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FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE

PARIS COURT OF APPEAL

Pole 4 - Room 8

JUDGMENT OF FEBRUARY 1, 2023

(no. 2023/15 , 24 pages)

Registration number in the general directory: **N° RG 17/05678 - N° Portalis 35L7-V-B7B-B24A3**

Decision referred to the Court: Judgment of February 16, 2017 - Commercial Court of PARIS RG No. 2014048537

APPELLANT

SOCIÉTÉ GENERALE, SA, acting proceedings and due diligence of Mr. Jonathan Whitehead, duly authorized for the purposes hereof 29, boulevard Haussmann 75009 PARIS *Registered with the RCS of PARIS under number: 552 120 222*

Represented by Me Marie-Catherine VIGNES of SCP GRV ASSOCIES, lawyer at the PARIS bar, toque: L0010, having as pleading lawyers, Me Barthélemy COUSIN,
Cabinet STEPHENSON HARWOOD AARPI, lawyer at the PARIS bar, toque P0161 and Me Dominique SANTACRU, lawyer at the PARIS bar, toque B1084

RESPONDENTS

XL INSURANCE COMPANY SE, registered in Ireland under number 641686, whose registered office is located; acting in France through its branch registered with the Paris RCS under number 419 408 927, located at 61 rue Mstislav Rostropovitch 75832 Paris cedex 17, acting in the person of its legal representatives in exercise, coming under the rights of the company AXA CORPORATE INSURANCE SOLUTIONS XL House, 8 St. Stephen's Green, Dublin 2, IRELAND

SA ALLIANZ IARD (TRANSLATING THE RIGHTS OF GAN EUROCOURTAGE), taken in the person of its legal representatives domiciled in this capacity at said head office whose head office is located
1 Course Michelet
CS 30051
92076 PARIS LA DEFENSE CEDEX
Registered with the RCS of PARIS under number 542 110 291

CHUBB EUROPEAN GROUP SE, European company, registered with the RCS of NANTERRE under number 450 327 374, acting in the person of its legal representatives in exercise and coming under the rights of CHUBB EUROPEAN GROUP PLC formerly CHUBB EUROPEAN GROUP LIMITED, formerly called ACE EUROPEAN GROUP LIMITED, an insurance company incorporated under English law, which had its registered office at 100 Leadenhall street LONDON EC3A BP (United Kingdom) and was registered under number 01112892.
31 Place des Corolles - north esplanade
La Tour carpe iem, 92400 COURBEVOIE

ZURICH INSURANCE PUBLIC LIMITED COMPANY, an Irish company registered in Ireland under number 13460, acting in France through its branch registered with the Paris RCS under number 484 373 295, whose registered office is located at 112 avenue de Wagram, 75808 Paris cedex 17 acting in the person of its legal representatives in office
Zurich House, Ballsbridge Park
Ballsbridge Park
DUBLIN 4 (IRELAND)

CHUBB EUROPEAN GROUP SE, European company, registered with the RCS of NANTERRE under number 450 327 374 sis acting in the person of its legal representatives in exercise and coming under the rights of CHUBB EUROPEAN GROUP PLC formerly CHUBB EUROPEAN GROUP LIMITED, coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE SE, a European company registered in England and Wales, whose registered office is at One America Square, 17 Crosswall, London EC3N 2AD, United Kingdom. 31 place des corolles-esplanade nord la tour carpe diem, 92400 COURBEVOIE

LIBERTY MUTUAL INSURANCE EUROPE LIMITED, a company governed by foreign law, taken from its branch in France located at 5 Boulevard de la Madeleine in PARIS 75001, registered with the Paris RCS under number B 408 774 610, acting in the person of its legal representatives in office
2 Minster Court,
mincing lane
EC3R 7YE LONDON (UK)

Represented by Me Jeanne BAECHLIN, applicant lawyer, lawyer at the PARIS bar, toque L0034, assisted by Me Matthieu PATRIMONIO, SCP RAFFIN & ASSOCIÉS, trial lawyer, lawyer at the PARIS bar, toque P 133

INTERVENERS

SA GRANAT MADENCILIK VE TICARET AS GRANAT MADENCILIK VE TICARET AS (formerly GOLDAS KIYMETLI MADENLER TICARETI AS), a public limited company under Turkish law, whose registered office is located at Keresteciler Sitesi Sedir Sok. Erdem Han. No. 12 Kat. 2 No. 7 Merter, Güngören, ISTANBUL, TURKEY, taken in the person of its legal representatives domiciled in this capacity at the said head office Keresteciler Sitesi Sedir Sok. Erdem Han. No. 12 Kat. 2 No.

7 Merter, Güngören
ISTANBUL, TURKEY

SA JAKANA TEKSTIL KONFEKSIYON URETIM VE TICARET AS JAKANA TEKSTIL KONFEKSIYON URETIM VE TICARET AS (formerly MEYDAN DOVIZ KIYMETLI MADEN TICARET AS), a public limited company under Turkish law whose registered office is at Tekstilkent A-4 Blok No. 48/1 Esenler, ISTANBUL, TURKEY, taken in the person of its legal representatives domiciled in this capacity at said headquarters Tekstilkent A-4 Blok No. 48/1 Esenler ISTANBUL, TURKEY

GOLDAS LLC, a limited liability company under UAE law whose registered office is located at 86426, Dubai, Hor Al Anz East, DUBAI, UNITED ARAB EMIRATES, taken in the person of its legal representatives domiciled in this capacity at said head office
86426, Dubai, Hor Al Anz East
DUBAI, UNITED ARAB EMIRATES

SA GOLDART HOLDING AS public limited company under Turkish law, whose registered office is located at Keresteciler Sit. Ihlamur Sok. No.4-6 Merter, ISTANBUL, TURKEY, taken in the person of its legal representatives domiciled in this capacity at said Keresteciler Sit. Ihlamur Sok. No.4-6 Merter ISTANBUL, TURKEY

All represented by Me François BERTHOD of AARPI ARTEMONT, lawyer at the PARIS bar, toque: R0289

COMPOSITION OF THE COURT:

The case was debated on June 21, 2022, in open court, before the Court composed of:

Ms Béatrice CHAMPEAU-RENAULT, Chamber President Ms Laurence FAIVRE, Chamber President Mr Julien SENEL, Advisor

who deliberated on it, a report was presented at the hearing by Mrs Béatrice CHAMPEAU-RENAULT, President of the Chamber under the conditions provided for in Article 804 of the Code of Civil Procedure.

Clerk, during the debates : Mrs Laure POUPET

JUDGMENT: Contradictory

- by making the judgment available to the Court Registry on October 26, 2022, extended to February 1, 2023, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.

- signed by Béatrice CHAMPEAU-RENAULT, President of the Chamber and by Laure POUPET, clerk present during the provision.

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SOCIETE GENERALE (hereinafter referred to as SG) is an international banking institution whose activity is divided between several businesses: retail banking, asset management, private management and securities management, financing and investment banking. investment, and which has recognized expertise on the world gold market.
SG Corporate & Investment Banking (hereafter referred to as SG CIB) is the entity that deals globally with capital markets and this division of the bank has been present in the Turkish market since 1990.

SG stated that it had been approached by the GOLDAS group, which brings together several Turkish companies specializing in jewelery and the trading of precious metals, made up in particular of companies that are members of the ISTANBUL Gold Exchange domiciled mainly in ISTANBUL (TURKEY) and in DUBAI, to carry out operations on the gold market.

In 2003, SG CIB signed four “Bullion Consignment Agreements” (hereinafter referred to as “BCAs”), then four new “BCAs” in April 2005, respectively with: - the Turkish companies GOLDAS KUYUMCULUK, MEYDAN DOVIZ, GOLDAS KIYMETLI MANDENLER and, - the company GOLDAS LLC based in DUBAI, these different companies belonging to the GOLDAS group.

The “BCAs” provided for SG to make available to GOLDAS a stock of ingots with a view to their acquisition. In the event of a request for the shipment of ingots by GOLDAS, the SG set up a "shipment" by giving instructions to both a gold refinery and/or a supplier (Rand Refinery in SOUTH AFRICA or Valcambi in SWITZERLAND) and to a transporter so that the ingots are prepared and then transported directly from SWITZERLAND or SOUTH AFRICA to the premises of GOLDAS. GOLDAS then had to either set the selling price of the ingots (pricing procedure) and pay them within a maximum period specified in the contract, or return them.

SG had taken out annual insurance coverage called “All Risks Bank”, with an overall scope of 110 million euros, covering damage to property and the risk of fraud, consisting of three successive lines, with six insurers : * SA AXA CORPORATE SOLUTIONS ASSURANCE (hereinafter referred to as AXA), * SA ALLIANZ IARD (hereinafter referred to as ALLIANZ), * SA ZURICH INSURANCE IRELAND PUBLIC LIMITED COMPANY (hereinafter referred to as ZURICH), * CHUBB INSURANCE COMPANY OF EUROPE SE, (hereinafter referred to as CHUBB), * SA LIBERTY MUTUAL INSURANCE EUROPE LIMITED (hereinafter referred to as LIBERTY) and * ACE EUROPEAN GROUP LIMITED (hereinafter referred to as ACE).

Between January 3 and February 15, 2008, SG bought more than USD 326 million in gold (price on February 18, 2008).

In March and April 2008, she filed a complaint against the GOLDAS group, in TURKEY, DUBAI and ENGLAND, claiming that this entrusted gold had been sold in full, essentially on the ISTANBUL GOLD EXCHANGE (hereinafter referred to as IGE), and diverted a total of 15.725 tonnes of gold bullion belonging to him, without any compensation, in violation of BCA contracts. She argued that these gold bars were the subject of said contracts under English law originally drawn up in the financial center of LONDON, that it was stipulated that the bank would remain the owner of the bars that GOLDAS had to isolate, that GOLDAS did not have the right to dispose of said ingots but could only form a purchase offer on all or part of the stock according to its own needs, that in the absence of agreement between the bank and GOLDAS on the conditions of the sale, either the BCA contract was extended, or the bullion should be returned to him.

Wishing to bring into play the guarantees of the insurance policy, the SG regularized on May 27, 2008 with the company AXA CS (underwriter of the three insurance policies), a declaration of loss reporting fraudulent acts by the GOLDAS group , specifying, on the one hand, having initiated various civil and/or criminal proceedings against the companies of the GOLDAS group and/or their managers, and, on the other hand, having acted against British insurers with which it considered to have insured the ingots delivered within the framework of its contractual relationship with GOLDAS.

The insurers refused to compensate SG, under the “All Risks Bank” policy, for the financial consequences of the damage that the bank considered to have suffered.

Examination of the insurance file was suspended from 2008 to 2012, as SG was awaiting the follow-up given to its claim declaration with English insurers.

In 2014, SG finally had AXA (lead insurer) and the co-insurers concerned by the first, second and third line "All risk banks" policies assigned to the Paris Commercial Court. Invoking fraud covered under the aforementioned policies that caused it harm, the bank thus demanded that the said insurers be ordered to pay it a total sum of 107,000,000 euros up to the amount of their respective participation in the insurance program.

By judgment of February 16, 2017, the court notably dismissed all of its claims, and ordered it to pay, on the one hand, to SA AXA the sum of 237,949 euros, on the other hand, to SA ALLIANZ, the company ACE, the company ZURICH, the company CHUBB and the company LIBERTY each a sum of 50,000 euros, dismissing it for the surplus, under the provisions of article 700 of the code of civil procedure, as well as to the entire costs.

Having regard to the appeal lodged by the SG by electronic declaration of March 16, 2017;

Considering the last writings on the merits of the SG (n ° 3) notified before the court by electronic means on December 2, 2019 requesting the condemnation of the insurance companies to pay him various sums in application of the guarantees subscribed in his insurance policy “ All banking risks”.

Having regard to the last submissions on the merits notified to the court electronically on January 31, 2020, by the respondents : ALLIANZ, AXA, CHUBB, ZURICH and LIBERTY supporting essentially

Having regard to the closing order dated February 3, 2020 setting the date for the hearing on June 30, 2020, then taking into account the health crisis, postponing this hearing to November 3, 2020;

Considering, after the closing order, the notification on September 17, 2020 by four companies of the GOLDAS group of a constitution of lawyer also bearing “summons of communication of the conclusions and documents”;

Considering the conclusions of voluntary intervention of the same companies on September 30, 2020 reiterating their summons and, in any event, requesting to see them declared admissible in their accessory voluntary intervention, see the SG dismiss and confirm the judgment and the conclusions served on November 2, 2020 by the same companies for the same purposes; Considering the adjournment of the case at the hearing of November 3, 2020, for pleadings on the merits at the hearing of April 6, 2021;

Having regard to the voluntary intervention of a company GOLDART HOLDING AS (another company of the GOLDAS group) on November 4, 2020, for the same purposes ;

Having regard to the conclusions of the incident of the five companies of the GOLDAS group notified electronically on November 5, 2020, then those notified on February 14, 2021, requesting the adviser to see: * give notice to the intervening company GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT AS that it withdraws its incident;

* order the SG to communicate to the four other parties intervening in the proceedings its last writings as well as all the documents which it mentions within a period of three days from the pronouncement of the order to intervene and, after this period, under penalty of 30,000 euros per day of delay for a period of three months;

* enjoin the companies ALLIANZ IARD, XLINSURANCE COMPANY SE, CHUBB INSURANCE GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY AND LIBERTY MUTUAL INSURANCE EUROPE LIMITED to communicate to the same parties their latest writings as well as the documents they refer to within three days of from the pronouncement of the order to intervene. * judge that the order to intervene will be enforceable at the sole sight of the minute; * condemn the SG to allocate to the four intervening companies a global sum of 5,000 euros for the irrecoverable costs of the incident; - order SG to pay the costs of the incident.

Having regard to the conclusions of the incident notified electronically on February 11, 2021 by the SG , which asks the pre-trial adviser to: * receive it in his writings and declare them to be well founded; * stay ruling on requests for communication of conclusions and documents from intervening companies pending a judgment of the PARIS Court of Appeal ruling on the admissibility of voluntary interventions by these companies; * reserve the costs and irrecoverable costs of article 700 of the code of civil procedure; * reject all other claims by said companies.

Having regard to the conclusions of the incident notified electronically on February 15, 2021 by the five insurance companies which are asking the pretrial adviser to stay ruling on the request for disclosure of documents pending a decision of the court on the admissibility of the voluntary interventions of the Turkish companies and to reserve the costs.

By order of March 8, 2021, the pre-trial counsel considered in particular that he was not competent to rule on this plea of inadmissibility falling within the exclusive jurisdiction of the Court of Appeal and stayed the ruling on all of the claims presented in the context of this incident by the companies GRANAT MADENCILIK VE TICARET AS, JAKANA TEKSTIL KONFEKSIYON URETIM VE TICARET AS, GOLDAS LLC, and GOLDART HOLDING AS, pending the decision to be taken before the court on the admissibility of their voluntary interventions.

By judgment of June 29, 2021, the Court of Appeal hereby: - declared the company GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT AS inadmissible in its voluntary intervention for lack of capacity to act; - declared admissible the conclusions of the SG dated February 11, 2021; - declared the companies GRANAT MADENCILIK VE TICARET AS, JAKANA TEKSTILKONFEKSIYON URETIM VE TICARET AS, GOLDAS LLC and GOLDARTHOLDING AS admissible in their voluntary interventions;. - ordered the revocation of the closing order and referred the case to the status hearing of October 11, 2021 so that the parties can proceed with the communication of their documents and the exchange of their conclusions under the control the pre-trial adviser; - dismissed the parties of their requests based on the provisions of Article 700 of the Code of Civil Procedure; - reserved the costs.

The parties regularly communicated their documents and, for those who so wished, notified new conclusions.

According to its last pleadings (no. 3) notified electronically on December 2, 2019, the appellant (the SG) asks the court, under the visa of article 1103 of the civil code, articles 313-1, 314 -1 and 441-1 of the Criminal Code, Articles 5, 9 and 16 of the Code of Civil Procedure, the first-line "All Risks Bank" insurance policy no. 413 033 858 20, the insurance policy 2nd line "All Risks Bank" insurance policy no. 413 033 859 20, 3rd line insurance policy "All Risks Bank" no. 413 033 860 20, of :

- accept it in its present writings and declare them to be well-founded;
- reject the arguments and claims of the respondents; - REVERSE
the judgment in all its provisions and rule anew: - order AXA to pay it 7,000,000 euros, 15,000,000 euros and 30,000,000 euros, i.e. its shares and portions under the three policies "Bank All Risks" insurance; - order ALLIANZ to pay it 10,000,000 euros and 6,000,000 euros, ie its shares and portions under the "All Risks Bank" insurance policies of 2 and 3 lines; - order ACE to pay it 3,750,000 euros, being its share and portion under the 3 line "All Risks Bank" policy; - order ZURICH to pay him 10,252,500 euros, being his share and portion under the 3 line "All Risks Bank" policy; - order CHUBB to pay it 15,000,000 euros, being its share and portion under the 3 line "All Risks Bank" policy; - order LIBERTY to pay it 9,997,500 euros, being its share and portion under the 3 line "All Risks Bank" policy; - declare that the sentences above will be accompanied by interest at the legal rate from the issuance of the summons of July 31, 2014, with capitalization of interest under the terms of Article 1343-2 of the Civil Code; - order in solidum the respondent companies to pay him 905,367 euros under Article 700 of the Code of Civil Procedure; - order in solidum the respondent companies to bear all the costs; - dismiss the respondent companies of all their claims, purposes and claims.

Under the terms of their latest conclusions (n°7) notified electronically on April **1 , 2022, the respondents XL INSURANCE COMPANY SE coming to the rights of the company AXA CORPORATE SOLUTIONS ASSURANCE, ALLIANZ, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB EUROPEAN GROUP PLC formerly named ACE EUROPEAN GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB EUROPEAN GROUP PLC formerly CHUBB EUROPEAN GROUP LIMITED, coming under the rights of CHUBB INSURANCE COMPAGNY OF EUROPE SE, European company registered in ENGLAND and WALES, company LIBERTY MUTUAL INSURANCE EUROPE LIMITED,** ask the court, police visa n°413 033 858 20 "All Risks Banks" underwritten by SG with AXA, policy no. 413 033 859 20 " All Banking Risks" underwritten by SG with AXA CORPORATE companies SOLUTIONS and ALLIANZ IARD, policy no. 413 033 860 20 "All Banking Risks" taken out by SG with the companies AXA CORPORATE SOLUTIONS, ACE EUROPEAN GROUP LIMITED LTD, ZURICH, ALLIANZIARD, CHUBB, LIBERTY, of:

- reject any request for condemnation against AXA CORPORATE SOLUTIONS ASSURANCE with regard to its merger-absorption resulting in the transfer of portfolio to the benefit of XL INSURANCE COMPANY SE with effect from December 31, 2019, which thus comes to its rights and intervenes for this purpose before the court of this court;
- CONFIRM the judgment in all its provisions, saying that the appeal of the SG and by dismissing this one of all its requests before the court;

In doing so,
PRINCIPALLY: - to judge

that the existence of fraud within the meaning of insurance policies n°413 033 858 20, n°413 033 859 20 and n°413 033 860 20 has not been demonstrated;

- rule that the disputed gold bars do not constitute insured Goods and Values within the meaning of insurance policies no. 413 033 858 20, no. 413 033 859 20 and no. 413 033 860 20; - judge that the GOLDAS companies did not act with the intention of making a profit;

Consequently, - to
judge that the distinct conditions of guarantee are not met, the defect of only one of them being sufficient to order the dismissal of the SG; - consequently dismiss the SG of all its claims made against the companies
AXA CS, ALLIANZIARD, CHUBBEUROPEAN GROUP SE formerly known as
ACE EUROPEAN GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED;

IN A VERY SUBSIDIARY WAY, and if by impossible the meeting of all the distinct conditions of guarantee were admitted by the court: - to judge that the exclusion clause 7.14 (insolvency of the clientele) finds to apply in this case; - consequently dismiss the SG of all its claims made against the companies AXA CS, ALLIANZ IARD, CHUBB EUROPEAN GROUP SE formerly called ACE EUROPEAN GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUALINSURANCE EUROPE LIMITED; - rule that exclusion clause 7.16 (financing transaction) is applicable in this case; - consequently dismiss the SG of all its claims made against the companies AXA CS, ALLIANZ IARD, CHUBB EUROPEAN GROUP SE formerly called ACE EUROPEAN GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED; - rule that exclusion clause 7.18 (failure to comply with existing procedures) is applicable in this case; - consequently dismiss the SG of all its claims made against the companies AXA CS, ALLIANZIARD, CHUBBEUROPEAN GROUP SE formerly called ACE EUROPEAN GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED; - failing this, assuming this exclusion clause not accepted as it stands, at the very least order the SG to produce all the manuals, directives and memos constituting the internal procedures in force at the time of the events within the SG in the context of the activity relating to precious metals, and suspend the proceedings pending this production; - rule that exclusion clause 7.9 (unexplained disappearances) is applicable in this case; - consequently dismiss the SG of its claims made against the companies AXA CS, ALLIANZ IARD, CHUBBEUROPEAN GROUP SE formerly called ACE EUROPEAN GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANYOFEUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED for the 500 kg of gold delivered to DUBAI;

- judge that the exclusion clause 7.2 would apply in the event that GOLDAS had the quality of "correspondent";

MORE SUBSIDIARILY YET, and if by extraordinary the court does not déboutait the SG of the entirety of its requests formed against the respondent companies;

Having regard to Articles 8,10, 11, 16, 138, 139 and 142 of the Code of Civil Procedure as well as Article 6 of the European Convention on Human Rights (ECHR),

- order SG to communicate the following documents, expressly referred to as produced by SG in the proceedings opposing it for the same facts to its English insurers: (i) the emails dated January 3, 2005 from Mr. BINALTI to Mr. Fernandez VALDES (who were transferred by Mr. Fernandez Valdes to Messrs. Deshpande and Teboul) [10000011]; (ii) the exchange of emails between Mr. Deshpande and Mr. Binatli on March 21 and 22, 2005 [10001084 & 10001091] and the exchange of emails between Mr. Deshpande and Mr. Binatli on October 4, 2006 (concerning the sale by Meydan of the gold forming the subject of transaction n°1505 with the plaintiffs, for which the payment date agreed with the plaintiffs was October 10, 2006) [10011736 & 10011737]; (iii) the telephone conversations between Mr. Teboul and Mr. Binatli on March 20, 2007 [1500287 & 1500289]; (iv) telephone conversations between Mr. Deshpande and Mr. Binatli on March 2, 2007, March 6, 2007 [1500179 & 15001811], March 9, 2007 [1500219], March 14, 2007 [1500239], March 22, 2007 [1500308], March 28, 2007 [1500353], May 1, 2007 [1500420], June 13, 2007 [1500828], June 15, 2007 [1500872], September 7, 2007 [1501688], November 13, 2007 [1502273] and December 5, 2007 [1502484]. (v) the meeting that took place in Paris on January 17, 2008 between Mr. Binatli and Mr. Teboul, Mr. Lannegrace, Mr. Varenne and Mr. Neviaski; (vi) telephone conversations between Mr. Deshpande and Mr. Binatli on January 30, 2008 [1502870], February 8, 2008 [1502997] and February 12, 2008 [1503027]. (i) the email exchange between Mr. Deshpande and Mr. Teboul on September 21, 2005 [10004821 & 10004827]; (ii) the discussion, around November 12, 2007, that Goldas Kuyumculuk was treating Plaintiffs' gold on consignment as its own inventory (and not merely as "Commodity", but as "Work in Progress", “Finished Goods” and – mainly – a “goods”, etc.), including: the email from Ms. Lu and to Mr. Merlin dated November 12, 2007 [10021040]; emails between Mr. Merlin, Mr. Teboul and Mr. Deshpande dated November 14, 2007 [10021040, 10021042, 10021043, 10021073]; email from Mr. Teboul to Mr. Binatli dated November 22, 2007 [10021249]; the email from Mr. Binatli to Mr. Teboul dated November 27, 2007 [10021371] which was forwarded to Mr. Merlin [10021373] and Ms. Luet [10021390]; the email from Ms. Luet to Mr. Teboul dated December 6, 2007 [10021612], which was forwarded to Mr. Binatli [10021613]; Mr. Binatli's email to Mr. Teboul dated December 14, 2007 [10021837 & 10021838], which was forwarded to Ms. Luet [10021892]; the email from Ms. Luet to Mr. Leroux dated January 2, 2008 [10022118]; the email from Mr. Merlin to Ms. Luet dated January 2, 2008 [10022124]; the email from Mr. Leroux to Ms. Luet dated January 4, 2008 [10022171]; the email from Ms. Luet to Mr. Richard dated January 9, 2008 [10022330]; the email from Mr. Richard to Ms. Luet dated January 11, 2008 [10022501]; the email from Mr. Froissart to Ms. Luet dated January 14, 2008 [10022469]; the exchange of emails between Ms. Luet and Mr. Richard on January 14, 2008 [10022501]; the telephone conversation between Ms. Luet and Mr. Teboul on January 14, 2008 [1503112/1502691]; the exchange of emails between Ms. Luet and Mr. Teboul on January 14, 2008 [10022513 & 10022521]; Mr. Binatli's email to Mr. Teboul dated January 15, 2008 [10022539]; the email from Mr. Teboul to Ms. Luet dated January 15, 2008 [10022557]; the exchange of emails between Mr. Teboul and Mr. Lannegrace on January 15, 2008 [10022559, 10022582, 10022585]; Ms. Luet's email to Mr.

Garbado dated 18 January 2008 [10022700];

(iii) telephone conversations between Mr. Deshpande and Mr. Binatli on October 9, 2007 [1501974] and December 14, 2007 [1502557]; (iv) the Credit Assessment produced by the Claimant Risk department on or about January 15, 2008, which stated (among other things): "Gold on consignment, although not purchased by Goldas at this stage, is used its delivery for the manufacture of jewelry" [10022961]; (v) the meeting held in Paris on January 17, 2008 between Mr. Binatli and Mr. Teboul, Mr.

Lannegrace, M. Varenne and M. Neviaski; (vi)
the discussions relating to the coverage of English insurers: (a) the
exchange of emails of January 9 and 10, 2008 between Ms. Luet and Mr. Richard [10022330, 10022336, 10022343, 10022380, 10022381]; the exchange of emails between Mr. Richard and Mr. Jugé on January 11, 2008 [10022431]; the email from Mr. Richard to Ms. Luet dated January 11, 2008 [10022501]; the exchange of emails between Mr. Froissart, Ms. Luet and Mr. Richard on January 14, 2008 [10022469 & 10022501]; the exchange of letters between Mrs Luet and Mr.

Teboul on January 14 and 15, 2008 [10022513; 10022521; 10022557]; mail from Mr.
Teboul to Mr. Richard
(and Mr. Neviaski) dated January 21, 2008 [10022827]; the email from Mr. Richard to Mr. Teboul dated January 22, 2008 (which was forwarded by Mr. Teboul to Mr. Neviaski [10022823]; the email from Mr. Teboul to Mr. Neviaski dated January 28, 2008 (mentioning, among other things, that the risk of embezzlement by the client was not covered by the plaintiffs' insurance, and that the premium for such coverage would be 2 to 3 times higher than the existing one) [10023015]; the email from M Neviaski to Mr.
Teboul and M. Williams dated 28 January 2008 [10023017]; the subsequent exchange of e-mails between MM. Lannegrace, Teboul, Richard and Neviaski on January 28, 2008 [10023035, 10023039, 10023042, 10023043]; the email from Ms. Luet to Ms. Engelhard dated January 31, 2008 [10023208]; the email exchange between Mr.
Neviaski and M. Froissart on February 8, 2008 [10023500 & 10023501]; the exchange of emails between Mr. Teboul and Mr. Richard on February 11, 2008 [10023534, 10023550]; email from Mr. Leroux to Mr. Teboul dated February 13, 2008 [10023661]; (b) the telephone conversation between Mr. Teboul and Mr. Richard on January 14, 2008 (concerning the scope of the insurance policy taken out by the underwriting Defendants) [1502695]; (c) telephone conversations between Mr. Teboul and Mr. Richard on January 28 and 29, 2008 regarding the Goldas embezzlement cover (which Mr. Teboul reported to Mr. Neviaski) [1502843, 1502850 & 1502854]; (d) the meeting and/ or conversation between MM. Teboul, Williams, Neviaski, Richard and Engelhard on January 29, 2008;

(vii) the instructions given by the plaintiffs to Cap Marine, on or around January 29, 2008, with a view to obtaining the agreement of the underwriting Defendants concerning an endorsement extending the scope of the insurance policy [10023090]

(viii) email dated February 5, 2008 from Mr. Jugé to Mr. Glover, of Cooper Gay, noting the plaintiffs' insistence on obtaining an endorsement stipulating coverage; the email from Mr. Jugé to Mr. Richard dated February 21, 2008 [10023920]; the memorandum created by Mr. Richard or Mr. Hauguel on or around February 21, 2008 [10029409];

(ix) telephone conversations between Messrs. Deshpande and Binatli of January 30, 2008 [1502870] and February 12, 2008 [1503027].

- judge that this communication will be accompanied by a penalty payment of 500 euros per day of delay per document not communicated, and this from the date of the order deciding the present incident; - order the suspension of the proceedings pending the complete communication of these documents, in order to allow them to be debated after the resumption of the proceedings requested by the most diligent party;
IN A SUBSIDIARY WAY,
If it is impossible for the court to judge that the fraud guarantee is applicable:

- note that SG still does not provide proof of ownership and payment of the disputed ingots to its suppliers with their dates and the prices applied prior to their direct deliveries to the GOLDAS companies; - rule that each insurer could only be held liable for its own part under the "all-risk banks" insurance policies n° 413 033 858 20, n°413 033 859 20 and n°413 033 860 20 and within the following maximum limits: o XL INSURANCE COMPANY SE coming under the rights of AXA CS: 52,000,000 euros; o ALLIANZ IARD: €16,000,000; o CHUBB EUROPEAN GROUP LIMITED coming under the rights of CHUBB INSURANCE COMPANY: 15,000,000 euros; o ZURICH INSURANCE: €10,252,500; o LIBERTY MUTUAL INSURANCE: €9,997,500; o CHUBBEUROPEAN GROUP LIMITED formerly known as ACE EUROPEAN GROUP SE: €3,750,000; - judge the companies XL INSURANCE COMPANY SE coming under the rights of AXA CS, ALLIANZ IARD, CHUBB EUROPEAN GROUP SE formerly called ACE EUROPEAN GROUP LIMITED, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED well-founded to oppose to the SG article L.121-12 al.2 of the insurance code in this case:

* note that SG still does not provide proof of ownership and payment of the disputed ingots to its suppliers with their dates and the prices applied prior to their direct deliveries to the GOLDAS companies;
Consequently, * to
judge the requests of the SG cannot be accepted as they stand, neither in principle nor in their quantum; * reject them more strongly;

In any event, - reject the
request made by the SG on the basis of Article 700 of the Code of Civil Procedure; - order SG to pay the companies XL INSURANCE COMPANY SE coming under the rights of AXA CS, ALLIANZ IARD, CHUBB EUROPEAN GROUP LIMITED formerly called ACE EUROPEAN GROUP SE, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED a sum of 70,000 euros each under article 700 of the code of civil procedure for the irrecoverable costs incurred in the appeal as well as the full costs with application of article 699 of the code of civil procedure for the benefit of Maître BAECHLIN, lawyer at the court.

Pursuant to their latest conclusions notified electronically on January 17, 2022, the voluntary interveners GRANAT MADENCILIK VE TICARET AS (formerly GOLDAS KIYMETLI MADENLER TICARETI AS), JAKANA TEKSTIL KONFEKSIYON URETIM VE TICARET AS (formerly MEYDAN DOVIZ KIYMETLI MADEN TICARET AS), GOLDAS LLC, GOLDART HOLDING AS ask the court to: - dismiss the SG of all of its claims; - confirm the judgment entered into in all its provisions; - order SG to pay the costs.

For a fuller account of the facts, pleas and claims of the parties, reference should be made to the conclusions referred to above in accordance with the provisions of Article 455 of the Code of Civil Procedure.

The closing took place on April 4, 2022.

REASONS FOR THE DECISION

By judgment of February 16, 2017, the Commercial Court upheld the defenses developed by the insurers, considering that the conditions of application of the insurance policies taken out were not met.

The analysis proposed by the bank SG as to the relations maintained with the companies of the GOLDAS group was not retained, the first judges noting in particular the oriented nature of the presentation of the SG in this respect as well as the absence of proof of the first of the conditions of guarantee, ie the existence of a fraud implying the commission of an intentional act qualified criminally. On the other hand, he did not expressly rule on the intentional element of the offenses invoked.

The court then considered that the insurers' guarantee only applied in the event of fraud relating to securities held by the insured, without extending to the bank's metal trading activity (shipment of gold to its customers), for which a specific policy had been taken out with English insurers.

Finally, the court considered that at least two of the exclusion clauses provided for in the contract were valid and enforceable against SG.

SG essentially considers that all the conditions for the application of the insurance policies are met and that the exclusion clauses invoked by the insurers are not applicable in this case.

The insurers maintain that the conditions for the application of the insurance policies have not been met.

In the alternative, they invoke the application of several contractual exclusion clauses of guarantees intended to operate (No. 7-14; No. 7-18; No. 7-16; No. 7-9 and No. 7- 2) and in an infinitely subsidiary way, the application of the legal exclusion of article L121-12 of the insurance code due to a negligent attitude of the SG having led to the extinction of its action and by the same to that of its insurer against the GOLDAS companies.

They also consider that the bank does not provide proof of the principle and the quantity of its request since it does not provide proof of payment of the ingots to its suppliers.

Finally, more subsidiarily they seek a stay of proceedings and an injunction under penalty to produce various documents useful to the debate that the SG still retains.

In any case, they request the rejection of any claim exceeding the guaranteed principal.

The companies of the GOLDAS group, which recall that they only intervene on an ancillary basis, produce in the debate a witness statement which, according to them, contradicts the thesis of the SG and underlines that no criminal conviction has ever been pronounced. against them. They seek confirmation of the judgment and the dismissal of the SG of all its requests.

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Requests to “say and judge” and to “declare” do not seize the court of claims within the meaning of articles 4 and 954 of the code of civil procedure, they will not be answered.

On the voluntary intervention of the company XL INSURANCE COMPANY SE in that it comes under the rights of the company AXA CORPORATE SOLUTIONS INSURANCE

It is hereby acknowledged that XL INSURANCE COMPANY SE has acquired the rights of AXA CORPORATE SOLUTIONS ASSURANCE following the merger-absorption of the latter with transfer of portfolio effective December 31, 2019, AXA CORPORATE SOLUTIONS INSURANCE having been removed from the RCS on March 2, 2020.

On the conditions of application of insurance policies

It is advisable beforehand to examine whether the conditions of application of the guarantee of the insurance policies are met, the exclusions of guarantee being discussed by the parties on a subsidiary basis for the contractual exclusions, and infinitely subsidiary, for the legal exclusions.

SG asks the court to reverse the judgment insofar as it dismissed all of its claims on this point, essentially arguing that:

* it follows from the BCAs signed by the parties that SG had to have gold bars delivered at the request of its Turkish client, GOLDAS, who had to keep them on deposit for a limited period on behalf of the bank and confirm each month the quantities of gold held in stock; GOLDAS could then form purchase offers on all or part of the stock which had to be accepted by the bank; in the absence of acquisition by GOLDAS, the consignment period of the gold was extended or it had to be returned;

* in violation of clear contractual provisions organizing the precarious nature of the detention and recalling that the ingots were entrusted to it only in order to form an offer to purchase or to return them, GOLDAS fraudulently sold a very large quantity, in particular on the ISTANBUL Gold Exchange, with the intention of making a profit by collecting the proceeds of sale, USD delivering them to TURKEY and DUBAI by ordering the transfer of 336,420,763 USD delivered respectively to: GOLDAS MEYDAN (2350 kg), GOLDAS KUYUMCULUK (3250 kg), GOLDAS KIYMETLI (5200 kg) and GOLDAS LLC (500 kg) on the day of discovery of this fraud, February 18, 2008; *these acts constitute several criminal offences: - by application of the provisions of article 314-1 of the penal code, a breach of trust, the constituent elements of which are: a prior condition, here the delivery of ingots on a precarious basis, a material element, the diversion of ingots by GOLDAS between TURKEY and DUBAI, and a moral element, since GOLDAS was aware of the limitation of its powers over the ingots; - forgery and use of forgery by communicating false stock confirmations; to demonstrate this, it invokes article 441-1 of the criminal code and defines the constituent elements as follows: the material element is the transmission by GOLDAS of false stock confirmations and the moral element, the conscience of the company d alter the truth about stock confirmations;. - fraudulent maneuvers constituting a fraud; pursuant to Article 313-1 of the Penal Code, the constituent elements of which are a material element, here the maneuver to obtain deliveries and the moral element the conscience of deceiving the bank to determine it to carry out the delivery of the ingots; * the conditions for implementing the policy are met because fraud within the meaning of the policy is well characterized, the insurance cover not being conditional on the existence of a prior criminal conviction; the fact that a foreign court did not find an offense thus has no effect on the qualification of a criminal offense under French law; indeed, the policy contract (article 1.8) only mentions French law, the only law of which the insurer is aware at the time of subscription; the qualification of fraud within the meaning of the policy cannot therefore be excluded;

* it reports on its own research on Turkish law in order to demonstrate that even if this law were intended to apply, this would not exclude fraud committed by GOLDAS; to do this, it argues that the obligation to sell the ingots reported by GOLDAS does not exist, its only obligation was that of declaring the ingots to customs by mentioning the contract which allows this customs clearance; this declaration does not imply any transfer of ownership; GOLDAS was not obliged to proceed with a sale but only with a consignment with declaration of this consignment with the IGE, thus allowing its restitution to the legitimate owner; these elements show the bad faith of GOLDAS, which did not inform its co-contractor of the difficulties encountered with Turkish law; the Turkish decisions did not mention any transfer of ownership of the ingots; the breach of trust is therefore constituted, nothing preventing GOLDAS from acting in accordance with Turkish law and the contracts signed; * then, SG recalls that the practices between the parties, in their business relations, comply with the BCAs which they have complied with and which they have therefore not waived since they have carried out consignments, monthly confirmations of stock and the price paid was only the price set during pricing, and not during customs control; these business relationships therefore do not allow GOLDAS to be exempted from compliance with the BCAs, the parties having complied with these practices and therefore never having tacitly waived them; * the ingots entrusted are property and securities within the meaning of the policy contract (chapter 1 article 1.3) of insurance, the policy not providing for the condition of physical detention necessary to invoke the guarantee but " *all securities and all documents whose possession, for whatever reason, corresponds to the practices of the insured establishment* "; the definition of “insured goods and securities” cannot therefore be restricted to ingots which are in the hands of the bank and which come under so-called “network” activities; * the purpose of the fraudulent act was to obtain a profit for the GOLDAS group, author of the fraud.

Taking into account the deductible of 3,000,000 euros applicable to the 1st line and the ceiling of 110,000,000 euros, it is a total sum of 107,000,000 euros which is requested by SG, it being understood that each insurer will have to be condemned to the extent of its participation in the disputed insurance programme.

The insurers are asking the court to confirm the judgment insofar as it dismissed all of SG's claims on this point, essentially arguing that:

* the conditions of the guarantee are not met; indeed, according to the object and the conditions of the guarantee, the SG must provide proof that the fraud exists and therefore demonstrate the material element, the moral element and the fact that the fraudulent act must have the object of procuring a profit to the author of the fraud, or to a third party, and that the fraud relates to insured values; the police cannot intervene in what appears to be only a commercial dispute with the GOLDAS group; * the SG showed a serious lack of transparency as to the various procedures initiated, the nature and developments of the disputes between it and GOLDAS; his appeal is doomed to failure, in particular in that it aims to question a posteriori the decisions of the Turkish criminal judge, while continuing to conceal important documents and information; both the GOLDAS companies and SG reported a persistent civil dispute between them, of which the insurers were unaware and to which they are foreign; * the SG does not prove the material element of the offences: a- the breach of trust is not characterized within the meaning of article 314-1 of the penal code because the surrender was not made on a precarious basis (against restitution) but to allow the acquisition of ingots through the company GOLDAS;

- progressively, the clauses of the BCAs were no longer respected by the parties who broke away from them, in particular as regards the right to dispose of the ingots; in practice, the SG sent gold intended to be sold quickly on the market, with the consequence of sending documents different from those provided for in the original BCAs; in view of the considerable development of the commercial relationship between the parties, and in order to meet the needs of GOLDAS within the framework of its trading activities, the quantities of gold shipped have regularly exceeded the quotas initially provided for by the BCAs; until February 2008, however, relations between the parties developed without incident, GOLDAS having systematically paid for the ingots shipped; moreover, the evolution of the relations between the parties leading to the authorization of trading operations on ingots rejects this qualification; the respondents also insist on the fact that some of these developments took place outside the BCAs, leading to their implicit renunciation by the contracting parties (extension of the consignment periods beyond the limits of the BCAs, introduction of new practices which were not provided for by these agreements such as the mentions in the shipping and invoicing documents referring to the concept of sale and the extension of payment terms following delivery); finally, they recall the terms of payment put in place between the parties operating by cash on delivery; on the application of Turkish law, they point out that in view of the evolution of relations between the parties tacitly modifying the initial contract, the examination of the rights available to the parties during their exchanges therefore included the Turkish law; they also make another interpretation of foreign law and affirm that the transfer of ownership took place as soon as the ingots were handed over to GOLDAS, which explains why GOLDAS had a right of disposal over the ingots concerned; these provisions are mandatory and directly contradict the BCAs, preventing their compliance by GOLDAS; proof of the breach of trust is therefore not provided.

b- the material element of the fraud and forgery is not characterized either within the meaning of articles 313-1 and 441-1 of the penal code because the documents that the bank brings back to prove this offense are in reality the result of common practices between the parties, once the sales were made on the market by GOLDAS, a price adjustment was made with the bank (“pricing”); the documents therefore did not mention the stocks physically held but the operations carried out on the goods sent by the bank.

In the alternative, they point out that the proof of the moral element of these offenses is not reported either because GOLDAS had no fraudulent intent, did not withhold information, and could legitimately believe that it could dispose of the bullion with deferred payment. Furthermore, the GOLDAS group has never disputed its debt.

They then add that GOLDAS did not seek an illicit profit within the meaning of article 1.8.1 of the policy because the dispute arose from the absence of payment of the ingots by GOLDAS which therefore does not make a profit since its debt has always existed.

Finally, the fraud did not relate to insured values because these were never in the possession of the bank which had them sent to GOLDAS by an intermediary.

To complete their demonstration, the insurers point out that the warranty conditions are cumulative and that the failure of one of them prevents it from becoming effective.

They therefore ask the court to confirm the judgment insofar as it held that the existence of fraud does not appear to be proven and that it did not in any event relate to insured values. They indicate that the judgment may be supplemented as soon as the search for an illicit profit by GOLDAS has not been demonstrated either.

So,

Having regard to Articles 1134 and 1315 of the Civil Code, in their wording applicable here, prior to the entry into force of the ordinance of February 10, 2016 reforming the law of obligations, the general regime and proof of obligations;

SG has taken out an “All Risks for Banks” insurance program.

On May 22, 2007, separate contracts were signed for the following amounts:

- AXA CS policy no. 413.033.858.20 in the first line for a ceiling of 10,000,000 euros per claim and per insurance period and application of a contractual deductible of 3,000,000 euros;

- AXA CS policy n° 413.033.859.20, coming in second line, for an additional ceiling of 25,000,000 euros, after application of an absolute deductible of 10,000,000 euros, in co-insurance with GAN EUROCOURTAGE, to whose rights comes the ALLIANZ IARD: * AXA CS: 60% * ALLIANZ 40%;

- AXA CS policy n° 413.033.860.20, intervening in the third line, for a ceiling of 75,000,000 euros after exhaustion of the amount of guarantee of the second line policy and in excess of an absolute deductible of 10,000,000 euros per claim , the shares of the various insurers concerned being distributed as follows: * AXA CS: 40% * ACE EUROPEAN GROUP LIMITED: 5% * ZURICH: 13.67% * ALLIANZ: 8% * CHUBB: 20% * LIBERTY: 13.33%

The contract applicable to this dispute is the version of the policies that took effect on July 1 , 2007.
The policy includes a “FRAUD” section with traditional clauses in this area requiring the insured to file a complaint with the competent authorities and to inform the insurer precisely of the status of the proceedings initiated.

The object and conditions of the guarantee are specified in Chapter 2 of the contract "OBJECT INSURANCE »

With regard to the cover requested for the risk of fraud, the policy is intended to guarantee the insured (article 2.2 of the policy): " *compensation for damage suffered as a result of fraud, committed by any means, by one or more of the employees of the insured establishment, and/or by one or more third parties, acting with or without the complicity of the employees",* it being specified that *"only fraud relating to values defined above, quantifiable in accounting terms , may give rise to compensation.”*

FRAUD is defined as (see article 1.8):

“ *Any fraudulent act and any malicious act defined below, sanctioned by a text containing provisions of a criminal nature.*

By text containing provisions of a criminal nature is meant: - any Law, Decree, Order, codified or not, any Ordinance or Regulation of Supervisory or supervisory authorities;

- sanctioning the author of the incriminated acts, either by a custodial sentence or a civil right, or by a pecuniary sanction (fine for example), or by a prohibition to exercise an activity provided that it emanates from 'an Authority independent of the SOCIETE GENERALE Group '

It is undisputed that the police thus refer to a fraud sanctioned by a penal text of French law. It follows that an act sanctioned civilly, even serious (for example a fraud or a serious breach of contract) cannot fall within the forecasts of the police and that the guarantee is not due in the event of a simple dispute. commercial.

In accordance with French criminal law, the existence of a criminal offense presupposes the combination of several constituent elements, including: - the material element: an act or several acts (in the case of a complex offence), consisting in that the law prohibits; - the moral or intentional element: with particular reference to article 121-3 of the penal code, which provides that " *there is no crime or misdemeanor without the intention to commit it".*

It is provided in Chapter 10 of the policy: “OBLIGATIONS IN THE EVENT OF CLAIMS”, that it is up to the insured establishment to demonstrate the principles of the mechanism of guaranteed fraud in the sense referred to above giving rise to a declaration of claim.

In addition, the fraudulent act must have as its object to provide its author with a "Profit" for himself or for a third party. (page 7 of the contract; article 1.8.1)

PROFIT is defined as (cf. article 1.14): “ *Any undue advantage perceived by the author of the fraud for himself or for a third party* ”.

Finally, section 2.2 of the policy requires that the fraud relate to insured values. The term “insured assets” (cf. article 1.3) *means: “In general, any instrument the holding of which corresponds to the practices of the profession of the insured institution, and in particular, - coined cash, banknotes, coins, currencies, coins and ingots of precious metals, precious objects, negotiable instruments* »

The court notes first that the SG did not consider it necessary to file a criminal complaint or to bring a civil action before the French courts.

On the other hand, it initiated various proceedings, both civil and criminal, in TURKEY, DUBAI and ENGLAND against the companies of the GOLDAS group.

It appears from the numerous exhibits produced in the proceedings that the criminal qualifications were the subject of very long debates before several Turkish criminal courts.

Thus, the SG lodged a complaint, on March 18, 2008, with the prosecutor of BARKIKOY against the directors of the companies MEYDAN, GOLDAS KUYUMCULUK and GOLDAS KIYMETLI. On June 3, 2008, the criminal investigation resulted in a dismissal order issued by the prosecutor confirmed before the 6th Assize Court of ISTANBOUL, on July 7, 2008, then before the Supreme Court on February 20, 2009, all SG's appeals having thus been rejected by these various courts under the terms of reasoned decisions.

It follows that the Turkish courts considered that upon receipt of the ingots shipped by SG, GOLDAS necessarily carried out customs clearance operations to allow them to enter TURKEY under the definitive import regime. They judged that no contractual clause could limit the rights of the importing company (GOLDAS), that the only competent company concerning the goods (…) is the one which lists the gold on the Stock Exchange and the power of the latter does not can

be limited by the terms of the contract; that with regard to the qualification of the "consignment" contract, the notion of sale was favored, and this on the basis of the elements of the investigation which revealed the reality of the relations between the parties (who were not thus in no way confined to the terms of the original BCAs, which have since been largely outdated: " *The managers of the complainant companies and those of the suspect companies have been involved in a commercial collaboration for the purchase and sale of gold since 2003* "; that according to the evidence collected following the investigation carried out, the statements of the defendants, the content of the investigation file as well as the reasons mentioned in the dismissal order: *"there are commercial relations for the purchase and sale of goods between the complaining company and the companies represented by the suspects";* that the disagreement between the parties arising from the consignment contracts for precious metals dated April 27, 2005 revealed that the legal relationship established by said contract was different.

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The Turkish criminal judge thus came to the conclusion that the dispute was of a commercial nature, relating to the non-payment of the ingots, and in no case of a criminal nature: *"Following the long-term commercial activity between the parties, a purchase-sale relationship has been created, payment for the imported gold (…) has not been made (…) The contract stipulates sanctions in the event of non-compliance with one or the other party [in this case: non-payment by GOLDAS]. In this regard, the dispute has the quality of a [commercial] legal dispute, and from a criminal point of view, it has been concluded, according to all the contents of the file, that no act constituting an infringement requiring public action could not be identified".*

At the same time, SG took several actions before the civil courts to obtain various protective measures against the GOLDAS companies, which were also all rejected. GOLDAS, for its part, initiated a defamation procedure against SG before the ISTANBUL Commercial Court, the outcome of which has not been communicated to the court.

SG also lodged a criminal complaint in DUBAI against GOLDAS LLC: no follow-up seems to have been given to this complaint, SG maintaining, without justifying it, that the manager of GOLDAS LLC had fled.

SG then initiated several proceedings against GOLDAS before the English courts (precautionary seizure proceedings and proceedings on the merits in order to obtain the condemnation of the GOLDAS companies to pay it various sums, and this, in relation to the gold bars delivered) . A judgment rendered by the High Court in April 2017, dismissed the bank's claims without examination on the merits for abuse of process.

On March 12, 2008, SG finally initiated proceedings against the English insurers and brokers and requested the mobilization of the insurance policy taken out with English co-insurers specifically covering the risks of material losses linked to transactions in precious metals. SG indicates that these proceedings were terminated by means of settlements, including the one concluded with its insurers on April 13, 2012 (transaction at 8.5 million dollars taking into account the costs of advice).

At this stage, the analysis of the elements collected within the framework of the investigations by the various jurisdictions, does not make it possible to note the existence of criminal offenses committed by GOLDAS.

The SG considers, however, that the rejection of all the proceedings thus initiated by it and the fact that no foreign court has upheld a criminal offense have no effect on the qualification of a criminal offense under French law and that the qualification of the fraud by the civil judge within the meaning of the policy is therefore not excluded.

It is true that the existence of a criminal sanction is not a precondition for bringing into play the guarantee in question, so that it is irrelevant for the analysis of its applicability that no criminal judgment has been pronounced by foreign courts.

However, it should be added that the various elements produced during the investigations and instructions in the said foreign criminal proceedings can usefully be taken into account by the court in order to form a conviction.

The existence of only one of the three offenses alleged by the SG (breach of trust, forgery, fraud) would suffice to constitute fraud, an event generating the damages for which the mobilization of guarantees is requested to compensate all the damages.

On the qualification of criminal offenses

Considering the terms of the “BCAs” to which it is expressly referred which stipulate in particular: (...)

2. Consignment Service

(a) During the Availability Period, SG will periodically deliver bullion on consignment to the CONSIGNEE at the designated location in accordance with the terms of this Agreement.

(b) the CONSIGNEE is entitled from time to time to require SG to deliver bullion to him instead and to acquire the consigned bullion.

3 Shipping Requests

a) The CONSIGNEE may, on any business day during the availability period, request a shipment, provided that such shipment does not exceed, with all the ingots consigned, the maximum consignment quantity.

b) If a shipping request is made orally, it must be confirmed in writing by the CONSIGNEE and mention (i) the measured quantity, shape and purity of the bullion, (ii) the requested delivery date; (iii) place of delivery and (iv) premium. SG shall have no obligation to arrange shipment unless it has received satisfactory written confirmation of such request.

A shipment request is irrevocable and CONSIGNEE agrees to accept delivery of each shipment requested.

(...)

6. Ownership and Risks

a) SG retains ownership of all consigned bullion until the date of receipt of the purchase price and on that date, ownership of consigned bullion acquired by CONSIGNEE passes to CONSIGNEE. (b) at the time of the sale of any bullion consigned by SG to the CONSIGNEE, SG shall have full ownership of such consigned bullion and such bullion shall be free from any lien, right in rem or other interest in favor of third parties: (...)

8. Custody and insurance

(a) all consigned bullion shall be held on consignment in the safe deposit boxes of CONSIGNEE until acquired under clause 4(a) or returned, provided that: (i) CONSIGNEE retains all bullion deposited in a safe place, on behalf of SG. (ii) in respect of all consigned bullion, the CONSIGNEE shall, at its own expense, take out and maintain, at all times, insurance (...).

9. Payments

a) The CONSIGNEE shall pay the acquisition price agreed upon under Article 4 for the purchase of any consigned bullion, for the value on the settlement date specified in the final invoice, and shall pay all other amounts referred to in Annex 1, Part II, on the due date, in accordance with the terms hereof (...).

Breach of trust

Under the terms of article 314-1 of the penal code in its version then in force, prior to the law of December 24, 2020 :

“Breach of trust is the act by a person of embezzling, to the detriment of others, funds, securities or any property whatsoever which have been given to him and which he has accepted on condition of returning them, representing them or to make a specific use of it.

This offense can only be conceived insofar as the surrender was made on a precarious basis.

If the SG establishes the precariousness of the rebate with regard to the terms of the "BCA", the parties are in total disagreement on a significant evolution of their relations as well as the practices operated by them and on a possible transfer of ownership of the ingots that the rebate would have operated.

This question is decisive in qualifying the offense as breach of trust.

Under the terms of article 111-4 of the penal code, the penal law is to be interpreted strictly.

The breach of trust cannot only be analyzed (retained) with reference to the clauses of a contract which would no longer be applied by the parties and which would have been totally or partially the subject of a tacit renunciation. The effective evolution of the contractual relations between SG and the GOLDAS group and the development of a contractual relationship on the margins of the “BCAs” must therefore be taken into account.

The insurers claim that the essential and indispensable elements for the qualification of deposit (making available of a thing with a view to its conservation and its return) are not met, that on the one hand from the origin, it is the sale of ingots which predominates in the economic relations between the parties, and that in any event, an evolution of the relations between the parties has taken place and SG has carried out the deliveries of ingots no longer in terms of precarious discount but by transferring their ownership to a new framework outside the terms of the “BCAs” to allow the sale of ingots on the IGE by GOLDAS.

It is true that the elements of the file undeniably show a change in the commercial relations between the parties outside the terms of the “BCAs”.

The insurers are thus not usefully contradicted when they maintain that: *over the years, the original provisions of the “BCAs” were, in many respects, no longer applied by SG and GOLDAS with regard to the development of their relationship. in view of a major shift in business relationships to support trading activity for significant amounts of gold; * the “consignment” activity has developed and has been extended to the delivery of gold intended for use in the trading operations of the GOLDAS group on the IGE; the predominance was given little by little to its operations carried out by the GOLDAS companies on the IGE with considerable quantities of gold, which, by hypothesis (with regard in particular to the volatility of the prices) required very rapid sales for the benefit of third party, which the bank could not ignore); * over the months, transactions no longer resembled deposit transactions but purchase-sale transactions; * the bank had knowledge, since 2007 and at the latest on January 15, 2008, of the immediate use (upon delivery) of the gold by GOLDAS, although allegedly not purchased by it; * specific practices have been put in place to take account of market activities ("back-to-back") outside the framework of the "BCA"; (confer letter of December 4, 2012 from the broker MARSH); quantities disproportionate (more than 15 tons of gold) with the forecasts of the BCA contracts have been sent and the increase in the sending of the quantities of ingots is consistent with the evolution of the relations between the parties and the shipments of gold to support the trading activity of the company GOLDAS; terms of payment have been put in place; gold being paid by GOLDAS sometimes within 60-90 days, sometimes within 10 days (back to back); * the use by the bank of model shipping and invoicing documents modified and making direct reference to the notion of sale allowed GOLDAS to sell the bars on the market while the bars were paid for later.

The court thus rightly noted that the tables of sales on the IGE provided by the bank establish that the ingots were sold by GOLDAS within three days following their delivery but never later, and this, whatever the duration of consignment appearing on the “BCA” which could range from 10 days to three months.

In accordance with mandatory Turkish legislation (Decree No. 32 issued pursuant to Law No. 1567 on the protection of the value of Turkish currency), any member importing raw gold must register the imported gold on the Turkish Stock Exchange. ISTANBUL gold for sale within a maximum of three days.

It results in particular from the hearing of Mr. ULUCAY, director of legal affairs of the ISTANBUL Gold Exchange in the context of the Turkish criminal trial that an importing member cannot proceed with the registration of gold on the IGE and carry out operations, if the property has not been transferred to it: *“Moreover, all the documents (information form, importation and customs declaration) must be established as belonging to the importing company. It is not possible to add any restriction””* and that of Mr. UGURLU, a specialist in the IGE, who also explained in the context of the criminal trial that : *In order for operations to be carried out within of the ISTANBOUL Gold Exchange, the goods must have been physically recovered by the authorized company and have been drawn up to this effect (…). It is not a question for us of knowing the credit and debt relations between the selling company and the buying importing company; this is confidential information (…). It is not possible to carry out transactions on the stock exchange with standard ingots imported with a retention of title clause”.*

It follows that it is sufficiently established that the public order provisions of the Turkish law relating to the regime of the definitive importation and sale of gold on the IGE market, implied that GOLDAS, as Turkish importing company had to dispose of the raw gold imported as soon as it arrived on Turkish soil in order to clear it through customs,

submit it to the IGE, then sell it obligatorily on the gold market and the clauses of the BCA thus appear in contradiction with this law.

However, the court notes that SG, which declared that it had recognized expertise both on the gold market and on the Turkish market, cannot claim that it did not know the legislation of the country of the companies with which it had been trading for many years in view of its considerable experience in these markets and its long presence in this capacity in TURKEY.

The elements produced in the debates by the GOLDAS companies, following their voluntary intervention, confirm this analysis. GOLDAS indicates that it used the bullion in its trading or jewelry manufacturing activities before paying the price and believed that the property was transferred to it in order to be able to sell the bullion on the IGE, the price to be settled to the bank being subsequently adjusted (pricing) within the period agreed with the SG.

The court also rightly considered that the SG itself agreed that the “BCAs” which it calls “instruments of fraud” have been tacitly amended over the years so that the documents adduced in the proceedings are insufficient to characterize the mechanisms actually adopted by GOLDAS and the bank and to qualify them, either as deposit contracts or purchase-sale contracts, and therefore to establish whether or not the actions of GOLDAS are likely to be sanctioned by a text of the code French penal.

Finally, with regard to the moral element of the offence, not analyzed by the court, it will be noted that the practices have evolved on the margins of the contracts initially concluded, that GOLDAS has always claimed to comply with the said practices between the parties and with the law, that the managers of the GOLDAS companies have never called into question their qualities as debtors of SG before the various courts, have proposed to SG to settle the ingots by making a payment in installments taking into account the financial difficulties of the companies concerned , and could legitimately believe that they could dispose of the ingots with deferred payment.

fake and scam

Given the provisions of Article 313-1 of the Criminal Code in the version applicable to the dispute which states: *“The fraud is the fact, either by the use of a false name or a false quality, or by the misuse of a true quality, either by the use of fraudulent maneuvers, to deceive a natural or legal person and to induce him in this way, to his prejudice or to the prejudice of a third party, to remit funds, securities or any good, to provide a service or to agree to an act operating obligation or discharge.*

Fraud is punishable by five years' imprisonment and a fine of 375,000 euros.

Having regard to article 441-1 of the same code in the version also applicable to the dispute, which provides: *“Constitutes a forgery any fraudulent alteration of the truth, likely to cause damage and accomplished by any means whatsoever, in writing or any other medium of expression of thought which has the purpose or which may have the effect of establishing proof of a right or a fact having legal consequences.*

Forgery and the use of forgery are punishable by three years' imprisonment and a fine of 45,000 euros.

The lie is produced by an alteration of the facts that the document was intended to establish and must relate to facts that are truly materially inaccurate.

The parties discuss the documents sent by GOLDAS to SG, which claims that they are physical inventory statements and therefore constitute forgeries. According to the latter, the sending of “stock confirmations” by GOLDAS is the component of the forgery offense while these documents dated January 31, 2008 resulted in new deliveries of ingots worth 202,208,791 USD. and the directors of GOLDAS were guilty of a fraud by using “manoeuvres” “forming offers to buy on bullion that he had previously sold” originally, according to her, new deliveries of bullion.

The respondents reply that these statements are in fact the monitoring of trading operations carried out on the ingots sold and therefore on the ingots sent and not physically held, that the SG does not demonstrate any alteration of the truth characteristic of a false intellectual , a fortiori of an intentional nature, and no maneuver by GOLDAS; that it is in any case in no way established that the sending by GOLDAS of these “pricing” requests was intended to determine the bank to proceed with new shipments of ingots. ; that it appears from the Turkish decisions that the directors of GOLDAS sold the ingots on the market, with subsequent adjustment of the price with the bank (“pricing”); that GOLDAS indicated that this was the practice established between the parties and that by sending a pricing request to the bank on February 15, 2008, GOLDAS complied with this usual practice.

It appears from the documents produced in the proceedings that SG proceeded to send new ingots (“shipment”), according to the shipping requests sent by the GOLDAS companies and in view of the regular payments from which it also benefited; that it was indeed in the light of a financial relationship hitherto favorable to its interests that the bank continued its deliveries and in no way because of the receipt of litigious faxes.

The material element of both fraud and forgery is also not characterized within the meaning of articles 313-1 and 441-1 of the criminal code because the documents that the bank produces to prove these offenses make it possible to establish that they are in fact the result of common practices between the parties, once the sales have been made on the market by GOLDAS, a price adjustment was made with the bank (“pricing”).
The documents therefore did not mention the stocks physically held but the operations carried out on the goods sent by the bank.
The reference to the stock of gold can therefore be understood, in this logic, in the sense of quantities of gold dispatched by the SG and not settled on a given date.

For the same reasons as those mentioned with regard to the offense of breach of trust, GOLDAS having indicated that this was the practice established between the parties and that by sending a pricing request to the bank on February 15, 2008, it had complied with this usual practice, the intentional element of the offenses of forgery and use and fraud is not further characterized.

In any event, doubt in criminal matters benefits the accused. Therefore, it should be considered that the dispute between SG and GOLDAS is only of a commercial nature, with regard to the contractual non-performance due to the non-payment of the price of gold.

Thus, the SG does not provide proof that the actions of the GOLDAS companies constitute one of the three alleged criminal offenses and consequently of fraud within the meaning of insurance policies n ° 413 033 858 20, n ° 413 033 859 20 and n°413 033 860 20, which justifies its rejection.

The judgment will be confirmed without it being necessary to follow the parties more fully in the detail of their arguments.

On other requests

Given the terms of the decision, there is no need to respond to the other arguments developed relating in particular to the goods and values insured, the search for illicit profit and the application of the exclusion clauses.

The judgment will be confirmed in that it ordered SG to pay the insurers compensation for irrecoverable costs.

In case of appeal, the SG will be condemned to pay to the companies XL INSURANCE COMPANY SE coming to the rights of AXA CS, ALLIANZ IARD, CHUBB EUROPEAN GROUP LIMITED formerly called ACE EUROPEAN GROUP SE, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming to the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED a sum of 10,000 euros each under article 700 of the code of civil procedure for the irrecoverable costs incurred in the appeal as well as the full costs with application of article 699 of the code of civil procedure for the benefit of Maître BAECHLIN, lawyer at the court, and will be dismissed on his own request.

FOR THESE REASONS

THE COURT,
ruling publicly as a last resort by contradictory judgment rendered by making it available to the registry,

Notifies **XLINSURANCE** COMPANY SE that it comes under the rights of AXA CORPORATE SOLUTIONS ASSURANCE;

CONFIRMS the judgment, if necessary by substituted reasons, in its provisions submitted to the court;

Adding to it,

Orders SOCIETE GENERALE to pay the companies XL INSURANCE COMPANY SE coming under the rights of AXACS, ALLIANZ IARD, CHUBB EUROPEAN GROUP LIMITED formerly called ACE EUROPEAN GROUP SE, ZURICH INSURANCE PUBLIC LIMITED COMPANY, CHUBB EUROPEAN GROUP SE coming under the rights of CHUBB INSURANCE COMPANY OF EUROPE, LIBERTY MUTUAL INSURANCE EUROPE LIMITED a sum of 10,000 euros each under article 700 of the code of civil procedure for irrecoverable costs incurred in the appeal as well as full costs with application of article 699 of the code of civil procedure for the benefit of Maître BAECHLIN, lawyer at the court.

SOCIETE GENERALE **dismisses** its claim for irrecoverable costs and costs.

Reject all other requests.

THE CLERK **THE PRESIDENT**