

«ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ
ҰЛТТЫҚ БАНКІ»

РЕСПУБЛИКАЛЫҚ
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РЕСПУБЛИКАНСКОЕ
ГОСУДАРСТВЕННОЕ УЧРЕЖДЕНИЕ

«НАЦИОНАЛЬНЫЙ БАНК
РЕСПУБЛИКИ КАЗАХСТАН»

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13.11.2014 № 33-3-16/3611

АО «Казкоммерцбанк»

050060, г. Алматы, пр. Гагарина, 135 ж

Национальный Банк Республики Казахстан, рассмотрев письмо АО «Казкоммерцбанк» (далее - Общество) от 11 ноября 2014 года №76309729 касательно выдачи разрешения на нахождение международных облигаций [Reg S ISIN: XS0867478124 / 144 A ISIN: XS0867573890; Reg S Common Code 086747812 / 144 A Common Code 086757389], руководствуясь пунктом 2 статьи 22-1 Закона Республики Казахстан «О рынке ценных бумаг», разрешает нахождение международных облигаций в списке ценных бумаг, торгуемых на Люксембургской фондовой бирже.

Заместитель Председателя


Н.Ж. Кусаннов

Исп.: Акатаева Р.С., тел.: 2788 104 (1084)

№ 0058982

DATED 14 NOVEMBER 2014

SUPPLEMENTAL TRUST DEED

among

JSC BTA BANK

and

JSC KAZKOMMERTSBANK

and

BNY MELLON CORPORATE TRUSTEE SERVICES LIMITED

relating to the

U.S.\$750,000,000 5.50% Notes due 2022

Dechert
LLP

160 Queen Victoria Street
London EC4V 4QQ

TABLE OF CONTENTS

	Page
1. RELATION TO THE TRUST DEED AND INTERPRETATION	2
2. SUBSTITUTION	3
3. AMENDMENTS TO THE TRUST DEED AND THE CONDITIONS OF THE NOTES.....	3
4. REPRESENTATIONS, WARRANTIES AND AGREEMENTS	12
5. RELEASE	12
6. EFFECTIVE DATE AND STATUS OF THE TRUST DEED AND THE NOTES	13
7. GOVERNING LAW, JURISDICTION AND ARBITRATION	13
8. MISCELLANEOUS	13

THIS SUPPLEMENTAL TRUST DEED is made on 14 November 2014 (this “**Deed**”)

BETWEEN:

- (1) **JSC BTA BANK** (the “**Bank**”);
- (2) **JSC KAZKOMMERTSBANK** (the “**Substituted Obligor**”); and
- (3) **BNY MELLON CORPORATE TRUSTEE SERVICES LIMITED** (the “**Trustee**”, which expression, where the context so admits, includes any other trustee for the time being of this Deed).

WHEREAS:

- (A) The Bank and the Trustee entered into a trust deed dated 21 December 2012 (the “**Trust Deed**”) relating to the issuance of U.S.\$750,000,000 5.50% Notes due 2022 (the “**Notes**”) by the Bank.
- (B) Pursuant to the Extraordinary Resolutions of the Noteholders passed at a meeting duly convened and held in accordance with the Trust Deed on 10 November 2014 (the “**Extraordinary Resolutions**”), the Noteholders have (i) approved the substitution of the Substituted Obligor in place of the Bank as the principal debtor under the Notes; (ii) approved certain modifications to the Trust Deed; (iii) approved certain modifications to the terms and conditions of the Notes set forth in Schedule 4 to the Trust Deed (the “**Conditions**”); and (iv) authorised and instructed the Trustee to enter into this Deed to give effect to such substitution and modifications.
- (C) This Deed is supplemental to, and should be read in conjunction with, the Trust Deed.

THIS DEED WITNESSES AND IT IS DECLARED as follows:

1. RELATION TO THE TRUST DEED AND INTERPRETATION

1.1 Relation to the Trust Deed

This Deed constitutes an integral part of the Trust Deed. Except as expressly modified by this Deed, the provisions of the Trust Deed (including the Terms and Conditions set forth in schedule 4 of the Trust Deed) remain unchanged and in full force and effect.

1.2 Interpretation

- (a) Capitalised terms used in this Deed but not defined in this Deed shall have the meanings specified in the Trust Deed, and the rules of interpretation set out in the Trust Deed shall apply as if they were set out in full herein.
- (b) Headings and sub-headings are for ease of reference only and shall not affect the construction of this Deed or the Trust Deed.
- (c) All references to “**Clauses**” or “**Schedules**” in this Deed shall refer to clauses or schedules in the Trust Deed.

2. SUBSTITUTION

- 2.1 As of the Effective Date (as defined in Clause 6.1 below), the parties hereto agree and acknowledge (the Trustee acting in accordance with the terms of the Extraordinary Resolutions) that all of the rights of the Bank under or in respect of the Notes and the Trust Deed (the "Assigned Rights") are hereby assigned absolutely and unconditionally, with full title guarantee, to the Substituted Obligor and that all of the obligations of the Bank under the Notes and the Trust Deed (the "Transferred Obligations") shall be so transferred to the Substituted Obligor.
- 2.2 The Substituted Obligor shall assume the Assigned Rights and shall perform, undertake and discharge the Transferred Obligations as if the Substituted Obligor had at all times been the issuer of the Notes. In particular, but without prejudice to the generality of the foregoing, all payment and debt obligations owed by the Bank in relation to the Notes or otherwise under the Trust Deed, whether arising before, on or after the Effective Date, shall be assumed and owed by the Substituted Obligor.
- 2.3 The Trustee acknowledges that all of the rights against it and obligations owed by it under the Trust Deed shall, as of the Effective Date, be rights in favour of, and obligations owed to, the Substituted Obligor such that the Trustee shall be bound by the terms of the Notes and the Trust Deed as against the Substituted Obligor as if the Substituted Obligor had at all times been a party to the Notes and the Trust Deed in place of the Bank.
- 2.4 As of the Effective Date, the Substituted Obligor shall be deemed to be named as the principal debtor in place of the Bank under the Notes and under the Trust Deed, and the Notes and the Trust Deed shall be deemed to be amended in all respects as necessary to give effect to this substitution.

3. AMENDMENTS TO THE TRUST DEED AND THE CONDITIONS OF THE NOTES

- 3.1 With effect from the Effective Date, the Trust Deed and the Conditions shall be amended as follows:
- (a) All references in the Trust Deed and the Conditions to the Bank shall be construed as references to the Substituted Obligor.
- (b) The definition of "Person" set forth in Clause 1.1 of the Trust Deed (*Interpretation: Definitions*) is hereby deleted in its entirety and replaced with the following text:
- "Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organisation, government, or any agency or political subdivision hereof or any other entity;
- (c) The definition of "Subsidiary" set forth in Clause 1.1 of the Trust Deed (*Interpretation: Definitions*) is hereby deleted in its entirety and replaced with the following text:
- "Subsidiary" means, in relation to any Person (the "first Person") at a given time, any other Person (the "second Person") (i) whose affairs and policies the first Person directly or indirectly controls or (ii) as to whom the first Person owns directly or indirectly more than 50 per cent. of the capital, voting stock or other right of ownership. "Control" as used in this definition, means the power by the first Person to direct the management and the policies of the second Person, whether through the ownership of share capital, by contract or otherwise;
- (d) The definitions of "Applicable Law", "Information Memorandum", "Samruk-Kazyna", "SK Bonds", "SK Loan Agreement", "SK Loan Schedule" and "Termination Date" set forth in Clause 1.1. of the Trust Deed are hereby deleted in their entirety.
- (e) Clause 7(b) of the Trust Deed (*Covenants: Covenants relating to the subordination of the SK Loan*) is hereby deleted in its entirety.
- (f) Clause 7(c) of the Trust Deed (*Covenants: Covenants relating to the SK Bonds*) is hereby deleted in its entirety.
- (g) Clause 7(d) of the Trust Deed (*Covenants: Credit Rating*) is hereby deleted in its entirety.

(h) Clause 7(g) of the Trust Deed (*Covenants: Notice of Redemption*) is hereby deleted in its entirety.

(i) Clause 7(e), Clause 7(f) and Clause 7(h) of the Trust Deed shall be renumbered accordingly.

(j) The following text is hereby added as a new Clause 7(a)(xi) of the Trust Deed (*Covenants: Information covenants*):

(xi) **Financial Statements etc.** send to the Trustee and to the Principal Paying Agent not later than ten days after the date of their distribution to shareholders, and in the case of annual financial statements in any event within 180 days of the end of each financial year, three copies in English of every balance sheet, profit and loss account and other information made available to creditors of the Bank generally and procure that the same are made available for inspection by Noteholders at the Specified Offices of the Paying Agents as soon as practicable thereafter.

(k) All references in the Trust Deed to Condition 5(j) (*Financial Statements*) shall be construed as references to Clause 7(a)(xi) (*Covenants: Information covenants: Financial Statements etc.*) of the Trust Deed.

(l) The following text is hereby inserted as a new Clause 7(e) of the Trust Deed (*Covenants: Listing*):

(i) **Listing**

use all reasonable endeavours to maintain the listing of the Notes on the Luxembourg Stock Exchange and the KASE but, if it is unable to do so, having used such endeavours, or if the maintenance of such listing or trading is agreed by the Trustee to be unduly onerous and the Trustee is satisfied that the interests of the Noteholders would not be thereby materially prejudiced, instead use all reasonable endeavours to obtain and maintain a listing of the Notes on another stock exchange and/or admission to trading on another market, in each case approved in writing by the Trustee.

(m) The following text is hereby inserted as a new Clause 7(f) of the Trust Deed (*Covenants: Compliance Certificates*):

Compliance Certificates

send to the Trustee within 14 days of its annual audited financial statements being made available to its members, and also within 14 Business Days of any request by the Trustee, a certificate of the Bank signed by any two of its Directors as at a date (the "Certification Date") not more than five Business Days before the date of such certificate (1) the Bank has complied with its obligations under this Trust Deed, or if such is not the case, giving details of the circumstances of any such non-compliance which has occurred since the Certification Date of the last such certificate; (2) that no Event of Default had occurred since the Certification Date of the last such certificate or, if such an event had occurred, giving details of it; and (3) giving details of any Potential Event of Default which has occurred since the Certification Date of the last such certificate.

(n) The following text is hereby inserted as a new Clause 7(g) of the Trust Deed (*Covenants: Material Subsidiaries*):

Material Subsidiaries

give to the Trustee at the same time as sending the certificate referred to in Clause 7(f) above (*Compliance Certificate*) or within 28 days of a request by the Trustee, a certificate of the Bank listing those Subsidiaries of the Bank that as at the last day of the last financial year of the Bank or as at the date specified in such request were

Material Subsidiaries of the Bank, upon which certificate the Trustee shall be entitled to rely without further enquiry and without incurring liability to any person for so doing.

- (o) Clause 15 of the Trust Deed (*SK Loan Schedule*) is hereby deleted in its entirety.
- (p) The address of the Bank in Clause 17 of the Trust Deed (*Communications*) is hereby deleted in its entirety and replaced with the following address:

Any communication shall be in writing and in English and shall be by letter, email or fax:

in the case of the Bank, to it at:

JSC Kazkommertsbank
135 zh Gagarin Ave.,
Almaty 050060
Kazakhstan
Fax: +727 2585-404

Attention: Financial Institutions Department

- (q) Paragraphs 2(d) and 2(e) of Schedule 3 of the Trust Deed (*Provisions for meetings of Noteholders*) are hereby deleted in their entirety.
- (r) The first paragraph of the Conditions is hereby deleted in its entirety and replaced with the following text:

The U.S.\$750,000,000 5.50 per cent. notes due 2022 (the "Notes", which expression includes any further notes issued pursuant to Condition 16 (Further Issues) and forming a single series therewith) of JSC Kazkommertsbank (the "Bank") are (a) constituted by, and subject to, and have the benefit of a trust deed dated 21 December 2012 as amended and supplemented by the Supplemental Trust Deed dated 14 November 2014 (as further amended or supplemented from time to time, the "Trust Deed") between the Bank and BNY Mellon Corporate Trustee Services Limited, as trustee (the "Trustee", which expression includes all persons for the time being appointed as trustee for the holders of the Notes ("Noteholders") under the Trust Deed), and (b) the subject of an agency agreement dated 21 December 2012 as amended and supplemented by the Supplemental Agency Agreement dated 14 November 2014 (as further amended or supplemented from time to time, the "Agency Agreement") between the Bank, the Trustee, The Bank of New York Mellon, as principal paying and transfer agent (the "Principal Paying and Transfer Agent"; which expression includes any successor or additional paying and transfer agents appointed from time to time in connection with the Notes), and The Bank of New York Mellon (Luxembourg) S.A. as registrar (the "Registrar", which expression shall include any successor registrar appointed from time to time in connection with the Notes).

- (s) Condition 5 (*Covenants*) is hereby deleted in its entirety and replaced with the following text:

(a) ***Negative Pledge of the Bank***

So long as any Note remains outstanding the Bank shall not, and shall not permit any of its Subsidiaries which is a Material Subsidiary to create, incur, assume or permit to arise or subsist any Security Interest (other than a Permitted Security Interest) upon the whole or any part of their respective undertakings, assets or revenues, present or future, to secure any Indebtedness for Borrowed Money of the Bank, any such Subsidiary or any other Person or any Indebtedness Guarantee in respect of such Indebtedness for Borrowed Money unless, at the same time or prior thereto, the Bank's obligations under the Notes are secured equally and rateably therewith (to the satisfaction of the Trustee) or have the benefit of such other arrangement as may be approved by an Extraordinary Resolution (as defined in the Trust Deed) of

Noteholders or as the Trustee in its sole discretion shall consider to be not materially less beneficial to the interests of the Noteholders.

(b) ***Limitations on Certain Transactions***

So long as any Note remains outstanding, the Bank will not, directly or indirectly, enter into or suffer to exist any transaction or series of related transactions (including, without limitation, the sale, purchase, exchange or lease of assets, property or services) involving aggregate consideration equal to or greater than U.S.\$5,000,000 unless such transaction or series of transactions is or are at a Fair Market Value.

(c) ***Limitation on Payment of Dividends***

So long as any Note remains outstanding, the Bank will not pay any dividends, in cash or otherwise, or make any other distributions (whether by way of redemption, acquisition or otherwise) in respect of its share capital (i) at any time when there exists an Event of Default (as defined in Condition 11) or an event which, with the passage of time or the giving of notice, or both, would constitute an Event of Default or (ii) at any time when no such Event of Default or event exists, (a) more frequently than once during any calendar year or (b) in an aggregate amount exceeding 50 per cent. of the Bank's net income for the period in respect of which the dividends are being paid or the distribution is being made, calculated in accordance with International Financial Reporting Standards, for which purpose, the amount of the Bank's net income shall be determined by reference to its financial statements of the period in respect of which the dividend is being paid. The foregoing limitation shall not apply to the payment of (i) any dividends in respect of any preferred shares of the Bank, which may be issued by the Bank from time to time or (ii) any dividends in respect of any common shares of the Bank, which are paid through the issuance of additional common shares.

(d) ***Determination of Material Subsidiaries***

A report or certificate of the Auditors (as defined in the Trust Deed) of the Bank (whether or not addressed to the Trustee and whether or not containing a monetary or other limit on the liability of the Auditors) that in their opinion a Subsidiary of the Bank is or is not or was or was not at any particular time or throughout any period a Material Subsidiary shall, in the absence of manifest error, be conclusive and binding on all parties; and the Trustee shall be entitled to rely upon any such report or certificate prepared by the Auditors and shall not be responsible for any loss occasioned by acting on any such report or certificate, as the case may be.

(e) ***Provision of Financial Information***

For so long as any Notes are outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Bank will furnish upon the request of a holder of Notes or a beneficial owner of an interest therein to such holder or the beneficial owner or to a prospective purchaser of Notes designated by such holder or beneficial owner, the information required to be delivered under Rule 144A(d)(4) under the Securities Act and will otherwise comply with the requirements of Rule 144A under the Securities Act, if at the time of such request the Bank is not a reporting company under Section 13 or Section 15(d) of the United States Securities Exchange Act of 1934, as amended, or exempt from reporting pursuant to Rule 12g3-2(b) thereunder.

(f) **SK Loan**

For so long as any Notes are outstanding, the Bank shall not (to the extent within its control) permit JSC BTA Bank to, and shall not itself:

- (i) make any payment on or in respect of the SK Loan, other than scheduled payments of interest in accordance with the terms thereof as in effect on the date on which the SK Loan was made;
- (ii) exercise, or consent to, any set-off against the SK Loan;
- (iii) create or permit to exist any security over any of its assets, or provide any guarantee, for or in respect of the SK Loan; or
- (iv) agree to amend, vary, waive, release or supplement any provision of the SK Loan as in effect on the date on which the SK Loan was made.

(t) Condition 8(b) (*Redemption and purchase: Redemption at the option of the Noteholders*) is hereby deleted in its entirety and the following Conditions 8(c) and 8(d) shall be renumbered accordingly.

(u) Condition 11 (*Events of Default*) is hereby deleted in its entirety and replaced with the following text:

“If any of the following events (each an “**Event of Default**”) occurs, the Trustee at its discretion may, and if so requested in writing by holders of at least one-fifth in nominal amount of the Notes then outstanding or if so directed by an Extraordinary Resolution shall, subject, in each case, to it being indemnified and/or secured and/or prefunded to its satisfaction, give notice to the Bank that the Notes are, and they shall immediately become, due and payable at their outstanding principal amount together with accrued interest to the date of such notice:

(a) ***Non-Payment***

the Bank fails to pay the principal of any of the Notes when the same becomes due and payable either at maturity, by declaration or otherwise or the Bank is in default with respect to the payment of interest or additional amounts on any of the Notes and such default in respect of interest or additional amounts continues for a period of ten Business Days; or

(b) ***Breach of other Obligations***

the Bank is in default in the performance, or is otherwise in breach, of any covenant, obligation, undertaking or other agreement under the Notes, or the Trust Deed (other than a default or breach elsewhere specifically dealt with in this Condition 11) and, where such default or breach is, in the opinion of the Trustee, capable of remedy, such default or breach is not (in the opinion of the Trustee) remedied within 30 days (or such longer period as the Trustee may in its sole discretion determine) after notice thereof has been given to the Bank or as the case may be, by the Trustee requiring the same to be remedied; or

(c) ***Cross-Default***

(i) any Indebtedness for Borrowed Money of the Bank, or any Material Subsidiary (a) becomes (or becomes capable of being declared) due and payable prior to the due date for payment thereof by reason of default by the Bank or such Material Subsidiary or (b) is not repaid at maturity as extended by the period of grace, if any, applicable thereto or (ii) any Indebtedness Guarantee given by the Bank or any Material Subsidiary in respect of Indebtedness for Borrowed Money of any other Person is not honoured when due and called, provided that the aggregate principal

amount of such Indebtedness for Borrowed Money exceeds U.S.\$10,000,000 (or its equivalent in other currencies (as determined by the Trustee)); or

(d) ***Bankruptcy***

(i) any Person shall have instituted a proceeding or entered a decree or order for the appointment of a receiver, administrator or liquidator in any insolvency, rehabilitation, readjustment of debt, marshalling of assets and liabilities or similar arrangements involving the Bank or any Material Subsidiary or all or substantially all of their respective properties and such proceeding, decree or order shall not have been vacated or shall have remained in force undischarged or unstayed for a period of 60 days; or (ii) the Bank or any Material Subsidiary shall institute proceedings under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect to be adjudicated a bankrupt or insolvent or shall consent to the filing of a bankruptcy, insolvency or similar proceeding against it or shall file a petition or answer or consent seeking reorganisation under any such law or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver, administrator or liquidator or trustee or assignee in bankruptcy or liquidation of the Bank or any Material Subsidiary, as the case may be, or in respect of its property or substantially all thereof, or shall make a general assignment for the benefit of its creditors or shall otherwise be unable or admit its inability to pay its debts generally as they become due or the Bank or any Material Subsidiary commences proceedings with a view to the general adjustment of its Indebtedness and, in any case as is specified in this Condition 11(d) in relation to a Material Subsidiary, which event is (in the sole opinion of the Trustee) materially prejudicial to the interests of the Noteholders; or

(e) ***Substantial Change in Business***

the Bank makes or threatens to make any substantial change in the principal nature of its business as conducted by it on the date of issue of Notes; or

(f) ***Maintenance of Business***

the Bank fails to take any action as is required of it under applicable banking regulations in the Republic of Kazakhstan or otherwise to maintain in effect its banking licence or corporate existence or fails to take any action to maintain any material rights, privileges, titles to property, franchises and the like necessary or desirable in the normal conduct of its business, activities or operations and where such default or breach is, in the opinion of the Trustee, capable of remedy, and such failure is not remedied within 30 days (or such longer period as the Trustee may in its sole discretion determine) after notice thereof has been given to the Bank; or

(g) ***Material Compliance with Applicable Laws***

the Bank fails to comply in any respect with any applicable laws or regulations (including any foreign exchange rules or regulations) of any governmental or other regulatory authority for any purpose to enable the Bank lawfully to exercise its rights or perform or comply with its obligations under the Notes, the Trust Deed or the Agency Agreement or to ensure that those obligations are legally binding and enforceable or to ensure that all necessary agreements or other documents are entered into and that all necessary consents and approvals of, and registrations and filings with, any such authority in connection therewith are obtained and maintained in full force and effect; or

(h) ***Invalidity or Unenforceability***

(i) the validity of the Notes, the Trust Deed, or the Agency Agreement is contested by the Bank or the Bank shall deny any of its obligations under the Notes, the Trust Deed or the Agency Agreement (whether by a general suspension of payments or a

moratorium on the payment of debt or otherwise) or (ii) it is or becomes unlawful for the Bank to perform or comply with all or any of its obligations set out in the Notes, the Trust Deed or the Agency Agreement or (iii) all or any of the Bank's obligations set out in the Notes, the Trust Deed, or the Agency Agreement shall be or become unenforceable or invalid; or

(i) **Government Intervention**

(i) all or, in the opinion of the Trustee, any substantial part of the undertaking, assets and revenues of the Bank, or any Material Subsidiary is condemned, seized or otherwise appropriated by any person acting under the authority of any national, regional or local government or (ii) the Bank, or any Material Subsidiary is prevented by any such person from exercising normal control over all or any substantial part of its undertaking, assets and revenues.

- (v) Condition 14(b) (*Notices: To the Bank*) is hereby deleted in its entirety and replaced with the following text:

Notices to the Bank will be deemed to be validly given if delivered to the Bank at 135 zh Gagarin Ave., Almaty 050060, Kazakhstan and clearly marked on their exterior "Financial Institutions Department" (or at such other addresses and for such other attentions as may have been notified to the Noteholders in accordance with Condition 14(a)) and will be deemed to have been validly given at the opening of business on the next day on which the Bank's principal offices, as applicable, are open for business.

- (w) The fourth paragraph of Condition 15(c) (*Trustee: Enforcement; Reliance*) is hereby amended by replacing the words "one member of the Management Board" in its second and third lines with the words "any two of its Directors".

- (x) The definition of "Fair Market Value" set forth in Condition 20 is hereby deleted in its entirety and replaced with the following text:

"Fair Market Value" of a transaction means the value that would be obtained in an arm's length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer. A report of the Independent Valuer or certificate of the Bank of the Fair Market Value of a transaction, shall, in the absence of manifest error, be conclusive and binding on all parties; and the Trustee shall be entitled to rely upon any such report prepared by such Independent Valuer and shall not be responsible for any loss occasioned by acting on any such report or certificate.

- (y) The definition of "Financial Indebtedness" set forth in Condition 20 is hereby deleted in its entirety and replaced with the following definitions of "Indebtedness", "Indebtedness for Borrowed Money" and "Indebtedness Guarantee":

"Indebtedness" means any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent.

"Indebtedness for Borrowed Money" means any Indebtedness of any Person for or in respect of (i) moneys borrowed, (ii) amounts raised by acceptance under any acceptance credit facility, (iii) amounts raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or similar instruments, (iv) the amount of any liability in respect of leases or hire purchase contracts which would, in accordance with generally accepted accounting standards in the jurisdiction of incorporation of the lessee, be treated as finance or capital leases, (v) the amount of any liability in respect of any purchase price for assets or services the payment of which is deferred primarily as a means of raising finance or financing the acquisition of the relevant asset or service and (vi) amounts raised under any other transaction (including any forward sale or purchase agreement and the sale of receivables or other assets on a "with recourse" basis) having the commercial effect of a borrowing.

“Indebtedness Guarantee” means in relation to any Indebtedness of any Person, any obligation of another Person to pay such Indebtedness including (without limitation) (i) any obligation to purchase such Indebtedness, (ii) any obligation to lend money, to purchase or subscribe shares or other securities or to purchase assets or services in order to provide funds for the payment of such Indebtedness, (iii) any indemnity against the consequences of a default in the payment of such Indebtedness and (iv) any other agreement to be responsible for repayment of such Indebtedness.

- (z) The following text is inserted as a new definition in Condition 20:

“Independent Valuer” means an independent investment bank, accountancy firm or other consultant of internationally recognised standing selected by the Bank and approved in writing by the Trustee, or if the Trustee is unwilling to provide such approval, then such independent investment bank, accountancy firm or other consultant of internationally recognised standing as may be nominated or approved in writing by the Trustee for the purpose.

- (aa) The definition of **“Material Subsidiary”** set forth in Condition 20 is hereby deleted in its entirety and replaced with the following text:

“Material Subsidiary” means, at any given time, any Subsidiary of the Bank whose gross assets or gross revenues represent at least 10 per cent. of the consolidated gross assets, or, as the case may be consolidated gross revenues of the Bank and its consolidated Subsidiaries and, for these purposes:

- (a) the gross assets and gross revenues of such Subsidiary shall be determined by reference to its then most recent financial statements (or, if none, its then most recent management accounts); and
- (b) the consolidated gross assets and consolidated gross revenues of the Bank and its consolidated Subsidiaries shall be determined by reference to its then most recent audited consolidated financial statements;

- (bb) The definition of **“Permitted Security”** set forth in Condition 20 is hereby deleted in its entirety and replaced with the following definition of **“Permitted Security Interest”**:

“Permitted Security Interest” means any Security Interest:

- (i) granted in favour of the Bank by any Subsidiary to secure Indebtedness for Borrowed Money owed by such entities to the Bank;
- (ii) which arise pursuant to any order of attachment, distraint or similar legal process arising in connection with court proceedings or as security for costs and expenses in any such proceedings, so long as the execution or other enforcement thereof is effectively stayed and the claims secured thereby are being contested in good faith by appropriate proceedings;
- (iii) being liens or rights of set-off arising by operation of law and in the ordinary course of business, including, without limitation, any rights of set-off with respect to demand or time deposits maintained with financial institutions and bankers' liens with respect to property of the Bank held by financial institutions;
- (iv) arising in the ordinary course of the Bank's or a Subsidiary's business and (a) which are necessary in order to enable the Bank or such Subsidiary to comply with any mandatory or customary requirement imposed on it by a banking or other regulatory authority in connection with the Bank's or such Subsidiary's business or (b) limited to deposits made in the name of the Bank or such Subsidiary to secure obligations of the Bank's or such Subsidiary's customers;

- (v) on property acquired (or deemed to be acquired) under a financial lease, or claims arising from the use or loss of or damage to such property, provided that any such encumbrance secures only rentals and other amounts payable under such lease;
 - (vi) arising pursuant to any agreement (or other applicable terms and conditions) which is standard or customary in the relevant market (and not for the purpose of raising credit or funds for the operation of the Bank or any Subsidiary), in connection with (a) contracts entered into substantially simultaneously for sales and purchases at market prices of precious metals or securities, (b) the establishment of margin deposits and similar securities in connection with interest rate and foreign currency hedging operations and trading in securities or (c) the Bank's foreign exchange dealings or other proprietary trading activities including, without limitation, Repos;
 - (vii) arising out of the refinancing, extension, renewal or refunding of any Indebtedness for Borrowed Money secured by a Security Interest either existing on or before the issue date of the Notes or permitted by any of the above exceptions, provided that the Indebtedness for Borrowed Money hereafter secured by such Security Interest does not exceed the amount of the original Indebtedness for Borrowed Money and such Security Interest is not extended to cover any property not previously subject to such Security Interest;
 - (viii) granted upon or with regard to any property hereafter acquired by the Bank or any Subsidiary to secure the purchase price of such property or to secure Indebtedness incurred solely for the purpose of financing the acquisition of such property and transactional expenses related to such acquisition (other than a Security Interest created in contemplation of such acquisition), provided that the maximum amount of Indebtedness for Borrowed Money thereafter secured by such Security Interest does not exceed the purchase price of such property (including transactional expenses) or the Indebtedness incurred solely for the purpose of financing the acquisition of such property;
 - (ix) created or outstanding upon any property or assets (including current and/or future revenues, accounts receivables and other payments) of the Bank or any Material Subsidiary arising out of any securitisation of such property or assets or other similar structured finance transaction in relation to such property or assets where the primary source of payment of any obligations secured by such property or assets is the proceeds of such property or assets (or where the payment of such obligations is otherwise supported by such property or assets) and where recourse to the Bank and the Material Subsidiaries in respect of such obligations does not extend to defaults by the obligors in relation to such property or assets, provided that the aggregate amount of such obligations so secured pursuant to this Clause (ix) at any one time (measured at the time of initial incurrence) shall not exceed an amount in any currency or currencies equivalent to 15 per cent. of loans to customers before provisions for loan losses (calculated by reference to the most recent audited consolidated financial statements of the Bank prepared in accordance with International Accounting Standards); and
 - (x) not included in any of the above exceptions, in aggregate securing Indebtedness for Borrowed Money with an aggregate principal amount at any time not exceeding U.S.\$50,000,000 (or its equivalent in other currencies) at that time.
- (cc) The definition of "Person" set forth in Condition 20 is hereby deleted in its entirety and replaced with the following text:
- "Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organisation, government, or any agency or political subdivision hereof or any other entity.

- (dd) The definition of "Security" set forth in Condition 20 is hereby deleted in its entirety and replaced with the following definition of "Security Interest":

"Security Interest" means any mortgage, charge, pledge, lien, security interest or other encumbrance securing any obligation of any Person or any other type of preferential arrangement having similar effect over any assets or revenues of such Person.

- (ee) The definition of "Subsidiary" set forth in Condition 20 is hereby deleted in its entirety and replaced with the following text:

"Subsidiary" means, in relation to any Person (the "first Person") at a given time, any other Person (the "second Person") (i) whose affairs and policies the first Person directly or indirectly controls or (ii) as to whom the first Person owns directly or indirectly more than 50 per cent. of the capital, voting stock or other right of ownership. "Control" as used in this definition, means the power by the first Person to direct the management and the policies of the second Person, whether through the ownership of share capital, by contract or otherwise.

- (ff) The definitions of "acting in concert", "Affiliate", "Authorisation", "Change of Control", "Development Organisation", "Finance Leases", "Information Memorandum", "Permitted Transferee", "Rating Agency", "RCTFF Agreement", "Redemption Date", "Relevant Jurisdiction", "Restructuring", "Restructuring Plan", "Samruk-Kazyna", "Secondary Public Offering", "SK Loan Agreement", "SK Loan Schedule", "Termination Date" and "Treasury Transactions" set forth in Condition 20 are hereby deleted in their entirety.

4. REPRESENTATIONS, WARRANTIES AND AGREEMENTS

- 4.1 Each of the parties, other than the Trustee, hereto represents and warrants, as of the date of this Deed and as of the Effective Date (as fully as if made on such date), that it has the capacity, authority and power to enter into this Deed.
- 4.2 The Substituted Obligor represents and warrants, on the date of this Deed, immediately after the execution of this Deed and on the Effective Date (as if fully made on such date), to the Trustee that:
- (a) it is and will be solvent; and
- (b) all governmental and regulatory approvals and consents necessary for its assumption of liability as principal debtor of the Notes and under the Trust Deed in place of the Bank have been obtained and are in full force and effect.
- 4.3 The Bank and the Substituted Obligor confirm to the other parties on the date of this Deed and on the Effective Date (as fully as if made on such date), that no Potential Event of Default, Change of Control or Event of Default has occurred and is continuing or will occur, immediately upon the execution of this Deed.
- 4.4 Each of the Bank and the Substituted Obligor hereto agrees that it shall, at the request and expense of the Substituted Obligor, do all such acts and things which the Trustee deems necessary or desirable to give effect to this Deed.
- 4.5 This Deed shall be binding upon, and enure to the benefit of, each of the parties hereto and its successors.

5. RELEASE

Upon the Effective Date and all times from and after the Effective Date, the Bank shall be released from any and all liabilities, covenants, obligations and duties under the Notes and under the Trust Deed.

6. EFFECTIVE DATE AND STATUS OF THE TRUST DEED AND THE NOTES

6.1 The effective date of this Deed shall be the later of (i) the date of this Deed and (ii) the date on which the Official List of the Luxembourg Stock Exchange is amended to reflect the substitution (the “Effective Date”).

6.2 Save for the amendments to the Notes and the Trust Deed effected by this Deed, all terms and conditions of the Notes and the Trust Deed shall remain in full force and effect, and the Notes and the Trust Deed, respectively, shall henceforth be read and construed as one document with this Deed.

7. GOVERNING LAW, JURISDICTION AND ARBITRATION

7.1 This Deed, including any non-contractual obligations arising out of or in connection with this Deed, shall be governed by and construed in accordance with English law.

7.2 The Substituted Obligor has agreed that the process by which any Proceedings in England are begun may be served on it by being delivered to Law Debenture Corporate Services Limited, Fifth Floor, 100 Wood Street, London EC2V 7EX or, if different, its registered office for the time being. If for any reason the Substituted Obligor does not have such an agent in England, it will promptly appoint a substitute process agent and notify in writing the Trustee of such appointment. If such person is not or ceases to be effectively appointed to accept service of process on behalf of the Substituted Obligor, the Substituted Obligor shall, on the written demand of the Trustee, appoint a further person in England to accept service of process on its behalf and, failing such appointment within 15 days, the Trustee shall be entitled to appoint such a person by written notice to the Substituted Obligor. Nothing herein shall affect the right to serve process in any other manner permitted by law.

7.3 The provisions of Clause 20.2 (*Arbitration*), Clause 20.3 (*Trustee’s Option*), Clause 20.4 (*Jurisdiction*), Clause 20.5 (*Appropriate Forum*), Clause 20.7 (*Consent to Enforcement*) and Clause 20.8 (*Waiver of Immunity*) of the Trust Deed shall apply to this Deed as if the same were repeated in full herein, *mutatis mutandis*.

8. MISCELLANEOUS

8.1 Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

8.2 Severability

In case any provision in or obligation under this Deed shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

8.3 Counterparts

This Deed may be executed in any number of counterparts, each of which shall be deemed to be an original.

8.4 Translations

This Deed may be translated into the Kazakh or Russian language. In the case of any conflict or discrepancy between the English language version and any such translation, the English language version shall prevail.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS whereof this Deed has been executed as a deed on the date stated at the beginning.

JSC BTA BANK

By:
Name: *Viktor Romanyuk*
Title: *Managing Director*

)


JSC KAZKOMMERTSBANK

By:
Name: *Sergiy Makrousov*
Title: *Managing Director*

)


BNY MELLON CORPORATE TRUSTEE
SERVICES LIMITED
Acting by its two lawful attorneys:

)
)
)

Name:
Title:

Name:
Title:

In the presence of:

Witness Name:
Signature:

Witness Address:

IN WITNESS whereof this Deed has been executed as a deed on the date stated at the beginning.

JSC BTA BANK)

By:
Name:
Title:

JSC KAZKOMMERTSBANK)

By:
Name:
Title:

BNY MELLON CORPORATE TRUSTEE)
SERVICES LIMITED)
Acting by its two lawful attorneys:)

Name: *M. Laidley*
Title: Melissa Laidley
Vice President

Name: *M. Thuo*
Title: Marco Thuo
Vice President

In the presence of:

Witness Name: *Michael Lee* Michael Lee
Signature: Vice President

Witness Address: One Canada Square
London
E14 5AL