

Kazakhstan Oil Mining / James Giffen - Mercator Corporation (Switzerland)

Case ID:

ARW-101

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Kazakhstan

Position of Public Official(s) (yrs in office):

Unnamed senior officials ("KO-1," "KO-2," and "KO-3")

Jurisdiction of Asset Recovery:

Switzerland

Jurisdiction of Asset Recovery ? Description:

Undertaking Recovery Effort, Location of Recovery Effort, Asset Location / Alleged Asset Location

Asset Recovery Start:

2003

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.16

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Other (Memorandum of Understanding)

Intl.Cooperation: MLAT/Letter of Request?:

Other

Basis for Intl Cooperation:

Memorandum of Understanding

Contributing Factors in Asset Recovery:

Memorandum of Understanding by Kazakhstan, Switzerland and the United States; World Bank signed a Service Agreement to assist in the establishment of the BOTA Foundation and implement the BOTA Program. The Government of the Republic of Kazakhstan pays a fixed annual fee to the World Bank for the contracted Services; these payments are posted to government accounts and are not disclosed in the Foundation's special purpose financial statements. (Source: BOTA Foundation, Independent Auditor's Report and special financial statements for the year ended 31 December 2010.)

Status of Asset Recovery :

Completed

Stage in Asset Recovery Chain:

Assets Returned to Victim or Requesting Jurisdiction

Assets Returned (USD) - Description:

Please see summary and US entry for amounts

Agreement for Returned Assets:

Yes

Agreement for Returned Assets - Description:

The 2008 Amended Memorandum of Understanding among the Governments of Kazakhstan, Switzerland and the United States provided that the recovered assets would be used to establish a social welfare foundation in Kazakhstan, the Bota Foundation. The Foundation is being overseen by the World Bank.

Case Summary:

See also US entry. Pursuant to an Amended Memorandum of Understanding signed in May 2008 by the Governments of Kazakhstan, Switzerland and the United States, \$84 million were to be returned to Kazakhstan. The funds were to be used to establish the BOTA Foundation, with its operations overseen by the World Bank. (Source: Amended Memorandum of Understanding by the Swiss Confederation, United States and the Republic of Kazakhstan (May 2008). According to the BOTA Foundation Independent Auditor's Report and special financial statements for the year ended 31 December 2013, the BOTA Program is funded with US\$ 115 million (principal and interest) held on account No. T-94025 with Pictet and Cie in Switzerland in the name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan. The Foundation subsequently announced that it had completed its mission and ceased operations. (Source: BOTA Foundation Final Summative Report, February 12, 2015, at <https://www.irex.org/sites/default/files/BOTA%20Summative%20Report%20FIN....>)

Disposition of Criminal Case(s):

Unknown as to Unnamed Senior Officials 1-3. According to the Judgment in a Criminal Case filed in the U.S. District Court for the Southern District of New York, Mercator Corporation pleaded guilty to one count violation of Foreign Corrupt Practices Act and was fined \$32,000, which it satisfied on November 30, 2010. (Sources: US v. Mercator Corporation, Case No. 1:03-cr-00404-WHP (S.D.N.Y.), Judgment in a Criminal Case filed on November 23, 2010 and Satisfaction of Judgment filed on December 9, 2010.) According to the Judgment in a Criminal Case filed in US v. James Giffen in the U.S. District Court for the Southern District of New York, Mr. Giffen pleaded guilty to one count of willful failure to supply information regarding foreign bank accounts and sentenced to time served. (Source: US v. Giffen, Case No. 1:03-cr-00404-WHP (S.D.N.Y.), Judgment in a Criminal Case, filed on November 23, 2010.)

Jurisdiction of Origin: Investigative Agency:

N/A

Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):

N/A

Jurisdiction of Origin: Courts Involved:

N/A

Jurisdiction of Asset Recovery: Investigative Agency:

N/A

Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):

N/A

Jurisdiction of Asset Recovery: Courts Involved:

N/A


Documents:

Kazakhstan_Oil_Switzerland_MOU.CH.US.KZ_BOTA_FDN_2008.pdf

Bota_Foundation_Indepent_Auditor_Report_FY_End_Dec_31_2010

Documents:

Attachment	Size
 Bota_Fdn_Annual_Report_2012.pdf	5.1 MB
 Bota_Fdn_Indep_Audit_Dec_31_2012.pdf	2.06 MB

Attachment	Size
 Kazakh_Oil_Bota_Audit_Report_2013.pdf	3.2 MB
 Kazakh_Oil_BOTA Fdn_End_Announcement_Dec_2014.pdf	113.95 KB

Documents Links:

Other Sources:

Swiss Ministry of Foreign Affairs, September 30, 2009; Amended Memorandum of Understanding by the Swiss Confederation, United States and the Republic of Kazakhstan (May 2008).

BOTA Foundation Final Summative Report, February 12, 2015, at <https://www.irex.org/sites/default/files/BOTA%20Summative%20Report%20FIN...>
 Independent Auditor's Report and special financial statements for the year ended December 31, 2013 at <http://www.bota.kz/uploads/538478d53d7ca.pdf>. For additional information on the BOTA Foundation's charter and copies of financial statements, please see the Foundation's website at <http://www.bota.kz/en/index.php/main/index/0> (Resources); BOTA Foundation 2012 Annual Report, "Summary Details from BDO Kazakhstan's Audit of BOTA's," at <http://www.bota.kz/uploads/51911a859a66c.pdf>; BOTA Foundation Independent Auditor's Report and Special Purpose Financial Statements for the Year Ended 31 December 2012, at <http://www.bota.kz/uploads/51b9fa19cffaf.pdf>;

BOTA Foundation Announcement, "BOTA Foundation completed its mission." December 31, 2014, at <http://www.bota.kz/en/index.php/announcements/index/51>.