



STATI PARTIES MOVE TO ATTACH REPUBLIC OF KAZAKHSTAN ASSETS AFTER US COURT GRANTS ENFORCEMENT OF US\$520 MILLION AWARD

NEW YORK, NEW YORK, UNITED STATES, May 23, 2018 /EINPresswire.com/ -- The Stati Parties have requested permission from the U.S. District Court for the District of Columbia in *Stati et al. v. Rep. of Kazakhstan* to take steps to enforce and execute the \$520 million arbitral award issued in their favor against Kazakhstan under the Energy Charter Treaty, including by attaching Kazakh state commercial assets in the United States.

The Stati Parties expect the D.C. court to rule imminently on this motion, filed April 23, 2018, at which time they will aggressively move to seize any such assets that their ongoing investigation reveals. The Stati Parties have already begun the process of obtaining discovery — which, under U.S. law, permits a judgment creditor to obtain information concerning a judgment debtor’s assets on a worldwide basis — from both Kazakhstan and from the U.S.-based financial institutions that manage its assets.

Indeed, a U.S. federal court has recently ordered a major U.S. financial institution to provide testimony concerning Kazakh state assets. The Stati Parties are seeking additional discovery, including the deposition of a senior U.S.-based Kazakh government official.

The Stati Parties’ motion to begin enforcement activities in the United States follows on the heels of a decision of the D.C. court granting the Stati Parties’ request for recognition of the arbitral award as an enforceable U.S. judgment under the terms of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In granting the Stati Parties’ request on March 23, 2018, the D.C. Court rejected Kazakhstan’s defenses to recognition and enforcement in their entirety, and recognized and entered judgment against Kazakhstan for the full amount of the award.

In confirming the award, the D.C. court, for the second time, refused to allow Kazakhstan to introduce its claimed evidence that the award was “procured by fraud,” and rejected Kazakhstan’s argument that it had erred when it ruled, in May 2016, that the award itself showed that the tribunal had not relied on any “fraudulent evidence” when it ruled in the Stati Parties’ favor.

The Stati Parties’ U.S. enforcement efforts are part of the long-running battle to enforce an arbitral award issued in December 2013 for violating the investor protection provisions of the Energy Charter Treaty. A tribunal constituted under the auspices of the Stockholm Chamber of Commerce found that Kazakhstan violated its international obligation to treat the Stati Parties’ investments fairly and equitably and awarded the Stati Parties more than US\$500 million in damages, legal costs, and interest.

The award has since been fully upheld by two tiers of the Swedish judiciary, including the Swedish Supreme Court.

In addition to their planned enforcement activities in the U.S., the Stati Parties have now secured attachments of Kazakhstan's property worth approximately US\$28 billion before various courts in the Netherlands, Belgium, Sweden, and Luxembourg, respectively. In light of the award's recognition and pending enforcement in the United States and the \$28 billion in Kazakh state assets attached in the Netherlands, Belgium, Sweden, and Luxembourg, the Stati Parties note that the recent decision of an English court to allow a trial on Kazakhstan's contrived fraud allegations is disappointing but ultimately irrelevant to their global enforcement strategy.

On May 11, 2018, an English court issued a ruling that the Stati Parties could not discontinue recognition and enforcement proceedings commenced several years ago in the England, based on certain fraud allegations made by Kazakhstan that have since been dismissed by courts in the U.S. and Sweden (including the Swedish Supreme Court). The English court ordered to conduct a trial on the hypothetical question of whether enforcement of the award would contravene English public policy, notwithstanding the fact that the Stati Parties are not seeking enforcement in England because of their successful enforcement activities in other jurisdictions and because they lack the financial resources to continue their enforcement efforts in England in light of the court's decision to conduct a full trial notwithstanding that the fraud allegations made by Kazakhstan have been dismissed by courts in the U.S. and Sweden as having no effect on the award.

In making its ruling, the English court has chosen to ignore the fact that the highest court at the seat of the arbitration in Sweden and the courts in the U.S. have rejected that such fraud allegations had any impact on the arbitration award. Rather than continue to waste time and resources on a trial in England, where the Stati Parties are no longer seeking enforcement, the Stati Parties instead intend to continue aggressively to seek collection of the award based on attachments of Kazakh state commercial assets in those jurisdictions that respect the determination rendered by the highest court of the seat of arbitration in Sweden to the effect that the award is proper and enforceable.

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