

## AFTER DELIBERATE

### Facts

Société Générale (or the BANK) declares that it was approached in 2003 by the GOLDAS group to carry out operations on the gold market; the GOLDAS group brought together several companies specializing in the manufacture and sale of jewelry, mainly located in Istanbul and Dubai.

Between July 2007 and June 2008, Societe Generale benefited from an annual insurance cover called "All Bank Risks", with a global reach of 110 million euros, covering property damage and the risks of fraud, - after the Police; this coverage consisted of three successive lines, with insurers SA AXA CORPORATE SOLUTIONS ASSURANCE (hereinafter AXA), SA ALLIANZ I.A.R.D. (hereinafter Allianz), SA Zurich Insurance Ireland Public Limited Company (hereinafter Zurich), CHUBB INSURANCE COMPANY OF EUROPE SE, (hereinafter Chubb), SA LIBERTY MUTUAL INSURANCE EUROPE LIMITED (hereinafter Liberty) and ACE EUROPEAN GROUP LIMITED (hereinafter ACE).

Between January 3, 2008 and February 15, 2008, the BANK bought gold for more than 326 million USD (price on February 18, 2008) according to the following scheme: it bought ingots from a supplier, most often located in South Africa, then instructed a transporter to deliver them to GOLDAS, to whom they were therefore physically handed over. The BANK declares that these ingots were the subject of contracts called Bullion Consignment Agreements (BCA), a contract under English law originally designed in the financial center of London.

According to the text of these BCA contracts, it was stipulated that the BANK would remain the owner of the ingots that GOLDAS had to isolate; that GOLDAS did not have the right to dispose of the ingots but could form an offer to buy all or part of the stock according to its own needs; that in the absence of an agreement between the BANK and GOLDAS on the conditions of the sale, either the BCA contract was extended, or the ingots had to be returned to the Bank. Through this practice, Societe Generale expected double remuneration: remuneration paid by GOLDAS in proportion to the duration of the BCA and the realization of its own margin on the sale of gold.

During a meeting which took place in a large Parisian hotel on February 18, 2008, GOLDAS informed Société Générale that the ingots which had been entrusted to it were no longer in its safes. Here, according to Societe Generale, I recount this interview: "to compensate the Bank, GOLDAS imperatively asked him to deliver three additional tonnes of gold; being listed on the stock exchange, GOLDAS proposed to sell these three tonnes to buy its own shares, which would have increased its value and sold them; the Bank did not give in to the blackmail of GOLDAS and refused to lend a hand to what would have constituted a clear market breach; on the other hand, she repeatedly asked to be able to inspect the GOLDAS coffers, which was refused; on March 4, 2008, while the representatives of the Bank were discussing with GOLDAS in an attempt to obtain the return of the ingots entrusted, one of

the directors and the shareholder of GOLDAS sent a fax proposing to buy 11.3 tonnes of 'gold above; a second fax on the same day stated that the parties had agreed on a sale price and asked for payment terms; Societe Generale replied that this offer was unacceptable for various reasons - if only because GOLDAS could not unilaterally fix the price of bullion belonging to the Bank - and urged clarification on the location of its gold ”.

In March and April 2008, Société Générale lodged a complaint against GOLDAS, in Turkey, in Dubai and in England, because it alleges that GOLDAS had sold entirely, mainly on the Istanbul Gold Exchange, or used the ingots entrusted, without no consideration, and would thus have violated the BCA She believes that GOLDAS embezzled a total of 15,725 tonnes of gold bars belonging to her These criminal complaints did not give rise to prosecution.

Wishing to bring into play the guarantees of the Police, Société Générale declared the disaster to its broker Marsh on May 29, 2008 who transmitted the declaration of disaster to the insurers in defense. Then, between 2008 and 2012, although it had not filed a claim with its insurers, it validly interrupted the prescription of the action.

By letter dated March 8, 2013, the defense insurers refused their coverage.

This dispute arose out of the refusal of insurers in defense to indemnify Société Générale, under the “All Bank Risks” policy, from the financial consequences of the damage it claims to have suffered.

## Procedure

By act of July 31, 2014, Société Générale assigned AXA, ALLIANZ, Zurich, CHUBB, LIBERTY and ACE.

Pursuant to the provisions of article 446-2 of the code of civil procedure, the court will retain the last requests formulated in writing by the parties which have agreed.

By its summary conclusions supported at the public hearing of September 21, 2016 and in the last state of its claims, Société Générale asked the court to:

- Order AXA to pay Société Générale the sums of € 7,000,000, € 15,000,000 and € 30,000,000, that is, its shares and portions in respect of the “All Bank Risks” policies of the first, second and third lines;
- Order Allianz to pay Société Générale the sums of 10,000,000 euros and 6,000,000 euros, that is, its shares and portions in respect of second and third line “Bank All Risks” policies;

- Order ACE to pay Société Générale the sum of 3,750,000 euros, that is, its share and portion under the third line “All Risks Bank” policy;
- Order Zurich to pay Société Générale the sum of 10,252,500 euros, that is, its share and portion in respect of the third line “All Risks Bank” policy;
- Order Chubb to pay Société Générale the sum of 15,000,000 euros, that is, its share and portion in respect of the third line “All Risks Bank” policy;
- Condemn Liberty to pay Société Générale the sum of 9,997,500 euros, that is, its share and portion in respect of the third line “All Risks Bank” policy;

In all cases,

- Judge that the sentence to intervene will be accompanied by interest at the legal rate to from the issue of this summons, that is, on July 31, 2014;
- Judge that these default interest will themselves bear interest at the legal rate in accordance with article 1154 of the civil code;
- Order the provisional execution of the decision to intervene notwithstanding appeal, constitution of any bond or guarantee;
- Convict in solidum AXA, Allianz, ACE, Zurich, Chubb and Liberty to pay Société Générale the sum of 613,450 euros in application of article 700 of the Code of Civil Procedure, to perfect the fees incurred for the preparation of these presents conclusions;
- Order AXA, Allianz, ACE, Zurich, Chubb and Liberty to pay all costs in solidum.

By its conclusions supported at the public hearing of September 21, 2016 and in the last state of its claims, AXA asked the court to:

- Discard Société Générale of all its requests, ends and conclusion;
- declare AXA excluded;

In the alternative,

- Suspend the decision pending the communication by Société Générale of the authorizations of its internal credit committee which it had to request to increase these ceilings “Maximum Consignment Quantity” and the “Maximum Consignment Duration” provided for under the terms BCA;
- Judge that AXA is admissible and well founded to oppose its exclusion clauses stipulated in articles 7.9, 7.14, 7.16, 7.18 and 7.2 of the Police;
- Discard Société Générale of all its requests, ends and conclusions.

In an infinitely subsidiary way,

If by extraordinary means the court judges that the fraud guarantee is applicable:

- Judge that the maximum amount of the sentence of AXA cannot exceed the sums of 7,000,000 euros, 15,000,000 euros and 30,000,000 euros, corresponding to its shares and portions under “all risks” insurance policies bank »N'413 033 858 20, N ° 413 033 859 20 and N ° 413 033 860 20;
- Suspend ruling on the payment of compensation pending:
  - o Communication by Société Générale of parts justifying:
  - Stay of proceedings in England
  - The purchase of ingots by Société Générale from refiners
    - o From Société Générale's confirmation that it has received no sum from GOLDAS in connection with the diversion it alleges of 11.3 tonnes of raw gold, it being understood that in the event that the Societe Generale would have received a sum, the latter must precisely justify the quantum and communicate the decision of any kind whatsoever or the transaction which determined GOLDAS to compensate it.
- Give notice to AXA that it reserves the right to conclude anew on the quantum of damage.

In any case,

- Reject the request for provisional execution of the decision to intervene;
- order Société Générale to pay the costs;
- Condemn Societe Generale to pay to company A: XA the sum of 237,949 euros before tax (sic) under article 700 of the code of civil procedure.

By their conclusions N ° 4 supported at the public hearing of September 21, 2016 and in the last state of their claims, Allianz, ACE, Zurich, Chubb and Liberty asked the court to:

Mainly,

- Refuse Société Générale of all its requests against ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY;

In a very subsidiary way,

- Judge that the exclusion clause 7.14 (insolvency of customers) is applicable in this case;
- Therefore dismiss Société Générale of all its claims against ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY;
- Judge that exclusion clause 7.16 (financing transaction) is applicable in this case;
- Consequently dismiss Société Générale of all its claims against ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY;
- Judge that exclusion clause 7.18 (lack of existing procedures) is applicable in this case;
- Therefore dismiss Société Générale of all its claims against ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY;
- Order Société Générale to produce all the manuals, directives and memos constituting the internal procedures in force at the time of the events within Société Générale within the framework of the activity relating to precious metals and suspend the proceeding pending this production;
- find that exclusion clause 7.9 (unexplained disappearances) is applicable in this case;
- Consequently dismiss Société Générale of its claims against ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY in respect of the 500 kg of gold delivered to Dubai;
- Judge that if GOLDAS were to be qualified as a correspondent, exclusion 7.2 would apply in this case;

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- Consequently dismiss Société Générale of its claims against ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY in respect of the 500 kg of gold delivered to Dubai;

In an infinitely subsidiary way,

- Order Société Générale to produce any document justifying steps taken to preserve the rights of insurers and / or cover its losses, in particular:

- o The records exchanged in the framework of the English procedure following the divestiture of the Turkish jurisdictions to find out about the BANK's claim and any decision and transaction entered into with GOLDAS;

- o The transaction concluded with the brokers in the context of the dispute between Société Générale and its English insurers;

- Direct Societe Generale to provide supporting documents for the disputed ingots to its suppliers with corresponding dates and prices;

- Suspend the proceeding while waiting for this production;

- Judge, assuming justified the principle and the quantum of the amount (sic) of Société Générale's requests that each insurer can only be held for its own share and within the following limits:

Allianz: 16,000,000 euros

CHUBB: 15,000,000 euros

ZURICH: 10,252,500 euros

LIBERTY: € 9,997,500

ACE: € 3,750,000

Conventional:

- Order Societe Generale to pay ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY to companies 60,000 € each under article 700 of the Code of Civil Procedure as well as all costs.

At the collegial hearing of December 14, 2016, after having heard the parties in Explanations and observations, The court closed the proceedings, put the matter under advisement and said that the judgment would be pronounced by making it available at the registry I February 16, 2017, pursuant to article 450 paragraph 2 of the Code of Civil Procedure.

Means of play

After having taken cognizance of all the means and arguments developed by the parties and in application of the provisions of article 455 of the code of civil procedure, the court will summarize them succinctly below.

In support of its request, Société Générale sets out its means as follows:

the "All Risks Bank" insurance policies n ° 413 033 858 20 n ° 413 033 859 20 and n ° 413 033 860 20 taken out by Société Générale with the defendant companies, hereinafter "the Police", offered cover insurance covering damage to property and the risk of fraud and therefore guaranteed Société Générale compensation for the damage suffered.

Indeed, the Police found in this case the four conditions for the application of its "fraud" component:

- first, because the fraud relates to securities insured by the Police, in this case gold bars, which are, in the words of the Police "instruments whose detention corresponds to the customs of the profession of the insured establishment (...)"

With regard to insured goods and values,

- the insurance program subscribed by Société Générale provides that the goods corresponding to the uses of the insured's profession are "insured values";
- gold bars are securities that banks use to handle and store;
- the sales made by the GOLDAS companies relate to gold bars, that is to say values insured under the insurance program;

- secondly, because the actions of GOLDAS, which knowingly sought to deceive Société Générale, constitute three criminal offenses under French law targeted by the Police; namely "breach of trust ,,," false and use of false ,,,"

"Scam". In the present case, for each of these offenses, the three elements of a criminal offense are characterized: the legal element, the material element and the moral element.

Relative to breach of trust,

- Société Générale entrusted gold bars to GOLDAS so that GOLDAS kept them on consignment in application of BCA contracts;
- the BCA prohibited GOLDAS from disposing of consigned ingots in any way and required it to keep them separated from its own metals;
- returnable ingots were sold between January 7, 2008 and February 19, 2008 on the Istanbul gold exchange, as shown in the report drawn up by this institution on March 27, 2008;
- by selling returnable ingots, GOLDAS used them contrary to what had been agreed with Société Générale in the BCA;
- GOLDAS was aware of the limitation of its power over returnable ingots;
- GOLDAS 'actions constitute the offense of breach of trust within the meaning of French criminal law; ·

Regarding the false and the use of false,

- Société Générale asked GOLDAS monthly to confirm the volume of ingots it held, but GOLDAS sent misleading stock confirmations to Société Générale on January 31, 2008;
- it was the sending of these misleading stock confirmations that enabled GOLDAS to conceal the sales of consigned ingots and, consequently, to be granted further consignment discounts;
- thus GOLDAS was aware of altering the truth in a document likely to establish proof of a right or fact having legal consequences and the actions of GOLDAS therefore constitute forgery offenses and use of forgery in the sense French criminal law;

Regarding the scam,

- GOLDAS sent misleading stock confirmations to Société Générale on January 31, 2008 and GOLDAS was then aware of deceiving the BANK and, by asking to buy ingots that it had already sold, it thus determined the BANK to make new ones consignment remittances;
- the actions of GOLDAS clearly constitute the offense of fraud within the meaning of French criminal law;

Concerning the absence of a penal sanction pronounced contre GOLDAS in Turkey

- not only has no decision on the merits been made in Turkey against GOLDAS because the only decisions rendered are decisions of dismissal which do not decide the merits of the law and are devoid of the authority of res judicata but also the Police provides that fraud should only be qualified in relation to the French penal code to the exclusion of all others;
- the absence of a criminal sanction pronounced against GOLDAS in Turkey therefore has no effect on the BANK's right to guarantee.

- moreover, because Goldas' actions voluntarily enabled him to profit from it, which can moreover be described as considerable, hence the satisfaction of the third condition.

- finally, and this is the fourth and last condition, because these acts had the effect of generating a loss for Société Générale, damage the total value of which was 455,240,861 USD on the day of the incident. The sum of 326,422,763 USD, or the equivalent of 223,012,032 euros, constitutes Société Générale's financial loss and this loss is very much greater than the ceiling of the insurance program taken out with insurers.

Contrary to what the defendants claim, no exclusion can be applied:

- nor the exclusion of article 7.16 ruling out the losses committed within the framework of a credit because the disaster is constituted by the sale by GOLDAS, in violation of the BCA, of 11.3 tonnes of gold bars entrusted by the Societe Generale and that it is therefore not linked to a financing transaction;
- nor that of article 7.18 excluding "frauds whose mechanism could have been set up thanks to a lack of total or partial application of the existing procedures in the insured establishment" because the conditions for its application are not met indeed, the limits appearing on the BCA are not internal procedures but contractual stipulations between GOLDAS and the BANK;
- nor that, irrelevant, of article 7.14 of counterparty failures or customer insolvency suffered in the context of financing because the BCA was not intended to organize a remittance of funds for the benefit of GOLDAS;
- nor that relating to unexplained disappearances for the case of ingots diverted to Dubai by GOLDAS because these ingots have not disappeared unexplained, the circumstances of this diversion being known to the parties to the proceedings.



Thus, Société Générale's loss on bullion being 223,012,032 euros and the claim made by the BANK against its English insurers having enabled it to recover an amount of USD 12.5 million, the object of which was to partially compensate for its consultancy costs, the BANK requests the total amount of 107,000,000 euros.

AXA, in the main, explains that the consequences of the facts in dispute do not fall within the object of the Police, as defined in Chapter 2, for the following three reasons:

1 - To be covered by the Police, fraud must be penalized by a text of a criminal nature under French law: however Société Générale does not provide proof of commission by Goldas of a criminal offense within the meaning of French law.

- Relative to the breach of trust, it is necessary to characterize the precarious surrender of a thing, as well as its intentional diversion (material element) (moral element).

However, Societe Generale's demonstration is based only on its own interpretation of the BCA, which it considers as a deposit contract when the relationship between GOLDAS and the BANK was a buy-sell relationship; the use of invoices separate from those provided for by the BCA, the invoicing procedures (corresponding to import against payment) as well as the Turkish system which prohibits the import of gold without the importer's right of disposal, demonstrate that no offense has been committed by GOLDAS since it was the owner of the ingots and that the dispute was therefore purely commercial.

- The offense of forgery, use of forgery and fraud is characterized when a person uses a forgery (material element) with fraudulent intent (moral element).

But Société Générale does not report proof that the ingots did not appear in GOLDAS stocks on January 31, 2008, contenting itself with affirming that the document of "stock confirmation" is a false intellectual, whereas it was not intended to confirm the physical presence of the stock of bullion but only to describe the flow of transactions. In doing so, by recognizing the state of the transactions in progress at January 31, 2008, GOLDAS was not altering the reality, it recognized it.

- The offense of fraud involves proof of the existence of fraudulent schemes.

But the swindle - commission offense and not offense of omission - supposing the discount obtained by deception is not characterized here because the return by GOLDAS of stock confirmations on the one hand did not determine the will of the BANK to continue his deliveries and on the other hand was not a lie.

2 - Fraud, within the meaning of the Policy, must be carried out "with the intention of making a profit from it and having the effect of generating a loss borne by the insured or depriving him of a receipt or 'a gain' but this is not the case here.

Indeed, the default of payment of GOLDAS is the consequence of its insolvency and not of its intention to take an illicit profit; moreover, it has never disputed being the debtor of Société Générale, as evidenced by the organization of meetings held in 2008 in order to discuss the terms of payment of its debt.

3 - In any event, only “insured property and values within the meaning of the Policy” are covered, which is defined in paragraph 1.3 “INSURED PROPERTY AND VALUES” in chapter 1 “DEFINITIONS”; however, this is not the case for the ingots at issue in this dispute.

The facts prove that the ingots were handed over by Société Générale and that they were delivered directly to the GOLDAS coffers but never "held" by the BANK itself; that Société Générale has never been able to exercise any power of surveillance and control, unlike the goods it holds when a client entrusts them to put them in safety in a safe; the BANK cannot make a partial reading of the Police to induce it to cover indifferently all the risks of its activity by seeking to transfer to its insurer the consequences of its own negligence.

In the alternative, AXA opposes its exclusion clauses stipulated in articles 7.9, 7.14, 7.16 and 7.18 of the Police:

- because the Police excludes cases where “the losses of its insured are suffered as a result of the insolvency of its customers or prescribers”, which was however the case here;
- because, moreover, it excludes cases of “failure to apply existing procedures in the insured establishment”; however Societe Generale should have checked GOLDAS 'financial health before working with this group, whereas it has carried out only slight or even non-existent checks, intended to set ceilings for its intervention. But it even freed itself from these limits, both in amount and in duration, and did not apply the procedures which must exist internally;
- because frauds "committed during financing operations, in any form whatsoever", are excluded from the fraud guarantee while the BANK was financing the activities of GOLDAS, in the sense that it granted it loans for it allow to finance its stock, between import and sale;
- because the Police do not cover “unexplained disappearances”, which applies to the 500 kg of ingots delivered to Dubai, of which the BANK itself declares that it has never been able to know what fate had been reserved for them.

Finally, since Societe Generale did not specify the quantified outcome of the procedures it has already initiated abroad and the sums it has thus recovered, AXA considers that it is not possible to determine the quantum of the conviction requested by the BANK.

In reply, the other insurers, namely ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY, develop an argument similar to that of AXA.

Mainly, the conditions of the Policy, as they appear in chapter 2 "OBJECT OF THE INSURANCE", are not met, the lack of a single one of them sufficient to order the dismissed of Société Générale ; Societe Generale does not provide proof of the existence of fraud, in particular with regard to the commission of an intentionally qualified crime.

Societe Generale clearly intended to conceal from the court the lessons of the criminal trial in Turkey, having resulted in dismissal orders based on the imperative provisions of Turkish law and the revelations of the investigation; the latter demonstrated that, contrary to what the BANK claims, the BCA does not refer directly to the concept of deposit contract but to the concept of sale and that of consignment.

This is why GOLDAS could have considered having acted legitimately, by selling the ingots on the market within the time limits imposed and then considering itself liable for the sale price to be fixed with Société Générale, thus complying with the obligations of Turkish law; this is how all intentional elements are lacking, as is the search for an illicit profit.

In addition, the BANK did not hold the bullion and therefore cannot claim coverage of the fraud guarantee, which requires that the alleged fraud relates to insured values within the meaning of the Police.

On a very subsidiary basis, the exclusion clauses apply; the exclusion cases which must apply concern "unexplained disappearances", "losses suffered as a result of customer insolvency", "consequences of financing operations by the BANK" and "failure to apply the internal control procedures".

On an infinitely subsidiary basis, the amount of the alleged damage is not justified because Société Générale does not provide an explanation, nor as to the consequences of the measures taken in Turkey (collective proceedings) and in England (claims for damages), nor as to the quantification of recoveries from which it was able to benefit.

So,

Whereas Societe Generale is a banking establishment of international scope whose activity is carried out around three trades:

- retail banking;
- asset management, private management and securities management;
- corporate and investment banking;

Whereas the monetary and financial code defines banking operations in its article L 311-1, providing that "banking operations include the receipt of funds from the public, credit operations, as well as payment banking services"; that article L 311-2 of the same code declares that "credit institutions can also carry out operations related to their activity such as:

1. foreign exchange transactions;
2. operations in gold, precious metals and coins;
3. the placement, subscription, purchase, management, custody and sale of securities and any financial product;
4. I advise and / or assist in matters of wealth management;
5. advice and assistance in matters of financial management, financial engineering and generally all services intended to facilitate the creation and development of businesses, subject to the legislative provisions relating to the 'illegal exercise of certain professions;
6. operations of simple rental of movable or immovable property for establishments authorized to carry out leasing operations;
7. the payment defects mentioned in Section II of Article L. 314-1;
8. issuing and managing electronic money.

When it constitutes the provision of investment services within the meaning of Article L. 321-1, the exercise of related operations and the consultancy activity is subject to the prior approval provided for in Article L. 532-1 ”;

Whereas article L 321-1 of the same code finally specifies that investment services relate to the financial instruments listed in article L 211-1 - namely securities

financial (equity securities issued by joint stock companies, debt securities, units or shares in collective investment undertakings) and financial contracts (or financial futures) - and "include the following services and activities:

1. the reception and transmission of orders on behalf of third parties;
2. the execution of orders on behalf of third parties;
3. trading on own account;
4. portfolio management on behalf of third parties;
5. investment advice;
- 6-1. the firm grip;
- 6-2. I guaranteed investment;
7. unsecured placement;
8. the operation of a multilateral trading system within the meaning of article L. 424-1;

Whereas, in the present case, the disputed transactions were carried out by “Société Générale Corporate and Investment Banking”, below SG CIB, pole that Société Générale defines as its pole specialized in financing and investment and which exercises three fundamental trades:

- operations on the capital markets in euros;

- derivative transactions (many interest rate, credit, foreign exchange and commodity derivatives);
- structured finance;

Whereas Société Générale reminds beforehand that SG CIB had been approached by the jewelry group GOLDAS in 2003, date on which this company appeared to it as a serious counterpart, capable of presenting audited accounts because it was listed on the stock exchange of Istanbul, capital of one of the countries consuming the most raw gold, showing a strong demand, in particular for an old and important production of jewelry;

Whereas Societe Generale alleges that the operations on the disputed ingots were the subject of contracts called Bullion Consignment Agreements (BCA); that, from the text of these contracts, as provided for debate:

- Société Générale made consignments of precious metals belonging to it in the coffers of GOLDAS in Istanbul, which had to keep them but did not have them; GOLOAS could make a purchase offer for a fixed period at a price to be agreed with the Bank; failing agreement with GOLOAS on the conditions of their sale during the period provided, the ingots subject to the consignment were returned to the Bank, which remained its owner; the BCA stipulates that the ingots were thus subject to a precarious delivery to GOLDAS; they were only the object of a relocation in the coffers of a potential buyer; thus, GOLOAS could hold in its coffers a certain quantity of ingots without impairing its cash flow or exposing itself to price variations;

- Société Générale was to receive a double remuneration, consisting on the one hand of a premium calculated according to the duration of the deposit and on the other hand of its margin perceived at the time of the sale, determined by the difference between its price purchase price and sale price; she had the possibility of selling her ingots to GOLDAS; but even if the GOLDAS price offer suited her, she remained the owner of the ingots until perfect payment;

- practically, GOLDAS began by asking the Bank for the transport, delivery and consignment of a certain quantity of ingots; this request was made by telephone; Société Générale then contacted a supplier and a transporter and then communicated to GOLDAS the characteristics of the planned delivery, accompanied by a delivery number intended for follow-up; GOLOAS replied by return e-mail formalizing its Shipment Request; the Bank then called on a specialized transport company to transport the gold by air (most often on a Johannesburg / Istanbul flight) and deliver it to GOLOAS premises from Istanbul airport; once arrived at their destination at GOLDAS, GOLDAS had to put them in their safes for the maximum period provided;

- at this stage, the parties had agreed neither on the principle nor on the conditions of their possible sale, but GOLOAS could form an offer to buy all or part of the ingots; when GOLDAS wished to make a purchase offer, it contacted the Bank by telephone, then sent an e-mail specifying the number of the ingots and their

characteristics, as well as the price agreed between the parties; thereafter, the Bank established a final invoice which GOLOAS had to pay by payment into the SG account at

Société Générale, New-York, in favor of SG, Paris; if no agreement on the sale was reached, the Bank could consent an extension of this first period or demand the immediate return of the ingots;

- to monitor the volumes of its gold stored at GOLDAS, the Bank sent GOLDAS monthly "Stock Confirmations", that is to say documents summarizing the ingots which are the objects of the BCA; GOLDAS validated them by affixing a signature and a stamp; then it sent them back to the Bank by fax;

Whereas the documents tendered for debate by the BANK establish that these operations were carried out by the teams of the corporate and investment bank, within the framework of its trading activity, in this case on the specific gold market ; that, in the field of trading, the BANK is unanimously recognized as one of the most sophisticated and knowledgeable establishments;

Whereas the BANK carried out these operations for its own account,

the court noted that the activities as described by the Bank and called BCA fall within the scope of banking operations as defined by the monetary and financial code in force;

Whereas the ALL BANKS RISK insurance policies are insurance of things which are not intended to cover indifferently all the risks of the banks, in all the extent and all the variety of their activities as exposed above; that these policies do not cover credit or counterparty risk, liquidity risk, interest rate risk or systemic risk; that they explicitly list the cases of formal and limited exclusions;

Whereas it is not disputed that the Policy had been validly subscribed by Société Générale at the time of the facts for a total amount of cover of 110,000,000 euros with defense insurers;

Whereas the investigation of the insurance file in dispute was suspended by Société Générale from 2008 to 2012, the Bank being awaiting the follow-up given to its declaration of loss to its English insurers;

Whereas, in this case, article 1.15 of the Police defines the CLAIM as "any event generating damage suffered by the insured and resulting from damage or loss guaranteed by the present contract and bearing on insured property and values, whether or not the perpetrators are identified ";

Whereas the concept of INSURED is defined in chapter 1 of the Police;

Whereas receiving the qualification of INSURED first the BANK and its subsidiaries (according to paragraphs 1.1.1 to 1.1.4) but also the BANK customers for the goods and values they have entrusted to it and deposited in safes compartments rented and BANK clients when they are victims of fraud on the property entrusted to the BANK and found in its accounts or those of its subsidiaries;

Whereas it is not disputed by the defendants that the BANK validly avails itself of the quality of INSURED by the Police;

Whereas the OBJECT OF THE POLICE is defined in its chapter 2 which specifies that it has two parts:

- compensation to the insured for material damage to property and valuables, mainly if they are the object of theft, deterioration or natural disaster;
- compensation to the insured for the damage suffered as a result of fraud, committed by any means, by one or more of the employees of the insured establishment and / or by one or more third parties, acting with or without complicity of the attendants;

Whereas Societe Generale, as an insured, bases its claim for compensation on the fraud of which it claims to be the victim;

Whereas it is therefore appropriate, in this case, that the BANK establish not only that it was the victim of a FRAUD but also that this fraud related to ASSURED PROPERTIES AND VALUES IN THE SENSE OF THE POLICE; that, as regards cumulative conditions, none of them must be missing for the Policy to apply;

Whereas the Police, in its chapter 1 DEFINITIONS, defines fraud as "any fraudulent act (...) sanctioned by a text including penal provisions (...)" and "that it is understood for / ' application of this contract that your facts are qualified by reference only to French texts (...) ;; (paragraph 1.8);

Whereas the fraud thus defined is understood exclusively as an act punishable under criminal law and therefore excludes from indiscriminately any form of default by a third party causing harm to the BANK, such as for example an act committed in breach of contractual obligations ; that the reference to the exclusively French character of the relevant texts concerns only the criminal classification of the acts and not the commercial or contractual classification of the context in which they would have taken place;

Whereas Société Générale alleges that the actions of GOLDAS constitute the offense of breach of trust, infringements of forgery and use of forgeries and the offense of fraud in the sense of French criminal law;

Whereas the penal code defines the breach of trust as the fact that a person embezzles, to the prejudice of others, funds, values or any property given to him and that he had accepted in charge of them return, represent or make specific use of it (article 314-1); the offense of forgery and use of forgery as any fraudulent alteration of the truth, likely to cause prejudice and accomplished by any means whatsoever, in writing or any other medium of expression of thought which has as its object or which may have the effect of establishing proof of a right or fact having legal consequences (article 441-1); scam as does, either by the use of a false name or a false quality, or by the abuse of a true quality, or by the use of fraudulent schemes, to deceive a person and thus determine it, to its detriment or to the prejudice of a third party, to remit funds, securities or any property, to provide a service or to consent to an act effecting obligation or discharge (article 313-1);

Whereas Societe Generale has brought multiple proceedings in Turkey, seizing the civil and criminal jurisdictions, filing in particular complaint against the leaders of GOLDAS near the public ministry of Istanbul as of March 18, 2008; that, in Turkey, it exhausted all the remedies, until appeal in cassation; that these appeals have been unsuccessful;

Whereas the Turkish supreme court has finally dismissed the criminal character of the dispute in these terms: "The contract provides for penalties in the event that one of the parties breaches the contract; and consequently, the tribunate having concluded that it is a civil litigation, an order of dismissal will be pronounced "(Exhibit N ° 11 of Société Générale, obtained following the judgment ordering the communication of documents rendered by the Paris Commercial Court on February 26, 2015 - judgment of the 6th Assize Court of Istanbul of July 7, 2008);

Whereas the BANK now requests that the Paris Commercial Court therefore retain fraud by reference to the French repressive texts cited above, without demonstrating that the definition of the three offenses it alleges would be different in Turkish law and in French law; that the Turkish jurisdictions first of all dealing with the criminal case nevertheless had wider means of investigation than the only documents now added to the file by the claimant alone;

Whereas the Turkish law relating to the regime of the definitive importation and the sale of gold on the market of the Istanbul Stock Exchange, law of public order, stipulates that GOLDAS, Turkish importing company, should dispose of gold as soon as it arrival on Turkish soil;

Whereas, in his minutes of interrogation of witnesses before the general public prosecutor's office of Barkikoy dated April 1, 2008, the director of legal affairs of the Istanbul Stock Exchange explained the mechanisms for importing raw gold into these terms: "import and / 'export are free in this area, however," this freedom only concerns , es precious metals



processed, the import of raw gold being the responsibility of the Stock Exchange // Gold from Istanbul and the Central Bank. In practice, all imported raw gold must be returned within 3 days to the gold exchange, and its buy-sell can only be done on the market. precious metals from the gold exchange All purchases / sales of gold (purchase sale of raw gold) must be made after importation between the opening and closing sessions of the exchange. more, even when it wants to buy gold for its customers, our Member importing company can only do so by placing, like any other buyer, a purchase order after the sale order during trading hours, of the gold it has imported. We call this transaction on own securities in our regulations (...). The price and the time are priority, this is why the importing company (member) has / 'obligation to make /' operation by the gold exchange. It cannot, between the opening and closing sessions of the stock exchange, put aside the gold to sell it to its customers without respecting the purchase-sale procedure described above and without completing the formalities. If requested, the system prevents it automatically "(Exhibit N ° 11 from the aforementioned Société Générale);

Whereas the defendants argue that the disputed contractual operations were not deposit operations but purchase-sale operations; that the defendants, to substantiate their point, point out the existence between GOLDAS and the BANK of a current account clarifying the terms of settlement put in place between these two partners;

Whereas the sales tables on the Istanbul Gold Exchange, supplied by the BANK (Exhibit N ° 19 of Société Générale - report by the Istanbul Gold Exchange of March 27, 2008 on sales made by GOLDAS), establish that bullion were sold by GOLDAS within three days of their delivery, but never later, regardless of the period of consignment appearing on the BCA which could range from ten days to three months;

Whereas, in its request to the Turkish justice "requesting a search and a seizure in order to gather / es evidence of the offense"> (above mentioned part N ° 11 of the Société Générale - letter to the general prosecutor's office of Barkikoy - Reference 2008126914 Hz ), the BANK said: "As we know, this quantity of gold with these characteristics must be kept and protected on the gold exchange"; that, however, although it thus recognized before the Turkish parquet floor that gold should be kept on the Istanbul gold exchange, it now alleges before the Paris Commercial Court that gold remained its property as long as it was not sold, according to the text of the BCA; that there emerges a contradiction between the text of the BCA and the practice operated;

Whereas it appears in any case that, if the operations were carried out in accordance with the text of the BCA, then they were operated in contradiction with the Turkish law on the imports of raw gold, although Société Générale declares to benefit recognized expertise both on the gold market and on the Turkish market (Exhibit 3 of AXA: Société Générale's reference document for 2009, a relevant year taking into account the facts of the dispute);

Whereas, moreover, the BCAs are admitted to the debate by Société Générale, but the documents useful for describing the reality of the schemes actually brought into play under

this designation come exclusively from the BANK; that the legal classification of the operations actually carried out is disputed by the defendants; that, moreover, Société Générale itself agrees that the BCA, which it calls "instruments of fraud", have been tacitly amended over the years;

Whereas the documents paid are ultimately insufficient to characterize the mechanisms truly adopted by GOLDAS and the BANK and to qualify them, either as deposit contracts or as purchase-sales; that, consequently, they are just as insufficient to establish whether the actions of GOLDAS are liable to be sanctioned or not by a text of the French penal code,

the court, in application of articles 9 and 146 of the code of civil procedure, will render its decision in view of the only documents tendered to the debate, and notes that Société Générale does not provide proof that the actions of GOLDAS would constitute fraud within the meaning of the Police;

Whereas, then, concerning the concept of GOODS AND VALUES INSURED WITH THE MEANING OF THE POLICE, this one is defined in paragraph 1.3 in these terms, reproduced below in full:

"1.3.1 All securities and all documents the holding of which, for whatever reason, corresponds to the uses of the insured establishment.

1.3.2 All valuables, documents or objects entrusted to the establishment insured for whatever reason, whether these valuables, documents or objects are held in premises or at his correspondents.

1.3.3 The goods and valuables contained in the compartments of chests, chests and / or chests rooms, whether they are rented or made available by the insured establishment to its customers or whether they are reserved by the insured establishment, for its own use.

1.3.4 Any amount, debit or credit position, expressed in any currency in the books of the insured establishment.

By value, we generally mean any instrument whose possession corresponds to the uses of the profession of the insured establishment, and in particular:

- . your cash, banknotes, coins, currencies, coins and ingots of precious metals, works of art, precious objects, coupons, checks, shares, founders' shares, titles or credentials, commercial paper, bonds, money orders, postage or tax stamps, promissory notes, bills of exchange, warrants, bills of lading,
- . all types of checks, including service checks, restaurant vouchers, bank or postal checks, traveller's checks,
- . all types of vouchers, including treasury bills, cash vouchers, blank or completed savings vouchers.

For reconstitution costs, the computer data of the insured establishment are not considered as values. "

Whereas this definition does not establish the list of "goods, values or instruments" covered without any context but that it takes care to specify on the one hand that they must be held by the insured establishment and on the other share that this detention must correspond to the uses of the profession;

Considering that, firstly, concerning the concept of detention, it must be distinguished from the concept of property and that it is a question here of the material detention of the thing, within the meaning of the power of fact on this one, it is to say the fact of having effective control;

Whereas, in this case, the documents tendered to the debate demonstrate that Société Générale did not have effective control or physical possession of the ingots during the operations it describes; that it declares that the ingots were delivered and stored in premises outside France or outside Europe of which it was neither the owner nor the tenant; that debates have shown that it did not inspect these premises during the period in dispute; that it did not have the ingots stored or handled at GOLDAS by its own agents, that it did not have unannounced checks or periodic confirmations on site carried out by its own agents; that the debates revealed that the BANK did not have proof that the ingots, at any time whatsoever, were indeed stored at GOLDAS;

Whereas it is GOLDAS who announced to the BANK that the ingots which it believed in stock were no longer in its safes; that GOLDAS objected to it having access to its premises despite its numerous requests repeated in spring 2008 when it wished to check the state of stocks;

Whereas, in its request to the Turkish justice "requesting a search and a seizure in order to gather the proofs of the offense" (its exhibit N ° 11 - letter to the general prosecutor's office of Barkikoy - Reference 2008/26914 Hz) the BANK clarified "despite all our verbal and written reminders, / es implicated, just as they did not return us the gold bars belonging to the client company, they also did not give information on the place storage "and" the people subject to our complaint hide this gold in various places "•

the court noted that Société Générale did not hold the ingots in dispute;

Whereas, secondly, the definition given by the Police adds that the possession of the instrument must be "in accordance with the customs of the profession"; that this clarification thus brings a restriction to the definition, thus excluding situations which would not be in accordance with the customs, with the customs; -

Whereas the Police illustrate the concept of VALUE by drawing up a non-exhaustive inventory (cited above); that it includes precious metal ingots in a long list, which associates minted money, banknotes, coins, currencies etc ... up to postage stamps, fiscal stamps or restaurant vouchers ; that these items have in common to emerge from the activities of the network banking; that it is precisely for these types of value that the global bank policies cover both theft and deterioration as well as the damages resulting from fraud;

Whereas, in this case, Société Générale writes in its declaration of loss to AXA dated May 27, 2008 that it was the victim of fraudulent acts "within the framework of its gold trading operations" (exhibit n ° 43 of Société Générale);

Whereas also Marsh, his own broker, characterizes the consignment activity with the GOLDAS group in his letter of December 4, 2012 to AXA intended to reactivate the aforementioned claim declaration:

"Société Générale started its consignment activity with the GOLDAS group in 2003. The activity started with small quantities of gold intended to be bought by the GOLDAS group to be used in the manufacture of jewelry. Over the years, the consignment activity has developed and has been extended to the delivery of gold intended for use in the trading operations of the GOLDAS group on the 'Istanbul Gold Exchange';

"Previously, Societe Generale had already developed with Indian banks (...) this deposit activity, also practiced by other competing banking establishments for this type of transaction on the raw materials market" (Exhibit 45 Société Générale); that this letter further specifies that it is indeed the umbrella policy "specifically covering its metal trading activity" which was the subject of a procedure in the United Kingdom, settled by a transactional agreement,

the court noted that Société Générale itself characterized the quarreled operations as gold trading operations, thus showing that the gold in dispute is nothing but a raw material;

Whereas there is no reference in the definition list to any raw material traded, for example copper, natural gas, wheat, petroleum; that the purpose of the Policy is not to cover the values that are at stake in the context of commodity trading operations, as carried out daily by SG Corporate and Investment Banking; that, when a loss is revealed in the course of a commodity trading activity, the coverage of the Policy is not acquired,

the court noted that the transactions in dollars carried out on physical gold with the intervention of GOLDAS were trading operations on raw materials and that the gold in dispute is not a value or an insured property within the meaning of the Police , and, consequently, since the Policy does not apply when only one of its conditions is lacking, the court will dismiss the BANK's claim for compensation.

Whereas, for the most part, the Police stipulates exclusions relating to the FRAUD guarantee;

Whereas, first, that section 7.14 states that losses suffered as a result of customer insolvency are excluded;

Whereas the Bank itself, in support of its developments relating to the quantum of the disaster, produced for the debate "an account extract signed by the financial director of the Pôle SG IS" in its part 58 entitled extraction of manual entries from the Grand Book "for GOLDAS counterparties";

Whereas the wording of the account retained by the BANK is "bad debt";

Whereas Societe Generale distinguishes "bad doubtful loans compromised" for amounts in USD and "bad and doubtful debts not compromised" for amounts in XAU (currency code for ounces of gold);

Whereas these accounting qualifications, extracted from the General Ledger of the BANK and certified by the financial director of SG IS for both 2008 and 2015, establish that the BANK has entered the losses it has suffered and thus provisioned in a counterpart account identified,

it thus appears that the exclusion of article 7.14 is applicable;

Whereas, secondly, that article 7.18 of the Police stipulates that "fraud whose mechanism may have been implemented due to a total or partial failure to apply existing procedures in the insured establishment" is not guaranteed ;

Whereas, in this case, Société Générale has set a weight limit on the four Bullion Consignment Agreements concluded with GOLDAS on April 27, 2005 (Exhibits N ° 7,8,9 and 10 of Société Générale), Maximum Consignment Quantity, 160,000 ounces, a maximum of 4,970 tonnes for the four GOLDAS companies; that the operations carried brought the stock of gold to 15,725 tonnes on February 18, 2008, that is 317% of the limit; that this stock was built up at a sustained rate between December 7, 2007 and February 18, 2008, at the rate of twenty-nine physical deliveries between 500 KG and 1.5 tonnes each, each time assuming international air transport and transport from Istanbul Airport to GOLDAS vaults;

Whereas Societe Generale does not specify how it submitted to the respect of the basic procedures of recognition, counting and verification of stocks and physical flows, by

independent controllers as well from the operational teams of the BANK as those of GOLDAS;

Whereas she was satisfied with the only inventory documents provided a posteriori · by GOLDAS himself, the Stock Confirmations, which she now describes as false intellectuals, and of which all the weakness has been revealed;

Whereas, by inviting a manager of Société Générale to a meeting in a Parisian hotel on February 18, 2008, it was the GOLDAS correspondent himself who revealed to the BANK the events that she deplored; that it did not discover them alone, for lack of efficient control,

it thus appears that fraud was possible thanks to a defect in the control procedure and that the exclusion clause 7.18 is applicable to the case in point, and, Société Générale having failed in the physical controls to be put implemented to monitor the circulation and the storage of its ingots and having thus taken reckless risks, the court notes that if the BANK could have believed that the ingots were insured values within the meaning of the Police, then it would have made bear its insurers the consequences of their own negligence;

Whereas, moreover, that article L.113-4 of the insurance code provides that "in the event of worsening of the risk during the contract such as, if the new circumstances had been declared at the time of the conclusion or renewal of the contract, the insurer would not have contracted or would have done so only for a higher premium, the insurer has the option of either terminating the contract or proposing a new amount of premium "; that it follows that the insured must keep the insurer informed of events that occur during the execution of the contract and in particular those which are likely to aggravate the risks;

Whereas, in this case, Societe Generale's activities on the physical gold market accelerated suddenly between December 2007 and February 2008, to the point that it appears that "new circumstances" have arisen run a risk at the BANK equivalent to approximately four times the amount of cover initially provided for in the contract (455,240,861 USD on the day of the loss for 110,000,000 euros of cover); that the BANK has not brought these new circumstances to the attention of insurers so that they can exercise their right to terminate the contract or increase the premium,

the court noted that if the BANK considered, at the time of the disputed facts, that its activities on the gold market were covered by the Police, then it did not fulfill its duty to inform its insurers vis-à-vis the aggravation of the risk during the contract.

On anatocism

Whereas Société Générale will be dismissed from its main claim, the court will say that there is no need to rule on its request based on the application of the provisions of articles 1153 and 1154 of the civil code.

On provisional execution

Whereas the court considers that provisional enforcement is neither necessary nor compatible with the nature of the case, the court will say that there is no need to order it.

On article 700 of the code of civil procedure

Whereas in order to have their rights recognized, the defendants had to incur costs not included in the costs which it would be unfair to charge them, Société Générale must be ordered to pay AXA the sum of 237,949 euros, on the other hand to ALLIANZ, ACE, ZURICH, CHUBB and LIBERTY the sum of 50,000 euros each, dismissing the remainder, in respect of the application of the provisions of article 700 of the code of civil procedure .

Costs

Full costs will be charged to Société Générale which succumbs,

and, without it being necessary to examine further the other pleas of the parties which the court considers as ineffective or ill-founded, it will be decided in the following terms:

For these reasons,

The court ruling by contradictory judgment at first instance,

- Discards SA SOCIETE GENERALE of all its requests;
- Condemns SA SOCIETE GENERALE to pay on the one hand to SA AXA CORPORATE SOLUTIONS ASSURANCE the sum of 237,949 euros, on the other hand to SA ALLIANZ 1.A.R.D. coming to the rights of GAN EUROCOURTAGE IARD, the COMPANY under English law ACE EUROPEAN GROUP LIMITED, the COMPANY under Irish law ZURICH INSURANCE IRLAND PUBLIC LIMITED COMPANY, the COMPANY CHUBB INSURANCE COMPANY OF EUROPE SE and the COMPANY under English law LIBERTY MUTUAL INSURANCE EUROPE LIMITED the sum of 50,000 euros each, dismissing the remainder for the application of the provisions of article 700 of the code of civil procedure;

- Holds that there is no need to rule on the approval of articles 1153 and 1154 of the civil code;
- Holds the parties ill-founded in their larger or contrary requests and dismisses them;
- Holds that there is no need to order provisional execution;
- Orders SA SOCIETE GENERALE to pay the costs, including those to be recovered by the court, liquidated at the sum of € 238.44, of which € 39.52 is VAT.

Pursuant to the provisions of article 871 of the code of civil procedure, the case was debated on December 14, 2016, in public hearing, before: Mr. Henri-Claude Delecourt, Mrs. Odile Vergniolle and Mr. Pierre-Yves Werner.

An oral report was presented at this hearing. Deliberated on January 18, 2017 by the same judges.

Holds that this judgment is delivered by making it available at the registry of this court, the parties having been previously informed during the debates under the conditions provided for in the second paragraph of article 450 of the Code of Civil Procedure.

The minute of judgment is signed by Mr. Henri-Claude Delecourt, chairman of the deliberations and by Ms. Laurence Baali, clerk.