

Kazakh Oil Mining / US Settlement (BOTA Foundation)

Case ID:

ST-249

Case Cluster :

Kazakh Oil Mining

Jurisdiction of Settlement:

United States

Jurisdiction of Settlement / Enforcement Agency:

Department of Justice

Jurisdiction of Foreign Public Official(s) :

Kazakhstan

Year of Settlement:

2007

Month/Day of Settlement (or Notes):

05/02

Other Jurisdictions of Settlement:

Kazakhstan, Switzerland

Settlement with Individual or Legal Person?:

Other (Confiscated Funds)

Type of Settlement:

Other

Legal Form of Settlement:

Memorandum of Understanding

Monetary Sanctions (Types):

Civil Confiscation

Total Monetary Sanctions (US\$):

\$84,000,000.00

Criminal Forfeiture / Confiscation (US\$):

\$0

Other Civil Monetary Sanctions (US\$):

\$84

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Monetary Sanctions Returned / Ordered Returned (US\$):

\$84,000,000

Monetary Sanctions Returned / Ordered Returned (Explanation):

BOTA Foundation (see Summary for explanation)

UNCAC Articles(s) Implicated:

Art.16

Art.23

OECD Anti-Bribery Convention Articles Implicated:

Art. 1, Art. 7

Offenses - Alleged:

Unspecified

Offenses - Settled:

Unspecified

Public Procurement Contract / SOE Involved?:

Yes

Summary:

Pursuant to a 2007 Memorandum of Understanding among the Governments of Kazakhstan, Switzerland and the United States, approximately \$84 million held on deposit in the account of Orel Capital Ltd. at Credit Agricole Indosuez in Geneva, Switzerland were transferred in July 1999 to an account in the name of the Treasury of the Ministry of Finance of the Republic of Kazakhstan at Pictet & Cie in Geneva, Switzerland. The funds had been frozen by order of a Swiss examining magistrate and in the United States, a criminal indictment had been filed against James H. Giffen and Mercator Corporation which included a criminal forfeiture allegation. The MOU stipulated that the funds be used to establish and operate the BOTA Foundation which carries out social programs and whose operations are being overseen by the World Bank pursuant to a Service Agreement. (Source: Memorandum of Understanding Among the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan (May 2007); Amended in 2008.) Please note that the amount of forfeited and returned sums are noted on the Kazakh Oil Mining - US Settlement Bota Foundation entry only so as to avoid double counting of settlement sums.

Sources :

Memorandum of Understanding by the Swiss Confederation, United States and the Republic of Kazakhstan (May 2007) and Annex 2 (Service Agreement for TDB BOTA Foundation among the International Bank for Reconstruction and Development and the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, accessed at <http://www.state.gov/documents/organization/108887.pdf>. US Report to the Organisation for Economic Co-operation and Development, "Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," Information as of May 31, 2011, The Mercator Corporation Case Summary at 104-105, accessed at <http://www.oecd.org/dataoecd/18/8/42103833.pdf>.