

JERSEY / JUDGMENT

Tepe -v- Botas and Others [2016]

JRC 047 (22 February 2016)

[2016] JRC 047

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judgment

the commissioner: 1. On 20 th January, 2016, I sat to consider a number of supplementary matters arising out of the judgment of this Court issued on 19 th January, 2016, Tepe -v- Botas

[2016] JRC 012A ("the Judgment"). There has been a slight delay in issuing the judgment because the parties at one stage requested me to defer finalising it because they hoped to agree on the terms of the Act necessary to reflect the Judgment. However, that transpired not to be possible and I am accordingly now delivering the judgment.

Background

2. The detailed history of this matter is set out in the Judgment but, in order to explain the issues which I have to resolve, I would summarise the key aspects of that history as follows. Expressions defined in the Judgment have the same meaning in this judgment even where I do not explain that definition in this judgment. 3. Tepe has the benefit of two sets of arbitration awards ("the Awards") against Botas . The first set is known as the Stations Awards, the first of which was on 5 th June, 2009, and the third of which was on 26 th August, 2011. The overall outcome was that the arbitration panel awarded Tepe sums totalling US\$52.5 million plus compound interest on such damages and ordered the return of certain securities ("the Stations Securities") which Tepe had provided pursuant to the underlying contract. The arbitration panel also ordered payment of all commissions accruing in relation to the Stations Securities until their return. As at the date of the representation to this Court in December 2014, the total amount due under the Stations Awards was US\$64,732,608 and the Stations Securities had an aggregate value of US\$5,604,664. 4. The second set of awards are referred to as the Lot A Awards, the first of which was on 18 th October, 2010, and the third of which was on 21 st May, 2013. These too awarded certain sums to Tepe and ordered Botas to return the various securities provided by Tepe in support of the underlying contract (the "Lot A Securities"). As at the date of the representation in December 2014, the amount due under the Lot A Awards was US\$27,818,670 and the aggregate value of the Lot A Securities was US\$15,930,519. The Stations Securities and the Lot A Securities are together referred to as "the Securities". 5. Botas has not paid any of the

sums due under the Awards nor has it returned any of the Securities. 6. Botas is wholly owned by the State of Turkey ("the Republic"). Botas is in turn the sole owner of two companies incorporated in Jersey, namely the second respondent (TPIC) and the third respondent (BIL). The shares in those two companies are referred to as "the Shares". 7. When Tepe instituted its proceedings in Jersey seeking leave to enforce the Awards as judgments, it obtained an interim arrêt over the Shares and over any amounts owed by TPIC or BIL to Botas ("the Debts"). 8. At the hearing which gave rise to the Judgment, the following main issues fell for decision:- (i) Botas submitted that the Awards should not be enforced in Jersey because the procedure followed by the arbitration panels had been unfair towards Botas, thereby engaging Articles 44(2) and (3) of the Arbitration (Jersey) Law 1998 ("the Arbitration Law"). (ii) Botas submitted that the Court had no jurisdiction to make any order in respect of the Shares because the Republic had an interest in and/or control of the Shares such as to engage the principle of sovereign immunity ("the sovereign immunity issue"). (iii) The Court had no jurisdiction - or if it had it should not exercise it - in respect of the Debts as they were situated outside Jersey ("the Debt issue"). (iv) The Court had no jurisdiction - or if it had it should not exercise it - in respect of the Securities because they too were situated outside Jersey. 9. In the Judgment, the Court found as follows on these points:- (i) It rejected all of Botas' criticisms of the procedure followed by the respective arbitration panels. It held that none of the grounds in Article 44(2) and (3) of the Arbitration Law for refusing to enforce the Awards was made out. The Awards were therefore enforceable in this jurisdiction. (ii) The Republic was not entitled to sovereign immunity in respect of the Shares. The Court would therefore confirm the interim arrêt over the Shares. (iii) The Court should not confirm the interim arrêt in respect of the debts because an arrêt has proprietary effect and there is no jurisdiction to grant an arrêt in respect of a debt situated outside the jurisdiction unless it is clear that the arrêt would be recognised under Turkish law as discharging the obligation of TPIC/BIL to Botas. (iv) The Court held that it had jurisdiction to make an in personam order directing Botas to return the Securities in accordance with the Awards and that in its discretion it was appropriate to do so notwithstanding that the Securities were situated outside the jurisdiction. Issues for decision 10. It seems to me that the issues raised by one or other of the parties at the hearing on 20th January can be considered conveniently under the following headings:- (i) The form of the Act to give effect to the Judgment. (ii) Should there be a stay of the arrêt over the Shares pending appeal and if so, on what terms? (iii) Should there be a stay pending appeal of the order to return the Securities? (iv) Should there be a stay of the order discharging the interim arrêt over the debts pending a cross-appeal by Tepe? (v) Should there be limited protective measures pending appeal? (vi) Costs (including whether there should be an order for an interim payment). I shall consider each of these in turn. (i) Form of the Act 11. Each side has produced a draft Act for consideration. Advocate Nicholls submitted that the form of any order giving effect to an arbitration award must simply mechanistically give effect to the exact terms of the award. Thus paragraph 1 of his draft Act was as follows:- "That the Representer be given leave to enforce the Stations Awards and the Lot A Arbitration Awards (as defined in the judgment dated 19 January 2016) (together the "Awards") in the same

manner as a judgment or order of the Royal Court in the terms set out in Schedules 1 - 6 of this Order." Schedules 1 - 6 then set out the key aspect of each partial award comprising in total the Awards. Thus, he submitted that no reference should be made in the Act to any specific sum now due under the Awards or to the return of the Securities. 12. In support of his submission, he referred to the English case of *Norsk Hydro ASA v State Property Fund of Ukraine and others* [2009] BusLR 558. In that case an arbitration award had been made against 'The Republic of Ukraine, through the State Property Fund of Ukraine' and another party. The award remained unsatisfied and Norsk Hydro applied for permission to enforce the award as a judgment. The respondents to that application were named as (1) the State Property Fund of Ukraine, (2) the Republic of Ukraine and (3) the other party to the arbitration. The order was granted *ex parte*. 13. The Republic of Ukraine subsequently applied to set aside the *ex parte* order on the ground that there was no jurisdiction to enforce an award made against one party against two different parties. Advocate Nicholls referred in particular to paragraphs 17 - 19 of the judgment of Gross J which were as follows:- "17. Section 100 and following of the Arbitration Act 1996 provide for the recognition and enforcement of New York Convention Awards. There is an important policy interest, reflected in this country's treaty obligations, in ensuring the effective and speedy enforcement of such international arbitration awards; the corollary, however, is that the task of the enforcing court should be as 'mechanistic' as possible. Save in connection with the threshold requirements for enforcement and the exhaustive grounds on which enforcement of a New York Convention Award may be refused (sections 102 - 103 of the 1996 Act), the enforcing court is neither entitled nor bound to go behind the award in question, explore the reasoning of the arbitration tribunal or second-guess its intentions. Additionally, the enforcing court seeks to ensure that an award is carried out by making available its own domestic law sanctions. It is against this background that issue 1 falls to be considered.

18. Viewed in this light, as a matter of principle and instinct, an order providing for enforcement of an award must follow the award. No doubt, true 'slips' and changes of name can be accommodated; suffice to say, that is not this case. Here it is sought to enforce an award made against a single party, against two separate and distinct parties. To proceed in such a fashion, necessarily requires the enforcing court to stray into the arena of the substantive reasoning and intentions of the arbitration tribunal. Further, enforcement backed by sanctions is sought in terms other than those of the award. Still further, though I do not rest my decision on it, such an approach raises the spectre of unintended consequences should a false step be taken - for example, English domestic law rules as to election and the enforcement of judgments against principals and agents would need to be considered ... In my judgment, this is all inappropriate territory for the enforcing court. The right approach is to seek enforcement of an award in the terms of that award.

19. Such considerations are reinforced and put beyond argument when regard is had to section 101 of the 1996 Act, which provides:- '(2) A New York Convention Award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect ...
- (3) Where leave is so given, judgment may be entered in terms of the award.' As it seems to me, the Morison order was not an order 'in terms of the award'; it was an order in different terms. For the reasons already given, in the present context, that difference matters. There was no jurisdiction to enforce the award in the terms of the Morison order and that order must be set aside." 14. Interestingly, the terms of the Arbitration Law are not the same as Section 19(3) of the Arbitration Act of the United Kingdom, and are in less prescriptive terms. Thus Article 42(1) of the Arbitration Law provides as follows:- "(1) A Convention award shall, subject to the following provisions of this Part, be enforceable in Jersey either by action or in the same manner as the award of an arbitrator is enforceable by virtue of Article 29." One therefore turns to Article 29 which reads:- "29 Enforcement of award An award on an arbitration agreement may, by leave of the Court on an application made ex parte, be enforced in the same manner as a judgment or order to the same effect; and, where leave is so granted, the act of court shall specify the manner of enforcement." 15. Despite this difference in language, I accept the general point made by Gross J at paragraphs 17 and 18 of his judgment. The Royal Court is not exercising any original jurisdiction; it is giving leave to enforce an arbitration award. Accordingly it may not make some order which is to different effect or which goes beyond that which is to be found in the award. Nevertheless, it does not seem to me that the terms of the order of this Court must follow slavishly the wording of an award, not least because we do not have the wording found in the Arbitration Act of the UK whereby the judgment has to be 'in terms of the award'. The purpose is to give effect to the award so that it may be enforced as a judgment in this jurisdiction. That requires there to be clarity as to what the Court is ordering. It is hardly conducive to ease and economy of enforcement if the Viscount has to delve back into the detail of an arbitration award in order to find out what she is enforcing. Indeed it is of note that in Norsk Hydro itself, paragraph 7 records the original ex parte order made by the High Court as first of all giving permission to enforce the award and secondly entering judgment for a specific sum of money. No objection seems to have been taken by any party to that aspect, which went beyond the approach suggested by Advocate Nicholls to the effect that the Court simply gives leave to enforce an arbitration award without being more specific. 16. Against that background, the following matters were in dispute between the parties.
- (a) Should a sum of money be specified in the Act? 17. As already stated, Advocate Nicholls submitted that the Act itself should not refer to any sum of money but that the sums could be found by adding up the various sums identified in the Schedules to his draft order and then calculating interest on those sums as set out in the Schedules. 18. Advocate Moran, on the other hand, submitted that the Act should reflect the sum currently due under the Awards. In my judgment, her submission is to be preferred. Such an Act would be far more helpful to all parties in enforcing the Awards as a judgment. Furthermore, I do not consider

that it is in any way going beyond the Awards. It is simply giving effect to them. All that is being done is that the mathematical exercise of calculating the sum due under the Awards as at the relevant date is being undertaken. It will simply be a case of adding up the various sums awarded under the Awards and calculating the interest which has accumulated on those sums at the rate laid down by the Awards from the dates specified in the Awards in relation to the different sums. Accordingly I directed at the conclusion of the hearing that the parties agree the calculations and the sum to be inserted in the Act is the sum due under the Awards as calculated exactly in accordance with the Awards. The only point on which there appeared to be some uncertainty was whether the calculations should include or exclude any VAT payable in Turkey. Tepe accepted that, in view of this uncertainty, the figure should exclude VAT in accordance with Botas' contention as to the correct effect of the Awards. 19. Since the hearing the parties have agreed that the total sum due as at 31 st December, 2015, is US\$96,913,564.73. This is the sum to be inserted in the Act together with reference to the fact that interest, commissions etc continue to accrue in accordance with the Awards until payment.

- (b) The Securities 20. For similar reasons to those noted in the preceding section, Advocate Nicholls submitted that the Act should make no specific order that Botas return the Securities. It was sufficient if the Act annexed the terms of the Awards as Schedules. Thus Schedule 2 of the draft Act submitted by Advocate Nicholls (which deals with the second partial Award of the Lot A Awards) provides at paragraph (6):- "[Botas] shall forthwith redeliver to [Tepe] for immediate cancellation [the Securities] ..., [Tepe] using their best endeavours to ensure that the Securities are cancelled at the earliest possible date." Paragraph (vii) of Schedule 4 and paragraph (iii) of Schedule 5 replicate the effective provisions in relation to the Stations Arbitration which provided that Tepe was entitled to recover the Stations Securities from Botas with effect from 30 th March, 2005. 21. I see no reason why the effect of these parts of the Awards should not be reflected in a specific order of the Court. The Court has agreed to enforce the Awards and the Awards contain provisions that Botas should return the Securities. I think that, in order to assist enforcement of the Awards as a judgment, it is appropriate that there be a specific order in the Act which simply reflects the Awards in this respect. 22. Advocate Moran asked the Court to order that Botas should return the Securities to the issuing bank and then file an affidavit confirming that this had been done. I do not consider that that would be appropriate. That was not what the Awards stated and I agree with Advocate Nicholls that any order made by this Court which purports to enable the Awards to be enforced as a judgment should reflect the effect of the Awards and not go beyond that. 23. It follows that in my judgment the Act should simply order Botas to return the Securities to Tepe . Given that the Awards have been outstanding for many years and that the performance of the obligation to return the Securities on the part of Botas is long overdue, I consider that an accurate reflection of the effect of the Awards is to order the return of the Securities to Tepe forthwith.

- (c) Provisions concerning the enforcement of the arrêt over the Shares 24. Given that the Court decided in the Judgment to confirm the arrêt in respect of the Shares, all parties agree that it is necessary for the Act to give some directions to the Viscount in connection with the arrêt . This is because realising the value of the Shares pursuant to the arrêt will not be straightforward given that there is no public market for the Shares and that the activities of TPIC and BIL are for the most part in Turkey. However, there is a difference of view between the parties as to the nature of the directions which should be given. 25. Advocate Moran submits that the directions should be in fairly general terms. Her draft Act provided as follows:- "4. The Viscount shall realise the Shares by such means as the Viscount shall decide, following a valuation conducted by a valuer appointed by the Viscount or public auction;
5. The Viscount be permitted to obtain such professional advice and to employ such services as are reasonably necessary to comply with the instant Order and to deal with all matters arising in relation to it and to meet and discharge all disbursements, costs, fees and charges so arising from the said realisation of the Shares;
6. Within seven days of the date hereof the Second and Third Respondents shall serve on the Viscount copied to the Representor an affidavit:- 6.1 exhibiting copies of their most recent management accounts, audited accounts and an up to date balance sheet, 6.2 giving details of any bank or investment account maintained anywhere in the world where the value of the account is greater than US\$1 million as of the date of the order including the name and address of the bank, account number, currency of the account, balance of the account and a copy of the most recent bank statement or valuation;
7. The Second and Third Respondents shall cooperate with the Viscount by providing such additional information as is in their custody, possession or control as the Viscount shall reasonably require in order to realise the Shares;
8. The Second and Third Respondents shall take all formal steps necessary in accordance with the Companies (Jersey) Law 1991 and their Articles of Association and cooperate with the Viscount as required in order to effect transfer of the Shares to a buyer." 26. Advocate Nicholls, on the other hand, sought more detailed and prescriptive provisions. Thus his draft Act would direct the Viscount to obtain three alternative valuations for the Shares, with each valuer providing a formal written opinion on the valuation and how the value of the Shares should be realised; that the Viscount should then produce a written determination reflecting her decision; that she should then provide copies of her decision and the valuations to all the parties and seek the approval of the Court; and that the Viscount be directed to give Botas or the Republic first right of refusal to purchase the Shares within 21 days of any such order. 27. In my judgment an Act which broadly reflects the approach of Advocate Moran is to be preferred. The Viscount is the executive officer of this Court and she should be left to exercise her discretion as to how to realise the value of the Shares for the purposes of satisfying Botas ' obligation to pay Tepe . It would not be right to direct her at this stage how to value or achieve a realisation of the Shares nor would it be appropriate formally to involve

Botas as debtor in that process. The Viscount would be involved with the enforcement of a judgment against Botas and it does not seem right therefore to give Botas a formal part to play in the realisation of the Shares. In practical terms, it may well be that the Viscount will need to consult or obtain information from Botas but that is a different matter. 28. As to the proposed order that TPIC and BIL should disclose their accounts and other financial information, there is clear authority that, in a post-judgment situation, the Court will often grant disclosure orders against a defendant or third parties in order to aid execution of a judgment or arbitration award and the interests of justice would usually point in favour of ordering such disclosure; see for example *Jomair Leasing Limited v Hourigan*

[2011] JRC 042 and the cases cited therein. In my judgment it is entirely proportionate and reasonable that orders along the lines of those put forward by Advocate Moran in relation to TPIC and BIL should be granted. The Viscount needs to have detailed financial information about the affairs of those two companies if she is to realise the Shares in order in due course to satisfy the amount owed by Botas to Tepe . (ii) Should there be a stay on the arrêt of the Shares pending appeal and if so on what terms? 29. Botas has stated that it intends to appeal against the confirmation of the arrêt over the Shares on the ground that this Court was wrong to reject the Republic's claim to sovereign immunity in respect of the Shares. This is a case where Botas had a right of appeal; it does not have to seek leave to appeal. 30. Advocate Nicholls submits that this is a case where this Court has no alternative but to grant a stay of the arrêt , at any rate in so far as selling any of the Shares is concerned. This is because, if prior to the hearing of any appeal, any of the Shares were to be sold, it would be impossible to put Botas back into the position in which it was prior to the sale. The appeal would thus be rendered nugatory even if successful. 31. He referred to the well-known statement of principle by the Court of Appeal in *Veka AG v T A Picot (CI) Limited*

[1999] JLR 306 at 309 where Southwell JA said this:- "Where there is an appeal by an unsuccessful party, the usual approach to be adopted in the courts of Jersey is to make whatever orders, including an order staying proceedings under the judgment appealed from, as will prevent the appeal, if successful, from being nugatory, unless the court is satisfied that the appeal is not bona fide, has no realistic chance of success or there are other exceptional circumstances. That has been the approach adopted by the courts of England and Wales in a number of the cases cited to us ..." 32. Given the observations at para 96 of the Judgment as to the difficulty of fitting the facts of the present case into the structure of the State Immunity Act 1978 , I do not consider that the appeal on this aspect has no realistic chance of success, nor do I conclude that the appeal is not bona fide . 33. In those circumstances, Botas is on the face of it entitled to a stay because I accept that the appeal on the arrêt would indeed be rendered nugatory even if successful if, by the time of the appeal, the Shares or some of them had been sold by the Viscount. However, the stay should be limited to any actual sale of the Shares by the Viscount. I see no reason to prevent the Viscount from taking preparatory steps such as obtaining valuations, information etc so that, in the event of the appeal being dismissed, she can move quickly

to a sale. 34. Advocate Moran said that I should not grant a stay on a sale but was unable to put forward any convincing reasons as to why that would be an appropriate course given that the appeal would be rendered nugatory if any of the Shares were sold. 35. If I was against her on the question of stay on the sale of the Shares, she next argued forcefully that I should make it a condition of granting such a stay that Botas pay Tepe the entire sum due under the Awards or that such sum be paid into Court. 36. In support of this proposal she referred to the case of *IPCO (Nigeria) Limited v Nigerian National Petroleum Corporation*

[2005] EWHC 726 (Com). In that case IPCO had obtained an arbitration award in Nigeria against the Nigerian National Petroleum Corporation (NNPC). NNPC had applied to the Nigerian High Court to quash the award but that application was still pending. In the meantime IPCO had obtained ex parte an order from the High Court in London enforcing the award, which order NNPC then applied to have set aside. It was this application which came before Gross J. He declined to set aside the order giving leave to enforce the award as a judgment but then had to consider whether its enforcement should be adjourned pending the decision of the Nigerian High Court on the validity of the arbitration award. Such an application was governed by Section 103(5) of the Arbitration Act which in effect provided that where an application had been made to the relevant court having jurisdiction over the arbitration (ie the Nigerian High Court in that case), the English court could adjourn enforcement of the award and could on any such adjournment order the other party to give suitable security. It transpired during the hearing before Gross J that NNPC accepted that US\$13 million was indisputably due to IPCO. The judge also held that, having regard to the merits of the points taken by NNPC before the Nigerian High Court, it was likely that, even if NNPC was partially successful, IPCO would be left with an award in excess of US\$50 million. In those circumstances, balancing various factors, Gross J adjourned enforcement of the order but only on terms that required NNPC to pay \$13 million to IPCO and to provide appropriate security for a further \$50 million. 37. Advocate Moran also referred to the case of *Jakobsson v Offshore Nautical Sales Limited*

[2003] JLR 71 . In that case the Royal Court had given judgment against the defendant company in the sum of £125,000. No stay of execution had been ordered and the defendant had not paid the sum due under the

judgment.

The defendant appealed. It transpired that, after the events giving rise to the claim but before the proceedings before the Royal Court, the defendant had transferred its business to another company within the same group. It therefore had a substantial balance sheet deficit and, but for the financial support of its parent company, would have been insolvent. Despite this, the parent company was paying for the defendant's legal costs. Furthermore, the parent company had settled all other debts owed by the defendant; it was only the debt to the plaintiff which had not been settled. 38. Southwell JA, sitting as a single judge of the Court of Appeal, held that the Court

had an inherent jurisdiction to prevent an abuse of its process. He held that there was such an abuse in that case because the defendant was being funded before the Royal Court and on appeal and had paid all its other creditors but was seeking to rely upon its insolvent position so that, even if the appeal was unsuccessful, the plaintiff would be faced with the long and expensive task of seeking to pursue companies or individuals in the wider group for payment of the judgment debt. Southwell JA held that in those circumstances the appeal should be stayed unless the defendant paid into court the sum due under the Royal Court judgment. 39. Advocate Moran argued that, by analogy, it was open to me to order payment of the entire sum due either to Tepe or into court as a condition of granting a stay on the sale of the Shares. 40. She argued that the entire debt in this case is indisputably due given that any challenges to the Awards have been rejected not only by the French courts (as the seat of arbitration) but now also by this Court. Furthermore there was no suggestion that Botas intended to appeal against this aspect of the Judgment. 41. She made the following further points:- (i) Tepe would have to indemnify and pay the Viscount for all the preliminary steps which the Viscount would need to take such as obtaining valuations of TPIC and BIL. These costs could be quite significant and would need to be paid out by Tepe during the course of the appeal proceedings if the Viscount was to be in a position to realise the Shares as soon as possible following any dismissal of the appeal. This would stretch yet further the already stretched resources of Tepe, which had been out of pocket by over \$90 million for several years because of the failure of Botas to honour the Awards. (ii) The process of realising the Shares was likely to take some time. It was wrong that Tepe should continue to be kept out of money to which it was entitled. (iii) There was no guarantee that, even if the appeal was dismissed and the *arrêt* upheld, the realisation of the Shares would be sufficient to satisfy the Awards. Although on the face of it TPIC and BIL were both extremely valuable companies worth in excess of the amount due, all the assets of BIL and virtually all the assets of TPIC were in Turkey and under the control of the Turkish branches of both companies. There was a real fear that steps might be taken to reduce the value of the Shares or otherwise make it unattractive for anyone to buy the Shares. This fear had been exacerbated by paragraph 21 of Botas' skeleton argument for the hearing before me which said:- "Further, it is emphasised that the Republic continues to assert an interest in the Shares and is not bound by the judgment of the Royal Court. Although its position is, as yet, unknown, there is a prospect that the Republic may refuse to recognise any sale of the Shares in TPIC and/or BIL, and thus that any attempt by a purchaser to control TPIC and BIL's activities in Turkey may be impeded or frustrated." In those circumstances, the security of the *arrêt* over the Shares was not sufficient of itself to ensure that Tepe would ultimately be paid. 42. In summary, she submitted that, if Botas wished to have the benefit of a stay on the sale of the Shares pending its appeal, it should pay the money which was indisputably due under the Awards. 43. I acknowledge the force of the points made by Advocate Moran. Botas has given no explanation for its failure to pay under the Awards. It has challenged the Awards both in the French courts and this Court and failed. I regard any argument that the Awards are flawed in any way as being hopeless and doomed to failure. I therefore regard the sum due under the Awards as being indisputably due. I also accept that the continued failure to pay the Awards is causing Tepe prejudice. There was some evidence before me to deal with that specifically but I am also content to adopt the words of Gross J at paragraph 52(v) of his judgment

in IPCO as follows:- "Given the size of the award, it may be inferred that any delay in enforcement is likely to prejudice IPCO. Very few commercial entities would not be prejudiced by delay in the availability of US\$152 million. It must be right to seek to minimise any such prejudice, so far as it is practicable and appropriate to do so." That observation is equally applicable to the sum just short of US\$97 million which is now due to Tepe . 44. In the circumstances, I have been sorely tempted to accede to Advocate Moran's suggestion. But in the end, I have reluctantly come to the conclusion that it would be an overbearing use of the ability to attach conditions to a stay of execution to grant her application. My reasons are as follows:- (i) This is a case where there is a right of appeal and the grounds of appeal in relation to the sovereign immunity issue are arguable. (ii) It is clear that a refusal to grant a stay of the sale of the Shares pending appeal would render any such appeal nugatory. Thus, on the face of it, Botas is entitled to such a stay. It would be a perverse decision to refuse it. (iii) Although the appeal is being brought by Botas , which is now a judgment debtor as well as the debtor under the Awards, the substance of the appeal in respect of the Shares is related to a question of sovereign immunity, with the sovereign state in this case being the Republic. It is the Republic which is entitled to any immunity which exists. As paragraph 61 of the Judgment (and the authorities referred to there) make clear, it is the overriding duty of the Court of its own notion to satisfy itself that effect has been given to any sovereign immunity. In circumstances where an arguable issue of sovereign immunity arises, I cannot find there to be an abuse of process as in the Jakobsson case. (iv) The effect of ordering payment of the entire sum to Tepe would be to render the appeal pointless. There would be nothing left to argue about. This would be in circumstances where there is a right of appeal, where such appeal is arguable, where not to grant a stay would render the appeal nugatory and where the interest in pursuing the appeal lies with a sovereign state which is claiming sovereign immunity. This seems to me to be a step too far. (v) On the particular facts of this case, I do not consider that an order that the money be paid into Court rather than to Tepe would be a satisfactory alternative. Normally such an order contemplates that, if the person paying the money into Court is successful, the money will be returned ie it is simply a form of security. However, Advocate Moran did not accept that that would be the case here and I fully understand why. In the event of Botas succeeding on its appeal in respect of sovereign immunity, it would still remain a judgment debtor in the amount of the Awards. One cannot imagine the Court in those circumstances agreeing to return the money to Botas . 45. Reluctantly therefore, I have come to the conclusion that the stay pending appeal on the sale of the Shares to which Botas is on the face of it entitled should not be made subject to the condition that it pays the debt either to Tepe or into court or otherwise provides security for the entire debt. However, I think it reasonable that a single judge of the Court of Appeal should have the opportunity of reviewing this decision. Accordingly, I propose to order that the stay on the sale of the Shares shall be for a fixed period of 28 days. It follows that, if Botas wishes to obtain an extension of the stay beyond that point, it will have to apply to a single judge of the Court of Appeal who can then consider whether or not to impose the condition sought by Advocate Moran as part of any continued stay. (iii) Should there be a stay on the order for the transfer of the Securities? 46. Botas intends to appeal against the order for the transfer of the Securities back to Tepe . This is on the basis that the Court has no jurisdiction to make such an order because the Securities are situated outside

Jersey. Advocate Nicholls argues that if the appeal is successful, it would be rendered nugatory if there has been no stay and the Securities have in the meantime been transferred to Tepe . If they were not transferred, Botas would be in contempt of court and might thereby face sanctions or difficulties in pursuing its appeal. 47. I decline to order a stay of this part of the order for the following reasons:- (i) As stated by the Court of Appeal in Veka AG cited at paragraph 31 above, a stay of execution may be refused even if to so would render an appeal nugatory where, inter alia, 'the appeal ... has no realistic chance of success or there are other exceptional circumstances' . I consider that both of these aspects are satisfied in the present case. (ii) Unlike the arrêt , the order does not have any proprietary effect. It is simply an in personam order against a party (Botas) which is before the Court and has submitted to the jurisdiction. I regard Botas ' argument that the Court had no jurisdiction to make such an order as not having any realistic chance of success. (iii) This is particularly so in circumstances where the order merely reflects what the Awards say. The Court undoubtedly has jurisdiction under the Arbitration Law to declare the Awards to be enforceable in this jurisdiction. The order for transfer does not go beyond the effect of the Awards. It is hard to see therefore any good argument as to why the Court may not make such an order. (iv) Even if Botas were to be successful on a technical point that the Court should not have made a specific order that the Securities be returned, there would still be an order of this Court having that effect because of the order declaring the Awards enforceable as a judgment coupled with the provision of the Awards that Botas should return the Securities to Tepe . (v) I see no prejudice to Botas even if its appeal is successful. As just pointed out, it is already and will remain (regardless of the outcome of the appeal) under an obligation to return the Securities. The Securities (which take the form of notes issued by a bank which can be called upon to pay on demand by Botas) were provided as security for Tepe's performance under the Stations Contract and the Lot A Contract. Tepe's obligations under those two contracts have long since disappeared following termination of the contracts by Botas and the subsequent Awards, which held that Botas was not entitled to terminate the contracts and that Tepe was entitled to damages as a result. There can therefore be no valid reason for the retention of the Securities, which should have been returned to Tepe long ago. (vi) Conversely, I consider that there is prejudice to Tepe for so long as the Securities remain outstanding. This is referred to in the affidavit of Mr Gungenci prepared for the original hearing. Thus the Securities can be called at any time by Botas and there has been one example of an unlawful call, albeit prior to the arbitrations. Secondly, commission payments payable to the bank which issued the Securities are continuing to run at \$250,000 per annum. Although this sum is being added to the amounts due under the Awards, the fact is that the Awards have not been paid and accordingly Tepe is having to fund these sums at present and will only recover them if and when Botas pays the amounts due under the Awards. This is therefore an additional cash flow burden on Tepe caused by Botas ' failure to meet the Awards. Thirdly, the retention of the Securities counts towards Tepe's credit limit with the bank in question and therefore affects its ability to borrow from the bank. 48. Putting these matters together, I consider that not only is there no realistic prospect of a successful appeal on this point but that there are also exceptional circumstances justifying a refusal to grant a stay. In my judgment it is time for Botas to behave reasonably and responsibly and return the Securities in accordance with the Awards. (iv) Should there be a stay on the

discharge of the interim arrêt over the debts owed by BIL to Botas ? 49. In the Judgment, the Court held that it should not confirm the interim arrêts in respect of the Debts owed by TPIC and BIL to Botas . Tepe has indicated that it intends to cross-appeal against the decision in relation to the debts owed by BIL. It apparently does not intend to appeal against the decision in respect of TPIC presumably on the ground that such debts were very modest and were being incurred in the ordinary course of business. 50. Advocate Nicholls submitted that the Court should not grant a stay because, unlike Botas ' detailed skeleton setting out its grounds for appealing against the sovereign immunity point concerning the Shares, Tepe had not set out any grounds for cross-appealing in respect of the debts nor had it filed an affidavit in support of an application for stay in accordance with normal practice. I reserved my decision at the end of the hearing and directed that Tepe should file an affidavit dealing with these two aspects. This has subsequently been done. 51. Having considered the matter, I am satisfied that a stay of the discharge of the interim arrêt on debts owed by BIL to Tepe should be granted. In the first place I am satisfied that Tepe has an arguable case for cross-appeal. I also find that a failure to grant a stay would render any cross-appeal nugatory in the event of the cross-appeal being successful. At present BIL's debts to Botas have been paid into a segregated account maintained by BIL and it is also paying any future sums which it may owe Botas in respect of the provision of gas into such segregated account. Should the cross-appeal be successful, the sums standing to the account could therefore be enforced against by way of arrêt . If the interim arrêt is lifted, the sums can be paid to Botas and there will be nothing left to arrest should the appeal be successful. 52. Conversely, I see no prejudice to Botas by maintaining the interim arrêt . The amounts are not sufficiently material as to cause any cash flow issues for Botas , not least because Botas owes very much more to BIL than BIL owes to Botas . 53. Accordingly I grant a stay of the discharge of the interim arrêt in relation to the debts (whether existing or future) owed by BIL to Botas so that it is maintained pending appeal.

- (v) Limited protective measure pending appeal 54. Tepe has asked that I include the following order in the Act:- "[BIL] shall not waive or otherwise cause to be diminished or reduced the value of the sums owed to it from [Botas] in accordance with the Marine Services Agreement (referred to in paragraphs 39 and 40 of Abul Kadir Yaylaci's Witness Statement dated 4 June 2015) and such sums as may become due to it in the future without giving [Tepe] 14 days written notice of its intention to do so." 55. This provision concerns a Marine Services Agreement relating to the operation of the Ceyhan Marine Terminal as described in paras 274 - 275 of the Judgment. A monthly sum is payable by Botas to BIL under this agreement but apparently Botas has not made any payment under the agreement since September 2011, with the consequence that, as of the end of April 2015, Botas owed BIL some US\$62m pursuant to the agreement. 56. This is clearly a material sum and Tepe seeks an order in the above terms to ensure that there is no waiver or other diminution in this asset of BIL without at least 14 days' notice being given to Tepe , presumably so that it may apply for relief from this Court should it think fit. 57. It is clear from cases such as Jomair Leasing (referred to above at para 28) that the Court will not hesitate to grant injunctions and make disclosure orders so as to aid the enforcement of judgment debts. Following this

Court's decision, Botas is a judgment debtor. If the appeal of Botas is unsuccessful, so that Tepe may enforce against the Shares, it is clearly important that the assets of TPIC and BIL have not been diminished or reduced in the meantime. 58. The relief sought in this case is extremely limited. It does not prevent BIL taking any steps in relation to the Marine Services Agreement; it merely provides that before doing so, it must give 14 days' notice to Tepe. I regard this as an entirely proportionate and reasonable request to maintain the status quo pending the appeal and pending enforcement and accordingly I grant the order in the terms set out above. (vi) Costs 59. Finally I was asked to address the question of costs. Advocate Moran submitted that Tepe had broadly been successful and should accordingly be awarded its costs on the standard basis. Advocate Nicholls submitted firstly that this Court should defer its decision on costs until after the outcome of the appeal was known, alternatively that Tepe should only be awarded 50% of its costs on the standard basis because it had been unsuccessful on certain issues. 60. There was no dispute as to the applicable principles. These are of course set out in the well-known passage in *Watkins v Egglisshaw* [2002] JLR 1 as subsequently approved by the Court of Appeal in *Flynn v Reid*

[2012] (2) JLR 226. 61. The relevant passage from *Watkins* is as follows:- "7 The principles that should guide the court in the exercise of its discretion in this area appear to me, therefore, to be as follows, stating them as shortly and simply as possible:

- (a) The court's overriding objective in considering costs is, as in everything else, to do justice between the parties.
- (b) In many cases, that objective will be fulfilled by making an award of costs in favour of the "winning" party, where a "winner" is readily apparent. In any event, the "follow the event" rule can still be a useful starting point.
- (c) It is a mistake, however, to strain overmuch to try to label one party as the "winner" and one as the "loser" when the complexity or other circumstances of the litigation do not readily lend themselves to analysis in these terms.
- (d) The discretion as laid down in art. 2 of the Civil Proceedings (Jersey) Law 1956 is a wide one and ought not to be treated as fettered by any particular supposed rule or practice, other than that the discretion should be exercised judicially and broadly in accordance with the guiding principles referred to in *In re Elgindata* (No.2) (5) and *A. E. I. v. Phonographic Performance* (1)." 62. The passage from *In re Elgindata* (No.2)

[1992] 1 WLR 1207 referred to by Page Commissioner at paragraph 3 of the judgment in *Watkins* included the following:- "The principles are these. (i) Costs are in the discretion of the court. (ii) They should follow the event, except when it appears to the court that in the circumstances a case some other order should be made. (iii) The general rule does not cease to apply simply because the successful party raises issues or makes allegations on which he fails, but where that has caused a significant increase in the length or cost of the proceedings he may be deprived of the whole or a part of his costs. (iv) Where the successful party raises issues or makes allegations improperly or unreasonably, the court

may not only deprive him of his costs but may order him to pay the whole or a part of the successful party's costs. Moreover, the fourth [principle] implies that a successful party who neither improperly nor unreasonably raises issues or makes allegations on which he fails ought not to be ordered to pay any part of the unsuccessful party's costs." 63. The statement in *Elgindata* concerning the third and fourth principles was specifically approved by the Court of Appeal in *Flynn v Reid*. Thus at paragraph 14 the Court stated:- "14 As stated in *Watkins* ... the principles are broadly in accordance with *In re Elgindata Ltd* ... a decision of the English Court of Appeal which predated the Civil Procedure Rules, although with additional flexibility now that the overriding objective is engaged. *Elgindata* is itself summarized in the judgment in *Watkins* (at para 3) and draws a distinction between two different situations (a) that a party may be deprived of his costs where he raises issues on which he fails even though he has succeeded overall; and (b) that he may be ordered to pay the unsuccessful party's costs if he raises issues or makes allegations improperly or unreasonably. ... It is not (and never was) necessary to show unreasonable conduct to trigger the former and less severe of the two, and the dictum of Lord Woolf, M. R. in *A. E. I. Rediffusion Music Ltd. v. Phonographic Performance Ltd* ... insofar as it suggests otherwise should be treated with caution." And at paragraph 21:- "21 Secondly, the Deputy Bailiff does not explain why, even if the appellant because of her partial success should have had a deduction from her own costs, she ought also to make a contribution to the respondent's costs and I can identify no reason why she should. ... The Deputy Bailiff expressly acquitted the parties of any misconduct in the litigation itself and there was no equivalent disproportion. As set out in *Elgindata* ... a successful party should only be ordered to pay the costs of an unsuccessful party where the successful party has raised issues or made allegations improperly or unreasonably." 64. I do not accept Advocate Nicholls' first submission, namely that I should defer a decision on costs until the outcome of the appeal is known. This would be a most unusual course and I see no good reason for it. On the contrary, it would mean that, following the appeal (particularly if unsuccessful) the parties would have to return for a hearing before me to present much the same arguments as they have already made at a time when the Court's memory of and feel for the case would be much less fresh and immediate than is currently the position. I conclude that I should follow normal practice and make a ruling on the costs. In the event of a successful appeal, the Court of Appeal can consider whether to vary any such order in the usual way. 65. Turning therefore to the parties' submissions on costs, I consider that the Judgment reflects five main issues which fell for decision:- (i) the enforcement of the Awards; (ii) sovereign immunity and enforcement against the Shares; (iii) whether the Court should enforce against the debts owed by TPIC and BIL; (iv) subsidiary issues in relation to the debts arising primarily out of the summons to vary the interim arrê^t; and (v) whether the Court should order Botas to transfer the Securities. Of these, I consider that Tepe succeeded on (i), (ii) and

- (v) but failed on (iii). As to (iv), it was partially successful. Thus, on the issue of the usual course of business exception, the Court agreed with Botas that such a matter had to be considered in each case but on the facts found for Tepe in respect of BIL but against Tepe in respect of TPIC. Tepe failed on the issue of set-off but succeeded on the issue of future liabilities. 66. Consideration of the submissions of Advocate Nicholls is complicated by the fact that he omitted issue (v) and therefore only considered there to be four issues, on which he said Tepe had succeeded on the first two and Botas on the second two. He suggested that 70% of the costs were attributable to the first two issues and 30% to the third and fourth issues. He submitted therefore that not only should Tepe be deprived of 30% of its costs but it should also be ordered to pay 30% of Botas' costs. He submitted that, in round terms, the net effect of this would be equivalent to ordering Botas to pay only 50% of Tepe's costs on the standard basis and this was the order which he invited the Court to make. 67. Advocate Moran submitted that the worst that should happen should be a deduction from the percentage of costs awarded to Tepe. There were no grounds upon which to make an order that Tepe should pay some of Botas' costs. Furthermore, when considering the question of any deduction, the Court should take into account that the arguments raised by Botas in relation to issue (i) were unreasonable such that an award of indemnity costs on that issue would be justified. Putting that into the equation, the right answer was that there should be no deduction or, at the very most, one of 10%. 68. The first issue I must decide is whether, as Botas submits, it should be awarded costs against Tepe on the issues upon which it (Botas) has succeeded. This would be a category (iv) order using the Elgindata categorisation. I remind myself that it was confirmed in *Flynn v Reid* that such an order should only be made (as Elgindata itself suggests) where the successful party has raised issues or made allegations improperly or unreasonably. 69. Botas has come nowhere near satisfying me on this aspect. Using the numbering in paragraph 64 above, issue (iii) was by no means easy to resolve and the arguments raised by Tepe were entirely reasonable and proportionate. The same is true of those subsidiary issues within issue (iv) where they failed. I conclude therefore that there are no grounds for making a costs order against Tepe and that it would be unjust to do so. However, issue (iii) and those parts of issue (iv) upon which Tepe failed took up a material part of the case and accordingly there should in principle be a deduction from the percentage of costs awarded to Tepe. 70. But before considering the appropriate percentage, I would touch upon the point raised by Advocate Moran in relation to issue (i). This is dealt with at paragraphs 21
- 53 of the Judgment and a fair reading of the Judgment shows that there was a resounding defeat for Botas on this aspect. In the first place, they had not pleaded the point yet they had raised it in their affidavit evidence so that Tepe clearly had to deal with the point. Secondly, a number of the arguments made by Botas were dismissed in forthright terms. Thus the point developed in paragraph 28 concerning invalidity under Turkish Law was dismissed in paragraph 29 as "unarguable". In relation to the point concerning the evidence of Professor Dugramaci the Court stated at paragraph 47 that it was very surprised that the point had been taken, given that counsel appearing for Botas in the arbitration had specifically agreed

that the admissibility of the statement was not being challenged. These are two specific examples but in my judgment, all of the points taken by Botas in relation to the arbitration were of no merit. Furthermore, Botas had raised some of these points on appeal to the French courts where they had also been rejected (or Botas had withdrawn its appeal) or the points could have been taken before the French courts as the courts of the seat of arbitration. Yet Botas sought to take them before this Court. 71. Advocate Nicholls pointed out that he had not spent any time in his oral submissions in developing these points. He had specifically simply rested on what was in his skeleton argument. I accept that this was so but the fact that it was raised in the affidavit evidence and in the skeleton argument meant that Tepe had to prepare for it. Some of the affidavits dealt exclusively with this aspect. 72. Viewing the matter in the round, I consider that this aspect of Botas' case was so devoid of merit as to have been raised unreasonably. I therefore consider that an award of indemnity costs would be justified in relation to this aspect. It would not be appropriate to make an order to that effect because this would require enormous work to establish how much time was spent on particular issues. I propose therefore to take this into account by taking a broad view and reducing the deduction which I would otherwise have made from the standard costs to be awarded to Tepe so as to reflect that it would have been entitled to indemnity costs on this issue. 73. Turning to the level of deduction, Advocate Nicholls put this at 30% although he had made no allowance for issue (v) and assumed total success on the part of Botas on issue (iv). Advocate Moran initially put the time spent on the debt issue at the hearing at 14% but this failed to take account of the hearing of the summons on the fourth day of the hearing. She accordingly corrected the figure to submit that 20% of the time at the hearing was spent on issues (iii) and (iv). 74. In the absence of the point concerning indemnity costs on issue (i), I would, taking a broad view, have deducted 15% from the costs awarded to Tepe. This would reflect the fact that it failed on issue (iii) and failed on certain aspects of issue (iv) while succeeding on others. However, given my finding that Tepe would have been entitled to its costs on the indemnity basis in relation to issue (i) (which, although not addressed orally by Advocate Nicholls, was a material part of the written material and of Advocate Moran's oral submissions) I propose to adjust this figure by 5% in Tepe's favour to allow for this aspect. I therefore order Botas to pay 90% of Tepe's costs on the standard basis, to be taxed if not agreed. 75. The final issue is whether I should order an interim payment on account of these costs. The Court has ordered such payment in a number of cases eg *Centre Trustees CI Limited v Van Rooyen*

[2009] JRC 133 , *Café de Lecq Limited v R A Rossborough (Insurance Brokers) Limited*

[2012] JRC 154 , *Marange Investments (Proprietary) Limited v La Générale des Carrières et des Mines SARL*

[2013] JRC 119A and *Crociani v Crociani*

[2013] JRC 250 . The reason for making such orders is well set out in the judgment of Jacob J in *Mars UK Limited v Teknowledge Limited*

[1999] 2 Costs LR 44 (cited in Centre Trustees) as follows:- "I now turn to the second issue, whether or not there should be an order for interim payment. The first thing to do is to consider what the general rule should be, interim payment or not. There is no guidance given in the Rules other than that the Court may order a payment on account. There is no guidance in the Practice Direction. So I approach the matter as a question of principle. Where a party has won and has got an order for costs the only reason that he does not get the money straight away is because of the need for a detailed assessment [taxation]. No one knows how much it should be. If the detailed assessment were carried out instantly he would get the order instantly. So the successful party is entitled to the money. In principle he ought to get it as soon as possible. It does not seem to me to be a good reason for keeping him out of some of his costs that you need time to work out the total amount. A payment of some lesser amount which he will almost certainly collect is a closer approximation to justice. So I hold that where a party is successful the Court should on a rough and ready basis also normally order an amount to be paid on account, the amount being a lesser sum than the likely full amount." 76. In the light of the authorities, Advocate Nicholls very properly accepted that it would be appropriate to order an interim payment in the amount of approximately 50% of the sum that Tepe would be likely to recover following taxation. I agree that this is an appropriate course of action. 77. Tepe has submitted an account from Collas Crill in the sum of £241,331. This is based on hourly rates at the Factor A rate with a Factor B uplift of 50%. Given the complexity etc of this case, it may well be that a Factor B uplift of significantly greater than 50% is ultimately allowed but Advocate Moran has kept it at this level simply for the purposes of calculating an interim payment. Pinsent Masons, the English solicitors, have submitted fees in the sum of £288,000. The rates charged fall within the rates which would be allowed on taxation at the Jersey rates. Goksu Law, the Turkish lawyers, have submitted fees in the sum of £175,844. Again these are calculated at rates which fall within the Jersey rates allowable on taxation. There are also disbursements, a provision for expert fees of £21,000 and an estimate of £22,500 in respect of the hearing before me on 20 th January. The total comes to £778,425. 90% of this sum is £700,582.50 and 50% of this latter sum is £350,291.25. 78. An issue has arisen in relation to the fees of Pinsent Masons. It is clear from a letter from Pinsent Masons dated 14 th January, 2016, that until 4 th December, 2014, fees were invoiced on the normal basis and the sum due in respect of this period is £36,000. However, from 5 th December, 2014, to date, Pinsent Masons have proceeded on the basis that 50% of their fees would be invoiced on a monthly basis and the 50% balance would be invoiced at the end of the matter with payment deferred so as to allow for the recovery of funds pursuant to the Awards. For the period up to the end of 28 th August, 2015, Pinsent Masons had invoiced a total of £125,900 on the periodic monthly basis and were shortly to issue an invoice for the 50% balance to 28 th August, 2015, in the sum of £125,900 which invoice would make clear on its face that it was payable on Tepe receiving sums from Botas . 79. Advocate Nicholls submits that the second invoice of £129,500 should not be included at this stage because to do so would infringe the indemnity principle. I agree that the indemnity principle forms part of Jersey law as was held by

Master Wheeler in *Boyd v Pickersgill and Le Cornu*

- [2000] JLR 310 . It is not for me to determine definitively whether the sum of £129,500 can be recovered in due course. That is a matter for taxation. However, I am entitled to take a preliminary view and to consider whether I should make a reduction in the payment on account in regard to this factor. 80. My preliminary view is that the costs are recoverable. In *Boyd v Pickersgill and Le Cornu* , the Master quoted from a decision of the English Court of Appeal in *General of Berne Insurance Co v Jardine Reinsurance Management Limited*
- [1998] 1 WLR 1231 , a decision of the English Court of the Appeal, where May LJ said at 1234:- "The appeal turns, as I say, on the construction of section 60(3) of the Act of 1974. It is said to enshrine a common law principle to which the label 'the indemnity principle' has been given. The principle is simply that costs are normally to be paid in compensation for what the receiving party has or is obliged himself to pay. They are not punitive and should not enable the receiving party to make a profit." Drawing on English authority, the Master said at 319:- "(b) Only where it has been agreed between a client and his lawyer that in no circumstances shall the client be liable for costs will such costs cease to be costs incurred by the client, and in the absence of such agreement, the recovery of such costs from the other party to the litigation will not infringe the indemnity principle." 81. I respectfully agree with this observation. Applying that to the facts of the present case, there is no question of Tepe making a profit and there is no question of Tepe having agreed that in no circumstances will it be liable for costs. On the contrary, an invoice for the second 50% of costs has been or is about to be rendered and Tepe will be liable to pay such costs if it recovers from Botas . Furthermore, there is no question of Tepe making a profit because it will be obliged to pay any sum recovered from Botas by way of costs to its lawyers. In addition, it is somewhat unattractive for Botas to argue that it should not have to pay costs at this stage because no recovery has been made when the sole reason that no recovery has been made is because Botas has failed to pay the amounts due under the Awards despite being in a financial position to do so. It would be a case of Botas using its own unjustified default to enable it to avoid paying Tepe's costs at this stage. 82. Accordingly, my view is that the indemnity principle does not prevent me making an interim order for costs. Even if I am wrong in my view of the indemnity principle, I would still make no deduction. Even if one were to deduct £116,550 (being 90% of £129,500) from the total allowable bill of £700,582.50 (being 90% of £778,425), therefore leaving £584,032.50, an interim payment of £350,291.25 (albeit more than 50%) would still leave ample margin for any reduction in taxation and I consider there is minimal risk of there turning out to have been any overpayment by Botas . Even if there were to be an overpayment, no injustice would be caused to Botas as any such overpayment could be set off against the judgment debt. 83. Advocate Nicholls raised a similar point in relation to the fees of Goksu Law. A letter from Goksu Law dated 15 th January states simply 'Since May 2014, we postponed our bill until a favourable decision, which we considered to exist now.' Advocate Nicholls argued that that might suggest that the fees are not yet due because there has as yet been

no recovery. I cannot read the letter in that way. A 'favourable' decision has been obtained in that the Judgment is broadly in favour of Tepe and enables it to enforce the Awards in Jersey. It is clear that that is also the view of Goksu Law and that accordingly his bill is now due. Accordingly I do not consider that there would be any infringement of the indemnity principle in relation to the fees of that firm. 84. In summary, I see no reason to make any deduction from the amounts suggested. Furthermore I consider that this meets the justice of the present case. Botas owes some \$97 million and has owed the sums due under the Awards for some years. It has put Tepe to the expense of taking the present proceedings in which Tepe has been successful to the extent that I have ordered payment of 90% of its costs. I see absolutely no reason why it should be kept out of that money for any longer and every reason to consider that it should be reimbursed forthwith. I therefore order that Botas pay the sum of £350,291.25 (being 50% of £700,582.50, which is in turn 90% of the total costs claimed by Tepe of £778,425). 85. Botas can easily afford to pay this sum. I therefore order that it be paid within 14 days of the formal issue of this judgment. Should Botas fail to pay this sum or fail to transfer the Securities to Tepe as ordered (thereby placing itself in contempt of court), it seems to me that it would be open to Tepe to apply to the Court of Appeal for such remedy as it may think fit with a view to ensuring that the appeal is only allowed to proceed if this Court's orders are complied with. 86. Advocate Nicholls submitted that, should I be minded to order an interim payment in respect of costs, this should be stayed pending appeal. I decline to do so for two reasons. First, there is nothing before me to suggest that Tepe would be unable to pay back such sum should this become necessary. Secondly, even if successful in its appeal in respect of sovereign immunity or the transfer of the Securities, Botas will still owe Tepe some \$97m. It would therefore be able to set off any repayable costs sum against the amount due under the Awards as now enforced by a judgment of his Court. I cannot see anything unfair or unjust in such a situation. 87. I should add that at one stage, it was suggested that I might order security for costs in relation to the appeal. This is not a matter for the Royal Court. Only the Court of Appeal (or a single judge of that Court) may make such an order. However, in case it is of assistance, I should add that, had I been sitting as a single judge of the Court of Appeal, having now had the benefit of hearing this case in full, I would regard it as a suitable case in which to order security for costs. There would be no question of the stifling of any appeal as Botas can clearly afford such security. Furthermore, Botas has shown itself willing to ignore not only the Awards but (now) a judgment of this Court. In those circumstances it might be considered that there are real grounds for believing that Tepe would have great difficulty in recovering its costs even if it is successful in defending the appeal. Whilst it may be argued that Tepe already has security in the form of the arrêt over the Shares, it is clear that this will not be an easy form of security to realise and there can be no guarantee as to the amount which will be realised. All these factors suggest that it might be fair and just to order security for the full amount of Tepe's anticipated costs in connection with the appeal. However, that is a matter for a judge of the Court of Appeal.

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