

# THE LAW OF THE REPUBLIC OF KAZAKHSTAN

## On Securitization

### Chapter 1. General provisions

### Chapter 2. Originator and special purpose company

### Chapter 3. Special considerations of securitization transactions

### Chapter 4. Final Provisions

The present Law establishes the legal basis and conditions for securitization in the Republic of Kazakhstan, determines particular requirements for the assignment of receivables upon securitization transactions and the issue of notes by a Special Purpose company, as well as establishes the requirements to originator, and to creation and activity of special purpose company.

## Chapter 1. GENERAL PROVISIONS

### **Article 1.** Basic concepts used in the present Law

The following basic concepts shall be used in the present Law:

- 1) special purpose company - a legal entity created according to the present Law for settlement of one or several securitization transactions, as well as investment of temporarily free receipts on assigned assets;
- 2) separate accounting in the special purpose company – non-inclusion of assigned assets, bonds (including accrued coupon on them) of special purpose company in balance sheet of special purpose company as a legal entity;
- 3) bonds of the special purpose company - bonds on which issuer's obligations execution is secured by assigned assets;
- 4) own equity of the special purpose company - assets, liabilities, equity capital and incomes (losses), received (incurred) after completion of securitization transactions of special purpose company as a legal entity. Own equity of special purpose company shall be not included in assigned assets, bonds (including accrued coupon thereon) of special purpose company;
- 5) affiliated persons - individuals or legal entities (except for state bodies carrying out monitoring and supervising functions within the limits of powers provided to them), having an opportunity directly and (or) indirectly to determine decisions and (or) render influence on the decisions made by either of the Parties (one of persons), including by virtue of the concluded transaction;
- 6) managing agent - a professional participant of the securities market rendering services to the special purpose company on investment of temporarily free receipts on assigned assets on the basis of the license for investment portfolio management;
- 7) future rights of claim - rights of claim arising after entering into the contract of claim rights assignment;

8) assigned assets - rights of claim acquired by special purpose company, any receipts on them, collateral security, rights and financial assets resulting from investment of receipts on assigned assets, as well as arising as a result of exercising of the given rights and financial assets;

9) debtor - a person having the existing or future liability to originator;

10) existing rights of claim – the rights of the claim existing at the moment of the entering into contract of claim rights assignment;

11) collateral security - collateral, besides the rights of claim, security of bonds issued by special purpose company which structure includes the rights and financial assets resulting from the conclusion of transactions by special purpose company prior to issue of bonds;

12) originator - a legal entity, carrying out assignment of the rights of claim at conclusion of securitization transaction;

13) securitization - financing for assignment of the monetary claim by issue of bonds secured by assigned assets;

14) securitization transaction - purchase of the rights of claim by the special purpose company and issue of bonds secured by assigned assets;

15) rights of claim - monetary claims arising in the course of carrying out by originator of its basic type of activity;

16) homogeneity of rights of claim - conformity of the rights of claim to the common objective criterion determined by the bonds issue prospectus;

17) receipts on the rights of claim - receipts under liabilities of debtors in the monetary form;

18) authorized body – **governmental body**, carrying out regulation and supervision of the financial market and financial organizations.

## **Article 2.** The legislation of the Republic of Kazakhstan on securitization

1. The legislation of the Republic of Kazakhstan on securitization is based on **the Constitution** of the Republic of Kazakhstan and consists of the **Civil code** of the Republic of Kazakhstan, the present Law and other regulatory legal acts of the Republic of Kazakhstan.

2. The legislation of the Republic of Kazakhstan concerning the **securities market** and concerning **joint-stock companies** shall be applied to the relations, related with securitization transactions and activity of the special purpose company unless otherwise stated by the present Law.

3. Where an international agreement ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law, the rules of an international treaty shall apply.

## **Chapter 2. ORIGINATOR AND SPECIAL PURPOSE COMPANY**

### **Article 3.** Requirements to the originator

1. Originator is a legal entity, the founders (or sole founder) of which have completely paid the amount of the authorized capital or have completely paid for the shares of originator purchased by them according to the foundation agreement.

2. Originator shall be entitled to participate in carrying out of simultaneously several securitization transactions.

3. Originator should have an auditor's report for the last year prior to conclusion of a securitization transaction.

#### **Article 4.** Creation and activity of the special purpose company

1. Special purpose company can be formed by originator or any other person in the organizational-legal form of the joint-stock company or Limited Liability Company.

The authorized capital of the special purpose company shall be formed exclusively by money.

2. The name of the special purpose company should contain the words "special purpose company". It shall be allowed to abbreviate the name of special purpose company using "SFC" abbreviation in its name. It shall be prohibited to use the words in the name of the special purpose company associated with the originator's company name or with the name of founders of the special purpose company.

3. During the period prior to repayment of bonds the special purpose company shall independently or with involvement of the managing agent can invest temporarily free receipts on assigned assets in financial instruments, the list of which shall be established by the authorized body according to the procedure, established by terms of bonds issue.

4. In case if the special purpose company carries out investment of temporarily free receipts on assigned assets independently, its staff shall have an employee possessing a certificate of competency with the right of access to works performance on securities portfolio management.

#### **Article 5.** Audit of the special purpose company

Special purpose company shall be obliged to carry out audit of its annual financial statements.

#### **Article 6.** Voluntary reorganization or liquidation of the special purpose company

1. Voluntary reorganization or liquidation of the special purpose company can be carried out with authorization of the authorized body after approval of the report on the results of repayment of all issues of bonds of the special purpose company.

2. Basing on application of the special purpose company for provision of authorization to voluntary reorganization or liquidation of the special purpose company the authorized body shall pass a decision and shall notify the special purpose company in writing on that within thirty calendar days from the date of application receipt. In case the authorized body makes a decision on refusal to give authorization to voluntary reorganization or liquidation, the authorized body shall notify the special purpose company in writing on that having specified the grounds for such refusal.

### **Chapter 3. SPECIAL CONSIDERATIONS OF SECURITIZATION TRANSACTIONS**

#### **Article 7. Securitization objects**

1. The rights of claim, being the objects of securitization, should be homogeneous.

2. Special purpose company shall use receipts on assigned assets exclusively for commitment of its liabilities under bonds issued by it and payment of services within the limits of one securitization transaction, as well as in cases provided for by the present Law, for investment in the financial instruments.

Payment for services rendered in the process of securitization transaction shall be made only at absence of outstanding liabilities on issued bonds.

#### **Article 8. Assigned assets**

1. Assigned assets under each securitization transaction are separated from own equity of the special purpose company and any other assets referring to any other securitization transaction or belonging to any other person.

Special purpose company shall be not entitled to carry out subsequent issues of bonds within the limits of one securitization transaction, except for issue of bonds under the bond program within the limits of one transaction.

2. Starting from the date of state registration of bonds issue prospectus by the special purpose company according to the present Law, recovery payment on assigned assets, being a security of the given issue of bonds of the special purpose company, can be applied only for commitment of liabilities of the special purpose company and payment for services related only with the given securitization transaction.

Recovery payment on the assigned assets, being a security of the given issue of bonds of the special purpose company, should be carried out according to the following sequence:

1) first of all obligations of the special purpose company under issued bonds shall be fulfilled;

2) on a second-priority basis it shall be required to make payment for services related with the given securitization transaction.

3. Obligations of the special purpose company to bonds holders shall be repaid at the expense of assigned assets, being a security on the given issue of bonds.

#### **Article 9. Rights of claim assignment contract at securitization**

1 According to the contract of rights of claim assignment at securitization originator shall assign or undertakes to assign its future or existing rights of claim to the debtors, arising out of originator's relations with debtors, and special purpose company shall carry out their purchase by the way of money transfer received from bonds placement, secured by the given rights of claim, to originator.

2. Originator shall carry out collection of payments on assigned rights of claim from debtors unless otherwise stated by the contract.

3. Rights of claim, being a subject of assignment under securitization transaction, should be determined in the contract between the originator and the

special purpose company so that it is possible to establish the existing monetary claim on the moment of contract conclusion, and future claim - not later than on the moment of its occurrence.

4. The contract of rights of claim assignment at securitization should be entered into in writing with observance of the requirements established by [Article 346](#) of the Civil Code.

Failure to observe the written form of the contract of rights of claim assignment at securitization shall result in its invalidity.

5. Owing to assignment of the rights of claim at securitization the special purpose company shall acquire the right to all receipts under the rights of claim from debtors in execution of such claims.

Originator shall not bear any liability to the special purpose company that the received receipts on the rights of claim are less than the amount paid by the special purpose company to originator for purchase of these rights.

#### **Article 10. Management of the assigned assets**

1. The managing agent shall carry out investment on the basis of the contract for investment portfolio management.

Property trust management contract rules shall be applied to the contract on investment portfolio management.

2. Apart from the terms and conditions stipulated by legislative acts of the Republic of Kazakhstan, investment portfolio management contract should contain the following:

1) conditions, procedure and terms of money receipt under the rights of claim which are form a part of assigned assets, and the procedure of control over their execution;

2) procedure of the managing agent interaction with the participants of securitization transaction, including on conclusion of collateral security transactions;

3) procedure of the assigned assets cost, flow and structure of verification carrying out with the bank-custodian;

4) procedure of information disclosing to the holders of bonds, their representative and authorized body.

3. The contract of investment portfolio management can be terminated, alongside with common bases of obligations termination under the contract, in one of the following cases:

1) under the initiative of one of the parties of the contract;

2) at termination of the license of the managing agent issued by the authorized body for carrying out of the related type of professional activity in the securities market.

Initiator of investment portfolio management contract termination shall be obliged to notify the party of the contract in writing thirty calendar days prior to date of contract termination.

In case of contract validity suspension, deprivation of the managing agent of its license for carrying out of the related type of professional activity in the securities

market, the managing agent shall be obliged to inform the special purpose company on this fact in writing within three calendar days.

Investment portfolio management contract shall be deemed as terminated upon completion of assets verification procedure transferred by the special purpose company to a new managing agent according to the procedure, established by the authorized body.

**Article 11.** Assignment of the rights of claim at securitization

1. The existing right of claim shall be considered as passed to the special purpose company at availability of the concluded contract from the moment of state registration of bonds issue.

2. At assignment of the future right of claim, it shall be considered as passed to the special purpose company at availability of the condition stipulated by paragraph 1 of present Article after occurrence of the right to money receipt which is a subject of claim assignment provided for by the contract. In future there is no need in additional registration of future right of claim assignment at occurrence of such right. If the assignment of the monetary claim is caused by a certain event, it shall become effective after approach of such event.

**Article 12.** Assigned assets accounting and storage

1. Assigned assets of the special purpose company shall be stored and accounted on accounts in bank-custodian according to custody contract.

2. Custody contract shall be concluded between the bank-custodian, the special purpose company and managing agent.

3. **The form of the typical custody contract** shall be elaborated and approved by the authorized body.

4. The bank-custodian shall be obliged to block (to not execute) the assignments of the managing agent in case of their incompliance to the legislation of the Republic of Kazakhstan sending an immediate notice on this fact to the authorized body and special purpose company.

In case if the special purpose company independently carries out investment of temporarily free receipts on the assigned assets, the bank-custodian shall be obliged to block (to not execute) assignments of the special purpose company at their incompliance to the legislation of the Republic of Kazakhstan sending an immediate notice on this fact to the authorized body.

5. Procedure control carried out by the bank-custodian over the target placement of assets of the special purpose company shall be determined by the authorized body.

6. The bank-custodian shall inform the special purpose company on the status of its accounts on a monthly basis.

7. Custody contract should be concluded simultaneously only with one bank-custodian.

8. Custody contract can be terminated, alongside with general grounds of a contract discharge, in one of the following cases:

- 1) on the basis of appropriate decision of executive body of the special purpose company;
- 2) on demand of the managing agent;
- 3) by the decision of the bank-custodian;
- 4) at termination of the license of the bank-custodian issued by the authorized body for carrying out appropriate types of professional work in the securities market.

In case of suspension of the license validity of the bank-custodian for carrying out appropriate types of professional work in the securities market the bank-custodian shall be obliged to notify the special purpose company on this fact in writing within three calendar days.

Initiator of custody contract termination shall be obliged to notify the parties under the contract thirty calendar days prior to the planned date of contract termination.

Custody contract shall be deemed as terminated upon completion of procedure of assets transfer belonging to the special purpose company to a new bank-custodian according to the procedure, established by the authorized body.

#### **Article 13.** Accounting and statements on transactions securitization

1. The special purpose company shall keep business accounting and shall submit financial statements separately on own equity and assigned assets, bonds (including on coupon accrued on them) to the special purpose company according to the procedure, established by effective legislation of the Republic of Kazakhstan.

2. Assigned assets which are considered to be a security of liabilities on bonds, remained after approval of the report on the results of such bonds repayment by the authorized body, shall be attributed to incomes (losses) of the special purpose company.

3. Procedure of business accounting keeping and drawing up of the financial statements by the special purpose company shall be established **by regulatory legal acts of the National Bank of the Republic of Kazakhstan**.

4. Peculiar features of business accounting of assets of the special purpose company and as well as transactions with bonds by the bank-custodian shall be established by the legislation of the Republic of Kazakhstan.

#### **Article 14.** Special considerations of bonds issue by the special purpose company

1. Except for requirements of the legislation of the Republic of Kazakhstan **concerning the securities market**, bonds issue prospectus (bond program) of the special purpose company should contain the following data:

1) the name and the place of location of originator, bank-custodian, managing agent, special purpose company and a person, carrying out collection of payments on assigned rights of claim;

2) subject of activity, rights and duties of originator in the securitization transaction;

- 3) characteristics of the rights of claim, terms and conditions, procedure and terms of money receipt under the rights of claim which are included in composition of assigned assets, and procedure of control over their execution;
  - 4) procedure of investment of temporarily free receipts on the assigned assets;
  - 5) costs and expenses related with payment of services on securitization transaction, and conditions according to which the special purpose company has the right to deduct the given expenses from the assigned assets;
  - 6) affiliated nature of the parties under the securitization transaction;
  - 7) availability of experience of securitization application by originator and persons participating in securitization transaction;
  - 8) amount, structure and forecast analysis of growth of the assigned assets securing the securitization transaction;
  - 9) data about additional security;
  - 10) conditions and the procedure of bonds issue repayment ahead of schedule;
  - 11) criteria of homogeneity of rights of claim;
  - 12) priority of bonds repayment of the various issues which have been issued within the limits of the given bond program;
  - 13) data on the representative of bonds holders.
2. Auditor's report of originator for the last year, contract on assignment of rights of claim under the given securitization transaction, concluded between the originator and the special purpose company shall be an integral part of the of the bonds issue prospectus of the special purpose company.
3. For consideration and approval of reports on the results of placement and repayment of bonds of the special purpose company it shall be additionally required to submit the reports reflecting the securitization transaction and issue of bonds of the special purpose company, according to the procedure and using the form which have been established by the authorized body.
4. A representative of bonds holders of the special purpose company shall not be an affiliated person of originator.

## **Chapter 4. FINAL PROVISIONS**

**Article 15.** Liability for Violation of the Republic of Kazakhstan Legislation Concerning securitization

Violation of legislation of the Republic of Kazakhstan on securitization shall result in responsibility according to the laws of the Republic of Kazakhstan.

**Article 16.** Procedure for this Law Coming into Effect  
The present Law shall come into effect from the date of its official publication.

**The President of the Republic of Kazakhstan**

**N. NAZARBAEV**

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