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Initial assessment **of the National Contact Point of the Republic of Kazakhstan**

The Guidelines of the Organization for Economic Co-operation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter, the OECD Guidelines) are a set of recommendations on responsible business conduct that Governments have addressed to multinational enterprises operating in or from States that comply with them.

The Guidelines are part of the Organization for Economic Co-operation and Development's 1976 Declaration on International Investment and Multinational Enterprises, a political commitment by the acceding States to ensure an open and transparent environment for international investment and to encourage the positive contribution of multinational enterprises to socio-economic progress.

The Government of the Republic of Kazakhstan has established a National Contact Point for Responsible Business (hereinafter referred to as the NCP), whose activities are aimed at promoting Guidelines and reviewing specific instances related to the activities of multinational enterprises based or operating in the Republic of Kazakhstan.

On August 1, 2023, the NCP Secretariat received a specific instance from an individual (*hereinafter referred to as the author of the specific instance*) regarding Astana Finance JSC (*hereinafter referred to as the enterprise*).

The subject of the specific instance is the non-payment of debt on obligations and the admission of default. The author of the specific instance believes that the company does not comply with the provisions of the OECD Guidelines in the field of General Policy (Chapter II), Disclosure of information (Chapter III), Consumer Interests (Chapter VIII).

When conducting an initial assessment as to whether the issue requires further study, the NCP assessed the case according to the following criteria:

1) The definition of the author of the specific instance and his interest in the described situation in the specific instance.

The author of the specific instance is an individual, the founder of Nomad Finance LLP, through which the author of the specific instance carried out activities with Astana Finance JSC.

2) The materiality and validity of the alleged violation of the OECD Guidelines indicated in the specific instance, including being supported by sufficient and credible information.

The subject of the author's specific instance is the non-payment of debt on obligations and the admission of default. The author of the specific instance sent documents on the recovery of the amount owed on the company's securities.

According to him, Astana Finance JSC defaulted in 2008 and did not pay the debt in accordance with its obligations. According to the results of numerous decisions of the creditors' club, by the decision of the issuer's shareholders, money was allocated for repayment and payment was made in 2020. The issuer refers to information that was posted on their website 10 years later.

The author of the specific instance repeatedly appealed to the representatives of the issuer, directly to the debtor himself at the executive level. In addition, letters were sent to the specified official address of the enterprise, and meetings were held with the management of the organization.

It is worth mentioning that over the past period, the company has changed its representative three times:

- 1) broker of BTA Bank JSC;
- 2) broker of Kazkommertsbank;
- 3) broker of Halyk Bank.

Such a series of brokerage changes raises concerns about the consistency and reliability of financial transactions of Astana Finance JSC. In particular, such a change of representatives could contribute to the non-payment of legal payments due to the author of the specific instance for the obligations of Astana Finance JSC. These changes in the representation could potentially disrupt the flow of financial transactions, which led to delays or non-payment of obligations to the interested party.

The author of the specific instance expresses his personal interest in ensuring that repeated violations of Astana Finance JSC related to non-fulfillment of his obligations and debts to his creditors are not allowed. Taking into account responsible business conduct, the author of the specific instance advocates that Astana Finance JSC adhere to the principles set out in the OECD Guidelines, thereby contributing to the development of a culture of transparency, accountability and ethical business practices.

3) Whether the company is subject to the OECD Guidelines.

Astana Finance JSC is a financial institution that operated as a subsidiary of BTA Bank. Astana Finance JSC provided various financial services, including lending, leasing and investment banking services.

According to the information provided by the Ministry of Justice of the Republic of Kazakhstan, the Central Securities Depository JSC maintains the register of participants of legal entities.

According to the information provided by the Central Securities Depository JSC, the major shareholders of the enterprise as of 00:00 on September 1, 2023 are:

- JSC "Unified Accumulative Pension Fund" (RK);
- an individual of the Republic of Kazakhstan;
- an individual of the Republic of Kazakhstan.

As a financial institution operating within the jurisdiction of a country that adheres to the OECD Guidelines for Multinational Enterprises, Astana Finance JSC

may indeed be subject to the guidelines. The applicability of the OECD Guidelines depends on various factors, including the nature of the business, its international activities and commitment to the principles of responsible business conduct.

If Astana Finance JSC is involved in cross-border transactions, investments or transactions that affect several countries, this is likely to fall under the OECD Guidelines. In addition, if an enterprise receives support or funding from Governments or financial institutions of OECD member countries, it can also be expected to comply with the OECD Guidelines.

4) The existence of a link between the company's activities and the alleged violation of the OECD Guidelines indicated in the specific instance.

First, from the point of view of the "General Policy" (Chapter II), non-fulfillment of debt obligations after default in 2008 raises concerns about the company's commitment to ethical and responsible business conduct. This violation reflects poorly on the company's compliance with the principles of integrity, transparency and accountability set out in the OECD Guidelines.

Secondly, with regard to "Disclosure of information" (Chapter III), the lack of transparency in the debt repayment process and the inability to provide timely and accurate information to creditors and interested parties further exacerbate the alleged violation. This undermines trust and confidence in the company's activities, affecting its reputation and credibility.

Finally, with regard to the "Interests of Consumers" (Chapter VIII), non-payment of debts may have adverse consequences for consumers who rely on the financial stability and reliability of Astana Finance JSC. This failure to prioritize the interests of consumers is consistent with the broader pattern of ignoring responsible business conduct highlighted in the specific instance.

In general, the alleged violation of the OECD Guidelines highlights the need for Astana Finance JSC to reassess its practices and demonstrate a sincere commitment to ethical behavior and corporate responsibility.

5) The extent to which the legislation of the Republic of Kazakhstan and/or parallel proceedings limit the ability of the NCP to resolve the situation described in the specific instance.

Not revealed.

6) Achieving the objectives and effectiveness of the OECD Guidelines when considering a specific instance.

Key considerations include determining the extent to which an enterprise adheres to the provisions of the OECD Guidelines on General Policy, disclosure and consumer interests. In addition, the assessment of transparency, accountability and response of Astana Finance JSC to solving the problems raised by the author of the specific instance is of particular importance for confirming the effectiveness of the OECD Guidelines in promoting responsible business conduct.

According to the information provided, all necessary actions were performed by the company to notify the author of the specific instance. At the same time, the company notes that all unclaimed rights (payments due to creditors) have been canceled due to the expiration of the retention period. In this regard, the company

cannot pay the amount due, which was explained by the company to the author of the specific instance on the current situation.

For reference: *According to the explanations, in connection with the restructuring of financial debt, the company issued an Information Memorandum on March 6, 2015. The announcement of the Information Memorandum was published on the London Stock Exchange on March 9, 2015, the Russian version on March 17, 2015 on the company's website.*

In order to receive the appropriate payments, the applicant had to fill out a form (which was attached to the Information Memorandum) and send it to the company by April 20, 2015.

On May 18, 2015, the company sent a notification to the author of the specific instance, in which it specified in detail all the necessary procedures for receiving payments. At the same time, the letter indicated the need to submit the form by 2 p.m. on May 20, 2015. According to the confirmation of the postal service, the author's representative (the Director of the DOC) received a notification from the company on May 19, 2015. However, the corresponding form from the author of the specific instance was not provided to the company within the specified period.

It is worth noting that in the response, the author of the specific instance gives the reasons for the failure to submit the necessary documents on time due to the official inaction of Nomad Finance LLP in the period from 2015 to 2020. In 2014, due to the revocation of the license for brokerage and dealer services, the author of the specific instance decided to suspend business activities. At the same time, the author of the specific instance in 2015 carried out work on the reorganization of the company from the form of JSC to LLP.

It is also worth noting that the author of the specific instance has a notification letter from the company dated April 24, 2014 No. 13-07/456, regarding information about the amount of compensation due and further instructions on its receipt.

Also in the above letter there is a reservation that this letter is sent to the last known address of the author of the specific instance and is considered delivered, regardless of whether the addressee is at a known address or not.

Conclusion:

In conclusion, it should be noted that the company has made every possible effort to fulfill its obligations to notify the author of the specific instance. These tight deadlines set by the company required prompt action and coordination to ensure timely information to all stakeholders. At the same time, it is not possible to assess the level of demonstrated responsibility for notifying all its creditors (*based on the submitted documents, as well as taking into account that at the time of writing this initial assessment, the company's website was inoperable*).

However, despite the efforts of the company, the author of the specific instance probably did not meet the deadline for submitting the necessary documents. This could happen for a number of reasons, including misunderstandings, insufficient attention to notifications, or personal circumstances.

It is important to emphasize that the company fulfilled its obligations to inform the author of the specific instance within the time limits provided, while the author of the specific instance most likely missed the deadline for submitting documents.

Based on the above, the NCP rejects the specific instance.

At the same time, it is not possible to assess the level of accessibility of the company's information, since the company's website is inoperable (at the time of writing this initial assessment).

In this regard, it is recommended that Astana Finance JSC ensure the functionality of the website with the necessary information reflected in it in accordance with the information disclosure policy on its activities, products and services.

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