

Kazakhstan Oil Mining / James Giffen - Mercator Corporation (United States)

Case ID:

ARW-102

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:

United States

Jurisdiction of Asset Recovery ? Description:

Undertaking Recovery Effort, Location of Recovery Effort

Asset Recovery Start:

2003

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.16

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Criminal Prosecution and Settlement agreements; Non-conviction based confiscation

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 administration of project

Status of Asset Recovery :

Completed

Stage in Asset Recovery Chain:

Assets Returned to Victim or Requesting Jurisdiction

Assets Returned (USD) - Description:

Source: BOTAF Foundation Independent Auditor's Report and Special Purpose Financial Statements for the Year Ended 31 December 2013.

Agreement for Returned Assets:

Yes

Agreement for Returned Assets - Description:

Memorandum of Understanding

Case Summary:

See also Switzerland 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 BOTAF

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....>)

In addition, as part of their August 6, 2010 plea agreements, U.S. citizen James Giffen and The Mercator Corporation relinquished any right or title they may have to additional Swiss accounts. (Sources: U.S. v. Approximately \$84 million on deposit in account no. T-94025 in the name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan, Case No. 2:07-cv-03559-LAP (S.D.N.Y.); August 6, 2010 plea agreements and information in U.S. v James H. Giffen, Case No. S4 03 Cr. 404 (WHP) and U.S. v The Mercator Corporation, Case No. S3 03 Cr. 404 (WHP) (S.D.N.Y.)).

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:

Unspecified

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

N/A

Jurisdiction of Origin: Courts Involved:

N/A

Jurisdiction of Asset Recovery: Investigative Agency:

Federal Bureau of Investigation

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

U.S. Attorney for the Southern District of New York; Department of Justice, Fraud Section; Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section

Jurisdiction of Asset Recovery: Courts Involved:

U.S. District Court for the Southern District of New York

Documents:

Kazakhstan_Oil_\$84m_Verified_Complaint_May_3_2007.pdf

Kazakhstan_Oil_Final_Order_Jun_1_2009.pdf

Kazakhstan_Oil_Giffen_Judgment_Nov_23_2010.pdf

Kazakhstan_Oil_Mercator_Judgment_Nov_23_2010.pdf

Kazakhstan_Oil_Mercator_Judgment_Satisfied_Dec_9_2010.pdf

Kazakhstan_Oil_Status_Rept_Dec_10_2009.pdf

Kazakhstan_Oil_US_Giffen_Plea_Ag_Aug_6_2010.pdf

Kazakhstan_Oil_US_Mercator_Information_Aug_6_2010.pdf

Documents:

Attachment	Size
 Bota_Fdn_Annual_Report_2012.pdf	5.1 MB
 Bota_Fdn_Indep_Audit_Dec_31_2012.pdf	2.06 MB
 Kazakh_Oil_Bota_Audit_Report_2013.pdf	3.2 MB
 Kazakh_Oil_BOTA Fdn_End_Announcement_Dec_2014.pdf	113.95 KB

Other Sources:

U.S. v. Approximately \$84 million on deposit in account no. T-94025 in the name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan, Case No. 2:07-cv-03559-LAP (S.D.N.Y.), Verified Complaint filed on May 3, 2007, Final Order filed on June 1, 2009 and Status Report filed on December 10, 2009; August 6, 2010 plea agreements and information in U.S. v. James H. Giffen, Case No. S4 03 Cr. 404 (WHP) and U.S. v. The Mercator Corporation, Case No. S3 03 Cr. 404 (WHP) (S.D.N.Y.); and Satisfaction of Judgement on December 9, 2010 in U.S. v. The Mercator Corporation, Case No. S3 03 Cr. 404 (WHP) (S.D.N.Y.); 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 financial statements for the year ended December 31, 2013 at <http://www.bota.kz/uploads/538478d53d7ca.pdf>;

BOTA Foundation, Final Summative Report, February 12, 2016; Announcement, "BOTA Foundation completed its mission." December 31, 2014, at <http://www.bota.kz/en/index.php/announcements/index/51>.