Neutral Citation Number: [2023] EWHC 2682 (Comm)

Case No: CL-2022-000274

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 27/10/2023

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

(1) CLIFFORD CHANCE LLP **(2) CLIFFORD CHANCE EUROPE LLP**	**Claimants/ Respondents**
- and -	
SOCIÉTÉ GÉNÉRALE S.A.	**Defendant/ Applicant**

- -
- -

Andrew Onslow KC and James McWilliams (instructed by **Reed Smith LLP**) for the **Claimants/Respondents**
Graham Chapman KC and Seohyung Kim (instructed by **Signature Litigation LLP**) for the **Defendant/Applicant**

Hearing date: 13 September 2023
Draft judgment circulated: 18 October 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 27 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Henshaw:

(A) INTRODUCTION

1. The Defendant ("***SocGen***") applies to challenge the court's jurisdiction to hear this claim, on the basis that:

   i) it falls within an exclusive jurisdiction clause in favour of the High Court of Paris; alternatively

   ii) the French court and not the English court is the most appropriate forum for the determination of the claim.

2. The substantive dispute relates to a professional negligence claim brought by SocGen against the Claimants (to whom I shall refer collectively as "***Clifford Chance***") alleging that they negligently handled a dispute between SocGen and Goldas Kuyumculuk Sanayi Ithalat Ihracat AS and other companies in the same group (together "***Goldas***", and the "***Goldas Dispute***").

3. In the present proceedings before this court, the First Claimant ("***CC LLP***") and the Second Claimant ("***CC Europe***") seek declarations that they are not liable to SocGen in professional negligence, and that CC Europe was not retained by SocGen at all.

4. SocGen has subsequently commenced proceedings against CC LLP and CC Europe in the High Court of Paris, seeking damages in excess of €140 million. The first hearing in that court is due to take place in March 2024.

5. I have reached the conclusion, for the reasons which follow, that SocGen's challenge to the court's jurisdiction should be dismissed.

(B) PARTIES

6. SocGen is an international bank which was founded and is headquartered in France. It is registered in England as an overseas company, and has a large number of subsidiaries, both in France and abroad, as part of its group ("***SocGen Group***").

7. CC LLP is a limited liability partnership incorporated under the laws of England and Wales. It carries on its legal practice from London and through overseas branches in Abu Dhabi, Amsterdam, Beijing, Brussels, Dubai and Shanghai. CC LLP also controls a large number of other subsidiary entities through which it, amongst other things, provides legal services in other jurisdictions.

8. CC LLP was incorporated on 1 November 2006. Between January 2000 and December 2006, the principal Clifford Chance entity was Clifford Chance Limited Liability Partnership ("***CC USA***"), a limited liability partnership incorporated under the laws of the State of New York in the United States of America. CC LLP replaced CC USA as the principal Clifford Chance entity in December 2006.

9. CC Europe is one of the subsidiary entities controlled by CC LLP and is the legal entity through which Clifford Chance currently provides legal services in France. It is a limited liability partnership incorporated under the laws of England and Wales.

10. CC Europe was incorporated on 24 March 2005. Before that, Clifford Chance provided legal services in France through a different entity, Clifford Chance SELAFA ("***CC***

Selafa"). CC Selafa is a limited liability company for self-employed French advocates in Paris, incorporated under the laws of France, and was at all material times regulated by the Avocats du Barreau de Paris (the Paris Bar). The legal practice of CC Selafa was transferred to CC Europe on 6 July 2005, on which date CC Selafa and CC Europe entered into a business lease under which CC Selafa leased the Paris practice to CC Europe. Since then, Clifford Chance's legal practice in France has been conducted through CC Europe.

(C) FACTS

(1) The 2003 Framework Agreement

11. Framework Agreement No. 2634 ("***the 2003 Framework Agreement***") was agreed between CC Selafa and SocGen for a period of three years from 1 January 2003 to 31 December 2005, "*renewable with the agreement of both parties*" (Article 2).

12. The agreement stated that it was made between CC Selafa, *"hereinafter referred to as the "Firm""*. Article 1.1 stated (in translation, prepared at the time of the original document):

> "The Contract applies to the relations between the Société Générale and its subsidiaries (hereinafter "SG Group" or "SG", see list in appendix 1) and the firm Clifford Chance (hereinafter "Law Firm" or "Firm") both in France and abroad."

The agreement was executed by SocGen and CC Selafa. Appendix 1 listed SocGen's subsidiaries worldwide.

13. Article 1.2 stated that:

> "This Contract defines the principles of SG Group's purchasing policy in the area of the services provided by the Firm. They relate to all dealings which any entity of SG Group (Head Office, branches and subsidiaries in France and abroad) may have as a client of the Firm."

14. Article 1.4 provided for SocGen to appoint an in-house lawyer to be responsible, on behalf of the SocGen group, *"for relations with the Firm, on a worldwide basis"*, as well as appointing in-house lawyers in all regions and/or major countries of the world to be responsible for relations with the Firm. Similarly, clause 1.5 of the 2003 Framework Agreement required "*the Firm*" to appoint a partner to assume overall responsibility for the relationship with SocGen, and also a lawyer to be SocGen's point of contact "*in each of the countries where the Firm has an office*". Annex 4 contained a list of contacts for each of the offices of Clifford Chance (including in England).

15. Article 3.3 included the following:

> "In order to efficiently advise the SG Group, the Firm must make all prior inquiries regarding the nature and scope of the engagement with which it is entrusted; in so doing it must ensure

> that it has received or provided all necessary relevant written information (engagement letter). …"

16. Article 3.4 stated that:

> "Each time the Firm is appointed in a matter, it undertakes to submit to both the SG Group entity which instructed it and to the SG in-house lawyer in charge of the matter, and if needs be, in matters where no SG in-house lawyer is directly involved, to the SocGen representative handling the affair, a detailed cost estimate (see article 7) together with a detailed invoice (see article 10)."

17. Article 5 provided, *inter alia*, that *"the [F]irm must appoint a partner responsible for each new matter"*. (The capitalisation is not present in the translation but is in the original French.) Article 6 provided for the Firm to keep SocGen's relevant instructing individual regularly informed.

18. Articles 7 and 8 dealt further with fees. Article 7.1 stated:

> "The method of determining the fees to be charged will be a matter of negotiations between the Firm and the SG in-house lawyer in charge of the file, and in principle with the SG sourcing correspondent for matters which may exceed EUR 300,000.
>
> a. In the case of lump-sum fees, the amount must be approved by the SG in-house lawyer in charge of the matter and by the representative of the business or product line before the Firm commences any work; furthermore, any conditions which might be associated with such lump-sum fees must be expressed clearly and precisely;
>
> b. When fees are to be charged on the basis of time spent on a matter, the Firm must provide a detailed estimate of the time it expects to devote to the matter together with the fees that will be charged (see appendix 4)."

19. Article 8 set out the preferential pricing terms available to SocGen, under which the maximum hourly rates for each type of fee earner in France, the United Kingdom and the United States were agreed. Appendix 6 set out the maximum hourly rates for a number of other Clifford Chance offices in Europe, Asia and the Middle East. Appendix 7 was a prescribed pro forma for annual and half-yearly reporting on all engagements, including a column for the "*Law firm office*" to be stated.

20. Article 10 provided that, unless otherwise agreed, the SocGen Group expected to be invoiced on a monthly basis. Invoices were required to contain at least the information detailed in Appendix 3. That appendix required a range of information including reference to the matter, name of responsible partner and fee-earners, and the name of the SocGen representation.

21. Article 11 required Clifford Chance to provide annual and half-yearly reports setting out details of the matters being handled by the various offices of Clifford Chance and containing the information required by Appendix 7. This included "*Law firm office location*", "*Type of work*" and "*Partner responsible*".

22. Article 16 required "*the Firm*" to hold appropriate professional indemnity insurance and to provide to the SocGen lawyer in charge of the overall relation with the Firm a completed certificate in the form attached in Appendix 5. The evidence includes a 'Verification of Insurance' provided by CC USA dated September 2002, relating to the policy year ending 31 August 2003, explaining that all Clifford Chance entities worldwide had cover of a specified amount for claims brought anywhere in the world, and providing further details.

23. Article 17 read:

> "**17. APPLICABLE LAW**
>
> The contract is subject to French Law."

(2) The 2006 Framework Agreement

24. In September 2006, CC Europe and SocGen entered into "*Amendment No.1*" to the 2003 Framework Agreement ("***the 2006 Framework Agreement***"). CC Europe was defined as "*the Firm*", SocGen as "*the Client*", and CC Europe and SocGen individually or together as "*the Parties*". The agreement recorded that *"[o]n 10/09/2003, the Parties signed a Referenced Contract No. 2634 under which the Firm undertook to provide legal services"*. The agreement was executed on behalf of CC Europe by Yves Wehrli, its Managing Partner.

25. By Article 1, CC Europe and SocGen extended the 2003 Framework Agreement, with some minor amendments, for a period of three years from 1 January 2006 to 31 December 2008.

26. Article 3.1 provided for maximum preferential hourly rates, as part of which Article 3.1(b) stated that *"the maximum hourly rates applicable by the Firm in France, the United Kingdom and the United States for any type of case are set out below. The SG Group will also receive a rebate on the standard hourly rates of the Firm's other offices"*. A table of rates followed. CC LLP, but not CC Europe, had offices in the UK.

27. By Article 5 of the 2006 Framework Agreement, the Firm undertook to obtain and maintain professional indemnity insurance throughout the duration of the contract, stating that the certificate of insurance could be found in Appendix 2. The certificate found in Appendix 2 stated that it was strictly confidential and "*intended solely for Société Générale in the context of the Framework Contract*". The certificate referred to the assured as CC LLP.

28. Like the 2003 Framework Agreement, the 2006 Framework Agreement included (at Appendix 4) a list of contacts for all the offices of Clifford Chance.

(3) SocGen engages Clifford Chance

29. In February 2008, SocGen sought Clifford Chance's assistance with the Goldas Dispute. Goldas is an international gold jewellery manufacturer based in Turkey and Dubai. In 2007 and 2008 SocGen supplied 15.725 metric tonnes of gold bullion (worth around US$483 million at the time) to Goldas on a consignment basis but subsequently learned that Goldas had begun using the gold without paying for it.

30. The evidence served on behalf of Clifford Chance (in a witness statement from their solicitor, Mr Hewetson of Reed Smith) indicates that in February 2008, SocGen approached CC Europe in Paris for assistance with its difficulties with Goldas, but CC Europe was unable to itself assist SocGen with the Goldas Dispute and was not itself instructed in connection with the same. SocGen were instead referred by Olivier Bertin-Mourot, a Partner at CC Europe, to James Abbott, a Partner at Clifford Chance in Dubai (a branch of CC LLP) ("***CC Dubai***") on 20 February 2008 and CC Dubai were instructed by SocGen on the Goldas Dispute. The Goldas Dispute did not in the event remain with CC Dubai and on 26 February 2008 was instead passed to Clifford Chance in London (and thus again CC LLP) in circumstances where the Bullion Agreements with which the dispute was concerned were subject to English law and jurisdiction clauses. Clifford Chance in London was instructed by SocGen and the retained Partner for the matter was Denis Brock, a Partner in the Litigation & Dispute Resolution practice at CC LLP. On transfer to CC LLP in London, the file for the Goldas Dispute at CC LLP in Dubai numbered 75-40351584 was closed and a fresh matter number was opened in London under number 70-40353181. For the remainder of Clifford Chance's involvement with the Goldas Dispute, the matter remained in London with CC LLP.

31. Mr Hewetson's evidence also states that no formal written retainer was agreed between SocGen and CC LLP to govern the Goldas instruction. (I discuss later the regulatory position in this regard: see § 94 below.) CC LLP (and not CC Europe) invoiced SocGen in respect of professional fees and disbursements in relation to the Goldas Dispute, and SocGen made payment to CC LLP.

32. Written communications passing between Mr Brock of CC LLP and Edward Pinnell of SocGen shortly after CC LLP's instruction on 20 February 2008 indicate that discussions took place as to the work to be undertaken, the basis on which SocGen would be charged and the likely cost of that work. Mr Brock's letter of 4 March 2008, accompanying CC LLP's first invoice, included the following passage:

> "On 25th February, I let you know that we had about £100,000 work in progress. That figure was approximate as some lawyers were behind on timesheets and did not include expenses or disbursements. I mentioned in Paris, on the 28th, that it would also be affected by the application of agreed rates for SocGen.
>
> So applying agreed rates and adding in "missing time" and the time for 25th to 29th we come to €254,347.01 …"

Throughout the retainer, Mr Hewetson states, SocGen received regular invoices from CC LLP providing details of its costs and disbursements, including where it requested the same timesheets.

33. SocGen, represented by CC LLP, obtained two worldwide freezing orders against Goldas in the English Commercial Court in March and April 2008. As required under the terms of the freezing orders, SocGen issued two claim forms, one against the Goldas companies in Turkey, and the other against a Goldas company in Dubai, and attempted to serve these on Goldas. However, Goldas did not file an acknowledgement of service and instead wrote to Clifford Chance that they considered that the service of the claim forms was defective.

34. On SocGen's case, the attempted service was made with Clifford Chance's advice. Clifford Chance's case is that SocGen's own Turkish lawyers, Pekin & Pekin ("***Pekin***") advised on and were responsible for service on Goldas in Turkey; thereafter confirmed that good service had been effected as a matter of Turkish law; gave advice about the difficulties SocGen would face in enforcing a judgment in Turkey, and recommended that SocGen instead commence bankruptcy proceedings in Turkey against Goldas. Mr Hewetson states:

> "In accordance with Pekin's advice, insolvency proceedings were opened against Goldas in Turkey in January 2009 and no further steps were taken by SocGen in relation to the Goldas Litigation, which fell into abeyance. It is evident that from SocGen's perspective the Goldas Litigation no longer served any useful purpose and was regarded as a closed matter: it was described in those terms by Gareth Williams of SocGen in email correspondence with Pekin and CC LLP in March 2013. This state of affairs in relation to the Goldas Litigation did not change until 9 February 2016. That was not because of any initiative taken by SocGen but rather because Goldas applied to strike out SocGen's claims on the grounds that they had not been validly served and could not now be served because they had expired."

(4) The 2009 Framework Agreement

35. Framework Contract CW 22478 ("***the 2009 Framework Agreement***") was entered into between CC Europe (defined as "*the Firm*") and SocGen in respect of the period from 1 January 2009 to 31 December 2011. The description of parties indicated that CC Europe was represented by Yves Wehrli, though *"acting as shareholder"*.

36. Articles 1.1 and 1.2 provided:

> "1.1. The Contract shall apply to the relationship of Société Générale and its subsidiaries (hereinafter the "SG Group" or "SG"; see list in Appendix 1) with the law firm Clifford Chance Europe LLP (hereinafter the "Law Firm" or "Firm") both in France and abroad.
>
> 1.2. This Contract shall define the principles of the SG Group's purchasing policy (head office, branches and subsidiaries in France and abroad) for the Firm's services. This Contract shall prevail over any other agreement, contract or terms and conditions of the Firm. …"

37. The substantive provisions of the 2009 Framework Agreement were similar to those in the previous agreements, and were directed at engagements between SocGen and Clifford Chance worldwide. Article 6.1, relating to fees, stated:

> "6.1 Fees shall be negotiated between the Firm and the SG legal officer in charge of the file, if necessary in conjunction with the Purchasing Department, within the limit of the maximum hourly rates agreed upon, which are included in this Contract (see Appendix 5). Before undertaking any service in a file, the Firm shall submit a quote to the SG legal officer and the relevant business line for validation (see Appendix 4)."

38. Article 7.1 referred to the "*maximum preferential hourly rates applicable by the Firm to the SG Group*", which (per Article 7.2 had to be applied in lieu of 'international rates'); and Article 7.3 stated that the maximum hourly rates could be found in Appendix 5. Appendix 5 set out maximum hourly rates by country and level of fee-earner, and also provided for immediate percentage rebates (discounts) on the hourly rates, the rebate for various countries including Great Britain being 7%.

39. Article 10 required the Firm to submit semi-annual reports of all invoices sent to SocGen entities and its clients, including the information set out in an Appendix.

40. The jurisdiction clause on which SocGen relies first appeared in the 2009 Framework Agreement, and was replicated in the 2012 and 2015 Agreements. It provides (in translation):

> "18. **GOVERNING LAW**
>
> The Contract shall be governed by French law.
>
> Any dispute relating to fees shall be referred to the Bâtonnier [President] of the Bar Association of the Paris Bar in the first instance.
>
> Any other dispute must be brought before the High Court of Paris."

(5) Application of the agreed maximum hourly rates, and reporting

41. Invoices for work on the Goldas Dispute, for example one dated 5 August 2019, indicate that CC LLP applied the agreed hourly rates, i.e. the updated rates set out in Appendix 5 to the 2009 Framework Agreement, and the agreed 7% discount.

42. Reports dating from at least 2010 indicate that CC LLP was providing to SocGen periodic reports that were compliant with the reporting requirements set out in the 2009 Framework Agreement, which included details of the work done on the Goldas Dispute.

(6) The 2012 Framework Agreement

43. By 2012, SocGen had introduced a standardised set of *"Terms and Conditions Applicable to the Relationship between the [SocGen] Group and its Entities and Law Firms"*. The Preamble to these stated:

> "Since 2000, the Société Générale Group has implemented and developed a policy governing its relationships and those of its entities with law firms. The principles of this policy are as follows:
>
> - priority use of referenced law firms,
> - systematic involvement of internal legal officers in determining the legal needs to be outsourced and in the appointment of law firms,
> - control of external legal expenses,
> - maintaining a high level of quality in the services provided by the law firms referenced by the Group,
> - control of the compliance of invoices with the Terms and Conditions and the Special Conditions, as well as accepted quotes.
>
> The Terms and Conditions applicable to the relationships between the SG Group and law firms incorporate the principles of this policy and form an integral part of the contract concluded between the SG Group and a law firm.
>
> The Terms and Conditions shall apply to all relationships of the Société Générale Group and its subsidiaries and branches in France and outside France (hereinafter the "SG Group"…) with any law firm referenced on one of the SG Group panels (hereinafter the "Firm").
>
> The Terms and Conditions shall prevail over any other agreements, contracts or Terms and Conditions of the Firm and are supplemented by Special Conditions. "

I refer to the General Terms and Conditions, together with the accompanying Special Terms and Conditions, as "***the 2012 Framework Agreement***".

44. Article 3 of the General Terms and Conditions provided *inter alia* that:

> "Before any appointment of a Firm in a file, the latter shall provide for approval to the SG Legal Officer who consulted it with a quote, including a description of the assignment, the team in charge, and specifying the names of the participants, their respective hourly rates, and the total amount of the quote (see Appendix 1 of the Terms and Conditions). The quote must be approved by the SG Legal Officer prior to referral to the Firm. This quote shall be attached to the invoices for the file."

45. Article 5.1 provided that the parties would *"define maximum preferential hourly rates excluding applicable taxes based on six levels of lawyer experience, determined as follows in each country in which the Firm operates"*. Other Articles dealt with contact

persons, referrals processing of files, expenses/disbursements, invoicing, reporting, confidentiality and conflicts of interest. Article 11 on insurance, similarly to previous Framework Agreements, required that *"[t]he Firm shall hold a professional indemnity insurance policy adequately covering its activities and provide the SG Group with a copy of this up-to-date insurance policy or a certificate specifying the amount covered (see Appendix 4)"*.

46. Article 12 of the General Terms and Conditions dealt with law and jurisdiction:

> "12. **GOVERNING LAW**
>
> The Contract shall be governed by French law.
>
> Any dispute relating to fees shall be referred to the Bâtonnier [President] of the Bar Association of the Paris Bar in the first instance.
>
> Any other dispute shall be brought before the High Court of Paris."

47. The General Terms and Conditions were executed by SocGen and CC Europe on or about 12 April 2012.

48. The accompanying "*Special Conditions Applicable to the Relationship between the [SocGen] Group and its Entities and Clifford Chance*" were agreed for a period of five years from 1 January 2012 to 31 December 2016. The statement of the parties at the start began:

> "**THESE SPECIAL CONDITIONS ARE HEREBY ENTERED INTO**
>
> **BETWEEN**
>
> **CLIFFORD CHANCE LLP EUROPE**, having its office at 9 Place Vendôme CS 50018 75038 Paris Cedex 01, registered with the Paris Bar pursuant to Directive 98/5 EC, acting in its own name and on behalf of all offices of Clifford Chance LLP, represented by Mr Yves Wehrli, acting as Managing Partner, duly authorised for the purposes hereof,
>
> Hereinafter referred to as "CLIFFORD CHANCE" or the "Firm"
>
> on the one hand
>
> AND
>
> **SOCIÉTÉ GÉNÉRALE**, a société anonyme [public limited company] …, with its registered office in Paris 75009 at 29, boulevard Haussmann, registered in the Trade and Companies Register of Paris under the unique identification number 552 120 222 RCS Paris, represented by Mr Gérard Gardella, acting as Group Legal Affairs Director, and by Caroline Boissy, acting as

> Head of the Services Area of the Group Purchasing Department, duly authorised for the purposes hereof,
>
> Hereinafter referred to as the "SG Group"
>
> on the other hand"

The reference in bold to "*Clifford Chance LLP Europe*" appears to be typographical error for "*Clifford Chance Europe LLP*", i.e., CC Europe, which is the entity that executed the agreement on the signature page.

49. Articles 1 and 2 stated:

> "1. **PREAMBLE**
>
> The relationship of Société Générale and its entities with Clifford Chance are governed by the Terms and Conditions applicable to the relationship between the Société Générale Group as defined in the preamble of the Terms and Conditions (hereinafter the "SG Group") and the referenced law firms. CLIFFORD CHANCE acknowledges that it has read these Terms and Conditions and accepts them.
>
> These Special Conditions apply to the SG Group's relationship with CLIFFORD CHANCE on the International panel. They supplement the Terms and Conditions.
>
> 2. **TERM**
>
> These Special Conditions are concluded for a term of 5 years, from 1 January 2012 to 31 December 2016, renewable by express written agreement between the parties. Any tacit renewal is excluded."

50. Article 3 dealt with contact persons. Article 3.2 stated:

> "3.2. In each country where the SG Group and Clifford Chance operate, the relationship is managed cumulatively by:
>
> (a) the legal officer(s) of the local SG Group entity(ies) (see Appendix 5)
>
> (b) the associate lawyer in charge of the Clifford Chance local office (see Appendix 6)"

The contact list in Appendix 6 listed relationship partners by country, including the UK.

51. Article 4 concerned preferential price conditions between Clifford Chance and the SocGen Group, and stated:

> "4.1. In accordance with Article 5 of the Terms and Conditions, the parties agree on the following preferential pricing conditions for the SG Group's own account operations:
>
> 4.1.1. : Maximum hourly rates for France, UK, US, by seniority (see Appendix 7);
>
> 4.1.2. : Maximum fixed prices per service, based on the description in the appendix, for France, UK, US (see Appendix 8);
>
> 4.1.3. : Maximum hourly rates for countries other than France, UK and US by seniority (see Appendix 9);
>
> 4.2. The parties favour the use on a case-by-case basis, at SG's request or on Clifford Chance's proposal, of innovative alternative invoicing methods, including but not limited to:
>
> - Blended hourly rates, where a single hourly rate applicable to any type of work performed by any lawyer involved in a file (or depending on the seniority of the lawyer) is provided.
>
> - Fixed-fee arrangements, paid according to the type of file, for any file falling within a particular category, geographic area, period or other.
>
> - Flat-fee arrangements, for each stage of a case, distinguishing between high-value-added work phases and more routine phases.
>
> - Deal-based billings, established in advance and for the entire operation, including a reduction in fees in the event of failure of the operation.
>
> …"
>
> (following by a number of further alternative variant fee structures).

52. The Special Conditions were executed on CC Europe's behalf by Yves Wehrli as Managing Partner on or about 18 December 2014.

(7) Subsequent work on the Goldas Dispute

53. Notwithstanding Goldas' complaints, no further attempts at serving the claim forms were made. Clifford Chance continued to advise SocGen in respect of the Goldas Dispute, which took the form of progressing insolvency proceedings in Turkey. Not having been served, the claim forms expired and SocGen's claims against Goldas became time-barred in 2014.

(8) The 2015 Framework Agreement

54. Amendment No.1 to the Special Conditions ("***the 2015 Framework Agreement***") extended the 2012 Framework Agreement for a further year, to 31 December 2017. The statement of the parties at the beginning was the same as in the 2012 Special Conditions, apart from a change to the named SocGen representatives.

55. Articles 1, 3 and 4 stated:

> "**1 PURPOSE**
>
> On 12 April 2012, the Firm and the Société Générale Group signed the Terms and Conditions and the Special Conditions applicable to the Relationship between Société Générale and the firm CLIFFORD CHANCE EUROPE LLP
>
> The purpose of this Amendment is to:
>
> - modify the Term of the Conditions governing the relationship between the Parties
>
> - amend the applicable Price Conditions from 1 January 2015.
>
> …
>
> **3 PREFERENTIAL PRICE CONDITIONS APPLICABLE BETWEEN CLIFFORD CHANCE EUROPE LLP AND THE SOCIÉTÉ GÉNÉRALE GROUP**
>
> Pursuant to Article 4.5 of the Special Conditions, the Parties have agreed to set new price conditions. These conditions are firm for the term set in Article 2 above.
>
> These new conditions appear in the appendix to this Amendment and replace the previous Appendices 7 and 9.
>
> **4 FINAL PROVISION**
>
> Subject to the changes made to the Special Conditions by this Amendment No. 1, all other provisions of the Special Conditions remain unchanged and are maintained as is. "

(9) Strike-out of the Goldas claim

56. In February 2016, Goldas applied to strike out SocGen's claims in the English courts on the basis that the claim forms had not been served and had expired and that SocGen's claims were time-barred. These applications resulted in SocGen's claims against Goldas being struck out on the grounds relied upon by Goldas, in a judgment of the High Court dated 3 April 2017 ([2017] EWHC 667 (Comm)) which was upheld in the Court of Appeal in a judgment dated 15 May 2018 ([2018] EWCA Civ 1093).

57. CC LLP continued to apply the updated agreed hourly rates in its invoices for work on the Goldas Dispute, for example in an invoice dated 15 June 2016 for work done on the strike-out application.

58. Clifford Chance's retainer was terminated in May 2017.

(10) The dispute between SocGen and Clifford Chance

59. By a letter dated 23 February 2022, SocGen served on CC Europe a "*letter de mise en demeure*", the equivalent to a Letter of Claim.

60. By a claim form and particulars of claim dated 30 May 2022, Clifford Chance served proceedings on SocGen at its address in Canary Wharf. SocGen does not dispute that the proceedings were validly served, and filed an acknowledgement of service on 20 June 2022 in which it stated its intention to dispute the jurisdiction of this court.

61. Thereafter the parties entered into a standstill and extension agreement. Following expiry of that agreement, SocGen issued its present application on 27 January 2023, supported by the first witness statement of Mr Fawell of its solicitors, Signature Litigation LLP.

62. Clifford Chance on 24 February 2024 served its evidence in response, comprising the witness statement from Mr Hewetson and the first witness statement of Daniel Kadar, a partner in Reed Smith's Paris office who is a French-qualified Avocat à la Cour. Clifford Chance applied to rely on Mr Kadar's witness statement as expert evidence as to French law under CPR 35.4; and that application was granted permission by Bright J on 16 March 2023.

63. Further witness statements were served by both sides in due course, including a witness statement dated 7 July 2023 from Mr Christopher Perrin, a partner in CC LLP who was the firm's Executive Partner and General Counsel from 2003 to 2021. I return to his evidence later.

64. Court proceedings in France have been initiated, with the first French court hearing listed for 7 March 2024.

(D) PRINCIPLES RELEVANT TO MAIN JURISDICTION ISSUE

(1) The construction of contracts and apparent mandate in French law

65. It was common ground that the main principles of contractual interpretation in French law are settled law and since 2016 have been codified as part of the French Civil Code. The key points of relevance are as follows.

    i) Where the wording of a clause is unambiguous, it must be applied purely and simply without distortion.

    ii) If there is ambiguity in the wording of a clause, the court must first look to ascertain the common intention of the parties rather than the literal meaning of its terms. In doing so, the court will consider (in no particular order) (a) the remainder of the contract, including any preamble, (b) other documents relevant to the contract, (c) pre-contractual negotiations and (d) post-contract conduct.

iii) If the common intention of the parties cannot be found, the court will interpret the meaning of the clause in question by reference to the meaning that a reasonable person in the same position as the contracting parties would attribute to it.

iv) A contract should be interpreted, insofar as possible, to:

a) ensure consistency with the contract as a whole; and

b) favour an interpretation that confers an effect to each clause rather than one that does not.

66. The relevant principles of the French law of agency are set out as follows in SocGen's evidence (Mr Fawell's 2nd witness statement):

> "9.1 The principle of "representation" allows an agent to bind a principal to a contract as though that principal were, itself, a party.
>
> 9.2 Usually, for a principal to be bound to a contract in this manner it is required that (a) the agent is vested (in the case of commercial parties, ordinarily by agreement) with the power of agency and acts within the limits of the powers given to it; (b) the agent assumes the capacity of agent; and (c) the agent has the required intention to enter into a contract.
>
> 9.3 Where no power has been conferred on a purported agent or an agent exceeds the power given to it, the general position is that the agent will not bind the principal and the relevant contract will be unenforceable against the principal.
>
> 9.4 However, under a well-established legal principle of the 'apparent mandate', a contract binds the principal "*even in the event of absence or exceeding powers, when the co-contracting party acts in good faith and has serious reason to believe that the agent had the capacity to deal with [it]"*. This principle was codified under Article 1156 of the revised Civil Code which provides that a contract will be enforceable against the principal where "*the contracting third party has legitimately believed in the reality of the agent's powers, in particular, due to the principal's behaviour or statements*"."

(2) Implied retainers

67. Insofar as it is relevant to decide whether an unwritten retainer could have arisen when SocGen instructed CC LLP in February 2008, the applicable law is determined by applying the Rome Convention on the Law Applicable to Contractual Obligations (80/934/EEC) (the "*Rome Convention*"). That is because any such contract of retainer will have been concluded on or before 17 December 2009 (when Regulation 593/2008 on the law applicable to contractual obligations, the 'Rome I' Regulation, came into force).

68. Pursuant to Article 8(1) of the Rome Convention, the existence and validity of a contract is determined by the law that would govern it under the Rome Convention (subject to a limited exception in art. 8(2)). Under Article 3 that would be the law chosen by the parties. Absent a choice of law by the parties, the law governing the retainer, as a contract for the provision of services, would ordinarily be the law of the country where the service provider has its habitual residence: see Article 4(1)(b). That default position can be displaced under Article 4(3) if the contract is manifestly more closely connected with another country.

69. Under English law, if there has been no written retainer between a lawyer and his/her client, one may be inferred from the conduct of the parties. The client's instruction to the lawyer, and the lawyer's acceptance of it, can give rise to:

    i) an express retainer: see *McDonnell v Dass Legal Solutions* [2022] EWHC 991 (QB) at § 181 (Foster J) and *Jackson & Powell on Professional Liability*, 9th ed., §11-004 and §11-006; or

    ii) an implied retainer, based on the parties having acted on the basis that a relationship of solicitor and client existed even if no express retainer was agreed: see *NDH Properties Ltd v Lupton Fawcett LLP* [2021] PNLR 8 §§ 79-82 (Snowden J) and *Jackson & Powell on Professional Liability*, 9th ed., §§11-005.

70. The general principles about implied (or inferred) contracts indicate that the ordinary prerequisites to contract formation must be satisfied, including intention to create legal relations. Such intention can be inferred where it is necessary, typically where the parties have acted in a way which is consistent only with an intention to make a contract, as opposed to where the parties would or might have acted exactly as they did in the absence of a contract (see, e.g., *Brown v InnovatorOne plc* [2012] EWHC 1321 (Comm) §§ 1014-1016 (Hamblen J).

71. SocGen cites in the context *Dean v Allin & Watts* [2001] EWCA Civ 758, [2001] 2 Lloyd's Rep. 249, where the Court of Appeal said:

> "… As a matter of law, it is necessary to establish that A&W by implication agreed to act for Mr Dean: an implied retainer could only arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly and properly to be imputed to the parties. In *Searles v Cann and Hallett* [1993] PNLR 494 the question arose whether the solicitors for the borrowers impliedly agreed to act as solicitors for the lenders. Mr Philip Mott QC (sitting as a deputy judge of the Queen's Bench Division) held that there was nothing in the evidence which clearly pointed to that conclusion. He went on:
>
> > 'No such retainer should be implied for convenience, but only where an objective consideration of all the circumstances make it so clear an implication that [the solicitor himself] ought to have appreciated it.'

> 'All the circumstances' include the fact, if such be the case (as it is here), that the party in question is not liable for the solicitors fees and did not directly instruct the solicitors. These are circumstances to be taken into account, but are not conclusive. Other circumstances to be taken into account include whether such a contractual relationship has existed in the past, for where it has, the court may be readier to assume that the parties intended to resume that relationship, and where there has been such a previous relationship the failure of the solicitor to advise the former client to obtain independent legal advice may be indicative that such advice is not necessary because the solicitor is so acting: see e.g. *Madley v. Cousins Combe & Mustoe* [1997] EGC 63 . …" (§ 22)

72. Although SocGen suggests that this is the 'leading case' on inferred retainers, it focussed on the situation where a lawyer instructed by one party (there, the borrowers in a property transaction) owed duties to another party (the lender). The same applies to another case cited by SocGen, *Caliendo v Mischon de Reya* [2016] EWHC 160 (Ch) §§ 681 ff, where there was a dispute about whether the firm had been retained by the claimants or only by another party. In such cases, although the test in principle may well be the same, it is likely to be harder to satisfy than in the simple case where the lawyer has no separate involvement but simply accepts instructions from a client without a written retainer.

(3) The construction of jurisdiction clauses

73. Beyond those set out above, neither party has identified any principles of French law on the construction of contracts that apply specifically when construing and applying jurisdiction clauses. Accordingly, and as set out below, the relevant jurisdiction clause in the Framework Agreement falls to be applied according to its clear terms.

74. In the event that one or more of the Framework Agreements applies in addition to an implied contract of retainer, it would be necessary to consider the principles for construing jurisdiction clauses in multi-contract disputes. The English principles may be summarised as follows (*Dicey, Morris & Collins on the Conflict of Laws*, 16th ed., § 12-082):

    i) Jurisdiction clauses should be construed widely and generously (*Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40).

    ii) An agreement which is part of a series of agreements should be construed by taking into account the overall scheme of the agreements.

    iii) It is generally to be assumed that just as parties to a single agreement do not intend as rational business people that disputes under the same agreement be determined by different tribunals, parties to an arrangement between them set out in multiple related agreements do not generally intend a dispute to be litigated in two different tribunals.

iv) Where there are multiple related agreements, the task of the court in determining whether the dispute falls within the jurisdiction clauses of one or more related agreements depends upon the intention of the parties as revealed by the agreements (at the time when they were entered into) as against these general principles.

v) Rational business people are unlikely to intend that disputes between them should fall within the scope of two inconsistent jurisdiction clauses.

vi) What is required is a broad, purposive and commercially-minded construction, in the light of the transaction as a whole, taking into account the overall scheme of the agreements and reading sentences and phrases in the context of that overall scheme.

vii) This may include enquiring under which of a number of inter-related contractual agreements a dispute actually arises, and seeking to do so by locating its centre of gravity and thus which jurisdiction clause is closer to the claim.

viii) Nevertheless the normal process of construction may not be able to avoid a degree of fragmentation and overlap.

75. Where the contracts are connected and are part of one package, as in *UBS AG v HSH Nordbank AG* [2009] EWCA Civ 585 and *Sebastian Holdings Inc v Deutsche Bank AG* [2010] EWCA Civ 998, the jurisdiction clause in the agreement "*at the centre of gravity*" is more likely to apply to the package of contracts. This is contrasted from a situation where different agreements were found to have been entered into for different aspects of an overall relationship (e.g. *Trust Risk Group SPA v AmTrust Europe Ltd* [2015] EWCA Civ 437; [2016] 1 All ER (Comm) 325).

76. In *Etihad Airways v Prof. Dr. Lucas Flother* [2019] EWHC 3107 (Comm); [2020] QB 793, an exclusive jurisdiction clause in a Facility Agreement was found to apply to a Comfort Letter, which did not have any jurisdiction clause but was negotiated and executed at the same time as the Facility Agreement as part of a suite of agreements. It was held that while it is entirely a matter of construction whether a jurisdiction agreement in contract A, even where it was expressed in wide language, was intended to capture disputes under contract B, the absence of any competing jurisdiction clause in any agreements within a particular set of agreements concluded by the parties for the same purpose, at the same time, and with the same subject matter can be a relevant consideration (and was found to be in the case) (§ 102(v), approved in *Trusk Risk Group* at § 46).

77. Whether a jurisdiction agreement in a later contract can apply to a contract concluded prior to the jurisdiction agreement coming into existence is essentially a matter of construction. In *Sapinda Invest v Altera* [2017] EWHC 871 (Comm); [2018] 1 All ER (Comm) 71 the court found that a claim for a breach of an alleged oral agreement for the sale of shares fell within the jurisdiction clause in an agreement for the sale of further shares made a few days later which conferred jurisdiction on the English court. This was on the basis that the agreements were interdependent and dealt with the same subject matter and the Court found that objectively there was consensus that the English courts should have jurisdiction. The position may well be different where two contracts are made at different times and relate to different subject-matters:

> "Whilst it is not impossible for a jurisdiction agreement to have, on its true construction, such retrospective effect, a party seeking to rely upon a subsequently agreed jurisdiction agreement, in a separate contract, is likely to face an uphill struggle: see e.g. Satyam. One reason is that the earlier contract had an existence of its own, and hence an applicable law, prior to the conclusion of the subsequent agreements. If there was no jurisdiction agreement at the time it was concluded, then it may be difficult to conclude that it is to be found in a subsequent agreement, particularly if (as in *Choil*) the disputes arising under the later agreement are likely to have a very different character to disputes arising under the earlier agreement." (*Etihad* § 104; see also *Terre Neuve Sarl v Yewdale Ltd* [2020] EWHC 772 (Comm) § 31(6)(a))

(4) Staying proceedings commenced in breach of an exclusive jurisdiction clause

78. Where a contract provides that all disputes between the parties are to be referred to the exclusive jurisdiction of a foreign tribunal, the English court will stay proceedings instituted in England in breach of such agreement unless the claimant can satisfy the court that strong reasons exist to allow them to continue (*Dicey*, 12R-062(3), citing among other cases *The Eleftheria* [1970] P. 94, 100 and *Donohue v Armco* [2001] UKHL 64 § 24). Lord Bingham in *Donoghue* stated, for example, that *"[t]he authorities show that the English court may well decline to grant an injunction or a stay, as the case may be, where the interests of parties other than the parties bound by the exclusive jurisdiction clause are involved or grounds of claim not the subject of the clause are part of the relevant dispute so that there is a risk of parallel proceedings and inconsistent decisions"* (§ 27). Hence Briggs states:

> "… in the context of genuine multipartite litigation, where some but not all of those genuinely involved in the dispute are party to the jurisdiction agreement, the jurisdiction agreement may not be given effect, even if it is for the English courts, as was confirmed by the House of Lords in *Donohue v Armco Inc.*. Although there may be a contractual agreement on jurisdiction, this will not be specifically enforced where to do so would fracture the coherent adjudication of a multipartite dispute. Of course, the potential for abuse of this principle is understood, and if a court believes that non-parties to the jurisdiction agreement – affiliates and subsidiaries, or 'friends and relations' as they were memorably described in *Donohue v Armco Inc* – have been put up to litigate by one party, in order to contend that they were not bound by the jurisdiction agreement, with a view to fabricating an exception, a court should detect it. But where there is no such manipulation, the existence of a jurisdiction agreement is strongly indicative, but is not conclusive, on the question whether relief will be ordered." (Briggs § 23.15, footnotes omitted)

Although I have omitted the footnotes from the above quotation, I should record that the footnote relating to the 'friends and relations' point made above reads:

> "[2000] 1 Lloyd's Rep 579, 590–591 (for those not familiar with Winnie-the-Pooh, it was Rabbit who had a large number of friends-and-relations). But the House of Lords did not share this analysis of the proceedings and therefore saw no reason to disregard the effect of the doctrine of privity: [2001] UKHL 64, [2002] 1 Lloyd's Rep 425."

79. The party alleging a binding jurisdiction agreement needs to show a good arguable case. In practice this means that:

    i) The party relying on the existence of the agreement must supply an evidential basis showing that it has the better argument (and not much the better argument).

    ii) If there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so.

    iii) The nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case there is a good arguable case for the existence of the agreement if there is a plausible (albeit contested) evidential basis for it.

    (*Dicey* § 12-083, summarising the restatement in *Kaefer Aislamientos SA de CV v AMS Drilling Mexico SA de CV* [2019] EWCA Civ 10 of the tests as formulated in *Brownlie v Four Seasons Holdings Inc* [2017] UKSC 80, and *Goldman Sachs International v Novo Banco SA* [2018] UKSC 34)

80. In exercising its discretion whether to grant a stay in a case where a jurisdiction clause applies, the following factors have been identified as relevant:

    i) the location of the evidence, and its effect on the relative convenience and expense of trial in England or abroad;

    ii) the governing law of the contract and whether it differs from English law in any material respects;

    iii) with what country each party is connected, and how closely;

    iv) whether the defendants genuinely desire trial in a foreign country, or are only seeking procedural advantages;

    v) whether the claimants would be prejudiced by having to sue in a foreign court because they would:

        a) be deprived of security for their claim;

        b) be unable to enforce a judgment in their favour;

        c) be faced with a time-bar not applicable in England; or

        d) for political, racial, religious or other reasons, be unlikely to get a fair trial; and

vi) whether there is the risk of inconsistent judgments involving not only the parties to the jurisdiction agreement but also third parties.

(*The Eleftheria* [1970] P. 94, 100; *The El Amria* [1981] 2 Lloyd's Rep. 119, 123–124 (CA); *The Sennar (No.2)* [1985] 1 WLR 490, 500; *Evans Marshall & Co Ltd v Bertola SA* [1973] 1 WLR 349)

81. The fact that a court was contractually chosen by the parties will be taken as clear evidence that it is an available forum (*Dicey* § 12-109). It is in principle not open to a party to object to the exercise of the chosen jurisdiction on grounds that should have been foreseeable when the agreement was made, including inconvenience as a result of witnesses and documents being in another country, inconsistent findings as a result of concurrent proceedings, or that the chosen forum has no rule that costs follow the event (*ibid*.).

(E) APPLICATION TO THE FACTS

82. SocGen's primary submission is that the applicable jurisdiction clause is the one found in the 2015 Framework Agreement, because that was the Framework Agreement in force and governing the relationship between the parties at the time the dispute between SocGen and Clifford Chance arose. I return to that submission later, after considering the position chronologically.

83. The focus, at least initially, must be on the relationship between CC LLP and SocGen. There can be no serious doubt that CC LLP, and not CC Europe, was the entity which handled the Goldas Dispute on SocGen's behalf:

i) There is no challenge to Mr Hewetson's evidence summarised in § 30 above about how the Goldas matter came to Clifford Chance, including the fact that CC Europe was unable to accept the instructions but CC LLP did so.

ii) CC LLP were the solicitors on the record in the Goldas litigation. SocGen received and paid invoices from CC LLP (only) in respect of its time costs and disbursements.

iii) Mr Pinnell, Clifford Chance's principal point of contact at SocGen in the Goldas Dispute swore an affidavit on 11 March 2008 in support of SocGen's application for a freezing order against Goldas, in which he referred to advice he received from CC LLP (rather than CC Europe, of which no mention was made).

iv) Kroll Associates UK Limited were instructed by CC LLP (and not CC Europe) to assist in relation to the Goldas Dispute. Kroll's engagement letter expressly refers to CC LLP representing SocGen in the matter and to SocGen as CC LLP's client.

v) SocGen makes no positive case in evidence or submission that the entity it instructed to act for it in connection with the Goldas Dispute was other than CC LLP.

(1) The position when CC LLP was first instructed

84. CC LLP was instructed in February 2008. At that time, the 2006 Framework Agreement was in force as between SocGen and CC Europe. CC LLP, incorporated on 1 November 2006, did not exist at the time when the 2003 Framework Agreement and the 2006 Framework Agreement were made.

85. There was some discussion during oral submissions of whether CC LLP may have become a party to the 2006 Framework Agreement as part of a transfer of business from CC USA. However, the evidence did not address this matter, and counsel for SocGen made clear that SocGen was not asking me to infer than CC LLP became party to the 2006 Framework Agreement as part of an assumption of CC USA's rights and obligations.

86. SocGen did submit, however, that CC LLP became a party to the 2006 Framework Agreement by conduct, when it accepted instructions from SocGen and began to charge fees consistent with the terms of that Framework Agreement. It submits that each of the successive Framework Agreements was, as its terms showed, intended to govern the relationship between all of the entities in the SocGen group and all of Clifford Chance's offices in France and throughout the world. They implemented a panel agreement between a global law firm and an international bank, for which work was undertaken in multiple jurisdictions. It would be absurd if the Framework Agreements were binding only on CC Europe, and as regards any other Clifford Chance entity were merely precursors to individual retainers with entirely separate and independent terms and conditions.

87. I am unable to accept that submission. It is true that the 2003 and 2006 Framework Agreements set out principles and procedures that were evidently intended to be applied to work done for SocGen entities by Clifford Chance entities across the world. However, there is no indication in the terms of either agreement that that was to be achieved by making all those entities, on both sides, parties to the Framework Agreements themselves, either at the outset of the Framework Agreement or subsequently. Neither agreement contained language suggesting that SocGen or CC Europe had contracted as agent for all their related entities, and each named CC Europe as the sole party on the Clifford Chance side. Neither Framework Agreement made provision for additional parties to be added later. The terms of both Framework Agreements are consistent with CC Europe having undertaken that it and other Clifford Chance entities would apply no more than the maximum rates specified in the Framework Agreements, and would perform the other tasks set out in the agreements relating to the conduct of work for the SocGen group, but without those other Clifford Chance entities themselves having to be or become party to or bound by the terms of the Framework Agreements.

88. That view is, further, consistent with the fact that the 2003 and 2006 Framework Agreements (like the later Framework Agreements) set out only the maximum rates but left the actual fee structures and rates as a matter for negotiation on a case-by-case basis: see §§ 16, 18, 19 and 26 above. There is, in my view, nothing absurd or unlikely about a situation where the Framework Agreements were just that: frameworks setting out terms on which (CC Europe promised) individual retainers would be carried out for SocGen entities by Clifford Chance entities, including maximum rates and other matters relating to the conduct of case work.

89. Article 1.2 of the 2003 Framework Agreement (unchanged by the 2006 agreement) stated that *"[t]his Contract defines the principles of SG Group's purchasing policy in the area of the services provided by the Firm*". Consistent with that stated purpose, the provisions of the Framework Agreements concern general matters such as the designation of points of contact, preferential hourly rates to be charged to SocGen, the calculation of an annual discount by reference to the fees charged in that year to SocGen, conflicts and confidentiality, the ownership of documents and invoicing and expenses. They provided agreed parameters within which individual instructions could be negotiated and agreed between the relevant Clifford Chance entity and SocGen/its relevant subsidiary, including both the scope of work on the particular retainer and the actual remuneration. Thus Article 3.3 of the 2003 Framework Agreement contemplated engagement letters being used for individual retainers, and Article 7.1 expressly envisaged the actual fees (as distinct from maximum fees) being a matter for individual negotiation.

90. Applying the French principles of contract interpretation summarised earlier, nothing in the 2003 and 2006 Framework Agreements stated unambiguously that other Clifford Chance entities were themselves to be regarded as – or that Clifford Chance Europe promised that those other entities would become – parties to the Framework Agreements themselves. Nor do any other relevant documents indicate that that was the parties' intention. The parties' post-contract conduct, including CC LLP's letter of 4 March 2008 referring to "*agreed rates*", and CC LLP having invoiced consistently with the Framework Agreement rates, does not point to that conclusion. It is consistent with SocGen and Clifford Chance having agreed a retainer including rates within the maximum hourly rates specified in the Framework Agreement that Clifford Chance Europe had entered into with SocGen. It does not demonstrate or evidence an agreement between SocGen and Clifford Chance LLP that the latter entity would thereby become an additional party to the Framework Agreement, nor that it had agreed to incorporate the entirety of the terms of the Framework Agreement (including the choice of law clause) into its contract of retainer.

91. Equally, the provision of an insurance certificate naming CC LLP does not advance the argument. It could not be said that the insurance policy would be ineffective to cover CC Europe unless the term "*the Firm*" in the Framework Agreements included CC LLP. If the certificate did reflect a single policy of insurance, there is nothing unusual about two legally separate, but connected, entities such as CC LLP and CC Europe sharing a single policy of insurance in the name of one alone.

92. Further, CC Europe's undertaking that the things set out in the Framework Agreements would be done by other Clifford Chance entities on matters abroad did not mean that CC Europe undertook that individual contracts of retainer between SocGen and other Clifford Chance entities would themselves be subject to French law (as were the 2003 and 2006 Framework Agreements themselves). The choice of law provisions governed the Framework Agreements themselves, as relationships between SocGen and CC Europe. It does not follow that a similar provision was required to be replicated or incorporated in individual retainers anywhere in the world. Indeed, it would be surprising if a retainer for, say, the conduct of litigation in the USA or the UK, inevitably governed by locally-imposed procedural and professional duties, would nonetheless be subject to French law. That is the case, in my view, even though some matters on which SocGen instructed Clifford Chance would be likely to involve

multiple jurisdictions: it would remain surprising for a retainer for the conduct of litigation in the USA and the UK to be subject to French law. Again applying French principles of contract interpretation, the 2003 and 2006 agreements did not unambiguously state that the choice of law provisions they included were required to be replicated or incorporated in individual retainers anywhere in the world, and there is nothing in the remainder of the contract or other documents, or the parties' pre or post contractual dealings, that would suggest that that was the case.

93. Equally, even if CC LLP had become a party to the 2006 Framework Agreement by conduct, it would not follow that the choice of law clause in that contract applied to individual retainers all over the world. Similar considerations to those referred to in § 92 above apply again. French law would govern the general relationship set out in the Framework Agreement itself, but would not necessarily apply to individual retainers. In the absence of a clear and specific indication that the parties intended such a result, I consider it unlikely that they would have envisaged French law apply to every kind of work wherever in the world it was carried out.

94. It follows from the foregoing paragraphs that when Clifford Chance LLP accepted SocGen's instructions in February 2008, any contract of retainer that arose was an inferred one of the kind mentioned in § 69 above. It is very likely that such a retainer did arise: commercial parties are unlikely to have entered into a lawyer/client relationship other than on a contractual basis. The governing law of that retainer will have been the law of England, as the place where Clifford Chance LLP was habitually resident, and where its relevant branch was providing services in English litigation. It was suggested at one stage in the evidence that an unwritten retainer was unlikely because it would not have enabled CC LLP to comply with its regulatory obligations under rules 2.02 and 2.03 the Solicitors Code of Conduct 2007 regarding provision of information. However, Mr Hewetson has explained (in evidence that is not challenged) that (a) rules 2.02(3) and 2.03(7) each provided that insofar as a firm could demonstrate that it was inappropriate for some or all of the information stipulated by rules 2.02 and 2.03 respectively to be supplied to a client, this would not constitute a breach of the rule; (b) a client of SocGen's sophistication is unlikely to have required all the information stipulated by rules 2.02 and 2.03 in order to understand the matters to which it would relate (the effect of the instruction and CC LLP's responsibilities thereunder, the likely cost of the matter or SocGen's potential liability for adverse costs); and (c) CC LLP did in fact provide SocGen with the information required by rules 2.02 and 2.03 in any event.

(2) Effect of the 2009 Framework Agreement

95. The year after CC LLP accepted instructions in the Goldas Dispute, SocGen and CC Europe entered into the 2009 Framework Agreement. By this time, in point of fact, the work and advice to which SocGen's present claim relates had been done/given, and the English litigation had fallen into abeyance (though, legally speaking, it is the case that SocGen alleges breach of an ongoing duty to advise, and the retainer did not end until 2017).

96. The 2009 Framework Agreement, like the 2003 and 2006 Agreements, contained no indication that all SocGen and Clifford Chance entities were, or were required to be made, parties to the Framework Agreement itself. It contained no language suggesting that SocGen or CC Europe had contracted as agent for all their related entities. Its terms

are consistent with CC Europe having undertaken that it and other Clifford Chance entities would apply no more than the maximum rates specified in the Framework Agreements, and would perform the other tasks set out in the agreements relating to the conduct of work for the SocGen group, but without those other Clifford Chance entities themselves being party to or bound by the terms of the 2009 Framework Agreement as such.

97. Like the 2003 and 2006 Framework Agreements, the 2009 agreement set out maximum rates but left the actual fee structures and rates as a matter for negotiation on a case-by-case basis. Indeed, Article 6.1 of the 2009 agreement made it explicit that fees were to be negotiated on a case by case basis, within the agreed maxima.

98. The 2009 Framework Agreement added a jurisdiction provision to the choice of French law. However, for reasons corresponding to those set out in §§ 92 and 93 above, I do not consider either (a) that CC Europe undertook that individual contracts of retainer would themselves be subject to French law or (b) that the choice of law and jurisdiction agreement applied to individual retainers anywhere in the world involving any Clifford Chance entity. If anything, either of these is even less likely than the choice of French law being incorporated into the retainer when CC LLP was first instructed. Either would mean that an existing retainer, governed by English law and relating to English litigation, would be converted in mid stream to a French law contract subject to exclusive French jurisdiction.

99. The terms of the jurisdiction clause itself are, in my view, a further pointer against any suggestion that the parties intended it to apply worldwide. The provision for any fee dispute to be resolved by the Bâtonnier is obviously directed at fee disputes relating to members of the Bar of Paris, since (as was common ground) the Bâtonnier would be unable to resolve any dispute relating to members of any other Bar and would decline to do so. Accordingly it is a provision that might logically be incorporated into, or regarded as forming part of, individual retainers of CC Europe itself, but no others. SocGen suggests that the jurisdiction clause *could* be construed as providing for all other fee disputes to be resolved by the High Court of Paris pursuant to the final sentence of the clause. Even if that were a permissible interpretation, the express reference to the Bâtonnier would still in my view tend to indicate that the parties did not intend the clause as a whole to apply to retainers worldwide. SocGen makes the point that the Framework Agreements contain numerous other indicia that they have a "*global remit*". I would accept that they extend globally in the sense indicated in § 87 above (i.e. they contain promises by CC Europe in relation to things to be done by other Clifford Chance entities abroad). However, if anything, it would be all the more surprising if parties, contemplating retainers across the world in that way, would have intended a jurisdiction clause referring fee disputes to the Bâtonnier and other disputes to the High Court of Paris to be a term of all those retainers.

(3) Effect of the 2012 and 2015 Agreements

100. The 2012 and 2015 Framework Agreements, though structured differently, contained broadly similar types of provision to those of the 2009 Framework Agreement.

101. A new development was the fact that these later agreements stated that CC Europe entered into them *"acting in its own name and on behalf of all offices of Clifford Chance LLP"*. The email evidence indicates that that wording originated in a proposed

amendment put forward by CC Europe on 22 December 2011. SocGen submits that it should accordingly be construed, in the event of any ambiguity, against its maker. However, (a) I was not directed to any principle of French contract interpretation to that effect, and (b) the proposer of the wording was CC Europe: to suggest that it should be construed against CC LLP would simply beg the question of whether CC LLP was party to the agreement or could be deemed itself to have proffered the wording.

102. This new provision gives rise to two questions:

i) whether CC LLP was bound as principal to the 2012 and/or 2015 Framework Agreements, and

ii) if so, whether that meant that the choice of law and jurisdiction provision (which was substantially the same as in the 2009 Framework Agreement) applied to individual retainers of CC LLP anywhere in the world, including in relation to existing engagements.

103. As to (i), SocGen in its evidence (in particular, the second witness statement of Mr Fawell dated 12 May 2023) summarised the French law principles of agency, but without making any positive assertion that CC Europe had CC LLP's actual authority to bind it to the 2012 or 2015 Framework Agreement, nor that SocGen had any specific state of mind or belief about any such actual authority. It is thus perhaps not surprising that CC LLP's evidence on the question of actual authority is relatively concise. It takes the form of a witness statement of Mr Perrin, a partner in CC LLP who was the firm's Executive Partner and General Counsel from 2003 to 2021. Mr Perrin states:

> "6. It has been a longstanding matter of firm policy, brought about at my instigation after the merger I have described at paragraph 4 above, that any Clifford Chance partner wishing to enter into an agreement with a client binding any Clifford Chance entity beyond the office or offices in that partner's own country is required to refer that client agreement to "the centre". I do not now recall precisely when that policy was implemented but I am confident that it was in place by 2004 and may in fact have been in place in 2003. For the period with which these proceedings are concerned, the policy in practice meant that the agreement in question needed to be referred to me or to Angela Robertson, the Head of the London 'Clearance Centre' (one of four offices managing client and work acceptance, the others being in New York, Frankfurt and Hong Kong).
>
> 7. I do not recall approving any of the Framework Agreements and they do not bear any sign that they had been vetted and approved by me or Angela Robertson. By way of example, we would never have approved a draft which was to bind the firm worldwide if it was not in English, or translated into English. In the circumstances, I believe that no approval was either sought or given to CC Paris or CC Europe in respect of the Framework Agreements. I infer that no such approval was sought - certainly in the case of all of the Framework Agreements after the 2003 Agreement - because those responsible for negotiating the same

> did not understand the relevant agreement to bind any Clifford Chance entity beside CC Paris or CC Europe.
>
> 8. In the circumstances, to the extent - which I make clear I do not accept - that the Framework Agreements do purport to bind CC LLP, they were entered into by CC Paris and CC Europe without authority from CC LLP."

104. SocGen criticises this evidence on the basis that it is based on recollection and Mr Perrin does not make clear what enquiries he has made about contemporary documents. In addition, it might be said in SocGen's favour that (a) the fact that CC Europe stated, in the Framework Agreements, that it was acting on behalf of CC LLP in itself constitutes evidence that CC Europe had CC LLP's authority, and (b) the fact that CC LLP subsequently abided by the fee maxima set out in the 2012 Framework Agreement is evidence that it was aware of that agreement, and thus of the fact that CC Europe had stated that it was entering into the 2012 Framework Agreement on CC LLP's behalf, yet did not demur from that statement.

105. However, those points have to be weighed against Mr Perrin's evidence, which is the only direct evidence on the point, and in the context of the inherent probabilities. I find it improbable that CC LLP would have given authority to CC Europe to bind it to an agreement of this nature without some careful vetting process having taken place. More plausibly, CC Europe may have taken the view that, by stating that it was acting on behalf of 'all offices' of Clifford Chance, it was confirming that (as in previous Framework Agreements) it was itself agreeing how matters would be handled both in its own and in CC LLP's various offices, as opposed to directly binding CC LLP to the Framework Agreement. At any rate, I am not persuaded that SocGen has the better of the argument that CC Europe had CC LLP's actual authority to bind CC LLP to the Framework Agreements. I consider that Mr Perrin's evidence allows a reliable assessment to be made that no such authority was in fact given.

106. As to apparent mandate, SocGen has not adduced any direct evidence of any behaviour or statements by CC LLP indicating that CC Europe was authorised to bind it to the Framework Agreements. The fact that CC LLP subsequently abided by the agreed rates and reporting mechanisms is not sufficient, since it is equally consistent with CC LLP simply have lived up to undertakings given to SocGen by CC Europe alone from 2008 onwards. Nor has SocGen adduced direct evidence of any actual belief by SocGen in the existence of such authority. The first witness statement of Mr Fawell includes the rather general statement that:

> "I understand from SG that each and every iteration of the Framework Agreements were negotiated between representatives of SG and Clifford Chance in Paris, with the aim of regulating the relationship between all the entities in the SG group (the "SG Group") and Clifford Chance worldwide in relation to the provision of legal services by the latter to the former."

However, that statement does not adequately identify the source of the information (see *Skatteforvaltningen v Solo Capital Partners, Practice Note* [2020] EWHC 1624 (Comm) §§ 92-93). Moreover, whilst Mr Fawell's statement refers to an aim of

regulating the relationship between all entities worldwide, it does not state that SocGen believed that to have been achieved by binding each and every entity to the terms of the Framework Agreement. Indeed, since the statement quoted above refers to all of the Framework Agreements, including those before the "*on behalf of …*" wording was introduced in 2012, it cannot realistically be taken as evidence of a belief that all Clifford Chance entities were parties to the Framework Agreements. On the face of the 2003, 2006 and 2009 Framework Agreements, at least, they were not. Further, SocGen has not adduced evidence from anyone responsible for the negotiation of the 2012 or 2015 Framework Agreements as to what, if anything, they were told by CC LLP, or that they believed CC Europe to be contracting on CC LLP's behalf. In all these circumstances, I do not consider that SocGen has shown a plausible evidential basis that would support an argument based on the apparent mandate doctrine.

107. Turning to issue (ii) identified in § 102 above, even if CC LLP were bound, as principal, to the 2012 and/or 2015 Framework Agreements, I do not consider that the choice of law and jurisdiction provisions in those agreements applied to individual retainers of CC LLP anywhere in the world, still less to existing engagements. My reasons are similar to those given in §§ 92 and 93 above in relation to the 2009 Framework Agreement. It would have been surprising for a choice of French law and the jurisdiction of the Batonnier/the High Court of Paris to have been made in relation to retainers between all SocGen and all Clifford Chance entities, all over the world and in relation to all kinds of case, including litigation governed by local rules of procedure and professional duties. Conversely, the choice of law and jurisdiction made sense as governing the overarching relationship between SocGen and CC Europe constituted by the Framework Agreements themselves, and the local relationship between SocGen and CC Europe in Paris. The Framework Agreements did not unambiguously state that that choice of law and jurisdiction would apply to individual retainers around the world, and the available evidence does not support the view that the parties intended that.

108. Accordingly, I do not consider that SocGen has the better of the argument that the jurisdiction clause in the 2012 and 2015 Framework Agreements binds CC LLP. I consider CC LLP to have the better of the argument.

(4) The position of CC Europe

109. CC Europe is bound by the jurisdiction clauses in the successive Framework Agreements. Further, having regard to the presence of the Batonnier provision for resolution of fee disputes, SocGen would have the better of the argument that that provision applied to any individual retainers of CC Europe for work in Paris, alternatively that CC Europe agreed that any such individual retainers would be on terms including such a jurisdiction clause.

110. However, there is in reality no substantive claim against CC Europe, and in that sense no dispute on which the jurisdiction clause could bite. Although SocGen's formal letter of demand is addressed to both CC LLP and CC Europe, SocGen has put forward no remotely arguable basis on which CC Europe, as opposed to CC LLP, could be said to have been retained in relation to the Goldas Dispute or liable for the acts and omissions it alleges (see, further, § 83 above). It is hard to see why SocGen's letter of claim asserted any claim against CC Europe at all (save perhaps with a view to seeking an advantage in terms of choice of law and/or jurisdiction).

111. On that basis, it might be suggested, there is no basis on which CC Europe could need negative declaratory relief of the kind it seeks by its present claim in England. I am not persuaded that that would follow: there may be room for such relief to be sought even in circumstances where the counterparty (here, SocGen) has not put forward any real substantive claim against a claimant. In any event, however, I would accept Clifford Chance's submission that to prevent CC Europe from seeking relief in England would lead to fragmentation of the proceedings; and that – particularly in circumstances where no genuine claim has been asserted against CC Europe – there would be exceptional reasons to refuse a stay despite the existence of the jurisdiction agreement. In terms of the statement from *Briggs* quoted in § 78 above, this is not a case where it could be suggested that the involvement of CC LLP is a contrivance to avoid the application of the jurisdiction clause. On the contrary, CC LLP is the real defendant to SocGen's claims, whereas CC Europe has no real involvement in them.

(F) FORUM NON CONVENIENS

112. SocGen argues in the alternative that the court should stay these proceedings on the basis that the French court is clearly and distinctly the more appropriate forum.

(1) Principles

113. Following the end of the Brexit transition period, applications to challenge jurisdiction are now decided by common law principles of *forum non conveniens* rather than the Brussels Regulation Recast (Regulation 1215/2012). The legal framework for determining an application for a stay of proceedings on the basis of *forum non conveniens* is as set out in *Spiliada Maritime Corp v Cansulex Ltd* [1987] A.C. 460.

114. The test has two limbs:

i) SocGen must establish that the French courts are both (a) "*available*" and (b) clearly or distinctly more appropriate than the English courts as a forum for determining the dispute.

ii) If SocGen can show that limb (i) is satisfied, then limb (ii) requires a consideration of whether, even if the courts of France are an available forum that is clearly and distinctly more appropriate for the trial of the action than the courts of England, justice nevertheless requires that a stay of the English proceedings should not be granted. The relevant test is whether there is a "*real risk that justice will not be obtained*" (*Altimo Holdings and Investment Ltd and others v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7; [2012] 1 WLR 1804).

115. As to the evidential burden:

i) If the exclusive jurisdiction clause in the Framework Agreement applies to the dispute between the parties, the burden is on Clifford Chance to show that there are strong reasons why the claim should continue in England. However, if it were to be found that the jurisdiction clause does not apply, the burden is reversed and it is for SocGen to first show French courts are clearly and distinctly more appropriate: "*In general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay*" (*Spiliada*, p.476). The burden on the applicant seeking a stay "*is not just to show*

that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right" (*ibid*, p.477).

ii) However, this is not absolute, and "*each party will seek to establish the existence of certain matters which will assist him in persuading the court to exercise its discretion in his favour, and that in respect of any such matter the evidential burden will rest on the party who asserts its existence*" (*ibid*., p,476)

iii) If SocGen can show that France is prima facie the appropriate forum (i.e. limb (i)), the burden of limb (ii) switches to Clifford Chance "*to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country*" (*ibid*., p.476)

iv) The "*natural forum*" is one "*with which the action had the most real and substantial connection.*" Thus, in considering any factors which point in the direction of the other forum, the court must look not only to factors affecting "*convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction…and the places where the parties respectively reside or carry on business*" (*ibid.*, p.478)

116. As to the governing law as a factor:

i) The governing law of the contract is a significant factor where issues of law are likely to be important and where there are real differences in the legal principles applicable to the issues, as there are between French and English law (*VTB Capital plc v Nutritek International Corp* [2013] UKSC 5; [2013] 2 AC 337 § 46).

ii) Whilst the English court can and often does decide questions of foreign law and grapple with legal concepts foreign to English law on the basis of expert evidence from foreign lawyers, the general principle, "*as a matter of common sense*", is that "*it is more satisfactory for the law of the foreign country to be decided by the courts of that country*" (*The Eleftheria*, p.105).

iii) Additionally, there are further repercussions in having an English court decide questions of foreign law. Whereas a question of foreign law decided by a court of the foreign country concerned can be appealed to the appropriate appellate court of that country as an appeal on the point of law, an English court would treat it as a question of fact for the purposes of appeal, which would inherently limit the scope of the appeal (*ibid*.).

(2) Application

117. In relation to the first limb of the test, SocGen submits as follows:

i) The French courts are available: French court proceedings have been initiated, with the first hearing listed for 7 March 2024.

ii) The majority of the issues in this case are ones of French law, rather than of fact. Those issues are of some complexity and they include (and are not limited to):

(a) Whether Clifford Chance was appointed as 'dominus litis' in the Goldas Litigation;

(b) The interpretation and construction of the terms of the Framework Agreement;

(c) The scope of Clifford Chances' duty, including the extent of their retainer in respect of the Goldas Litigation and the duty to advise in relation to the defective service in Turkey and limitation and expiry of claim forms in England;

(d) Whether Clifford Chance were in breach of their duty given that the attempts to effect service in Turkey were defective, and Goldas complained at the time that they were defective, yet no advice was given on how to cure the defective service;

(e) Whether Clifford Chance's advice on procedural strategy in the Goldas Litigation was in breach of their duty;

(f) Whether Clifford Chance's advice in relation to limitation was deficient;

(g) The scope of duty/nexus question: whether the loss suffered by SG in the Goldas Litigation was within the scope of Clifford Chance's duty; and

(h) Whether SG's loss should be treated with respect to loss of chance principles, and if so, how those principles should be applied.

iii) Those are all either matters of law or a matter of applying the French professional negligence law to the facts, which the French courts would be in a much better position to do. While the Goldas Dispute was an English law matter that had been litigated in London, questions of English law are narrow and limited to English rules on limitation, service and expiry of claim forms and the circumstances in which courts will give permission for alternative service. Further, it is not anticipated that there are likely to be any serious dispute as to the facts, given that they are either a matter of record or findings of fact by Popplewell J in his judgment on the strike-out application.

iv) Should an appeal by either party be required, a question of French law decided by French courts can be appealed in the usual way, whereas a question of French law decided by English courts would be treated as a question of fact, which would necessarily limit the scope of the appeal.

v) The location of the witnesses and other evidence is not a relevant consideration, as it was foreseeable at the time of entering into the Framework Agreements that

choosing French jurisdiction would have always involved any overseas parties having to travel to France. In any event this is not a factor that points in either direction, as the main witness for Clifford Chance (Mr Brock) has been based in Hong Kong and would have to travel in either event, and the remaining Clifford Chance witnesses would have to travel from London, whereas SocGen witnesses would have to travel from Paris.

vi) In circumstances where the Framework Agreements are governed by French law and the proceedings are likely to engage questions of law (rather than fact) it is submitted that consideration of all of the circumstances points towards a stay being granted.

vii) Accordingly, the French court is clearly and distinctly the more appropriate forum.

118. I do not accept those submissions. I have concluded that CC LLP has the better of the argument that it was not bound by the Framework Agreements, and (in any event) that the choices of law and jurisdiction which they contain do not form part of the contract of retainer in relation to the Goldas Dispute. Even if the Framework Agreements have any application, they have no real bearing on the critical issues between the parties. The dispute concerns whether or not an English firm of solicitors were negligent in their conduct of English law litigation in the English High Court. The retainer was governed by English law. To the extent that the Framework Agreements have any relevance at all, they can be considered in translation.

119. Further, the events that form the subject matter of that dispute all took place here. The large number of documents involved, primarily those on CC LLP's file, are in England and written in English. They would need to be translated were the proceedings to take place in France. The eight Clifford Chance personnel working on the Goldas Dispute were all based in London. Except for Mr Brock, who now lives in Hong Kong, they are all understood still to be in this jurisdiction. CC LLP's two main contacts at SocGen, Mr Pinnell and Mr Williams, were and are also based in England. CC LLP is headquartered in London and SocGen has a substantial presence in London.

120. Consequently, it has not been shown that the courts of France are clearly and distinctly the more appropriate forum. To the contrary, this court is that forum.

(G) CONCLUSION

121. For these reasons, I shall dismiss SocGen's jurisdiction challenge.

122. I am most grateful to all counsel for their helpful written and oral submissions.