



*United States Attorney  
Southern District of New York*

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**NEW YORK MERCHANT BANK PLEADS GUILTY TO FCPA VIOLATION;  
BANK CHAIRMAN PLEADS GUILTY TO FAILING TO DISCLOSE  
CONTROL OF FOREIGN BANK ACCOUNT**

PREET BHARARA, the United States Attorney for the Southern District of New York, and LANNY BREUER, the Assistant Attorney General for the Department of Justice's Criminal Division, announced that THE MERCATOR CORPORATION, a merchant bank with offices in New York, pleaded guilty today in Manhattan federal court to one count of making an unlawful payment to a senior government official of the Republic of Kazakhstan, in violation of the Foreign Corrupt Practices Act ("FCPA"). Additionally, JAMES H. GIFFEN, the chairman of THE MERCATOR CORPORATION, pleaded guilty today in Manhattan federal court to one count of failing to disclose control of a Swiss bank account on his income tax return. Both pleas were before United States District Judge WILLIAM H. PAULEY III.

According to the Information to which THE MERCATOR CORPORATION pleaded guilty:

THE MERCATOR CORPORATION advised Kazakhstan in connection with various transactions related to the sale of portions of its oil and gas wealth by Kazakhstan. Three senior officials in the government of Kazakhstan, identified in the Information as KO-1, KO-2, and KO-3, had the power to substantially influence whether MERCATOR obtained and retained lucrative business, as well as the authority to pay MERCATOR substantial success fees if certain oil transactions closed, and to decide whether or not those transactions would close. MERCATOR was therefore dependent upon the goodwill of those senior officials, and, in an effort to maintain its lucrative position, MERCATOR, in November 1999, caused the purchase of two snowmobiles that were shipped to Kazakhstan for delivery to KO-2.

According to the Information to which GIFFEN pleaded guilty, on March 27, 1997, GIFFEN filed a U.S. Individual Income Tax Return, Form 1040, for himself for the calendar year 1996,

which failed to report that GIFFEN maintained an interest in, and a signature and other authority over, a bank account in Switzerland in the name of Condor Capital Management, a British Virgin Islands corporation controlled by GIFFEN.

In 2007, the United States brought a separate, related civil forfeiture action against approximately \$84 million on deposit in Switzerland. The civil complaint alleged that the funds were traceable to unlawful payments to senior Kazakh officials in connection with oil and gas transactions arranged by MERCATOR for Kazakhstan (No. 07 Civ. 3559 (LAP)). Pursuant to a 2007 agreement between the United States, Switzerland, and Kazakhstan, the funds are being used by a non-governmental organization in Kazakhstan, independent of the Kazakh Government, to benefit underprivileged Kazakh children.

THE MERCATOR CORPORATION faces a maximum penalty of the greatest of \$2,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss resulting from the offense. GIFFEN, 69, of Mamaroneck, New York, faces a maximum sentence of one year's imprisonment and a maximum fine of \$25,000.

Mr. BHARARA praised the Federal Bureau of Investigation for its outstanding work on the case, and expressed his gratitude to the Department of Justice Criminal Division's Office of International Affairs for its invaluable assistance.

This case is being prosecuted by the Office's Complex Frauds Unit. SDNY Assistant U.S. Attorneys ANIRUDH BANSAL and LEE RENZIN, and Trial Attorney JAMES M. KOUKIOS of the Department of Justice Criminal Division's Fraud Section. SDNY Assistant U.S. Attorney BARBARA A. WARD of the Office's Asset Forfeiture Unit and Assistant Chief DANIEL H. CLAMAN of the Department of Justice Criminal Division's Asset Forfeiture and Money Laundering Section are handling the related civil forfeiture proceedings.

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