

SECRETARIAT REVIEW: KAZAKHSTAN

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1 Introduction

Kazakhstan was admitted as an EITI Candidate country on 27 September 2007¹. Kazakhstan has published five EITI reports from 2005 to 2009². The most recent EITI report disclosing data from 2009 was published in June 2011³. There has been an incremental increase in company participation in EITI reporting from 38 companies in 2005, to 103, 108, 109 and 123 companies in 2006, 2007, 2008 and 2009 respectively.

The Board established a deadline of 9 March 2010 for Kazakhstan to complete the Validation process. Validation commenced in October 2009. Following a request from the government of Kazakhstan, the EITI Board extended Kazakhstan’s Validation deadline to 9 September 2010⁴. A final Validation report endorsed by the National Stakeholder Council (NSC) was submitted to the EITI Board on 11 August 2010⁵. Having reviewed the validator’s findings, the EITI Board designated Kazakhstan as Candidate country ‘Close to Compliant’ on 13 December 2010⁶. The Board set a deadline of 12 June 2011 for Kazakhstan to complete four remedial actions for achieving compliance and request a Secretariat review. The four remedial actions were:

¹ <http://eiti.org/files/page/Minutes%20of%20the%203rd%20EITI%20Board%20Meeting.pdf>

² <http://eiti.org/document/eitireports>

³ http://eiti.org/files/EITI_report2011_eng.pdf

⁴ <http://eiti.org/files/2010-05-26%20Final%20Minutes%20of%20the%2012th%20Board%20Meeting.pdf>

⁵ [http://eiti.org/files/Kazakhstan%20\(ENG\).pdf](http://eiti.org/files/Kazakhstan%20(ENG).pdf)

⁶ http://eiti.org/files/Minutes_14th_Board_Meeting_ENG.pdf

1. The National Stakeholder Council should agree a clearer definition of materiality, and demonstrate that “all material oil, gas and mining payments to government” and “all material revenues received by governments from oil, gas and mining companies” have been covered in the 2009 report. In agreeing a definition of materiality, the National Stakeholder Council is encouraged to consider a specific figure that defines a material payment.
2. The National Stakeholder Council should also clarify its agreed approach for coverage of dividend payments and payments to local and regional authorities for the 2009 and subsequent reports.
3. Increasing company participation through targeted outreach to the largest oil, gas and mining companies that are not yet participating in the process. An entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial. The National Stakeholder Council may wish to consider requesting that the government unilaterally discloses the combined benefit stream from such small operators.
4. As per the Indicator Assessment Tool for Indicators 12 and 13, the National Stakeholder Council should agree a more detailed and time-bound strategy for ensuring that company and government reports are based on audited accounts to international standards;

The Board decision, including the remedial actions is presented in Annex A.

As provided for in Policy Note #3 of the EITI rules, and if the remedial actions for achieving compliance are not complex and can be quickly undertaken, the Board will empower the International Secretariat to prepare an assessment of whether a country has satisfied the requirements to be designated as EITI Compliant. The Secretariat Review of Kazakhstan was carried out in accordance with the 2009 edition of the EITI Rules.

2 Kazakhstan’s response to the Board decision

On 10 June 2011 the NSC submitted a dossier of information, including a memo⁷ detailing actions undertaken to complete the remedial actions, and requested a Secretariat review. The International Secretariat analysed this information, but was not able to ascertain whether all remedial actions had been fully addressed. In August 2011, the Secretariat requested supplementary information⁸ from the NSC necessary to complete the secretariat review, and an opportunity to meet with stakeholders in Kazakhstan.

The process in Kazakhstan has stalled since July 2011 because of NSC governance and stakeholder coordination challenges resulting from a reshuffling within the Ministry of Industry and New Technologies (MINT), the line ministry responsible for EITI implementation. The NSC did not convene in the period July-December 2011, nor did they respond to the Secretariat’s request for supplementary information. In November 2011, the Secretariat was informed by stakeholders that it was unlikely that the NSC would meet prior to the elections in January 2012. In light of the above and the time elapsed since the deadline for completing the remedial actions, the Secretariat finalised its review based on the dossier compiled by

⁷ Annex B – NSC memo (10.06.2011),

⁸ Annex C – Secretariat Review Terms of Reference

the NSC in June and an analysis of the 2009 EITI report. The Secretariat's assessment of the corrective actions is presented in section 3 below.

In January 2012, the Secretariat was informed that the NSC had decided to convene a meeting on 10 January. The Secretariat visited Astana on 10-11 January and met with stakeholders. The objective of the mission was not to collect new information for the secretariat review, but to confirm that the Secretariat's analysis of the dossier was correct. Policy Note 3 stipulates the MSG is entitled to comment on the Secretariat's review. The Secretariat transmitted the draft review to the NSC on 16 January 2012.

3 Secretariat review of remedial actions and assessment of indicators

The EITI Board agreed four remedial actions and tasked the Secretariat with reassessing validation indicators 9, 11, 12, 13, 14 and 15. The Secretariat's assessment below addresses the corrective actions in turn, with reference to the relevant validation indicators as appropriate.

3.1 Remedial Action 1 (#9, 11, 14, 15)

The National Stakeholder Council should agree a clearer definition of materiality, and demonstrate that "all material oil, gas and mining payments to government" and "all material revenues received by governments from oil, gas and mining companies" have been covered in the 2009 report. In agreeing a definition of materiality, the National Stakeholder Council is encouraged to consider a specific figure that defines a material payment.

3.1.1 Validator's findings

It is clear from the validation report that not all companies were participating in the EITI process. The validator reported that for the 2005-2008 reports, the NSC has defined materiality by i) 'All payments made by extractive companies to the central government, as identified through the Tax Code and other applicable legislative requirements, are material regardless of how significant the payment'; and ii) 'The percentage of payments/revenue between the extractive industry and the government'. The Validator noted that the NSC had agreed an interim coverage target of company payments representing approximately 90% of all oil and gas revenue, and company payments representing approximately 60% of total mining industry revenue (Validation report, p.39). According to the NSC, non-reporting companies represented less than 10% of extractive industry revenue in 2008, of which non-reporting oil and gas companies accounted for 7.66 % and non-reporting mining companies 1.70% (Validation report, p.5).

3.1.2 Progress since validation

The NSC has maintained the above definition of materiality for the 2009 report. According to the NSC there are more than 800 subsoil use contracts in Kazakhstan⁹. The NSC has therefore agreed the following materiality thresholds for the 2010 EITI report:

- US\$100 000 (excluding VAT) for mining companies;
- US\$200 000 (excluding VAT) for oil and gas companies.

The decision to establish the thresholds at this level was done with the view to ensure that all extractive companies figuring on the government's list of 'large taxpayers'¹⁰ and all MoU-signatories would be covered by the threshold.

⁹ Annex B – NSC memo (10.06.2011)

123 companies had signed the MoU in 2008, of which 109 disclosed payments in the 2008 EITI report. By the time of the 2009 EITI report, the number of MoU signatories had increased to 128 companies. 123 of these participated in the 2009 EITI report. The Secretariat understands that all companies, including non-MoU signatories will be required to submit EITI reporting templates in the 2010 and future EITI reports. Payments and revenues from companies that meet the threshold will be reconciled.

3.1.3 Secretariat's Assessment

The Secretariat notes that the NSC has agreed a definition of materiality and established thresholds for company participation. However, the methodology for establishing the materiality threshold has not drawn on a comprehensive analysis of the materiality of payments and revenues in the extractive sector. The NSC has not clarified what percentage of total revenue from the oil, gas and mining sector will be captured by this threshold, and whether it will ensure that all material payments and revenues are included in future EITI reports. The Secretariat understands that the government will not unilaterally disclose revenues from non-reporting companies in future EITI reports.

The NSC has not provided data on the total government revenues from oil, gas and mining companies in 2009¹¹. Furthermore, it has not been possible to obtain an exhaustive list of non-participating companies and detailed information regarding the size (materiality) of the payments and revenues from the non-reporting companies. Independent analysis of the 2009 EITI report, data provided by the Ministry of Finance, and the Tax Committee webportal indicate that some companies, considered to be 'large taxpayers' and/or MoU signatories, did not disclose payments in the 2009 report. The Secretariat's analysis indicates that payments from at least 11 companies amounting to USD 938 936 660 were not disclosed¹². The 2009 EITI report does not unilaterally disclose the government revenues from non-reporting companies. As a consequence, it is not possible to establish whether the omission of these payments has materially affected the 2009 EITI report. Accordingly, it is not possible for the Secretariat to establish whether the corrective action has been adequately addressed.

The EITI International Secretariat considers that there is insufficient evidence to demonstrate that the remedial action requested by the Board has been completed. The approach to defining materiality for the 2009 Report was insufficient, in that it appears clear that large (material) payments and revenues are not disclosed or reconciled. There have been improvements in the approach to defining materiality for the 2010 report, including the agreement of specific thresholds. However, this approach has not yet been implemented.

3.2 Remedial Action 2 (#9)

The National Stakeholder Council should also clarify its agreed approach for coverage of dividend payments and payments to local and regional authorities for the 2009 and subsequent reports.

¹⁰ According to the NSC, 'large taxpayers' refers to a government list of the 300 largest taxpayers, defined annually by income. This list is not exclusive to the extractive sector.

¹¹ A letter from the Ministry of Finance was submitted to the Secretariat during its mission in January. The letter states that 94.6% of total revenues from oil and gas, and 76.6 % of total revenues from mining were covered in the 2009 EITI report. It does not specify whether there were any material tax payers among the non-participating companies.

¹² These non-reported payments represent 7.2 % of total revenues disclosed in the 2009 EITI report.

3.2.1 Validator's findings

The validator reported that payments to subnational entities (with the exception of local taxes) were not included in the reconciliation reports because payments to subnational entities were considered immaterial by the NSC. However, the validator noted that 'the NSC does not possess data as to the magnitude of company benefit streams to subnational government. It is also unclear whether such benefits are delivered in-kind or in-cash...' (Validation report, p.30).

With regards to dividends, the validator noted that the state-owned company KazMunayGaz (KMG) receives dividends from its participation in other extractive operations, but the NSC has not been able to confirm this information. According to the validator, this income could be pooled with income from other non-extractive activities and could contribute to dividends if they are paid by KMG to Samruk-Kazyna, the National Welfare Fund. Dividends were not included in the reporting templates as they would be paid to a holding company rather than the Treasury. The validator further reported that the NSC has not agreed that dividends are material and has established a working group to consider whether dividends should be included in future reports.

3.2.2 Progress since validation

According to the NSC¹³, EITI reporting in Kazakhstan includes all tax and non-tax payments to regional and local levels. Taxation at the local level is collected by local/regional treasuries, but administered via a unified national system. Payments to local budgets are therefore reported by the Tax Committee of the Ministry of Finance. Social payments to subnational level will be disclosed, but not reconciled in the 2010 EITI report. The Secretariat understands that companies are required to invest 1 % of profits in social projects. However, these payments are often made directly to contractors and not to local government entities, making reconciliation difficult.

The NSC accepted the working group's recommendation to include dividends and other payments on state shares received by state companies in the 2009 EITI report. The 2009 EITI report included dividend payments by one company for nationally owned state shares. However, the government receipt of this payment was not disclosed. According to the reconciler 'the Authorized body [Ministry of Finance] did not include dividend data on the state-owned shares in the Report due to the fact that the Authorized body did not have information on dividend payments which are not paid to the budget...' (2009 EITI report, p.86)

3.2.3 Secretariat's Assessment

The Secretariat notes that according to the NSC, payments to subnational entities are reported by companies and by the Tax Committee on behalf of subnational entities, and included in EITI reports. Government revenues are disclosed in aggregate in the EITI reports. The 2009 EITI report contains a comprehensive list of all revenue streams, but does not specify which taxes and other payments are made directly to subnational entities. The NSC has not provided details regarding the materiality of revenues collected at subnational levels.

The Secretariat is satisfied that the NSC has agreed an approach for coverage of dividend payments. The agreed approach does not however allow for reconciliation of dividend paid to state-owned companies as shareholders or dividends paid by state-owned companies to the National Welfare Fund.

¹³ Annex B – NSC memo (10.06.2011)

The Secretariat's view is that the EITI process would benefit from additional clarity on these issues, including a more detailed explanation of the payments and revenues at sub-national level. In addition, the NSC should take further steps to ensure that the payment and the receipt of dividends can be reconciled. On balance, however, noting that these payments have been covered in the 2009 report, **the EITI International Secretariat is satisfied that the remedial action requested by the Board has been completed.**

3.3 Remedial Action 3 (#11)

Increasing company participation through targeted outreach to the largest oil, gas and mining companies that are not yet participating in the process. An entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial. The National Stakeholder Council may wish to consider requesting that the government unilaterally discloses the combined benefit stream from such small operators.

3.3.1 Validator's findings

The validator noted that the list of companies provided by the NSC mentions over 800 companies, of which 17% participate in the EITI. The validator further reported that there has been a legislative change, enacted in June 2010, which require all new subsoil users to comply with the conditions set out in the MoU. According to the validator, the amendments to the legislation do not affect extractive companies that have obtained subsoil use contracts prior to this enactment.

3.3.2 Progress since validation

The number of MoU signatories has increased from 128 signatories in 2009 to 136 signatories in 2010. The government and NSC are planning to engage companies that are not MoU signatories by:

- Enforcing the new law dated 24 June 2010 (Chapter 7, article 76 of the Law of the Republic of Kazakhstan "On Subsoil and Subsoil Use" no 291-IV) which requires all subsoil users to observe the MoU and report in accordance with the requirements of the EITI. According to the NSC, and contrary to the validation report, the law applies to both new subsoil use licenses and existing subsoil use licenses, making EITI reporting mandatory.
- Considering integrating EITI and Licensing Contractual Conditions (LCC) reporting¹⁴ which would, according to the NSC, allow for 100% company participation. Companies that fall below the agreed thresholds will not be included in the EITI report, but the tax revenues will be disclosed on the Tax Committee webpage¹⁵. The Secretariat understands that the government will not unilaterally disclose revenues from non-reporting companies in future EITI reports.
- Increasing industry association membership on the NSC to allow for a broader representation of company interests and engagement.

¹⁴ All subsoil users are required to submit LCC reports to the Geology and Subsoil Use Committee under the Ministry of Industry and New Technologies (MINT). These forms consist of approximately 250 reporting items, including taxes and social payments.

¹⁵ It remains unclear whether disclosure on the Tax Committee webportal includes non-tax payments such as royalties and profit oil.

3.3.3 Secretariat's assessment

The government has amended the law to make EITI reporting mandatory for all subsoil use license holders. The Secretariat takes note of the ongoing discussions regarding EITI and LLC reporting integration and efforts to ensure broader company representation and engagement on the NSC.

The Secretariat notes that the above actions have not yet been implemented. Hence, it is not possible to conclude that indicator 11 has been met. However, the Secretariat notes that the mandatory reporting requirement will be applicable to the 2010 EITI report and that the NSC has taken steps to increase company participation. **The EITI International Secretariat is satisfied that the remedial action requested by the Board has been completed.**

3.4 Remedial Action 4 (#12,13)

As per the Indicator Assessment Tool for Indicators 12 and 13, the National Stakeholder Council should agree a more detailed and time-bound strategy for ensuring that company and government reports are based on audited accounts to international standards.

3.4.1 Validator's findings

At indicator 12, the validator reported that not all companies participating in the EITI audit their accounts to international standards. Regarding indicator 13, the validator reported that 'our interlocutors... generally agreed that the financial reports issued by the government are not accompanied by an audit report and it is unlikely that the Accounting Committee worked to international standards for 2005 or 2006'. The validator recommended that the NSC develop a strategy for moving towards compliance with EITI Criterion #2.

3.4.2 Progress since validation

With respect to indicator 12, the NSC cites the 2008 Law on Audit Activities requiring audits to be done in accordance with international auditing standards. Another law [Law on Depository of Financial Statements] was enacted in 2008 requiring companies to submit financial statements to the Depository electronic database: www.dfo.kz. The 2010 amendments to the Law on Subsoil and Subsoil use also stipulates that 'subsoil users are obliged to submit reporting documents, *which shall be confirmed by an audit report*, in compliance with the requirements set forth in the Extractive Industry Transparency Initiative and in accordance with the procedure approved by the Government of the Republic of Kazakhstan'. The NSC recognises that small companies are unlikely to comply with these laws.

The NSC confirms that 26 companies did not provide data audited to international standards for the 2007 EITI report. In the 2008 EITI report, 19 companies failed to comply with this requirement. The NSC believes that this is sufficient. For the 2009 EITI report, companies were required to indicate on the reporting templates whether their financial statements had been audited to international standards. The reconciler reported that 78 of the 123 companies provided data drawn from accounts audited to international standards. Companies are required to have their accounts audited by 30 October in the year following the financial year concerned. The NSC has explained that the timetable for EITI reporting had not been aligned with the schedule for auditing, and several companies had not yet completed their audits by the time of the 2009 reconciliation. The NSC is currently discussing whether companies will be requested to substantiate the data submitted by including an Auditor's statement confirming that the provided reports have been audited to international standards.

Regarding indicator 13, the NSC states that the Accounts Committee prepares an Annual Report which is reviewed and approved by the Parliament by the 15 of May every current year, and subsequently published in the media. The Accounting Committee complies with the following auditing standards:

- International Organization of Supreme Audit Institutions (INTOSAI)
- Asian organisation of Supreme Audit Institutions (ASOSAI)
- European Organization of Supreme Audit Institutions (EUROSAI)
- Assembly of Supreme Audit Institutions of the Organization for Economic Cooperation (ECOSAI)
- Supreme Audit Institutions Heads Council of CIS participating states

The NSC is satisfied that that 'government data, provided for the purpose of EITI, are audited by the Accounts Committee of the Republic of Kazakhstan and are available to the public'.

3.4.3 Secretariat's assessment

The NSC has not produced a detailed and time-bound strategy for compliance with indicators #12 and #13. Although there is legislation requiring companies to comply with international accounting standards, it remains unclear to what extent this is enforced and whether reports submitted for EITI reconciliation are drawn from accounts that have been audited to international standards. The NSC has not confirmed whether companies will be requested to substantiate the data submitted by including an Auditor's statement confirming that the provided reports have been audited to international standards.

It remains unclear whether the Annual Report produced by the Accounting Committee is accompanied by an audit report, and whether the data submitted by the government for EITI reports have been audited to international standards.

The EITI International Secretariat considers that there is insufficient evidence to demonstrate that the remedial action requested by the Board has been completed.

4 Conclusion

The Board decision stipulated that four remedial actions should be completed in order to achieve Compliance. The Secretariat is satisfied that remedial actions 2 and 3 have been completed. However, it has not been possible to establish that remedial action 1 requiring that all entities that make or receive material payments are included in the reporting process has been satisfactorily completed. Nor has it been possible to establish that remedial action 4 requiring company and government reports to be drawn from accounts that have been audited to international standards has been satisfactorily completed. With reference to the validation indicators, the Secretariat's view is that indicator 11, 12, 13, 14 and 15 remain unmet. There has been some progress with defining materiality (indicator 9), but it is not yet clear whether the work done to date will result in a sufficiently comprehensive EITI report.

Annex A - EITI Board Decision on Kazakhstan Validation, 13 December 2010

The EITI Board agreed the following statement:

The Board designates Kazakhstan as Candidate country as of 13 December.

Based on a thorough assessment of the specific circumstances, Kazakhstan is considered to be 'close to compliant'.

The Board congratulates the government, companies and civil society organisations in Kazakhstan for the progress made in implementing the EITI and for completing validation.

In all decisions on Validation the Board places a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand. As set out in EITI Policy Note #3, the designation of "close to compliant" applies in cases where the EITI Board considers that a candidate country has not only made meaningful process, but can reasonably be expected to achieve Compliance within a very short time.

The validator found that Indicator #4 is not met, and concluded that a positive judgment on indicators 13 and 16 were subject to provisos and corrective actions. The Board agreed that the validation report does not provide sufficient information for the Board to assess compliance with all of the validation indicators. A number of issues require further information and clarification. The Board agreed that a detailed analysis of the forthcoming 2009 EITI Report is required in order to clarify the outstanding issues. Specifically, indicators 9, 11, 12, 13, 14, 15 should be reassessed. The following issues must be addressed in order to achieve Compliance:

- 1. The National Stakeholder Council should agree a clearer definition of materiality, and demonstrate that "all material oil, gas and mining payments to government" and "all material revenues received by governments from oil, gas and mining companies" have been covered in the 2009 report. In agreeing a definition of materiality, the National Stakeholder Council is encouraged to consider a specific figure that defines a material payment.*
- 2. The National Stakeholder Council should also clarify its agreed approach for coverage of dividend payments and payments to local and regional authorities for the 2009 and subsequent reports.*
- 3. Increasing company participation through targeted outreach to the largest oil, gas and mining companies that are not yet participating in the process. An entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial. The National Stakeholder Council may wish to consider requesting that the government unilaterally discloses the combined benefit stream from such small operators.*
- 4. As per the Indicator Assessment Tool for Indicators 12 and 13, the National Stakeholder Council should agree a more detailed and time-bound strategy for ensuring that company and government reports are based on audited accounts to international standards;*

When the National Stakeholder Council has completed these remedial actions the EITI International Secretariat will review Kazakhstan's compliance. The Secretariat will consult widely with stakeholders during the review. The National Stakeholder Council should be given an opportunity to comment on the Secretariat's findings. The Secretariat's review will be a public document - supplementing the Validation Report - thereby ensuring that the basis for the Board's decision regarding compliance is clear to all stakeholders.

The Secretariat should submit its report to the Board via the Validation Committee. If the Board is satisfied that remaining requirements have been met, the country will be designated as EITI Compliant. In the interim, Kazakhstan will retain its Candidate status. The Board retains the right to require a new Validation if the remedial steps are not completed within six months (i.e. 12 June 2011). The Board does not foresee granting any extensions beyond this deadline to complete remedial actions.

Annex B – National Stakeholder Council (NSC) memo (10.06.2011)

Response from Kazakhstan NSC to the questions of the International EITI Board. Reference is made to letter from the International Secretariat, dated January 14, 2011.

I) Materiality/all companies participation

Questions on materiality level have been repeatedly discussed both at NSC and working group meetings. The issue has been broadly and deeply discussed based on the information provided by Ministry of Industry and New Technologies (MINT), Geology and Suboiluse Committee under MINT (GSC) and Ministry of Finance (MF). The following conclusion has been drawn.

NSC acknowledges the fact that according to the past 2005-2009 EITI reports, NSC was satisfied with the wording given in Validation Report indicator 14 where it is stated: "for "the first Kazakhstan Validation Process", materiality constitutes approximately 90% of payments/revenues currently represented by the extractive industry signatory companies. The NSC understands payments made by the oil and gas industry signatory companies to constitute approximately 90% of all oil and gas revenue and oil and gas revenue to constitute over 50% of Kazakhstan's total revenue. Payments made by the mining industry signatory companies are said to constitute approximately 60% of the total mining industry revenue. Mining revenue is said to constitute approximately 2.3% of Kazakhstan's total revenue."

These data and conclusions were based on letters, submitted by the Tax Committee of the Ministry of Finance RK to the Ministry of Energy and Mineral Resources and NSC. The letter № HK-18/2275 (please, see Attachment 1) dated February 25, 2010 within the Tax Committee competence provided data on ratio of proceeds of extractive companies- EITI MoU signatories to proceeds of the Mining and metallurgy (including finished articles) industries and shows the following:

- for mining industry the ratio was- in **2007** -84,7%, in **2008**- 87,3%;
- for metallurgy (including finished articles) industry- in **2007** - 92%, in **2008** - 69,4%

Accordingly to the Ministry of Oil and Gas request, the Tax Committee provided the letter № HK-09/687 dated January 18, 2011 with data on tax proceeds from large oil\ gas and mining companies for year **2009** (please, see Attachment 2). The information was presented by branch of the economy overall, but not broken down by individual payers.

The Tax Committee advised, that for EITI purposes they provide data broken down by individual payers only for companies- EITI MoU signatories, provided by relevant Ministry yearly.

Hence, for the past reports NSC has concluded that large taxpayers, being EITI MoU signatories, had reported on EITI.

At present, unfortunately, the Ministry of Finances of the RK keeps no separate records of sub-soil users' tax payment; therefore the NSC has no precise information on the companies which hadn't previously joined EITI. However, this issue has been raised and will be further addressed by NSC.

Further to this and based on EITI International Secretariat recommendations, NSC has now made the analysis of the following documents:

- List of large taxpayers of Kazakhstan which is annually defined by the Government Resolution for 2008-2009 (see Attachments 3a and 3b)
- List of MoU Signatories which submitted data for 2007-2008 EITI reports (see Attachments 4a and 4b.)
- Data about payments of the companies published at the website of the Tax Committee (www.salyk.kz)
- Data about company payments placed on the site of Depository of Financial Reporting www.dfo.kz. (Depository of Financial Reporting was created by the Government Resolution in 2008 in order to comply with the Law on "Accounting and Financial Reporting of Kazakhstan" in respect to public interest.)
- Licensing Contractual Conditions (LCC) reports in the taxation part of all subsoilusers for 2007, 2008 and 2009 provided by Geology and Suboil use Committee.

The review of these data allowed NSC to conclude that reporting forms for 2007-2008 were submitted by all large taxpayers excluding the below mentioned subsoil users, which are also not MoU signatories.

- LLP JV "Kuatamlonmunay"
- JSC "Turgai Petroleum"
- JSC "Oil Company "KOR"
- JSC "Pavlodar Petrochemistry Plant"
- LLP "Gornorudnay Kompaniya"
- LLP "Arna Petroleum"

The aggregated payments made for same periods by these companies were:

- 2007 – 46 871 401.7 KZT (4.4% of aggregated amount in 2007 report)
- 2008 – 65 712 514.6 KZT (4.5 % of aggregated amount in 2008 report)

We would like to emphasize once again that the time the validation was undertaken, EITI compliance was voluntary. We would also like to note that following the explanatory work by all NSC members, such huge mining company as JSC "Arcelor Mittal Temirtau" submitted data for 2007, 2008 and 2009 reports, and such huge oil and gas company as LLP "Tengizchevroil" joined MoU in 2009.

Due to the facts that the reporting form approved at that time included all tax and non-tax payments of the subsoilusers to the budget of Kazakhstan and that the data were provided by most of the huge taxpayers, NSC finds this approach as sufficient for the reports of 2005-2009.

However, in order to improve EITI reporting in the future and with the purpose of covering all material payments, the NSC members agreed the following:

It has been identified that all subsoilusers of Kazakhstan report on LCC via Geology and Suboil Use Committee under MINT. LCC reporting is approved by the Government of Kazakhstan, it is mandatory for all subsoil users including extractive companies. LCC is administered by the Geology and Suboiluse Committee. **NSC agreed to use LCC forms as the basis for defining materiality level.** After the review of LCC forms for 2007, 2008 and 2009, NSC agreed the following materiality level:

- 100 000 USD (VAT exclusive) for the mining companies

- 200 000 USD (VAT exclusive) for the oil and gas companies

In addition to this, we believe that for the subsequent EITI reports starting from 2010 the following companies will report as well: huge taxpayers of the extractive industry as annually identified by the Government Resolution and all EITI MoU signatory companies.

In order to cover all companies under EITI reporting, NSC is discussing to integrate EITI reporting to LCC. Integrating EITI with LCC will provide 100% company participation. Currently procedural and technical issues related to the integration of EITI reporting to LCC are being discussed.

It is important to note that there are more than 800 subsoil user contracts signed in Kazakhstan. That is why decision was made to annually revise materiality level and cover only materially important companies under reconciliation.

II Sub-national payments, dividends and social payments

It should be noted that reporting on EITI in Kazakhstan includes all payments, tax and non-tax carried out to both the national and local budgets of the country. Payments to the local budgets are reconciled via National Tax Committee as local taxation is administered via unified national system of Kazakhstan.

Based on the proposal by the civil society, 2009 reporting form includes the dividends and other payments on state shares received by state companies.

Regarding reporting on social payments, a working group under NSC has been created which is working on the mechanisms of social payments reporting. The decision was made to include companies' expenses on social programs into 2010 reporting form but due to technical challenges to reconcile such payments, at this stage they are just stated but not reconciled. Also, use of LCC for EITI purposes will allow us to include into the reporting the data about social expenses. Moreover, in accordance with the new Law No 291-IV dated 24.06.2011 "On Subsoil and Subsoil use" social payments are not regarded as confidential information. Further work on improving social payments reporting is thus ongoing.

III) Companies data audit.

According to SAPA-Consulting reconciliation data, the following number of companies has been audited in accordance with international standards:

- 2007 EITI Report 83 companies (from 109 provided data)
- 2008 EITI Report 89 companies (from 108 provided data)

The remaining 26 and 19 companies for 2007 and 2008 accordingly didn't undertake any audit those years.

For the past reports NSC believes that such numbers of audited companies was sufficient

According to point 2 of the Article 5 of the Law of Kazakhstan No 304 dated 20.11. 1998 "On Audit Activities» audit shall be done in accordance with international auditing standards. Penalties for not following the legislation related to audit activities are stated in the Code of the Republic of Kazakhstan dated 30.01.2001 "On administrative violations". This sounds as following"

" Article 186. Obligatory Audit Evasion

Obligatory audit evasion or prevention lead to the fine imposed on the management of the organizations, small and medium size enterprises in the amount of twenty MCI, large enterprises - in the amount of 200 MCI

Article 571. Bodies of the Ministry of Finance of the Republic of Kazakhstan

1. Bodies of the Ministry of Finance of the Republic of Kazakhstan consider cases about administrative violations described in the articles 176 (part 2), 177, 178, 185-187, 204, 357-2 (part 1) of the given Code.
2. Consideration of cases of administrative violations and imposition of administrative fines shall be done:

For administrative violations - Minister of Finance of the Republic of Kazakhstan and his/her deputies, the head of the authorized state body in the area of state financial control and state procurement and his/her deputies, head of territorial authorities.

At the same time, we are currently discussing the tool in ToR for 2010/ 2011 reports according to which the companies will have to substantiate their data by the Auditor's statement confirming that the provided reports have been audited according to international standards.

V) Government data audit

Counting Committee of the Republic of Kazakhstan is the supreme body of the state's financial control and oversees the implementation of the national budget. Counting Committee reports directly to the President of the Republic of Kazakhstan.

According to the Counting Committee Provisions over National Budget Implementation (General Provisions (Article 1 and Article.2), "Counting Committee is the highest organ of state financial control, exercising external control over the national budget implementation, is directly subordinated and regulated by the President of the Republic of Kazakhstan.

The main tasks of the Counting Committee are ... the completeness and timeliness of state budget control ...

... Every year, Counting Committee makes a report of the national budget implementation for the financial year (hereinafter - the annual report), which according to its content is the conclusion to the Government Report of the Republic of Kazakhstan on the national budget implementation. ... The annual report includes an assessment ... of income and expenditures of the national budget.

... The annual report, approved by the Counting Committee, is sent for review and approval by the Parliament of the Republic of Kazakhstan and for information to the Government of the Republic of Kazakhstan till 15th of May of the current year. The provision of the annual report in the Parliament of the Republic of Kazakhstan is made by Chairman of the Counting Committee.

After approval by the Parliament of the Republic of Kazakhstan the annual report is to be published in the media, taking into account security order and other confidential information protected by law.

Starting from 2003 annual reports of the Counting Committee are publicly available on the website of the Counting Committee www.esep.kz and can be accessed on the following link: <http://esep.kz/first2.php?lang=rus&mid=50> (In Russian only).

Thus, we can conclude that the Government data, provided for the purpose of EITI, are audited by the Counting Committee of the Republic of Kazakhstan, and are available to the public in the Annual Report of the Counting Committee.

Regarding the audit in accordance with international standards: "Counting Committee over the national budget implementation control is currently a member of five international organizations:

- INTOSAI - International Organization of Supreme Audit Institutions – since May 2000
- ASOSAI - Asian Organization of Supreme Audit Institutions – since October 2000
- EUROSAI - European Organization of Supreme Audit Institutions – Since October 2003
- ECOSAI - Assembly of Supreme Audit Institutions of the Organization for Economic Cooperation – since January 2004
- Supreme Audit Institutions Heads Council of CIS participating states – since 2000.

Thus we can draw a conclusion, that in its work the Counting Committee of Kazakhstan adheres to the international principles and approaches to audit.

In conclusion we would like to thank you for the undertaken work. NSC has thoroughly considered the questions and recommendations of the Validator and the International Secretariat and hopes that the International Secretariat will consider the information provided in this document as sufficient in order for Kazakhstan to get the compliant status.

Sincerely,
NSC and Secretariat

Annex C – Secretariat Review ToRs

EITI Secretariat review mission to Kazakhstan: draft Terms of reference

In accordance with the Board in its decision of 13 December 2010 (Annex A), Kazakhstan has requested a secretariat review. The EITI International Secretariat is planning a visit to Kazakhstan on 7-9 September 2011 to collect supplementary information necessary to complete the review.

The objective of the secretariat review is to supplement the Validation report submitted in August 2010 with an assessment of the remedial actions requested by the Board. Kazakhstan has published EITI reports disclosing payments and revenues from extractive industries on a regular basis, most recently with an EITI Report covering 2009. The remedial actions established by the Board focus on whether Kazakhstan's EITI reports are comprehensive and cover all material payments and revenues.

In requesting the secretariat review, the NSC has submitted the following information:

- A memo outlining the NSC's response to the Board decision;
- Data on tax payments from large extractive companies in 2009;
- Data on the share of payments by extractive companies to the budget in 2007 and 2008;
- Data on the share of government revenues from EITI MoU signatories in the mining sector;
- Lists of large taxpayers in 2008 and 2009;
- Lists of EITI MoU signatory companies participating in the 2007-2008 reports.

The International Secretariat has reviewed this information, but is not yet in a position to complete its assessment of whether all remedial actions have been fully addressed. Further information on the following issues is necessary in order to complete the secretariat review:

- i) Total company payments and government revenues from the extractive sector in 2008 and 2009;
- ii) The share of total revenues from the extractive sector included in the 2008 and 2009 EITI reports;
- iii) The significance of revenues from the extractive sector not covered in the 2008 and 2009 reports.

The issues are discussed in more detail below.

Questions related to the 2008 and 2009 reports:

1. What was the total government revenue from all oil and gas companies in 2008 and 2009? (All companies refers to all companies in the sector, not just MoU signatories that participate in the EITI process);
2. What percentage of total government revenue from all oil and gas companies was covered in the 2008 and 2009 EITI reports?
3. Do any of the oil and gas companies that did not participate in the 2008 and 2009 EITI reports and represent more than 1% of total government revenue from the oil and gas sector? (The secretariat review should identify these companies, the size of their payments relative to the total, and their current position on participating in the EITI);
4. What was the total government revenue from all mining companies in 2008 and 2009? (All companies refers to all companies in the sector, not just MoU signatories that participate in the EITI process);

5. What percentage of total government revenue from all mining companies covered in the 2008 and 2009 EITI reports?
6. Do any of the mining companies that did not participate in the 2008 and 2009 EITI reports represent more than 1% of total government revenue from the mining sector? (The secretariat review should identify these companies, the size of their payments relative to the total, and their current position on participating in the EITI);
7. What is the definition of 'large taxpayers' as annually defined by the Government Resolution for 2008-2009?

Questions regarding the definition of materiality:

The International Secretariat understands that the NSC has agreed a materiality definition for future reports and decided a materiality threshold of US\$100 000 (excluding VAT) for mining companies and US\$200 000 (excluding VAT) for oil and gas companies. Further clarification is needed on the following:

8. Will the government disclose revenues from companies that are not MoU signatories?
9. Will the government disclose all revenues, or only the revenues from the companies that make payments above this threshold?
10. What is the expected share of total government revenues from oil, gas and mining that will be covered in the EITI report according to this materiality definition/threshold?
11. Does this definition apply to companies in the exploration and development stage, or only to producing companies?

Questions regarding company participation:

12. How is the government / MSG planning to engage companies that are not MoU signatories?
13. What activities have recently been undertaken to increase company participation?
14. According to the NSC, integrating EITI with Licencing Contractual Conditions (LCC) reporting will provide 100% company participation:
 - i. Will LLC reporting provide comprehensive and sufficiently disaggregated information on all material companies?
 - ii. Which companies are required to submit LCC reports?
 - iii. Which taxes and other payments are reported under LCC?

Questions regarding payments to subnational levels of government:

15. Which taxes (including dividends on regionally owned state shares) and other payments (including dividends on regionally owned state shares) are made by oil, gas and mining companies to sub-national government entities?
16. How significant are company payments to subnational entities relative to total government revenues from the extractive sector?

Questions regarding company and government auditing:

17. Why did only 89 of the 108 companies participating in the 2008 EITI reconciliation and 78 of the 123 companies in the 2009 EITI reconciliation submit data drawn from accounts audited to international standards?

18. What has the NSC done to address this issue given that the number of companies that provided data audited to international standards decreased from 2008 to 2009?
19. The International Secretariat understands that in future EITI reports, companies will be requested to have their data substantiated by an Auditor's statement. How will the NSC deal with companies that submit reporting forms that have not been certified?
20. The NSC has informed that the Accounting Committee complies with a number of international auditing standards (INTOSAI, ASOSAI, EUROSAI etc.). Further information on government auditing practices are needed:
 - i. How is government data audited?
 - ii. Which institutions are involved?
 - iii. What is the current status of auditing: When was data last audited and what is the schedule for the next audit?

Annex - EITI Board Decision on Kazakhstan Validation, 13 December 2010

The EITI Board agreed the following statement:

The Board designates Kazakhstan as Candidate country as of 13 December.

Based on a thorough assessment of the specific circumstances, Kazakhstan is considered to be 'close to compliant'.

The Board congratulates the government, companies and civil society organisations in Kazakhstan for the progress made in implementing the EITI and for completing validation.

In all decisions on Validation the Board places a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand. As set out in EITI Policy Note #3, the designation of "close to compliant" applies in cases where the EITI Board considers that a candidate country has not only made meaningful process, but can reasonably be expected to achieve Compliance within a very short time.

The validator found that Indicator #4 is not met, and concluded that a positive judgment on indicators 13 and 16 were subject to provisos and corrective actions. The Board agreed that the validation report does not provide sufficient information for the Board to assess compliance with all of the validation indicators. A number of issues require further information and clarification. The Board agreed that a detailed analysis of the forthcoming 2009 EITI Report is required in order to clarify the outstanding issues. Specifically, indicators 9, 11, 12, 13, 14, 15 should be reassessed. The following issues must be addressed in order to achieve Compliance:

- 1. The National Stakeholder Council should agree a clearer definition of materiality, and demonstrate that "all material oil, gas and mining payments to government" and "all material revenues received by governments from oil, gas and mining companies" have been covered in the 2009 report. In agreeing a definition of materiality, the National Stakeholder Council is encouraged to consider a specific figure that defines a material payment.*
- 2. The National Stakeholder Council should also clarify its agreed approach for coverage of dividend payments and payments to local and regional authorities for the 2009 and subsequent reports.*
- 3. Increasing company participation through targeted outreach to the largest oil, gas and mining companies that are not yet participating in the process. An entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial. The National Stakeholder Council may wish to consider requesting that the government unilaterally discloses the combined benefit stream from such small operators.*
- 4. As per the Indicator Assessment Tool for Indicators 12 and 13, the National Stakeholder Council should agree a more detailed and time-bound strategy for ensuring that company and government reports are based on audited accounts to international standards;*

