



**Kazakhstan · Kyrgyzstan · Azerbaijan · Uzbekistan
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**Mergers & Acquisitions in Kazakhstan
To Buy or Not to Buy....**

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February, 2009

Dear Ladies and Gentlemen,

We are sending you a piece of significant information that we hope might be extremely beneficial to your company.

Should foreign companies continue to conduct mergers & acquisitions in Kazakhstan? What are the risks that they face? What are the new laws that the government plans to introduce and how will they affect investors?

These are the questions that foreign investors need to address before contemplating any mergers or acquisitions in Kazakhstan. Yet, with the credit crisis badly affecting Kazakhstan's fledgling economy and with the state moving increasingly and ominously towards nationalisation in their policy decisions, perhaps a more pertinent question is "why do foreign companies continue to invest in Kazakhstan?" The answer is obvious: because there is massive potential and there are still huge profits to be made in this oil rich country.

However Kazakhstan's mergers and acquisitions market has felt the problems of the global economic crisis more than most. The credit crisis decimated the number of Kazakh merger and acquisition deals, the total value of which fell in the second half of 2007 by 90%. At the same time, virtually all deals were reduced to the purchase and sale of small companies with consolidation as the principal motivation.

In order to adjust, the merger and acquisition market in Kazakhstan has become more dynamic and has shown significant changes in terms of both quality and quantity. Today there is a far greater level of diversification in the market than in previous years. Whilst in 2007 the natural resources sector was still the largest area for mergers and acquisitions there appears to be a growing shift towards the financial sector. The total value of mergers and acquisitions in the financial sector in 2007 was over \$1 billion which partly compensated for the decline in the subsoil industries and reflected the change in emphasis.

GRATA Law Firm represented the buyer in the major financial acquisition of 2007, the purchase of ATF Bank for \$2.2 billion by UniCredit and despite the instability of the international financial markets; the sector continues to attract foreign banks. In 2008 Kookmin Bank, again advised by GRATA completed the takeover of Bank Center Credit for \$634 million to become the first Korean Bank to establish themselves in Kazakhstan. It is a trend that looks like to continue in the near future as a number of international banks are rumoured to be considering potential targets. But despite this continued activity by foreign investors, the cross-border expansion of recent years by local Kazakh banks appears to be declining. Foreign companies are making much larger acquisitions; the value of the ATF Bank deal alone is greater than that of all Kazakh transactions abroad.

So whilst the mergers and acquisitions market has begun to adjust to the credit crisis, it is the new legislation and moves by the state to exert greater control that are rightly the main concern of the cautious investor. The current climate is a far cry from the Kazakhstan of the early nineties when the newly independent state's policies and tax regimes were cobbled together and designed conspicuously to attract foreign investors to help the country to harness their vast natural resources and to develop their infrastructure. The difference could not be better illustrated than by taking a brief examination of the new tax code which comes into effect in early 2009. Plans to transfer a greater burden of taxation onto subsoil users and the proposed major increase in the

amount of excess profit tax that subsoil use companies will pay are just two of the new initiatives which are enough to make even the keenest investors think twice.

Another risk is the acquisition process itself. In Kazakhstan the process does not differ a great deal from that of other countries: negotiations are carried out between the parties, followed by due diligence and structuring the transaction to try to minimize the tax burden and reduce potential risks before the deal is concluded. However, the main risk for foreign investors is that the transaction should be governed by the laws of Kazakhstan and one consequence of this is that warranties and indemnities given by the seller are essentially unenforceable. This protection, which companies are entitled to rely upon under the common law system, is no longer available and a failure to appreciate this can have disastrous consequences. This places a huge emphasis on the due diligence process and the buyer needs to be absolutely certain that they know what they are buying.

However for those investors who are prepared to accept these risks and who are looking to the future they would be wise not to ignore the potential in Kazakhstan's fast moving consumer goods (FMCG) markets particularly with the huge increases globally in the price of food. At the moment this is a relatively weak sector of the Kazakhstani economy but informed observers will have noted its potential. The merger and acquisition process, as with natural resources in the early 90s can drive the growth and development of this relatively emergent area and foreign FMCG companies will be looking to target this.

On the whole therefore mergers and acquisitions market in Kazakhstan will continue to adapt and appears to be resilient enough to continue to attract foreign investment. Increased state control, rumours of a new state owned mining company and the new tax code seems to indicate that the subsoil and natural resources market does not have the same appeal of five or 10 years ago. Banks and financial institutions will continue to be targeted by foreign investors in the near future and the FMCG market looks set to be a long term growth area. Kazakhstan still offers potentially huge rewards for the right investor who picks the right target. But are you willing to take the risk? **THAT** is the question.