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Private & Confidential
COUR D'APPEL DE PARIS
Paris
France

Date: 7 March 2022

Our Ref: YAL001.0001
Your Ref: Pôle 2 – Chambre 5 RG N° 17/05678

Dear Sirs

Re: Société Générale v Axa and others and Goldas as an Interested Party

We are instructed by Goldas Group member companies in relation to legal disputes past and pending, three of whom have been joined to this action.

We are instructed to supply a brief commentary on the factual background relating to the dispute in this case, Goldas Group members being the party whose trade with Société Générale (SG) is in issue and who stand accused of theft and fraud by SG.

Enclosed herewith are various documents to which reference is made, they are listed in the **Annex** attached. Most of the Items have a translation into French, however, the hearing bundle at 4.1 in not translated unless those parts extracted and exhibited elsewhere.

Goldas' position is that it was in a trading relationship with SG for more than four years. It was by any measure a massive trading relationship of some 500 tonnes of gold bullion. Goldas paid all sums due and owing on demand until 18 February 2008, leaving approximately 11.2 metric tonnes of gold unpriced, the subject of this litigation. It is SG's position that under the terms of the Bullion Consignment Agreements (BCA) it had with Goldas that the unpriced and unpaid gold 11.2 MT remained the property of SG. Goldas' position that the BCA was not strictly observed and in many respects had not been from the inception of trading relations in 2003. The BCA was an English law English jurisdiction contract. The reservation of title was not observed because the action of Turkish law and the physical observance of it by Turkish Customs officers meant that no one shipment of gold from SG could enter Turkey unless a full signed and stamped invoice from SG to Goldas accompanied it. SG supplied a full invoice for everyone of the 3,500 odd shipments it made. Furthermore the gold was, by law, shipped direct to the Istanbul Gold Exchange (IGE), where it had to be offered for sale on the market by

Goldas within 3 days of arrival. As for the shipments to Dubai, the Dubai courts' decisions were based on the fact that it was a CIF (Cost Insurance Freight) Invoice as such the gold belonged to Goldas after shipment, the BCA was irrelevant.

Numerous documents are attached hereto demonstrating the early trading position between the parties. SG in its long and ultimately failed litigation against its UK insurers was ordered to provide extensive disclosure detailing tape recordings of its internal and external meetings and telephone calls, letters, emails and other documents. Goldas only has access to the disclosure by way of documents/emails it was sent by SG at the time. Goldas knows of the existence of the material from reference to the submissions made to the court by the parties to that action describing the disclosure. Some of which is referenced herein and has already been brought to this court's notice by Axa, and is referred to as the Paragraph 21 documents.

However, it is important to focus on the fact that this action relates to the final 11.2 MT of 500 MT traded. The Paragraph 21 documents will demonstrate as is already known from the November/December 2007 email exchanges (**Item 1.2.1**), that SG knew that Goldas were using the gold before pricing and before making payment, yet despite this knowledge continued to ship vast and increasing quantities of gold by value to Goldas. There was nothing wrong, this was the established trading relationship, under English law it was the contract. What SG sought to do was to rely on the strict wording of the BCA knowing full well that Goldas were trading the gold before making payment to them.

We have proceeded by providing at **A)** an initial summary of the core point relating to the subject of this case, the 11.2 metric tonnes of gold claimed by SG; this is followed by a more detailed analysis of the SG submissions in this case at **B)** below.

A) SUMMARY

Goldas has supplied a considerable amount of complex material, some of it relating to the early trading period between SG and Goldas, which is valuable and descriptive of the existing business relations and operation of the contract. However, we believe that in order to expose the very core of the claim currently before the court we require disclosure of the materials described in Paragraph 21 of the Re Re Amended Defence and Counter Claim of the 1-5th Defendants in the London insurance litigation from 2009-2012 **Item 3** (or **Piece 50** to the Defendants' submissions) (the Paragraph 21 Material), we say this for the following reasons:-

1. Under the various BCA entered into between SG and Goldas, approximately 500 tonnes of gold was traded over a 4.5 year period. The $480m claims variously issued by SG against: Goldas in March 2008; London insurers in 2009; and French insurers in 2015, each related to the final unpaid 11.2 to14.7 tons of gold from the trading relationship. Likewise, the SG freezing injunction obtained against Goldas, which started all of these claims was in relation to that gold alone.

2. The gold in issue was shipped in the final seven weeks of trading. In the three month period (November 2007 to 18 February 2008) SG supplied Goldas with around 45 tons some $2.4 billion in gold. The

Paragraph 21 Material sought by way of disclosure in these proceedings, contains crucially important documents and recordings spanning that final 3 month period. The material is from SG's archive and includes emails and tape recordings of calls and meetings, which according to the pleading drafted by Dominic Kendrick QC, reveals that SG employees at high levels of seniority were fully aware that Goldas was using the gold before making payment; and that SG nevertheless continued to send gold to Goldas.

3. SG's concern was not to stop sending the gold, 31 December 2007 was the year end where all or very nearly all balances were cleared – SG could have walked away at that point. Instead SG accelerated shipments of gold, choosing to amend its insurance coverage adding a fraud clause. This is apparent from the wording of the Re Re Amended Defence (**Item 3**)as well as being referenced in the transcripts of the 3 and 5 April 2012 proceedings in the London Commercial Court before Clarke J (**Item 2.1**), that SG went to the insurance market to add fraud to its low risk policy, ten months into the one year term, and in January 2008 SG gave an indemnity to its brokers to hide the truth of its transportation, which was key to setting its insurance premiums for the next year.

4. As with many aspects of this case the parties' compliance with the strict terms of the BCA is subject to dispute. A credit risk application was completed by a Mr Zolynski 11 June 2003 (**Item 1.1**), the purpose described is *to conduct gold purchase, sale and hedging operations* not a consignment operation. There were numerous ad hoc waivers and relaxations by SG; a valid CIF open balance invoice was supplied to Goldas; SG exported the gold as a door to door shipment through Turkish customs using a sale and purchase agreement passing title in accordance with the strict requirements of Turkish law; and insured and delivered direct to the doors of the Istanbul Gold Exchange, where the gold had to be made available for sale, all of which is referenced in the 2016 1st and 3rd witness statements of Simon Rose (**Item 4** or **Piece 49 Defendants'submisson**). That said, for the purposes of this action, the state of knowledge at SG, of its and Goldas' adherence to the terms of the BCA throughout its existence, whilst highly important, is inevitably going to be less important than what we believe will be contained in the Paragraph 21 Materials. If those materials do indeed contain conclusive evidence that immediately prior to sending the 11.2 tonnes of gold in dispute in this case, then SG knew full well that Goldas was using the gold before making payment, meaning that the retention of title clause was a fiction, and therefore means that the claims made by SG must be abusive and that the injunction was obtained by perjury.

5. Goldas contends that the gold shipped by SG to Goldas was done so with the full knowledge and blessing of SG that Goldas were going to use it before paying for it - SG disagrees. The take away point is that, despite the handshake nature of the agreement and casual attitude of SG, which on Goldas' own case it never complied with the retention of title part of the agreement it being illegal to do so in Turkey (SG well knew having a local registered bank in Turkey). The first 500 tonnes or so of gold shipped were nevertheless bought and paid for in full by Goldas, no point is or can be raised by SG in relation to that (but under English law the facts behind the course of business dealings have to be taken into accounts in circumstances where there is a dispute as to the terms of the contract). Instead, it is the unpaid gold, the object of the SG claim, which is the focus of these proceedings. Based on what we

believe the Paragraph 21 Material contains, SG should have made an unsecured debt claim on the unpaid invoices – it did not. The injunction which brought the Goldas Group to its knees causing catastrophic losses, was obtained because of the affidavit of Florent Teboul Director of SG Precious Metals Department (**Item 4.1**). Goldas contend that from reading Paragraph 21 of the Re Re Amended Defence that the materials and descriptions referenced therein will show that the Florent Teboul affidavit was false and misleading, when he said had he known the gold was being used before payment he would have reported it to the police as a fraud as per para 42.4 of his affidavit below:

> "*42.4 I did not understand what Mr Yalinkaya meant by this statement. If he sought to suggest that SG allowed Consigned Bullion to be removed from Goldas' vaults before Goldas requested purchase and before SG received payment for any purchase (and so before title passed to Goldas), that is incorrect. I was never aware that Goldas engaged in this practice. If I had been aware of it, I would have had the same response as I did when Mr Binatli informed me the Consigned Bullion had been removed from Goldas' vaults (see 29.5 above and following - i.e., I would have seen this action as fraud and sought urgently to notify my superiors and protect SG's position as best as possible);"*

6. What Mr Teboul said is incompatible with the truth, in Paragraph 42.5 he goes on to confirm that he has ordered a review all data, phone calls and emails, this we believe formed some or all of the Paragraph 21 Material.

> "*42.5 I was not aware at any time that Goldas dealt with the Consigned Bullion otherwise than in strict accordance with the Agreements unless otherwise agreed by SO in writing. I have authorised the Compliance Department of SG to review all data, phone calls and emails to confirm this issue. The results of that check are not yet available.*"

7. In fact had the truth relating to the final 11.2 tonnes been told, it is our submission that no injunction would ever have been applied for, let alone granted. It is Goldas' belief that the truth relating to the final 3 month period rests in the Paragraph 21 Material.

8. A fundamental flaw in the SG case is that approximately 50% of the transaction it made with Goldas from or about 2005 were Back-to-Back transactions. They were based on and carried out using the unmodified BCA. They form almost half of the gold shipments which are the subject of this dispute. See attached schedule sent by Aneesh Deshpande to Goldas on 18 February 2008 (**Item 6**). It will be seen that it is entitled "Consignment and Gold Loans yet un-priced". The word "consignment" in this document meaning shipments/loans with two or three month payment terms; the word "loans" meaning back to back transactions with payment terms of 10 days. It shows that the Goldas Kiymetli shipment numbers 1970 to 1985 are "btb" (Back-to-Back) as is evident that they are for 10 days duration. Back to Back

loans/shipments can have no retention of title as they are designed for Goldas specifically to sell the gold on the Turkish IGE (Istanbul Gold Exchange) market and make payment immediately back to SG (immediately stretched from 2/3 days to 10 days), in essence they became a short term loan. Their existence is fundamentally in breach of the terms of the BCA retention of title, but until 18 February Goldas complied with the one remaining term of the BCA, namely that Goldas paid the agreed price. From 2005 back-to-back formed around 50% of transactions. There cannot both be a retention of title and a back-to-back transaction. Back-to-back means that Goldas sell the gold to a third party and then pay the money back to SG, retention of title is an impossibility. Nevertheless, the claim against the insurers is that all the gold was held on consignment until priced and paid, see email from Aneesh Deshpande to Cetin Binatli explaining the Back to Back (**Item 6**).

9. Added to this is a newly discovered fact that SG, in Goldas' successful strike out action of all SG's claims in London, represented to the Commercial Court and Court of Appeal that the value of its with Goldas were different to the values presented to this court. Paragraph 3.8(a) and 3.8(b) of SJS3 and exhibit ref SJS3/089-155 (**Item 4.1**) showing a list of all gold bullion transactions with Goldas. However, the documents submitted to this court by SG at 2.3.3 show the total trade value with Goldas was higher by around 0.05%, Goldas have conservatively calculated that over the 4.5 years of trading this would amount to in excess of $50m. They cannot both be correct and either the courts of London or Paris have been deliberately misled. It begs the question as to what accounting records were submitted on behalf of SG to its tax and regulatory authorities.

10. Goldas' contention remains constant, that the terms of the BCA were not followed from day 1 and that SG knew this, never once asking to inspect the gold during that 4.5 year trading period. Whether Goldas ever gets full disclosure of the internal SG position from day 1 is not an immediate concern, in part because it is not essential to the narrow claim that SG's action against Goldas was based on untruth; it would merely serve to emphasise the crushing extent of the mischief. After the November 2007 SG Risq department/Goldas emails (**Item 1.2.1**) (referenced within Paragraph 21 available because they were correspondence between Goldas and SG), in which Goldas confirmed in exchanges that it treated the gold as its asset. In addition, during the period of the other Paragraph 21 Material (which we have not seen), instead of ceasing all shipments straight away, SG shipped more gold than ever before. In that last 3 month period the bank sent to Goldas about $2.4 billion of gold (25% of total $ transactions in 4.5 years of trading). According to the pleadings of Dominick Kendrick QC in particular paragraph 21, SG did so in full knowledge that Goldas were using the gold before payment, this will be regarded as mischief enough. A further consequence would be that SG allowed Florent Teboul to perjure himself in his affidavit to obtain the freezing order, repeatedly relying on the same affidavit in 2017/2018, long after the disclosure exercises from the insurance case which first revealed the Paragraph 21 Material. This means that even SG's then lawyers, Clifford Chance (who had acted obtaining the WFO against Goldas; in the 2009-2012 London insurance litigation yielding the Paragraph 21 disclosure; and the 2017/8 strike out and appeal in London), must also have been aware from at least 2011, that the Teboul affidavit was false. Yet SG instructing these same lawyers continued to rely on Teboul's affidavit as a

document of truth before the Commercial Court and the Court of Appeal (new solicitors were appointed for the Court of Appeal).

11. It may be asked why Goldas employed such a broad spectrum of material in its strike out application as identified in SPTR 1 and 3, when in reality it was only the final three months that mattered. In short, without disclosure Goldas had insufficient evidence to make the three month point stick as a stand alone issue. Goldas had no resources to make a disclosure application, therefore it had to go-long with the material it did have, relying on the course of dealings point from the inception of the contract. It now transpires that Goldas and the French insurers need the Paragraph 21 Material to prove once and for all that SG knew full well before it shipped the final outstanding 11.2 tonnes of gold that Goldas were using it before making payment, and that the basis of this claim cannot rest on SG's wish to rely on the retention of title (ROT) in the BCA as a proprietary claim for its gold and not an unpaid debt is utterly misconceived.

Summary Conclusion

12. The starting point for any lawyer coming new to this case will be the BCA, the terms of which are categoric. However, for the last three months of trading SG's state of knowledge that there was no consignment will be equally categoric. At the new year when all balances were required to be zeroed and the agreement could have been ended, SG doubled down making a record-breaking January. It is unthinkable that SG seek to rely on the strict wording of the agreement whilst withholding the Paragraph 21 Disclosure, which one way or the other will reveal the truth.

B) DETAILED RESPONSE TO THE SG APPEAL SUBMISSIONS TO THE PARIS COURT OF APPEAL

13. In responding to the SG appeal submission in this case it is first necessary to understand the extent to which these issues have previously been litigated and subject to final rulings in various jurisdictions. It is also necessary to understand the extent to which the SG submissions on the facts is partial, incomplete or plain wrong. The Goldas parties do not know whether the SG submission is meant to be an honest attempt littered with mistakes and misrepresentations or a representation of the facts as the bank would like them to be in a post truth world. The difficulty is that many of the factual statements which together make up the SG appeal submissions are directly contradicted by documents appended to the appeal submissions already before the court, sometimes authored by or on behalf of SG.

14. During the course of these submissions, which are not, given the limited time available, intended to be an exhaustive critique of the SG position, we will review the facts of the case leading to the conclusion that SG's submission might be regarded, in effect, as an insurance fraud. Insurance fraud here being knowingly making a claim for uninsured trading losses, as though the loss was a result of a theft or fraud perpetrated against it. In order to do so close reference will be made to evidence previously submitted to other courts by the parties.

15. In order for the court to see and hear the incontrovertible truth of the matter, we request below that the court makes an order that SG provide disclosure of identified and numbered individual documents and tape recordings, which are known to exist and are in the possession of SG (and other defendants from its London Insurance litigation 2009-2012 (London Insurance Case). The London Insurance Case, as this court has been informed, was SG's attempt to seek recovery of the same losses it seeks to recover in these proceedings. We say SG falsely accuses Goldas of theft and fraud; SG will doubtless say that Goldas falsely accuses SG of perjury, insurance fraud, malicious prosecution, and specifically in relation to Turkey, running a claim in France and London, which would amount to customs and currency protection fraud. Given the serious nature of these allegations on both sides, speedy disclosure is sought so that the truth is laid bare before this court so that further time is not wasted on debate when the disclosure sought will settle the argument once and for all. The disclosure request is set out at the end of this document.

16. However, it is important to note that whilst the disclosure sought is expected to reveal the complete unvarnished truth, the fundamental issues belying this case have been extensively litigated over the past decade. Goldas and others have successfully rebutted SG's claims with a significant body of evidence. It is our submission that the evidence already available rebuts the SG claim, but the fact remains that despite repeated defeats SG continues to recycle and pursue its claims time and time again, besmirching Goldas' name, repeatedly accusing it and its officers of theft and fraud. So whilst we will detail the evidence available to rebut the claim, the court must understand that Goldas has a moral right to the disclosure sought to stop this endless litigation.

SG are serial losers litigating against Goldas

17. It is important to understand what steps SG has already taken to prove its contention that the gold was stolen. SG makes reference to its failed attempts to seek redress at paragraph 1.8 of its submissions, reporting on a litany of failure. This is nevertheless an inadequate reflection of the reality of the litigation process, disregarding and diminishing the importance of the findings of other courts. SG painted itself as the victim of fraud having lost 15 MT of gold bullion, it did so time and again returning to this theme. However, it was not a victim of fraud – far from it. SG invoiced all of the 'stolen' gold on delivery. This was part of a long term arrangement of approximately 3,500 shipments of some 500 MT of gold bullion. SG relies on a retention of title clause in an agreement of its design, the terms of which were entirely ill suited to reality of the transaction it was carrying out – a sale and purchase agreement CIF transaction (see below). SG's true action against Goldas should have been for late payment of its invoices in breach of the established course of business conducted over many years. Instead we will see that SG wrongly accused Goldas of fraud/theft and in so doing wrongly obtained a crippling Worldwide Freezing Order (WFO), claiming title under a ROT despite knowing that: it had issued an invoice; title had to pass for the gold to enter Turkey; and that Goldas were using the gold and treating it as its own asset before pricing and paying for the gold. It was no different to a shipper of goods providing 30 -90 day payment terms to its customer, the action lies in the debt, the invoice, not in the goods shipped.

18. It will be seen below that SG supplied a signed, stamped invoice to Goldas in order to actually and lawfully import the gold shipments into Turkey, actually because without the signed original stamped invoice the Turkish customs authority would not have and did not allow the gold to pass into the country. The importance and use of the invoice is set out in more detail below. Furthermore, SG at paragraphs 1.3.2 and 1.3.3 in its submissions to this court references and exhibits the invoices it received from the refineries Valcambi in Switzerland and Rand in South Africa. It exhibited the invoices it said to evidence the fact that it *"had to procure gold to make the required deliveries and bought it…".* SG cannot have it both ways, it cannot deny the effect of the invoice it issued and delivered (which it does), and at the same time rely on the invoice in its hands to prove that it purchased the gold.

19. For Goldas, a gold trader and jewellery manufacturer turning over $10billion USD, in an industry based on good name, reputation and trust, being accused of theft of 15 MT of gold, with a WFO, any debt it did owe to SG was soon wiped out by the collateral damage caused by SG's actions.

20. SG has commenced numerous actions against Goldas, with 16 'final' appeal court rulings concerning the facts at the heart of this case, but has failed repeatedly to achieve a single judgment order that has withstood appeal. In general after litigants lose a case they often take a pragmatic and commercial view, the decision driven more by cost than a belief in justice served. However, in this case money appears to have been no object to a vastly wealthy international bank, we can only speculate as to the bank's motivation in pursuing these claims. We will briefly narrate the history of SG litigation against Goldas.

London Commercial Court 2008 to 2019

21. On 15 March and 2 April 2008 SG obtained WFOs at SPTR 1 Exhibit Bundle A page A10/A331, based on the evidence of its officers Florent Teboul page A29 in the same bundle and Edward Pinnell at page A20 (collectively **Item 4.1**). The evidence of Florent Teboul in particular was crucial. He declared that he believed the BCA was being followed to the letter; that had he known Goldas was using the gold before making payment for it, he would have reported the behaviour as a fraud to the police (this is demonstrably false, for the many reasons set out in SPTR 1 for example paragraphs 21 to 35 and 41 to 84). However, reference made in paragraph 21 of the re re amended defence and counterclaim in the London Insurance Case to the existence of tape recordings of calls and meetings as well as documents and emails, means that if those materials are disclosed they will implicate Florent Teboul in Perjury (referred to in SPTR1 but extensively in SPTR 3 at paragraphs 36,38, 68-70,72; and is referred to by the respondent AXA in this appeal (**Piece 50**) at 17, 34 and 45 of its submissions). The point is that, if the documents and recordings from paragraph 21 are accurately described therein, then SG continued to supply the bulk of the gold shipped to Goldas, which forms the basis of SG's claim in this case, long after SG/Risq/Teboul discussed Goldas' use of the gold by before payment as outlined in the paragraph 21 documents. Indeed, AXA's response in this case was to seek a conditional order for the disclosure of the same paragraph 21 documents in its submission at page 60. If the disclosure sought is as described then SG must share the perjury for repeatedly placing reliance on Florent Teboul's affidavit to obtain the WFO and to defend the contents as being true in the strike out hearing

and appeal in London (below). The WFO was relied on in various proceedings in Turkey notably the criminal case. Any suggestion that SG may claim to have been unaware of the actions of its employees and officers in January 2008, cannot survive the London Insurance Case disclosure process where these issues were raised in the pleaded case paragraph 21 see above.

22. Goldas was mired for years in defending thousands of individual legal actions brought by SG and then substantially multiplied by those of other creditors, all triggered by SG's WFO and insolvency actions SPTR1 paragraph 193 (**Item 4 and 4.1**). Eventually, on 9 Feb 2016 Goldas issued an application in London seeking to strike out the SG claim against it and to have the WFOs discharged. It did so without the benefit of any assistance of the Insurer parties or their documents, save what was publicly available. Goldas' application was heard in January 2017 and a judgment of (now Lord Justice Popplewell of the Court of Appeal) dated 3 March 2017 provided a detailed ruling striking out the claim (**Item 4**).

23. Despite SG undertaking to the court on being granted the WFO on 15 March and 2 April 2008, that it would issue and serve the claim form(s) and serve the WFO(s), it failed to do so in accordance with the requirements set out in the Hague Convention in Turkey (see below). It separately failed to serve out in Dubai see paragraph 52 of Popplewell March 2017 (**Item 4**). Instead, knowing of its own failure to serve out in relation to both countries it failed to take any action to notify the court, withdraw the WFO, or rectify the failure and serve out correctly. Its lawyers were notified in writing of each failure; Turkey was a detailed explanation of the Hague Convention by Goldas' lawyer (paragraph 19 of Popplewell); Dubai was a short letter from the Foreign Process Section (paragraph 28 Popplewell) confirming that attempted service had failed.

24. In fact Popplewell's judgment ran to some 85 paragraphs, he not only struck out the claim for serious failings of breaching the rules, failing to serve the claims and abuse of process, he ordered that the WFO be discharged with immediate effect and requiring SG to write to all entities it had ever notified of the existence of the WFO, that the order had been discharged requiring SG to supply a copy of the judgment to the recipients of the WFOs. This was by any measure a damning finding against anybody not least an international bank of some repute.

25. The evidence relied upon by Popplewell J in making his decision and that of Lord Justice Longmore in the Court of Appeal, was primarily contained in SPTR1 and SPTR 3 on behalf of Goldas and SJS1 and SJS3 submitted on behalf of SG (**Item 4.1**). SPTR1 is in French (**Piece 49** of the Defendants' submission) and they are otherwise in English but we have translated into French some of the more salient paragraphs. Everything said in SPTR1 and SPTR 3 is supported by documentary evidence. The narrative employed by SG in its 2019 submission is brief by comparison having been prepared for a specific purpose. However, it is light on important detail particularly the trading relationship between SG and Goldas such it respectfully recommended that the court reads SPTR1, which sets out a fundamental and accurate narrative. The court has the evidence supplied on behalf of SG, which is by way of rebuttal.

26. The issue of failure to serve out in Turkey under the Hague Convention was a matter for expert opinion, that was until SG's own expert conceded that SG had by law failed to serve its own claim paragraph 4 Popplewell. SG includes in its submission paragraph 1.8.4 reference to the letters of its lawyers Pekin at its exhibit No. 69. There can be no good reason to include this information. Pekin were severely criticized in the 3 April 2017 Popplewell Judgment (**Item 4**), when he said inter alia: "incorrect advice from Pekin" paragraph 33(3)(c); "failure to do so in Turkey was the result of negligent Turkish law advice" (52); "In relation to service in Turkey, the erroneous advice of Pekin" (64); "the incompetence of SG 's Turkish legal advisers" (70.4). This is scathing criticism by any measure, it was of course for failing to effect service of the original proceedings in Turkey, yet despite this and losing repeatedly in the Turkish Supreme Court, SG keeps faith with Pekin and continues to instruct them in relation to the ongoing Goldas litigation in Turkey.

27. Whether Pekin deserve the criticism or whether they were acting on instructions is not important. What is concerning is that despite the findings of courts and SG's own abandonment of the Pekin service argument in London, it is a wonder that copies of the offending correspondence have been included in the documents now before this court; yet SG failed to include the judgment of Popplewell J, which systematically identified and ruled on the facts in dispute. Save for one element of discretion Popplewell's judgment was upheld by the Court of Appeal in full.

28. Popplewell in his judgment could not comment on the truth of Florent Teboul's affidavit because no witness evidence was called, and as there had been no application for disclosure, it not having been considered necessary for the central issue of strike out. There was therefore no disclosure of evidence before Popplewell's court. Despite reference to the existence of evidence contradicting the SG's case to its core, the court could not rule on evidence not put before it. SG and its lawyers maintained that they relied on Florent Teboul's affidavit evidence as being true. Goldas were able to demonstrate that SG had breached undertakings to the court and had breached rules of dealing with the court honestly and truthfully by continuing to rely on and keep in place the WFO when they knew that they no longer intended to proceed with the claim in the UK. Popplewell identified 3 major abuses committed by SG which he outlines at paragraphs 57, 60 and 64 of his judgment.

29. For example, SG had as a condition of being granted the WFO undertaken to serve the claim on Goldas as soon as possible but failed to do so. SG sent the claim by fax, post and by leaving at the premises of Goldas, but they failed to effect service as per the rules and requirements as set out in the Hague Convention. It may be that an international bank represented by two international law firms in this matter, Clifford Chance and Pekin, had not heard of the Hague Convention or were unfamiliar with its requirements. However, Goldas' then Turkish lawyers wrote to SG and both of its lawyers immediately on receipt of documents explaining in detail how their attempts at service had failed setting out the actual requirements for service on a company in Turkey. Despite this instead of correcting their error SG and its lawyers continued trying to serve as before. The Hague Convention can hardly be descried exotic, it is in daily use in Turkey, UK and France. In Dubai, SG similarly failed to serve the documents

this time its lawyers in London did follow a prescribed method for service out, but received a letter from the Foreign and Common Wealth Office saying that service had failed to be effected – despite this SG did nothing further to try to effect service. SG therefore had two claims totalling some $480 million against which it had obtained WFOs and had solemnly undertaken to the court that it would serve the claims. Yet it knowingly failed to take the necessary steps to effect service in Turkey and failed to take the necessary steps to effect service in Dubai. SG was under a strict duty to notify the court that it had failed to honour its undertakings, and/or to make an application to seek an alternate method of service. It could not in good conscience do that because it's failure in Turkey at least was because of its own shortcomings, which had been repeatedly brought to its attention. Instead the crippling WFO remained in place and was relied on in the Turkish criminal proceedings and insolvency proceedings. SG represented to the Turkish Supreme Court that the London claim had stalled because Goldas failed to engage. Lord Justice Popplewell was not impressed, he made as part of his order that SGs behaviour was an abuse of process, that they had 'warehoused' the claim deliberately to maintain the WFO in place. He discharged the WFO. On the subject of the para 21 documents and the information that, if released, will likely lead to a perjury claim against SG and/or Teboul, Popplewell ruled that as SG continued to rely on Teboul and in the absence of evidence other than what Teboul said, not having the disclosure, alternate or live evidence, he ruled that the WFO had been validly granted, but that it should be discharged one month after it was granted. He also awarded that there be an inquiry as to damages.

30. The case went to the Court of Appeal where Longmore J upheld the Popplewell judgment save that the damages order was cancelled on the basis of the length of time having elapsed. If the para 21 documents are as described, it is entirely expected that proceedings will be initiated against Florent Teboul, other members of SG and its team and SG. The WFO order would have to be revisited and Popplewell's ruling would have to be corrected as he and Longmore in the Court of Appeal placed reliance on the Teboul affidavit.

31. The reference by SG in its submissions to para 47 of the 2018 Longmore ruling is taken out of context, the court should read both judgments in full to make sense of it. The SG claim, for its asset the gold bars, lacked particulars of claim which were never served; any defence was never triggered because of the SG failure to serve. For the reasons set out herein, the proprietary claim made must have failed, had an alternate or replacement claim in debt been made for the $480m invoiced debt then ultimately any defence would have been in setoff and counterclaim. The $480m loss, whilst a large sum was minor compared to the losses Goldas suffered as a result of the SG WFO and actions taken against it. In any event this claim was struck out, and there is no possibility of SG making a new claim because of the operation of the Limitation Act. As will be seen below, SG were given every opportunity and encouragement to return to the London Commercial Court but failed to do so allowing the limitation period to expire and its debt claim for $480m along with it. The court might consider that missing the limitation period on its claim alone to be worthy of further consideration as it is incumbent upon SG to pursue its claims through the court to judgment to mitigate the losses of its insurers in this case.

Turkish Criminal Proceedings March 2008 to February 2009

32. This was an action by SG against the decision of the prosecutor not to prosecute Goldas and its board of directors for fraud and embezzlement of gold bullion. The first instance court rejected SG's challenge SPTR1 paragraph 98 as did the Turkish Supreme Court twice paragraph 41, 42 and 57 Appendix A SPTR 1 (**Item 4/Piece 49** of the insurer defendant submissions) and exhibit volume D/1/230 (**Item 4.1**). The findings of the various Turkish courts reveal that it was a commercial sale and purchase relationship; that there was a legitimate debt owed on the SG invoices by Goldas for the entirety of the gold delivered to it; that there was no retention of title by SG, the retention of title and consignment was valid until invoiced and imported; and in reliance on extensive expert opinion that the rules for the importation of gold, currency protection law, customs law and rules of the IGE implementing these utterly forbid the import of gold by anyone other than the owner.

33. Goldas are perplexed at SG' reliance at paragraph 2.2 of its submissions in this court to extracts of expert evidence from the Turkish Supreme Court and to new expert material from Turkish academics as to the operation of Turkish law in 2008. SG appears to be seeking to circumvent the findings of the Turkish Supreme Court despite it twice having ruled against SG on the subject see above. It is extraordinary that SG should purport to present a partial review of the evidence, in effect asking this court to go behind the decision of the final appellate court of a sovereign jurisdiction. The decision not to prosecute was challenged by SG through to 'final' appeal in the Turkish Supreme Court in June 2008. When the court ruled against SG it took the extraordinary step of making representations to Turkish Ministry of Justice. The Turkish Supreme Court were required to rehear the case, whereupon in January 2009 the court reaffirmed its earlier decision not to prosecute.

34. It should be noted that there have been no criminal proceedings or charges raised against Goldas, its directors or anyone so connected, let alone a conviction of fraud, yet SG has repeatedly accused Goldas of fraud and theft. SG has throughout its submission to this court stated that Goldas committed fraud and stole the gold – it has not.

Turkish Commercial Court March April 2008

35. SG made seven injunction applications issued in the Turkish Commercial Courts either failed or were successfully appealed by Goldas because they did not meet the criteria. These are dealt with at length in SPTR 1 Appendix A. Only one application was successful, it was an application for inspection of specific numbered gold bars in Goldas' vaults, there being no right of appeal Goldas were unable to challenge it. This search order was a futile gesture SG had already been informed by IGE that the specific gold bars in question had been sold and delivered to HSBC see paragraph 70 SPTR 3. Futile though the order was, SG paid a $14.2m USD bond into court as security for what was in effect a photo opportunity. The bond remained in court until or about March 2019, it was removed undercover of an application by Pekin in circumstances that compliance with the rules of service is again in dispute.

Turkish Commercial Court February 2009 to 2019?

Insolvency

36. The bankruptcy/insolvency of the Goldas entities with whom SG traded was sought by SG without first obtaining a judgment order in England. The first instance court granted a bankruptcy order against Goldas Meydan in 2011. This was appealed and the Turkish Supreme Court annulled the order. The court ruled that there was a valid English law and jurisdiction clause in the BCA requiring SG to first obtain a judgment order from the London Commercial Court, see SPTR 1 Appendix A paragraph 69 Exhibit D/2/327. SG appealed that decision back to the Supreme Court but failed. SG then took the case back to the first instance court but this time the court in reliance on the above Supreme Court ruling on the jurisdiction clause refused SG's application. This was reappealed to the Supreme Court twice. SG pursued each of the remaining Goldas entities but in each case the first instance courts applied the Supreme Court ruling on the jurisdiction clause. This is not perhaps the most intellectually challenging aspect of this case, jurisdiction clauses are in common use. However, after the first ruling in 2012 SG were then faced with the option of returning to the London Commercial Court to continue/restart the claim it had started and 'warehoused', but chose instead to keep trying its luck in Turkey with almost identical applications for the bankruptcy (albeit with slight variations). These applications were followed with the inevitability of night after day by word for word annulments, issued by the Supreme Court for the next 7 years – in fact 12 times the Turkish Supreme Court ruled on SG bankruptcy claims against Goldas in a bizarre exercise in attrition. Note that the UK limitation period didn't expire until 2014. An example extract from one of the Supreme Court of Appeals Decisions, Number 2016/389, states as follows:

> *"…it was acknowledged by the parties that the English Law and Courts were authorized for the purpose of determination of the amount of the debt, … Article 14(e) of the agreement, dated 27.04.2005 and executed by and between the parties, … the plaintiff should, thus, at first obtain a decision that would evidence the existence of its receivable at the said jurisdictions, and also that it should initiate bankruptcy proceedings and file action for declaration of bankruptcy of the defendant against the debtor in Turkey by referring to such decision, but that the plaintiff has initiated bankruptcy proceedings directly and in manner which would extinguish the choice of law and competent jurisdiction between the parties and which would, in particular, give rise to the fact that the receivable would be governed by the law of another jurisdiction, and that the actions of the plaintiff were not rightful…"*

Dubai Court

37. At about the same time as SG commenced action against Goldas in Turkey in March/April 2008, SG also commenced legal action against Goldas LLC in Dubai, using the same London WFO. SG's application for an injunction in Dubai was rejected as were two subsequent appeals. The history of the Dubai litigation is described in SPTR1 Appendix A chronological account of legal proceedings; and by

SG's previous London lawyer in SJS1 pages 86 to 90 (**Item 4/4.1**). There were no criminal proceedings in Dubai. SG's submissions to this court at 1.8.3 on this subject that the only action in Dubai was police investigation are manifestly inadequate to the point of being misleading and untrue.

38. London Insurance Case 2009-2012

39. Although this is not a claim against Goldas it is of relevance. After failing in the Turkish Criminal Courts and Dubai, SG commenced action against its insurers in London after initial success against Goldas in the Istanbul Commercial Court. SG has informed this court that the claim was settled on the eve of the trial in April 2012 after 3 years and numerous court hearings. There had been a number of hearings in which SG had been ordered to provide extensive disclosure. It transpired that SG had, as a matter of course, kept recordings of telephone conversations and meetings made on its premises. In addition, there were numerous documents and emails. These were placed on an electronic disclosure platform and by which method the defendant insurers and insurance broker defendants were able to review the disclosure. All documents and recordings were each identified by a unique number as can be seen at paragraph 21 of the re re amended defence and counterclaim (**Item 3/Piece 50 of defendant submissions**) referenced throughout this document.

40. All of these cases have, to a greater or lesser extent, dealt with the issue of whether SG was trading with Goldas on an invoice/sale and purchase agreement, or whether Goldas were holding gold on deposit by way of consignment until payment – with the exception of the Turkish commercial court cases ultimately turning on the BCA jurisdiction clause.

Understanding SG litigation strategy

41. The SG behaviour is as inexplicable as it is extraordinary, save when we consider that in all of these cases SG was seeking a short cut, to shutdown Goldas without the need for a detailed examination of the facts and circumstances. An examination which in an English court of law would necessitate the disclosure of evidence in the hands of SG (paragraph 21 material as a minimum) and that disclosed generally in the London Insurance case. The materials disclosed by SG, at that time, were described by its counsel Mr Moger QC during a hearing on 8 October 2010 (**Item 2**):

> *"We listed 25,259 electronic documents, 3,111 audio recordings, and 33 hard copy categories of documents, 21 of which are files, and I am indebted to Mr. Schaff for setting out at para.9 of his skeleton that that consists of 108,612 pages of documents and 114 hours of audio files. Can I hand to your Lordship, just by way of a specimen, I have not brought the document as a whole to court, a specimen of the various sections of the list. The top page is the list, a specimen page, the documents, as you see in the left hand column, beginning with document 23,845 of the electronic documents disclosed."* (SPTR3 A/I/78).

42. Pursuing legal action in London therefore carried the risk to SG that it would show the truth of SG's behaviour, proving that it knowingly traded gold with Goldas on credit terms under the guise of a BCA, and that it knowingly relied on the perjured testimony of Florent Teboul. It mattered not to SG that the action it took against Goldas, which it knew would precipitate its demise (SPTR 1 paragraph 175), terminating the employment of 3,500 people, stopping dead in its tracks the trading of a group business turning over some $10billion. It did so with the full expectation that this would be the outcome, all the while knowing full well that it had falsely accused Goldas of theft to achieve this end, strenuously trying to have the entire Goldas board imprisoned for stealing gold which SG knew long before shipment to Goldas that Goldas was using before making payment.

43. One conclusion which may be drawn is that it only mattered to SG that Goldas be put down to avoid the certain inquiry of its regulator, which would otherwise wonder at the behaviour of a bank which loaned 500 tons of gold without security, knowing it was being offered for sale within 3 days of arrival (by law) in a different sovereign nation. A sovereign nation ranked so low on the bank's country risk assessment that the amounts sent to Goldas far exceeded the amounts which could be loaned to the country itself.

44. Seen in this light SG's repeated appeals to the Turkish Supreme Court, whilst desperate and futile, may have been the least worst option. In terms of strategy there was the possibility that Goldas could have been worn down into making a filing error or missing a deadline. For the same reason the deliberate warehousing of the London claim, the 'failure' to effect service out by Clifford Chance and Pekin (by many measures arguably amongst the leading law firms in their respective jurisdictions), both being undone by the most basic of international document service rules, is unthinkable. This does raise the question for the Defendant insurers in this case: what recovery has SG made against its lawyers for the basic errors of failure to effect service? It must be incumbent on SG to protect its insurers by seeking redress against its lawyers in circumstances of such a gross and obvious failure.

45. In considering why SG would wish to avoid litigating the Goldas claim in London, consideration must be given to SG's own banking regulators and what they would make of it all. The regulators' interest, amongst other things, would have been focused on SG's claimed capital reserves and French banking liquidity rules. SG by its own repeated statements affirmed that the gold sent to Goldas remained SG's property on its own balance sheet up until the time it was paid for e.g. Mr Herve Kerdrel para 52 SPTR3. compared this to the November/ December 2007 email exchange between SG and Goldas paragraph 151 SPTR 1 and exhibit C/III/606 (and below) (**Item 4.1**). Here Goldas responded to SG and its Risq department requests as to how they were treating the gold on its own balance sheet, to which Goldas responded that it was an asset and a debt to be paid. It is difficult to see how Mr Kerdrel's statement could be maintained in light of the these email exchanges. The regulator would surely consider this to be a serious issue with both SG and Goldas simultaneously treating the same gold as their own asset on their own balance sheets. The email exchange came well before the outstanding balances were effectively zeroed for the annual SG year end, and before more than $2 billion in gold was sent to

Goldas during the next 3 months, with open balances of up to 17 tons at one point in January 2008. SG had to react, it couldn't keep treating the gold as its asset whilst Goldas was doing the same. Either, at the time they became aware reading the November/December 2007 emails, they were completely unaware of what Goldas were doing, in which case according Florent Teboul's March Affidavit, they would have reported it as a fraud, asked to see the gold, in effect taken all the steps as set out in section 1.6 of the SG submission, but in November/December, not February/March. Or, as is plainly evident, they were already well aware that Goldas were using the gold before making payment (because of say their informal agreement, Turkish law, the invoicing, the Back to Back sales) then they cannot show the gold on their balance sheets and accounts as their asset. Whatever the case they cannot do nothing. They absolutely cannot send $2-3 billion in gold, and certainly cannot continue to do so. November 2007 was of course critical for world banking with a liquidity crunch affecting banks in all major jurisdictions. On 24 January 2008 and 12 February 2008 the chairman of SG, Mr Daniel Bouton, and Mr Mustier, head of corporate banking, wrote separate letters of comfort assuring Goldas that all was well and that SG's liquidity was secure paragraph 74 SPTR 3 exhibit A/II/466-7. It would now appear to be the case that a part of SG's strategy was to utilise Goldas, ostensibly one of its biggest customers, to maximise revenue and to trade through the international crisis. This at least would explain the massive increase in gold shipped to Goldas from November 2007 onwards, and the failure of SG to do anything other than to shore up its insurance policies first to add storage and then to add fraud and embezzlement even though only a month or so remained on the existing policy at the time.

46. From this perspective the pursuit of repeated hopeless claims did serve a purpose, they were a convenient smoke screen, a diversion to avert an enquiry and to prevent evidence and the truth from emerging. Whilst SG are claiming that Goldas robbed the bank, SG would be perceived as the innocent victim, and there is less likelihood of an investigation as to the false declaration of assets and capital because it has been declared to have been stolen by Goldas. In fact SG could not say otherwise, the implications would have been potentially catastrophic. During late February and early March through to or about 17 March, SG and Goldas remained locked in meetings to resolve the issue. Goldas took this very seriously instructing Rothschild as financial advisors and Dominique de Villepin, SG using PWC. Goldas offered all of its assets and stock as security promising that it would repay SG offering an immediate substantial lump sum and the balance in 6 months. Negotiations were still afoot when Goldas learned that SG had issued proceedings, had obtained a WFO and had made a criminal complaint with a high risk of arrest and imprisonment pending investigation. Prior to the precipitous action by SG, Goldas had available lines of credit to the sum of $323m USD paragraph 181 SPTR 1 and exhibit C/III/740. Its share capital was popular and valuable, immediately prior to the WFO Goldas had shares available to be allotted which should have raised TL 510m see paragraph 190 SPTR 1. SG did not take the money offered. It could not treat the money as a trading debt as it could not expose itself to the inquiry into its trading which would surely follow.

47. Evidence did emerge from the London Commercial Court in the London Insurance Case, but Goldas was not a party, the case was settled using the secrecy of a Tomlin Order. The disclosure provided

between the parties cannot not be used outside of the case in which it was disclosed, unless that is any of the disclosure becomes documents of public record by being included in a court bundle placed before a judge in a court hearing. In this way some tantalising details have emerged from the court file and are referenced herein.

48. The criminal cases in Turkey were the initial strategy, placing heavy reliance on the UK WFO SG's Turkish lawyer made a criminal complaint against the entire board of Goldas. Had they succeeded the entire board of directors would have been held in prison pending investigation and charge. This alone would have prevented Goldas from trading (with no directors able to run or manage the business from their prison cells). At the time Goldas was enmired in SG law suits, opposing these without directors would have been impossible, let alone the task of dealing with day to day transactions without directors would have likely resulted to the swift collapse of Goldas .

49. Finally on the question of the seemingly endless series of failed insolvency applications to Turkish Supreme Court. When this approach seemed finally exhausted, the sister of SGs Turkish lawyer, Ms Pekin, through her own independent law firm in Istanbul on behalf of her client, the Bank of Nova Scotia, with a claim against Goldas Kuyumculuk pursued an identical claim for insolvency using the same methodology. Kuyumculuk was temporarily declared bankrupt, meaning that this court refused to join it to these proceedings, however, the Turkish Supreme Court on 29 September 2021 ruled that the insolvency order against Kuyumculuk was to be annulled.

SG preparations for a potential claim against its insurers

50. SG traded successfully with Goldas for 4 years until September 2007. There had been occasions when Goldas did not pay on time such as paragraph 71 SPTR 1 (**Item 4**), even as late as 22 January 2008 Mr Despande emailed Mr Binatli *"We have various payments which we have received with delay. Could you please arrange for these payments to be back valued for the correct value date?? If this is not possible could you please arrange to have the interest paid??"* SPTR 3 paragraph 83 exhibit C/II/303 (**Item 4.1**), surely an impossibility with a BCA. When Goldas needed a loan the 'consignment gold' was converted to a loan with no formality see for example paragraph 76 SPTR 1; back to back trading was instituted at SG's suggestion with Goldas being given payment terms of 10 days; SG routinely shipped gold on 30 day terms.

51. However, for whatever reason (it may have been the gradual uncovering of the Jerome Kerviel scandal internally at SG)/it may have been the international banking crisis/credit squeeze), in October 2007, which caused SG to change its insurance policy to insure gold on premises in Turkey see paragraph 39 of 5 April 2012 judgment of Clarke J (**Item 2**) "*Soc Gen had Mr Jugé that it worked in the same way with Goldas since 2002, with transportation only being insured originally and storage beginning in November 2007."*. It should be noted that this was midway through the insurance policy year.

52. Prior to this Goldas was responsible for insuring gold on its premises, this was logical because it had the insurable risk as it had title. Gold was originally insured by SG as far as Turkish Customs, this made sense because that was the point at which the invoice for the gold was delivered by SG ending SG's ROT and allowing the import to proceed as Goldas' property see paragraph 46/7 of SPTR 1 (Item 4) and the Turkish Supreme Court decision on the criminal case above. Goldas pointed out that the gold shipments should be insured door to door, as Goldas were not insuring the gold in transit as it was under SG's control until delivered, see Cetin Binatli email to Aneeesh Deshpande dated 09/03/2004 (**Item 6**). All deliveries were to the IGE where the gold was traded. Once in the IGE it was a matter for Goldas. Note Florent Teboul conceded in his affidavit paragraph 12.4.7 exhibit to SPTR 1 volume A/I/29 (**Item 4**), that the gold was delivered to the IGE, again explaining why no inspection was required of the Goldas vaults.

53. After the insurance policy had been amended to include storage, there followed the November/December 2007 emails (**Item 1.2.1**)(above) where Risq ask how Goldas treat the consignment gold before payment and Goldas answered that they treat it as an asset/debt. We have seen that gold trading massively increased at this point, indeed this was a consideration exercising the Paris Commercial Court in its judgment of 2017. The end of year closing of all open balances ensues, with flights booked to land in Istanbul with fresh supplies of gold in the first days of the new year.

54. Early January 2008 was a busy time for the SG Risq department. At the time SG was getting ready to announce the Jerome Kerviel affair, SG and its Risq department had a substantial number of tape recorded internal meetings, calls as well as memos and emails Paragraph 21(e) re re amended defence and counterclaim. The subject under discussion was that SG was aware that Goldas was using the gold before making payment. Rather than stop the trade immediately, which is what they say would have happened had they known Goldas was using the gold before payment (see above Florent Teboul affidavit 11 March 2008). SG called in their Cap Marine insurance broker (**Item 3** paragraph 21(e)vi) *"the discussion of the insurance protecting the Claimants , which took place in the Claimants' organisation (and with Cap Marin) from about 9 January 2008; in particular the discussion as to whether (1) it protected the Claimant in respect of the loss of gold which was being used (by Goldas Kuyumculuk) and/ or (2) it covered the Claimant in respect of "misappropriation" of the gold by Goldas"* note also para 21 and Clarke J 5 April 2012 Judgment (**Item 2**). SG sought an endorsement to its policy, only 2 months before the end of the expiry of the current policy term, seeking to have fraud and embezzlement added to the cover, on what was described as a low risk cover. On 30 January 2008, Mr Glover emailed Mr Jugé,: *"Re: Soc Gen. Please let me have your draft clause re:misappropriation and I will then have discussions with insurers to see what can be achieved."* Paragraph 35 of Clarke J 5 April 2012 (**Item 2**). That was Mr Juge of Cap Marine after meeting SG on 9 January 2008 and Mr Glover of placing broker Gooper Gay. SG through its brokers were actively seeking to change cover to include potential embezzlement or fraud by Goldas.

55. The fraud endorsement failed to be added to the London insurance policy being overtaken by the news of Goldas' default on 18 February reaching the market. The failure was not only because the endorsement was a highly suspicious alteration to be made particularly mid-term and so close to renewal on a low risk policy. But also because the insurers began to be concerned that the bank were not being honest about the quantities of gold and non-precious metals it was transporting and storing as it was seeking to rely on 2006 figures. As will be seen from the review of the evidence by Clarke J in his judgment 0n 5 April 2012 (**Item 2**), evidence which we have not seen, SG would appear to be misleading the insurers, or at least causing the insurers to be misled by the brokers, it did not transport non-precious metals at all, yet was claiming it did on an amalgamated precious and non-precious metal policy.

56. The transcript of Clarke J's hearing and judgment of 3 and 5 April 2012, reveal this to have been a very important event in the London Insurance Case. The broker defendants, Cap Marine and Cooper Gay, had recently settled the claim with SG. The insurer defendants had only just learned of the second fraud/attempted fraud against them, the withholding of the transit information. They brought this to the attention of the court in an application to amend their case based on new information received. The 3 April transcript details this at 1-15 and 28/29 in particular.

57. At line 25 on page 12 of the 3 April 2012 (**Item 2**) transcript Clarke J interjects as follows of SG and its brokers' dealings with the insurers:

> *MR JUSTICE CLARK: Well, let us look at that. What he says is, he seems to root around it, he read the file and he has found you negotiated last year a policy including three rates of transit. That was based on the second part of the agreed conditions, and the reason for that is there is no possibility to buy storage, pure storage coverage, and now you say that you do not need any transit coverage. I assume you think in fact you never did, so the question of insurers is why did you buy such a coverage, and why did you negotiate it so severely? Insurers have the feeling that you lied when you negotiated that coverage, just to get access to that specific market.*

58. Then at line 16 of page 14 of the 3 April transcript Mr Kendrick counsel for the insurer defendants summarises the position as follows:

> *MR KENDRICK …when the claim emerged in February, and the brokers pointed out there had been two mis-descriptions. One, on precious metal storage, which had omitted Turkey, and Goldash, and the other on non-precious transits, which Clifford Chance were involved at this time, and took the placement file so they could investigate, amongst other things, volumes. Instead of blaming the brokers at the time, for the precious metals problem, Soc Gen gave them an indemnity, and limited their liability to E&O cover. There was never any accounting the larger transits by Soc Gen; the position was left open, with the insurance department trying to press the non-precious to make declarations pointing to all those transit rates. Now, the brokers gave up trying to renew, and in the event the underwriters declined to accept premium and reserved their rights. Their suspicions had been aroused by that*

endorsement which Soc Gen had been trying to obtain, that they would have coverage for fraud by a trader such as Goldash, and those attempts went right up to the day before the loss was announced.

59. These are but example extracts from the oral submissions at the hearing, Clarke J had the benefit of reading the court bundle of documents, skeleton arguments and witness evidence when making his order, the court is referred to paragraphs 1-55 of Clarke J's 5 April 2012 (**Item 2**) judgment, though it is all deeply concerning. Paragraphs 34 to 55 deal with the January to March 2008 period, that is: the proposed changes to the existing policy to include fraud; the origin of the waiver provided to the brokers; the misrepresentation that there ever were any transit figures, and that therefore the amalgamated precious and non-precious metals policy was policy designed to mislead the insurers by not revealing the quantities of gold transported as the policy was to be fixed for any quantity unlike the base or non-precious metal shipments.

60. At paragraphs 2 to 10 of the 5 April judgment Clarke J explains some of the background namely that there are two departments at SG trading precious and non-precious physical metals. Non-precious metal trading was in warehouse warrants it needed insurance for metal in storage but not transport. At paragraph 3 precious metals required transit and storage and that *"Soc Gen provided gold in granular form to the refinery for conversion into gold bars"* (this is not what SG has represented to be the case in its current submissions to this court see its paragraph 1.3.2/3). At paragraph 7 Clarke J states: *"Mr Teboul of the precious metals department sought to cut the insurance premium to the bone. This was to be achieved by having one policy for both precious and non-precious metals, but with different terms applying to each. Each type of metal was, under the policy, covered for transit and storage on an all risks basis, and there were common conditions, but different bases of cover and different rates."*

61. Then at paragraphs 8 and 9 continues that: "*the cover for non-precious metal in storage was standard all risks cover, but the cover for precious metal in storage was warranted to be pure contingency cover only. It is common ground that contingency cover is a form of sleep-easy cover, although what exactly pure contingency cover means is a matter of dispute. It is agreed that a contingency premium is typically in the range of 25 to 40 per cent of the standard premium."* The point being that it was extremely low risk, but that jarred with the factual position that Mr Teboul and SG were widely aware of the relaxed approach taken to the application of the terms of the BCA. *"Mr Teboul required a fixed premium in relation to precious metals which could not increase no matter how much gold was shipped."* The non-precious metals section were content to rely on the amount of metal at risk.

62. It is truly extraordinary that SG found itself withholding its gold shipment figures seeking to rely on those from 2006; whilst pretending that it had shipments of non-precious metals, based on storage volumes, when it did not transport any non-precious metals. Both of these deceptions had the stated aim of fraudulently reducing SG's insurance costs.

63. At paragraph 53 Clarke J quoted from the 26 March 2008 email of Mr Pascal Richard, the head of the insurance department (presumably at SG) as follows:

> *"What I found when I read the file is this: you negotiated last year a policy including three rates for transit. The policy is placed on the specie market with marine conditions. The reason why it has been placed on this market is that there was no possibility to buy pure storage coverage. Then now you say that you do not need any transit coverage, and I assume you think in fact you never did. So the question of insurers is 'Why did you buy such a coverage?' and 'Why did you negotiate so severely?' Insurers have the feeling that you lied when you negotiated that coverage just to get access to that specific market. It is quite strange for them that the coverage that existed in the Aon policy could have been subjected to rate negotiation if you knew it would never be used. Insurers have in mind a business of $300,000. It seems that they are willing to recover that amount. They consider it as a contentious issue."*

64. At paragraph 132 Clarke J notes that: "*Mr Richard, who had familiarity with the point, was not involved in the negotiations. But it was a point of which Soc Gen, as a whole, had some knowledge.*"

65. Mr Teboul was featured in the paragraph 21 references showing prior knowledge that Goldas were using the gold before payment; he continued trading with Goldas; he was central to the requirement to cut the gold shipment insurance premium 'to the bone'; and was directly involved in what can only be described as the casually dishonest behaviour of SG through its officers, relating to its gold, looking the other way in relation to obvious breaches of its strict contractual documentation. However, Mr Teboul was not the bank, he could do none of these things alone, it is evident that SG had a serious problem of integrity as is evident by its Risq and other teams waiving through all of the January/February 2008 transactions, which alone are the subject of this dispute, long after they were aware Goldas were using the gold before payment; and the insurance team failing to provide truthful answers to direct questions, all to minimise cost and maximise profit, taking advantage of insurers and indeed regulators conditioned to expect the highest standards of behaviour and efficacy from one of the country's leading financial institutions. In addition, it was now (April 2012) apparent to SG that the insurer defendants and the court were aware of the following:-

> **Attempt Fraud 1**: was set out in re re amended defence and counterclaim, SG being fully aware that Goldas were using the gold before payment were trying to amend their insurance policy to include fraud and embezzlement;
>
> **Fraud 2**: as per 3 April and 5 April transcripts, the brokers used by SG (Cap Marine and Cooper Gay) became aware that SG had withheld information about their transit figures of non-precious metals. SG insisted on having a policy based on an amalgamation of precious and non-precious metal transit and storage. It transpires that there was no non-precious metal transit as such 100% of the transit was of precious metals.

Fraud 2A: SG by withholding of the 2007 transit figures for precious metals so that the insurers were having to base their insurance quote on out of date information, SG volumes of precious metal transactions grew over the period withheld, thereby compounding Fraud 2 above..

Fraud 3: SG by claiming reliance on the BCA retention of title clause to claim fraud/theft by Goldas, when all shipments subject of the SG claim post dated the date when SG was demonstrably aware that Goldas were using the gold before payment, when SG increased its exports of gold by value to Goldas.

66. When the brokers demanded the transit figures SG effectively rewarded them with a waiver limiting their liability (in the UK this would now be regarded as a red flag under the Bribery Act), whilst asking the brokers to continue seeking insurance cover in the market knowing the information supplied was wrong and misleading, both for the indorsement and the transit figures.

67. The London Insurance Case was settled a matter of days after Clarke J's devastating order. The settlement agreement which had remained cloaked in secrecy prior to its disclosure by SG in these proceedings contains the extraordinary wording at paragraph 12, that none of the parties can in any way assist Goldas against SG. If the statements which SG made in the London cases and many others besides had been true, or even near to the truth, there would have been no need for including paragraph 12. The fact remains that its inclusion was essential because otherwise SG would have been exposed to the risk that Goldas would have easily been able to prove that SG based its action against the Goldas parties using fraudulent means. That part of SG's own evidence deemed to have been in the public domain would have been sufficient to alert Goldas to the existence of evidence to prove the Perjury of Florent Teboul in obtaining the WFO and triggering litigation against Goldas globally. Maintaining secrecy was therefore of the utmost importance.

The trading relationship between SG and Goldas

68. In order to understand the factual matrix it is important to have an overview of the trading relationship, its genesis and what happened to SG's claim in London. SG at paragraphs 1.3 to 1.5 of its submissions provides an analysis which is wholly insufficient failing to give a clear understanding of what happened.

69. As has been stated above SG provided Goldas with approximately 500 tons of gold over a near 5 year period between September 2003 and February 2008. All transactions were under an agreement entitled Consignment Agreement and later BCA. On paper it was a consignment agreement with a retention of title clause. As is well established and adjudicated by the Turkish Supreme Court ref, the ROT failed for impossibility, see above. In reality the BCA was never and could never have been intended to operate as a consignment given the circumstances set out above. SG wanted to supply gold to Goldas, Goldas wanted gold on loan from SG, not the expensive liability of storing it until the day it needed it.

70. In 2002/3 SG and Goldas had been in negotiations which looked set to fail. Goldas wanted to borrow gold on 30 day terms, having made an approach to SG in November 2002 to SG's then employee Mr Gratton-Brunt (**Item 1**). SG required 110% security, there was no likelihood that Goldas would see the employment of a letter of credit to provide 110% security, their issue was liquidity; there was also a country risk problem with Turkey emerging from a roller coaster banking crisis in 2002. In July Mr Florent Teboul took over from Mr Gratton-Brunt. A credit risk application was completed by a Mr Zolynski 11 June 2003 (**Item 1.1**), the purpose described is to conduct gold purchase, sale and hedging operations not a consignment operation, see SJS1 Bundle A Vol 1 page 79 (**Item 4.1**). At the beginning of September 2003 the stars aligned and SG with incredible dexterity managed to obtain agreement by exchange of emails over a period of a day or so see SPTR 3 paragraphs 16 to 27 and SJS1/A exhibit Vol1/p75 onwards (**Item 1.2 and 4.1**). Mr Topolanski from SG gold trading agreed that gold trading could proceed on condition of a 110% letter of credit. Between 1 to 3 September 2003 Mr Teboul exchanged emails with Mr Binatli of Goldas on the question of a letter of credit it was unlikely but they would try. Within an hour of this exchange on 3 September there was an internal exchange of emails at SG that country risk would be satisfied and that interest could be reduced from 100% to 2% as long as there was a consignment agreement. A letter of credit was promised within the month in the email of Bellet dated 3 September, though none was ever discussed again with Goldas. Goldas were presented with a consignment agreement to agree and sign on 1 September 2003. It was signed and returned on the 3rd . The first shipment of gold was agreed between Florent Teboul and Cetin Binatli that day, as is clear from the internal SG emails that internal approval was given by Mr Renaurd on 10 September the date of the first delivery.

71. Goldas had no requirement, wish or legal capacity to hold gold on a consignment basis. It could be purchased on the IGE immediately or could have it shipped to it in a day or so, the problem was borrowing money to pay for it - see paragraphs 20 to 27 SPTR 1 (**Item 4**) and Gratton-Brunt witness statement dated 11 December 2008 (**Item 1**). Cetin Binatli confirmed that he was assured by Florent Teboul that the consignment agreement was a formality SPTR1 paragraph 26. The nature of the consignment agreement was that of a bank to bank in country agreement to allow banks immediate access to capital if required to ensure daily liquidity and regulatory necessity of having sufficient capital to be activated within a matter of hours or minutes. Few other institutions require gold in this way, and fewer other than banks are of sufficiently high repute that they would be trusted to hold it, or have the facilities to do so securely. It is uncertain as to whether and how often gold is shipped on this basis between banks in different cities, let alone different legal jurisdictions.

72. After the trading relationship had been well established, the question of using a bonded warehouse was raised by SG's Annesh Despande and was suggested to Goldas as an option when they sought to increase the amounts of gold they took. Goldas rejected this proposal and it went no further, see SPTR1 paragraph 56 to 61 (**Item 4**). Gratton-Brunt at paragraph 12 (**Item 1**) had mentioned the same concept in his witness statement when explaining the layers of security SG would require to ship gold to a company outside of France, these included a letter of credit and *"we would look at third partying the*

bullion during the consignment term prior to any purchase and payment (i.e. warehousing it with third party security firms such as Brinks Global Services or Securicor in their vaults at the local gold or metals exchange in the relevant jurisdiction)", see also paragraph 24b of his statement.

73. SG being a member of the stock exchange merged with the IGE, and having had a branch in country in Turkey since or about 1990, knew full well that the gold it sent to Turkey had to be owned by the receiving entity. It delivered the gold to the IGE vaults on arrival in country, and traded on the IGE within 3 days of arrival as per the rules of the exchange (above and in the Turkish Criminal case expert evidence referenced in SPTR1 and the annex there to **Item 4**). It is a wonder that SG in its submissions would challenge the evidence regarding the effect of the law and rules of the importation of gold into Turkey.

74. A problem occurred on the very the first shipment of gold by SG to Goldas. Turkish customs required proof that the gold was owned by Goldas. SG had supplied a 'Pro-Forma' invoice as per the contract. Turkish Customs rejected this and SG were asked to supply an unconditional invoice which they did. The Pro-Forma Invoice issue arose again shortly thereafter but SG again sent an unconditional signed and stamped invoice to Goldas which was presented to Turkish Customs where upon importation of the gold was allowed into Turkey, a detailed explanation with copy emails is set out at paragraph 49 to 53 SPTR1 and above. From then on SG sent signed final unconditional invoices to Goldas. It is to be noted that SG in its submissions continues to refer wrongly and without evidence to first invoice of each transaction variously being a pro-forma invoice, customs invoice or provisional invoice (see paragraphs 1.3.4; 2.3.3 of SG submission to this court), as was first stated by Florent Teboul in his affidavit date 10 March 2008. However, as stated above, if this were true and SG were genuinely placing reliance on the ROT in the BCA, it would mean that SG had actively participated in the biggest ever and most sustained gold fraud, customs fraud and breach of currency protection laws in the history of the Turkish state.

75. SG made over 3500 individual shipments of gold to Goldas over the 4.5 years between 2003 to 2008, this was accepted by SG in the London litigation. Every shipment required an invoice to Goldas identifying, along with the sale and purchase agreement, CIF terms, airway bill that Goldas was liable under the invoice to pay for the gold and that there was no ROT, a detailed explanation of the transaction process is set out at paragraphs 73 and 137 of SPTR1 (Item 4) and clarified at paragraph 48 of SPTR 3 (Item 4.1). In effect the ROT in the BCA applied as far as the Turkish border, at which point instead of being given the Pro-Forma invoice, Goldas and Turkish Customs received a full valid invoice. Every shipment was offered for sale by law on the IGE within 3 days of arrival. SG insured the gold in transit only, it did not have on premises insurance cover, ostensibly because after delivery it did not have an insurable interest (see above until November 2007). It had an unpaid invoice with no security whatsoever. Terms of the BCA were not followed, it bore no resemblance to the course of business dealings adopted by the parties, it did not reflect the reality of dealing and exporting gold into Turkey.

76. Goldas strongly contend that SG was aware of the use of gold from the very beginning. We have considered whether this whole problem could have been because of one rogue trader, Florent Teboul, but this would be impossible to conceive. It was not a series of paper transactions, it was a large and complex trade requiring the involvement of various departments within SG:

77. SG an international bank of high repute had to know the IGE and Turkey rules for gold importation. It would be unthinkable for an experienced international bank not to know what was happening to its gold in any event, but with a local branch and a membership of the Turkish markets it had to know these details. The decision makers at SG as referred to above may have been reckless, acted in haste, or were wrongfooted by the late introduction (by themselves) of a consignment agreement. But the email traffic from September 2003 above reveals that the momentum to conclude a deal with Goldas was entirely generated by SG. If it agreed a contract by mistake, or one which was impossible to satisfy Turkish law requirements, then even if SG were ignorant of the workings of Turkish law it should have at least been aware that it was sending a sale and purchase agreement and an unconditional invoice from the very first transaction. SG chose to rely on Goldas' inhouse legal opinion rather than its own international law firms. It is inconceivable that SG did not watch the first transactions like a hawk. The legal effect of the impact of Turkish law and the issuing of the invoice, without which the gold could not enter the Turkey, would be to blue pencil the contract removing reference to the ROT. Goldas complied with the rest of the terms, there was an occasional late payment or difficulties where chased consignments were converted to loans using the same BCA. SG introduced Back to Back transactions whereby Goldas were specifically to sell the gold to a third party and make payment within 2 to 3 days, as explained by Aneesh Deshpande in an email in 2005 (**Item 6**), again using the same BCA, again the ROT was a nonsense, it could not apply to a Back to Back transaction requiring the sale of the gold to a third party. It is important to note that Back to Back transactions using the BCA made up approximately 50% of trades, and just short of 50% of the claim by SG in this case relates to Back to Back transactions as is apparent from the Aneesh Deshpande email and attached schedule dated 18 February 2008 (**Item 6**). SG traded with Goldas for nearly five years prior to the 18 February default without once asking to check the physical condition of the vaults and the gold therein. This was not because SG was naïve, or even fearful for what they would find if they did check, but simply that they knew it was always intended to be a sale and purchase agreement.

78. The invoices, as opposed to Pro-Forma invoices, must ordinarily have triggered the SG finance, credit, and credit control departments to question the whereabouts of the payment immediately due against the invoices, the ROT would demand this. There was no credit agreement in place, yet payment would often not be made for 1-3 months, therefore there had to be a back office understanding in place that there was no ROT.

79. The Risq department had to consider the lack of security, the country risk, country law, the invoice and the export/sales documentation, all against a ROT contained within the BCA.

80. The Treasury/Compliance department to identify the regulatory requirement to maintain the level of the bank's reserves. Noting the nature of the invoice and lack of corresponding payment, the impact on the status of the gold on the balance sheet from an asset to a receivable. This would have been the same for every invoice issued.

81. SG's stance, that it believed that the consignment agreement solved all of these issues implies that its various departments were driving with their eyes closed. SG makes reference to a document headed Stock Confirmation Notice in its submission, this is extensively dealt with at SPTR3 paragraph 66, 68 and 69 (**Item 4.1**). The document's heading is a mismatch with its contents being *"for the purpose of our internal audit, we would like to confirm the outstanding transaction balances as of the date mentioned above with ourselves' and 'stock of gold quantity not priced and not paid"*. It was introduced 3 years into the trading relationship when the amounts of gold shipped warranted an audit check of unpriced gold.

82. There were numerous instances when it was apparent that SG knew that Goldas were using, the most startling of which are the previously mentioned paragraph 21 re re amended defence and counterclaim documents, which we do not yet have, but including the November/December 2007 string of emails between Florent Teboul and Cetin Binatli, which of course we do have, where Goldas explicitly stated that it recorded the gold as an asset in its accounts. One must wonder at what Goldas thought of being asked how it recorded the gold in its accounts having traded the same way for years. Risq had their answer, the response was to massively increase the amount of gold by value shipped, almost 20-25% by value of the 4.5 year trading was shipped after this exchange and all of the gold, the 11.2 metric tonnes, which is the subject of this dispute.

Disclosure Requests

83. **REQUEST 1** Disclosure of the hearing bundle and skeleton arguments from 3 April 2012 hearing should be provided by SG

84. **Reason** as this goes to the heart of the good faith insurance contract, should SG be allowed to rely on the AXA insurance contract in this case when it would appear only required to do so because it lacked good faith in its dealings with its primary insurer? The court should take into account the concern expressed by Clarke J in the London Commercial Court for the activities of SG as revealed in the judgment of 5 April 2012 and the transcript from the associated hearing on 3 April 2012. These demonstrate that SG was misleading the insurers by way of the brokers to get a cheap deal on its gold shipments insurance, yet whilst we have not seen the supporting evidence underlying the judgment, both it and the transcript are persuasive, on their face indicative of a tawdry affair not fit for a banking establishment of any repute.

85. **REQUEST 2** Disclosure of the settlement agreement dated or about 30 January 2012 between SG and the brokers Cap Marine and Cooper Gay and the associated waivers given to the brokers in March 2008.
86. **Reason 2** the 3 April 2012 hearing makes reference to the settlement of the claim against the brokers Cap Marine and Cooper Gay, the impression given is that money changed hands. However, no copy settlement agreement has been provided by SG leaving the misleading impression that it only reached a settlement agreement with the insurer defendants. Note SG in its 1st June 2016 submission (exhibit/piece 81), where it says: *"SG's claim against its British brokers and insurers enabled it to recover an amount of USD 12.5 million (up to USD 4 million from brokers and USD 8.5 million from insurers)".* Yet, at 1.8.5 of its submission to this court SG states that it recovered $8.5m USD, which is misleading.

87. **REQUEST 3** Disclosure of the documents and tape recordings referred to and individually identified in paragraph 21 of the re re amended defence and counterclaim of the 1st to 5th Defendants in the London Insurance Litigation.
88. **Reason 3** in short to demonstrate the truth or otherwise of SG's assertions that it was unaware of the use of the gold by Goldas prior to 18 February 2008. To demonstrate whether or not Florent Teboul committed Perjury by his affidavit dated 10 March 2008. Furthermore, we are aware of the AXA conditional submission requesting the disclosure referred to in the re re amended defence and counterclaim.

89. **REQUEST 4** Disclosure of the hearing bundles and supporting skeleton arguments from the interlocutory hearings in the London Insurance Case, for hearings dated: 20 November 2009; 7 December 2009; 19 February 2010; 27 May 2020; 2 July 2010; 25 July 2010; 8 October 2010; 23 March 2011; 27 July 2011; 10 October 2011 (and of course from request 1 above 3 and 5 April 2012).
90. **Reason 4.** These are documents of public record. They have been read or referred to in open court and largely relate to Goldas and its private affairs and dealings with SG, yet having been disclosed and made public Goldas has not seen them and is only able to speculate as to their content in circumstances which SG is declaring Goldas to be a fraudster and cheat where the truth or otherwise of those statements is to be found in the disclosure sought. See below the section headed French Banking Secrecy for further support to this argument.

91. **REQUEST 5** Disclosure of the complete electronic disclosure platform from the London Insurance Case as referred to at page 26 line 20-36 and following page of 2 July 2010; in addition further reference to a specific search in the hearing transcript by SG's own legal counsel, Mr Moger in the 8 October 2010 transcript.
92. **Reason 5** disclosure of the paragraph 21 documents will show a crucial snapshot of SG's dealings with and pertaining to Goldas. Disclosure of the platform will enable Goldas to identify documentation from across the trading period demonstrating the truth of its trading relationship with SG. And for the reason set out in 76 above, and the French banking secrecy section below.

93. If the court wishes to get to the truth of what happened and whether SG's allegations of fraud repeated in SG's appeal submission are true and the statements and accusations it has made are in any way defensible, then SG should be ordered to make available the disclosure platform, and at the very least the trial bundles as well as the skeleton arguments and hearing bundles and witness statements from the interlocutory hearings of the London Insurance Case. All of the aforementioned documents and recordings will be easily available and conveniently archived. These disclosure platforms were in their relative infancy at the time, the use of such platforms is of course nowadays commonplace, artificial intelligence/machine learning as a matter of routine such that documents and voice files can be searched and interrogated with a high degree of efficiency. However, we have one advantage the insurers did not have, that being the benefit of the insurers having examined the data and provided some useful analysis.

94. SG has repeatedly stated that Goldas has committed fraud, if so this must by extension apply to the entirety of its trading relationship with SG. It is not enough to clear its name in relation to a handful of transactions it must be able to do so in relation to them all.

French Banking Secrecy Rules

95. The disclosure platform primarily relates SG's dealings with Goldas, it is understood no documents, or electronic documents or recordings (collectively referred to as the Documents) pertaining to any other of the bank's customers were disclosed. Goldas gave no consent to SG to disclose any Documents relating to Goldas to any other person. Goldas is now in the invidious position that its private files Documents relating to it have been disclosed to others wholly unconnected to Goldas, without Goldas being allowed to view them. In any event SG must disclose to Goldas all the Documents disclosed in the London Insurance Case so that it can make an assessment thereof to establish what action can be taken against SG.

96. If the court decides to order disclosure Goldas consents that disclosure be made to the other defendants herein.

Yours faithfully

Morgan Rose Solicitors

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