Applicant: S.P.T. Rose
First
SPTR1
9 February 2016

IN THE HIGH COURT OF JUSTICE **Folio Nos. 267 of 2008 and 329 of 2008**
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

BETWEEN

SOCIÉTÉ GÉNÉRALE

Claimant

and

(1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.
(2) GOLDAS KIYMETLI MADENLER TICARETI A.S.
(3) MEYDAN DOVIZ VE KIYMETLI MADEN TICARET A.S.
(4) GOLDAS LLC

Folio 267 Defendants

AND BETWEEN

SOCIÉTÉ GÉNÉRALE

Claimant

and

(1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.
(2) GOLDART HOLDING A.S.

Folio 329 Defendants

WITNESS STATEMENT OF SIMON PAUL TIMOTHY ROSE

I, **Simon Paul Timothy Rose**, Director and Solicitor in the Firm of Morgan Rose Solicitors, 53-64 Chancery Lane, London, WC2A 1QU, will say as follows:

INTRODUCTION

1. I am a Director and Solicitor at Morgan Rose Solicitors, who are instructed by the Defendants in both proceedings. I am the fee earner with overall conduct of and responsibility for the proceedings for the Defendants. I confirm that I am authorised to make this witness statement on behalf of each of the Defendants.

2. I make this witness statement in support of the Defendants' applications for an Order:

   (1) Striking out the Claim Forms issued by the Claimant in the two proceedings before the Court; and/or

   (2) Discharging the freezing orders obtained by the Claimant against the Defendants on 15 March 2008, continued on 2 April 2008 (as against the Folio 267 Defendants ('the First Freezing Order') and on 2 April 2008 (as against the Folio 329 Defendants ('the Second Freezing Order'), and together referred to herein as 'the Freezing Orders'.

   (3) That there be an inquiry as to damages in respect of any losses caused to the Defendants by the Freezing Orders.

3. The facts and matters set out in this witness statement are within my own knowledge or have arisen from information or documents given to me by the Defendants' authorised representatives (save where I state otherwise). Where I refer to any additional information outside my own knowledge or the knowledge of the Defendants which has been conveyed to me, I believe it to be true. I refer in this witness statement to a paginated bundle of documents contained in 9 volumes marked **SPTR1.** Bundle A contains the 15 March 2008 injunction application bundle to which I have added such other documents available from the renewal and second injunction orders dated 2 April 2008 as well as the respective Claim Forms. Bundle B contains documents relating to the proceedings between the Claimant and its insurers. Bundle C in 4 volumes contains documents primarily referred to in this witness statement. Bundle D in 2 volumes contains example documents from the Claimants' various proceedings against the Defendants in Turkey and primarily contains documents referred to in Appendix A hereto. Bundle E is a set of the Bullion Consignment Agreements between the parties. Page references herein are, unless otherwise stated,

to this exhibit, and take the form [Bundle/Volume/Page when there is more than one volume otherwise Bundle/Page].

4. This witness statement deals with matters of fact which are relevant to the issues arising in this application. It is not intended to be, and nor should it be read as, a witness statement which deals with the issues which arise or might have arisen in the substantive proceedings had they been progressed by the Claimant. Furthermore, I do not intend, more than is necessary, to go into such matters or deal with those issues insofar as they are not relevant to this application.

5. The Defendants' application, and this witness statement, address the following issues:

(1) despite issuing the claims on 18 March 2008 and 4 April 2008 respectively, the Claimant's failure to serve either of the Claim Forms on any of the Defendants; with the consequence that those claims should be struck out on that basis alone;

(2) the Claimant's failure to take any step in either set of proceedings despite having obtained the Freezing Orders constitutes an abuse of process and/or amounts to want of prosecution;

(3) the Claimant's conduct in obtaining the Freezing Orders, including both the manner in which those Orders were obtained and the Claimant's subsequent use of them in the context of proceedings brought against the Defendants abroad, whilst failing to advance the English proceedings, amounts to an abuse of process.

(4) the impact of the Freezing Orders on the Defendants.

6. I also address the background to the proceedings, including the parties' commercial relationship, and to contrast that with the picture portrayed by the Claimant in obtaining the Freezing Orders (this is not intended, nor would it be appropriate to deal with all the substantive issues which might have arisen in the proceedings).

7. The documents which exist in relation to the parties' relationship are primarily in English but those arising from the Claimant's proceedings in Turkey are generally Turkish language documents. The majority of the Turkish language documents I refer to in this witness statement

have been translated and wherever possible I have referred to translations of the documents as well as the original document.

8. There are occasions, however, where the Defendants have not yet been able to obtain a translation of a particular document. However, I speak and read fluent Turkish and so am able to determine what a particular document says or to what it relates. In those circumstances, but being mindful that I am not appointed as a translator, I have tried to avoid giving any commentary or explanation of the contents of documents which have not been translated, although an indication is usually given of what the document is so that it can be properly identified. Of course, any additional translations required can be acquired.

9. That said, the Claimant should be familiar with virtually all of the documents referred to in this witness statement, because they arise either in the context of the parties' relationship, or from litigation commenced by the Claimant overseas. Therefore, if and to the extent the Claimant disagrees with any description or characterisation of a document I have referred to, or the outcome of any foreign proceedings, then I would expect the Claimant to indicate what that disagreement is and, if they have a translated document already, provide the same. If the Claimant does not disagree with a description of a document which is not translated, or does not disagree with (for example) what I say the result of litigation in Turkey was, then it may not be necessary, in the interests of saving costs and expediency, to obtain translations of every single document which remains without a translation.

GENERAL BACKGROUND

10. The Claimant is a well-known international bank registered and headquartered in France. The First to Third Defendants in the Folio 267 claim are companies incorporated in The Republic of Turkey. For ease of reference I refer to these companies as 'Kuyumculuk', 'Kiymetli' and 'Meydan' respectively. Kuyumculuk was a public company listed on the Istanbul Stock Exchange. The Fourth Defendant to the Folio 267 claim is a limited liability company incorporated in the Emirate of Dubai, United Arab Emirates and I refer to it as 'Goldas Dubai'. The First Defendant to the Folio 329 claim is Kuyumculuk. The Second Defendant to the Folio 329 claim is a company incorporated in the Republic of Turkey, and I shall refer to it as 'Goldart'.

11. Each of the Defendants was a company within the Goldas Group (and I collectively refer to the Defendants and the Group as 'Goldas'). At the material times, Goldas was a multinational gold jewellery manufacturer and retailer with its head office in Istanbul, Turkey. Immediately prior to the commencement of the proceedings by the Claimant, Goldas had a turnover of approximately US$8 Billion. This figure is arrived at by way of addition of the turnover of all of the group companies which then existed, of which there are more than 50, and so I do not exhibit documents for them all here. However, by way of example copies of the 2007 accounts for Kuyumculuk are produced at C/I/1. These show that Kuyumculuk alone had a turnover of US$3.8 billion, employed approximately 715 people. I understand from the Group's officers that the Group employed more than 3500 people worldwide and had credit facilities available to it of over 420m Turkish Lira TL (discussed further below). Its assets included retail outlets in numerous jurisdictions, as well as gold mining concessions in Turkey and Mali. The Defendants' representatives calculated that Goldas companies accounted for approximately 67% of all gold being imported in Turkey alone in 2007 (as can be verified by cross referencing the Istanbul Gold Exchange (IGE) figures for Goldas importations of gold with the figures for Turkey as a whole (see C/III/853 to 898)).

12. As I explain further below, the trading relationship between the Claimant and Goldas commenced in 2003. From 2003 to 2007 over 420 tons of gold bullion had been bought and paid for by the Defendants from the Claimant (see the table at paragraph 36 below). The Claimant and its relevant officers and employees were extremely familiar with the Defendants and their officers or representatives.

13. As I understand the position, the Claimant had, prior to entering into a commercial relationship with the Defendants, supplied bullion to other banks on a consignment basis. This allowed the Claimant to make profit on the interest over the period of consignment, and allowed the counter-party to have access to the bullion as required. As the trade is with other banks, the operation is relatively low-risk both in relation to credit, and also because the receiving bank would (one would imagine) have its own vaults in which the bullion would be securely stored.

14. Supplying bullion internationally to non-bank counterparties is a rather different matter, and I understand this was very much the case in relation to the Defendants. In particular, the whole nature of the arrangement between the Claimant and the Defendants was, from the outset, intended to be one in which the bullion supplied would be used by the Defendants legitimately in

their business. The Defendants contend, and have always maintained, that the Claimant was aware of this from the outset of their relationship.

15. I am conscious that this application is not intended to deal with the details or merits of the dispute between the Claimant and the Defendants. Therefore what I say here is necessarily limited to matters which I consider will assist the Court in understanding, broadly, the nature of the dispute and identifying certain factors which demonstrate that the position was never as one-sided or clear cut as the Claimant sought to maintain when obtaining the Freezing Orders.

16. What I say here does not necessarily constitute all of what would have formed the basis of the Defendants' defence to the actions brought (had they ever been served, which as I set out below, they have not). I should add, however, that the Claims in question were issued on 18 March 2008 (Folio 267) and 4 April 2008 (Folio 329). The time for service has long expired, and the Defendants would now have the benefit of a limitation defence to those claims were they to be commenced again.

BACKGROUND TO THE PROCEEDINGS

17. The Claimant obtained the First Freezing Order on an *ex parte* without notice basis on 15 March 2008. This was continued on 2 April 2008. The Second Freezing Order was obtained on 2 April 2008, and again appears to have been obtained *ex parte* and without notice (insofar as no notification of that application was given to the Defendants, who did not appear) albeit that the order was made 'until further order' and no return date was set.

18. The Claim Form in Folio 267 of 2008 was issued on 18 March 2008. The Claim Form in Folio 329 of 2008 was issued on 4 April 2008.

19. It is necessary to look at both the background to the Claimant obtaining both the Freezing Orders and issuing the Claim Forms, and at matters which have occurred in relation to these proceedings since the claims were issued. In relation to the former, it is sensible to divide the relevant background into two further areas: (i) the parties' commercial relationship; and (ii) the events which led to the Freezing Orders and claims.

The Parties' Commercial Relationship

The Defendants' Intentions and Use of Bullion

20. Mr Cetin Binatli, who was the Director of International Relations for Goldas, initiated contact with the Claimant on or about 5 November 2002, with a view to finding alternative ways to finance its production of gold jewellery. In his email of 5 November 2002 to Mr Jeff Gratton-Brunt, the then director of Precious Metals Physical Department at the Claimant (a copy of which is at C/I/69), Mr Binatli sent introductory documents including financial information on Kuyumculuk, and set out in brief terms the basic requirement of seeking deliveries of gold. In doing so, Mr Binatli clearly set out that the gold was required for the manufacture of gold jewellery:

> *'Our main interest is to obtain a gold consignment for a period of 30 days. We will use the gold for our production of gold jewellery. We normally purchase 1kg of .995. We have an annual production of approx.12 tons.'*

I have spoken to Mr Binatli and he understood the use of the term consignment meant a shipment or transaction of gold to use in production, not a shipment to hold in his vault until he was ready to use it.

21. I understand from the Defendants' representatives that Mr Binatli and Mr Gratton-Brunt met in November 2002 to continue the discussions, and at all times they were on the basis that Goldas was looking for an arrangement whereby they would receive the bullion and be entitled to utilise the same in their business, and that payment terms would then extend to a date later in time to allow for the jewellery manufacturing cycle to occur. Mr Gratton-Brunt may have commenced internal discussions within the Claimant at that stage, although unfortunately he became ill shortly afterwards and was on leave for some time. As a result, Mr Florent Teboul took over Mr Gratton-Brunt's role.

22. By email of 5 June 2003 (C/I/70), Mr Binatli informed Mr Gratton-Brunt that he had discussed the matter internally with Mr Teboul. Mr Binatli said:

He initially informed me that he would be interested in doing business. He pointed out that his priority was the Indian market. I told him that the Turkish market was a very straight forward market and he would not face problems like the Indian market. He told me that Socgen was not active in Turkey but he would like to start working. The only problem he saw that we would have to overcome was the country risk element. He thought that it would take quite some time to obtain a result from the Credit Dept. but he would start the process immediately.'

23. Following Mr Gratton-Brunt's resignation due to ill-health, Mr Teboul became the principal point of contact with Goldas companies. Mr Teboul requested to see the annual reports of Kuyumculuk for the last three years by email of 23 June 2003 (C/I/71). Mr David Zolynski, a commodities analyst for SG, reviewed the information provided by Mr Binatli and asked for some clarification on the accounts by email of 7 July 2003. Mr Binatli replied to Mr Zolynski providing explanations in answer to his questions by email of 14 July 2003 (C/I/72). Mr Binatli offered to provide any further information if required in a further email of 20 August 2003 (C/I/74).

24. During early September 2003 the Claimant and the Defendants' representatives continued to liaise concerning the commercial arrangements which were shortly to be commenced between them. The correspondence between the parties included further statements by the Defendants' representatives which made clear the Defendants' position concerning their activities as it concerned the use of the bullion.

25. For example, on 3 September 2003, Mr Binatli wrote to Mr Teboul in the following terms, about the activity of Meydan (C/I/75):

We (our brokerage company called "Meydan") was the 5th largest importer of gold into the country according to the Istanbul Gold Exchange figures. You may find a copy of the report www.iab.gov.tr/bul04.htm. In 2003 and 2004 we intend to increase our jewellery production & sales + be more active in gold importation. As you know "Meydan" our group company is an active member of the IGE and is able to import & sell gold also to third parties in the market (banks & other jewellery producers).'

26. In a further email exchange on the same day (C/I/77), Mr Binatli explained the Defendants' intention of gradually increasing their import of gold into Turkey as follows:

'Yes roughly 15 tonnes in 2002. We are presently expanding our production facility and have invested approx. $5 million this year on new machinery for extra production. With this investment which will be completed in 2004, we predict around a production capacity of 20 tonnes. But beside this we aim to sell into the Turkish market, through our brokerage company "Meydan" another 10 tonnes of gold bars in 2003 and maybe increase this amount further to 15 tonnes in 2004.'

27. It is difficult to see how these two extracts could indicate anything other than the fact that Meydan was operating (initially) as a gold trading entity, and that the Defendants intended to use the gold to manufacture jewellery and intended to increase production. It is worth noting that in his affidavit before the Commercial Court dated 11 March 2008 (a copy of which is at A/29), Mr Teboul acknowledges that he knew the Folio 267 Defendant companies were jewellery manufacturing or bullion trading companies (see page 2 of that affidavit).

28. In addition, it was apparent from the name of the company what business Meydan carried out. Meydan Doviz ve Kiymetli Madenler Ticareti A.S. translates (and although I appreciate I am not engaged here as a translator) most closely as 'Meydan Currency Exchange and Precious Metals Trade'. The Claimant was aware of the approximate meaning of the name of the company. This is evident from an exchange of emails on 3 June 2004 (C/I/80) in which Lydie Bellet of the Claimant emailed Cetin Binatli to confirm the name of the company as follows:

'The department has a problem with this counterpart because the credit line request was on the name: Meydan Precious Metals & Forex and in the documents "article of association" that we received from your part, the indicated name is: MEYDAN FOREIGN EXCHANGE AND GOLD TRADE JSC.

Please confirm me if the company changed name. If it is the case I need a document who indicates clearly the change of name.'

29. Cetin Binatli replied on 5 June 2004 to Aneesh Deshpande (C/I/81):

'The official name of Meydan should be in Turkish stating 'Meydan Doviz ve Kiymetli Maden Ticareti A.S.' The translation really is not official. Thus, you should input the Turkish version (like Goldas Kuyumculuk Ithalat Ihracat Sanayi A.S.)

The translator may have done a misinterpretation when interpreting from the original Turkish version into English. So you should consider the official name of the company and not the interpretation. (Look at the original Turkish documents).'

30. In January 2006, a further exchange of emails (C/I/82) demonstrated that Florent Teboul had knowledge that Kiymetli was a trading only company. In an email of 17 January 2006, Cetin Binatli wrote that Kiymetli was a trading company and not a manufacturer, to which Florent Teboul replied, stating that he already knew this but that confirmation was required so that Mr Teboul could pass the same on to the Claimant's Commodities Trading Credit Analyst, Séverine Spezzatti.

31. Further, Mr Teboul in his affidavit at §13 (A/39) stated specifically that the Defendants carried on business trading and manufacturing gold products. It is inconceivable that the Claimant did not appreciate what the Defendants were doing with the bullion delivered to them. Mr Teboul states that :

'as Goldas traded and manufactured gold, it had a high demand for bullion. Its recent throughput has been approximately 11MT of bullion each month. The Agreements with SG ensured that Goldas had an immediate supply of bullion that it could request to purchase, to cover fluctuations in its demand.'

32. Despite this, Mr. Teboul sought to suggest in his affidavit that he had no idea that the bullion might be being used or moved from its storage locations and that he would have considered such action to amount to a fraud. In particular, at §42.4 (A/50), explaining his response to a facsimile sent by Mr Binatli in relation to a request by the Claimant to inspect the Defendants' vaults (after the problems arose in February 2008):

'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 ([...] 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).'

33. Mr Teboul continued:

'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 SG in writing.'

34. Although I have not set out in full all the points which might be raised by the Defendants in relation to the Claimant's knowledge of their activities, from the above alone Mr Teboul's statements are open to serious debate.

The Contractual Arrangements

35. On 3 September 2003, the Claimant and the Defendants entered into the first of the Bullion Consignment Agreements (BCAs) (the first agreements were Gold Consignment Agreements but for ease of reference they are all referred to herein as BCAs) which formed the basis of the dispute between the parties. However, it is (and has since the dispute arose in 2008) been the Defendants' positon that the BCAs were the Claimant's standard form documents but which, whilst they might have been suitable for bank-to-bank bullion consignments, simply did not reflect the true agreement or intentions of the parties, and/or in any event did not at any stage accurately reflect how business was intended to be, or in fact came to be, performed.

Bullion Dealings Between the Parties

36. From September 2003 the parties engaged in the supply by the Claimant and purchase by the Defendants of significant quantities of bullion. The trade between the Claimant and the Defendants entered into by quantity of bullion/value in each of the years 2003 – 2007 is summarised in the following table. This information has been extracted from the Claimant's numerous statistical reports of various dates from C/I/84 onwards and IGE letters dated 21 March 2008, copies of which are produced at C/I/186. To get an approximation of the value I have taken the Kitco.com statistical analysis, which is produced at page C/I/190, for the years in question, to get an average price of gold for the year in ounces, divided by 31.1035 to get the gram price for fine gold and then multiplied figure by the annual delivered gold bullion figures. So for 2003, the Kitco.com average as 363.38 / 31.1035 = 11.682929 x 2.375 x 1,000,0000 (because 1m grams = 1MT) = 27,746,957 :

Year	Approximate Quantity of Gold Bullion Imported by Defendants from SG (Metric Tons)	Approximate Value of Bullion Imported by the Defendants from SG (US$)
2003	2.375	Av 363.38 27,746,957
2004	30.00	Av 409.72 395,183,821
2005	108.50	Av 444.74 1,551,410,291
2006	116.375	Av 603.46 2,257,869,934
2007	163.245	Av 695.39 3,649,715,966

37. The initial BCA was between the Claimant and Kuyumculuk and is dated 3 September 2003, which is produced at E/1. A second BCA was entered into between the Claimant and Meydan on 14 May 2004. Copies of these are at E/15.

38. New agreements were entered into with Kuyumculuk, Kiymetli, Meydan and Goldas Dubai on 27 April 2005 (replacing the previous BCAs with Kuyumculuk and Meydan). Copies of these BCAs are at E/29. The terms of these bullion agreements were substantially the same as previously, save they provided for different amounts for the purposes of 'Maximum Consignment Quantity'. These amounts were as follows:

- Kuyumculuk: 64,000 oz (c.1990 kg)
- Meydan: 64,000 oz
- Kiymetli: 16,000 oz (c.497 kg)
- Goldas LLC: 16,000 oz

39. In fact, as I explain further below, the Claimant provided gold bullion significantly in excess of the abovementioned amounts, as is clear from the Claimant's own demands in relation to bullion delivered to the Defendants in early 2008.

Actual Trading Practice and Agreement

40. There are various ways in which the BCAs were inaccurate and did not reflect the actual commercial arrangements between the Claimant and the Defendants. It is important for the Court to understand as a matter of overview how the position which was presented to the Commercial Court in March 2008, which purported to rely on the strict terms of the BCAs, was not complete or accurate.

Claimant's Awareness of Use of Bullion

41. The first and most obvious point is that, as I have indicated above, the Defendants believe that the Claimant was aware from the very outset of the relationship that the gold bullion delivered to it would be used by the Defendants in their trade, and that the whole purpose of the arrangement was to provide the Defendants with bullion on more advantageous commercial terms than those which it was able to obtain from Turkish banks, which charged punitive interest rates on loans with which bullion might be purchased.

42. In addition to the emails I have referred to above which indicate that the Claimant was informed and/or aware from the very outset of the relationship that the Defendants would be using the bullion delivered (and just by way of further example), on 10 November 2003 Mr Binatli replied to an email of Mr Teboul dated 7 November 2003 (C/I/195) seeking information about quarterly results and annual statements, and wrote as follows, identifying yet again that Meydan would be used in circumstances where the gold delivered by the Claimant would be sold on to third party purchasers:

> *'We are very much satisfied with the relationship and would also like to develop this further. As per your request I have attached our 3rd quarter results. Our target sales for 2004 is approximately $200-250 million, but as you also know we also have a fully owned subsidiary (www.meydan.com.tr) which is a full member of the Istanbul Gold Exchange, which is also licensed to import & sell gold bars to third party buyers in the Turkish market. So, we also can activate this possibility and work on a basis that we consign from you and sell to third*

party buyers/consumers in the Turkish market. This in return will increase our volume of business with you further. "Meydan" was ranked the 5th largest trader/importer in 2002 in the Istanbul Gold Exchange (www.iab.gov.tr/bul04.htm)'

I have been told by Mr Binatli that his reference to consign was to send. Mr Binatli was aware of what a consignment agreement was but that this was not what was intended by either party. Irrespective of what was written they intended to operate under a sale and purchase agreement.

43. I am also aware that there are likely to be significant numbers of further documents in the possession of the Claimant, its advisors or former insurers, which demonstrate that the Claimant in fact knew, considerably before February 2008 (if not from the outset of the parties' relationship) about the Defendants' use of the bullion in its jewellery production and trading. I say this because I have had sight of unsigned pleadings from the Claimant's subsequent litigation against its insurers relating to this dispute, and in particular a copy of the re-re-amended defence and counterclaim of the insurer defendants. This provides document reference numbers (which I infer are a reference to disclosure control numbers) in relation to documents which, on the face of the pleading, would lead to that conclusion. I refer especially to paragraph 21 of the re-re-amended defence and counterclaim in this respect (B/1). I am also aware that significant disclosure was ordered in those proceedings, e.g. see the Order of Tomlinson J dated 2 July 2010 exhibited at B/46.

44. I appreciate that these pleadings are not sworn, nor are they necessarily unchallenged, which is why I say no more than there is a real prospect of such documents existing. Unfortunately the Defendants are not able to obtain copies of these documents at present but the Claimant should no doubt be able to do so.

Importing of Gold in Turkey and Use of Final Sales Invoices

45. Secondly, it appears that the Claimant accepted, when obtaining the First Freezing Injunction, that retention of title clauses in the BCAs could not operate as a matter of reality pursuant to Turkish Law (see the exchange between Mr Brock (for the Claimant) and Kitchen J at A/325). I understand from the Defendants, and from the letter I refer to below, that in Turkey an importer of gold bullion was (and is) required to be a member of the IGE, and that all bullion imported had

(and has) to be stored and traded on the IGE within 3 days of delivery into the country. This was notified to the Claimant by Mr Osman Sarac of the IGE on 17 March 2008 (see C/I/196).

46. My understanding is that as gold is a special commodity and, as part of the Turkish currency protection legislation, a person must be the owner of gold to be able to import it and there must be no fetter on his ability to trade the gold. This is confirmed in paragraph 132(7) of a statement made, at the request of the Turkish Public Prosecutor, by Mr Cem Ulucay of the IGE dated 1 April 2008 (at C/II/602), and the decision of the Public Prosecutor, Mr Raif Bikmaz dated 3 June 2008 (C/I/199), subsequently upheld by the Turkish Supreme Court in a judgment on 20 February 2009 (C/I/215).

47. Mr Raif Bikmaz explains that the importation of the raw unprocessed gold through Turkish customs thus could only be achieved once it was delivered with a commercial invoice with a customs declaration:

> *'It is not possible to import gold to the country without having an authorization of disposition on the unprocessed gold imported pursuant to the open provisions of the legislation and also it is prohibited to enforce an expression that restricts the utilization of the ownership right and the disposition authority. For that reason; the complete disposition on the imported goods pass to the importer company.' (C/I/203)*

To have sought to impose a retention of title clause would have fettered the importer's ability freely to trade the gold and would have potentially been a criminal act.

48. The reality of this situation is confirmed by the fact that as early as the first transaction, in September 2003, the Claimant was informed that a 'Proforma' invoice was not sufficient to allow the bullion to be imported into Turkey, and that therefore a Final Invoice was required in each case. The use of a Final Invoice was only consistent with a sale of the bullion to the Defendants, albeit on advantageous payment terms (which I also mention below).

49. For example, on 11 September 2003, Mr Binatli requested from Mr Jacob Jesudasan and Mr Aneesh Despande (both of the Claimant) that a 'Final Invoice' be sent to him as an importation of bullion could not be completed on the basis of a proforma invoice (C/I/221):

> *'Thank you, I have received the original documents but need the original 'Final Invoice' and not the 'Proforma Invoice'. Can you please arrange to send me asap the 'Final Invoice' via DHL.'*

50. Mr Jesudasan responded by email that he would be forwarding the original documents by DHL on the same day. On 16 September 2003, Mr Jesudasan wrote another email to Mr Binatli with regards to another shipment (C/I/224):

> *'I have faxed you the documents for shipment of 300 Kgs.*
> *Kindly let me know if the invoice is fine for your customs purpose and in turn I could forward you the originals through DHL.'*

51. On 27 October 2003, Mr Binatli requested by email from Mr Jesudasan with regards to another shipment (C/I/226):

> *'Please make sure that they are stated as "invoice" and not "proforma invoice". The invoices you sent me earlier unfortunately is not acceptable to the customs because they are stated as "proforma invoices" and not as "invoice". Could you also re-send the invoices 125kg Invoice No.778 dated 09.10.03 $1.487.535.- & 100kg Invoice No.789 dated 15.10.03 $1.199.625.- again as stating "invoice" along with invoice no.792 for $1.499.531,25.'*

52. On the same day, Mr Jesudasan responded as follows (C/I/225):

> *'Is it fine enough if I send you the just the original of invoices. Hope other docs are fine in it.'*

53. Cetin Binatli confirmed by email of same day that original invoices and other documents were fine, to which Jacob Jesudasan responded that he would be sending the invoices to Mr Binatli that same day.

54. The final invoices (which under the terms of the BCA were only to be used where a sale of the bullion was agreed) contained all the material terms of a sale (including naming the parties as 'buyer' and 'seller') and, not withstanding that those invoices were intended to be presented to third parties, including Turkish customs, the Claimants did not seek to reserve any title (which in any event would have been impossible absent compliance with Turkish law). Instead those invoices gave a date for payment and in effect granted a period of credit for the sale of the bullion. Examples of these invoices are at C/I/231,235 from November 2003 and C/I/239 from January 2008.

55. In addition, the Claimant would provide a Shipment Confirmation Notice which (aside from not being in any form prescribed by the BCA) actually referred to the parties' "delivery and sale agreement" as being the relevant (or a telling description of the relevant) agreement. An example of copy of such a notice is at C/I/230,234 from November 2003 and C/I/240 from January 2008.

56. Had the Claimant wished to ensure it retained title to the gold bullion delivered, at least two commercially viable options were available.

57. First, the Claimant could have required that a third-party bonded warehouse be used to store the gold bullion, thus ensuring that the customs requirements did not apply until the required bullion was removed. In fact, this option was considered by the Claimant and the Defendants in March 2005, but was never utilised.

58. In particular, on 21 March 2005, Aneesh Deshpande by email (C/I/244) responded to a query by Cetin Binatli with regards to the shipment of an unexpected extra metric ton:

> *'I and Florent were wondering, if we managed to have an arrangement with Brink's whereby we arranged for Gold to be stored at a Bonded warehouse in Istanbul for a certain duration of time, we could have Kilo Bars ready for delivery to your vault as and when you require for back to back shipments. This will enable immediate delivery or the latest next day delivery to you. This facility could also be used for shipments on 1 or 2 months consignment. Would you happen to have an interest in such a facility or do you think the current facility where by we forecast what you require and arrange for the shipments suits you better??*
>
> *The cost of this facility, including shipment and storage at the bonded warehouse including deliveries to your vault could cost approximately 10 cts higher.'*

59. Cetin Binatli responded by email of 22 March 2005 (C/I/244) but refused this suggestion, relying, in part, on the fact that the Defendants wanted to be able to 'determine our requirements' (which in this context can only have meant use the gold):

> *'Yes, we are aware of such a service option but frankly are not interested for several reasons.*
>
> *First being that, there is additional costs involved. Second being that, we have previously tried this way of operation and were not satisfied with neither Brinks nor Securicors service. Third being that, we prefer to*

determine our requirements when it occurs rather than forecasting them (this is difficult to determine especially on the back to back transactions). Fourth being that, we do not think that there is a big advantage in using this route.'

60. Using a bonded warehouse was clearly an option for the Claimant, however, upon which it could have insisted if it had been minded to do so.

61. Secondly, I understand the Claimant has a Turkish subsidiary based in Istanbul, established in 1989. I cannot immediately see why the Claimant could not have utilised its presence in Turkey to hold the bullion if it required to retain title.

Place of Delivery of Bullion

62. It was common for deliveries of bullion to be made by the Claimant to locations other than that specified in the Shipment Confirmation Notice for the bullion. So, for example, shipments to Kiymetli, Meydan and Kuyumculuk were delivered to the IGE. Shipments for Goldas Dubai were at times delivered to third party customers of that company, because Goldas Dubai did not have facilities to store gold safely at its offices. This was inconsistent with the suggestion that the bullion was required to be stored securely at a specified location. Indeed, the location specified was also not the IGE, but the registered office of the relevant company (which would not have had the facilities to store bullion in any event).

63. It is worth noting that there is no facility under the BCA whereby the Claimant can check the physical location of the bullion at any time. It is perhaps worth adding that the Claimant did not once seek security from the Defendants, despite the large quantities of bullion being delivered, and did not ever in 5 years (until February 2008) seek to inspect the bullion or the location of its storage.

Reality of Commercial Practice

64. In nearly 5 years of trading, involving billions of dollars of gold bullion, the Defendants did not once return a shipment to the Claimant. It is inconceivable for the Claimant to have honestly or genuinely considered that the bullion was not being used, in circumstances where it was delivering very large quantities of bullion (at the date of the Freezing Injunction some 15MT) to the

Defendants with payment terms of up to 90 days, and where the Defendants (i) had never returned a shipment; and (ii) openly carried on business as gold traders and jewellery manufacturers/retailers. There is no reason why any of the Defendants would have needed to retain gold bullion on this scale and for these time periods if it was not using it.

65. The Claimant could not credibly maintain that the Defendants needed to retain 11.3 MT of gold on long term consignment on the off chance that it might at some point be needed for production or to trade, when it is apparent from the sample transactions, referred to at paragraphs 54/5 above, that gold bullion could be delivered by the Claimant to the Defendants within a matter of days of request.

Quantities of Bullion Delivered and Payment Terms

66. It is also relevant that the Claimant made no attempts whatsoever to adhere to the restrictions on maximum consignment quantities contained within the BCAs. It would not be overstating the position to say that these limits were ignored. For example, notwithstanding the limitations on bullion quantities in the BCAs being Kuyumculuk 2,000kg, Meydan 2000kg, Kiymetli 500kg and Goldas LLC 500kg. As at March 2008 immediately prior to the Freezing Orders being obtained, payment was being demanded (on the basis of the Claimant's own case and documents at FT6 A/166 and FT9 A/233) in respect of c. 4,200kg of bullion, with the further bullion amounts having been supplied to the Defendants: 5,200kg to Kiymetli, 500kg to Goldas Dubai, 3250kg to Kuyumculuk and 2350kg to Meydan.

67. The Claimant was also willing to extend payment term times significantly from the original periods set out in the BCA. These were increased to 60, and ultimately up to 90 days from the 30 originally envisaged. Examples of transactions in which this was provided for are at C/I/246 to 252.

Back-to-Back Transactions

68. In addition to the more regular transactions in which the bullion would be delivered with a final invoice, payable after a certain period (which as I mention increased to 90 days over the course of the relationship), a substantial part of the Claimant's business with Defendants comprised 'back to back' transactions, where the Defendant company which was party to the transaction was to trade the gold promptly on the IGE (or in Dubai) and receive the same proceeds from its buyer before making payment to the Claimant for the gold.

69. Such transactions were originally intended to involve 'pricing' (i.e. agreement of the price) of the gold by agreement between the parties prior to or on the same day as its delivery to the relevant Defendant company, and payment also being made to the Claimant for the gold prior to or on the same day as its delivery. However, in practice, payment was received by the Claimant after the delivery date. Indeed, the Claimant agreed for the payment period to be increased to 10 working days from the date the gold cleared customs. Plainly the Claimant must have been well aware that the whole point of these transactions was that they would operate 'back-to-back', i.e. necessarily include immediate or swift onward sale of the bullion to a third party before the Claimant was paid, and therefore inconsistently with the BCAs.

70. The Claimant's knowledge of the onward sale of the bullion can be demonstrated from email communications. In an email from Mr Deshpande of the Claimant to Mr Binatli of 1 December 2004 (C/I/253), the Claimant suggested a back to back transaction. In doing so Mr Deshpande clearly set out the Claimant's understanding of such a transaction, which plainly anticipated that the Defendants would sell the gold to third parties before payment to the Claimant which would be paid later:

> *'I have a strong feeling, the Silver ranking will be changing in 2005. For Gold for Meydan, looking at the fact that during the year end the demand is the highest, I would suggest we could do some back to back shipments i.e. we ship the Gold and the metal is purchased on arrival and payment is made on spot date. (Cetin if you remember, we did the same for silver once).'*

71. Another email, this time from Mr Binatli to Mr David Fernandez of 3 January 2005 (C/I/254), also demonstrated openly and clearly that the relevant Defendant had entered into a back–to-back transaction, and was awaiting payment from their counter party before being able to pay the Claimant:

> *'The amount under this reference seems to total $15,880,035.94. This amount as you know is a back to back deal and it seems that we have not received the funds from our customer with value 30.12.04. We had instructed our bank to transfer the said funds accordingly, but because our customer did not effect payment into our account there was a lack of funds, thus, our bank was not able to effect payment with this value. We are tracing the situation and will inform you accordingly. Apologies for any inconvenience caused.'*

72. The Court will note from Mr Teboul's affidavit of 11 March 2008 (A/29) that he accepts that in fact the BCAs were varied in certain respects, but that the formal documents were not necessarily amended. It seems the Claimant was obliged to concede that certain variations to the contractual arrangements had been made, and this in itself illustrated that the BCAs could not be taken at face value. For example:

(1) Mr Teboul stated at §12.2.4 of his affidavit (A/34), in relation to the Maximum Consignment Quantities that:

> *'As the relationship with Goldas developed, it was proposed that the Maximum Consignment Quantity could be increased. This decision was approved by SG's Rick Division; however, as the provision had originally been inserted to protect the interests of SG, it was not thought necessary to formally amend the terms of the Agreements'*

(2) In relation to shipment of the bullion, Mr Teboul appears to accept at §12.4.7 of his affidavit (although he does not refer to it as a variation) that far from being delivered or kept at the defined 'Location' according to the BCA, in fact the bullion was, in relation to Turkey, delivered to the IGE (which corresponds to the fact that Turkish law required imports to be traded on the IGE).

(3) In relation to the Maximum Consignment Period as set out in the BCA (30 days), Mr Teboul again accepted that the Claimant and the Defendants did accept both longer and (for back-to-back transactions) shorter periods 'of consignment'. It is notable, however, that the relevant periods were marked by a date being the 'late date of payment' which was contained in emails sent to the Defendants when bullion was requested. Again, no formal amendments were made to the BCAs (Mr Teboul stating these were not necessary), but it is acknowledged that the time periods in questions increased to 60 and then ultimately 90 days for payment by February 2008, and for 'back-to-back' transactions, from the same day to 10 business days.

Contractual Price not Reflecting Contractual Terms

73. Throughout the relationship between the Claimant and the Defendants, they both treated gold shipped to the Defendants as having been sold to them. To that end, the Claimant charged

interest, referable to the spot price for gold on a daily basis from the date of delivery. Pages C/IV/986-981 comprise, by way of example, a set of documents generated in relation to contract 1889, a purchase of gold by Meydan. The BCA (at E/59) provides for the payment of a premium, to cover the shipping costs etc. (see Annex 1 Part I and II (b)). Annex 1 Part II also makes reference to a consignment fee. It is only payable if gold is not purchased during the applicable Free of Charge Consignment Period (30 days, 15 days or 7 days, depending on the circumstances) and is to be an amount equal to (i) the quantity of gold not purchased x (ii) the London Gold price at the date of purchase or return x (iii) the rate fixed by the Claimant and specified in the pro forma invoice x (iv) the number of days from the end of the Free of Charge Consignment Period up until the settlement date; divided by 360. It will be seen that the Claimant confirms the shipment on 5 November 2007 (C/IV/986) on terms that interest is paid at a rate of 0.5% per annum for 3 months and there should be a premium of US$0.75. The last date of pricing is said to be 8 November 2007 and the last date of payment 13 November 2007. An invoice is generated which makes no reference to a premium or interest and refers to a settlement date of 14 November 2007 and a price of US$12,859,980. The price is stated to be US$12,859,980 (C/IV/988). On 17 January 2008 the Claimant writes to Meydan confirming pricing for value date 17 January 2008 of US$889 per Troy oz. and a premium of US$0.75 per Troy oz, producing a total amount of US$14,231,551.25. Interest of US$12,971.99 is also claimed, calculated by reference to an attached spreadsheet (C/IV/994). The spreadsheet records interest payable from the date of delivery (8 November 2007). Payment is subsequently made by Meydan on 23 January 2008 of three separate sums: (i) the original purchase price (US$12,859,980); (ii) the difference between the original purchase price and the price on the value date (US$1,371,571.25); and (iii) an interest payment of US$12,971.99 C/IV/1004. It will be seen that, wholly inconsistently with the BCA, the Claimant treats Meydan as liable to pay interest on a daily basis by reference to the spot price for gold on each day; thus treating Meydan as having borrowed the original purchase price, which is then subject to adjustment as the gold price fluctuates.

Ad-hoc Credit Facilities Provided by the Claimant

74. It is also important to appreciate that the Claimant had for some time prior to February 2008 been prepared to provide the Defendants with what amounted to a rolling loan facility or overdraft in a cumulative sum of US$10m, which was used from time to time as and when required by the Defendants.

75. Mr Teboul made reference, at §17 of his affidavit (A/40), to these loans. While he describes each of them as 'a short term advance' based on his own evidence these were still in operation almost 2 years after being made. In fact, I have seen documents (including those referred to below) which indicate both that such facilities were being made available to the Defendants earlier than Mr Teboul has indicated, and also that these facilities were approved by him with virtually no formality at all.

76. In this respect I refer, merely by way of example, to:

(1) An email of 17 October 2005 in respect of transaction 1179-A appended at C/I/256, in which Aneesh Deshpande of the Claimant set out the payment price for 250kg of gold bullion, and confirmed the agreement of the Claimant (following a telephone conversation earlier that day) to provide a loan for the full balance;

(2) A final invoice (C/I/259) dated 18 October 2005 in respect of the same purchase of 250kg of gold bullion with a price of US$3,806,810 . The invoice reflects that the Claimant made a loan to the Defendant (Kuyumculuk) for a 2 month period for the total price, subject to interest being charged;

(3) An email exchange between Mr Binatli and Mr Teboul dated 30 May 2006 (C/I/261). In an email timed at 4.06 pm (local time, which at that time of year is BST + 2), Mr Binatli asks Mr Teboul ('Florent') whether it would be possible to extend a payment due on 2 June 2006 for two months. Mr Teboul replies in an email times at 3.10 pm (local time, which is BST + 1), (and therefore, it seems, 4 minutes later) simply saying:

> *'sure*
> *I lend to you 4 M$ (please pay the interest on the first period) from 2/06/06 to 01/08/06 at 8.17% (libor 2Mo + 3.0%)*
> *official confirmation will follow*
> *thanks'*

(4) A further pricing email dated 27 January 2006 and Final Invoice for the same transaction, no 1290-A in which the Claimant agrees to a US$ loan to Meydan in the sum of US$3,595,676 for two months from 31 January 2006 to 31 March 2006 (C/I/262).

77. Despite Mr Teboul's insistence in his affidavit that the bullion should not have been used by the Defendants, it must have been obvious to the Claimants from these loans alone that this was what was happening. Otherwise, the bullion would simply have been returned and (if necessary) re-consigned without the need for a loan agreement and the interest this would necessarily entail. The only commercially viable reason for requiring a loan was because the bullion itself was no longer available and that the loan was required to cover the purchase cost.

Year-End Closings

78. The final point to mention in this section is that at the end of each financial year, 31 December, the Claimant insisted that all open balances between the Claimant and the Defendants were closed and paid for or payment sent, regardless of any applicable terms to each transaction. New transactions would then be started on the 1st January the next day/year. This meant that all bullion would be priced by the Claimant and payment made by the Defendants (although in December 2007 it would seem that the Claimant did not price four 3-month transactions 1889, 1913, 1916 and 1919, mistakenly shown as back-to-back).

79. The Claimant prepared monthly statistical reports of all precious metal transactions and gave an end of year summary in December. At C/I/263 are the reports for December 2007 and January 2008. The completed transactions for December 2007 show shipments of 9.90 MT made with payments for 13.425 MT received totalling US$348,526,839.84. In January 2008 there were 18.5 MT shipped of which payments for 15.550 MT were received totalling US$1,292,085.18. However, this figure is wrong; the actual amount received by the Claimant from its own report is US$445,730,787.23.

80. As examples of the end of year pay down occurring, I exhibit at C/II/300 and C/II/302 emails of 8 December 2005 from Mr Deshpande to Mr Binatli which demonstrate the maturing of all shipments prior to 31 December 2005, and a further email of Mr Binatli to Mr Teboul dated 13 December 2006 asking whether the normal 'year-end' procedure closure of positions could be avoided. As I understand it from the Defendants' officers, the year-end closure process meant that any quantities of gold shipped prior to the year end were required by the Claimant to be price fixed by 31 December, by Goldas companies. Shipments for early January would be pre-booked

so that there would not be an issue interrupting the trading position. On no occasion did the Defendants return any bullion to the Claimant.

81. Therefore, as at the point where the Claimants obtained their First Freezing Injunction and issued the Folio 267 Claim, the Defendants had made payment for all bullion which was delivered prior to 31 December 2007, save the occasional missed transactions not invoiced. So, in almost 5 years of trading, every bullion delivery had been paid for, and on the occasions where additional time was required, the Claimant had allowed the Defendants the benefit of what was effectively an overdraft facility.

82. A further example of the relaxed approach the Claimant took to the commercial relationship appears in the context of delays by banks in transferring payments or where Goldas had been delayed making a payment. One example is the 3 January 2005 email referred to above at paragraph 71, which arose from a chasing email of 31 December 2004 from Mr Fernandez (C/I/254). No complaint or query was raised by the Claimant's representatives about any potential breach the terms of the BCA, and in particular the retention of title clause.

83. It also appears that the Claimant was primarily concerned with ensuring its books were kept in order. In an email from Aneesh Despande to Cetin Binatli dated 22 January 2008 (C/II/303) Mr Despande stated:

> *'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 dates??*
> *If this is not possible could you please arrange to have the interest paid??'*

Again there is no reference or concern that consigned bullion might have been released prior to payment having being received. This once again confirms that, in reality, the Claimant was not concerned that the Defendants were using or selling on the gold (which the Defendants contend the Claimant knew in any event) and that the BCA was a matter of form only.

Conclusion

84. For the reasons explained above, it is plain that the relationship between the parties was conducted on a different basis to that which the Claimant sought to set out when asserting that the Defendants had misappropriated gold bullion. The Defendants believe, and have always believed,

that the Claimant was well aware of how the bullion was to be used. The Claimant was always willing to deal with the Defendants on a far more informal basis than it subsequently sought to make out. The Defendants predominantly discharged their payment obligations, or had arranged sensible payment terms which the Claimant had always been prepared to grant. The significance of these points is explored further below in relation to the manner in which the Claimant obtained the Freezing Orders.

THE FREEZING ORDERS

Events Immediately Leading to the Freezing Orders and Claims

85. On 5 March 2008, the Claimant (through Mr Edward Pinnell) sent several documents dated 4 March 2008 for the attention of the different Defendants by fax to the Goldas fax server, together with a covering letter. One document (at C/II/306), entitled 'Notice of Expiry of Maximum Consignment Period', was addressed to Kiymetli. The other documents were all entitled 'Notice of Default' and were (between them) effectively addressed to each Defendant. They are at C/II/304 onwards. Each document sought the return of gold bullion previously delivered to the Defendants, and/or asserted that there had been a default under the contractual arrangements between the Claimant and the Defendants and sought the immediate return of gold bullion and/or payment of sums alleged to be due for the same.

86. For reasons which I have alluded to already, the Defendants did not accept that there had been any default of the arrangements which had in fact governed their relationship with the Claimant, and I understand it was clear to all concerned that there was a dispute between the parties as to what sums were due to be paid to the Claimant, and over what time-scale. This is obvious from the fact that, as I explain, the parties were in the middle of negotiations about the dispute, when the Claimant obtained the Freezing Injunctions and commenced these proceedings. In an attempt to resolve the dispute, at the time the Defendants' representatives sought to agree with the Claimant terms for making payment for gold bullion previously delivered (and sold) to one or more of the Goldas companies. I should say clearly, however, that, Defendants make no admissions whatsoever that any sums were previously or remain due to the Claimant and each of the Defendants reserves all their rights in this respect.

87. A further Notice of Default was sent to Kuyumculuk by Mr Pinnell of the Claimant on or about 7 March 2008 (C/II/317), which sought repayment of monies alleged due pursuant to loan agreements in the total sum of US$9,188,480.21.

88. From 28 February 2008 representatives of the Claimant and of each of the Defendants were engaged in without prejudice discussions in attempts to settle the dispute which had arisen so suddenly in respect of very significant sums of money. In this respect, the Claimant had instructed Clifford Chance and PriceWaterhouseCoopers to assist it, whilst the Defendant had instructed Turkish lawyers Postacioglu, and Rothschild as financial advisors. The Defendant had also instructed Dominique de Villepin as a legal advisor.

89. On 10 March 2008, the Claimant's Turkish lawyers, Pekin & Pekin (hereafter called 'Pekin') sent documents also entitled Notice of Default to the Defendants. These documents, which were in Turkish but which have been translated and are at C/II/318, expressly sought to give the Defendants until the end of (i.e. 23.59 on) 17 March 2008 to comply with the demands made in the notices.

90. Notwithstanding those Notices of Default, the time given by Pekin for a response to the same and the attempts by the Defendants to resolve the issues:

(1) The Claimant also on 10 March 2008 (via its Group Corporate Secretary Christian Schricke), wrote to the Commercial Court giving advance notice that it would be seeking a worldwide freezing injunction and confirming that it intended to give the appropriate cross-undertaking in damages to the Court, and an undertaking as to the costs of third parties affected by any order made. The Claimant expressly confirmed that it had the means to give a cross-undertaking in damages (see C/II/363).

(2) By 11 March 2008, the Claimant had prepared and obtained signed copies of its evidence in support of its intended injunction, as can be seen from the affidavits of Mr Pinnell and Mr Teboul in Bundle A, but did not immediately proceed to make its application.

(3) On 13 March 2008, the Claimant issued an Application Notice for an *ex parte* without notice freezing injunction against the Defendants' assets to a cumulative value of $468,000,000;

(4) On Saturday 15 March 2008, the Claimant obtained the First Freezing Injunction *ex parte* and without notice.

The First Freezing Order and the Folio 267 Claim

91. On Saturday 15 March 2008, whilst the Claimant and the Defendants were engaged in discussions concerning the dispute, the Claimant appeared before Kitchin J at his residence to seek an *ex parte* without notice freezing injunction.

92. The hearing bundle (later delivered to the Defendants (or one of them), as I describe later in this statement) is contained at volume A of SPTR1.

93. Kitchin J made the First Freezing Order on an ex parte interim basis in relation to each of the Folio 267 Defendants in the form set out at A/10. The amounts frozen for each Defendant varied, but cumulatively amounted to over US$468,000,000. The freezing injunction did not prevent trading in the ordinary course of business. A return date was set for 2 April 2008. In obtaining the freezing order, Claimant gave, *inter alia*, the following undertakings to the Court:

(1) The usual cross-undertaking in damages in the form: *'If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make.*

(2) An undertaking to issue and serve the claim form as soon as practicable;

(3) An undertaking to serve upon the Defendants, together with the Freezing Order:

i. copies of the affidavits and exhibits containing the evidence relied on by the applicant and any other documents provided to the court on the making of the application;
ii. the claim form; and
iii. an application notice for the continuation of the order.

(4) An undertaking in damages in respect of losses caused by the order to any third parties.

94. The documents at (i) were set out in Schedule A (A/17) to the First Freezing Order. These were the affidavits of Edward Pinnell and Florent Teboul both dated 11 March 2008, found at A/20 and A/29 respectively.

95. Kitchin J stated, on granting the injunction, that leave to serve out of the jurisdiction was not required and the Claimant agreed that it was not (this is noted in the Note of the Hearing (A/326). I have assumed for present purposes that this was on the basis of what was at the time, CPR r6.19 (now CPR r6.33(2), and the fact that there was a choice of law and jurisdiction clause in favour of English law and the English Courts in the BCAs.

Events Immediately Following the Grant of the First Freezing Order

96. The order of Kitchin J of 15 March 2008 alone (albeit with a covering letter) was faxed and emailed to representatives of the Folio 267 Defendants in the afternoon of the 15 March 2008 (C/II/364,365). Each of the letters specifically stated that the interim order was contained 'by way of Notice'. However, at this stage the Defendants and their representatives did not appreciate the meaning and import of the documents received. In fact, on Monday 17 March 2008 the Defendants' and Claimant's representatives PWC/Clifford Chance (for the Claimant) and Rothschild/Postacioglu (for the Defendants) attended a pre-arranged continuation of the series of meetings in Paris to discuss the issues or disputes between the parties because they did not appreciate what steps the Claimant had taken. I am informed that this meeting was concluded on the basis that further information would be supplied by the Defendants' representatives, who were ignorant of the fact that an injunction had been obtained in London as no notice was given nor reference made to it by the Claimant's representatives. The Defendants' representatives adjourned to their offices to conference call the Defendants' board members to inform them of the outcome of the meeting. The conference call was terminated part way through the afternoon of Monday 17 March 2015, when the fact that some serious action had been taken by the Claimant was brought to the attention of the Defendants' officers (which included not only the Freezing Order but the criminal complaints referred to below) and they appreciated the significance of the same, particularly in relation to the threat of arrest which they would have faced in Turkey. The officers of the Defendants had to report themselves to prosecutors immediately to avoid facing the risk of arrest and detention.

97. The Defendants understand that the interim injunction was immediately and widely circulated amongst and brought to the notice of the Defendants' banks, gold exchanges and other trading

parties. This had an immediate and catastrophic effect on the Defendants' financial and trading positions as discussed below.

98. On 17 March 2008, the Claimant had prepared and filed criminal complaints in the Turkish Prosecutor's office against each of the individuals on the Defendants' boards of directors. A sample criminal complaint is attached (C/II/373), although in the interests of brevity the annexed documents have not been produced. In support of these actions the Claimant cited the Interim Injunction Order from the English proceedings at paragraph 7 (C/II/378).

99. On Tuesday 18 March 2008 the Claimant issued a Claim in the Commercial Court with Folio Number 267. It is not clear why this was done on 18 March 2008 and not 17 March 2008 in light of the undertakings to the Court, but I note again that Pekin had previously written to the Defendants with a deadline of 17 March 2008 for making payment of the demanded sums. In addition, and as I explain below, on or about 18 March 2008 the Claimant also commenced injunctive proceedings in Turkey against the Defendants.

100. At some date which the Defendants cannot presently recall, a bundle of documents was delivered to some shops belonging to a retail arm of the business (not in fact one of the Defendants' premises) in Istanbul and other cities in Turkey as well as in Russia, China and Dubai, and may also have been delivered to the head office (but it is unclear where the different copies were left). This bundle contained the first documents in Bundle A. As can be seen by the index at C/II/392 this comprised the application, affidavits and exhibits made in support of the interim application, a draft order, an unissued claim form, skeleton arguments and a note of the hearing on 15 March 2008. None of the documents was translated. The bundle did not contain the issued claim form or any application notice for the continuation of the First Freezing Order.

101. Between 18 March 2008 and 25 March 2008, various other proceedings were commenced, or actions undertaken, by the Claimant in Turkey, and further notices of default were sent to the Defendants. I deal with these matters in more detail in the narrative chronology contained in Appendix A to this statement. By way of example at C/II/393 is a copy of an application for an injunction made by the Claimant's Turkish lawyers, Pekin, in the Turkish Commercial Court in Bakirkoy, Istanbul. This document has not been translated but as will be explained below, the Claimant makes reference to the injunction granted by Kitchin J in the body of the application at paragraph 5 (C/II/400) and at paragraphs 26 and 27 (C/II/405).

Failure to Serve the Folio 267 Claim and Further Injunction Documents

102. By two letters dated 25 March 2008 the Claimant (through Pekin) purported to effect service of the Folio 267 Claim Form and service pack issued on 18 March 2008 on Kuyumculuk and Kiymetli respectively (C/II/421). The process which the Claimant had attempted to use was that of service by notary public.

103. By letters dated 25 March 2008 (C/II/478), each of the Meydan, Kuyumculuk and Kiymetli wrote to the Claimant, and I understand from the Defendants' representatives that copies were faxed to Messrs Clifford Chance, rejecting (or disputing) the apparent attempts to serve legal documents. It is clear from those letters that service was not accepted and that the Claimant was informed that if it wished to effect service then this was required to take place in accordance with the applicable provisions of the Hague Convention 1965. Kuyumculuk, Kiymetli and Meydan received (and to date have received) no reply or response to these letters rejecting service.

104. By letters dated the 27 March 2008 (C/II/481), each of the Defendants wrote to the Claimant by fax, post and DHL, and copied by fax to Clifford Chance, informing them that the purported service of legal documents on them was not accepted (and that the Defendants considered those attempts to be invalid according to the relevant laws). The Defendants stated clearly that if the Claimant wished to effect service then it could only do so by the correct legal process, namely by service in accordance with the applicable provisions of the Hague Convention 1965 in relation to the Turkish Companies or, for Goldas Dubai, according to the relevant legal requirements for service of foreign proceedings. The Defendants received (and to date have received) no reply or response to their letters rejecting service.

105. I should also note that although a letter was written to this effect on behalf of each of Meydan and Goldas Dubai, in fact I understand that neither Meydan nor Goldas Dubai received any documents (not even a letter) by way of purported service of the Claim Form, as had been the case for Kuyumculuk and Kiymetli. On this basis it would seem there was in fact no attempt made to serve the Folio 267 Claim Form on Meydan or Goldas LLC at all.

106. The Claimant did not issue an Application Notice for the continuation of the First Freezing Injunction (returnable on 2 April 2008) until 27 March 2008, (C/II/487). This appears to have been faxed to Kiymetli only, on 27 March 2008, (C/II/485). No other notice of the application was given.

107. On Wednesday, 2 April 2008, there was a hearing at the Commercial Court before Mr Justice Burton. It is not clear whether consideration was given as to whether proper notice of the hearing had been given to the Defendants of this hearing given that the Claimants had only provided informal notice of the application notice by way of fax, and even then only to one Defendant. Even this notification was far short of the required period pursuant to CPR 6BPD 7.1.

108. It is apparent from the limited documents available that First Freezing Order was renewed and extended until further order. In addition, pursuant to paragraph 2 of Schedule B to the Order, the Claimant undertook to serve the respondent *'together with this order copies of the affidavits and exhibits containing the evidence relied on by the applicant (to the extent they differ to the affidavits and exhibits served upon the respondent following the order of Kitchin J on 15 March 2008) and any other document provided to the court on the making of this application.'*

109. The additional document for service identified in Schedule A to the Order was the affidavit of Gemma Muggoch dated 31 March 2008. I understand this was not, and has never been, supplied to, let alone served on, any of the Folio 267 Defendants. The Defendants do not know what that affidavit stated as a result. No other documents relating to the continuation of the First Freezing Order have been served.

110. On 7 April 2008, a letter was sent from the Defendants' Turkish lawyers (C/II/501), Postacioglu, by notarial service to Pekin, in substantially the same terms as the Defendants' letters dated 27 March 2008 refusing to accept and disputing the validity of the Claimant's purported service of the proceedings unless done so in accordance with the applicable provisions of the Hague Convention.

111. On 8 April 2008, Pekin responded (C/II/505) asserting that the Claimant was entitled to serve under Article 10 of the Hague Convention using the notary public service process. However what Pekin omitted from its letter (or clearly had got wrong) was that Turkey had opted out of Article 10 of the Hague Convention, as can be seen from Turkey's status on the Hague Convention

website https://www.hcch.net/en/states/authorities/details3/?aid=277 (C/II/512). The Defendants will adduce further evidence (of experts if necessary) to address this point if so required (i.e. if the Claimant disputes that no valid service took place pursuant to the Hague Convention).

The Second Freezing Order and Folio 329 Claim

112. In addition, on 2 April 2008 the Claimant sought and obtained a further freezing order *ex parte* and without notice against Kuyumculuk and Goldart (as the Folio 329 Defendants, it appears) for non-payment under the guarantees they had each purportedly given to the Claimant in guarantee of the liabilities of the Defendants.

113. It was unclear why this application needed to be made *ex parte* and/or without notice. However, what is clear is that no notice of the same was given (see paragraph 2 of the Second Freezing Order at A/346). Notwithstanding this, the Order did not include any provision for a return date (it was made until trial or further order). Save as set out below, it also failed to make the normal provision for any of the usual documents created when an *ex parte* without notice injunction is granted (and in particular a note of the hearing or the skeleton arguments in support) to be served on the Defendants.

114. The Claimant did, however, undertake to issue and serve a Claim Form and injunction as soon as practicable. The Claimant also undertook to serve the Folio 329 Defendants with the Order and:

(i) copies of the affidavits and exhibits containing the evidence relied on by the applicant and any other documents provided to the court on the making of the application; and

(ii) the claim form.

115. The additional document for service identified in Schedule A of the Second Freezing Order was the first affidavit of Edward Pinnell dated 31 March 2008.

Events Immediately Following the Grant of the Second Freezing Order

116. On 2 April 2008, Clifford Chance on behalf of the Claimant sent three 24 page fax letters enclosing both Orders of 2 April 2008 to the same fax number (+0090 212 637 4007), the first

addressed to Kiymetli, the second to Meydan and the third to Kuyumculuk. The letter sought to enclose by way of Notice, a copy of each of the Freezing Orders made 2 April 2008 is produced at C/II/515.

117. On 3 April 2008, a further fax letter (C/II/527) was sent (again to the same fax number) in ostensibly the same terms as those of dated 2 April 2008 but addressed to Goldart. Again, the only documents faxed were the Injunction Orders.

Failure to Serve the Folio 329 Claim and Second Freezing Order Documents

118. Despite the undertakings given to the court, none of the supporting documents relied on by the Claimant in relation to either injunction obtained on 2 April 2008 was served on the Defendants. No new evidence relied on in support of either injunction application has since been separately supplied to or served on any of them by the Claimant or its agents, and no note of or skeleton arguments for the hearing at which the Second Freezing Order was obtained have been delivered to or served on the Folio 329 Defendants.

119. Despite the undertaking given on 2 April 2008 to issue a new claim as soon as practicable, it was not until Friday 4 April 2008 that a new claim with Folio No. 329 was issued in the Commercial Court in London (A/361) against Kuyumculuk and Goldart.

120. On 14 April 2008, the Claimant purported to serve the Folio 329 Claim Form dated 4 April 2008 and a service pack plus translation and apostille. At the written request of Pekin, service was purportedly effected by way of notarial service by post on Goldart Holding A.S. and Goldas Kuyumculuk Sanayi Ithalat Ihracat A.S. on the same date. Copies of both letters are at C/II/531.

121. On 16 April 2008, the Folio 329 Defendants, by their lawyers Postacioglu, rejected and disputed the purported service with a further letter from Postacioglu, again referring the Claimant to the specific provisions of the Hague Convention (C/II/564).

122. On 17 April 2008, Pekin replied to the letter of Postacioglu dated 7 April 2008 challenging the rejection of service of legal documents or proceedings. Translated copies of this letter are at C/II/568. In essence, Pekin contended that the Folio 329 Claim Form was served properly and in accordance with Turkish and English law, by reference to Article 54 of Turkish International

Private and Procedural Law (IPPL), which plainly has no application to the issue of service. A translation of the IPPL with the original Turkish is at C/III/612. Pekin made no reference to the Hague Convention despite repeated references to the same by the Defendants. The Defendants will, if necessary (i.e. depending on whether the Claimant disputes that valid service has not occurred, and on what basis) adduce expert evidence as to Turkish Law to demonstrate that the attempt by Pekin to justify the Claimant's actions is unfounded.

123. On 1 May 2008, Postacioglu sent two letters by notary public on behalf of the Defendants (both produced at C/II/575 and C/II/579) ostensibly in response to the Claimant's letters dated 22 April 2008; although the Defendants do not have copies of Pekin's letters of 22 April 2008. In these documents Postacioglu answers Pekin's arguments contained in their letter of 17 April 2008, before reasserting the Defendant's contention that only service in accordance with the applicable provisions of the Hague Convention would suffice.

124. To the best of my knowledge and having made enquiries with the Defendants, there were no further attempts made by the Claimant to serve the Freezing Injunctions, documents in support of the same or either of the Claim Forms. As stated above, the Claimant has never provided to the Defendants, whether by notice or otherwise, the second affidavit of Mr Pinnell or the affidavit of Ms Muggoch.

Conclusion on Service Issues

125. The Defendants will each contend that despite the Claim Forms being issued more than 7 ½ years ago, service has not been effected in respect of either Claim Form, or as against any of the Defendants. This is despite the Defendants' clear and repeated assertions to the Claimant's Turkish lawyers that service by way of notary public was not permissible as a matter of Turkish Law under the applicable provisions of the Hague Convention. I also note that in over 7 years the Claimant has not sought to enter judgment in default against any of the Defendants.

126. In relation to this aspect of the application, the Court is therefore asked to strike out or dismiss each of the Claims on the basis that service has never been effected and the time limit in which the Claim Forms were required to be served has long expired. The Court is asked to discharge the Freezing Orders in consequence, and/or discharge those Orders in any event.

Conduct of the Claimant in Obtaining the Freezing Orders

127. As the Claimant has never supplied the Defendants with any documents which provide any meaningful information as to what was said to the Court in obtaining the Second Freezing Order (including as to evidence or submissions), what I say below is necessarily limited to the First Freezing Order. That said, the fact that such documents were never supplied indicates the general nature of the conduct and/or approach taken by the Claimant in obtaining those Orders.

128. In short, the Defendants' position is that, in addition to failing to comply with its undertakings regarding service of documents, the Claimant failed to disclose to the Commercial Court significant and material matters and evidence which were important to the Court's decision in whether to grant an injunction. These matters also go to the question of the Claimant's intention when obtaining the Orders, and particularly whether those Orders were obtained without a proper intention to pursue the English proceedings to trial.

129. Before the Commercial Court on 15 March 2008 the Claimant made several significant points which underpinned the entirety of the case against the Defendants and, more importantly, its justification for seeking an urgent freezing injunction on a Saturday without notice:

(1) That the Claimant retained title to the bullion imported into Turkey;

(2) That the Defendants had misappropriated (or, to use the Claimant's Counsel's more colourful language, 'stolen') the bullion and, additionally, that this showed a risk of dissipation;

(3) That the Claimant had only just (on 18 February 2008) discovered the Defendants might have been using the bullion;

(4) That the commercial arrangements between the Claimant and Defendants were entirely and strictly subject to the terms of the BCAs, which had not been varied in any way.

130. In respect of each of these fundamental issues, the Defendants contend that the Claimant did not present the whole picture to the Court, or did not reveal information which must have been

known to it (to the extent that the picture given was misleading). There are further separate points which arise as to what was said (or not said) to the Court which I refer further below, but I would first make reference to the points made in paragraphs 20 - 84 above which set out the background to the relationship between the parties and how the relevant arrangements worked in practice. Those points are highly relevant to the application that was made and clearly should have been disclosed to the Court on 15 March 2008. Beyond, and without prejudice, to the generality of that observation, I would draw particular attention to the specific matters highlighted below.

Failure to Exhibit and Explain Complete Invoices

131. In his affidavit at §12.2.3 (A/33), Mr Teboul refers to various documents which he stated were produced in accordance with the BCAs. Mr Teboul focuses particularly on the 'Provisional Invoice' or 'Customs Invoice', suggesting that this invoice did not pass title and that it only contained a sale price to allow shipment of the gold through Turkish customs.

132. However, Mr Teboul did not exhibit to his affidavit a complete suite of the documents which actually passed between the Claimant and the Defendants, or explain the effect or purpose of those documents. Mr Teboul also failed to refer the Court to relevant correspondence in this respect, which the Defendants contend undermines the position taken by the Claimant.

133. In his affidavit at 12.2.3, Mr Teboul began by stating that the documentation included:
'*(a) a custom invoice to be provided to the shipper of the bullion (see further below) (the "Customs Invoice"). This invoice contains details of the gold being shipped and was required for the shipper to import the bullion into Turkey:*'

134. In fact, Mr Teboul had no basis for saying that a "customs invoice" was used. There is no reference in the contract to a "customs invoice" and to the Defendants' knowledge (at least at the time) documents of this nature were not used in these transactions. None seem to have been exhibited to Mr Teboul's affidavit.

135. Mr Teboul goes on to state that a "Provisional Invoice" would be sent to the Defendants, and that these invoices took the form of 'proforma invoices' in the form of annex 3 to the BCAs. In fact as I set out at paragraphs 47 - 54 above, and what Mr Teboul in his affidavit or the Claimant at the hearing of the injunction application failed to draw to the attention of the Court, was that from

the very first transaction the Claimant was asked to supply final invoices and not proforma invoices, because final invoices were required to allow the gold bullion to be imported.

136. What should have been drawn to the attention of the Court was a complete pack of documents for the importation and delivery to the Defendants of bullion, and not simply the invoices in respect of the bullion which made up the first part of the Claimant's claim (being the only invoices to which Mr Teboul appears to refer). I exhibit at C/II/585 a complete pack of two sample transactions number 1967 and 1964 initiated 4 February 2008 and 1 February 2008 respectively containing an example of all the relevant documents which should have been put before the Court.

137. In relation to these documents, the Court will note:

(1) The transaction commences with an email requesting and confirming the deal enclosing the shipping documentation;

(2) The actual invoices sent were marked 'Invoice'. No reference is made on the face of the invoice to the terms of the BCA (as required by the BCA) and there is no mention of retention of title or any other qualification. The parties are referred to a 'seller' and 'buyer'. Further, a price being the 'total amount due' is specified, together with a settlement date, effectively giving a period of credit. The invoice also refers to the Incoterm CIF (Costs Insurance Freight) which of itself means that risk passes to the purchaser before the main carriage takes place, but that the seller pays for carriage and insurance.

(3) A shipment confirmation notice is also included. Not only does this not refer to the BCA, but in fact refers to 'our delivery and sale agreement' as the defined 'Agreement'. The references in the shipment confirmation notice do not correlate to the BCA in any event.

(4) An air waybill is included. Contrary to Mr Brock's suggestion that the Defendants might have suggested the air waybill passed title, this has never been the Defendants' position.

(5) A packing list for the bullion is included. This has no material impact.

(6) At C/II/600, a delivery note is also included. This discloses, as I have mentioned above at paragraph 62, that the delivery of the bullion was not made to the Defendants' premises described on the shipment confirmation notice but was delivered to the IGE. Again, this was outside the letter of the BCA, but it was well known to the Claimant that it was occurring.

(7) At C/II/601, is exhibited a Turkish customs declaration document submitted by the Claimants' shipping agent, presumably at the Claimant's request. It identifies the exporter as the Claimant, and in this example, Meydan as the recipient. In box 14, the shipping agent, Erk Gumruk, is named, as is confirmed by reference to the delivery note at page 600. The fact that the goods are imported with an original invoice ('Orijinal Fatura' in Turkish), dated 4 April 2008, is noted in box 44 on the form, as is the transaction reference, in this example, 1964. It is my understanding that customs officers require original documents as standard practice. Box 44 includes the 'Konsimento' or air waybill number 07424747052 correct which accords with per C/II/598. The invoice at C/II/597 confirms that the details entered on the customs declaration are correct and that it is a CIF invoice in the sum of US$14,955,325. Referring back to the customs declaration, details from the invoice have are added such that at box 20, delivery method 'Teslim Sekil' is CIF Istanbul. In box 22, the currency and total invoice amount 'Doviz ve Toplam Fatura Bedeli' are given as US$14,955,325, as per the invoice. Finally in box 28 under the heading financial and banking details 'finansal ve bankacilik veriler', Eurobank is named. Directly below it reads 'Mal Mukabili', which translates to cash on delivery or cash against goods, the opposite of any form of retention of title.

138. In the deposition of Mr Cem Ulucay of the IGE at C/II/602, referred to above at paragraph 46, Mr Ulucay makes reference to the fact the rules of the IGE require members to own the gold they import. He states that the imported gold must be traded on the exchange within 3 days of importation into Turkey, a point also made by Mr Osman Sarac of the same organisation at C/I/196. However, Mr Ulucay expands on this saying that even if the gold is imported for the importer's own customers, the gold must first be sold on the exchange in a 'self-to-self transaction'. He states that the legislation requires the selling importer to wait 3 minutes before performing the purchase transaction. This allows an opportunity for other members to interfere and buy the gold themselves. Any retention of title would be wholly incompatible with this process. Mr Ulucay refers in the second page of his statement to the impossibility of imposing any form of retention of title on the importation of gold, save by competent authorities. In addition, in

the final paragraph, Mr Ulucay's recollection was that there is a section of the customs declaration document detailing the type of importation which is generally written as 'Mal Mukabili', translated as 'cash against goods'. He saw this as confirming his understanding and recollection that the Goldas companies would pay for the gold at some point after its purchase. Thus Mr Ulucay, and by extension the IGE, relied on the documentation and the customs declaration to satisfy themselves that the importer did own and have title to transact the imported gold on the IGE in accordance with Turkish law.

139. In his affidavit (A/35) at §12.4.4 and 12.4.7, Mr. Teboul confirmed his understanding that the gold had to be shipped to the IGE. It beggars belief that the Claimant, with a local branch in the country, would not have first ascertained the precise rules and regulations necessary for the importation of gold into Turkey, would not have learnt that only an owner of gold could import it, and that the gold would first have to be delivered to a gold exchange and not the recipient's own vaults, which indeed Mr. Teboul acknowledged:

> *'I understand from the shipper that Turkish regulations required the bullion to be first shipped to the Istanbul Gold Exchange before being transported elsewhere.'*

Although this appeared in Mr Teboul's affidavit, it appears not to have been drawn to Kitchin J's attention when the application was made.

140. Save for the delivery notes and the customs declaration, which were not received until delivery, all of the above documents were sent by the Claimant to the named Defendant company by fax and, in later years, email, in relation to each and every transaction entered into by the parties. These documents were not before the Court in complete form, nor were they drawn to the attention of the Judge.

141. Moreover, the Defendants now know that the Claimant retained such emails and transaction documents, and was fully aware of their existence, because on the next working day after the injunction was obtained (i.e. on Monday 17 March 2008) the Claimant's Turkish lawyers, Pekin lodged a lengthy and detailed complaint about the Defendants to the Turkish Police enclosing copies of the very same invoices, shipping confirmations, packing lists, air waybills and receipt/delivery notes referred to above.

142. The importance of the invoices cannot be overstated. As I have described at paragraph 46 above, title had to pass to the Defendants to allow for legal importation into Turkey and for the gold to be traded on the IGE, and title passed with those invoices. It is clear from the note of the hearing before Kitchin J that this was within the Claimant's knowledge. At page 6 of the note of hearing (A325), Mr Brock refers to advice that the Claimant received from its Turkish lawyers that once invoices are delivered, title passes unless registration of title occurs. Despite this, and although Mr Brock suggested the Claimant had been advised that it retained title over the remaining bullion, this issue simply was not properly raised with the Judge, nor was an explanation given as to why the Claimant thought the position different with the 11.3 MT of bullion. In particular, it was not pointed out that it entirely undermined the suggestion that the Claimant's gold had been stolen, which was the bedrock of its application. In summary, the fact that the invoices delivered were in fact straightforward commercial invoices, the fact that the Defendants had specifically stated that final invoices were required to import the bullion, and position under Turkish Law should all have been drawn to the attention of the Court.

143. The reference to air waybills as being the documents which might have passed title (on page 5 of the same note) was irrelevant, and had never been part of the Defendants' arguments.

144. The failure to disclose the true suite of contractual documentation and explain the possible consequences or arguments which could arise from them had an obvious knock-on effect when Mr Brock came to explain the possible defences the Defendants might have to the proceedings and the way in which the Court was asked to view the whole case. The emphasis of the Claimant was very much on the suggestion that the Defendants had stolen at least 11.3MT of gold, an entirely different proposition to a claim in contract for the price. Further, the assertion that the gold had been stolen was the only any basis for arguing that there was a real risk of dissipation. Taking page 4 (A/323) of the note of hearing[1] for example:

> *'Mr Brock stated that there was a real risk of dissipation. First, it should not be overlooked that the Respondents had stolen US$500 million of gold and could potentially do anything.'*

Failing to Disclose Variations to the Contractual Arrangements

[1] See also paragraph 46(7) of the Claimant's skeleton argument (A/311).

145. In addition to presenting a misleading position by failing to refer to and explain the contractual documentation, the Claimant also failed to explain to the Court the fact that, far from complying with the terms of the BCAs, the Claimant and the Defendants had for years adopted a different practice (aside from that already set out).

146. The potential issue was raised by Mr Brock in paragraph 67 of his skeleton argument (A/299 at 315), referring to a letter from Mr Hasan Yalinkaya to the Claimant of 22 February 2008 in which Mr Yalinkaya had stated *'You are well aware of our business model and how it has been applied in practice for the past five years, with your knowledge and acceptance'*. Mr Brock then stated that the Claimant 'categorically refutes such claims' and, in the note of the hearing, this is repeated (page 5).

147. At paragraphs 41 - 84 above, I have set out how, in fact, the Defendants consider that the Claimant repeatedly and systematically engaged in variations and divergences from the terms of the BCAs. This included not only the invoicing procedure and retention of title matters (which are of themselves fundamental), but also in respect of the periods before which payment was required and the quantity of bullion being delivered to the Defendants at any one time.

148. Furthermore, Mr Teboul's affidavit was inconsistent on the issue of how the commercial arrangements developed. At paragraph 42.5 (A/51) Mr Teboul states that he had no awareness that the bullion was dealt with other than in strict compliance with the BCAs, unless agreed in writing. Yet at 12.2.4 (A/34) and 12.11.3 (A/37), Mr Teboul refers to informal changes being made to the BCA without amendments in writing. This does not appear to have been specifically drawn to the Judge's attention.

Claimant's Knowledge of the Use of Bullion

149. Perhaps the most fundamental of the failings by the Claimant to disclose the whole or accurate picture to the Court concerns the Claimant's knowledge of the Defendants' use of the bullion in its normal commercial activities.

150. I have already referred, at paragraphs 20 – 34 and 42 above, to emails showing instances in which the Claimant was told about the use of bullion by the Defendants. None of these were put before the Court.

151. Further, the Claimant had previously enquired of the Defendants how the Defendants were treating the bullion as a matter of accounting practice. For example, I exhibit at C/III/606 email exchanges between 27 November 2007 and 15 January 2008 in which the Claimant asks this question. The Defendant responds that the bullion is recorded in trade payables and that it is an asset. On 15 January 2008, there is a further exchange between Mr Binatli and Mr Teboul regarding how the Defendants have previously shown the gold on their balance sheet. The Claimant continued to send gold despite this information.

152. The significance of the fact that it was clearly arguable that the Claimant had knowledge of how the Defendants had treated and used the bullion cannot be understated. The Claimant's case was predicated on the assertion that it had no knowledge of the Defendants' use of the bullion until 18 February 2008 and that gold had been stolen. The Defendants' position is that this simply was not true. It is a matter of speculation as to why the Claimant chose to misrepresent the position in this way, but one possibility is that it was seeking to avoid the potential adverse consequences of it becoming apparent to the Claimant's regulator that the Claimant had delivered over 15 MT of bullion to the Defendants without taking any security for the same or enquiring as to its whereabouts. In this regard it should be noted that the Claimant sought and obtained an order from Kitchin J that the Court file be sealed. It will be seen from the note of the hearing (see A/326) that the basis for making such an order had been discussed between Mr. Brock and the judge the previous evening. No note of that discussion, which appears to have formed part of the application had been disclosed. The alleged evidential basis for making such an order appears wholly inadequate (see Claimant's skeleton argument at §73 (A/315 referring to exhibit FT15 at A/253).

153. The Judge's attention was also not drawn to the sheer absence of reality of the Claimant's argument. There was no discussion about the obvious security requirements a large commercial bank would have put in place and the checks such a bank would have carried out when dealing with bullion transactions of the size carried out by the Claimant, nor any explanation as to why the Claimant did neither. This was a point quickly recognised by Tomlinson J in a hearing relating to the scope of disclosure in the Claimant's litigation with its insurers (see the transcript at B/88,89).

154. The Defendants consider that each of these points were material matters which were either not disclosed, not properly disclosed or were misrepresented before the Court when obtaining the freezing injunction, and would have had an obvious and determinative effect on the Court's decision on whether to grant the injunction.

Additional Matters Relating to Abuse of Process/Want of Prosecution

155. From the very moment the First Freezing Injunction was obtained (if not before) it appears that the Claimant has intended to launch a legal attack on the Defendants through multiple proceedings in different jurisdictions. Furthermore, it is apparent from the note of the hearing before Kitchin J on 15 March 2008 (A/320) that the Claimant was well aware that both:

(1) the effect of the Freezing Injunctions on the Defendants financial status and trading ability would be immediate and severe, and would extend around the globe (see A/323: middle paragraph);

(2) there was a risk that the officers of the Defendants could have 'problems with their personal freedom', which must be taken to mean a risk of arrest; and that it was 'highly likely' that there would be criminal proceedings commenced in Turkey (A/322 3rd paragraph and more specifically A/323 final paragraph).

156. It is always essential that the draconian effects of a freezing injunction are minimised by the prompt and conscientious pursuit of the proceedings. However, where there were additional factors which the Claimant knew would cause particular problems for the Defendants, the duty to pursue the claims expediently became even more critical.

Failure to Pursue English Proceedings and Pursuing Proceedings Abroad

157. Notwithstanding its clear awareness of these factors, and despite having legal advice form one of the largest law firms in the world, from the very moment it obtained the Freezing Injunctions and issued both of the present claims against the Defendants, the Claimant deliberately chose to commence and pursue numerous proceedings in Turkey and Dubai, to the exclusion of the proceedings in England, which were left to languish.

158. Steps taken in Turkey and Dubai included seeking injunctive or restraining relief and search orders, attempting to invoke insolvency proceedings against the Defendants and filing criminal complaints against the Defendants' officers and/or shareholders. In fact the Claimant initiated no fewer than 8 injunctions against the 3 Turkish defendant companies; personal injunctions against

the board members and selected employees; 3 sets of criminal proceedings in relation to each Turkish company's entire board of directors and some specific employees; and injunction proceedings against Goldas LLC in Dubai. Many of these actions were subject to appeal. All were ultimately unsuccessful save one being a search and seizure order which, although granted, failed in its purpose as no relevant bullion was discovered. Of these actions, most were commenced in the first days and weeks after the Claimants obtained the Freezing Injunctions and issued the claims in England. Contained in Appendix A to this witness statement is a narrative chronology which sets out the major proceedings arising in Turkey which the Claimant has pursued.

159. In contrast to its relentless pursuit of the Defendants in Turkey on all possible fronts, the Claimant has not taken a single step in relation to the English proceedings in over 7 ½ years. As I set out above, the Defendants contend that the Claimant has not even served the proceedings on them.

160. It is apparent, as I identify with reference to numerous examples of litigation in Turkey, that despite this wholesale failure to pursue the English proceedings at all, let alone expeditiously, the Claimant has nonetheless sought to use the fact of the Freezing Injunctions and the Claims being issued in England to its advantage in the various proceedings it has initiated overseas.

161. The note of hearing also indicates that although Mr Brock mentioned criminal charges being a possibility, the Court was not told of the Claimant's confirmed decision to file criminal complaints against the Defendants' directors on the next working day in Istanbul. In fact, the Court was told that there was no intention to issue foreign proceedings other than ancillary proceedings (e.g. enforcement orders) in Turkey and Dubai. Perhaps unsurprisingly, the Claimant also did not suggest to the Court that it would pursue insolvency proceedings in Turkey but not pursue the English proceedings at all.

Improper Use of Freezing Orders

162. The Defendants contend that the above facts and matters indicate a complete absence of any intention by the Claimant to use the Freezing Orders for their true purpose, and an absence of intention to pursue the underlying proceedings.

163. In this respect it is also notable that at paragraph 46(5) (A/310) of the Claimant's skeleton for the First Freezing Order, it was stated that the Claimant had no detailed knowledge of the

Defendants' assets and so the disclosure provisions of the draft Order were important. At paragraph 10 of the supplementary skeleton (A/319), Counsel for the Claimant relied upon an extract from the White Book citing the importance of a disclosure order to render the Freezing Order effective. The importance to the Claimant of this provision was emphasised in the hearing (see note of hearing page 5 at A/324).

164. Despite these points apparently having been put to the Court and relied upon by the Claimant, it is notable that:

(1) The letter under cover of which notice of the Order was given to the Defendants as described at paragraph 96 above makes no mention of the potential disclosure obligation (which would arise following effective service);

(2) The Claimant appears to have taken no steps whatsoever to enforce that obligation (although it is not conceded that such an obligation arose absent valid service).

165. The Defendants contend that all of the above matters support the conclusion that the Claimant had no intention of obtaining the Freezing Orders for a proper purpose, or at the very least having obtained the orders did not comply with the strict obligations which attach to them for the their proper use and pursuit.

Subsequent Steps Taken in Foreign and English Proceedings

Chronology in Relation to Proceedings Commenced by Claimant from 15 March 2008

166. In Appendix A to this witness statement I have set out a narrative chronology of the major steps or events taken in foreign proceedings initiated by the Claimant after 15 March 2008.

167. I do not intend in the main body of this witness statement to go through these in detail, although it is important for the magnitude and extent of those proceedings to be understood. In particular, it will be clear to this Court, in light of the long chronology of litigation in Turkey (and I have sought to include only the fact of the commencement or conclusion of the most important matters) that the Claimant has not only been pursuing proceedings against the Defendants from

the outset, but have done so relentlessly, including pursuing virtually every avenue of appeal open to them when (as they have) decisions have gone against them.

168. The extent and sheer volume of these proceedings also assist in demonstrating why the Defendants have, until now, not been able to attack the English claims or Freezing Injunctions. In this regard I refer to a schedule of further legal actions (C/IV/913) in addition to the proceedings initiated by the Claimant, referred to below at paragraph 193.

Failure to Pursue English Proceedings

169. As mentioned above, in striking comparison to the significant litigation which was pursued in Turkey (and in Dubai, although I have not dealt with the Claimant's attempt to obtain a freezing injunction against the fourth Defendant in Dubai in detail) is the fact that the Claimant has failed to take any steps at all in pursuit of the English proceedings, notwithstanding its having obtained and used the Freezing Orders and therefore having accepted all the obligations attendant on such Orders.

170. This in itself supports not only the conclusion that the Claimant had no intention of pursuing the English proceedings, but in turn that the Freezing Orders were obtained and used absent such intention.

171. Although of course the Claimant cannot have been unaware of the fact that no steps had been taken in the English proceedings, it is clear from various documents that the Claimant was not merely regularly reminded of those proceedings, but remarkably appears to have stated openly that it did not intend to take any positive steps in those proceedings.

172. In this respect:

(1) In the insolvency proceedings against Goldart which I describe in Appendix A, the Claimant submitted an affidavit dated 15 May 2009 by Denis Brock. In this affidavit Mr Brock, who of course had appeared before Kitchin J to obtain the First Freezing Order, confirmed that the Claimant had commenced proceedings in England against, *inter alia*, Kuyumculuk and that the proceedings were 'pending' but that no final judgment had been given. A copy of this affidavit is at C/III/634. No mention was made of the fact that no steps (not even service) had been carried out in (what was then) over a year since the issue of the Claims,

but it is clear that the Claimant was still very much aware of the existence and 'live' status of the proceedings despite not having progressed it. It should be noted that this affidavit was filed as part of an attempt by the Claimant to answer the Defendants' case in the Turkish proceedings that the dispute was a matter which should be determined by the English Courts before insolvency proceedings could be pursued in Turkey.

(2) In a hearing on 17 July 2012 before the 5th Commercial Court of Bakirkoy, Turkey, it appears from a translation of the record of hearing (at C/III/637) that the Claimant referred to the English proceedings as follows:

> *'the Attorney for the plaintiff stated as follows: [referring to the SG v Goldas Commercial Court March 2008 action] 'The action filed abroad failed to provide an outcome due to failure of the opposing party to defend the suit…'*

(3) In a letter to Pekin dated 19 June 2013 (at C/III/639) ("the CC Letter"), the Claimant (via Mr. Brock's firm, Clifford Chance) asserted that:

> *'The Defendants have refused to participate in the proceedings in England. Accordingly neither of the cases has moved forward.'*

The letter then continued:

> *'SG has not continued the lawsuits and the Defendants have not taken any steps to continue the lawsuits. As a result, no witness or expert evidence has been served by either party and there has been no disclosure. Nothing has been filed except for the Claim Forms themselves.*
>
> *The cases remain pending before the English Courts but will not be advanced unless the Defendants either admit the claims or put in defences.'*

(4) It is clear from the CC Letter that the Claimant was well aware of the fact that it had taken no positive steps in the English proceedings since issuing the claims, albeit that it was (wrongly) seeking to blame the Defendants for the same. Further, the CC Letter makes no mention of the Defendants' unequivocal position that none of the proceedings had been properly served on them by the Claimant, which of course was well known to the Claimant.

The CC Letter also appears to confirm that the Claimant had no intention at all to take any further steps in the proceedings.

(5) The importance of the English proceedings was obvious to the Claimant. The basis for the decisions of the Turkish Supreme Court as set out in Appendix A to overturn the decision to liquidate Goldas companies, was that the Claimant should have first obtained a judgment from the Commercial Court in London because the BCAs contained English law and jurisdiction clauses.

(6) The CC Letter was relied on by Pekin in support of the Claimant's attempts to convince the Turkish Supreme Court to reverse its decisions in relation to the insolvency proceedings concerning Meydan, Kiymetli and Goldart.

(7) After 2013, the Claimant removed from their Annual Report to shareholders any reference to proceedings against the Defendants in England. Previously this had been mentioned in the section entitled 'Legal Risks' or 'Risks and Litigation' from 2009 – 2012. Copies of the relevant sections from each report are at C/III/641.

173. It can therefore be seen that in over 7 years since issuing both claims, the Claimant has taken no steps to progress either of them. It also seems from the available material that the Claimant has no present intention to pursue the claims. Despite this, no steps have been taken by the Claimant to discontinue the claims, or discharge the Freezing Orders. Further, and very much in contrast with the position in England, the Claimant appears to have vigorously pursued criminal, commercial and insolvency proceedings in Turkey, including by way of various appeals to the highest Courts.

IMPACT OF THE FREEZING ORDERS

174. Prior to the action taken by the Claimants to obtain a worldwide freezing injunction against the Defendants, the group of companies of which the Defendants were a constituent part was a well-established and rapidly growing business enterprise on the world stage. In addition to the financial information I have referred to at the outset of this witness statement, there are various other sources of information which indicate the success which the group was enjoying at the time the Freezing Orders were obtained.

175. The fact that the Freezing Orders might have caused substantial and long-term harm to the Defendants, who as the Claimant knew ran a very successful business built on high volume and low-profit margin gold trading and production, was clearly identified by the Claimant's Counsel when he applied to Kitchin J for such orders. In the note of hearing at page 4 (A/323), Mr Brock appears to agree with Kitchin J that the injunction might *'substantially shut down the business of the Respondents'*. Further, it is apparent from the supplementary skeleton at §3.3 (A/318), that the Claimant intended to serve the Order both on the Defendants' banks and on the IGE. It can come as no surprise to the Claimant that in fact the Freezing Orders have had the effect envisaged.

176. At C/III/649 is a copy of the 2009 Deloitte Global Powers Report, which was based on 2007 financial information (as is confirmed on page 1 of the report). This report discloses that that Goldas was ranked 200th (page 16 C/III/666) worldwide in the consumer products industry sector and was established in the top 5 of the Africa Middle East section (page 23 C/III/673). It was also at page 29 C/III/679) listed 8th in the top 50 fastest growing businesses worldwide ahead of giants such as Apple Inc (at 28th), Nokia Corporation (at 29th) and The Coca-Cola Company (at 38th).

177. As a further demonstration of the relative size and importance of Goldas in 2007, there is attached at C/III/687 a Global Securities Report produced by Global Securities USA Inc Global Menkul Dergerler A.S. for investors and potential investors in Goldas with a buy recommendation. As Kuyumculuk was the only publically traded company within the Group, this can only be a reference to that company. At page 5 (C/III/691) of the report, a suggested valuation of Goldas was put at US$230 million corresponding to a share price at 3.73 TL. It should be noted from the same page that the Goldas valuation includes a 70 % subsidiary stake in the Belgium Trading Company (BTC), at that stage a loss making mining company, demonstrating the long term investment view of the company and the group.

178. The degree to which the Group companies were interrelated can be seen, for example, from the reference at page 4 to Kuyumculuk leasing new premises from the parent group for US$ 0.3 m. At page 14 is the group structure. I am informed that the Group as a whole had some 400 jewellery shops around the world, including the Gold Meister chain in Germany, and that there was a series of further acquisitions planned in the USA and Europe for Spring 2008. At page 15 (C/III/701) of the report is further reference to Goldas' subsidiaries, notable is the reference to the 99% stake

in Goldas Precious Metals Trading being a translation of Goldas Kiymetli Madenler A.S., the second defendant.

179. This particular report also suggests in the Analysis and Forecast section on pages 17 and 18 (C/III/703) that revenues from Goldas Kiymetli Madenler A.S. accounted for around 87% of the consolidated revenues of 2007 first quarter, indicating the bullion trading aspect of the business was very important.

180. In addition, the Goldas brand was very valuable in its own right. A report published in 2007 by brand valuation consutants, Brand Finance Plc (at C/III/713) suggested that the Goldas brand was valued at US $160m.

181. The immediate and severe impact of the Freezing Orders obtained in March and April 2008 can be seen from a number of different sources:

(1) One of the most obvious and immediate impacts was on the banks themselves and the Defendants' lines of credit, which can be identified from figures obtained from the Turkish Central Bank. I append at C/III/740 a schedule of relevant figures and the supporting data at C/III/743. The supporting material is from the Turkish Central Bank, it has not been translated but the essential data can be read across. That information discloses that:

a. The total credit available to the group plunged from almost TL421m (about US$323m at the then exchange rate of TL1.30 to $1) in March 2008 to just over TL49m (US$37.7m) when next recorded in September 2008;

b. Kuyumculuk's credit lines fell from TL223.2m to TL42.7m (US$171.7m to US$32.8m);

c. Kiymetli's credit lines fell from TL90.01m to TL10,000 (US$69.2m to US$7,690);

d. Meydan's credit lines fell from TL96.22m to TL150,000 (US$74m to US$115,300);

e. Goldart's credit lines fell from TL30m to TL00 (US$23.07m to US$00).

182. I have been informed by the Defendants' officers that immediately following the Freezing Orders being granted and served on the Defendants' banks, the group's bank accounts were frozen (irrespective of whether every company in the group had been the recipient of a freezing order).

As a further example of the impact of the injunction on wider Goldas Group companies is an email exchange dated 21 May 2008 between Goldart (UK) Limited and G4Si London exhibited at C/IV/982 relating to refusal to make shipments from Goldas Dis Ticaret A.S. to Goldart (UK) Limited.

183. I am informed that some of the banks agreed to new terms but insisted on security where none had previously been required. I am also informed that the banks gradually accepted that the injunction did not impact on them but nevertheless insisted on long term loan balances being paid off, and this was automatically done by way of set-off unilaterally applied by the banks. An example of this is appended at C/III/851: a copy of an email dated 25 March 2008 from Aylin.Atik@denizbank.com to Kemal Ulutepe, at that time the Finance Director of Goldas (cc'd widely to Deniz Bank email addresses). The terms of the email were brief and to the point:

> *'We kindly request that capital and interest in relation to credits provided by our bank are paid back in accordance with the attached payment plan and that provision of security operations in favour of our bank are completed on 26/03/2008.*
>
> *Yours sincerely*
> *Deniz Bank*
>
> *26/03/2008 $3,500,000 + interest*
> *28/03/2008 $3,500,000 + interest*
> *31/03/2008 $2,500,000 + interest'*

184. The effect of this action, which was replicated across the banks, was that both the Defendants' liquidity was removed, and its credit and trustworthiness effectively destroyed. Bearing in mind the industry in which the Defendants were involved, the very high costs of sales and the vast turnovers of the various companies, it is easy to see how a reduction in credit of virtually 90% would cause an enormous, catastrophic, financial problem.

185. Further, by September 2008 the Group loans to available credit ratio was 57% having 6 months previous been 11%, not taking into account the impact on the cost of borrowing and security required. The resultant cash flow squeeze was debilitating and no less important than the loss of trust.

186. The impact on the removal of the import facility meant that Kiymetli was ultimately forced to cease trading after trying to continue with a minimum of trade. Its revenues had represented 87% of the consolidated revenue for Kuyumculuk. Meydan was no longer able to import gold and

Goldas LLC was also forced to cease trading. In this respect, I exhibit at C/III/899 a copy of the email dated 22 April 2008 from Tony Day at the Dubai Gold Exchange ("DGE") to Goldas LLC confirming that it had been suspended from the DGE with immediate effect, because the DGE had received notice of the freezing injunction. The impact of not being able to fund or sustain gold trading meant that Kuyumculuk and the manufacturing arm of the group experienced enormous difficulties with cash flow and loss of trust which had a massive impact on its business.

187. The impact of the injunctions in this case can also be demonstrated by reference to the 2010 Deloitte Global Powers Report, based on 2008/9 figures. As mentioned above, prior to the injunction Goldas featured very prominently in the 2009 Deloitte Global Powers Report as a highly successful company. In stark contrast, the 2010 report contains no mention of Goldas nor do the subsequent reports for 2011, 2012 and 2013. It had not simply slipped down the league table, but had wholly disappeared from view: a catastrophic turn of events for what had been the 8th fastest growing company from the year before. I have not appended a copy of this report to prove a negative, but it can be viewed through the following link: http://groupedebruges.eu/sites/default/files/publications/downloads/nl_en_cb_global_powers_consumer_products_2010.pdf

188. The impact of the injunction can also be gauged by reference to the share price of Kuyumculuk, a listed company. On 14 March 2008, Kuyumculuk's share price was TL3.52. By 31 March 2008, the financial crisis created by the injunctions I describe above having commenced, the share price was almost half that value, at TL1.88. Trading in Goldas (Kuyumculuk) shares subsequently had to be temporarily suspended on a number of occasions from March 2008. The share price after March 2008 fell less slowly, but by October 2008 it was below TL1. This is a dramatic change of events for a company previously doing well. There is appended at C/III/900 a plotted chart obtained from the website uk.finance.yahoo.com setting out the Kuyumculuk share price for 2008 and, at C/III/901 is a chart from the same source of the Istanbul Stock Exchange 100 index (BIST 100) for 2008. Between 2 January 2008 and 14 March 2008, the Istanbul Stock Exchange 100 index lost 22.16% whereas Kuyumculuk gained 19.73% (the index fell from 54.708 to 42.586, whereas in the same period Kuyumculuk rose from TL2.94 to TL3.52. From 14 March 2008 to 31 December 2008, although the Istanbul SE 100 index fell 36.92% (42.586 to 26.864), Kuyumculuk's share price, which had previously not been following a downward market trend, plunged 78.41% (TL3.52 to TL0.76).

189. At C/III/902 is a report for the performance of the Kuyumculuk shares price between 2008 and 2013 when it was de-listed from the stock exchange, showing it never recovered. At C/III/903 is a report for the BIST 100 for the same period showing a substantial improvement following the effects of the 2009 financial crisis.

190. The dramatic and swift reduction in share price also meant that the possibility of Kuyumculuk raising funds by way of a rights issue was effectively curtailed. At the relevant time, Kuyumculuk had TL80m of nominal value shares issued and allotted, but had a further TL170m nominal value shares available to be issued which, had they been sold prior to the injunction, could have raised up to c.TL510m (assuming a discounted price of TL3 per share). Subsequently, the Turkish Capital Market Board imposed restrictions meaning that shareholders other than Goldart could not increase their shareholdings (which it did in 2011 and 2012). I have exhibited at C/III/904 a translation of a copy of the Turkish Trade Registry Gazette Official showing the share capital in 2012 and reporting the resolution to issue Kuyumculuk shares to Goldart.

191. I have looked at the other companies referred to in the Global Securities Report at page 8 (C/III/694) (mentioned in paragraph 177 above), to see whether there was any impact from the difficult trading period on the trading figures of the comparable companies. By and large the comparable companies either improved or remained steady. Only one out of seven suffered a setback and it soon recovered as can be seen from charts for the period 2008 to 2013 which I have extracted and append at C/III/911.

192. Further problems were caused by the financial impact of the injunctions, aside from a collapse in the trading abilities of the Defendants. These were felt throughout the wider Goldas group. They included the inability to carry out planned expansion and investment in foreign stores, with numerous stores having to close as a result of the significant decrease in trade. This included, ultimately, the loss of the German 'Gold Meister' chain of stores in 2011. Bullion trading activities were forced to stop overseas and mining operation investment was curtailed at a time when the price of gold was strong and rising and would otherwise have been an ideal time to make a significant investment.

193. I append at C/IV/913 the schedule of proceedings brought against the Goldas companies by various parties. I have not seen the files for each action but am aware that there is a huge bulk of cases which have arisen out of the financial turmoil into which the Defendants were cast. Added to this is my own experience attending the premises of the Defendants. They simply have no staff

left working and the entire weight of responsibility for dealing with the actions brought by the Claimant in Turkey and other third party actions has been in the hands the Yalinkaya brothers, an assistant and two law firms. This is one of the most visible impacts of the financial injury as I am informed that the Group employed in excess of 3,000 people prior to the injunctions.

TIMING OF THIS APPLICATION

194. As I have set out above, the Defendants had been in pre-arranged meetings with the claimant on 17 March 2008 in which the dispute between the parties was intended to be the subject of constructive discussion. They were not aware of the injunction sent by fax at the weekend until the afternoon of the 17th and this action caused those discussions to end.

195. On 18 March 2008, the Claimant simultaneously launched 5 injunction applications in the Commercial Court in Istanbul Turkey, and a claim in the Commercial Court of the High Court in London. The day before, a criminal complaint against the full board of directors of the Defendants had been filed with the Chief Prosecutor's Office in Istanbul.

196. At the time, the directors of the Defendants considered that the pre-eminent threat to the Defendants' businesses was the risk that the board of directors would be held in custody on remand, pending investigation and charge. If this had been the case the Goldas companies would have been paralysed, as no decisions could have been taken and this would have rapidly have led to the complete collapse of the businesses.

197. In addition there were the injunctions the Claimants sought to obtain in Turkey. The effect of these injunctions would have been very serious had the Claimant succeeded. The Claimant had immediately commenced proceedings in Turkey with multiple applications. Owing to the immediate urgency and proximity of these applications the Defendants vigorously sought to oppose these (as well, of course, as dealing with the criminal proceedings).

198. Finally, of immediate concern was managing the business of the Defendants through the significant cash flow problems caused by the temporary freezing of their bank accounts, and the subsequent financial crisis which had arisen in an extremely short space of time. I understand that the effort required to try and keep the Defendants trading and to save the business was considerable. Matters were made considerably worse owing to the decision of the Defendants' banks to close down lines of credit, net-off credit balances against borrowings and allowing much

reduced levels of credit to remain, and then only if security was provided, where none had previously been given or sought.

199. As I have set out in more detail in Appendix A, the criminal proceedings and the subsequent appeals of the decisions by the Claimant continued until February 2009 when the Supreme Court rejected a final appeal of the Turkish Ministry of Justice. The Turkish commercial proceedings continued until June 2008, and in Dubai the Claimant's appeals continued until November 2008.

200. Shortly thereafter, in January 2009, the Claimant commenced insolvency proceedings against the Turkish Defendants. These proceedings continued until late December 2014. In addition to these proceedings, the Defendants (and the wider Goldas group) have been dealing with numerous different pieces of litigation in various jurisdictions, which I have already referred to above.

201. Therefore in the immediate aftermath of the Freezing Orders being obtained, the Defendants (and their officers) were simply not in a position to deal with the proceedings in England. Further, the Defendants believed the proceedings themselves had not been served on them and had informed the Claimant of this fact. Shortly thereafter the major issue became the financial management of the group. By this stage, the Freezing Orders had had their immediate effect and the immediate damage had been done and was beginning to spread and so the Defendants did not see that taking steps in the English proceedings would remedy that damage. Having the facility to borrow hundreds of millions of dollars in gold without security and without any major degree of formality based on name, reputation and above all trust was central to the Defendants' success and ability to remain in business. Once the injunction had been obtained and served on the Defendants' banks and gold exchanges around the world there was no way back, the spell was broken and trust was shattered.

202. By the time the criminal proceedings and Turkish/Dubai injunction actions had finished the Defendants were not in any real position to open up a new front of litigation in England, and, as the underlying proceedings had not been served, did not consider that it was immediately necessary to do so. The Defendants were engaged constantly in litigation elsewhere, and were seeking to both defend the insolvency proceedings which followed and also restore credibility in the group. The Defendants' view was that the damage had been done and taking steps to discharge the injunction would have at best achieved a Pyrrhic victory.

203. It is only in recent months, following the conclusion of the insolvency proceedings, that the Defendants have been in a position to turn their attention to the English proceedings and to obtain sufficient funding to be able to make this application.

CONCLUSION

204. In the circumstances, the Defendants seek an Order that the claims be struck out and (both further and alternatively) that the Freezing Orders be discharged. The Defendants also seek an Order directing that there be an inquiry as to damages caused to the Defendants by reason of the Claimant having obtained the Freezing Orders.

Statement of Truth
I believe the facts in this witness statement are true.
Signed:
Simon Paul Timothy Rose
Dated:

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Signed: 

Simon Paul Timothy Rose

Dated: 9 February 2016

Applicant: S.P.T. Rose

First

SPTR1

9 February 2016

Folio Nos. 267 of 2008 and 329 of 2008

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

BETWEEN

SOCIÉTÉ GÉNÉRALE

Claimant

and

(1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.

(2) GOLDAS KIYMETLI MADENLER TICARETI A.S.

(3) MEYDAN DOVIZ VE KIYMETLI MADEN TICARET A.S.

(4) GOLDAS LLC

Folio 267 Defendants

AND BETWEEN

SOCIÉTÉ GÉNÉRALE

Claimant

and

(1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.

(2) GOLDART HOLDING A.S.

Folio 329 Defendants

WITNESS STATEMENT OF SIMON PAUL TIMOTHY ROSE

Morgan Rose Solicitors
Chancery House
53-64 Chancery Lane
WC2A 1QU
Solicitors for the Defendants

IN THE HIGH COURT OF JUSTICE

2008

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

Folio Nos. 267 of 2008 and 329 of

BETWEEN

SOCIÉTÉ GÉNÉRALE

Claimant

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(1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.

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Folio 267 Defendants

AND BETWEEN

SOCIÉTÉ GÉNÉRALE

Claimant

and

(1) GOLDAS KUYUMCULUK SANAYI ITHALAT IHRACAT A.S.

(2) GOLDART HOLDING A.S.

Folio 329 Defendants

APPENDIX A

This is Appendix A as referred to in the Witness Statement of Simon Paul Timothy Rose dated 9th February 2016.

1. On 15 March 2008, the Claimant obtained the First Freezing Order on an ex parte without notice basis.

2. On 17 March 2008, the Defendants replied to Notices of Default (NODs) sent by the Claimant on 10 March 2008] by letters sent via notary public to the Claimant's lawyers, copies of which are produced at D/I/1 onwards. In these letters the Defendants set out the various grounds of their dispute with the Claimant.

3. On 17 March 2008, the Istanbul Gold Exchange (IGE) sent a letter to Clifford Chance explaining the application of Turkish law to dealings with gold imported in Turkey, which is produced at C/I/196. Principally the letter stated that gold could only be imported into Turkey by members of the IGE, and that the imported gold needs to be delivered to the IGE's vault and traded within three days, and only thereafter could gold be stored. In addition, the IGE considered that foreign judgments or orders could be enforced but only once the Turkish Court had (effectively) recognised that judgment or order and made its own order for enforcement of the same. The Defendants understand that the Claimant expressly relied on this letter in support of its applications for injunctive relief and/or precautionary seizure orders which followed to the Turkish Courts.

4. On 17 March 2008, the Claimant filed criminal complaints in substantially the same form against the directors of Kuyumculuk, Kiymetli and Meydan in the Turkish Prosecutor's Office based on allegations of fraud. Despite the complaint petitions being dated 18 March 2008, it is clear from the instructions letter of the Prosecutor's Office addressed to Istanbul Police Department that the complaints were filed on 17 March 2008. A copy of the complaint petition and the instructions letter filed against Goldas Kuyumculuk are produced by way of example at C/II/382 together with their translations. The Claimant's legal representative, Deniz Ketenci, signed and confirmed receipt of the instructions letters on 17 March 2008. The Claimant exhibited a copy of the First Freezing Order to each of the complaint petitions as part of its supporting documentation.

5. On 18 March 2008, the Claimant made 5 applications for precautionary seizure and/or injunctive relief in various of the Turkish Commercial Courts situated in Istanbul against Kuyumculuk (Cases no. 2008/229 and 2008/232) and Kiymetli (Case no. 2008/230). I

am aware of but do not have copies of an action against Kiymetli and Kuyuculuk as guarantor (Case no. 2008/231), and Meydan (Case no. 2008/430). The annexes and/or documents in support of these applications included both the First Freezing Injunction, and the Folio 267 Claim Form, issued on the same date. I exhibit at C/II/393 a copy of the application against Goldas Kiymetli (Case no. 2008/230) by way of example although this is presently available in Turkish only together with the list of exhibits. I have not exhibited the remainder of the documents as there are 5 applications similar in nature each with practically identical exhibits of over 300 pages. These can be made available if the court deems it necessary.

6. On 19 March 2008, the IGE sent a letter to the Istanbul Prosecutor's Office in response to a request for information dated 18 March 2008, a copy of which is produced at D/I/32. The IGE set out procedural matters concerning gold trading on the IGE and confirmed that all transactions relating to the specific bullion mentioned in the request had been carried out in accordance with the law and had either been traded on or removed from the IGE vault. The IGE also showed the breakdown of bullion imported together with their eventual purchasers. I have not exhibited this for reasons of good sense as it adds nothing to the present application. This annex is available if required.

7. On 19 March 2008, the Turkish Commercial Courts rejected the Claimant's requests for precautionary seizure and/or injunctive relief made on 18 March 2008, mentioned in paragraph 5 above.

8. On or about 20 March 2008, the Claimant sent further Notices of Default to the Defendants by fax. These documents repeated the contents of earlier Notices of Default dated 7 and/or 10 March 2008, save that where the return of gold bullion had previously been requested, the new NODs were requesting the payment of money instead. Copies of the letters are produced at C/II/408.

9. On 20 March 2008, the Istanbul Prosecutor's Office decided to consolidate the cases against the Goldas companies' directors (Consolidation no. 2008/690 and 2008/691).

10. On 20 March 2008, the Claimant applied to the Turkish Criminal Court for an order to search for gold bullion in the offices and residences of the directors of Goldas

companies in Turkey and for an order to protect any evidence so obtained. A copy of the petition is at D/I/37 but is presently only available in Turkish.

11. On 21 March 2008 the Defendants submitted evidence to the criminal complaint file including the original BCA, copy invoices, decisions of the board of directors, IGE letters concerning the quantities of gold imported by the Defendants from the Claimant dated 21 March 2008 which can be found at C/I/186, and emails between the Claimant and the Defendants. The copy of the cover page listing the annexes enclosed, which is presently only available in Turkish, is produced at D/I/39 although in the interests of brevity the annexed documents have not been produced.

12. On 21 March 2008 the Turkish Criminal Court rejected the Claimant's application for a search order and protective measures (Decision no. 2008/583). The Claimant then appealed this decision.

13. On 21 March 2008 Pekin sent another NOD produced at D/I/41 to Kuyumculuk through notary public requesting payment within 7 days of US$8,810,776.89 plus interest of $337,703.32 purportedly due pursuant to loan agreements dated 19.07.06, 28.02.06 and 24.01.07.

14. On 24 March 2008, Pekin sent letters in response to the Defendants' letters dated 17 March 2008, produced at D/I/48 onwards available only in Turkish at present. The Claimants claimed that the Defendants were all in default, and rejected all of the arguments or assertions the Defendants had raised.

15. On 21 March 2008, the IGE sent letters produced at C/I/186 to Kiymetli and another to Meydan, upon their request, confirming the amount of gold Kiymetli and Meydan respectively had imported into Turkey. This identified imported gold amounting to 245,220 kg for Kiymetli and 168,400 kg for Meydan Doviz.

16. On 24 March 2008, Deniz Ketenci of Pekin requested and obtained copies of the Istanbul Police file meaning that representatives of the Claimant from this date had copies of the IGE letter to the police dated 19 March 2008 which I mention above at paragraph 6. A copy of the handwritten application in Turkish is produced at D/I/86.

17. On 25 March 2008, Pekin purported to effect service of the Folio 267 Claim Form on two of the Defendants. The issue of service is considered in the main witness statement.

18. On 26 March 2008 the Turkish Commercial Court granted the Claimant's application (originally made on 18 March 2008) for inspection of Kuyumculuk's vaults at its factory and a seizure order against Kuyumculuk. The Court granted the application on the basis that despite clear evidence from the IGE that all the named gold bars had been sold to third parties, if the inspection of the Kuyumculuk's vaults revealed any of the gold bars identified by number in the application then those gold bard should be seized and taken into the custody of the IGE pending the outcome of the claim commenced in England. A copy of the decision is produced at D/I/87 but it is only available in Turkish at present. Security was required to be deposited with the Court for this relief to be granted, which amounted to a payment of 15% of the value of the bullion which was the object of the application. This amounted to US$14,250,000.00. I understand the Claimant provided letters of guarantee by Yapi ve Kredi Bankasi and Turkiye Garanti Bankasi as security on 1 April 2008 (which were effectively letters of confirmation by banks that they held an equivalent sum in security and that this continues to be the case).

19. Also on 26 March 2008, the Claimant appealed the Turkish Commercial Courts' decisions rejecting its requests:

    (i) For precautionary seizure against Kuyumculuk (Case no. 2008/229; Decision no. 2008/229);

    (ii) For injunctive relief against Kiymetli (Case no. 2008/230; Decision no. 2008/230); and

    (iii) For precautionary seizure against Kiymetli and Kuyumculuk as guarantor (Case no. 2008/231; Decision no.2008/219).

20. On 1 April 2008, the Claimant appealed the Turkish Commercial Court's decision rejecting the Claimant's application for injunctive relief against Meydan (Case and

Decision no. 2008/430). In support of its appeal the Claimant submitted that the English freezing injunction was not enforceable in Turkey.

21. Also on 1 April 2008, representatives of the Claimant and the police attended the premises of Kuyumculuk to execute the search and seizure order granted on 26 March 2008 in Turkish case no. 2008/232 mentioned above at paragraph 19. I have been told by the Defendants' officers that no gold was found on the premises.

22. On 2 April 2008, the First Freezing Order was continued and the Second Freezing Order made. The Freezing Orders are considered in the main witness statement.

23. On 3 April 2008, the Turkish Criminal Court rejected the Claimant's appeal against its decision dated 21 March 2008 in case no. 2008/538 which had rejected the Claimant's request for a search order and protective measures.

24. On 3 April 2008, the Claimant appealed a decision taken by the Courts in Dubai refusing an application by the Claimant for a freezing injunction. Unfortunately, the Defendants do not have documents relating to this application or its refusal, and so I am unable to explain the circumstances further, save that it appears the Claimant had applied for such relief in the Dubai Courts.

25. On 4 April 2008, following the Turkish Criminal Court's dismissal of the Claimant's appeal on 3 April 2008, the Claimant applied instead to the Bakirkoy Prosecutor's Office requesting that an application be made to the criminal court for a freezing order in respect of bank accounts of each of Kiymetli, Meydan and Kuyumculuk.

26. On 7 April 2008, the Claimant sent two further NODs produced at D/I/93 to Goldart and Meydan each repeating demands for payments within 3 days.

27. On 7 April 2008, the Turkish Criminal Court, accepted the Claimant's request to freeze certain bank accounts of Kiymetli, Kuyumculuk and Meydan following the application of the Claimant to the Bakirkoy Prosecutor's Office three days earlier.

28. On 8 April 2008, the Claimant sent a further NOD, produced at D/I/117 and only available in Turkish at present, to Kiymetli and Kuyumculuk (as guarantor) seeking payment within 3 days of service.

29. On 10 April 2008, Kiymetli, Kuyumculuk and Meydan appealed the freezing order of the Turkish Criminal Court of 7 April 2008.

30. On 11 and 14 April 2008, the Claimant applied for precautionary seizure in the Turkish Commercial Courts against Meydan and Goldart (Case no. 2008/568) and against Kiymetli and Kuyumculuk as guarantor (Case no. 2008/314). Unfortunately a copy of the relevant document cannot be found, but I infer the existence of the application from the later decision in these proceedings dated 14 April 2008 and 18 April 2008 respectively.

31. On 11 April 2008, the Claimant also applied for precautionary seizure against Goldart as guarantor of Goldas Dubai (Case no. 2008/312). I exhibit at D/I/136 a copy of the application by way of example although this is presently available in Turkish only. I have not exhibited the documents annexed as there are 3 applications similar in nature each with practically identical annexes of 24 in number with over 280 pages. These can be made available if the court deems it necessary. Referred to at page 15 of the Goldart application at D/I/150 as being annexed in support of the application are the Second Freezing Order and the Folio 329 Claim Form.

32. On 14 April 2008, the Turkish Criminal Court reversed the decision made on 7 April 2008 to freeze Kiymetli and Meydan's bank accounts.

33. Also on 14 April 2008 the Turkish Criminal Court rejected the Claimant's request for precautionary seizure against Meydan and Goldart as guarantor (Case no. 2008/568). The Court found that the relevant conditions for grant of precautionary seizure were not satisfied under Turkish law.

34. On 16 April 2008, the Turkish Commercial Court rejected the Claimant's request made on 11 April 2008 for precautionary seizure against Goldart as Goldas Dubai's guarantor

(Case no. 2008/312; Decision no. 2008/312). The Court found that the relevant conditions for grant of precautionary seizure were not satisfied under Turkish law.

35. On 18 April 2008, the Turkish Commercial Court rejected the Claimant's claim on 14 April 2008 for precautionary seizure against Kiymetli and Kuyumculuk (as guarantor) (case no. 2008/314). The Court found that the conditions required for precautionary seizure were not satisfied under Turkish law.

36. On 22 April 2008, the Claimant sought to expand the scope of its criminal complaints filed on 17 March 2008 by adding allegations of violations under Turkish Anti-Smuggling Law and Turkish Law regarding the Protection of the Value of Turkish Currency. Although I am not a qualified Turkish lawyer, I understand from the Defendant's officers and their Turkish advisors that the significance of this amendment was that, if actioned by the police, the Defendants could be held in custody without bail and without charge for an initial period of up to 10 days and, if renewed, until trial.

37. I am told that on 22 April 2008, Pekin sent a further letter claiming that service of the second Claim Form on 14 April 2008 was effected in compliance with procedural rules. I am aware of this owing to the letter in reply dated 1 May 2008 noted below.

38. On 24 April 2008, the Claimant appealed The Turkish Commercial Court's decisions of 14 April 2008 rejecting its requests for precautionary seizure against each of Meydan and Goldart (as guarantor) (Case no.2008/568), Goldart (as Goldas Dubai's guarantor) (Case no. 2008/312) and Kiymetli and Kuyumculuk (as guarantor) (Case no. 2008/314).

39. On 16 May 2008, the Claimant made further submissions produced at D/I/156 in support of its alleged violations under Turkish Anti-Smuggling Law and Turkish Law regarding the Protection of the Value of Turkish Currency. The Claimant also argued that the bullion should and must have been subject to 'temporary importation rules' under customs laws to the effect that consignment was possible in Turkey and that the Claimant retained title to the bullion.

40. On 26 May 2008, the IGE sent a letter produced at D/I/169 to the Bakirkoy Prosecutor's Office explaining the legal procedure to import gold into Turkey.

41. On 3 June 2008, the Prosecutor's Office decided (Decision no. 2008/18512) not to prosecute any of the directors listed in the criminal complaints filed by the Claimant. A translation of the reasons for that decision is at C/I/199.

42. On 12 June 2008, the Turkish Supreme Court rejected an appeal by the Claimant of the Turkish Commercial Courts' decision to refuse precautionary seizures against the different Goldas companies in the following actions:

    (i) Kiymetli and Kuyumculuk as guarantor (decision no. 2008/6504);
    (ii) Kuyumculuk (Decision no. 2008/6505);
    (iii) Goldart (as Goldas Dubai's guarantor) (decision no. 2008/6506);
    (iv) Meydan and Goldart (as guarantor) (decision no. 2008/6507);
    (v) Kiymetli and Kuyumculuk (as guarantor) (decision no. 2008/6508).

43. On 12 June 2008, the Turkish Supreme Court also rejected appeals by the Claimant of the Turkish Commercial Courts' decisions rejecting injunctive relief against both Kiymetli and Meydan on the basis that decisions concerning injunctive relief could not be appealed under Turkish law as they were not considered to be final decisions (Decisions no. 2008/6509 and 2008/6510). Copies of the decisions are produced at D/I/167 but are presently only available in Turkish.

44. On 18 June 2008, the Claimant appealed the decision of the Prosecutor's Office not to prosecute the Defendants' directors dated 3 June 2008 to the Turkish Criminal Court.

45. Also on 18 June 2008, SG submitted written pleadings in support of its application for precautionary seizure in Dubai. A copy of the translation of the pleadings is produced at D/I/174.

46. Also on 18 June 2008, SG filed a criminal complaint against Goldas Dubai's director Mr Cenk Yigit in the UAE. The Defendants are unable to locate documents which relate to

this complaint or the outcome of the proceedings, and so I cannot comment on it further.

47. On 7 July 2008, the Turkish Criminal Court rejected the Claimant's appeal against the Prosecutor's Office's decision not to pursue criminal charges against the Defendants' directors, indicating that the issue in question was a contractual one only (Decision no. 2008/1152). A copy of the translation of the decision is at D/I/182.

48. On 23 July 2008, SG applied to the Turkish Ministry of Justice by way of extraordinary appeal against the decision of the Turkish Criminal Court dated 7 July 2008 affirming the non-prosecution decision of the Prosecutor's Office.

49. On 21 August 2008, the Dubai Court refused the Claimant's request for precautionary seizure (case no. 78/2008). A copy of the translation of the decision is at D/I/186.

50. On 31 August 2008, the Claimant appealed the aforementioned decision of the Dubai Court dated 21 August 2008 to the Dubai Court of Appeals. A copy of the translation of the notice of appeal is at D/I/192.

51. On 5 September 2008, the Turkish Ministry of Justice applied to the Supreme Court Prosecutor's Office to reverse the decision of non-prosecution of the Turkish Criminal Court dated 7 July 2008. A copy of the application is produced at D/I/196 but is only presently available in Turkish.

52. On 17 September 2008, the Claimant submitted written pleadings in support of its appeal of 31 August 2008 in Dubai. A translated copy of the Grounds of Appeal is appended at D/I/197.

53. On 8 October 2008, Goldas Dubai filed its arguments in response to the Claimant's appeal. The Defendants cannot presently locate documents in relation to this.

54. On 26 November 2008, Dubai Court of Appeal affirmed the decision of the lower court in case no. 79/2008 and rejected the Claimant's request of precautionary seizure against Goldas Dubai. The Court found that there was insufficient evidence to demonstrate that

the Order of the English Courts was final in nature. However, the Court rejected the appeal on the basis that the contractual agreement was one of sale and in addition that there was no evidence which indicated that the director of Goldas Dubai had fled the country. A copy of the translation of the decision is produced at D/I/206.

55. On 16 January 2009, the Claimant obtained orders from Turkish Insolvency Office against the following Goldas companies:

    (i) Goldart (Order no. 2009/778);
    (ii) Kiymetli (Order no. 2009/779);
    (iii) Kuyumculuk (Order no. 2009/780);
    (iv) Meydan (Order no. 2009/1311).

    A copy of the order against Meydan is produced by way of example at D/I/217 but it is presently only available in Turkish. All orders requested either payment of sums under the BCAs as indicated on the order or required the company to raise an objection to the order within 7 days from the date of its service. As I understand the position, an alleged creditor is required to obtain such an order for payment from the Turkish Insolvency Office as a prelude to filing a claim for insolvency in Turkey. By way of illustration of the insolvency proceedings, we have copied the documents relating to Meydan only throughout the process. These documents have not presently been translated owing to their size and the time required to do so, but translations can be obtained in due course if required.

56. On 23 January 2009, the Defendants filed notices of opposition to all of the orders of the Insolvency Office on the basis that the parties had contractually agreed that the English Court should have jurisdiction to settle any disputes arising from the BCA and that there were ongoing proceedings in England in relation to the same matter. The Defendants also argued that the Claimant was trying to circumvent the proper legal procedure as to recognition and enforcement of foreign decisions in Turkey and that they should wait to have an enforceable final English decision before bringing proceedings in Turkey. A copy of the notice on behalf of Meydan is produced by way of example at D/I/219 but is presently only available in Turkish.

57. On 20 February 2009, the Turkish Supreme Court rejected the application of the Turkish Ministry of Justice dated 5 September 2008 to reverse the decision of the Turkish Criminal Court by which the latter Court decided not to prosecute the directors of the Defendants. Primarily the Supreme Court rejected the application on the basis that the dispute was a contractual one and that it should be resolved by the competent civil courts. A translated copy of the decision is at D/I/230. This judgment finally concluded the Turkish criminal proceedings.

58. On 4 March 2009, the Claimant commenced insolvency proceedings in Turkey against Meydan (case no. 2009/167) and Goldart (case no. 2009/230 later changed to 2011/578). A copy of the application against Meydan is produced by way of example at D/I/236 but is presently only available in Turkish. The Claimant did not mention the English proceedings or the Freezing Orders in its petitions. The Claimant presented as evidence the IGE's letter of 27 March 2008. A translated copy of the IGE letter is produced at D/I/261.

59. On 5 March 2009, the Claimant commenced insolvency proceedings in Turkey against Kuyumculuk (case no. 2009/203) and Kiymetli (case no. 2009/218).

60. On 12 March 2009, Kuyumculuk, Kiymetli and Goldart submitted their responses to the insolvency proceedings commenced on 4 March 2009 arguing, amongst other things, that the dispute between the parties was a matter to be determined subject to English law and jurisdiction; that the Turkish courts had no power to make a decision until the English court had ruled on the dispute; that there were proceedings issued in England and therefore there was *lis pendens*. On 13 March 2009, Meydan submitted its response in the insolvency case to the same effect, a copy of which is produced by way of example at D/I/271 but is only available in Turkish at present. .

61. The insolvency proceedings continued, with the Claimant submitting its replies on 7 April 2009 to the Kuyumculuk, Kiymetli and Goldart petitions, and to the Meydan petition on 21 April 2009.

62. In the insolvency proceedings against Kuyumculuk, the Claimant submitted an affidavit (document no. 16128) dated 15 May 2009 by Denis Brock, who was one of the

Claimant's legal representatives at Clifford Chance in England. This affidavit is discussed in the main witness statement at paragraph 164 (1) and produced at C/III/634.

63. The insolvency proceedings in Turkey continued several years (as I set out below). It is not necessary to indicate to the Court every step, but needless to say these proceedings were strongly contested by the Defendants, notwithstanding the difficulties they were facing and had faced since the Freezing Injunctions had been obtained.

64. On 14 May 2012, Meydan was declared insolvent (Case no. 2011/74; Decision no. 2012/105). A copy of the hearing record in Turkish is produced at D/I/297. Meydan appealed this decision on 22 May 2012, largely repeating submissions concerning the competency of the courts in Turkey to take such decisions in relation to insolvency where the proceedings which had been commenced by the Claimant in England had not been concluded.

65. On 17 July 2012, in the 5th Bakirkoy Commercial Court in the Goldart insolvency proceedings (Case no. 2011/578), the attorney for the Claimant (from Pekin) made a submission in a procedural hearing that the claim in England had failed to provide an outcome due to a failure by Goldart to defend those proceedings. Goldart's attorney responded to this submission by contesting that the Claimant had not served those proceedings on Goldart. A translated copy of the hearing record reflecting this is at D/II/298.

66. On 16 November 2012, the Claimant sent a NOD (document no. 33135) produced at D/II/300 to Kuyumculuk through a notary public requesting payment of sums asserted to be due under a BCA within 3 days from the date of service of the NOD.

67. On 10 December 2012, the Claimant obtained a further payment order from the Turkish Insolvency Office against Kuyumculuk, relying on NODs dated 10 March 2008 and 16 November 2012. The Claimant relied on a different invoice included in the NOD of 10 March 2008 which they had not requested under the first insolvency order. Kuyumculuk objected to this order on 7 February 2013.

68. On 27 December 2012, the Claimant filed further insolvency proceedings against Kuyumculuk. A copy of the application in Turkish is produced at D/II/311. This claim was brought following Kuyumculuk's opposition to the Turkish Insolvency Office's order dated 10 December 2012. At this stage there was already an insolvency case pending before the Turkish Commercial Courts in relation to amounts requested under other invoices (Case no. 2009/203 – although the case number changed due to a transfer between commercial courts), but the second insolvency proceedings were for an increased amount of $89,968,044.52 which had not been previously claimed.

69. On 21 January 2013, the Turkish Supreme Court reversed (Decision no. 2013/255) the Turkish Commercial Court's insolvency decision dated 14 May 2012 against Meydan. A translated copy of the decision is produced at D/II/327. The Supreme Court reversed the decision on the basis that the parties had agreed to an English jurisdiction clause in their contract which was the subject of the dispute. It therefore found that the Claimant should obtain a judgment from English courts establishing its entitlement to payment of the alleged debt before pursuing any insolvency proceedings in Turkey. On 6 May 2013, Meydan applied to the Turkish Supreme Court for clarification of the grounds/wording of its decision dated 21 January 2013. A copy of the application in Turkish is at D/II/332.

70. On 15 May 2013, the Claimant requested (by application) that the Turkish Supreme Court reconsider and reverse its decision dated 21 January 2013.

71. On 14 November 2013, the Turkish Supreme Court (Decision no. 2013/7094) rejected the Claimant's request to reverse its 21 January 2013 decision on Meydan's insolvency but accepted Meydan's request to clarify the grounds for its decision by specifying that the Claimant was not entitled to commence insolvency proceedings in Turkey before establishing its rights to the debt in the English Courts. A copy of the decision and its translation is produced at D/II/335.

72. On 12 February 2014, the Commercial Court of First Instance (Decision no. 2014/41) applied the Supreme Court's decision dated 14 November 2013 and rejected the Claimant's insolvency proceedings against Meydan. A copy of the decision and its translation is produced at D/II/340.

73. On 21 February 2014, the Claimant appealed the First Instance Commercial Court's decision dated 12 February 2014 in favour of Meydan. A copy of the appeal is produced at D/II/355 but is only presently available in Turkish.

74. On 10 April 2014, the Turkish Commercial Court rejected the Claimant's claim against Goldart (Decision no. 2014/87) and Kiymetli (Decision no. 2014/114) for payment by way of insolvency on the same grounds as set out by the Supreme Court, namely that the parties had agreed to an English law and jurisdiction clause in their contract and therefore that the Claimant should have obtained a judgment from English establishing the debt before pursuing any insolvency proceedings in Turkey. The Claimant appealed both decisions on 16 April 2014 and submitted its detailed arguments on 22 May 2014 against Goldart and on 15 May 2014 against Kiymetli.

75. On 5 May 2014, the Claimant submitted its detailed arguments and sought to rely upon a letter dated 19 June 2013 sent by Clifford Chance to Pekin. This letter is discussed in the main witness statement at paragraph 164 (3) and is produced at C/III/639. A copy of the Claimant's submissions is produced at D/II/357 but is presently only available in Turkish. A translation of the relevant paragraph on page 7 of the submissions where reference to the Clifford Chance letter was made is produced at D/II/383.

76. On 8 May 2014, the Turkish Commercial Court rejected the Claimant's claim (no. 2013/16) against Kuyumculuk for payment by way of insolvency on the basis that the parties had agreed to an English law and jurisdiction clause in their contract and therefore that the Claimant should have obtained a judgment from English establishing the debt before pursuing any insolvency proceedings in Turkey. A copy of the decision is produced at D/II/384 but is presently only available in Turkish.

77. On 24 December 2014, the Turkish Commercial Court also rejected SG's insolvency claim (Case no. 2014/620, previously Case no. 2012/1616) filed on 27 December 2012 against Kuyumculuk on the basis that the parties had agreed to an English law and jurisdiction clause in their contract and therefore that the Claimant should have obtained a judgment from English establishing the debt before pursuing any insolvency

proceedings in Turkey. A copy of the decision is produced at D/II/387 but is presently only available in Turkish. There has been no appeal against this decision.