSD as a depository must equal at all times the sum of shares on the CSD's account with the registrar.

Thus, the CSD maintains two securities account systems for corporate securities, a registrar and a depository. For the sake of clarity, the former will be called CSD-registrar and the latter will be called CSD-depository in this report.

The records of the CSD-depository are reconciled with those of the registrars after each transaction and additionally once a month. Custody problems have not yet occurred.

Only beneficial owners and the CSD can have a securities account directly with the registrar, no matter whether it is the registrar operated by the CSD or an independent registrar.[17] If a beneficial owner does not want to open an account with the registrar directly, then he would need to open an account with a direct participant of the CSD-depository (a "nominee"). There are currently 46 direct participants of the CSD-depository (CSD-depository securities account

[17] In 2004, a new law required custodian banks and brokers to close their accounts with registrars.

holders), about half of them banks (including the NBK) and half of them are brokers. Moreover, the CSD of Kyrgysia is also a direct participant. Finally, the Russian CSD is going to open a securities account with the CSD-depository. Although not prohibited by law, it has been difficult up until now due to regulatory requirements for foreign institutions to become direct participants of the CSD-depository without establishing a branch. However, these regulatory requirements are being relaxed now so that foreign institutions could easier open accounts with the CSD-depository.

Full segregation on accounts with the CSD-depository

As required by law, there is full segregation of all holdings with the CSD-depository: Each direct participant has for each of its clients a sub-account with the CSD-depository, and another sub-account for its own holdings. Thus, even transactions between two clients of the same CSD participant have to be settled in the CSD-depository and cannot be internalized by the CSD participant. There is a sub-account also for each foreign client of a direct CSD participant.[18] Full segregation is required by law for all securities issues that are held in the CSD-depository. The only exceptions are foreign direct participants of the CSD-depository. These foreign participants are only required to segregate their own holdings from those of their clients. As the only foreign participant of the CSD-depository is currently the Kyrgysian CSD, only the account of the Kyrgysian CSD with the CSD-depository does not have to be fully segregated into sub-accounts.

Holdings on the CSD-depository's accounts with registrars are not segregated, i.e. the accounts of the CSD-depository with registrars are not divided in sub-accounts.

If an issuer of a corporate security wishes to identify the beneficial owners, then he goes to the registrar. The registrar knows all beneficial owners with an account directly with the registrar. The CSD provides the identity of all other beneficial owners to the registrar. The registrar provides all information to the issuer.

Figure 1 below provides an overview of the securities account relations for corporate securities in form of an example. The dotted arrow indicates that an issuer has issued 1000 shares in a corporate security that is registered with the registrar (the registrar operated by the CSD or an independent registrar). The other arrows indicate securities accounts. *A*, *B*, *C* and *D* are participants in the CSD-depository, i.e. have an account with the CSD-depository. *a* to *j* are beneficial owners. *a* to *h* have securities accounts with one of the four participants in the CSD-depositories. *i* and *j* have securities accounts directly with the registrar. The CSD-depository also has a securities account with the registrar. The accounts of *A*, *B*, *C* and *D* with the registrar are segregated into sub-accounts. Only *C* owns itself shares in the securities issue. Therefore, *C*'s account is divided in three sub-accounts, one for *e*, one for *f* and one for *C* itself.

It should be noted that the numbers used in Figure 1 are merely examples and are not meant to be realistic for any securities issue. In fact, what the CSD-depository holds on its account with independent registrars seems to be very small. The CSD provided data on its holdings with two of the 19 independent registrars. In terms of value, less than 0.01% of shares in equities that can be settled in the CSD are indeed held in the CSD, while more than 99.99% is held directly with the registrar. For shares in corporate bonds, less than 0.04% is held in the CSD.

[18] There are of course no sub-accounts for clients of clients of direct CSD participants. I.e. if a small German investor buys through its German bank that has an account with a direct CSD participant Kazakh securities, then there is a sub-account for the German bank in the CSD, not for the small German investor.

Lost shareholders

When many companies were privatized in Kazakhstan in the 1990s, company shares were often given to employees of the respective companies who held them on their accounts with registrars. Due to a lack of experience with financial assets, these shareholders often did not exactly know what to do with their shares. In many cases, these shareholders left the country in later years without providing their new addresses to the registrars. These shareholders are now lost in the sense that the registrars cannot contact them. Some lost shareholders may once re-emerge and claim ownership rights in their shares. Others may remain lost for ever.

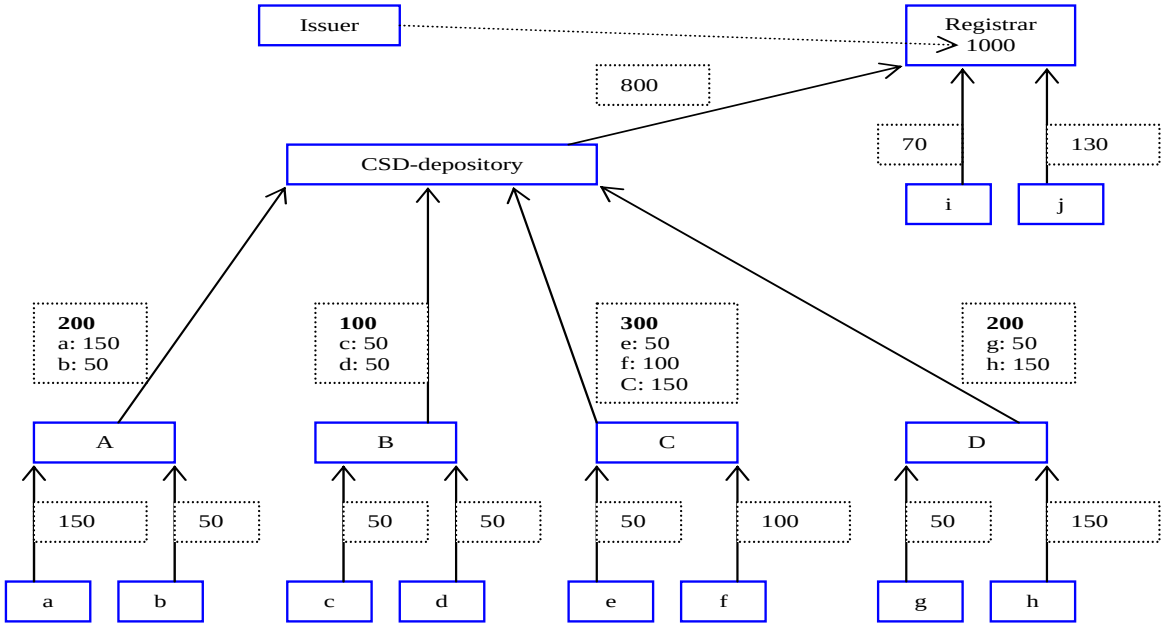


Figure 1: Holding corporate securities

A.2.2) Holding public sector securities

Depository

There are no registrars for public sector securities. The primary accounting system is the CSD-depository. The CSD-depository does not have for a given Kazakh public sector securities issue securities accounts with other institutions, but other institutions have securities accounts with the CSD-depository. And the sum of shares in the public sector security held on accounts with the CSD-depository must equal at all times the total number of shares issued.

Full segregation on accounts with the CSD-depository

Exactly as for corporate securities, law requires full segregation of all holdings of public sector securities with the CSD-depository. The only exceptions are foreign direct participants of the CSD-depository. Foreign participants are only required to segregate their own holdings from those of their clients. As the only foreign participant of the CSD-depository is currently the

Kyrgysian CSD, only the account of the Kyrgysian CSD with the CSD-depository does not have to be fully segregated into sub-accounts.

Figure 2 below provides an overview of the securities account relations for public sector securities in form of an example. The issuer has issued 2000 shares in a public sector security into the CSD-depository. All these 2000 shares are held on accounts of the direct participants *A*, *B*, *C* and *D* of the CSD-depository and the accounts of these direct participants are segregated.

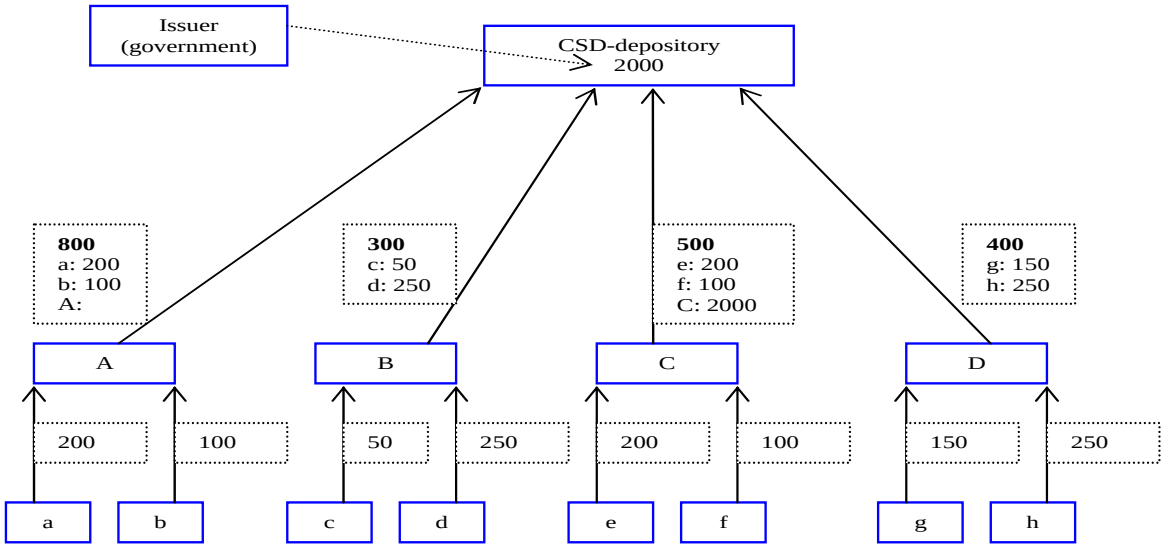


Figure 2: Holding government securities

A.2.3) Holding foreign securities: The link to Clearstream Banking Luxembourg (CBL)

The CSD has one link to another CSD, this is the link to CBL. The CSD has not only a securities account, but also a cash account with CBL. However, the link is a free-of-payment link. The cash account is only used for interest and dividend payments to participants of the CSD and the cash account balance is accordingly zero most of the time.

Exactly as for Kazakh securities, law requires full segregation of all holdings of CBL securities with the CSD-depository. The only exceptions are again foreign direct participants of the CSD-depository.

A.3) Holding cash for settlement purposes

Banks that are direct CSD-depository participants hold their cash settlement accounts with the Kazakhstan Interbank Settlement Centre (KISC) of the NBK. Brokers that are direct CSD-depository participants are not allowed to hold cash accounts with the KISC (unless the broker is also a bank). They hold cash settlement accounts with the CSD. The CSD itself has a cash account with the KISC. The amount of cash held on the CSD's account with the KISC has to equal or – during the settlement process - exceed the sum of cash on cash accounts of brokers

with the CSD. If a broker wants to increase its cash holdings with the CSD, it would transfer via one of the banks cash on the CSD's account with the KISC.[19]

The cash on a broker's account with the CSD is a liability of the CSD towards the broker (and not merely under custody). But the broker would not lose his cash if the CSD were to go bankrupt. This is because the CSD cannot use the cash received from a broker to for example grant credit or buy other assets. As mentioned above, the amount of cash held on the CSD's account with the KISC bank in principle has to equal the sum of cash on cash accounts of brokers with the CSD. If the CSD were to go bankrupt, the broker could claim the cash on the CSD's account with the KISC.

There is partial segregation of cash account with the CSD. Thus, there is a sub-account for cash owned by the broker and there is another sub-account for cash owned by all the clients of the broker. The cash accounts of the CSD and of the banks with the KISC are not segregated.

No cash accounts are held with registrars.

Figure 3 below provides an overview of the cash account relations in form of an example. The dashed arrows indicate cash accounts. *A* and *C* are assumed to be brokers, i.e. have cash accounts with the CSD. These cash accounts are segregated into two sub-accounts, one for the brokers own cash and one for his clients' cash (see broker *A*; it is assumed that broker *C* does not hold own cash on his account with the CSD.). *B* and *D* are banks and have cash accounts with the KISC. The CSD also has a cash account with the KISC and the amount of cash on this account equals or exceeds at all times the sum of the amounts on brokers' cash accounts with the CSD. Broker *A* uses bank *B* as cash agent and broker *C* uses bank *D* as cash agent. As cash on accounts with a bank is not under custody and not backed by holdings of the bank with the NBK, the bank can have more (*A*) or less (*D*) on its account with the KISC than what others have on their accounts with the bank.

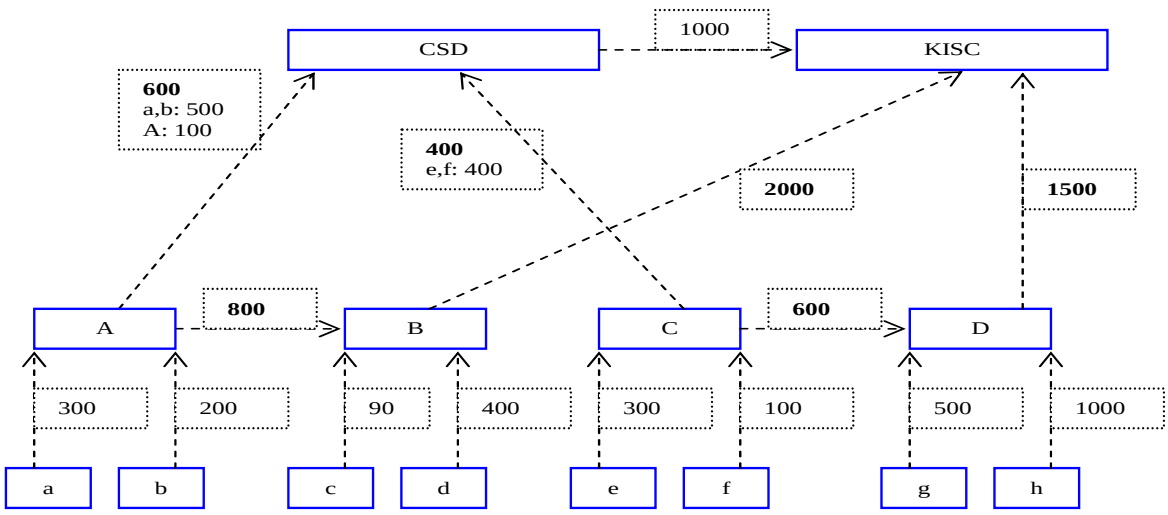


Figure 3: Holding cash

[19] Brokers have cash accounts directly with the CSD since Q4 2004. Before, brokers had to use a bank (with a KISC account) as cash settlement agent.

A.4) From trading to settlement

At the Kazakhstan Stock Exchange (KASE), securities can be traded on an official market and OTC. Furthermore, securities can be traded OTC outside of KASE, typically on the phone.

A.4.1) Trading on the Kazakhstan Stock Exchange (KASE)

Trading on the KASE is fully electronically. All trades at the Kazakhstan Stock Exchange (KASE) have to be settled through the CSD-depository. Straight through processing (STP) is applied.

Only brokers are allowed to submit trading orders to the KASE. Thus, investors who wish to buy or sell securities must in effect go to a brokerage firm. Banks can apply for a broker license for trading in public sector securities. However, law stipulates that banks cannot act as brokers for corporate securities. Moreover, there are currently 63 brokers that are members of KASE. Not all of them are members of the CSD.

It follows that in many cases, the investor does not have his securities and cash accounts with his broker, but with another institution, typically a custodian bank. For this reason, the CSD is to be kept informed at all times about the CSD participant that is to be used to settle trades of a given investor, i.e. the settlement agent for each investor.

For trades executed on the KASE, communication between brokers/settlement agents on the one hand and the CSD on the other takes place through KASE.

Trading on the official market of the KASE follows several steps:

- The investor instructs his broker to sell or buy on the investor's behalf.
- The broker submits a trading order to the official market of the KASE through the IT system provided by KASE.
- If the order can be matched with another order, then the KASE sends, again via its IT system, a request for trade confirmation to the investor's settlement agent.
- If the investor's settlement agent finds that the investor has enough cash or securities on his accounts, then the settlement agent confirms via the IT system of the KASE.
- If the settlement agent confirms, then the KASE sends settlement instructions electronically to the CSD.
- The CSD settles the trade, if all positions are indeed covered. Then the CSD sends electronically a settlement confirmation to the KASE.
- Finally, the KASE confirms the settlement via its IT system to the broker and to the settlement agent. Only if the broker or the settlement agent requires also a settlement confirmation directly from the CSD, then he/it would receive such a confirmation, either by fax or, if installed for the specific broker/settlement agent, electronically through an IT system provided by the CSD.

Trading on the OTC market of the KASE follows similar steps:

- The investor instructs his broker to sell or buy on the investor's behalf.
- The broker submits a trading order to the OTC market of the KASE through the IT system provided by KASE.
- If the broker can be matched with another broker, then the two brokers are informed accordingly through the KASE IT system.
- The brokers agree on the terms of trade (price, quantity etc.) in bilateral negotiations, typically on the phone.

- If the two brokers agree, then they both send a settlement instruction to the KASE via the IT system of KASE.
- Then the KASE sends, again via its IT system, a request for trade confirmation to the investor's settlement agent.
- If the investor's settlement agent finds that the investor has enough cash or securities on his accounts, then the settlement agent confirms via the IT system of the KASE.
- If the settlement agent confirms, then the KASE sends settlement instructions electronically to the CSD.
- The CSD settles the trade, if all positions are indeed covered. Then the CSD sends electronically a settlement confirmation to the KASE.
- Finally, the KASE confirms the settlement via its IT system to the broker and to the settlement agent. Only if the broker or the settlement agent requires also a settlement confirmation directly from the CSD, then he/it would receive such a confirmation, either by fax or, if installed for the specific broker/settlement agent, electronically through the IT system provided by the CSD.

Repo trading

Securities are traded on the KASE outright and as repos. There are two types of repos, simple and automatic repos. In case of automatic repos, the KASE instructs the CSD to transfer the securities to the securities borrower (and the cash to the securities lender), to block the borrowed securities on the account of the securities borrower until the repo expires and to automatically retransfer the securities and the cash (plus the repo rate) when the repo has expired. In case of simple repos, KASE instructs the CSD to transfer the securities to the securities borrower (and the cash to the securities lender), but the securities are not blocked on the securities borrower's account. And the retransfer of the securities and the cash (plus repo rate) requires new instructions from the repo partners (to be sent to the CSD via KASE). The repo partners can therefore renegotiate the length of the repo contract flexibly during its lifetime.

Settlement fails

If orders are matched on the KASE, but settlement is not possible because the investor does not have the securities or funds on his accounts with the settlement agent, then settlement is cancelled, the CSD informs the KASE and the KASE informs the brokers. The broker that represents the investor with sufficient securities or cash can now decide if he wants to cancel the trade or to try to settle the trade again. If he decides to cancel the trade, then the other broker is fined by KASE and the fine is extended to the first broker. If the other broker is not responsible for the fail, then he can issue a claim against the responsible party. The fines imposed by KASE for fails are high. According to one bank, only about 0.1% of the volume of KASE trades therefore fails.

A.4.2) Trading outside the KASE

Securities trades can of course at any time be initiated outside the KASE, for example on the phone. If such a trade is to be settled in the CSD, then the settlement agents of the investors would send settlement instructions directly to the CSD, either by fax or, if installed for the specific settlement agent, electronically through the IT system provided by the CSD.

However, if trades in corporate securities are concluded outside of the KASE, then up to two registrars (one of which may be the CSD-registrar) may be involved in the settlement. If – for example – the seller has his account directly with a registrar, but the buyer has her account with the CSD-depository, then the corporate securities are settled across the two institutions: The seller's account with the registrar is debited and the CSD-depository's account with the registrar and the buyer's account with the CSD-depository are credited.[20] Communication between a beneficial owner and a registrar requires that the beneficial owner personally goes to the registrar, no matter whether it is the CSD-registrar or an independent registrar. The independent registrars typically have offices in various places in Kazakhstan for this reason. Communication between the independent registrars and the CSD takes place by fax. To confirm the fax messages, signed and stamped papers need to be exchanged later, typically after about one week.

A.5) Settlement

A.5.1) Settlement through the CSD

If settlement takes place through the CSD, then the securities leg is settled in the CSD-depository and the cash leg is settled in the CSD (if both parties are brokers) or the KISC (if both parties are banks) or in both (if one party is a broker and the other a bank). In these cases, the securities and the cash leg are settled on a real-time gross settlement basis. Full DvP is ensured as securities debit positions are first blocked on the seller's securities account, then cash is transferred to the buyer's account and finally securities are transferred if and only if cash has been transferred successfully (DvP Model 1). If both parties have a cash account with the KISC, then the cash is first transferred from the buyer's cash account to the CSD's cash account with the KISC and then passed on to the seller's cash account.[21] The CSD is in principle a normal participant in the KISC. However, it has the right to debit cash accounts of banks with the KISC for settlement purposes without a confirming instruction from the bank. All instructions to settle the cash leg of securities trades are sent by the CSD to the KISC through the IT system provided by the KISC.

The standard settlement cycle for trades on KASE is according to KASE rules T+0. Instructions are usually settled in the CSD-depository about five minutes after the CSD has received the settlement instructions from KASE. Intraday finality (instructions received on a given day are settled on the same day) is therefore ensured. Because of the short settlement cycle, it is impossible to replenish securities or cash accounts after trading orders have been sent to the KASE and before settlement is due.

Instructions for trades agreed upon outside of the KASE are also settled in the CSD-depository about five minutes after the CSD has received the instructions, thus intraday finality is again ensured. Trading partners can agree on a later settlement date if they conclude a trade outside of KASE.

A securities lending and borrowing program does not exist. Settlement instructions are not queued, i.e. they are immediately cancelled if they cannot be executed when due because of uncovered positions.

[20] Note that there is no registration after settlement (i.e. after debiting and crediting securities accounts). Or to put it differently, registration is the same as settlement.
[21] Before 1998, cash was transferred directly from the buyer's to the seller's cash account with the KISC.

All types of settlement in the CSD, including free-of-payment settlement, require, by law, matching of settlement instructions.

A.5.2) Settlement if a registrar is involved

If an independent registrar is involved in the settlement process, then DvP is not ensured as the registrars do not interact with any cash settlement agents.

If one party in a trade has his account directly with an independent registrar so that settlement between CSD-depository and independent registrar is required, then settlement often takes several hours. Such trades however take place only about 5 to 6 times a day. If it happened more often, then settlement of such trades could take significantly more time due to the paper work involved: the CSD communicates with the independent registrars by fax (see above).

As mentioned above, the CSD operates the registrar for currently two corporate securities issues. However, as a matter of fact, currently no beneficial owners hold shares in these two issues directly with the registrar so that settlement of secondary market transactions between the CSD-depository and the CSD-registrar never occurs.[22]

A.6) Corporate actions

The CSD is not involved in the settlement of corporate actions (dividend payments, interest payments etc.) for corporate securities. The registrar is obliged to provide the names and addresses of all shareholders/bondholders to the corporate issuer if required e.g. for settlement of corporate actions or to invite to a general assembly. The CSD is obliged to provide the registrar with the names and addresses of those securities holders that do not have their accounts directly with the registrar, i.e. that are not known to the registrar. The registrar then provides all information in a package to the issuer. Finally, the issuer initiates (typically through a paying agent bank) the transfer of dividend or interest payments to the beneficial owners.

In case of foreign CSD-depository participants with no segregation of their securities accounts (e.g. the Kyrgysian CSD), interest and dividend payments are made to the participant who would then pass on the payments to the beneficial owners.

Beneficial owners (located in Kazakhstan) with an account with a CSD-depository participant can refuse to have their identity disclosed to the CSD/registrar/issuer. In these cases, the interest and dividend payments would be made by the issuer to the CSD-depository participant who would then pass the payment on to the beneficial owner. However, only beneficial owners that disclose their identity to the CSD can get tax reductions. There are therefore strong incentives for beneficial owners to disclose. Almost all beneficial owners therefore disclose their identity to the CSD.

(A shareholder/bondholder may also ask the registrar for the identity of all other shareholders/bondholders. However, each shareholder/bondholder can prohibit the registrar to

[22] Before the CSD was established in 1997, the NBK operated a CSD for public sector securities. Corporate securities however were deposited and settled exclusively in registrars (which were at that time operated and owned by banks and corporate issuers, see Section A.2; and beneficial owners could hold securities with registrars still indirectly through banks/nominees, see Footnote 17).

reveal such information to other shareholders/bondholders. Only the issuer has the right to get information on the identity of the holders.)

In case of public sector securities, the CSD is involved in the settlement of for example interest payments. The total interest for the issue is paid to the CSD's cash account with the KISC and the CSD redistributes the payment to its participants. The CSD participants then pass the interest payments on to the beneficial owners.

A.7) Activities of the NBK

Operations

To provide liquidity to the market, the NBK mainly uses repos in public sector securities (NBK as securities borrower and cash lender). Most of these repos are carried out on the KASE. In these cases, counterparties are brokers that may or may not be banks. Repos traded on the KASE have a maturity of typically 7, 14 or 28 days. All these repos are of course settled through the CSD. At rare occasions, the NBK carries out repos outside of the KASE. Again, these repos are also settled through the CSD. If the NBK carries out a repo outside of the KASE, it has to send settlement instructions directly to the CSD. This is done electronically to through the IT system provided by the CSD.

The NBK furthermore offers an overnight credit facility. Credit from this facility is uncollateralized so that the CSD is not involved in the settlement of these operations. The overnight facility however is hardly used as the interest rate for it is relatively high.

The NBK does not give any intraday credit. However, if banks need urgently liquidity, then they typically sell foreign currency to the NBK.

Issuance of government securities

The NBK acts as agent for the Ministry of Finance in issuing of government securities. Such securities are issued by auction. These primary market auctions are carried out on the KASE and accordingly settled through the CSD.[23]

[23] Until 2004, these auctions were conducted by the NBK itself outside of the KASE.

Annex B: Scope of Work

Central Securities Depository External Adviser

Background

Elena Studenina Head of Depository Department on behalf of Mr. Bakhytzhan Kapyshev, President of the Central Securities Depository of Kazakhstan has asked for Pragma Corporation / USAID's assistance in designing a plan to review the country's existing depository-registrar system in order to bring it more in line with standards and best practices of the EU countries. The plan would also serve as a model for introducing similar changes in the countries of the so called Common Economic Space (Russia, Belarus, Ukraine and Kazakhstan).

Kazakhstan system of securities registration and settlements was established in the mid 1990's under the support of the USAID. While it is considered the most adequate in the region it is felt the Kazakhstani system does not comply with current securities markets organizational and operational standards. The resultant plan will help bring Kazakhstan's banking sector into compliance with the EU standards up until 2007 and help with the President of Kazakhstan's desire to develop a regional financial center in Kazakhstan. Mr. Marc Bayle Deputy Head of Securities Settlement Systems Policy Division of ECB has indicated the willingness of the ECB to participate in the enhancement of the Kazakhstan's market infrastructure as undertaken by USAID. He has nominated Mr. Jens Tapking an expert in securities settlement systems policy, who is currently in charge of assessing Central Depositories in the Euro Area to work on this project.

The Pragma Corporation views this as a Strategic Policy rather than a Technical Assessment project. We are allocating a maximum of 10 days of field work, but we anticipate substantially less assuming the CSD can supply the appropriate data prior to the consultants field work. The ECB consultant will process the data and provide the CSD with a report and recommendations based on Kazakhstan's experience and best examples of other countries.

Accordingly, the consultant/s will:

Review the structure of the registration system in Kazakhstan as compared to certain EU countries that the consultant feels are appropriate to the situation in Kazakhstan. The CSD has suggested England, France, Germany, and Switzerland. The non-EU countries to be compared would be the US and Canada. By registration systems it is defined as a system of institutions that conduct registration of securities and offer services related to registration of ownership rights on securities, confirmation of rights, and registration of transactions of securities either in a central depository or company registrars.

Specific to the review of the EU and non-EU countries the consultant will;

- Compare the role of central depositories and registrars in those countries when registering transactions, preparing shareholder lists for participation in a shareholder general meeting or dividend payment.
- Review and compare the functions of central depositories versus registrars.
- Compare the number of central depositories, registrars, and joint stock companies in those countries and make recommendations as to the appropriate number for Kazakhstan.

- Review the independence of the central depositary systems with regards to company registrars and their function in the capital markets.

- Work with the Financial Supervisory Authority and KSE in recommending changes in the registration system if required.

Deliverables

The consultant should summarize his findings, conclusions regarding his analysis. Recommendations should be made regarding further steps to be taken for changes if needed in the Central Securities Depository and will be submitted in exit memoranda to Pragma FSI/USAID.

Results to be achieved

Working with the Central Securities Depository the consultant will process the data and provide the CSD with a report and recommendations that will provide a blueprint for the central depository to make it closer to EU standards.

LOE required: up to 10 days

Annex C: Securities depositing and registration arrangements in selected countries

In this annex, the securities depositing and registration landscape in Finland, Germany, France, the UK and the US is briefly described.

C.1) Finland

The depositing, registration and settlement arrangements in Finland very much resembles those of Kazakhstan for public sector securities as it was described in Annex A (in particular Section A.2.2). In particular, Figure 2 would be an appropriate description of the situation in Finland. The Finish CSD, APK, is the only primary depository in Finland. Securities accounts with APK are fully segregated in sub-accounts, i.e. each direct APK participant has for each of its clients a sub-account with APK, and another sub-account for its own holdings.[24]

In contrast to the CSD of Kazakhstan that opens cash accounts for brokers, cash cannot be held with APK. All APK participants need to have a cash settlement account with the Bank of Finland (Finland's central bank) or with a cash settlement agent that has a cash account with the Bank of Finland. Thus, if the institutions *A* and *C* were deleted from Figure 3 of Annex A, the Figure would relatively well describe the situation in Finland.

Like in Kazakhstan's CSD, APK settles in real-time gross settlement mode (DvP model 1). Again like in Kazakhstan, to settle the payment side, the buyer transfers money from his (or his agent's) Bank of Finland account to APK's account with the Bank of Finland and APK transfers the money on to the seller's (or seller's agent's) account with the Bank of Finland.

Like for public sector securities in Kazakhstan, corporate actions like dividend and interest payments are settled with an involvement of APK. The issuer transfers the payment to APK's cash account with the Bank of Finland. APK transfers the payments on to APK participants. The APK participants then make payments to their clients.

C.2) Germany

The German CSD, Clearstream Banking Frankfurt (CBL), is the only primary depository in Germany. Segregation of securities accounts with CBF into sub-accounts is not required. The system of holding securities can be described by the following Figure 4. (For example, institution A has 800 on its account with CBF, 300 are owned by its clients, and 500 are owned by A.)

[24] Sweden (VPC) and Greece (the CSD of the Athens Stock Exchange) are organised in a similar way.

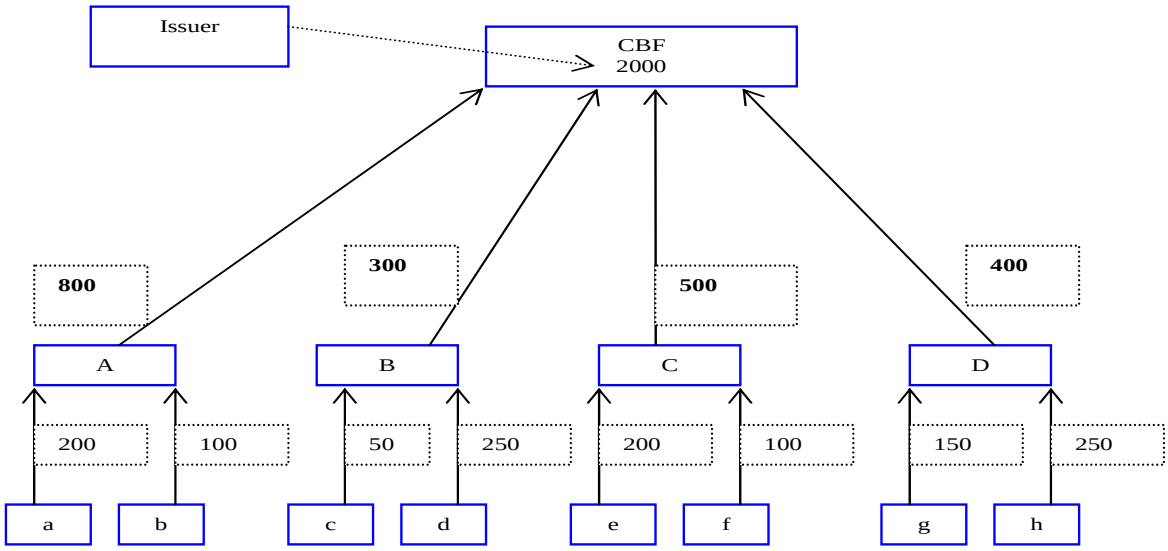


Figure 4: Holding securities in Germany

There are two types of securities issues in Germany, “bearer securities” and “registered securities”. The fast majority of German securities are (dematerialised) bearer securities. Figure 4 describes the securities account system for both types of securities.

However, there is a so-called “registrar” for each issue of registered securities, but not for bearer securities issues. We now consider only registered securities. The registrar is typically operated by an agent of the issuer. The registrar in principle registers the name, address and profession of the beneficial owner. However, a beneficial owner can refuse do be registered. In this case, a nominee of the beneficial owner would be registered as the owner and a contract between the nominee and the beneficial owner could ensure that all rights are transferred from the nominee to the beneficial owner.

However, neither the CSD or beneficial owners or nominees of beneficial owners have securities accounts with the registrar. And the registrar has no securities account with the CSD. The German registrar is neither a depository and or a participant of CBF!

CBF however acts as service provider to the registrars. If securities are transferred, then the beneficial owner’s bank sends, together with the instruction to credit/debit the securities to/from the bank’s securities account with CBF, the name of the new/old beneficial owner (or his nominee) to CBF. CBF then passes the information on to the registrar.

Settlement in CBF already constitutes finality. For example, if the seller goes bust between settlement and registration, then the securities still get registered in the name of the buyer and cannot be claimed by the creditors of the seller. Dividend payments are initiated according to the records of CBF. However, voting rights at general assemblies are issued according to the records of the registrar.

There are two types of registered securities, those with and those without restricted transferability. Ownership rights in securities with restricted transferability can be transferred only with approval of the issuer. If the issuer of securities with restricted transferability refuses a transfer, then no unwinding has to take place in CBF, but new instructions are to be sent to CBF as if a completely new transaction is to be settled.

C.3) France

All French securities are nowadays fully dematerialised. The French CSD, Euroclear France, is the only primary depository in France. Segregation of securities accounts with Euroclear France into sub-accounts is not required.

There is a so-called "registrar" for each French securities issue, typically operated by the issuer or an agent of the issuer. Two forms of French securities can be distinguished:

"Essentially registered securities": The name of each single beneficial owner is kept in the records of a registrar. The beneficial owner can hold the securities in two ways as he/she prefers, as administered registered securities or as purely registered securities. If securities are held as administered registered securities, then they are held on an account of the beneficial owner with a custodian bank which itself holds them on an account with Euroclear France (or with a custodian that has an account with Euroclear France etc). If securities are held as purely registered securities, then they are held on an account of the beneficial owner with the registrar which itself holds them on an account with Euroclear France.

Figure 5 describes this situation. 2000 shares in an essentially registered security have been issued in Euroclear France. The beneficial owners *a* to *f* hold their shares in administered form through custodian banks *A*, *B* and *C* (which themselves may hold own securities) with Euroclear France. Beneficial owners *g* and *h* hold their securities as purely registered securities, i.e. on accounts with the registrar that itself holds them on an account with Euroclear France. Personal information on all beneficial owners (including *A*, *B* and *C*) are kept in the registrar.

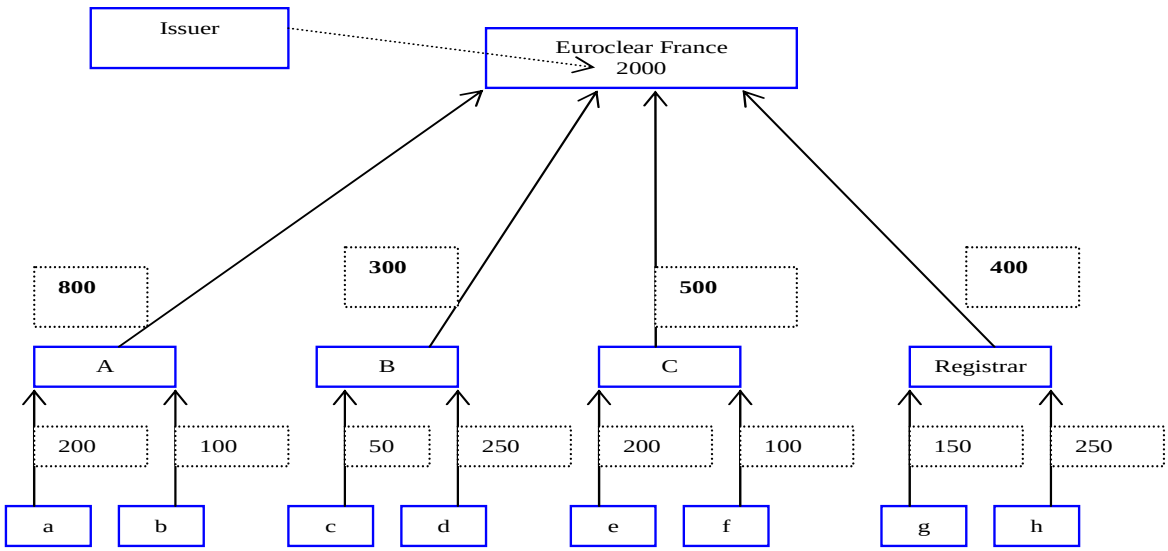


Figure 5: Holding securities in France

"Occasionally registered securities": The beneficial owner can hold these securities in three ways as he/she prefers, as "bearer" securities, as administered registered securities and as purely registered securities. The names of the beneficial owners of securities that are held as bearer securities do not appear in the registrar. The names of the beneficial owners of securities that are held as (administered or purely) registered securities do appear in the registrar. (I.e. each beneficial owner can decide whether he wants his name registered in the issuer's registrar or not.) If securities are held as bearer securities or as administered registered securities, then they are held on an account of the beneficial owner with a custodian bank that itself holds them on an

account with Euroclear France (or with a custodian bank that has an account with Euroclear France etc.). If securities are held as purely registered securities, then they are held on an account of the beneficial owner with the registrar which itself holds them on an account with Euroclear France.

Figure 5 also describes the situation for occasionally registered securities. There is no difference in the securities account structures. The beneficial owners *a* to *f* hold their shares in administered registered form or in bearer form through custodian banks *A*, *B* and *C* with Euroclear France. Beneficial owners *g* and *h* hold their securities as purely registered securities, i.e. on accounts with the registrar that itself holds them on an account with Euroclear France. Personal information on all beneficial owners that hold securities in registered form is kept in the registrar.

In case of occasionally registered securities, the issuer may request Euroclear France to collect on a chosen date from custodian banks the names of those beneficial owners that hold securities in bearer form.

In case of non-French beneficial owners, the name of a nominee instead of the name of the beneficial owner can be kept by the registrar.

Most issuers opt for occasionally registered securities and the beneficial owners typically opt for bearer holdings. The essentially registered form is mainly used for equities of military firms or media firms.

Beneficial owners remain unknown to Euroclear France in all case.

The book-entry in Euroclear France finalises the settlement. If the buyer's registration is contested, then the case must be resolved between the parties outside Euroclear France. Euroclear France rules do not provide for an unwinding or reversal of settlement.

Registration for registered securities takes about 2 to 5 days.

C.4) UK

The UK CSD, Crest, is the only primary depository in the UK and also used as primary depository for Irish equities.

There is a registrar for all UK and Irish securities. Or to put it differently: All UK and Irish securities are registered securities. The need to have a registrar for all UK and Irish securities is a requirement from UK and Irish company law.

For Irish securities, the issuing company or an agent of it acts as registrar.

For UK securities, there are (since 2001) two registrars for each issue, the operator registrar and the issuer registrar. The operator registrar is Crest (since 2001). The issuer registrar is the issuing company or an agent of it. The operator registrar is the registrar for all shares in the issue that are kept (in book-entry form) on accounts with Crest (uncertificated shares). The issuer registrar is the registrar for all shares in the issue that are in physical form (certificated shares). I.e. if a share is withdrawn from a Crest account and passed on to the beneficial owner in paper form, the share is removed from the operator registrar and gets registered in the issuer registrar.

Crest/the operator registrar has no securities accounts with the issuer registrar and the issuer registrar has no securities accounts with Crest/the operator registrar.

The registrar keeps as information the name of the legal (or "registered") owner. The legal owner is either the beneficial owner (the "final" owner) or a nominee of the beneficial owner. The beneficial owner decides whether his name or a name of a nominee shall be kept in the registrar. (I.e. the beneficial owner can appoint a nominee.) Crest for example has around 40000 members, i.e. much more than most continental European CSDs, but much less than there are beneficial owners of UK securities. A beneficial owner who does not want to exert his voting rights typically appoints a nominee who would than use the beneficial owner's voting rights instead. However, many beneficial owners who have appointed a nominee still exert their voting rights themselves.

The transfer of legal title requires registration, i.e. settlement is not enough. (For certificated shares, this is the difference between registered and bearer securities. For a bearer security in paper form, transfer of legal ownership is achieved when the paper certificate has changed hands. A registration is not required.) Thus, if there is a time lag between settlement and registration, and – say – the seller of securities goes bust between settlement and registration, then the settlement needs to be unwound (replacement cost risk). If the seller has sold on the securities already, then unwinding gets even more complicated. In case that there is no proper DvP, the buyer may even lose his cash without getting the securities (principle risk). In cases in which Crest acts as register, there is no time lag between settlement and registration as both functions are carried out by Crest. In all other cases, the time lag between settlement and registration must not be longer than 2 hours and is typically about 30 minutes.

C.5) US

Only a few US securities are bearer securities in the sense that (i) they exist in paper form and the owner is the person who holds them in his hands, (ii) there is no registrar for them. If they get stolen, then the thief is the new owner. If they get lost, then ownership rights expire.

Almost all securities issued under US law are registered securities, i.e. there is a registrar for each security issue, operated by the issuer or an agent of the issuer.

All shares of a given security that are deposited in DTC, the only primary depository for US corporate securities, are registered at the registrar in the name of DTC's nominee Cede & Co. (Cede & Co is a company set up by DTC for the sole purpose of acting as nominee for DTC.) If registered shares are withdrawn in paper form from a DTC account, DTC instructs the registrar to register the shares now into the name of the beneficial owner or a nominee of the beneficial owner. In contrast to bearer securities, ownership in registered paper form securities shares is evidenced by the entry in the registrar rather than by the physical holding in one's hands.

Note that registrars are no primary depositories. Neither DTC or Cede & Co. or beneficial owners or their nominees have securities accounts with registrars. Moreover, registrars have no securities accounts with DTC.

Annex D: List of institutions that have been interviewed

The Central Securities Depository of Kazakhstan

The Financial Supervision Agency of Kazakhstan

Fondoviy Service (a local brokerage company)

HSBC Kazakhstan

The Kazakhstan Interbank Settlement Centre of the National Bank of Kazakhstan

The Kazakhstan Stock Exchange

The National Bank of Kazakhstan

Registrar System of Securities (an independent registrar)

Turan Alem (a local bank)

Monetary Roundtable
Almaty, April 2005

1. I am really pleased for the invitation to today's round table and for the possibility to express my views about some issues important for the Kazakh economy. During my professional carrier in the Czech National Bank I was meeting frequently with foreign experts and I always admired their ability to arrive, look around and be ready to give pieces of advice. I do not think I am endowed with such general advising skills. My expertise is rather based on my personal experience with monetary policy making in the transition Czech economy, it has origin in the thought-provoking process of learning by doing, sometimes even of learning by doing mistakes. My role here is in one aspect easier because the National Bank of Kazakhstan plans, I think rightly, to adopt inflation targeting as a general framework for conducting monetary policy. It is the same approach the Czechs applied in 1998. It should be noted that at that time the inflation targeting was practiced only in a handful of developed countries. The Czech Republic was the first who sent the message that this regime of monetary policy may serve equally well to a less developed country. Since then the family of inflation targeters grew substantially in number, particularly among emerging market economies. Therefore I am deeply convinced that even the Kazakh public will appreciate its benefits.

2. Many people take for granted that inflation targeting is a simple approach whose substance consists in playing with setting and hitting the targets and that the central bank performance can be easily judged by the frequency with which inflation targets are met. I call this view the text-book approach. The Czech experience demonstrates that inflation targeting is instrumental in strengthening transparency of central bank policies, in cultivating

communications skills when explaining monetary decisions, in making the central bank moves more predictable and credible or in supporting the coordination between the central bank and the government.

3. I found out that the NBK pays attention to some of these principles. The document "Основные направления денежно-кредитной политики на 2005-2007 годы" is clear about policy intentions, highlights the diminishing role of monetary aggregates, outlines major risks in the way of presenting alternative scenarios as well as hints on the general implications for direction of interest rate changes. This key policy document thus manifests a great deal of transparency. There is one apparent shortcoming, namely discriminatory treatment of those readers who are not familiar with the Kazakh or the Russian language. I would strongly recommend the current Czech practice to make all key policy documents available simultaneously both to domestic and foreign analysts which means to put on the web simultaneously English translation. The main reason why we adopted such non-discriminatory approach lies in the fact that the major market players with big influence on the Czech currency who has to be informed fast and without any noise do not dwell in Prague but in London or Frankfurt. I bet that the achieved financial openness of the Kazakh economy makes these information requirements not so much different from the Czech case.

4. The viability of inflation targeting should be primarily seen in the ability of this framework to solve practical problems. My understanding of the basic dilemma the Kazakh monetary authorities are exposed to is following: how to conduct monetary policy in the face of large capital inflows. There are both welcome as well unwelcome consequences of these inflows with unfair distribution among economic agents. While the recipient of welcome consequences is usually the business sector of the economy, the task of the central bank mainly consists in containing unwelcome consequences. The

general wisdom says that the interest rates should be rather low in order not to provoke further inflow of foreign capital, but they should not be too low otherwise inflationary pressures might be mounting. At the same time interest rates should not be even too high as high interest rates expose the economy to the risk of excessive exchange rate appreciation.

5. In my attempt to evaluate this general trade-off in Kazakhstan I found myself in difficulties to answer the simple question what is the level of monetary policy rate? The National Bank of Kazakhstan uses a couple of instruments each of them yielding different interest rate level. The document "Обзор инфляции 4 квартал 2004 года" reports that central bank notes bore average interest around 3.5 %, the repo rate which is expected to fluctuate within the band ± 2 percentage points was about 1.2 %, deposit accounts offered the average yield around 2.2 %, overnight rate was increased to 8.5 % and the so called official refinancing rate was kept at 7 %. I think that the adoption of inflation targeting will eventually lead to substantial simplification of the structure of monetary instruments with clear objectives to become a market-maker in determining short-term interest rates and to strengthen the signaling role of the interest rate changes. The same simplifying process took place in the Czech Republic. During the period of managing money supply a host of sterilization instruments with a wider spectrum of maturities and slightly different objectives were also in use. Now, there is only one major instrument, namely two-week repo facility, and therefore only one policy rate. Two supplementary instruments are also available, namely overnight depository facility and overnight lending facility. Their rates are however mechanically connected to that of the 2W repo rate. This simplified structure made the conduct of monetary policy more understandable and therefore more effective in anchoring inflation expectations.

6. At this point, let me digress to the widely discussed problem of the so called excess liquidity. There is a paradox because the adjective excess in fact describes the shortage, namely the shortage of long-term government debt and perhaps the shortage of banking credit. These two shortages are blamed for generating idle money in the hands of banks and pension funds and therefore for generating excessive demand for central bank deposit facilities. The question is to what extent the Kazakh central bank should resist this pressures or to yield to this pressure. In my comment of this dilemma I would draw a line between two things. From the view of mechanics of money creation and money destruction the ultimate reason of excess liquidity is the policy of partial sterilization of exchange rate interventions. If the new money generated by injections from the external sector is not withdrawn from the circulation by the central bank, and nobody else can do it, the money is chasing some return and by doing so the money market interest rates are pushed down. In other words, the problem of excess liquidity can be also interpreted as a disguised or less transparent form of keeping interest rates low. By saying that I am not critical about low or even negative real interest rates in Kazakhstan at time of large capital inflows. My recommendation is to employ procedures by which the policy of negative real interest rates if judged appropriate under current circumstances is the outcome of deliberate calibration of monetary interest rates and not the side effect of other policies.

7. But the problem with excess liquidity is primarily a structural one. Why the government is not issuing more long-tem debt if this stance creates a shortage of risk-free instruments into which the pension funds could allocate savings of their clients? The answer sounds simple. There is no need to issue government debt because the government practically does not run budget deficits. Frankly speaking, this is quite a unique situation from the historical experience of European economies which face the opposite problem of how

to get excessive public debt under control. If the Kazakh debate about negative consequences of insufficient public debt was more echoed in Europe, I guess that the criticism of the Stability and Growth Pact which calls for balanced budget over the business cycle would be even sharper. Therefore, it is tricky to give advice on a problem with which there is no practical experience in my country. On the other hand if such problem would arise I am sure that the Czech Ministry of Finance would take responsibility for finding a solution. Division of labor should be unambiguous. The natural habitat of the central bank is the short end of the yield curve, or short-term money market interest rates, because this is dictated by the efficiency of monetary management. The central bank engagement in the long end of the yield curve distorts market signals about inflation expectations and gives privileged competitive edge to selected market player. Therefore, the current objective of the National Bank of Kazakhstan to shorten average maturity of monetary instruments and to concentrate its operations predominantly on the monetary functions of these instruments should be seen as a right step in the right direction.

8. On several occasions I realized how topical is the issue of choosing the optimal exchange rate regime for Kazakh economy. The central bank argues that the inflation targeting oriented on the sole goal of maintaining price stability makes it impossible to follow another target for the exchange rate level. On the other hand government authorities seem to be worried that the real economy might be hurt if the exchange rate is not paid explicit attention. This is a traditional dispute between those who are concerned that inflation targeting might give rise to a kind of obsession with low inflation and those who maintain that there is nothing inherent in inflation targeting that would justify such concerns. Let me express me view on this topic.

9. First, by adopting inflation targeting the central bank in a trade dependent economy like Kazakhstan or the Czech Republic will have to pay substantial attention to the exchange rate behavior. The reason is simple because the exchange rate is one of the crucial determinants of inflation. Too fast appreciation may indicate undershooting the target and the central bank will have to react or by interest rate cuts or by direct interventions on forex market. It should be up to the central bank to cook the appropriate mix of responses.

10. Second, in 2003 the Czech currency experienced strengthening in such a scale that the central bank described the firming as the exchange rate bubble. Nobody was happy with such wild exchange rate fluctuations, but at the same time nobody saw the remedy in the return to the fixed exchange rate. Such consensus was built up on the fact that another fixed exchange rate of the Czech currency collapsed under the attack of speculative capital a couple of years ago. Hungary experienced similar difficulties in previous year when speculators tested their framework of dual goals: the exchange rate band shadowing the so-called ERM2 arrangement and the disinflation target. The lesson is simple: do not peg the exchange rate because the costs of defending the peg, either successfully or unsuccessfully tend to be pretty high. This lesson should be listened to by Kazakh authorities, particularly if they plan to eliminate remaining capital controls and to establish full capital mobility.

11. And last but not least, the observed real appreciation of tenge is mainly driven by the appreciation vis-à-vis US dollar. The strengthening vis-à-vis Russian ruble or euro looks more reasonable. But in these days many currencies throughout the world are experiencing fast appreciation vis-à-vis US dollar. The explanation for weak dollar lies outside their countries, in large trade deficits in American economy. The tenge appreciation thus has

significant structural elements which are difficult to correct by choosing among exchange rate regimes.

12. The Czech experience with inflation targeting thus demonstrates that central bank in a trade dependent economy cannot be indifferent to the exchange rate behavior because exchange rate instability translates sooner or later into inflation instability. But measures aimed at exchange rate stability must be consistent with financial openness of the economy. What kinds of measures are available? Let me shortly elaborate on one of them.

13. In the Czech Republic has been successfully applied so called privatization account which is a regulation aimed at isolating the impact of large privatization receipts on the foreign exchange market. The Czech government is paid for the sold assets in foreign currency and the conversion into domestic currency is done on the accounts of the central bank. As a result, the privatization receipts do not enter the forex market and do not even provoke appreciation expectations. I find many similarities between the Czech privatization scheme and the National Fund of the Republic of Kazakh, shortly the oil fund. In both cases conversions are processed on the central bank books in the attempt to shield the exchange rate from large forex transactions. Maybe, this shielding effect might be improved, for example by allowing exporting firms to honor tax liabilities in foreign currency, particularly if these revenues are channeled to the oil fund, converted back to foreign currency and invested into foreign assets.

14. Were it is the Kazakh oil fund or the Czech privatization account, two important regulatory functions should be born in mind. The first is the already mentioned role in isolating the exchange rate of domestic currency from the impact large foreign exchange revenues. But the same importance should be should be paid to the second regulatory function which consists in

isolating the macroeconomic balance from inflationary impact of spending accumulated reserves too fast. The Czech National Bank was quite successful in negotiating the first regulatory pillar as the government agreed to run a scheme which compensates the central bank for taking over the exchange rate risk into its balance sheet. Unfortunately, no commitment regarding the speed of using privatization revenues was accepted by the government. It seems to me that similar vacuum exists in Kazakhstan. After all, the government will argue that it is its sovereign responsibility to find uses for the oil fund money. On the other hand, the sovereign responsibility of the central bank is to take care about price stability. I think that the inflation targeting may assist in reaching reasonable compromise. The point is that if the government expresses consent to the central bank inflation target, it should behave in such a way that the target is not undermined by the actions of the government. I understand that it may be tricky to put this thesis in practice. But it works somehow in the Czech Republic and I believe that it will also work in Kazakhstan.

Oldrich Dedek
Czech National Bank

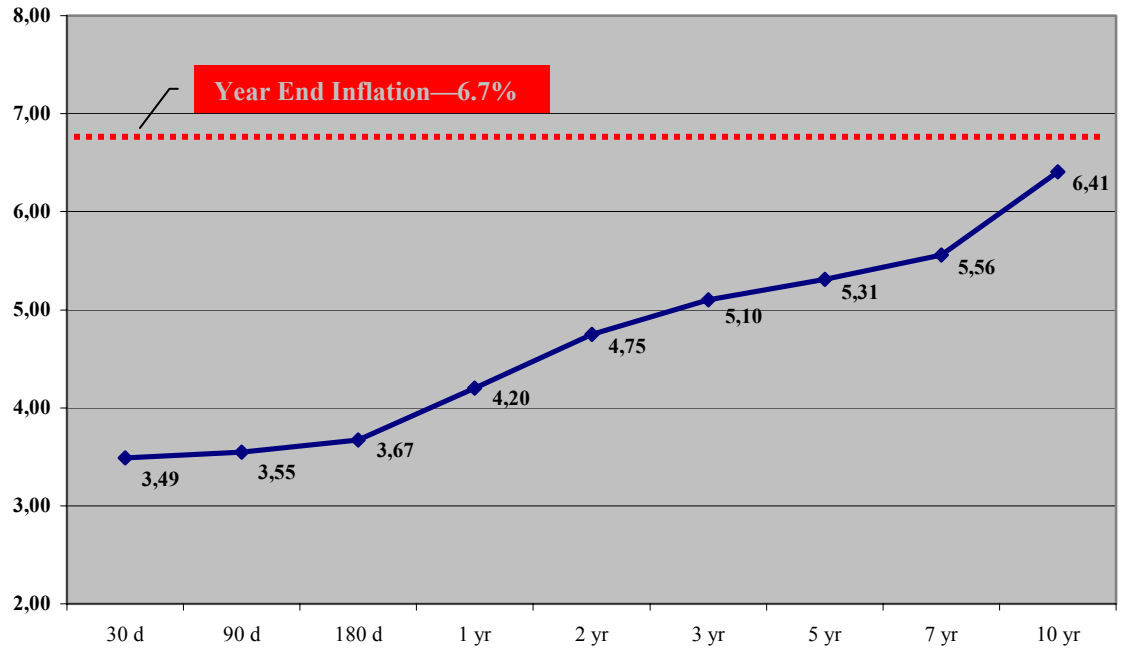
KAZAKHSTAN'S TERM STRUCTURE OF RATES

Stephen S. Moody

Introduction

At the end of 2004, yields on National Bank short-term notes were more than 300 basis points below the annual rate of inflation. This runs contrary to traditional yield curve theory—the so-called "expectations" theory—which holds that yields should reflect investor expectations of a positive rate of return on their fixed-income investments; that is, a return that exceeds the rate of inflation. But Kazakhstan's is not a traditional economy. It is an emerging market economy that has twice over the past five years experienced a surge of foreign capital inflows, owing in the main to historically high world crude oil prices and historically low interest rates in reserve currency economies. Under circumstances such as these, central banks typically sterilize foreign capital inflows to prevent excessive—potentially inflationary—growth in money supply. However, where that has occurred in the past, yields on short-term government securities usually ended up higher than yields before sterilization.[1] This paper investigates the causes of low yields on NBK notes in 2004.

Figure 1. Government Yield Curve
(Traded yields on 12.12.04, in percent per annum)

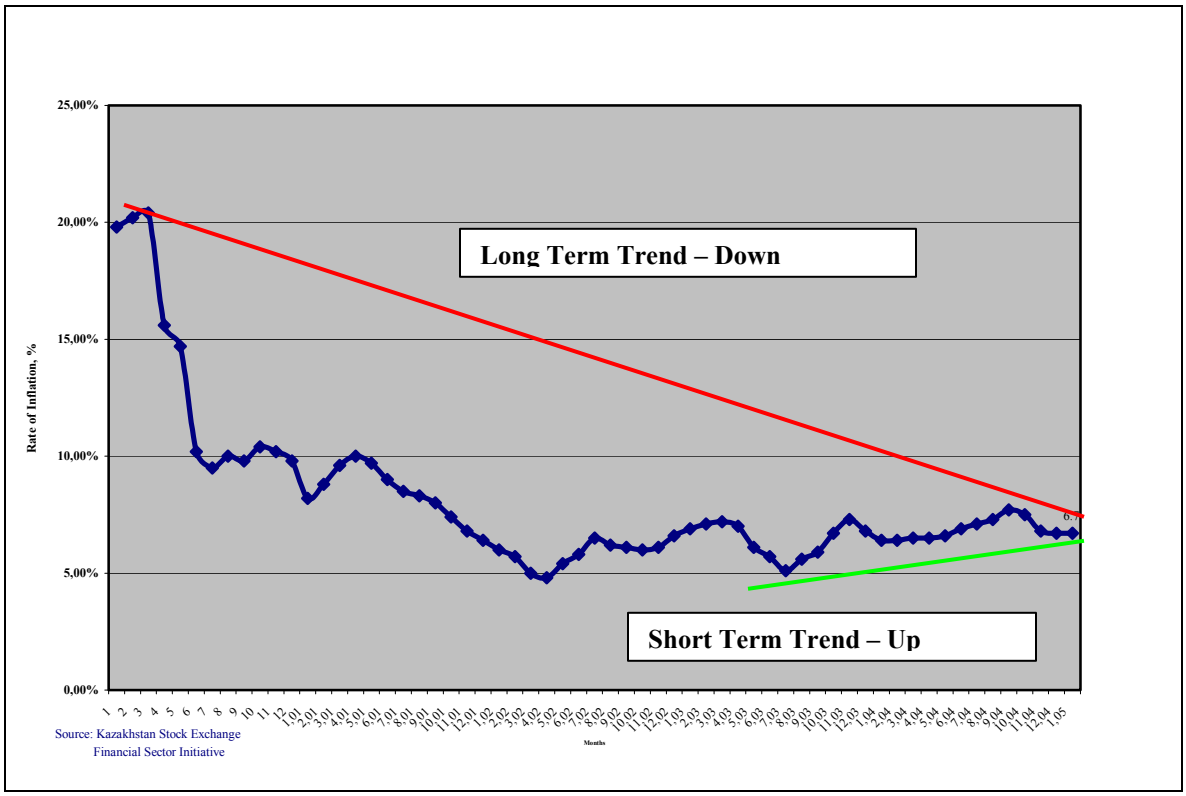


The Government Yield Curve and Inflation

The most egregious anomaly in the current term structure of rates is that yields of virtually all National Bank notes and MinFin bonds are net negative—i.e., lower than both the current (6.70%) and the average annual (four-year, 6.89%) rates of inflation. These artificially low yields are, in the main, the result of excess liquidity in the banking sector arising from (1) historically high crude oil prices and (2) arbitrage opportunities in

international interest rates and in Kazakhstan's exchange regime. A third factor—sterilization of foreign capital inflows—may also have played a role. This paper examines the three factors separately, though of course they acted in concert to distort the current term structure of rates.

Figure 2. Inflation
(01.00-12.04, monthly, year on year)



1. Excess Liquidity[2]

Excess liquidity is the primary underlying problem with the term structure of rates in Kazakhstan. In the financial press, it is referred to as a "shortage of financial instruments," which is accurate only if one considers commercial bank loans financial instruments and useful only if understood in the context of specific maturities. To say, for example, that there is a shortage of ten-year bonds is accurate; to say there is a shortage of short-term notes is not. Therefore, the preferred term of art is "excess liquidity" which, by definition, encompasses not only pension fund assets but commercial bank, insurance company and investment fund assets as well. Banks are the major conduit of excess liquidity in the financial sector though not, strictly speaking, its cause.

The cause of Kazakhstan's excess liquidity is that financial sector assets (primarily, those of banks, but also pension funds, et al.) are growing faster than the *unmet* needs of the private sector and government for finance. The key word here is "unmet." The fastest growing sector of Kazakhstan's economy is the oil industry, and its financing needs are being met in the main by foreign direct investment. Foreign direct investment in Kazakhstan since 2000 exceeds US$ 20.0 billion; in 2004 alone, it is estimated to have totaled more than US$ 5.0 billion.[3] Had those US$ 5.0 billion appeared

in the form of domestic corporate bonds or commercial bank loans, there would be no "shortage of financial instruments" today.

But foreign direct investment is not the only form of foreign finance. Since 1998, Kazakh banks (including Kazakhstan Development Bank) and oil companies have issued international bonds in the amount of US$ 3.37 billion, about half of which was placed in 2004 alone. Some banks have also received foreign syndicated loans. To be sure, Kazakh commercial banks in turn make international loans and investments, so net foreign finance to Kazakhstan is somewhat less than the total. It is nonetheless significant: in 2004, total foreign finance (US$ 1.65 billion) was 1.81 times greater than new domestic corporate bond issuance (US$ 911 million), which itself almost doubled all previous corporate issuance.

Figure 3. Foreign Direct Investment and Finance[4]
(2000-2004, billions of US$)

Year	Foreign Direct Investment	Foreign Finance	Total
2000	2,000	0,020	**2,020**
2001	4,557	0,150	**4,707**
2002	4,106	0,400	**4,506**
2003	4,609	0,950	**5,559**
2004	5,000	1,650	**6,650**
Total	**20,272**	**3,170**	**23,442**

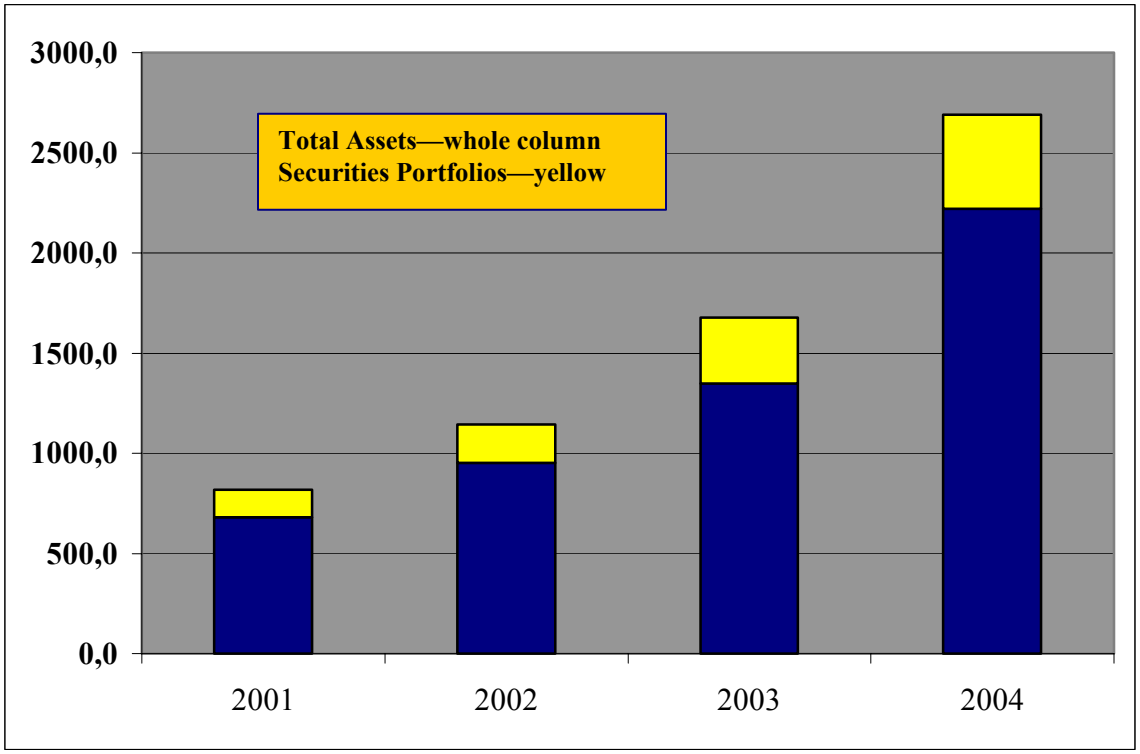
Though their impact on monetary policy is similar, foreign direct investment and foreign finance are themselves quite different. Foreign direct investment in Kazakhstan's oil industry was, from the historical perspective, predestined. It represents investments the Soviets did not make after onshore deposits were first developed in 1972, and investments Kazakhstan could not make after its independence from the Soviet Union in 1992. It also explains, at least in part, the failure of Kazakhstan's "blue chip" privatization program from 1995: there simply wasn't enough money domestically to develop Kazakhstan's oil sector to its full potential. It's probably safe to say that, if blue chip privatization had succeeded, oil production would not have surpassed a million barrels a day in 2003. Of course, foreign direct investment is also the result of what foreign investors perceive as fair treatment under Kazakh law and reasonable reward in Production Sharing Agreements. The amount of foreign investment, however, is clearly a function of the price of crude oil.

Foreign finance, on the other hand, is much more opportunistic than it is predestined, though for an ambitious banker there is a certain developmental inevitability to floating an international bond. That is not to say that Kazakh banks are issuing international bonds just for prestige and credit ratings. To the contrary, international borrowing by Kazakh banks so far—and especially the last two years—displays sound understanding of the economics of international interest rate and currency arbitrage. (See *Arbitrage Opportunities,* below.) However, the primary reason the largest banks have issued abroad is that Kazakhstan's bond market remains a *second tier market*: it cannot

offer issuers the *size, timing* or *liquidity* international markets offer. In essence, there is only one buyer for bank issues in Kazakhstan—the private pension system which, by comparison to the international market, is still miniscule and still subject to fairly tight constraints. According to current FSA Prudential Norms, for example, holdings of corporate issues (including bank issues) are limited to 50 percent of pension fund portfolios—currently, that means about US$ 1.86 billion compared to the US$ 2.225 billion issued in international markets over the past two years by only four commercial banks and the KDB. To a certain extent, Kazakhstan's largest commercial banks have been forced to borrow abroad lest they "crowd out" other potential bank and non-bank local issuers. In 2004, thirteen local banks, of which three also issued internationally, placed US$ 370.1 million domestically.[5]

But commercial bank borrowing (or "funding," as the banks would say) is only one side of the coin—the liability side of the balance sheet. Of greater direct impact on monetary policy and the term structure of rates in Kazakhstan are commercial bank assets, which dwarf other assets in the financial sector (pension, insurance, et al.) and, due to the multiplier effect of fractional reserve banking, tend to grow much faster than other assets when funding—domestic or foreign—is present.

Figure 4. Bank Assets and Securities Portfolios[6]
(2001-04, in billions of KZT)



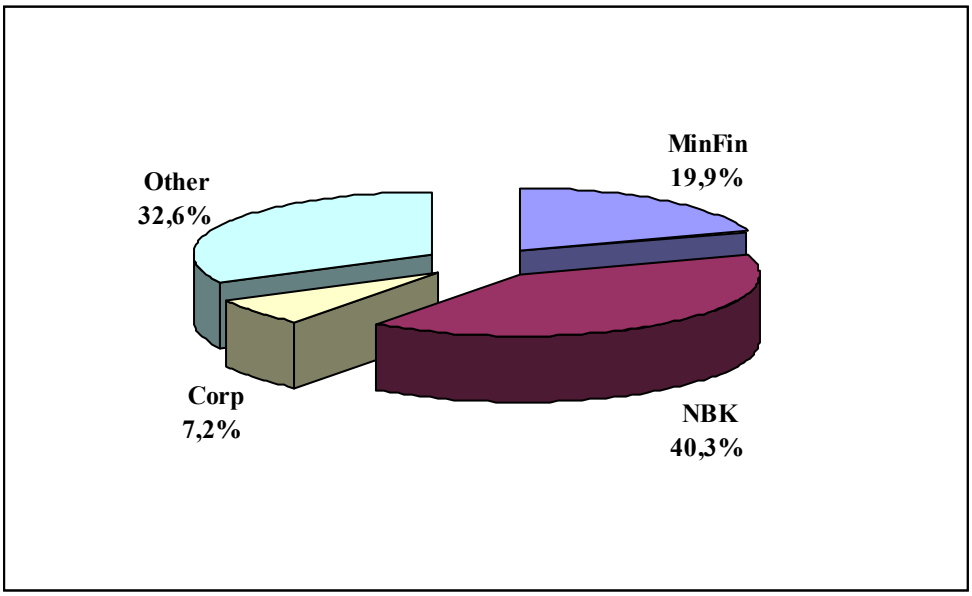
Both of these dynamics have been at work in Kazakhstan from 2001 to the present. During the period, total commercial bank assets (Figure 4) increased 3.29 fold to KZT 2,689.7 billion (US$ 20.69 billion). Predictably, the securities portfolio component of total assets (yellow, in Figure 4) grew as well, but more so—3.47 fold to KZT 470.28

billion (US$ 3.62 billion)—as the quality of loan portfolios deteriorated.[7] In the period, the percentage of "standard" loans fell from 69.0 at the end of 2001 to 56.3 today.

It is noteworthy that, throughout this period, the standard measures of bank liquidity appeared stable though at relatively high levels, ranging from 0.78 at the end of 2002 to a high of about 1.15 in August 2003. In 2004, after a seasonal peak at 1.1 in June, liquidity ratios trended downward toward a more normal (though still high) 0.9 in September before climbing back to 1.06 by the end of the year. While the trend toward higher levels of liquidity is clear, seasonal movements cannot be characterized as particularly volatile. But neither are they negligible. *Even modest variations in bank liquidity can have significant impact on the term structure of rates, especially in emerging markets where banks use foreign borrowing to fund credit portfolio growth.*

The reason for this is clear. When banks issue bonds locally to fund the growth of their domestic loan portfolios, they actually replenish the stock of domestic securities from which they must eventually draw to expand their securities portfolios. When banks issue bonds abroad, they of course add to the supply of international corporate bonds, but the addition may or may not increase the stock of corporate securities suitable for domestic investors. In Kazakhstan during the past two years, tenge-based investors (pension funds, insurance companies, banks, investment funds and other organizations) have fled dollar-denominated bonds to escape currency risk and shunned international bonds to avoid yields below the rates of Kazakh inflation (net negative yields). These two trends, while largely of exogenous causes, played critical roles in distorting Kazakhstan's current term structure of rates, and are therefore discussed at greater length in the following section (see *Arbitrage Opportunities)*.

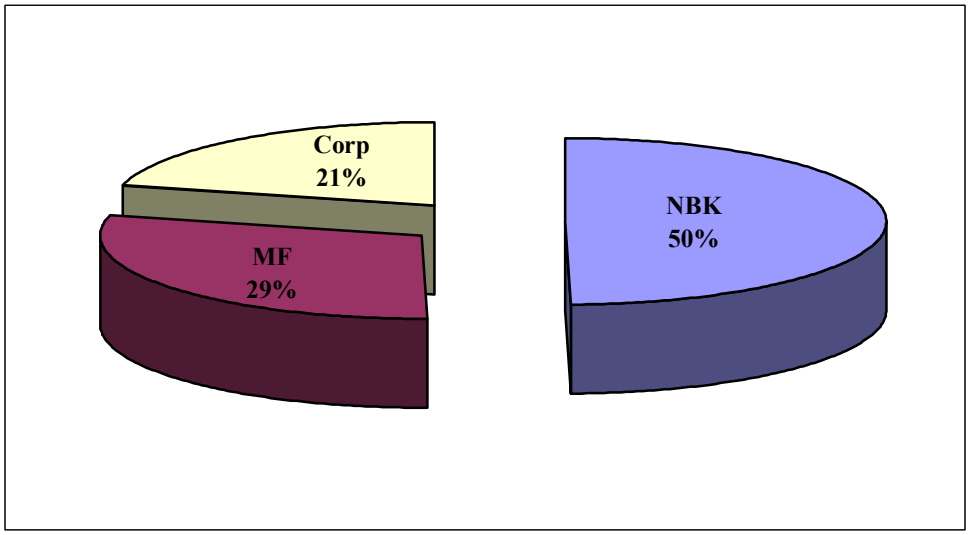
Figure 5. Structure of Bank Securities Portfolios[8]
(on 31.12.04, in percent)



Thus, over the past two years, even as banks expanded their securities portfolios by KZT 275.9 billion, they added only KZT 88.6 billion to the stock of outstanding Kazakh corporate securities. The difference (KZT 187.3 billion) was partially

compensated by investments in dollar-denominated issues of the government, international financial organizations and the KDB and in other asset classes (Other, in Figure 5). However, in 2003 and 2004, Kazakh banks came to the market for an additional KZT 122.4 billion of domestic securities, which had to be supplied either by corporate issuers in other sectors of the economy or by government. Since, oil industry aside, other economic sectors have growth rates significantly below that of commercial banks and because most corporate domestic issues are not rated investment grade, it stands to reason the lion's share of the shortfall would have to be met by government issues—as it turns out, mostly NBK notes.

Figure 6. Composition of Outstanding Debt Stock[9]
(on 31.12.04, in percent)

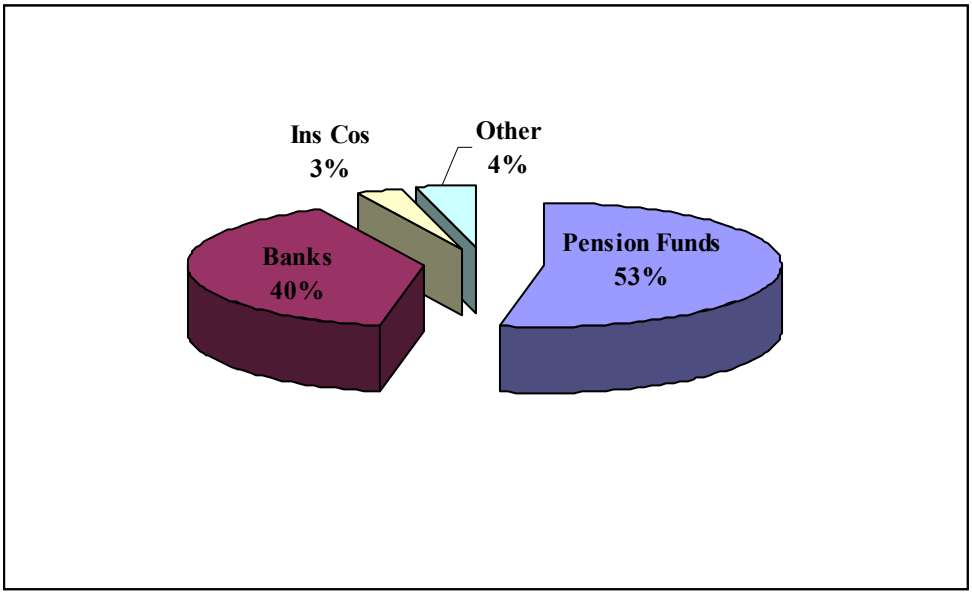


At the end of 2004, NBK notes accounted for 50 percent of all of Kazakhstan's outstanding domestic debt, government and corporate, which totaled KZT 795.1 billion (US$ 6.1 billion). Since January 2003, outstanding domestic corporate debt, which includes bank and non-bank mortgage-backed bonds, has increased 3.24 fold from KZT 56.0 billion to 168.5 billion. In the same period, outstanding domestic government debt grew at only a slightly higher rate—3.63 times, from KZT 172.8 billion to 626.6 billion. However, within the government asset class, outstanding NBK notes have grown 6.16 times, from KZT 64.3 billion to 396.1 billion. That short-term NBK notes comprise 63.2 percent of outstanding government debt is itself an anomaly in the structure of the yield curve, and we will revisit the issue later.

However, more important than the absolute size of NBK note stock is the net negative yields the notes carry. (*See* Figure 1, pg. 1.) The extremely low yields on NBK notes imply that the overall stock of government and corporate debt is less than the aggregate demand for it; that is, the value of total liquid financial assets in the economy exceeds the value of total outstanding government and corporate debt—or a "shortage of financial instruments," including of course a shortfall in commercial bank loans relative to their borrowing. Among the proximate causes of excess liquidity in the system is that, in the past two years, banks borrowed more money than they could lend to creditworthy borrowers at profitable spreads *in the current year.* Deterioration in the quality of loan

portfolios suggests, of course, that creditworthy borrowers have become progressively harder to find, even as bank deposits surged.[10] However, excess liquidity in the banking system should also be a temporary phenomenon that year-end data just happened to capture. Excess reserves is an expensive strategy when the excess has to be invested in net negative yields.

Figure 7. Ownership of Outstanding Debt[11]
(on 31.12.04, estimated except Banks)



But bank securities portfolios are not the only, or even the largest, investment assets in the system. At the end of 2004, pension fund assets totaled KZT 484.0 billion (US$ 3.72 billion), of which KZT 422.2 billion (87.2 percent) were invested in domestic fixed-income instruments. And like the banks, the pension funds are suffering from the net negative yields on outstanding government notes and bonds; the real rate of return on total pension fund assets last year was -2.94 percent. As of 1 December last year, 31.62 percent of pension assets were invested in NBK notes, whose average maturity was clearly less than one year; twenty-six percent of pension assets were in corporate bonds, the average weighted maturity of which as an asset class is 6.3 years. The duration of pension fund portfolios is obviously much too short. Portfolios of short duration have higher transaction costs, run greater reinvestment risk and—in a phenomenon often over-looked by asset managers—book realized losses on maturing issues which, had maturities been longer, might have shown a profit at some later date. In the end, of course, the government is the ultimate guarantor of pension accumulations which, by law, shall not be less than contributions compounded at annual rates of inflation. By allowing short-term net negative yields, the government is not penalizing pensioners, any shortfall in whose pension pay-outs government itself will have to compensate; the penalty falls rather on the pension fund operators and asset management companies (KUPA) which are being deprived of income. Net negative yields on government instruments put the pension system in jeopardy.

The other category of interest in Figure 7 is "Other," which is essentially corporate treasuries, including those of state-owned companies like Kazakhstan Mortgage Company. "Other" assets are the residual; that is, securities not owned by pension funds, banks and insurance companies. At the end of 2004, "Other" assets totaled KZT 33.0 billion. (The absolute number is approximate, since the holdings of both pension funds and insurance companies are estimated. Year-end data have not been published as of this writing.) The "Other" category represents two recent trends in Kazakhstan's financial markets: (1) the use of REPOs as an instrument of cash management and corporate finance and (2) the willingness to hold financial assets in tenge-denominated instruments. All of the assets in the "Other" category are not REPO-related, but some assets in other categories (specifically, Banks and Insurance Companies) are. REPOs would not be possible, of course, were agents in the economy unwilling to hold tenge-denominated instruments. Acceptance of domestic instruments has been growing steadily since 2000, but the weakness of the dollar over the past two years has significantly accelerated the trend. The trend is important for two reasons: first, it immediately expresses itself as increased demand for tenge-denominated instruments, the primary source of which is government—the National Bank and Ministry of Finance; and, second, the trend is reversible. In 2003 and 2004, however, it was a hidden source of excess liquidity: instruments which had once been profitable for pension funds—dollar-indexed corporate bonds, for example—turned loss-making and were jettisoned as quickly as possible in favor of tenge-denominated, inflation-indexed bonds.

Figure 7 is helpful as far as it goes. It identifies bank securities portfolios as the likely conduit of global excess liquidity into Kazakhstan's nascent financial sector. It cannot, however, quantify the excess liquidity in the system that did not find a home at all—that is, the amount by which total demand for tenge-denominated investment instruments exceeded the supply, as current yields on NBK notes imply it did.

But NBK notes are not only investment vehicles. They are also instruments of monetary policy—the default instrument for sterilizing foreign capital flows into the economy to prevent excessive growth in money supply. Net negative yields on NBK notes may also imply that NBK did not sterilize enough of the foreign capital inflows. In the next section, we examine foreign capital inflows and their impact on the yield curve.

2. Arbitrage Opportunities

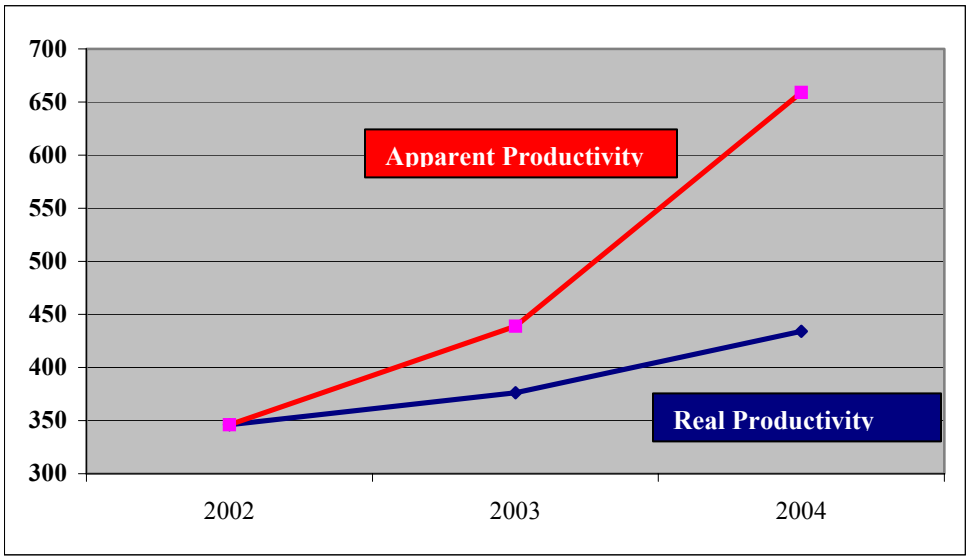
As stated earlier, foreign capital inflows are the primary cause of current excess liquidity in Kazakhstan. And like the foreign capital inflows to Asian developing markets during the early nineties, they are largely exogenous in origin, although they may mask an autonomous upward shift in the domestic money demand curve. In the main, however, the causes for the surge in foreign capital inflows to Kazakhstan are: (1) low rates of growth in industrialized economies (particularly the US during 2000-2003) and the accompanying low level of international interest rates, and (2) extreme weakness of the US dollar due to a deteriorating current account and the accompanying high prices for crude oil. Historically low interest rates in industrialized economies caused interest rate differentials with Kazakhstan to widen, creating arbitrage opportunities for domestic commercial banks. The surge in crude oil prices in the last two years caused inordinate increases in the productivity of Kazakh oil producing assets, giving rise to foreign capital inflows in addition to, and other than, foreign direct investment. There are, in fact, three

different types of foreign capital inflows into the Kazakh economy, and each affects liquidity, monetary aggregates and the yield curve in a different way. In principle, each requires a different policy response.

1. Foreign direct investments. Foreign Direct Investments represent Kazakhstan's largest foreign capital inflows. FDI are actually purchased for shares of the local entity in which the investment is made; like stock swaps, FDI are non-cash transactions and typically exempt from tax. The investment accrues to the entity's balance sheet as capital (fixed) assets, where it is subsequently depreciated at some annual rate. (The costs of research, development and oil exploration are also capitalized and depreciated.) Depreciation is, of course, a non-cash expense; therefore, FDI have no direct impact on money supply, unless the fixed assets are subject to import duties, in which case only the portion that flows to budgetary authorities enters the money supply.

As discussed above, FDI do have an indirect effect on bank liquidity and the yield curve to the extent they displace commercial bank loans and corporate bond issues. To the extent they are subject to import duties, they have the same effect on government issuance.[12]

Figure 8. Apparent vs. Real Increase in Oil Sector Productivity[13]
(2002-2004, in millions of barrels per year)



2. Crude Oil Export Receipts.[14] Foreign Direct Investments expand or improve production facilities and, therefore, increase productivity. The increased productivity takes the form of increased annual oil export receipts. Note that, in the oil sector, productivity actually has two components: (1) the real expansion of production capacity, expressed in millions of barrels per year, and (2) any change in the price of crude oil which, when added to or subtracted from real expansion, yields the apparent increase (decrease) in productivity. Figure 8, above, depicts the apparent and real increases in productivity in Kazakhstan's oil sector over the past two years, based on 2002 Refinery Acquisition Costs (RAC) of crude oil.

Crude oil export receipts have a direct impact on money supply, which they enter in two ways: (1) as payment of local operating expenses (labor and materials) and (2) as payment of local and federal taxes (property, income, et al.) and government royalties on

sub-soil exploitation. The volume of oil export receipts entering the money supply will vary from year to year depending on a number of factors, including the world price of crude oil. However, the amount that enters the money supply should be considered *permanent and cumulative*. "Permanent" means exactly what it says: once these flows enter money supply, they remain there permanently; to offset the increase in money supply, the same amount must be absorbed by corresponding increase in GDP in the year in which it occurs. "Cumulative" means that any portion not absorbed by GDP in the year in which it occurs will be forced into money balances unless sterilized for a term corresponding to the time required for their absorption in subsequent GDP cycles. Figure 9, below, estimates total per barrel oil production costs (less depreciation) and the portion of those costs covered by oil export receipts for the past four years. Using these estimates, the cumulative total of oil export receipts entering money supply through the cost structure would have been KZT 805.15 billion, or 27.7 percent of GDP growth during the period.

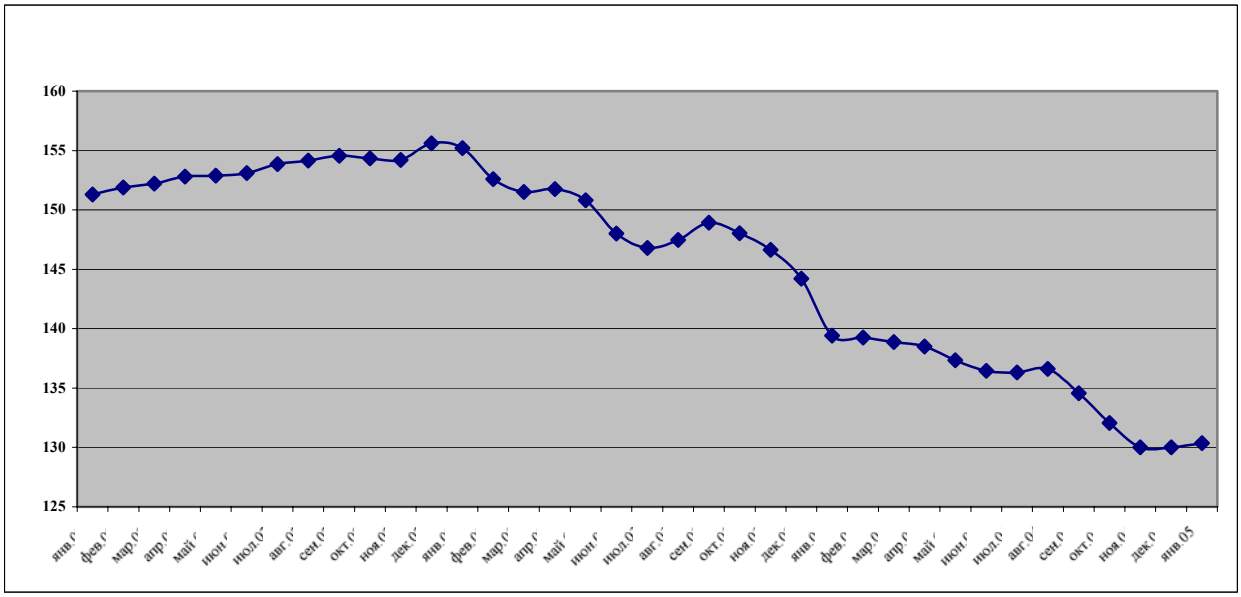
Figure 9. Estimated Export Receipt Coverage of Production Costs[15]
(2001-2004, in KZT)

	2001	**2002**	**2003**	**2004**
In KZT/Bbl:				
Production Cost	624,55	578,73	659,34	673,04
Royalties	56,71	71,20	83,08	86,31
Taxes	144,18	172,44	266,79	277,13
Total	825,44	822,38	1009,21	1036,48
Production (mln bbl)	*275,00*	*319*	*364*	*407*
Total (bln KZT)	227,00	262,34	367,35	421,33
of which **Export**	**143,01**	**165,27**	**231,43**	**265,44**

The cumulative total of oil receipts available to cover oil production costs, however, would have been much higher—KZT 1278.02 billion, or 43.9 percent of the growth in GDP. If oil company treasuries took the autonomous decision to increase KZT holdings relative to hard currency, as persistent weakness in the dollar would have encouraged them to do, approximately KZT 805.15 billion would have flowed into money supply through the exchange regime. A shift to tenge-denominated holdings clearly occurred in the economy during the period (see "Other," Figure 7, above), though it is impossible to determine the exact extent to which oil export receipts might have played a role. Oil companies, of course, have other alternatives.

To the extent they did play a role, however, crude oil export receipts had a direct, though marginal, impact on both bank liquidity (increasing liabilities) and the yield curve (increasing demand for tenge-denominated instruments). Oil export receipts clearly affect currency exchange rates, which strengthen as demand increases for local currency to pay salaries, suppliers and taxes (and, potentially, fund portfolio investment). Stronger rates, of course, absorb more dollar inflows, reducing the potential need for sterilization.

Figure 10. Monthly KZT/USD Exchange Rates[16]
(Jan 2002-Dec 2004)



3. Foreign Finance. The foreign capital inflows arising out of domestic bank borrowing abroad have direct effects on bank liquidity, the yield curve, exchange rates and money supply. The effects on bank liquidity and the yield curve were discussed earlier.

Figure 11. Net Total and Cumulative Bank Foreign Finance[17]
(2002-2004, in KZT billions)

	2002	2003	2004
Foreign Issuance	45,98	108,45	190,46
Syndicated Loans	13,95	70,90	30,47
Foreign Lending	-7,66	-19,00	-32,36
Annual Total	**52,27**	**160,35**	**188,57**
Cumulative Total	52,27	212,62	401,19

The effect on exchange rates is obvious but perhaps not as straightforward as it might appear. Under the conditions prevailing over the past two years, exchange rates actually attracted more foreign funding than otherwise might have occurred. The wide interest rate differentials between Kazakhstan and western markets, which initially attracted commercial banks, were made even more attractive by the oil-driven strength of the tenge against the US dollar, especially in 2004. Consider a bank that issued dollar-denominated eurobonds in late 2003 at say 7.5 percent, converted the dollars to tenge then made tenge-denominated loans at 11.5 percent. The bank picked up not only the four-point differential between funding and lending rates, but also the full 9.70-point tenge appreciation against the dollar—a total of 13.70 points. That was the nominal rate of return on the operation. Like households, of course, bank income statements are also subject to inflation, though bank expense inflation is different from (and probably lower than) CPI (6.7 percent). The real rate of return on the operation was about 700 basis points (13.70 – 6.70). Nevertheless, at these spreads, the banks cannot be faulted for taking advantage of either interest rate differentials or exchange rate arbitrage.

Consider, however, the case in which the same bank was unable to place all its funds in commercial loans. What was the lowest yield on NBK notes the bank could have accepted on its excess reserves and still broken even on the operation?

Cost of funds	7.5%
Tenge inflation	6.7
Total cost	14.2
Tenge Appreciation	-9.7
Break-even Yield	*4.5%*

Theoretically, then, any yield less than 4.5 percent would have been net negative for the bank unless, as we speculate above, the rate of bank income statement inflation was in fact lower than 6.7 percent. If bank inflation were, for example, 5.7 percent, the bank would have broken even at a yield of 3.5 percent—the expectations of an investor whom tenge appreciation indemnified against domestic inflation.

Be that as it may, the effects of foreign funding on money supply are best characterized as *net cumulative, nonpermanent but long-term*. They are net cumulative in the sense that, like oil export receipts, net incremental annual increases, not absorbed by GDP in the year in which they occur, accrue to money balances unless sterilized. "Nonpermanent" means that, since the inflows are the result for foreign borrowing at some specific term, the flows will reverse no later than the term of the loan. However, since they are private investment funds, which respond to both interest rate and currency arbitrage opportunities, they may also be diverted out of domestic investments into investments abroad at any time. In this sense, "nonpermanent" means they can give rise to net negative foreign capital inflows from one year to the next. In fact, from the point of view of commercial bank strategy, any over-funding that might have occurred in 2004 was probably intended to finance expansion into foreign markets—Russia, Ukraine and Central Asia. Expansion strategies notwithstanding, "nonpermanent but long-term" means these inflows are based on funding at term (in some cases, as long as ten years) and their impact on money supply will, in the main, be more akin to that of oil export receipts than to that of, say, portfolio investment. With one important difference: unlike oil export receipts, foreign funding inflows follow the rules of fractional reserve banking; i.e., once in the money supply, they can expand at the effective money multiplier rate. The fact that, in 2004, they did not is due less to bank regulation (required reserves, refinance rate, et al.) than to the physical constraints of (1) too few creditworthy borrowers domestically and (2) the inability to expand abroad as quickly as planned.

Figure 12. GDP and Money Supply (M3)[18]
(1999-2004, in KZT billions)

	1999	2000	2001	2002	2003	2004
GDP	**2 017**	**2 600**	**3 251**	**3 747**	**4 612**	**5 543**
Real growth		9,8%	13,5%	9,5%	9,3%	9,4%
M3	**274**	**397**	**576**	**765**	**971**	**1 635**
M3 Growth, %	84,4%	45,0%	45,1%	32,8%	27,0%	68,3%
M3 as % GDP	13,6%	15,3%	17,7%	20,4%	21,1%	29,5%
Velocity		*6,55*	*5,64*	*4,90*	*4,75*	*3,39*

As important, the deterioration in the quality of loan portfolios in 2004 means that the real productivity of commercial bank loans was less than their apparent productivity—i.e., the face value of loans plus accrued interest. And that, of course, was the case in the oil sector: due to the surge in crude oil prices, real productivity (1.19 mbd) was much less than apparent productivity (1.8 mbd). *Real productivity drives GDP growth.* When money supply grows faster than GDP, monetary velocity slows, signaling that GDP cannot absorb increases in money supply. The fact that money supply grew sharply last year suggests that NBK did not adequately sterilize the foreign capital inflows from export oil receipts and bank foreign finance.

Figure 13. Estimated Cumulative Foreign Capital Inflows
(2001-2004, in KZT billions)

	2001	2002	2003	2004
Oil Export Receipts	143,01	165,27	231,43	265,44
Foreign Finance		52,27	160,35	188,57
Annual Total	143,01	217,54	391,78	454,01
Cumulative Total	**143,01**	**360,55**	**752,33**	**1206,34**

3. Sterilization

At the end of 2004, foreign currency reserves of the National Bank totaled KZT 1,206.0 billion (US$ 9.27 billion at year end valuations). This is the net cumulative amount of foreign capital flows that the National Bank has converted to tenge since it began doing business in 1993, including those of the last four years. (*See* Figure 13, *above*.)[19] This is not all the hard currency in the country; there are hard currency accounts in banks and hard currency cash reserves in households, which are already accounted for in money supply (M3). Foreign reserves, however, are the result of the National Bank buying foreign currency inflows formerly not counted in money supply. When NBK sells tenge for these inflows, of course, it increases money supply.

Offsetting its foreign currency reserve asset at year end, NBK had liabilities consisting of a stock of NBK notes, of which KZT 396.1 billion were outstanding, and deposits in the amount of KZT 279.4 billion, of which KZT 164.2 billion were commercial bank reserves. NBK also carried a reserve of KZT 410.9 billion against cash-in-circulation outside the bank—which, by right of seigniorage, NBK has printed or minted and remains liable. However, since the purpose of sterilization is to prevent unwanted increases in money supply via the exchange regime, the value of cash-in-circulation and commercial bank reserves (together, *the monetary base*) is excluded when calculating unsterilized money balances. Thus, the amount of unsterilized foreign capital inflows in the money supply at the end of 2004 was:

Total Foreign Currency Reserves	KZT	1206.0 billion
NBK Notes Outstanding		-396.1
Other Deposits		-115.2
Unsterilized Money Balances	*KZT*	*694.7 billion.*

The amount of unsterilized money balances in excess of the monetary base was:

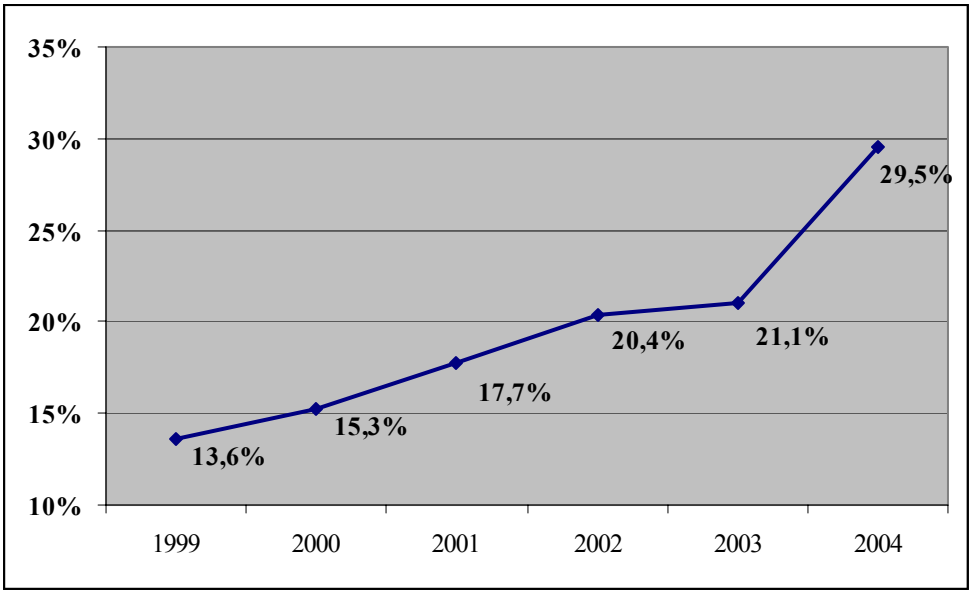
Unsterilized Money Balances	KZT	694.7 billion
Monetary Base		*-575.1*
Net Unsterilized Money Supply	KZT	119.6 billion.

Thus, NBK could have sold an additional KZT 119.6 billion of notes, deposits, REPOs or other instrumentalities to check excessive growth in money supply. The question is, would domestic demand have been sufficient to absorb the additional supply, and if so, at what price? In answer to both parts of the question, with the current ratio in banks at 1.06 at year end, there would have been sufficient liquidity to easily absorb the additional instruments, *and yields would probably not have risen.*[20] By some estimates, banks could have bought as much as KZT 362 billion of NBK notes, REPOs or certificates of deposit. And there might have been additional demand in insurance companies and corporate treasuries. Pension funds, in theory, are always fully invested and should not in any event have bought additional short-term notes, the duration of which at year end was about 140 days.

So why didn't NBK sterilize the additional balances? There are three reasons.

First, sterilization is very expensive business.[21] In the course of 2004, NBK had an average outstanding stock of notes and deposits of KZT 358.5 billion on which it paid interest at an annual average 4.0 percent, amounting to approximately KZT 14.4 billion (US$ 105.4 million). Meanwhile, on its annual average foreign currency reserve stock, the bank earned interest at an average rate of about 2.25 percent, amounting to KZT 21.6 billion (US$ 158.9 million). However, due to tenge appreciation in 2004, NBK booked real and valuation losses of KZT 92.2 billion (US$ 677.8 million). Sterilization operations in 2004 cost NBK about US$ 624.4 million—that's US$ 41.60 that the National Bank saved every man, woman and child in Kazakhstan from losing to inflation last year.

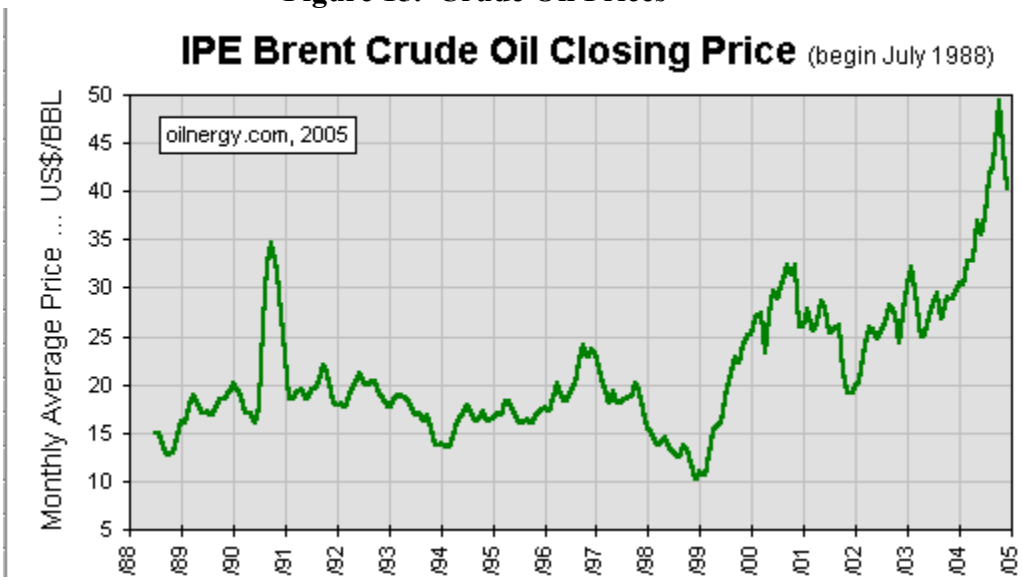
Figure 14. Money Supply (M3) as a Percent of GDP
(End of year, in percent)



But there are reasons other than cost. Given that the portion of foreign capital inflows in the banking sector expresses itself in terms excess reserves and a sinking quality of loan portfolios, selling additional notes, REPOs or certificates of deposit was perhaps not the best instrumentality. The situation appeared to call for a regulatory response: to wit, raising reserve requirements. And that, of course, is what the National Bank has done. In addition to effectively taxing foreign borrowings, raising reserve requirements increases the reserves component of the monetary base and reduces the money multiplier.

Last, there are broader macroeconomic considerations which may warrant 2004's sharp increase in money supply. The first is that, even at 29.5 percent of GDP, money supply is relatively low; policymakers should avail themselves of every reasonable opportunity to further monetize the economy. If, for example, policymakers anticipate a period of sustained real productivity growth in sectors of the economy other than oil and banking, it is reasonable to fund that growth with an increase in money supply. Real GDP has been growing at an average 9.4 percent rate for the past three years. Should real growth continue at that pace, any unsterilized money balances not eliminated by increased reserve requirements early in 2005 will be readily absorbed by GDP growth.

Figure 15. Crude Oil Prices



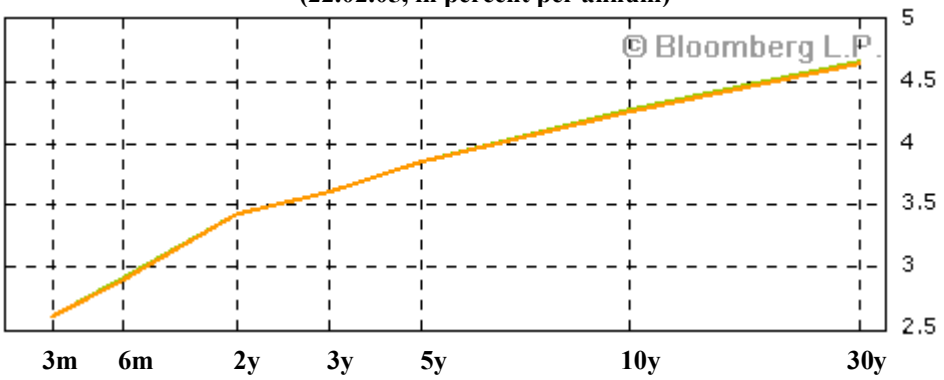
Conclusion

So what does this say about Kazakhstan's yield curve? It says the term structure of rates is correct under current circumstances: *it expresses the expectations of investors in the financial sector whom the tenge's appreciation against the dollar indemnified against domestic inflation*—commercial bank securities portfolios. That yields are net negative for other investors—in particular, the pension funds—is not the fault of commercial banks, but yields won't turn positive till banks rid themselves of excess liquidity. And the National Bank has every intention of helping them do just that. Keep in mind, however, that banks aren't the cause of excess liquidity; they're simply conduits for it.

Nor is the National Bank alone responsible for the pension funds' current plight. The government of Kazakhstan is an indirect but substantial beneficiary of Foreign Direct

Investment; one way governments distribute such benefits directly to the people is by constructing and maintaining a viable long-term yield curve in which the country's pension funds can invest with impunity. Like the National Fund, it's another way of saving for rainy days. Kazakhstan's Ministry of Finance should make building a risk-free yield curve a priority—and the longer the term, the better. There is a cost, of course, but securing its citizenry's future justifies government's expense.

Figure 16. US Yield Curve
(22.02.05, in percent per annum)



Last, yields transmit more than investment income; yield curves send messages. One of the principal messages here is: Kazakhstan's financial sector is fully integrated into the world economy. Net negative yields in the term structure of rates reflect not only massive foreign capital inflows and excess liquidity in domestic commercial banks, but also the current global trends toward lower yields on government securities of all maturities and lower rates of inflation. Maybe that's what Kazakhstan's yield curve is telling investors to expect.

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Mr. Moody is a Senior Advisor at the Pragma Corporation, the US financial consulting firm implementing USAID's Financial Sector Initiative in Kazakhstan. Since August 2000, the Financial Sector Initiative has provided technical assistance to the National Bank and the Financial Supervision Agency in the development and regulation of new financial instruments, the primary and secondary mortgage markets, the insurance industry, the private pension fund system and credit bureau.

[1] "Causes of Capital Inflows and Policy Responses to Them," Ul Haque, Mathieson, and Sharma. Undated IMF Occasional Paper.

[2] Net negative rates are not unique to Kazakhstan. According to *The Economist* (February 24, 2005) global liquidity, as measured by the US monetary base plus foreign reserves in the world's central banks, is growing at its fastest pace (20%) in thirty years. High levels of global liquidity probably explain why the US yield curve flattened so dramatically in 2004. The spread between the one-year T-bill and the twenty-year bond narrowed from 390 basis points on 2 January 2004 to 210 basis points on 31 December 2004 (*See* Figure 16, pg. 16). Alan Greenspan himself has expressed puzzlement that US long-term rates have not been rising in tandem with short rates.

[3] Ministry of Economy data and estimate.

[4] Ministry of Economy data and Pragma/FSI estimates based on KASE announcements.

[5] KASE data.

[6] NBK data.

[7] Commercial bank loans are not liquid: once the money goes out the bank's doors, the borrower controls when it comes back. To offset the illiquidity of their loan portfolios, banks maintain securities portfolios of highly liquid government and investment grade corporate securities. As loan portfolios grow, so do securities portfolios; and securities portfolios must grow faster as the quality of loan portfolios deteriorates.

[8] Pragma estimates based on NBK data.

[9] NBK and Pragma data.

[10] While the focus of this paper is foreign funding, it would be remiss not to observe that domestic bank deposits grew KZT 644.3 billion, or 66.1 percent, in 2004 alone, probably as a result of the sharp increase of commercial loans with lump sum, as opposed to scheduled, payouts. Increased residential mortgage lending may have also played a role. Outstanding mortgages are estimated to have totaled US 1.0 billion at the end of 2004.

[11] Pragma estimates based on NBK data.

[12] Officially, the Government of Kazakhstan has run modest budget deficits over the past four years, the largest of which—1.8% of GDP—occurred in 2004. However, if one takes the National Fund into account, the government budget is clearly in surplus, which explains MinFin's reluctance to issue long term debt.

[13] Based on production data of Petrokazakhstan.

[14] There are, of course, numerous sources of foreign currency export receipts—copper, grain, precious metals, et al. Oil export receipts dwarfed all others in the period. There were actually two oil "shocks:" the first between 1999 and 2002 and the second in 2004.

[15] Based on actual costs reported in Kazmunaigaz's 2003 Annual Report. EOY 2004 data were estimated by annualizing QIII 04 data. These data include refining costs, therefore the total is somewhat higher than actual crude oil production costs per barrel. Annual crude oil production figures include the crude oil equivalent of gas condensate and have been modified to capture only half of the increase in real capacity over the previous year.

[16] NBK data.

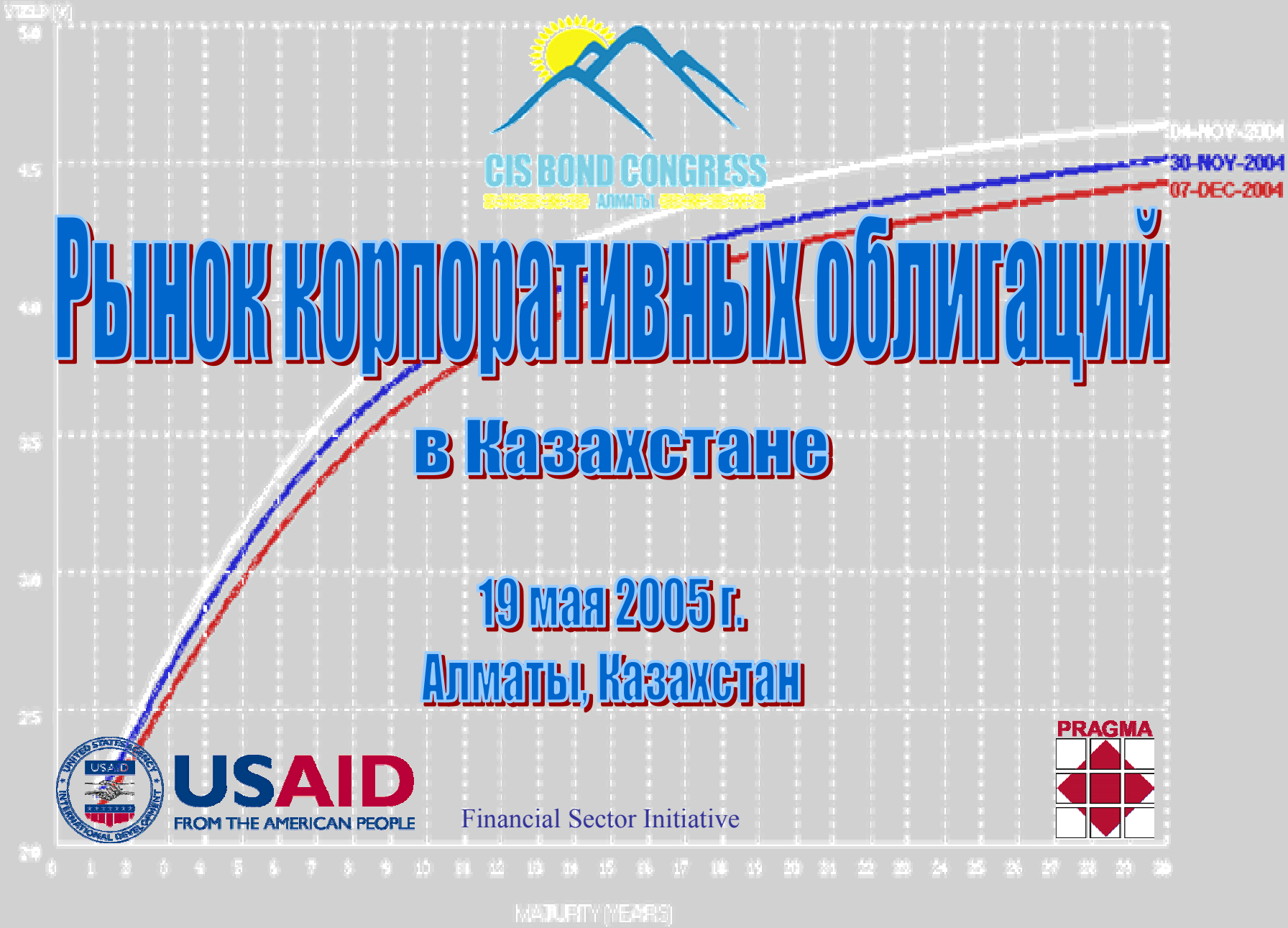
[17] Pragma estimates based on KASE data and announcements.

[18] Based on preliminary GDP data of Goskomstat and NBK monetary aggregates. Official 2004 real GDP was published on 15 February; official nominal GDP is still pending.

[19] The fact that NBK foreign currency reserves and the estimate of foreign capital inflows in Figure 13 are almost identical is not entirely coincidental. Clearly, however, oil export receipts are not the only export receipts that found their way into the National Bank's foreign currency reserves; likewise, the last four years do not account for all the flows of foreign currency reserves through the bank since NBK began operations. In addition to the stock vs. flows problem, there are several dynamics at work here, including foreign capital outflows (*Exports pay for imports*.) and untranslated oil export receipts flowing into the National Fund, which resides on the balance sheet of NBK. On the other hand, the fact that estimated foreign capital inflows from these two sources in the past four years equal the current stock of NBK foreign currency reserves dramatically illustrates the impact these two sectors have on the economy and money supply.

[20] The "cover" would have been more than three to one.

[21] Sterilization is, indeed, expensive business. The estimates set forth here, however, may overstate the actual costs to NBK; they are intended to be illustrative rather than definitive.



CIS BOND CONGRESS

АЛМАТЫ

Рынок корпоративных облигаций

в Казахстане

19 мая 2005 г.

Алматы, Казахстан

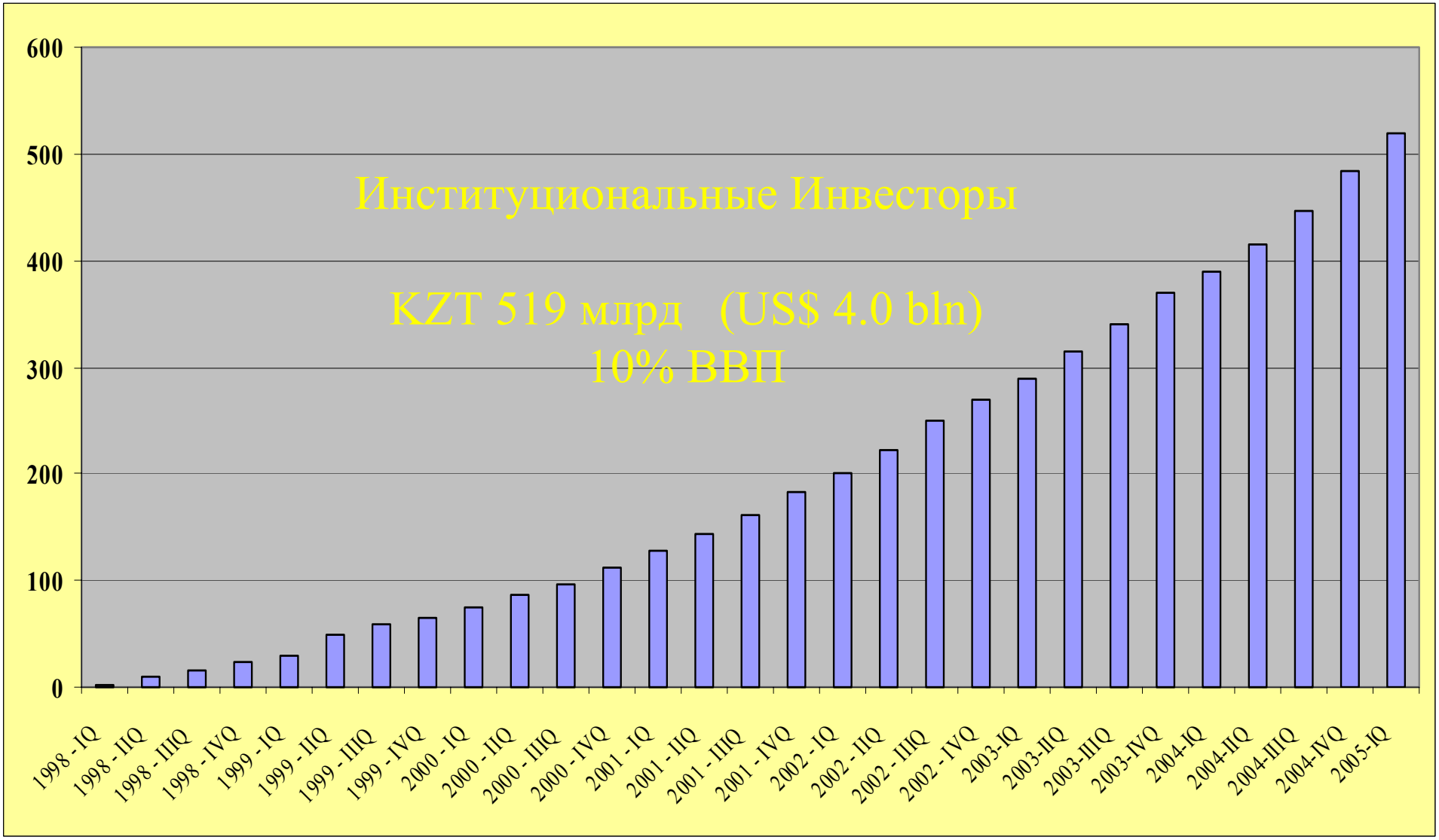
USAID
FROM THE AMERICAN PEOPLE

Financial Sector Initiative

PRAGMA

Пенсионные накопления 1998-2005

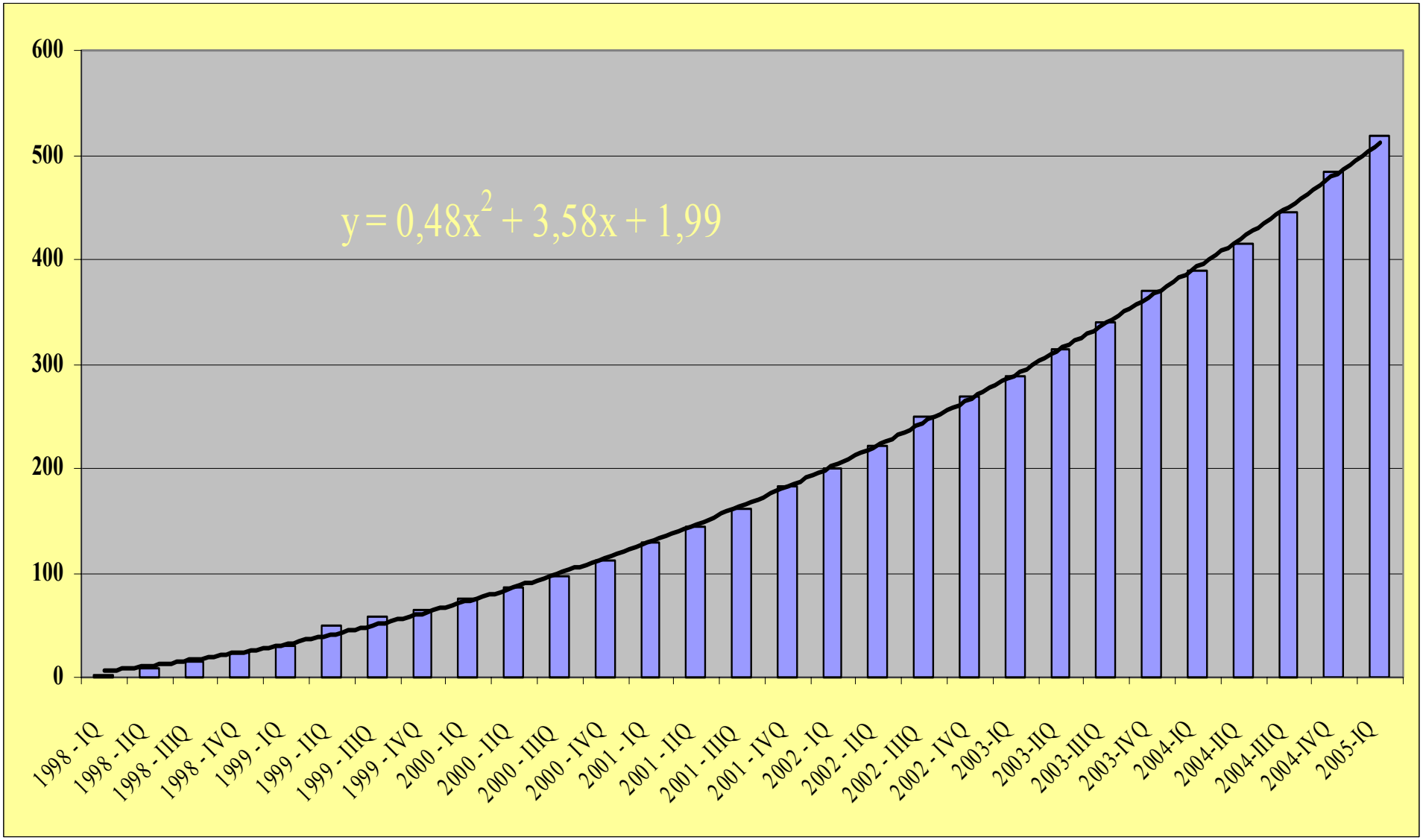
(квартально, в миллиардах тенге)



Source: National Bank, Pragma Corporation

Пенсионные накопления 1998-2005

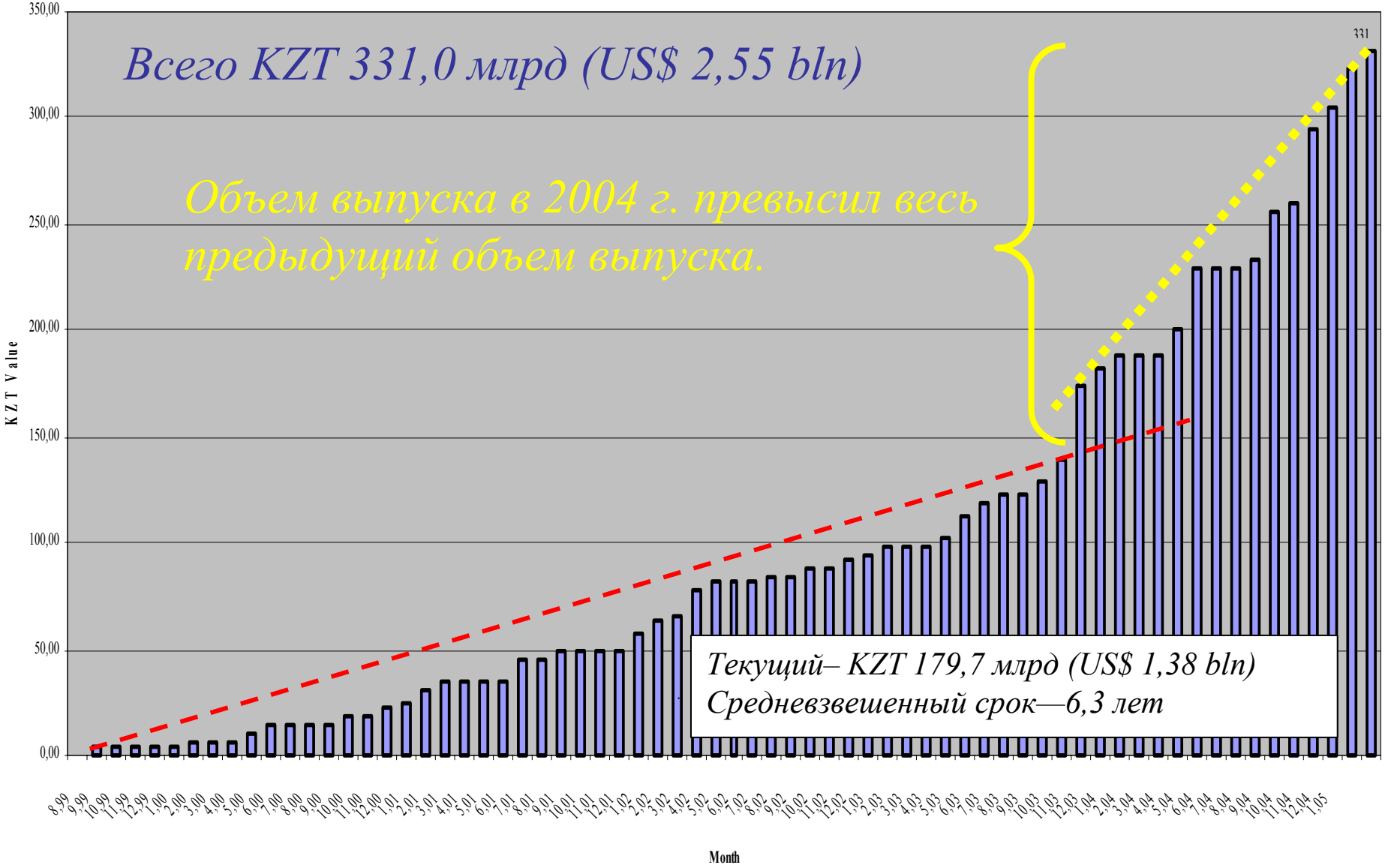
(квартально, в миллиардах тенге)



Source: National Bank, Pragma Corporation

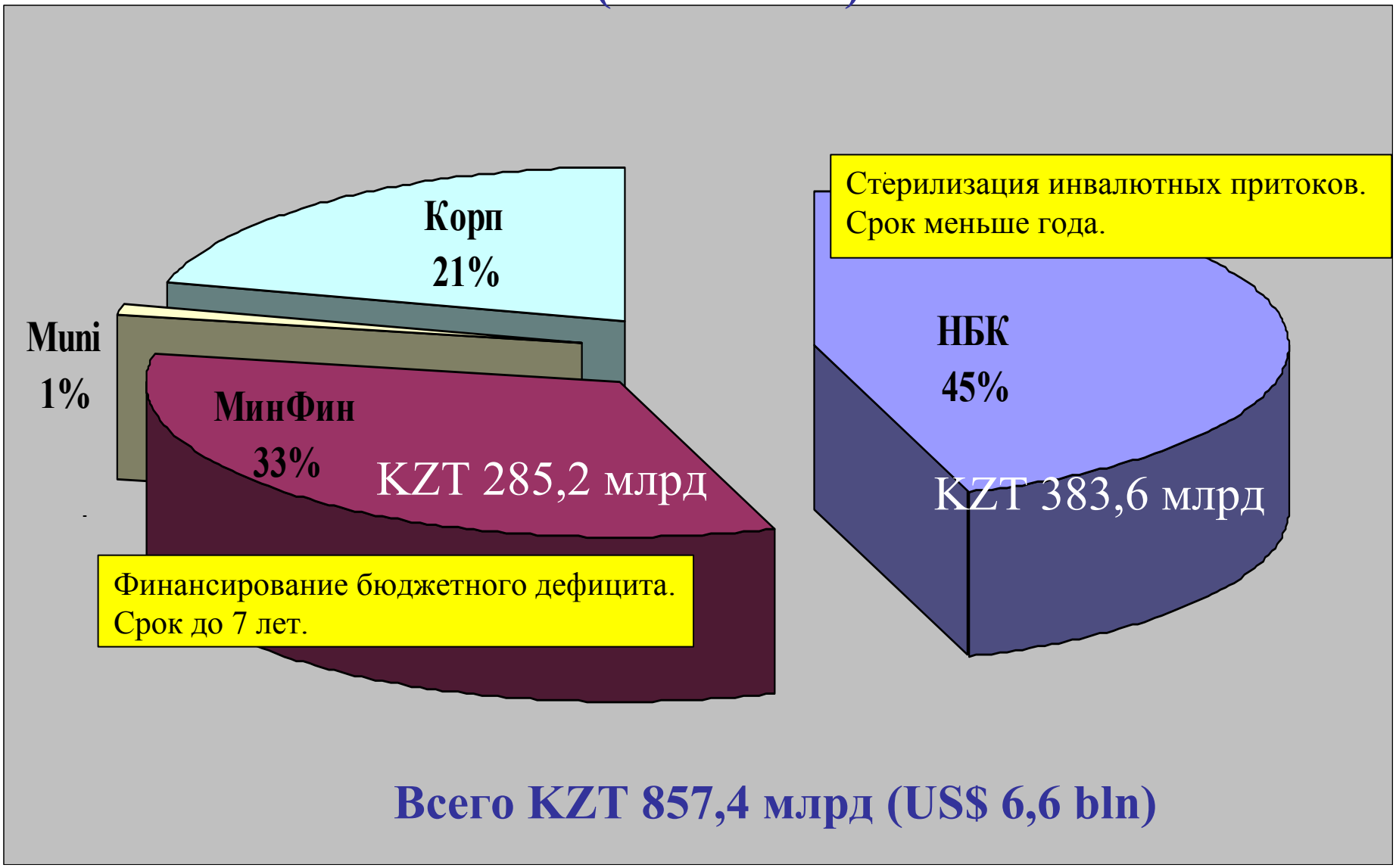
Кумулятивный выпуск корпоративных облигаций

(ежемесячно, 09.99—03.05, в миллиардах тенге)



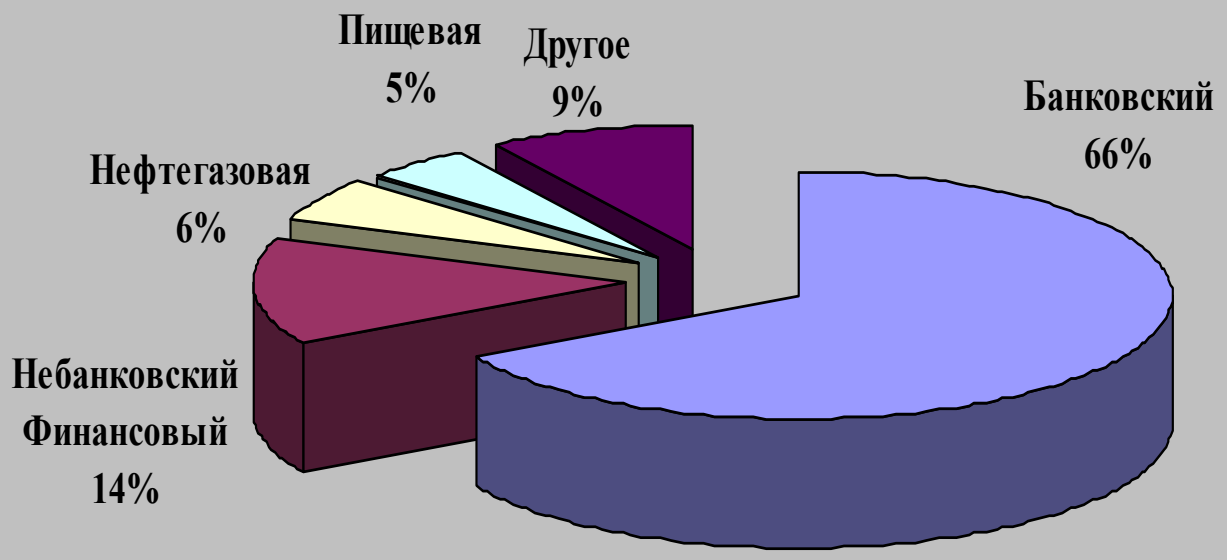
Source: Kazakhstan Stock Exchange

Структура внутреннего долга
(на 31.03.05)



Всего KZT 857,4 млрд (US$ 6,6 bln)

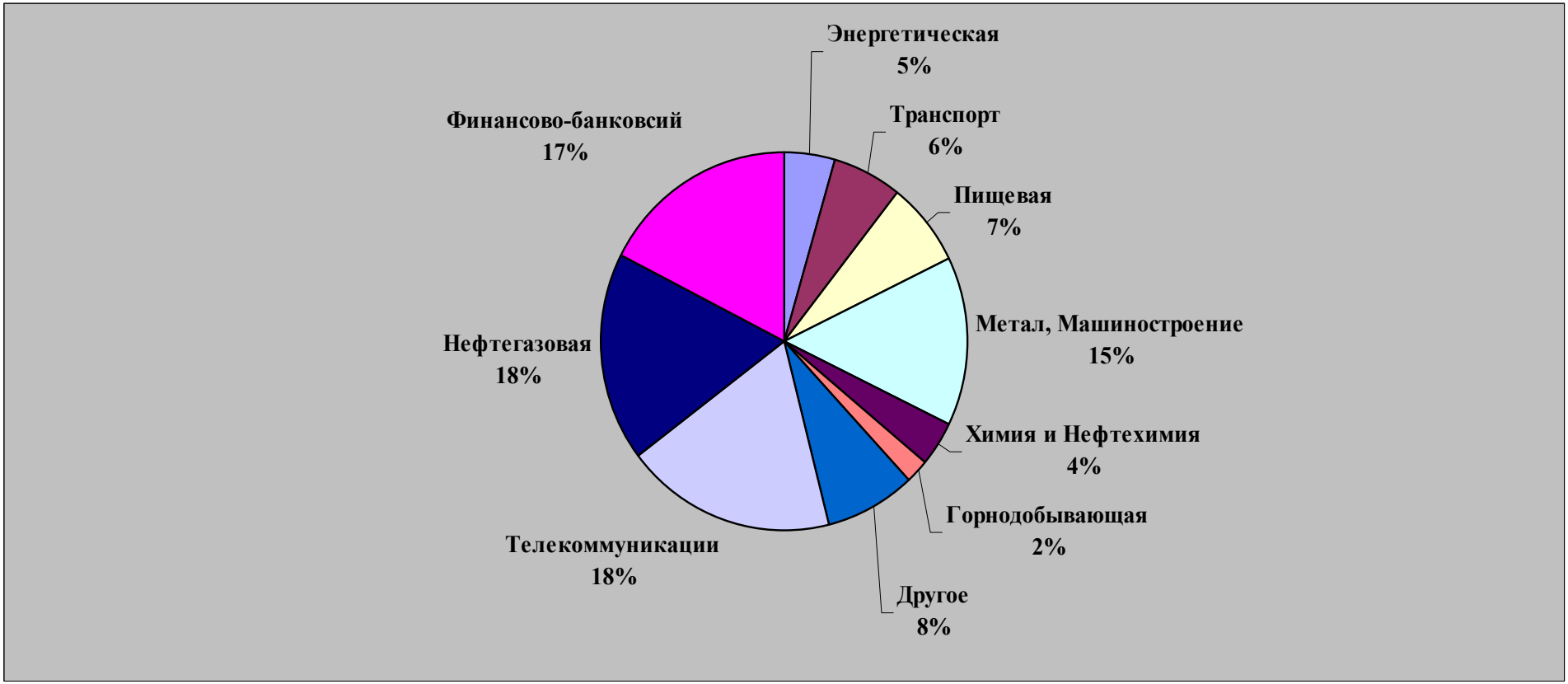
Отраслевая структура корпоративного долга
(на 31.03.05)



80% эмиссий в финансовом секторе

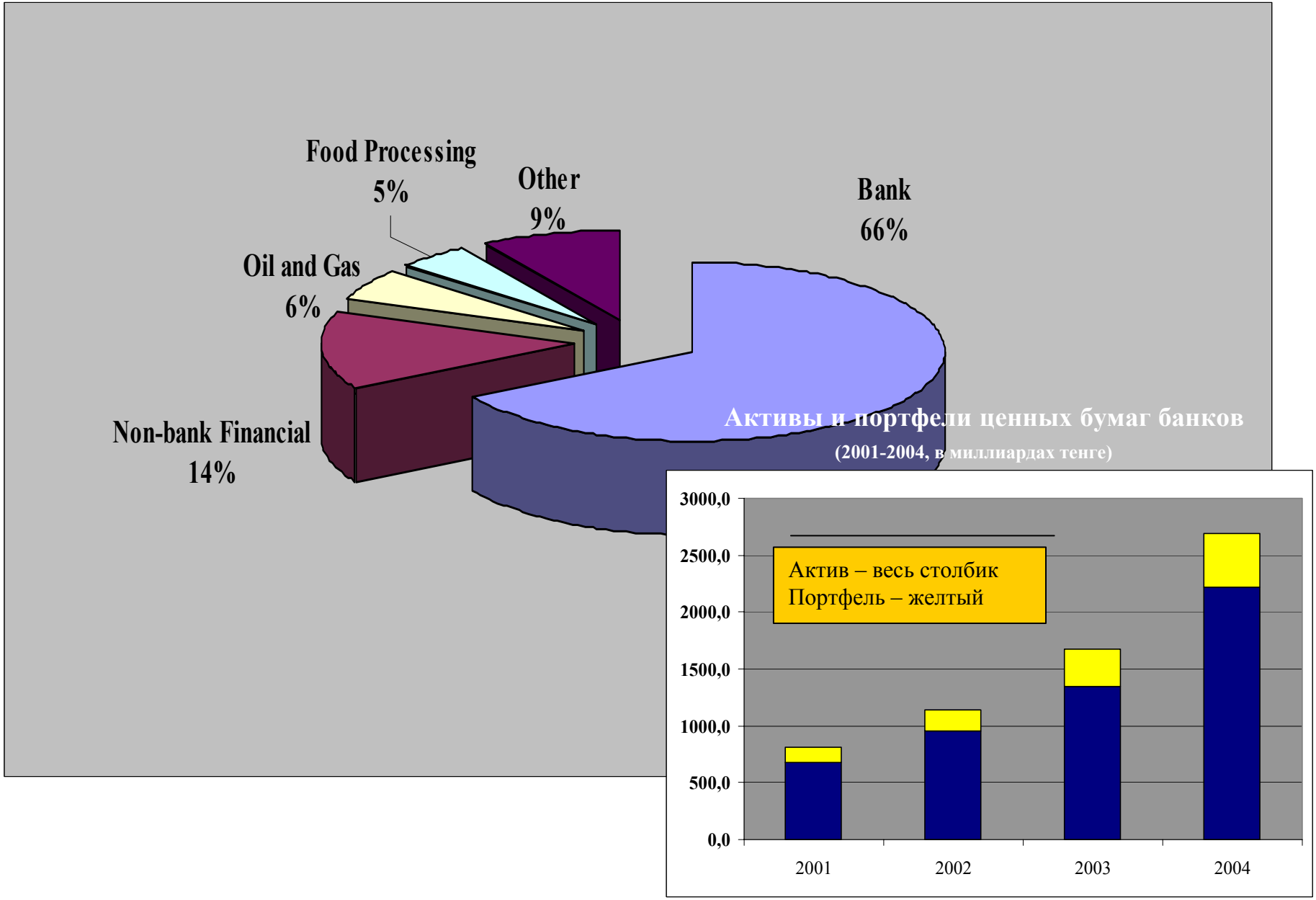
Source: Pragma Corporation, KASE

Структура российского корпоративного долга
(на 18.04.05)

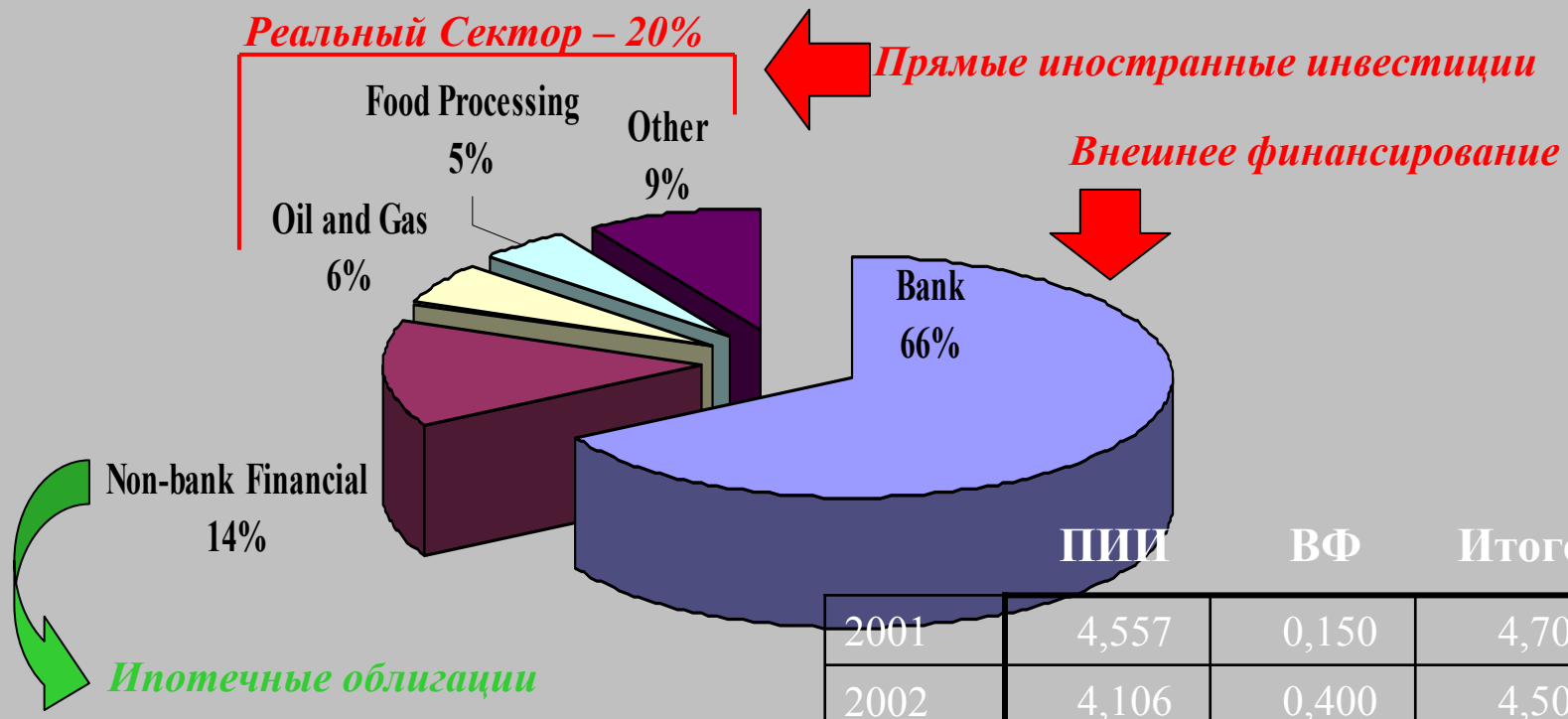


Источник: Рынок Ценных Бумаг по данным ММВБ

Структура внутреннего корпоративного долга
(на 31.03.05)



Структура внутреннего корпоративного долга
(на 31.03.05)



	ПИИ	ВФ	Итого
2001	4,557	0,150	4,707
2002	4,106	0,400	4,506
2003	4,609	0,950	5,559
2004	8,423	1,650	10,073
Итого	21,695	3,150	24,845

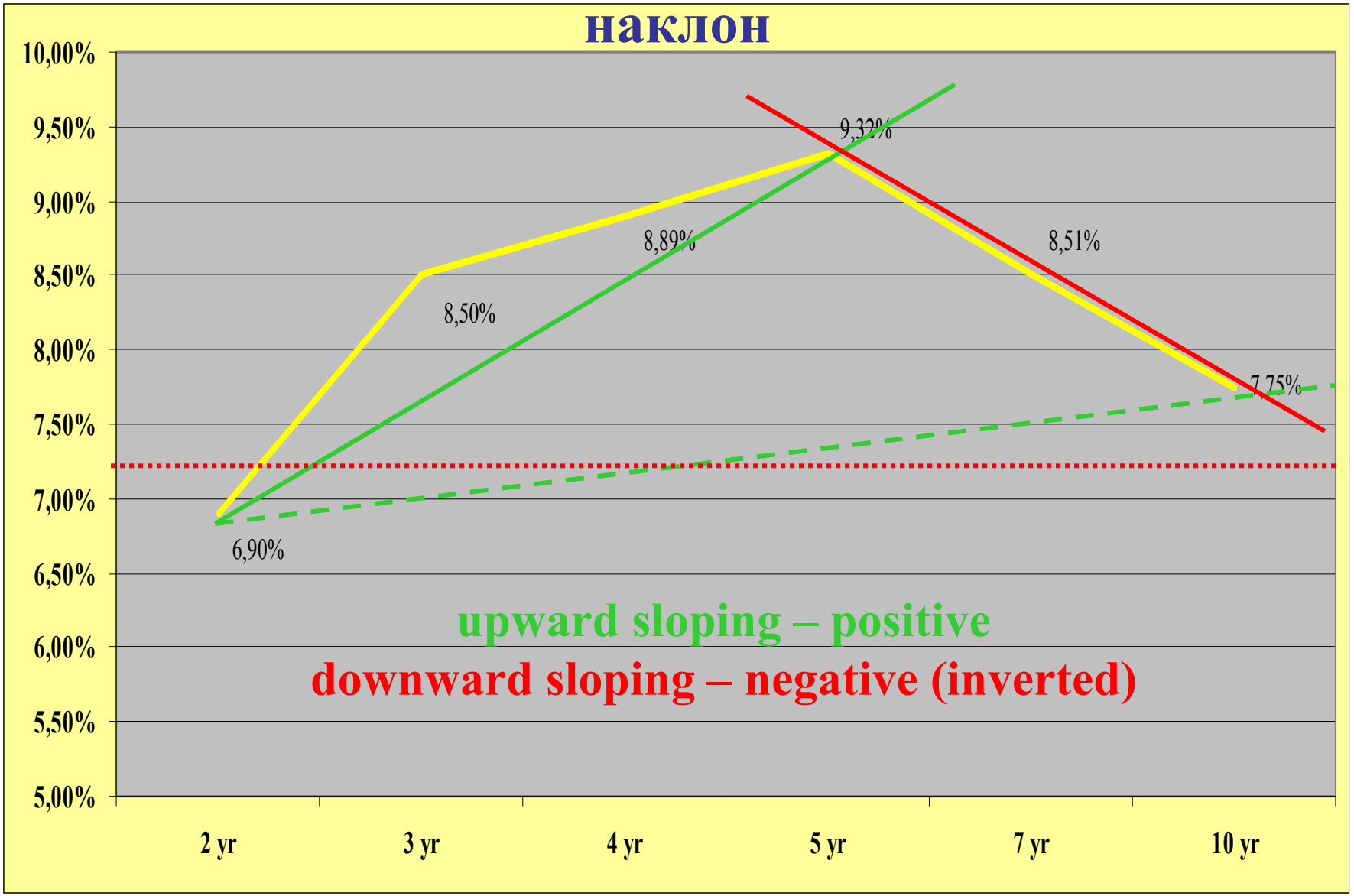
в миллиардах долларов США

Source: KASE, National Bank, Pragma Corporation

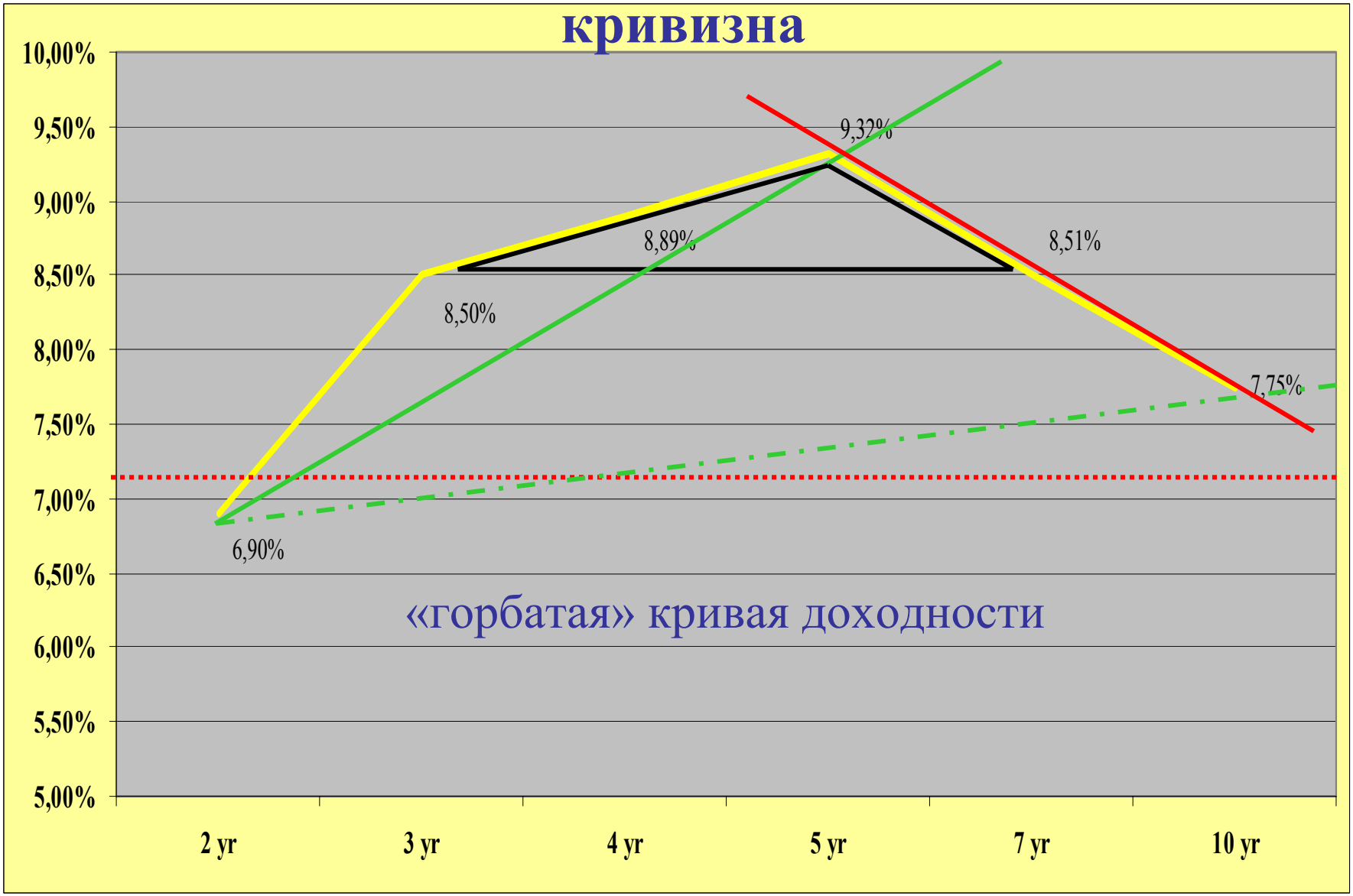
Кривая доходности банковского сектора

Наклон
Кривизна
Уровень

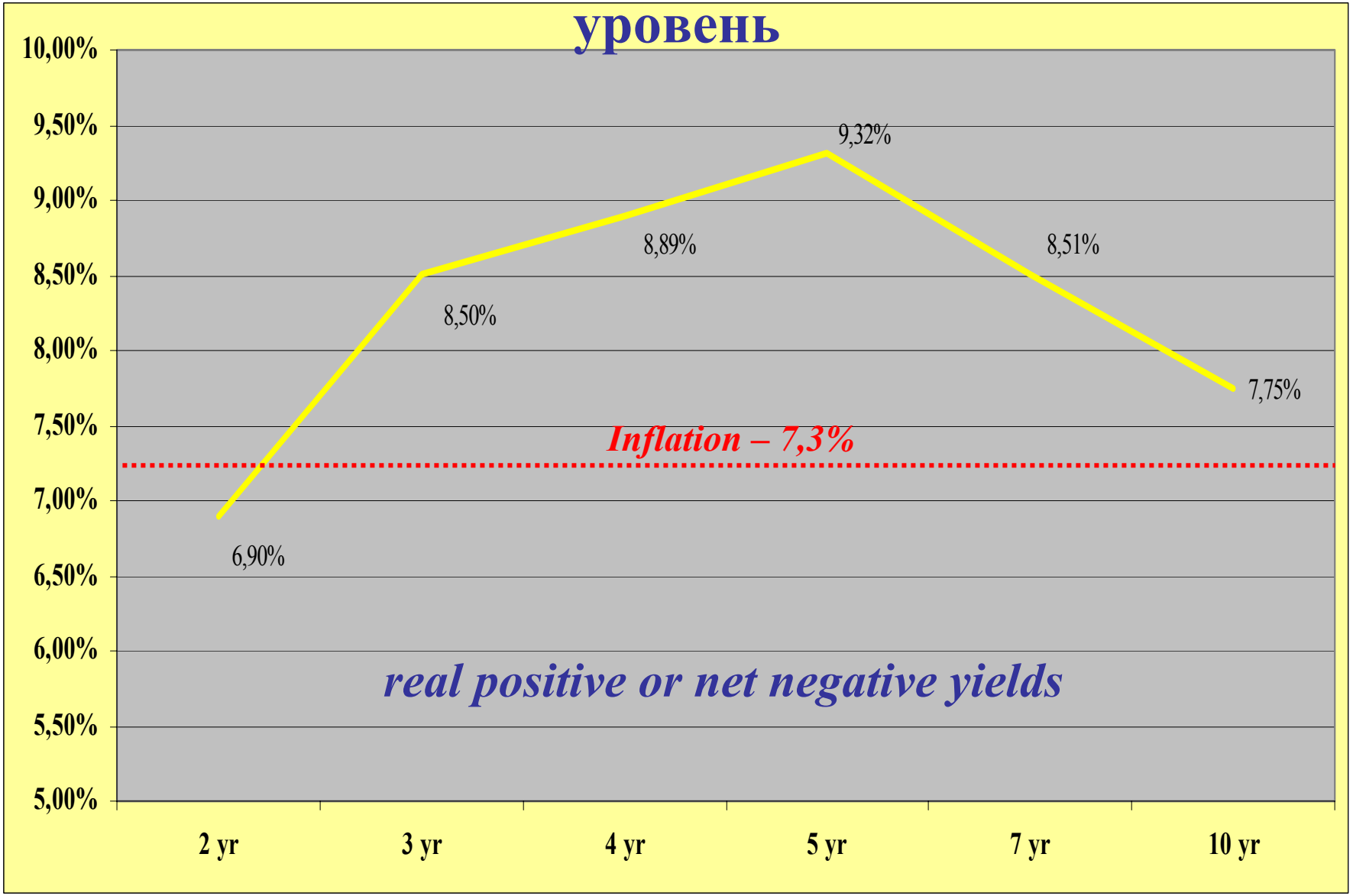
Кривая доходности банковского сектора: наклон



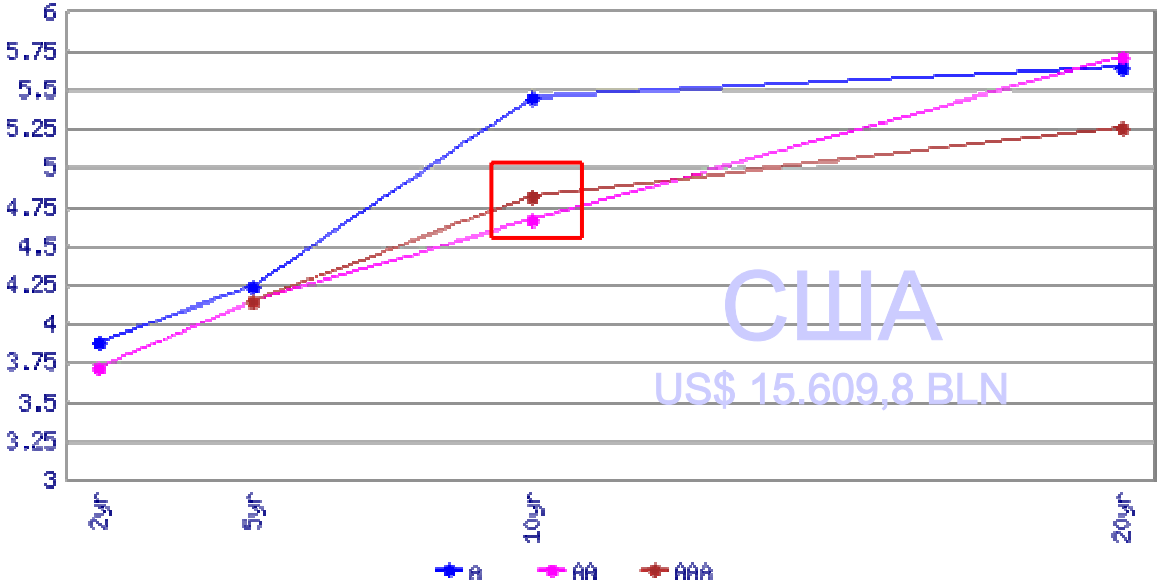
Кривая доходности банковского сектора: кривизна



Кривая доходности банковского сектора: уровень



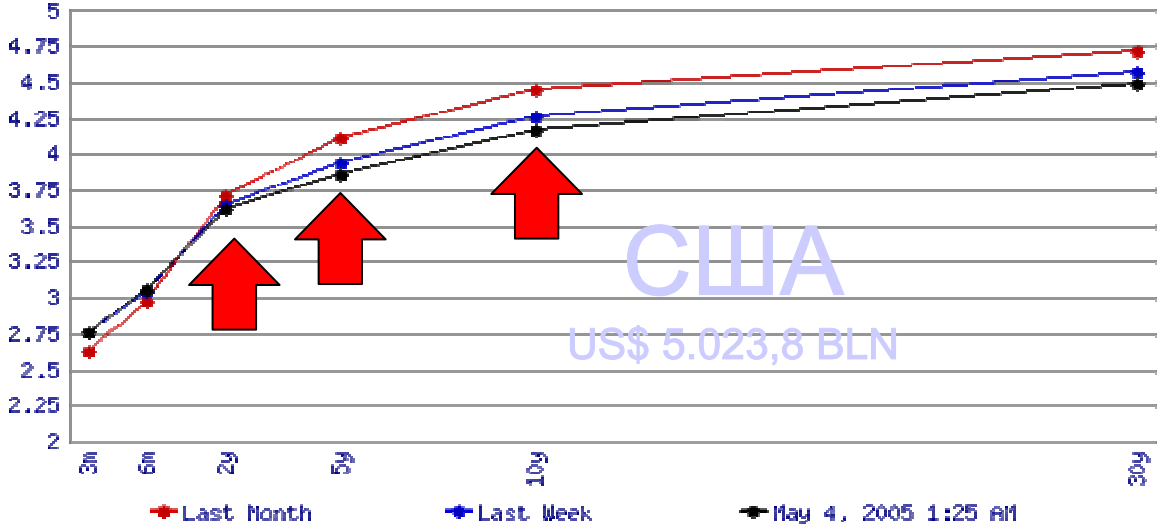
Корпоративная кривая доходности



Корпоративный Спрэд

	2yr	5yr	10yr
AAA		30	60
AA	12	30	50
A	25	42	125

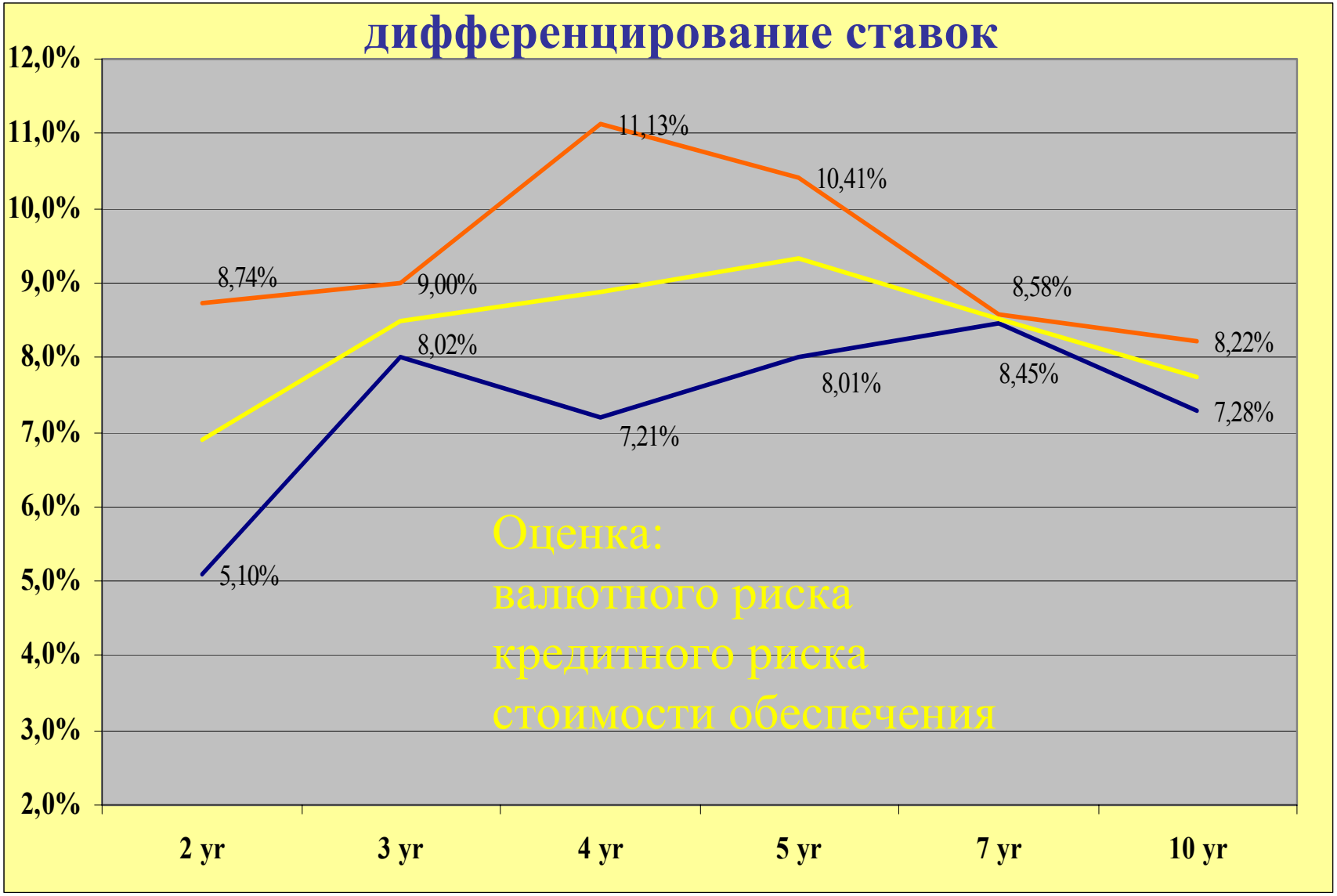
Государственная кривая доходности



Source: Bondtalk.com, World Bank

Кривая доходности банковского сектора: уровень

Кривая доходности банковского сектора:



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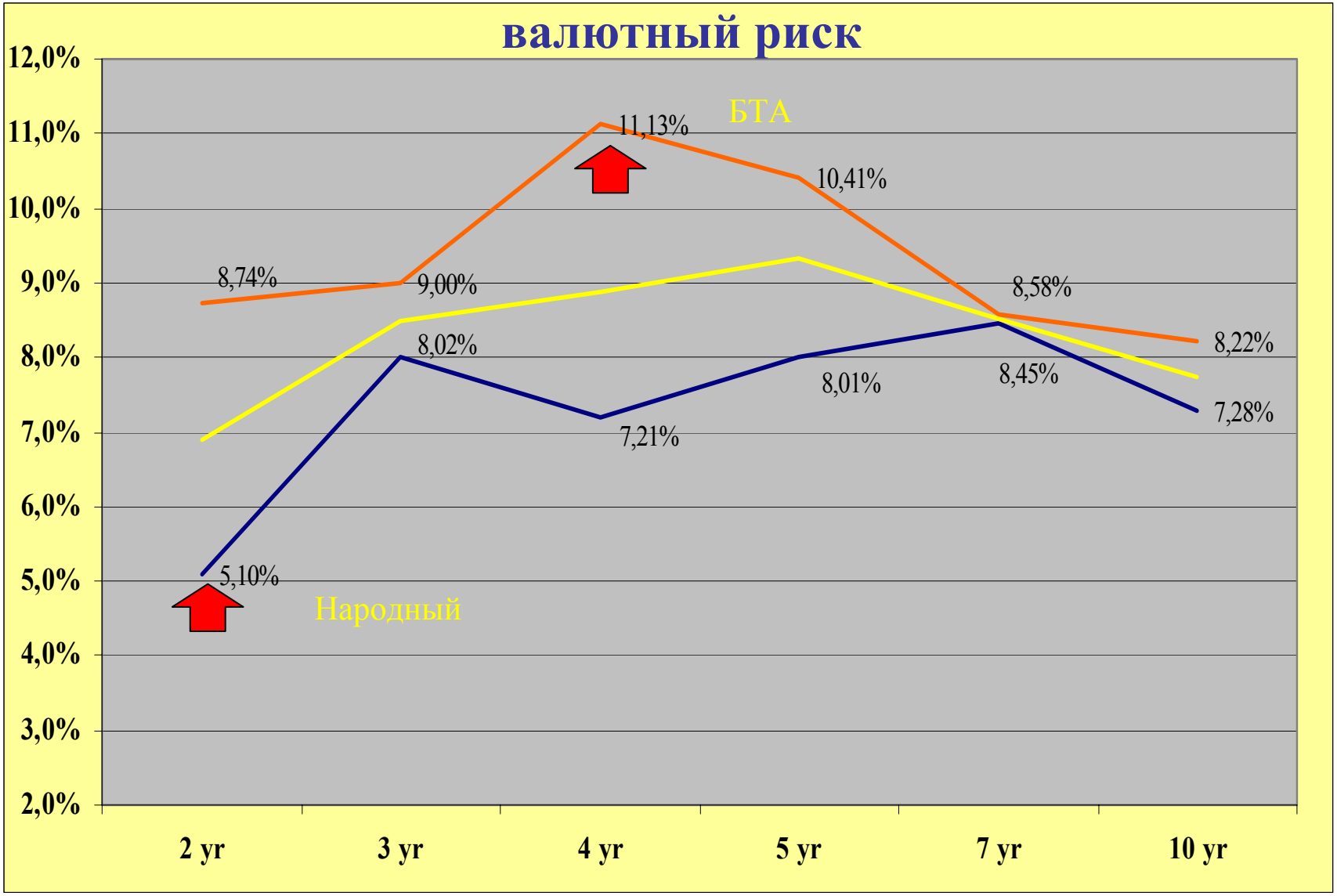

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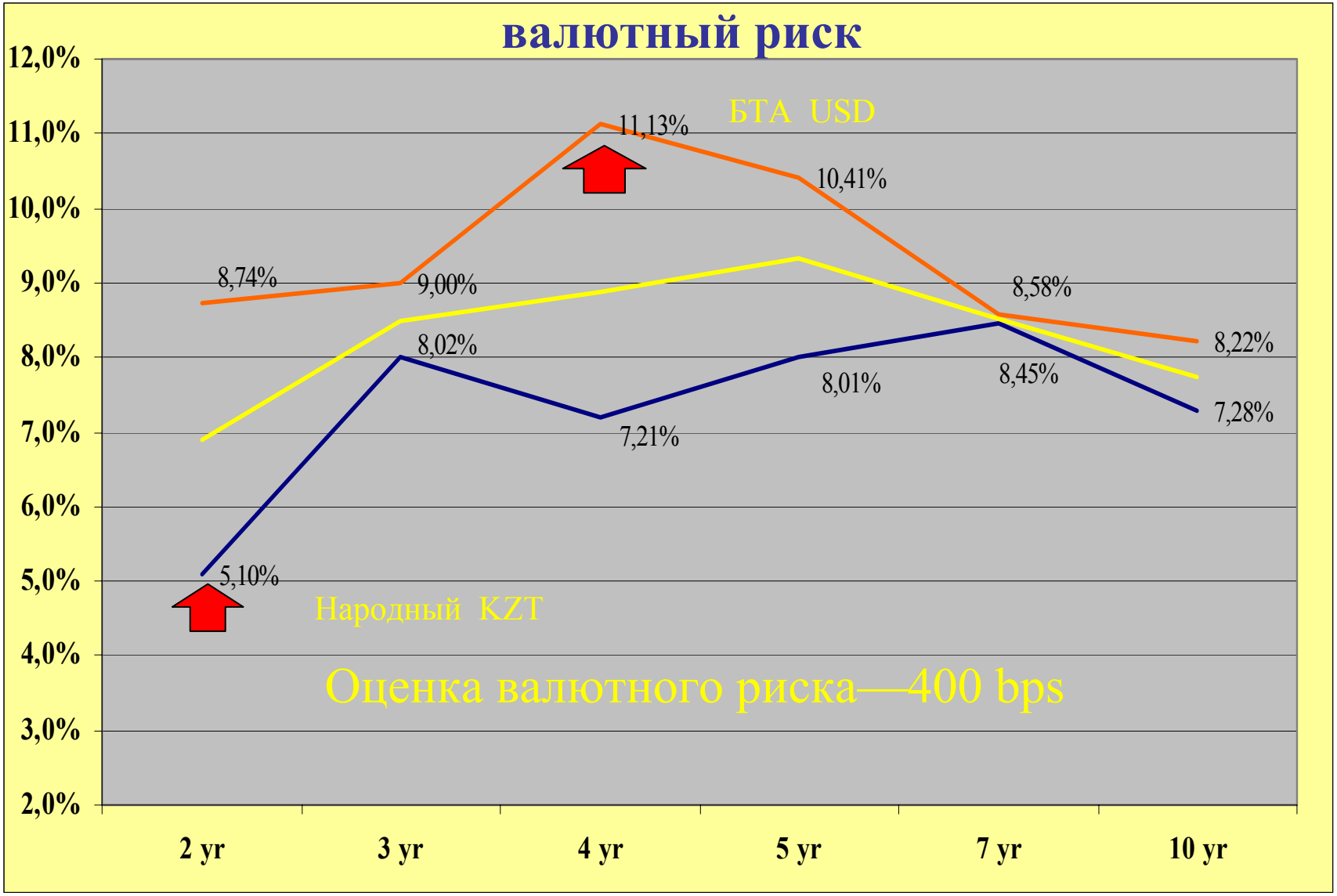

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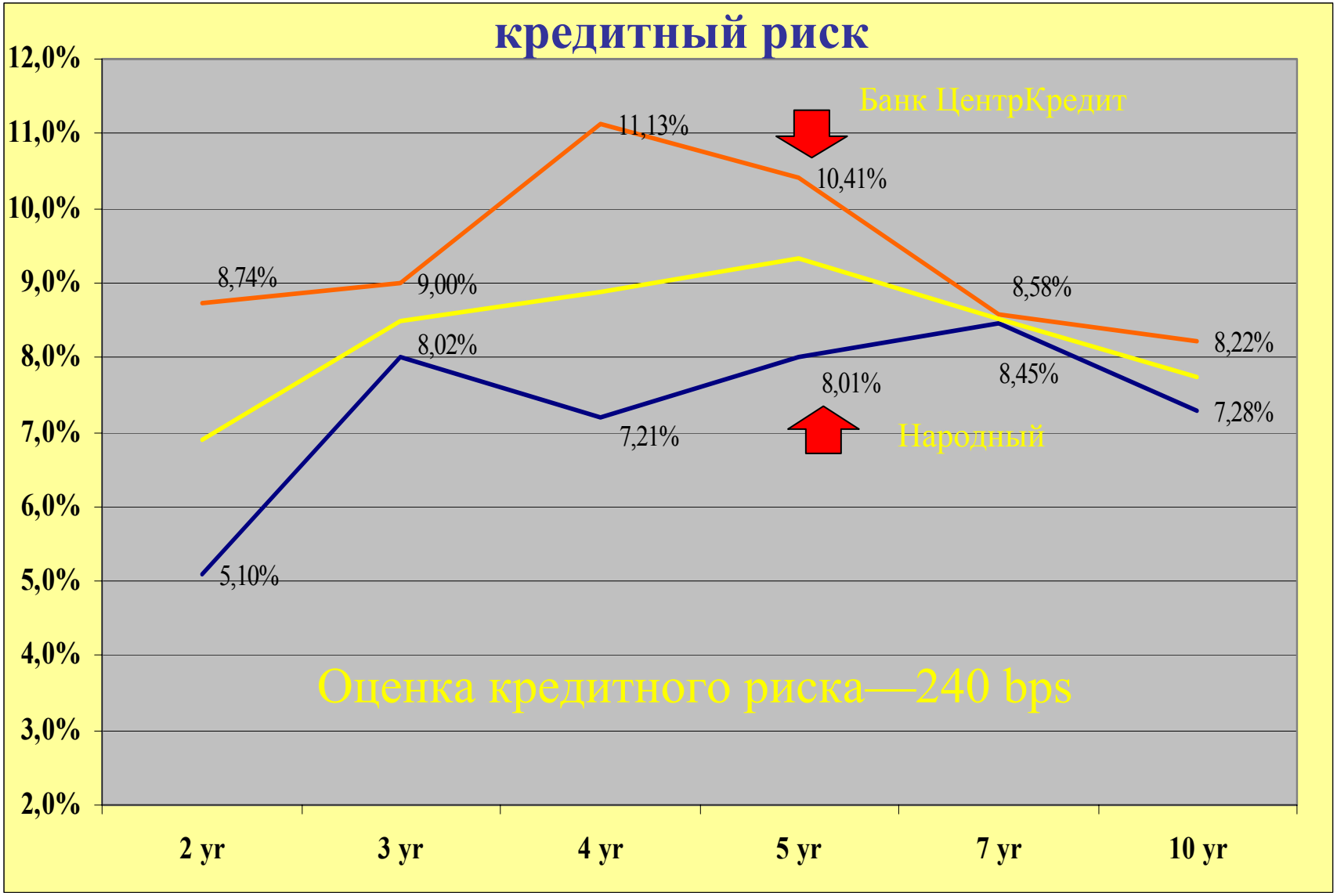
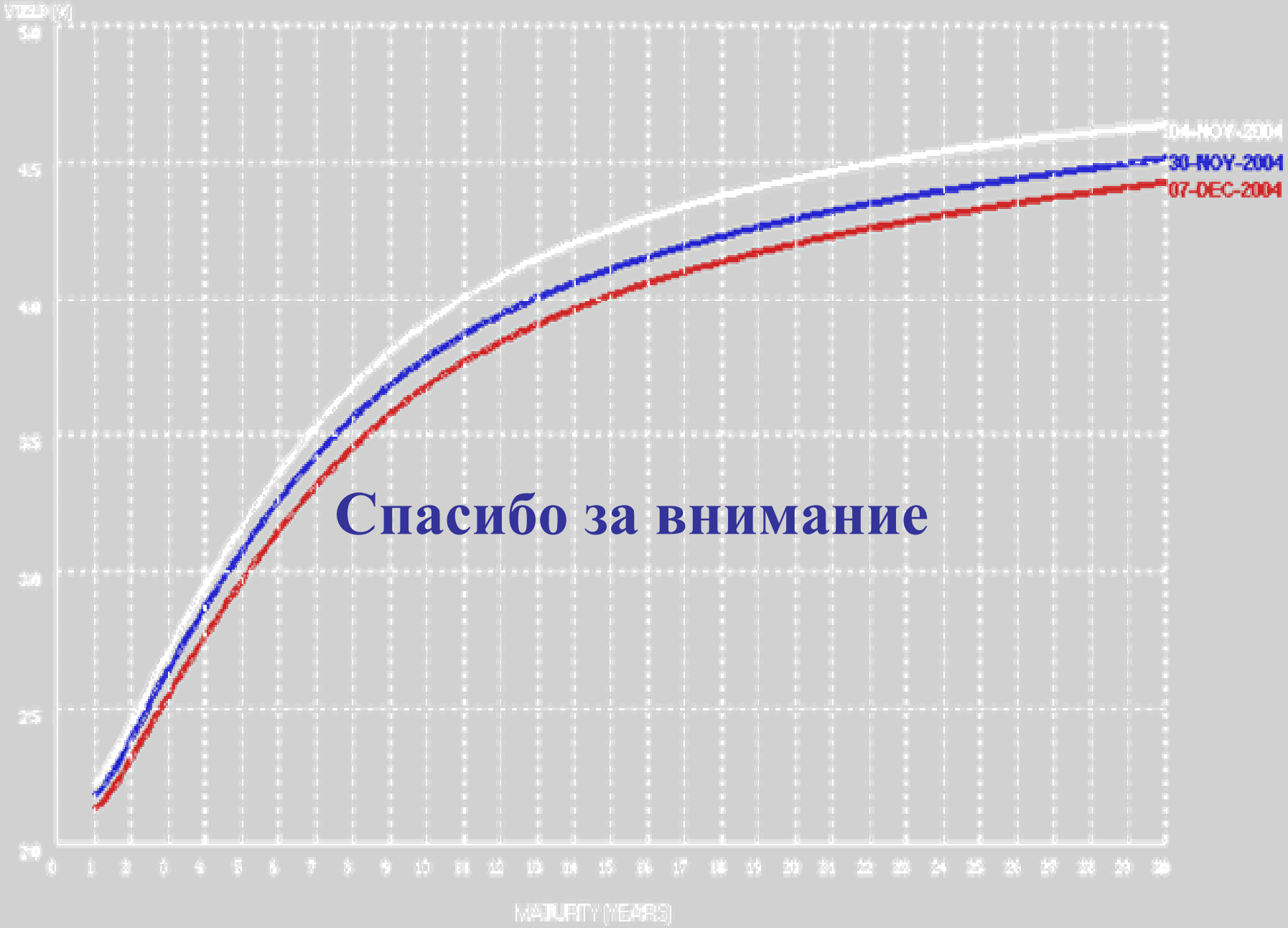


Кривая доходности банковского сектора:



Спасибо за внимание

Corporate Bond Market Uzbekistan

CBONDS
CIS Bond Conference
May 19th-20th 2005

Jack Pascal

CHALLENGES AND OPPORTUNITIES

A quick review of the Market

- 91 issues have come to the market 66 issuers $50 million
- The majority of the issues have been fixed coupon issues the balance being floating rate.
- Maturities have ranged from 1 year to 5 Years 2 years being the most common

CHALLENGES AND OPPORTUNITIES

- A good start for Corporate Bonds!

- What is needed to move forward?
- What do the regulators and market participants need to do?
- Insurance guarantees
- Secondary market trading
- Constraints to developments

Guarantees

- A troubling aspect of the market
- 57% have been insurance guarantees. Sugurta Business Insurance has guaranteed 88% of those.

Secondary market

- No real secondary market trading for corporate bond issues.
- Secondary underwriter-to-underwriter trading in the OTC market, Small and underdeveloped.
- The small capital base of the insurance, banking and investment funds
- The limited capital base of underwriters to position or trade securities
- A pension system that is not developed.

Infrastructure Constraints

- The government does not promote the growth of the private sector
- A lack of a benchmark GKO yield curve to price corporate bonds
- A lack of international bond issuance to benchmark corporate securities
- No credit rating agency to evaluate the creditworthiness of issuers

Changes that can be Accomplished

- Broker/dealers capacity building is needed.
- Additional training for underwriters, market makers and arrangers.
- Education is needed to expand the institutional buyer base.
- Market makers/underwriters of corporate bonds need a mechanism to finance their trading positions.

Legal / regulatory constraints

- Corporate bond issues are limited to 100% of Charter Capital (Paid in Capital).
- More transparency needed between the issuer and buyers. Are these pre-arranged trades?
- There is a lack of adequate disclosure on the part of issuers of bonds

Regulatory Constraints…..

- Use of proceeds. Needs to be expanded and monitored?
- More disclosure on previous emissions of bonds needed.
- Difficult to determine who the real owners of a company are based on the filling documents at the CCFSM.

Some Final Thoughts

- Is there enough coordination concerning the banks and their underwriting risks between the Center and the Central Bank?
- Is there a possible systemic risk to the financial markets from a default on insurance guarantees?

PENSION & INSURANCE ATTACHMENTS

Проект

Закон Республики Казахстан
«О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам страхования»

Статья 1. Внести следующие изменения и дополнения в следующие законодательные акты Республики Казахстан:

1. В Гражданский кодекс Республики Казахстан (Особенная часть) от 1 июля 1999 г. (Ведомости Парламента Республики Казахстан, 1999 г., № 16-17, ст. 642; № 23, ст. 929; 2000 г., № 3-4, ст. 66; № 10, ст. 244; № 22, ст. 408; 2001 г., № 23, ст. 309; № 24, ст. 338; 2002 г., № 10, ст. 102; 2003 г., № 1-2, ст. 7; № 4, ст. 25; № 11, ст. 56; № 14, ст. 103; № 15, ст. 138, 139, 2004 г., № 3-4, ст. 16; № 5, ст. 25; № 6, ст. 42; № 16, ст. 91; № 23, ст. 142):

1) в статье 807:

пункт 1 статьи 807 изложить в следующей редакции:

«1. Объектами имущественного и личного страхования могут быть имущественные интересы, связанные:

1) с дожитием граждан до определенного возраста или срока, установленного договором страхования, со смертью, с наступлением определенных событий в жизни граждан;

2) с причинением вреда жизни и здоровью граждан в результате несчастных случаев и иных событий, заболеваний;

3) с владением, пользованием и распоряжением имуществом;

4) с обязанностью возместить вред, причиненный другим лицам, в том числе в результате нарушения договора (обязательств);

5) с иными рисками граждан и юридических лиц.»;

в пункте 2 после слова «противоправные» дополнить словом «имущественные»;

в пункт 3 после слова «выступают» дополнить словом «имущественные»;

2) в статье 809:

в пункте 1 после слова «гражданина» дополнить словом «имущественных»;

пункт 2 изложить в следующей редакции:

«2. К имущественному страхованию относится страхование имущества и связанных с ним имущественных интересов.»;

в пункте 5 слова «(страхование ответственности за причинение вреда)» и «(страхование ответственности по договору)» исключить;

3) в статье 809-1:

пункт 1 изложить в следующей редакции:

«1. Накопительным страхованием является страхование, предусматривающее осуществление страховой выплаты при наступлении страхового случая, в том числе по истечении установленного договором

страхования периода либо иного события, предусмотренного договором страхования, в зависимости от того, какое из них наступит первым.»;

пункт 2 дополнить словами «, обладающего признаками вероятности и случайности его наступления.»;

в пунктах 3 и 5 слова «Договор аннуитета» заменить словами «Договор аннуитетного страхования»;

4) статьи 810, 811 и 812 исключить;

5) пункт 3 статьи 816 исключить;

6) в части первой пункта 1 статьи 818 слова «или аннуитета» исключить;

7) в статье 819:

в пункте 3 второе предложение исключить;

пункт 5 исключить;

8) пункт 1 статьи 820 дополнить частью второй следующего содержания:

«Страховая выплата осуществляется единовременным платежом, за исключением страховых выплат по договорам аннуитетного страхования.»;

9) в статье 821:

в пункте 3:

дополнить словами «, за исключением страховых выплат, связанных с компенсацией расходов застрахованного в связи с заболеванием и иным расстройством здоровья.»;

дополнить вторым предложением следующего содержания:

«При этом страховая выплата, связанная с компенсацией расходов застрахованного в связи с заболеванием и иным расстройством здоровья, осуществляется в порядке, предусмотренном пунктом 2 настоящей статьи.»;

10) в части первой пункта 3 статьи 824 слова «перестрахователя и перестраховщика» заменить «перестрахования между перестрахователем и перестраховщиком»;

11) в статье 825:

в пункте 1:

подпункт 1) изложить в следующей редакции:

«1) составления сторонами договора страхования;»;

подпункт 4) исключить;

12) в статье 825-1:

в пункте 1 слова «и подлежат согласованию с уполномоченным государственным органом в случаях, установленных законодательными актами Республики Казахстан» исключить;

в пункте 2:

подпункт 3) изложить в следующей редакции:

«3) перечень страховых случаев;»;

подпункт 14) исключить;

подпункт 15) изложить в следующей редакции:

«15) дополнительные условия.»;

пункт 5 исключить;

13) статью 826 дополнить пунктом 2-1 следующего содержания:

«2-1. Франшиза - предусмотренное условиями страхования освобождение страховщика от возмещения ущерба, не превышающего определенного размера.

Франшиза бывает условная (невычитаемая) и безусловная (вычитаемая).

При условной франшизе страховщик освобождается от возмещения ущерба, не превышающего установленного размера франшизы, но должен возместить ущерб полностью, если его размер больше этой суммы.

При безусловной франшизе ущерб во всех случаях возмещается за вычетом установленной суммы.

Франшиза устанавливается либо в процентах к страховой сумме, либо в абсолютном размере.»;

14) пункт 1 статьи 826-1 изложить в следующей редакции:

«1. В случае несоблюдения страхователем два раза подряд условий уплаты страхового взноса по договорам накопительного страхования, страховщик обязан уведомить страхователя о необходимости уплаты страхового взноса.»;

15) в статье 826-2:

подпункт 1) пункта 1 исключить;

в части второй пункта 3 слово «существенного» исключить;

дополнить пунктом 4 следующего содержания:

«4. Страховщик вправе отказаться от восстановления действия договора накопительного страхования, если действие такого договора было досрочно прекращено, и страховщиком была выплачена выкупная сумма.»;

16) статью 830 дополнить пунктом 1-1 следующего содержания:

«1-1. Законодательными актами об обязательном страховании могут быть предусмотрены иные условия и порядок разглашения сведений, составляющих тайну страхования.»;

17) в статье 841:

в части первой пункта 1:

подпункт 6) изложить в следующей редакции:

«6) вступления в законную силу решения суда о принудительной ликвидации страховщика. При этом организация, осуществляющая гарантирование страховых выплат по обязательным видам страхования, выполняет свои обязательства, по договорам страхования, гарантированным ею, в порядке и сроки, установленные законодательными актами.»;

дополнить подпунктом 7) следующего содержания:

«7) вступления в силу решения уполномоченного государственного органа о выдаче разрешения на добровольную ликвидацию страховщика.»;

18) в части второй пункта 1 статьи 842 слова «, страховые взносы, полученные от страхователя, подлежат возврату в полном объеме» заменить словами «возврату подлежит выкупная сумма в размере, установленном договором.»;

19) подпункты 6) и 7) пункта 1 статьи 843 исключить;

20) в статье 845:

в пункте 1 слова «свое имущество и иные имущественные интересы, указанные в пункте 2 статьи 809» заменить словами «свои имущественные интересы, указанные в пункте 1 статьи 807»;

в части первой пункта 2 слова «имущества и иных» исключить;

в пункт 3 слова «имущества и» исключить;

пункт 5 исключить.

2. В Закон Республики Казахстан от 22 апреля 1998 г. «О товариществах с ограниченной и дополнительной ответственностью ("Ведомости Парламента Республики Казахстан", 1998 г., № 5-6, ст. 49; 1999 г., № 20, ст. 727; 2002 г., № 10, ст. 102; 2003 г., № 11, ст. 56; № 24, ст. 178; 2004 г., № 5, ст. 30; :

1) часть вторую пункта 2 статьи 1 изложить в следующей редакции:

«Особенности товариществ с ограниченной и дополнительной ответственностью, осуществляющих отдельные виды банковских операций, либо являющихся профессиональными участниками страхового рынка, могут определяться законодательными актами Республики Казахстан.».

3. В Закон Республики Казахстан от 18 декабря 2000 г. «О страховой деятельности» (Ведомости Парламента Республики Казахстан, 2000 г., № 22, ст. 406; 2003 г., № 11, ст. 56; № 12, ст. 85; № 15, ст. 139; 2004 г., № 11-12, ст. 66):

1) статью 1 дополнить пунктом 3 следующего содержания:

«3. Если международным договором, ратифицированным Республикой Казахстан, установлены иные правила, чем те, которые содержатся в настоящем Законе, то применяются правила международного договора.»;

2) в статье 3:

абзац второй изложить в следующей редакции:

«актуарий – физическое лицо, имеющее лицензию уполномоченного органа, осуществляющее деятельность, связанную с проведением экономико-математических расчетов размеров обязательств, ставок страховых премий по договорам страхования и перестрахования, а также производящее оценку прибыльности и доходности проводимых и планируемых к проведению видов страхования страховой (перестраховочной) организации, в целях обеспечения необходимого уровня платежеспособности и финансовой устойчивости страховой (перестраховочной) организации;»;

абзац четвертый исключить;

абзац шестой изложить в следующей редакции:

«перестрахование - деятельность и связанные с ней отношения, возникающие в связи с передачей перестрахователем всех или части страховых рисков в перестрахование с одной стороны, и принятием этих рисков перестраховочной организацией с другой стороны, в соответствии с заключенным между ними договором перестрахования.»;

абзац девятый исключить;

в абзаце четырнадцатом после слова «страхования» дополнить словом «(перестрахования)»;

абзацы пятнадцатый, шестнадцатый изложить в следующей редакции:

«страховой агент - физическое или юридическое лицо, осуществляющее посредническую деятельность по заключению договоров страхования от имени и по поручению одной или нескольких страховых организаций в соответствии с предоставленными полномочиями;

страховой брокер - юридическое лицо, представляющее страхователя в отношениях связанных с заключением и исполнением договоров страхования со страховщиком по поручению страхователя или осуществляющее от своего имени посредническую деятельность по оказанию услуг, связанных с заключением договоров страхования или перестрахования, а также осуществляющее консультационную деятельность по вопросам страхования и перестрахования;»;

3) в пункте 1 статьи 4 слова «по имущественной защите законных интересов» заменить словами «по защите законных имущественных интересов»;

4) пункт 2 статьи 5 исключить;

5) дополнить статьей 5-1 следующего содержания:

«Статья 5-1. Страхование страховыми организациями - нерезидентами Республики Казахстан

1. Страхование расположенных на территории Республики Казахстан имущественных интересов юридического лица или его обособленных подразделений и имущественных интересов физического лица, являющегося резидентами Республики Казахстан, может осуществляться только страховой организацией - резидентом Республики Казахстан.

2. Допускается заключение договоров страхования со страховыми организациями нерезидентами Республики Казахстан физическими лицами - резидентами Республики Казахстан, временно находящимися за пределами Республики Казахстан с целью работы, учебы, лечения или отдыха только на период временного пребывания этих лиц за пределами Республики Казахстан.

3. Банкам второго уровня Республики Казахстан и организациям, осуществляющим отдельные виды банковских операций, запрещается осуществлять платежи и переводы денег, связанные с оплатой страховых премий (взносов) в пользу нерезидентов Республики Казахстан, от юридических и физических лиц резидентов Республики Казахстан.»;

6) в статье 6:

пункт 2 дополнить подпунктами 3) и 4) следующего содержания:

«3) страхование к наступлению определенного события в жизни;

4) страхование жизни с участием страхователя в инвестиционном доходе страховщика.»;

пункты 3, 4 изложить в следующей редакции:

«1) страхование от несчастных случаев;

2) страхование на случай болезни;

3) страхование автомобильного транспорта;

4) страхование железнодорожного транспорта;

5) страхование воздушного транспорта;

6) страхование водного транспорта;

7) страхование грузов;

8) страхование имущества от ущерба, за исключением классов, указанных в подпунктах 3) - 7) настоящего пункта;

9) страхование гражданско-правовой ответственности владельцев автомобильного транспорта;

10) страхование гражданско-правовой ответственности владельцев воздушного транспорта;

11) страхование гражданско-правовой ответственности владельцев водного транспорта;

12) страхование гражданско-правовой ответственности, за исключением классов, указанных в подпунктах 9) – 11) настоящего пункта;

13) страхование займов;

14) ипотечное страхование;

15) страхование гарантий и поручительств;

16) страхование от прочих финансовых убытков;

17) страхование расходов, связанных с правовой защитой.

4. Дополнительные требования по условиям проведения отдельного класса (вида) страхования в добровольной форме страхования, в том числе пруденциальные нормативы в рамках отдельных классов страхования устанавливаются нормативными правовыми актами уполномоченного органа.»;

в пункте 5 второе предложение исключить;

в пункте 6 после слов «данный класс» дополнить словом «обязательного»**;**

7) в статье 7:

пункты 1, 2 изложить в следующей редакции:

«1. Страхование жизни представляет собой совокупность видов страхования, предусматривающих осуществление страховой выплаты в случаях смерти застрахованного или дожития им до окончания срока страхования, либо определенного договором страхования возраста.

2. Аннуитетное страхование представляет собой совокупность видов накопительного страхования, предусматривающих осуществление периодических страховых выплат в виде пенсии или ренты в течение установленного договором срока или пожизненно – в случаях достижения застрахованным определенного возраста, утраты трудоспособности (по возрасту, по инвалидности, по болезни), смерти кормильца, безработицы или иных случаях, приводящих к снижению или потере застрахованным личных доходов. Условие об осуществлении периодических страховых выплат по

договорам аннуитетного страхования не связано с определением, уточнением и подтверждением размера страховых выплат.»;

дополнить пунктами 2-1 и 2-2 следующего содержания:

«2-1. Страхование к наступлению определенного события в жизни представляет собой совокупность видов накопительного страхования, предусматривающих осуществление страховой выплаты в фиксированной сумме в случаях наступления заранее оговоренного события в жизни (бракосочетание или рождение ребенка) застрахованного.

2-2. Страхование жизни с участием страхователя в инвестиционном доходе страховщика представляет собой совокупность видов накопительного страхования, предусматривающих осуществление страховой выплаты в фиксированной сумме или страховых выплат виде пенсии или ренты в случаях смерти застрахованного или дожития им до окончания срока страхования, либо определенного договором страхования возраста с условием участия страхователя (застрахованного, выгодоприобретателя) в прибыли, получаемой страховой организацией в результате инвестиционной деятельности, посредством осуществления дополнительных страховых выплат либо увеличения страховой суммы. Порядок участия застрахованного (выгодоприобретателя) в доходах, получаемых страховой организацией в результате инвестиционной деятельности, определяется нормативными правовыми актами уполномоченного органа.»;

пункты 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 изложить в следующей редакции:

«3. Страхование от несчастного случая представляет собой совокупность видов страхования, предусматривающих осуществление страховой выплаты в фиксированной сумме и/или в размере частичной или полной компенсации расходов застрахованного в случаях смерти, утраты (полной или частичной) трудоспособности (общей или профессиональной) или иного причинения вреда здоровью застрахованного в результате несчастного случая, профессионального заболевания, за исключением страхования рисков, указанных в подпункте 2) пункта 3 статьи 6 настоящего Закона.

Под несчастным случаем понимается наступившее вопреки воле человека внезапное, кратковременное событие (происшествие) в результате внешнего механического, электрического, химического или термического воздействия на организм застрахованного, повлекшее за собой вред здоровью, увечье либо смерть.

4. Страхование на случай болезни представляет собой совокупность видов страхования, предусматривающих осуществление страховой выплаты в фиксированной сумме и/или в размере частичной или полной компенсации расходов застрахованного в связи с заболеванием и иным расстройством здоровья, за исключением страхования рисков, указанных в подпункте 1) пункта 3 статьи 6 настоящего Закона;

5. Страхование средств транспорта, перечисленных в подпунктах 3), 4), 5), 6) пункта 3 статьи 6 настоящего Закона, представляет собой совокупность

видов страхования, предусматривающих осуществление страховых выплат в размере частичной или полной компенсации ущерба, нанесенного имущественным интересам лица, связанным с владением, пользованием, распоряжением средством транспорта, вследствие его повреждения или уничтожения, включая угон или кражу.

6. Страхование грузов представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат в размере частичной или полной компенсации ущерба, нанесенного имущественным интересам лица, связанным с владением, пользованием, распоряжением грузом, в том числе включая багаж, товары и все прочие виды продукции, вследствие их повреждения, уничтожения, пропажи, независимо от способа транспортировки.

7. Страхование имущества представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат в размере частичной или полной компенсации ущерба, нанесенного имущественным интересам лица, связанным с владением, пользованием, распоряжением имуществом, вследствие его повреждения или уничтожения, кражи, за исключением имущества, перечисленного в подпунктах 3), 4), 5), 6), 7) пункта 3 статьи 6 настоящего Закона.

8. Страхование гражданско-правовой ответственности владельцев средств транспорта, предусмотренное подпунктами 9), 10), 11) пункта 3 статьи 6 настоящего Закона, представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат в размере частичной или полной компенсации ущерба, нанесенного имущественным интересам лица, связанным с его обязанностью возместить ущерб, нанесенный третьим лицам, в связи с использованием им транспортного средства, включая гражданско-правовую ответственность перевозчика.

9. Страхование гражданско-правовой ответственности представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат в размере частичной или полной компенсации ущерба, нанесенного имущественным интересам лица, связанным с его обязанностью возместить ущерб, нанесенный третьим лицам, вследствие страхования всех рисков, за исключением указанных в подпунктах 9), 10), 11) пункта 3 статьи 6 настоящего Закона.

10. Страхование займов представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат при возникновении убытков страхователя в результате невыполнения заемщиком обязательств перед страхователем.

11. Ипотечное страхование представляет собой вид страхования, предусматривающий осуществление страховых выплат в результате неисполнением заемщиком обязательств перед страхователем по договору ипотечного жилищного займа.

12. Страхование гарантий и поручительств представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат при возникновении убытков страхователя в результате его обязанности исполнить выданную им гарантию или поручительство.»;

дополнить пунктами 13, 14 и 15 следующего содержания:

«13. Страхование от прочих финансовых убытков представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат при возникновении убытков в результате потери работы, потери дохода, плохой погоды, непрерывных, непредвиденных расходов, потери рыночной стоимости и других убытков в результате осуществления финансово - хозяйственной деятельности, за исключением страхования рисков, указанных в подпунктах 12), 13), 14), 15) пункта 3 статьи 6 настоящего Закона.

14. Страхование расходов, связанных с правовой защитой, представляет собой совокупность видов страхования, предусматривающих осуществление страховых выплат при потерях страхователя (застрахованного) в результате понесенных им расходов в связи с судебным разбирательством.

15. По договорам страхования рисков, указанных в пунктах 10-13 настоящей статьи, может быть застрахован риск только самого страхователя и только в его пользу.»;

8) статьи 8 пункт 3 изложить в следующей редакции:

«3. Деятельность в отрасли «страхование жизни» не может совмещаться с деятельностью в отрасли «общее страхование», а также соответствующих классов в обязательной форме страхования, за исключением страхования рисков в пределах классов страхования, указанных в подпунктах 1) и 2) пункта 3 статьи 6 настоящего Закона.»;

9) статью 9 изложить в следующей редакции:

«Статья 9. Деятельность по перестрахованию

1. Деятельность по осуществлению перестрахования на территории Республики Казахстан подлежит лицензированию в порядке, предусмотренном настоящим Законом.

2. Страховая организация осуществляет передачу страховых рисков на перестрахование без наличия лицензии по перестрахованию.

3. Страховая организация вправе принимать страховые риски на перестрахование только при наличии лицензии по перестрахованию.

4. Страховая организация, имеющая лицензию по отрасли «общее страхование», имеет право получить лицензию и осуществлять деятельность по перестрахованию по всем классам страхования исключительно в отрасли «общее страхование».

5. Страховая организация, имеющая лицензию по отрасли «страхование жизни», имеет право получить лицензию и осуществлять деятельность по перестрахованию по всем классам страхования исключительно в отрасли «страхование жизни».

6. Перестраховочная организация, осуществляющая перестрахование как исключительный вид деятельности на основании лицензии по перестрахованию, вправе осуществлять перестрахование по всем классам страхования в отраслях «страхование жизни» и «общее страхование».

7. Нормы настоящего Закона в части создания, лицензирования, регулирования и прекращения деятельности страховой организаций применяются к условиям создания лицензирования, регулирования и прекращения деятельности перестраховочных организаций, осуществляющим перестрахование как исключительный вид деятельности.»;

10) в статье 11:

в пункте 2:

в подпункте 1) слова «в порядке, предусмотренном нормативными правовыми актами уполномоченного органа» исключить;

в подпункте 2) после слов «(для страховой организации» дополнить словами «, осуществляющей деятельность в отрасли «страхование жизни»;

в подпункте 10) слово «Казахстан.» заменить словом «Казахстан;»;

дополнить подпунктами 11) и 12) следующего содержания:

«11) ассистанс;

12) деятельность, предусмотренную законодательными актами Республики Казахстан, в рамках участия в системе гарантирования страховых выплат.»;

дополнить пунктом 5 следующего содержания:

«5. Ассистанс – предоставление страховыми организациями, юридическими лицами помощь страхователю (застрахованному, выгодоприобретателю), попавшему в затруднительное положение во время его путешествия либо его нахождения вдалеке от места жительства, в виде денег и/или в натурально - вещественной форме через техническое, медицинское содействие вследствие наступления страхового случая.

Ассистанс осуществляется на основании договора о совместной деятельности между страховыми организациями, либо между страховыми организациями и иными юридическими лицами, оказывающие услуги ассистанса.»;

11) дополнить статьей 11-1 следующего содержания:

«Статья 11-1. Общие условия осуществления страховой деятельности

1. Страховая (перестраховочная) организация вправе осуществлять страховую деятельность только при наличии лицензии на право осуществления страховой деятельности (деятельности по перестрахованию), правил страхования, определяющих общие условия осуществления страхования по определенному виду и внутренних правил.

2. Внутренние правила страховой (перестраховочной) организации должны определять:

1) структуру, задачи, функции и полномочия подразделений страховой (перестраховочной) организации;

2) структуру, количество членов, задачи, функции и полномочия службы внутреннего аудита и других постоянно действующих органов;

3) систему управлениями рисками, раскрывающую политику страховой (перестраховочной) организации по управлению техническими (страховыми), инвестиционными, кредитным, операционным, рыночным и другими рисками;

4) права и обязанности руководителей структурных подразделений;

5) полномочия должностных лиц и работников страховой (перестраховочной) организации при осуществлении ими сделок от его имени и за его счет.

3. Правила страхования и внутренние правила страховой (перестраховочной) организации утверждаются советом директоров.

4. Страховая (перестраховочная) организация не вправе осуществлять страховую деятельность без наличия в своем штате актуария.»;

12) пункт 1 статьи 13 изложить в следующей редакции:

«1. При осуществлении страхования рисков посредством создания страхового пула, договор сострахования заключается на условиях страховой организации, принимающей на себя функции и полномочия ведущей страховой организации.»;

13) в статье 15:

в пункте 1:

слова «предоставлению страховых услуг» заменить словами «заключению и исполнению договоров страхования»;

второе предложение исключить;

пункт 2 изложить в следующей редакции:

«2. Передача страховой (перестраховочной) организацией принятых ею страховых рисков в перестрахование осуществляется с учетом требований к порядку расчета пруденциальных нормативов.»;

пункт 5 исключить;

14) главу 4 дополнить статьями 16-1, 16-2, 16-3 следующего содержания:

«Статья 16-1. Создание страхового брокера

1. Организационно-правовой формой страхового брокера является товарищество с ограниченной ответственностью либо акционерное общество.

2. Наименование страхового брокера должно содержать слова «страховой брокер» или производные от них слова.

3. Страховому брокеру запрещается использовать в своем наименовании слова «национальный», «центральный», «бюджетный», «республиканский».

4. Не допускается использование в качестве наименования обозначений, тождественных или сходных до степени его смешения с наименованием ранее созданных страховых брокеров, в том числе страховых брокеров - нерезидентов Республики Казахстан. Настоящий запрет не распространяется на дочернего страхового брокера в случае использования им наименования родительской организации.

5. Государственная регистрация страхового брокера производится в порядке, определенном законодательством Республики Казахстан.

Статья 16-2 Требования к учредителям страхового брокера

1. Запрещается участие страховой (перестраховочной) организации или ее работников в создании или деятельности страхового брокера.

2. Учредители и работники страхового брокера не могут занимать одновременно должности в страховой (перестраховочной) организации.

Статья 16-3. Формирование уставного капитала страхового брокера

1. Учредители, участники либо акционеры страхового брокера обязаны оплачивать приобретаемые доли участия либо акции исключительно деньгами в национальной валюте.

2. Минимальный размер уставного капитала создаваемого страхового брокера должен быть полностью оплачен его учредителями к моменту его государственной регистрации.

3. Требования к минимальному размеру уставного капитала и к иным условиям деятельности страхового брокера устанавливаются нормативными правовыми актами уполномоченного органа.»;

15) статью 17 изложить в следующей редакции:

«Статья 17. Деятельность страхового брокера и требования, предъявляемые к ней

1. Деятельность страхового брокера является исключительным видом деятельности и подлежит лицензированию уполномоченным органом.

Страховой брокер не вправе осуществлять деятельность страхового агента.

2. Страховой брокер осуществляет следующие виды брокерской деятельности:

1) посредническая деятельность по заключению договоров страхования от своего имени и по поручению страхователя или договоров перестрахования от своего имени и по поручению цедента;

2) консультационная деятельность по вопросам страхования (перестрахования);

3) поиск и привлечение физических и юридических лиц к страхованию (перестрахованию);

4) проведение сравнительного анализа услуг и финансового состояния страховых (перестраховочных) организаций;

5) сбор информации об объектах страхования с целью проведения сравнительного анализа услуг, предоставляемых страховыми (перестраховочными) организациями;

6) разработка по поручению клиентов условий страхования (перестрахования), критериев выбора страховщиков (перестраховщиков), оказание экспертных услуг по выявлению страховых рисков;

7) подготовка и/или оформление по поручению страхователя (цедента) необходимых для заключения договора страхования (перестрахования) документов, сбор информации по вопросам страхования;

8) оформление по поручению страхователя (цедента) договора страхования (перестрахования);

9) сбор страховых премий от страхователей (цедентов) по договорам страхования (перестрахования) для их последующего перевода страховым (перестраховочным) организациям при наличии соответствующего соглашения со страхователем (цедентом);

10) размещение страховых рисков по договорам страхования (перестрахования) или сострахования по поручению клиентов;

11) обеспечение правильного и своевременного оформления документов при заключении договора страхования (перестрахования), осуществлении страховой выплаты, рассмотрении претензий при наступлении страхового случая, а также других документов, связанных с заключенными договорами страхования (перестрахования);

12) оказание консультаций и содействие в получении страхователем (цедентом), выгодоприобретателем страховой выплаты при наступлении страхового случая;

13) оформление в соответствии с представленными полномочиями, необходимых документов для получения страховой выплаты;

14) сбор, по поручению страхователя (цедента), страховых выплат от страховых (перестраховочных) организаций для их последующей передачи страхователю (цеденту), выгодоприобретателю;

15) подготовка документов по рассмотрению и урегулированию убытков при наступлении страхового случая по поручению заинтересованных лиц;

16) организация услуг экспертов по оценке ущерба и определению размера страховой выплаты.

3. Страховой брокер при осуществлении своей деятельность не является стороной договора страхования (перестрахования).

4. Основные права, обязанности и ответственность страхового брокера должны быть определены в его внутренних правилах осуществления деятельности страхового брокера.»;

16) дополнить статьей 18-1 следующего содержания:

«Статья 18-1. Требования к страховому агенту

1. Не может быть страховым агентом физическое лицо при наличии у него непогашенной или неснятой в установленном законом порядке судимости.

2. В своей деятельности страховой агент обязан:

1) предъявлять страхователю агентское соглашение или иной документ, удостоверяющий его право заключать договоры страхования от имени и по поручению страховой организации;

2) предъявить информацию о страховой организации (всех страховых организациях), страховым агентом которой (которых) он является, включая копию лицензии страховой организации (страховых организаций) на право осуществления страховой деятельности;

3) по требованию страхователя ознакомить с условиями страхования по заключаемому договору страхования.»;

17) в статье 20:

в пункте 1 слово «деятельности» исключить;

пункт 2 изложить в следующей редакции:

«2. Порядок осуществления аудита страховой (перестраховочной) организации, а также требования, предъявляемые к отчету и заключению уполномоченной аудиторской организации, устанавливаются нормативными правовыми актами уполномоченного органа.»;

в пункте 5:

слово «(аудитора)» исключить;

в пункте 6 после слова «требований» дополнить словами «нормативных правовых актов»;

18) в статье 21:

в часть первую пункта 2 дополнить словами «и Национального Банка Республики Казахстан»;

часть первую пункта 4 изложить в следующей редакции:

«4. Юридические лица, зарегистрированные в оффшорных зонах, или физические лица, являющиеся участниками (учредителями, акционерами) юридических лиц, зарегистрированных в оффшорных зонах, перечень которых устанавливается уполномоченным органом, не могут прямо или косвенно быть учредителями или акционерами страховой (перестраховочной) организации - резидента Республики Казахстан.

Указанное ограничение не распространяется на страховые (перестраховочные) организации, зарегистрированные в оффшорных зонах, имеющих международный кредитный рейтинг не ниже рейтинга «А» одного из рейтинговых агентств, перечень которых устанавливается уполномоченным органом.

Перечень зон, признаваемых оффшорными, при осуществлении надзора за страховой деятельностью устанавливается нормативными правовыми актами уполномоченным органом.»;

29) в статье 22:

часть вторую пункта 1 исключить;

в пункте 4 слово «Официальный» заменить словом «Правовой»;

20) в пункте 2 статьи 24 после слов «уполномоченного аудитора,» дополнить словом «службы»;

21) в статье 25:

в пункте 5 слова «, обладающих правом контроля над ней» исключить;

22) пункты 3 и 4 статьи 32 исключить;

23) пункт 1 статьи 35 исключить;

24) статью 36 исключить;

25) в статье 43:

в подпункте 5) слова «уставного и собственного капиталов» заменить словами «уставного капитала, гарантийного фонда, маржи платежеспособности»;

дополнить подпунктами 9-1), 9-2) следующего содержания:

«9-1) предъявляет требования к методам оценки и принципам расчета страховых тарифов по классам (видам) страхования страховых (перестраховочных) организаций;

9-2) определяет порядок расчета коэффициента убыточности страховой (перестраховочной) организации;»;

в подпункте 10) после слов «страховых брокеров» дополнить словами «филиалов и представительств страховых (перестраховочных) организаций и страховых брокеров, в том числе нерезидентов Республики Казахстан,»;

дополнить подпунктом 11-1) следующего содержания:

«11-1) устанавливает требования к автоматизации страховой (перестраховочной) организации;»;

подпункт 14) дополнить словами «, страховых брокеров, обособленных подразделений субъектов страховой деятельности и страховых брокеров, в том числе созданных страховыми (перестраховочными) организациями – нерезидентами Республики Казахстан, страховыми брокерами - нерезидентами Республики Казахстан»;

подпункт 19) изложить в следующей редакции:

«19) вправе получать от профессиональных участников страхового рынка и их объединений, страховых агентов, необходимые сведения для осуществления своих контрольных и надзорных функций в соответствии с настоящим Законом;»;

подпункты 22), 23) изложить в следующей редакции:

«22) устанавливает требования к содержанию и изготовления бланков страховых полисов по отдельным видам обязательного страхования;

23) вправе применять ограниченные меры воздействия к профессиональным участникам страхового рынка;»;

26) в статье 44:

в пункте 1 слова «и страхового брокера» заменить словами «, страхового брокера и их обособленных подразделений, в том числе созданных страховыми (перестраховочными) организациями - нерезидентами Республики Казахстан, страховыми брокерами - нерезидентами Республики Казахстан,»;

в пункте 2 слова «Субъект страховой деятельности обязан» заменить словами «Страховая (перестраховочная) организация, страховой брокер, их обособленные подразделения, в том числе созданные страховыми (перестраховочными) организациями - нерезидентами Республики Казахстан, страховыми брокерами - нерезидентами Республики Казахстан - обязаны»;

в пункте 4 после слов «страховых (перестраховочных) организаций,» дополнить словами «, страховых брокеров и обособленных подразделений страховых (перестраховочных) организации и страховых брокеров, в том числе созданных страховыми (перестраховочными) организациями - нерезидентами Республики Казахстан, страховыми брокерами - нерезидентами Республики Казахстан,»;

27) статью 45 исключить;

28) статью 46 изложить в следующей редакции:

«Статья 46. Пруденциальные нормативы и иные, обязательные к соблюдению нормы и лимиты

1. Надзор за платежеспособностью и финансовой устойчивостью страховой (перестраховочной) организации и лиц, в отношении которых осуществляется надзор на консолидированной основе, производится посредством установления для них пруденциональных нормативов и иных, обязательных к соблюдению норм и лимитов.

2. Пруденциальные нормативы включают:

1) минимальный размер уставного капитала;

2) минимальный размер гарантийного фонда;

3) минимальный размер маржи платежеспособности;

4) норматив достаточности маржи платежеспособности и гарантийного фонда;

5) норматив достаточности высоколиквидных активов;

6) нормативы диверсификации активов.

Уполномоченный орган вправе устанавливать дополнительные пруденциальные нормативы.

3. Маржа платежеспособности представляет собой превышение активов, рассчитанных с учетом их классификации по качеству и ликвидности, над обязательствами страховой (перестраховочной) организации.

4. Гарантийный фонд создается в целях обеспечения финансовой устойчивости и платежеспособности страховой (перестраховочной) организации в результате снижения маржи платежеспособности ниже минимально установленного размера.

5. Максимальный объем обязательств страховой (перестраховочной) организации по отдельному договору страхования или перестрахования рассчитывается актуарием и не может превышать фактический размер маржи платежеспособности, рассчитанных с учетом требований настоящего Закона и нормативных правовых актов уполномоченного органа.

При этом страховая организация вправе передавать на перестрахование только часть страхового риска, превышающую норматив, указанный в настоящем пункте.

6. При групповом страховании норма, указанная в пункте 5 настоящей статьи, рассчитывается по каждому застрахованному отдельно.

7. При сострахования норма, указанная в пункте 5 настоящей статьи, рассчитывается исходя из доли от страховой суммы каждого сострахования.

8. Уполномоченный орган вправе устанавливать дополнительные требования к минимальному уровню маржи платежеспособности и порядку расчета страховых резервов для страховой организации, осуществляющей деятельность по ипотечному страхованию.

9. Совокупный размер страховых премий, уплаченных цедентом перестраховочным организациям - нерезидентам Республики Казахстан не должен превышать восьмидесяти пяти процентов от совокупного размера страховых премий, полученных им по договорам страхования (перестрахования), с учетом уплаченных перестраховочным организациям, по завершении полного финансового года.

10. Страховая (перестраховочная) организация представляет в уполномоченный орган сведения о наличии и ограничении использования производных финансовых инструментов, не входящих в финансовую отчетность.

11. Нормативные значения и методики расчетов пруденциальных нормативов, а также требования к методике расчета стоимости активов с учетом их классификации по качеству и ликвидности для расчета пруденциальных нормативов и иных, обязательных к соблюдению норм и лимитов, устанавливаются нормативными правовыми актами уполномоченного органа.»;

29) в пункте 3 статьи 47 слова «порядку размещения средств страховых резервов» заменить словами «, их структуре»;

30) статью 53 изложить в следующей редакции:

«Статья 53. Рекомендации по оздоровлению финансового положения страховой (перестраховочной) организации

В случаях ухудшения финансового положения страховой (перестраховочной) организации уполномоченный орган вправе поставить перед его акционерами вопрос о необходимости финансового оздоровления, смене руководства или реорганизации страховой (перестраховочной) организации, включая выдачу рекомендаций:

1) об ограничении принятия обязательств по договорам страхования (перестрахования);

2) об увеличении уставного капитала;

3) о прекращении выплат дивидендов и увеличении страховых резервов;

4) о сокращении расходов посредством закрытия отдельных филиалов и представительств, а также посредством прекращения или ограничения дополнительного найма работников;

5) о постоянном или временном отстранении от должности любого из руководящих или иных работников страховой (перестраховочной) организации;

6) о приостановлении или ограничении страховой деятельности по некоторым классам страхования с повышенной степенью риска.»;

31) дополнить статьей 53-1 следующего содержания:

«Статья 53-1. Ограниченные меры воздействия

1. В случаях обнаружения уполномоченным органом нарушений пруденциальных нормативов и других, обязательных к соблюдению норм и лимитов страховой (перестраховочной) организацией, нарушений законодательства Республики Казахстан, выявления неправомерных действий или бездействия должностных лиц и работников страховой (перестраховочной) организации и страхового брокера, уполномоченный орган вправе применить к страховой (перестраховочной) организации и страховому брокеру одну из следующих ограниченных мер воздействия:

1) затребовать письменное обязательство;

2) дать обязательное для исполнения письменное предписание;

3) вынести письменное предупреждение;

4) составить письменное соглашение.

В случае обнаружения уполномоченным органом нарушений законодательства о страховании и страховой деятельности актуарием, уполномоченный орган вправе применить ограниченные меры воздействия, указанные в подпунктах 2) и 3) настоящего пункта.

2. Письменное обязательство страховой (перестраховочной) организации или страхового брокера должно содержать факт признания имеющихся нарушений законодательства Республики Казахстан и/или недостатков и гарантию руководства страховой (перестраховочной) организации или страхового брокера по недопущению в дальнейшем выявленных недостатков и/или нарушений законодательства Республики Казахстан.

3. Письменное предписание – указание страховой (перестраховочной) организации или страховому брокеру о принятии обязательных для исполнения коррективных мер, направленных на устранение выявленных нарушений законодательства Республики Казахстан, а также нарушений договорных обязательств, в строго определенные сроки и о недопущении в дальнейшем выявленных нарушений законодательства Республики Казахстан.

Письменное предписание также может выноситься уполномоченным органом в случаях нарушения страховой (перестраховочной) организацией пруденциальных нормативов и других, обязательных к соблюдению норм и лимитов, нарушения в течение шести последовательных месяцев принятых страховой (перестраховочной) организацией или страховым брокером на себя обязательств согласно письменному обязательству.

Страховая (перестраховочная) организация или страховой брокер обязаны уведомить уполномоченный орган об исполнении письменного предписания в указанный в нем срок.

4. Письменное предупреждение является уведомлением уполномоченного органа о возможности применения к страховой (перестраховочной) организации или страховому брокеру санкций, предусмотренных статьей 53-2 настоящего Закона в случае, если имеющиеся нарушения законодательства

Республики Казахстан, не будут устранены в установленный уполномоченным органом срок, а также в случае невыполнения принятых страховой (перестраховочной) организацией или страховым брокером на себя обязательств в срок, установленный в письменном обязательстве, и/или письменного предписания уполномоченного органа.

5. Письменное соглашение – соглашение между страховой (перестраховочной) организацией или страховым брокером и уполномоченным органом о необходимости устранения выявленных недостатков и об утверждении первоочередных мер в связи с этим. Письменное соглашение может составляться в случаях, когда уполномоченным органом вместе со страховой (перестраховочной) организацией или страховым брокером приходят к выводу, что для устранения имеющихся недостатков требуется срок, превышающий два месяца.

6. Уполномоченный орган вправе применить к страховой (перестраховочной) организации или страховому брокеру любое из ограниченных мер воздействия, определенных настоящей статей вне зависимости от примененных ранее к нему мер воздействия.»;

32) дополнить статьей 53-2 следующего содержания:

«Статья 53-2. Санкции

1. Применение санкций к страховой (перестраховочной) организации и страховому брокеру производится уполномоченным органом либо судом в соответствии с настоящим Законом.

2. В качестве санкций уполномоченный орган вправе применить следующие меры:

1) наложение административного штрафа по основаниям и в порядке, установленным законодательными актами Республики Казахстан;

2) приостановление действия лицензии по основаниям, установленным статьей 54 настоящего Закона;

3) отзыв лицензии по основаниям, предусмотренным статьей 55 настоящего Закона;

4) принять решение о принудительном выкупе акций страховой (перестраховочной) организации у ее акционеров и реализовать их новому инвестору в соответствии с условиями статьи 61 настоящего Закона.»;

33) в статье 54:

в пункте 1:

в подпункте 1) слова «письменного предписания» заменить словами «ограниченных мер воздействия»;

подпункт 4) дополнить словами «и деятельности страхового брокера»;

подпункт 6) исключить;

в подпункте 9) слово «страхования.» заменить словом «страхования;»;

дополнить подпунктом 10) следующего содержания:

«10) осуществление страховым брокером деятельности страхового агента.»;

дополнить пунктом 1-1 следующего содержания:

«1-1. Действие лицензии страховой (перестраховочной) организации может быть приостановлено как по всем классам, так и по отдельным классам страхования.»;

в части второй пункта 3 слова «страховой (перестраховочной) организации» заменить словом «лицензиата»;

34) в статье 55:

в пункте 1:

подпункт 4) исключить;

в подпункте 5) слово «организации.» заменить словом «организации;»;

дополнить подпунктом 6) следующего содержания:

«6) неосуществление страховой деятельности, деятельности страхового брокера в течение одного года со дня получения лицензии.»;

пункт 3 изложить в следующей редакции:

«3. Страховая (перестраховочная) организация, у которой отозваны лицензии, не вправе осуществлять страховую или иную деятельность, обязана прекратить все операции по имеющимся банковским счетам, за исключением операций, перечень которых определяется уполномоченным органом.»;

дополнить пунктом 4 следующего содержания:

«4. Страховой брокер, у которого отозвана лицензия, не вправе осуществлять свою деятельность, обязан прекратить все операции по имеющимся банковским счетам, за исключением случаев, связанных с текущими расходами на его содержание, зачислением денег, поступающих страховому брокеру.»;

35) в пункте 1 статьи 56 слова «доведения его до сведения лицензиата либо опубликования в печати» заменить словами «его принятия уполномоченным органом»;

36) пункт 8 статьи 56 изложить в следующей редакции:

«8. Запрещается финансирование уполномоченным органом расходов по прекращению деятельности страховых (перестраховочных) организаций по основанию принудительной ликвидации, за исключением расходов, связанных с оплатой труда работников уполномоченного органа, включенных в состав временной администрации (временного администратора) страховой (перестраховочной) организации и ликвидационной комиссии, а также расходов по опубликованию в официальных печатных изданиях центрального органа юстиции информации о принятом судом решения о принудительной ликвидации страховой (перестраховочной) организации и расходов, связанных с государственной регистрацией прекращения деятельности страховой (перестраховочной) организации по основанию принудительной ликвидации органом юстиции и сдаче документов для хранения в архив после завершения ликвидации страховой (перестраховочной) организации в случаях отсутствия имущества страховой (перестраховочной) организации либо если его стоимость недостаточна для покрытия данных расходов.»;;

37) статью 59 дополнить подпунктом 1-1) следующего содержания:

«1-1) невыполнение письменного предписания и письменного предупреждения уполномоченного органа об устранении нарушений законодательства о страховании и страховой деятельности;»;

38) в статье 61:

пункты 2, 3 изложить в следующей редакции:

«2. Принудительный выкуп уполномоченным органом акций страховой (перестраховочной) организации осуществляется по цене, определяемой исходя из размера ее фактической маржи платежеспособности на дату принятия им решения о принудительном выкупе акций (долей акционеров) страховой (перестраховочной) организации в целях их последующей реализации новому инвестору.

3. Реализация выкупленных акций страховой (перестраховочной) организации производится уполномоченным органом по цене их приобретения.

Права и обязанности владельцев всех принудительно выкупаемых акций страховой (перестраховочной) организации переходят к новому инвестору.»;

39) пункт 2 статьи 62 дополнить частью второй следующего содержания:

«При получении разрешения на добровольную реорганизацию в юридическое лицо, не осуществляющее страховую деятельность страховая (перестраховочная) организация обязана в недельный срок вернуть все ранее выданные лицензии в уполномоченный орган.»;

40) статью 64 исключить;

41) пункт 4 статьи 67 после слова «обязана» дополнить словами «в недельный срок»;

42) пункт 2 статьи 69 изложить в следующей редакции:

«2. Временная администрация складывает свои полномочия и передает документы и имущество страховой (перестраховочной) организации председателю ликвидационной комиссии в срок не более десяти дней. В случае если принудительно ликвидируемая страховая организация является участником системы гарантирования страховых выплат, временная администрация предоставляет в организацию, осуществляющую гарантирование страховых выплат по обязательным видам страхования, информацию в объеме и в сроки, предусмотренным нормативным правовым актом уполномоченного органа.»;

43) в части второй пункта 1 статьи 70 после слова «назначения» дополнить словами «и освобождения»;

44) подпункт 5) пункта 1 статьи 72 слова «гарантийным выплатам» заменить словами «гарантийным, компенсационным выплатам и иным расходам, связанным с их осуществлением»;

45) в статье 74:

в пункте 3 слово «обязана» заменить словами «и страховой брокер обязаны»;

в пункте 4 слово «проводит» заменить словами «и страховой брокер проводят»;

46) дополнить статьей 75-1 следующего содержания:

«Статья 75-1. Коэффициент убыточности

1. Страховые (перестраховочные) организации в целях анализа своей деятельности при проведении всех либо отдельных классов (видов) страхования производят расчет коэффициента убыточности.

2. Коэффициент убыточности – относительный показатель, отражающий убыточность деятельности страховой (перестраховочной) организации при осуществлении всех либо отдельных классов (видов) страхования.

Порядок расчета коэффициента убыточности устанавливается нормативными правовыми актами уполномоченного органа.»;

47) пункты 1 и 2 статья 77 изложить в следующей редакции:

«1. Профессиональные участники страхового рынка, страховые агенты, осуществляющие предпринимательскую деятельность, обязаны формировать данные по страхованию (перестрахованию), страховому посредничеству и обеспечивать учет и хранение документов, связанных с их деятельностью в порядке установленном законодательством Республики Казахстан.

2. Перечень документов, подлежащих обязательному хранению, порядок и сроки их хранения профессиональными участниками страхового рынка, страховыми агентами, осуществляющими предпринимательскую деятельность, устанавливаются уполномоченным органом по согласованию с уполномоченным государственным органом управления архивами и документацией.».

4. В Закон Республики Казахстан от 3 июня 2003 г. «О Фонде гарантирования страховых выплат» (Ведомости Парламента Республики Казахстан, 2003 г., №11, ст.63):

1) в статье 1:

подпункт 1) изложить в следующей редакции:

«1) банк-агент – банк или организация, осуществляющая отдельные виды банковских операций, оказывающие услуги по осуществлению гарантийных выплат кредиторам на основе агентского соглашения с Фондом гарантирования страховых выплат.»;

подпункт 6) изложить в следующей редакции:

«6) кредитор - страхователь (застрахованный, выгодоприобретатель) принудительно ликвидируемой страховой организации – участника Фонда, имеющий право на получение гарантийной выплаты в случаях, предусмотренных настоящим Законом;»;

подпункт 7) дополнить словами «по видам обязательного страхования, гарантированным Фондом гарантирования страховых выплат»;

подпункт 11) дополнить словами « а также расходов, связанных с определением страхового случая, размера причиненного вреда и иных

расходов, связанных с осуществлением гарантийных и компенсационных выплат;»;

2) подпункт 1) статьи 4 дополнить словами «, в том числе регулирующие вопросы порядка осуществления гарантийных и компенсационных выплат;»;

3) в статье 5:

пункты 3, 4 изложить в следующей редакции:

«3. Общее руководство за деятельностью Фонда осуществляет совет директоров, который состоит из пяти человек. В состав совета директоров входят один представитель уполномоченного органа, один представитель от страховых организаций - участников Фонда, один представитель Учредителя, генеральный директор Фонда, осуществляющий руководство текущей деятельностью Фонда, назначаемый Учредителем и один представитель Фонда.;

4. Банковские счета Фонда открываются в Национальном банке Республики Казахстан. Для осуществления гарантийных выплат, а также в целях осуществления Фондом текущей финансово - хозяйственной деятельности банковские счета Фонда могут открываться в банках второго уровня.»;

4) в статье 6:

подпункт 1) изложить в следующей редакции:

«1) установления ставок обязательных и чрезвычайных взносов страховых организаций-участников на каждый календарный год, размера чрезвычайных взносов, подлежащих к уплате страховыми организациями-участниками в Фонд;»;

дополнить подпунктом 4-1) следующего содержания:

«4-1) установления предельных размеров привлекаемых займов и заимствований Фондом;»;

5) статью 7 изложить в следующей редакции:

«Статья 7. Гарантии Фонда

«Со дня вступления в законную силу решения суда о принудительной ликвидации страховой организации-участника Фонд принимает на себя обязательства по осуществлению гарантийных выплат кредиторам по всем наступившим страховым случаям по договорам обязательного страхования, по которым принудительно ликвидируемая страховая организация неправомерно отказала (полностью или частично) либо не осуществила страховую выплату в полном объеме, в том числе и в период до отзыва лицензии на право осуществления страховой деятельности и вступления в силу решения суда о ее принудительной ликвидации.»;

6) статью 8 дополнить пунктами 3 и 4 следующего содержания:

«3. В целях обеспечения качественного и своевременного выполнения своих функций, Фонд вправе в пределах своей компетенции получать от физических и юридических лиц, а также государственных органов информацию, в том числе составляющую тайну страхования.

Полученные сведения не подлежат дальнейшему разглашению.

4. Работники Фонда несут ответственность за разглашение сведений, полученных в ходе осуществления ими своих функций, составляющих служебную, коммерческую тайны, тайну страхования или иную охраняемую законом тайну в соответствии с законами Республики Казахстан.»;

7) подпункт 7 статьи 10 исключить;

8) статью 15 изложить в следующей редакции:

«Статья 15. Основания и порядок осуществления гарантийной выплаты

1. Право требования к Фонду по осуществлению гарантийной выплаты возникает у кредитора со дня вступления в законную силу решения суда о принудительной ликвидации страховой организации – участника.

Право на получение гарантийной выплаты имеют кредиторы:

1) по всем наступившим страховым случаям в период до вступления в законную силу решения суда о ее принудительной ликвидации по договорам обязательного страхования, по которым принудительно ликвидируемая страховая организация неправомерно отказала (полностью или частично) либо не осуществила страховую выплату в полном объеме;

2) по страховым случаям, наступившим в период со дня вступления в законную силу решения суда о принудительной ликвидации страховой организации до дня заключения страхователем нового договора обязательного страхования с другой страховой организацией - участником, но не более двух месяцев со дня вступления в законную силу решения суда о принудительной ликвидации страховой организации по договорам обязательного страхования принудительно ликвидируемой страховой организации.

2. При возникновении у кредитора права требования к Фонду на основаниях, предусмотренных подпунктом 1) пункта 1 настоящей статьи, при наличии подтверждающих документов, кредитор вправе в течение двух месяцев, со дня вступления в законную силу решения суда о принудительной ликвидации страховой организации – участника, обратиться в Фонд с письменным заявлением об осуществлении гарантийной выплаты.

В случае отсутствия подтверждающих документов, для их получения, кредитор вправе обратиться в ликвидационную комиссию принудительно ликвидируемой страховой организации с заявлением (претензией) об осуществлении страховой выплаты.

3. При наступлении страхового случая по договору обязательного страхования в случае, предусмотренном подпунктом 2) пункта 1 настоящей статьи, кредитор вправе обратиться с требованием об осуществлении страховой (гарантийной) выплаты непосредственно в Фонд либо в страховую организацию – участнику Фонда.

После получения требования кредитора, страховая организация – участник либо Фонд в порядке, предусмотренном законодательными актами об обязательном страховании, проводят работу по определению страхового случая и размера причиненного вреда.

4. После предоставления кредитором либо страховой организаций – участником полного пакета документов, необходимых для осуществления гарантийной выплаты, Фонд принимает решение об осуществлении гарантийной выплаты либо об отказе в осуществлении гарантийной выплаты.

5. Фондом возмещаются расходы страховых организаций – участников, связанные с осуществлением мероприятий, предусмотренных пунктом 3 настоящей статьи, в размере фактических расходов, но не более пяти месячных расчетных показателей.

6. Размер гарантийной выплаты определяется в соответствии с законодательными актами Республики Казахстан по обязательному виду страхования для осуществления страховых выплат по договору обязательного страхования. Порядок осуществления гарантийной выплаты определяется в соответствии с настоящим Законом и нормативными правовыми актами уполномоченного органа.

7. Гарантийной выплатой не покрываются моральный ущерб, упущенная выгода кредитора, а также неустойка по договору обязательного страхования.

8. Гарантийная выплата кредиторам осуществляется непосредственно Фондом или через банк - агент в безналичной форме на банковский счет кредитора либо наличными деньгами.

9. Со дня осуществления гарантийной выплаты кредитору принудительно ликвидируемой страховой организации к Фонду переходит право требования кредитора по договору обязательного страхования в объеме осуществленной гарантийной выплаты.

Перешедшее право требования кредитора, а также требование по возмещению расходов, связанных с осуществлением гарантийной выплаты, предъявляется Фондом к ликвидационной комиссии принудительно ликвидируемой страховой организации (далее - ликвидационная комиссия) в порядке, предусмотренном законодательством Республики Казахстан.»;

9) статью 16 изложить в следующей редакции:

«Статья 16. Дополнительные способы защиты прав страхователей

«1. По договорам обязательного страхования принудительно ликвидируемой страховой организации, срок действия которых не истек, страхователь вправе в двухмесячный срок, с даты вступления в силу решения суда, заключить договор обязательного страхования со страховой организацией – участником Фонда, на оставшийся период времени, в течение которого должен был действовать договор обязательного страхования, ранее заключенный с принудительно ликвидируемой страховой организацией.

2. В случае заключения страховой организацией – участником договора обязательного страхования, предусмотренного пунктом 1 настоящей статьи, Фонд осуществляет компенсационную выплату страховой организации – участнику.

3. Размер компенсационной выплаты определяется в соответствии с законодательным актом об обязательном страховании, исходя из периода

действия вновь заключенного договора обязательного страхования. Порядок осуществления компенсационной выплаты определяется в соответствии с настоящим Законом и нормативными правовыми актами уполномоченного органа.

Срок действия вновь заключенного договора составляет период с даты заключения нового договора и до момента окончания срока, в течение которого должен был действовать договор обязательного страхования, ранее заключенный страхователем с принудительно ликвидируемой страховой организацией.

Если страхователь полностью не уплатил страховую премию по договору обязательного страхования, ранее заключенному с принудительно ликвидируемой страховой организацией, Фонд вправе осуществить компенсационную выплату за вычетом неуплаченной страхователем суммы страховой премии. В этом случае, страховая организация-участник, заключившая договор обязательного страхования, вправе требовать от страхователя неуплаченную сумму страховой премии.

4. При заключении страховой организацией-участником договора обязательного страхования с страхователем принудительно ликвидируемой страховой организации страховая организация-участник несет ответственность по такому договору в объеме, предусмотренном законодательным актом Республики Казахстан по данному виду обязательного страхования.

5. Страховая организация-участник не вправе отказать страхователям принудительно ликвидируемой страховой организации в заключении договора обязательного страхования на неистекший период действия договора обязательного страхования.

По договорам, заключенным на неистекший период действия ранее заключенного с принудительно ликвидируемой страховой организацией – участником Фонда договора обязательного страхования, страховая организация - участник не уплачивает обязательные взносы Фонду, а формирует условные обязательства.

6. Со дня осуществления компенсационной выплаты Фонду переходит право требования страхователя по договору обязательного страхования в объеме осуществленной компенсационной выплаты.

Перешедшее право требования, а также требование по возмещению расходов, связанных с осуществлением компенсационных выплат предъявляется Фондом к ликвидационной комиссии в порядке, предусмотренном законодательством Республики Казахстан.

7. Уполномоченный орган незамедлительно, но не позднее 10 дней со дня вступления в законную силу решения суда о принудительной ликвидации страховой организации - участника, направляет в Фонд копию решения суда о принудительной ликвидации страховой организации - участника Фонда.

8. Фонд, в течение десяти рабочих дней, со дня получения копии вступившего в законную силу решения суда о принудительной ликвидации

страховой организации - участника, публикует в периодических печатных изданиях на государственном и русском языках, распространяемых на всей территории Республики Казахстан, сообщение об осуществлении гарантийных выплат кредиторам принудительно ликвидируемой страховой организации по наступившим страховым случаям, а также перечень страховых организаций - участников с указанием их адреса, к которым страхователи вправе обратиться при наступлении страхового случая по договорам обязательного страхования принудительно ликвидируемой страховой организации, а также для заключения нового договора обязательного страхования на неистекший период действия договора, ранее заключенного с принудительно ликвидируемой страховой организацией.»;

10) в статье 18:

в пункте 1:

подпункт 2) изложить в следующей редакции:

«2) ходатайствовать перед уполномоченным органом о включении своего представителя в состав ликвидационной комиссии и участвовать в ликвидационном производстве принудительно ликвидируемой страховой организации в порядке, предусмотренном законодательством Республики Казахстан;»;

в подпункте 3) слова «информации, необходимой» заменить словами «информации и документов, необходимых»;

в пункте 2:

подпункты 3) и 4) изложить в следующей редакции:

«3) представлять в уполномоченный орган сведения о деятельности Фонда и отчетность (за исключением финансовой отчетности Фонда) в порядке, объемах и сроках, определяемых уполномоченным органом;»;

«4) представлять страховым организациям - участникам по их запросам свой годовой бухгалтерский баланс и отчет о доходах и расходах в соответствии с договором участия;»;

подпункт 5) после слова «годовой» дополнить словом «бухгалтерский»;

подпункт 7) дополнить словами «и нормативными правовыми актами уполномоченного органа;»;

подпункт 11) дополнить словами «и нормативными правовыми актами уполномоченного органа;»;

дополнить подпунктом 13) следующего содержания:

«13) возместить расходы страховых организаций – участников в порядке, предусмотренном пунктом 6 статьи 15 настоящего Закона.»;

11) в статье 19:

подпункт 3) пункта 1 изложить в следующей редакции:

«3) требовать от Фонда представления годового бухгалтерского баланса и отчета о доходах и расходах;»;

пункт 2 дополнить подпунктом 7) следующего содержания:

«7) осуществлять мероприятия, предусмотренные пунктом 3 статьи 15 настоящего Закона.».

5. В Закон Республики Казахстан от 1 июля 2003 г. "Об обязательном страховании гражданско-правовой ответственности владельцев транспортных средств" (Ведомости Парламента Республики Казахстан, 2003 г., №15, ст. 104):

1) пункт 2 статьи 8 изложить в следующей редакции:

«2. Страховщик, осуществляющий обязательное страхование ответственности владельцев транспортных средств, обязан ежегодно публиковать свою финансовую отчетность на государственном и русском языках не менее чем в двух периодических печатных изданиях, распространяемых на всей территории Республики Казахстан, в объеме и сроки, предусмотренные нормативным правовым актом Национального Банка Республики Казахстан о порядке публикации годовой финансовой отчетности.»;

2) дополнить статьей 8-1 следующего содержания:

«Статья 8-1. База данных по обязательному страхованию

1. Юридическое лицо, зарегистрированное в качестве страховой организации, до получения лицензии на право осуществления обязательного страхования ответственности владельцев транспортных средств обязано стать участником базы данных по обязательному страхованию в порядке, определенном настоящим Законом.

2. База данных по обязательному страхованию – совокупность информации о страхователе, застрахованном и страховщике.

Страховой отчет – форма полной или частичной выдачи информации, содержащейся в базе данных по обязательному страхованию.

Субъектами базы данных по обязательному страхованию являются страхователь и застрахованный.

3. Организациями по формированию и ведению базы данных по обязательным видам страхования являются кредитное бюро, создаваемые и осуществляющие свою деятельность в соответствии законодательными актами Республики Казахстан и нормативными правовыми актами уполномоченного государственного органа по регулированию и надзору за страховой деятельностью.

4. В целях обеспечения качественного и своевременного выполнения функций по реализации требований, предусмотренных законодательными актами и настоящим Законом, кредитные бюро и Фонд гарантирования страховых выплат вправе получать от физических и юридических лиц, а также государственных органов информацию, в том числе составляющую тайну страхования.

Работники кредитных бюро и Фонда гарантирования страховых выплат несут ответственность за разглашение сведений, полученных в ходе осуществления ими своих функций, составляющих служебную, коммерческую

тайны, тайну страхования или иную, охраняемую законом тайну, в соответствии с законами Республики Казахстан.

5. Поставщиками информации для формирования базы данных по обязательному страхованию являются:

1) подразделения дорожной полиции органов внутренних дел;

2) страховщики, осуществляющие обязательное страхование ответственности владельцев транспортных средств;

3) иные лица на основании договоров о предоставлении информации и (или) получении страховых отчетов.

6. Поставщик информации вправе:

1) требовать от кредитных бюро использования предоставляемой информации в соответствии с настоящим Законом;

2) иметь иные права в соответствии с законодательными актами Республики Казахстан и (или) договором о предоставлении информации и (или) получении информации.

7. Поставщики информации обязаны:

1) заключить договор участия о предоставлении информации и (или) получении страховых отчетов;

2) предоставлять информацию в кредитные бюро для формирования базы данных по обязательному страхованию в объеме и порядке, определенных настоящим Законом и договорами о предоставлении информации и (или) получении страховых отчетов;

3) вносить корректировки в информацию, переданную в кредитные бюро, по требованию субъекта базы данных по обязательному страхованию;

4) предоставлять информацию в кредитные бюро, в точном соответствии с имеющимися сведениями о субъекте базы данных по обязательному страхованию;

5) использовать информационные ресурсы и информационные системы в соответствии с законодательством Республики Казахстан;

6) обеспечивать надлежащие условия получения и обработки информации за счет собственных средств.

8. Получателями страхового отчета являются:

1) уполномоченный государственный орган по регулированию и надзору за страховой деятельностью;

2) подразделение дорожной полиции органов внутренних дел;

3) страховщики, осуществляющие обязательное страхование ответственности владельцев транспортных средств;

4) субъекты базы данных по обязательному страхованию;

5) консалтинговые и научно-исследовательские организации, предоставляющие консультационные услуги в сфере страхования и актуарных расчетов.

Не допускается предоставление информации иным лицам, не указанным в настоящем пункте.

9. Лица, указанные в подпунктах 3) и 5) пункта 8 настоящей статьи, после заключения договора о предоставлении информации и (или) получении страхового отчета должны зарегистрироваться в кредитных бюро в качестве получателей страховых отчетов.

Получатель информации вправе получать страховой отчет и иметь иные права в соответствии с законодательными актами Республики Казахстан.

Получатели страхового отчета, указанные в подпунктах 3) и 5) пункта 8 настоящей статьи, обязаны:

1) сообщать об изменении сведений, представленных им при регистрации в качестве получателя информации;

2) соблюдать конфиденциальность в отношении полученной информации и не разглашать ее третьим лицам;

3) использовать полученную информацию только для целей, предусмотренных настоящим Законом;

4) ознакомить субъекта базы данных по обязательному страхованию по его требованию с содержанием информации либо выдать ему в соответствии с внутренними правилами получателя информации ее копию;

5) оплатить услуги базы данных по предоставлению информации;

6) нести иные обязанности в соответствии с законодательными актами Республики Казахстан.»;

3) дополнить статьей 8-2 следующего содержания:

Статья 8-2. Информация, представляемая для формирования базы данных по обязательному страхованию

«1. В целях выполнения своих обязательств по предоставлению информации и получения страховых отчетов поставщики информации, указанные в подпунктов 2) и 3) пункта 5 статьи 8-1 настоящего Закона, и получатели страхового отчета, указанные в подпунктах 3) и 5) пункта 8 статьи 8-1 настоящего Закона, обязаны заключить со всеми кредитными бюро договоры о предоставлении информации и (или) получении страховых отчетов.

2. Подразделение дорожной полиции органов внутренних дел предоставляет кредитным бюро возможность получать информацию по дорожно-транспортным происшествиям, транспортным средствам, прошедшим государственный технический осмотр и об их владельцах, заключивших договор обязательного страхования своей ответственности, в порядке, сроки и объеме предусмотренным договором о предоставлении информации.

3. Страховщики предоставляют информацию по каждому заключенному договору страхования, об объемах страховых премий, страховых случаях, а также суммах страховых выплат (в разрезе выплат по имуществу и здоровью), в порядке, сроки и объеме, предусмотренным договором о предоставлении информации и (или) получении страховых отчетов.

4. Информация, перечисленная в пунктах 2 и 3 настоящей статьи, представляется в электронном виде с использованием информационных систем объединенных соответствующим программным обеспечением.

5. Кредитные бюро обязаны своевременно вводить информацию, полученную от подразделения дорожной полиции и предоставленную страховщиками.

6. Кредитные бюро обязаны обеспечить равные условия участия страховщиков в создании и доступа к информационным ресурсам базы данных.»;

4) пункт 4 статьи 13 изложить в следующей редакции:

«4. Допускается заключение договора обязательного страхования ответственности владельцев транспортных средств на срок иной, чем предусмотрено пунктом 3 настоящей статьи:

1) при сезонной эксплуатации транспортного средства, но не менее шести месяцев;

2) с кредиторами (страхователями) принудительно ликвидируемой страховой организации – участника системы гарантирования страховых выплат»**;**

5) подпункт 3) пункта 1 статьи 14 изложить в следующей редакции:

«3) наступления первого страхового случая, предусматривающего осуществление страховой выплаты.»;

6) подпункт 1) пункта 2 статьи 16 дополнить словами «, в том числе о двойном страховании, сезонной эксплуатации транспортного средства, временном въезде на территорию Республики Казахстан и праве на уменьшение размера страховой премии в порядке, предусмотренном настоящим Законом;»;

7) в подпункте 6) пункта 2 статьи 17 слова «в течение семи рабочих дней с момента получения сообщения о наступлении страхового случая» заменить словами «в сроки, установленные настоящим Законом»;

8) в статье 22:

дополнить пунктами 5-1 и 5-2 следующего содержания:

«5-1. Страховщик производит оценку размера вреда, причиненного имуществу, или организует названную оценку с привлечением независимого эксперта за свой счет. Страховщик не вправе удерживать со страховой выплаты, причитающейся выгодоприобретателю, собственные расходы на проведение оценки.

Страховщик не вправе отказать страхователю в проведении оценки размера вреда, причиненного имуществу потерпевшего, в случаях, когда привлечение страхователем независимого эксперта невозможно.

5-2. Страхователь (застрахованный) или потерпевший вправе самостоятельно воспользоваться услугами независимого эксперта. При этом затраты на оценку размера вреда, причиненного имуществу, несет сам страхователь (застрахованный) или потерпевший. Если оценка, произведенная по инициативе страхователя (застрахованного) или потерпевшего, будет признана страховщиком и использована им при расчете размера страховой

выплаты, то страховщик возмещает затраты на экспертизу лицу, понесшему эти расходы.

В случае несогласия с оценкой размера вреда, причиненного имуществу потерпевшего, произведенного по инициативе страхователя (застрахованного) или потерпевшего, страховщик вправе произвести собственную оценку. При согласии выгодприобретателя с оценкой, произведенной страховщиком, расходы страхователя (застрахованного) или потерпевшего на проведение оценки не подлежат возмещению страховщиком.»;

в пункте 6:

слова «в течение семи рабочих дней со дня уведомления им либо страхователем (застрахованным) страховщика о наступлении страхового случая» заменить словами «в течение трех рабочих дней со дня представления им или страхователем (застрахованным) страховщику документов, подтверждающих факт наступления страхового случая, »;

слова «произвести оценку» заменить словами «произвести осмотр поврежденного имущества и оценку»;

дополнить пунктом 6-1 следующего содержания:

«6-1. Страховщик в течение 4 рабочих дней со дня проведения осмотра поврежденного имущества и оценки размера вреда, причиненного имуществу потерпевшего либо получения результатов такой оценки, произведенной независимым экспертом по инициативе страхователя (застрахованного) или потерпевшего, составляет отчет об оценке (при необходимости) и страховой акт и представляет их на ознакомление выгодоприобретателю.»;

9) пункт 2 статьи 23 изложить в следующей редакции:

«2. Если страховщиком на основании заявления страхователя (застрахованного) или потерпевшего в течение трех рабочих дней со дня получения документов, подтверждающих факт наступления страхового случая и предоставления на осмотр поврежденного имущества не будет произведена оценка причиненного вреда, страхователь (застрахованный) либо потерпевший вправе воспользоваться услугами независимого эксперта и начать восстановление (утилизацию) имущества.»;

10) в статье 24:

в пункте 1:

подпункт 1) дополнить абзацем седьмым следующего содержания:

« ребенок - инвалид» - 300;»;

подпункты 2) и 3) изложить в следующей редакции:

«2) за вред, причиненный имуществу одного потерпевшего - в размере причиненного вреда, но не более 400;

3) за вред, причиненный одновременно имуществу 2-х и более потерпевших - в размере причиненного вреда, но не более 400 каждому потерпевшему. При этом общий размер страховых выплат всем потерпевшим не может превышать 1000. В случае превышения размера вреда над предельным объемом ответственности страховщика страховая выплата

каждому потерпевшему осуществляется соразмерно степени вреда, причиненного его имуществу.»;

11) пункт 6 статья 24 изложить в следующей редакции:

«6. В случае смерти потерпевшего лицу, осуществившему погребение потерпевшего, страховщиком возмещаются необходимые расходы на погребение в размере фактических затрат, но в пределах страховой суммы, установленной договором обязательного страхования ответственности владельцев транспортных средств.»;

12) в статье 25:

в части первой пункте 2:

подпункт 4) изложить в следующей редакции:

«4) нотариально удостоверенная копия свидетельства о смерти потерпевшего;»;

дополнить подпунктом 4-1) следующего содержания:

«4-1) документ, подтверждающий право выгодоприобретателя на возмещение вреда (копия);»;

подпункт 8) дополнить словами «, в том числе копия свидетельства о регистрации транспортного средства.»;

пункт 4 дополнить частью второй следующего содержания:

«При причинении вреда имуществу потерпевшим признается собственник данного имущества, а в случае его смерти – лица, имеющие право на возмещение вреда.»;

13) в статье 26:

часть вторую пункта 2 изложить в следующей редакции:

«Оспариваемая часть страховой выплаты должна быть осуществлена страховщиком в течение трех рабочих дней со дня вступления в законную силу определения суда об утверждении мирового соглашения либо вступления в законную силу решения суда по данному спору, если судом решение не обращено к немедленному исполнению.»;

дополнить пунктом 2-1 следующего содержания:

«2-1. В случае причинения вреда имуществу нескольких потерпевших, страховщик обязан начать страховую выплату в течение семи рабочих дней со дня получения им документов всех потерпевших, но не позднее 15 календарных дней со дня получения документов от потерпевшего, первым, представившим страховщику документы, независимо от представления документов другими застрахованными. »;

14) статью 29 дополнить пунктом 5-1 следующего содержания:

«5-1. Страховая выплата не осуществляется за поврежденное транспортное средство, указанное в страховом полисе.».

6. В Закон Республики Казахстан от 1 июля 2003 г. «Об обязательном страховании гражданско-правовой ответственности перевозчика перед

пассажирами» (Ведомости Парламента Республики Казахстан, 2003 г., №15, ст. 102):

1) пункт 2 статьи 8 изложить в следующей редакции:

«2. Страховщик, осуществляющий обязательное страхование ответственности перевозчика, обязан ежегодно публиковать свою финансовую отчетность на государственном и русском языках не менее чем в двух периодических печатных изданиях, распространяемых на всей территории Республики Казахстан, в объеме и сроки, предусмотренные нормативным правовым актом Национального Банка Республики Казахстан о порядке публикации годовой финансовой отчетности.»;

2) статью 11 дополнить подпунктом 4-1) следующего содержания:

«4-1) Допускается заключение договора обязательного страхования ответственности перевозчика перед пассажирами на срок менее двенадцати месяцев с кредиторами (страхователями) принудительно ликвидируемой страховой организации – участника системы гарантирования страховых выплат.».

7. В Закон Республики Казахстан от 6 июля 2004 г. "О кредитных бюро и формировании кредитных историй в Республике Казахстан" (Ведомости Парламента Республики Казахстан, 2004 г., № 15, ст.87):

1) статью 2 дополнить пунктом 2-1 следующего содержания:

«2-1. Положения настоящего Закона распространяются на отношения, возникающие при формировании базы данных по обязательному страхованию и их использования и применяются с учетом особенностей, предусмотренных законодательными актами Республики Казахстан.»;

2) в статье 7:

в пункте 2:

в подпункте 5) слова «исследования.» заменить словом «исследования;»;

дополнить подпунктом 6) следующего содержания:

«6) формирование и ведение базы данных по отдельным видам обязательного страхования в порядке, предусмотренном законодательными актами Республики Казахстан.».

дополнить пунктом 4 следующего содержания:

«3. Кредитные бюро осуществляют деятельность по формированию и ведению базы данных по обязательному страхованию в порядке, предусмотренном законодательными актами и нормативными правовыми актами уполномоченного органа.».

Статья 2. Порядок введения настоящего Закона

1. Настоящий Закон вводится в действие по истечении десяти дней со дня официального опубликования, за исключением абзаца одиннадцатого подпункта 11) пункта 3 статьи 1 для страховых организаций, осуществляющих деятельность в отрасли «общее страхование», которое вводится в действие с 1 января 2007 года.

2. Профессиональным участникам страхового рынка привести свою деятельность в соответствие с требованиями настоящего Закона в срок до 1 января 2006 года.

Президент
Республики Казахстан