

IN THE HIGH COURT OF JUSTICE **Claim No. []**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

BETWEEN:

BANCO CENTRAL DE VENEZUELA **Claimant**

— *and* —

THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND
Defendant

PARTICULARS OF CLAIM

Where a document referred to below is followed by a reference in the form [A/x], that indicates that a copy of that document appears at Annex x.

A. The parties

1. The Claimant (“**BCV**”) is the central bank of Venezuela. As set out in section F below, BCV is a legal person governed by Venezuelan public law.
2. The Defendant (“**BoE**”) is the central bank of the United Kingdom. It is a body corporate incorporated under Royal Charter.
3. BoE holds gold reserves as bailee for BCV, as set out in section C below.

B. Summary

4. Given the present COVID-19 emergency, BCV wishes to facilitate the transfer of €930 million of the value of gold held on its behalf by BoE to the United Nations Development Programme (“**UNDP**”), so that UNDP may use such funds in accordance with its Humanitarian Response Plan for addressing the COVID-19 emergency in Venezuela, including to acquire healthcare equipment, medicines and basic foodstuffs on the international market.
5. BoE has refused to confirm that it will give effect to BCV’s instructions to facilitate access to the gold that BoE holds on BCV’s behalf.
6. There is no, or no sufficient, basis for such refusal. BoE’s conduct is wrongful, as set out in sections E and G below. Further, BoE is depriving BCV of access to its gold reserves at a time of national and global emergency, and so preventing BCV and UNDP from addressing that emergency.
7. BCV therefore brings this claim in order to secure the release of its gold.

C. The Accounts

8. On 12 August 2008, BoE agreed in writing to open a gold set aside account in BCV’s name [A/1]. BCV now has two gold accounts with BoE, namely (i) account 217 Banco Central de Venezuela and (ii) account 571 Banco Central de Venezuela number 2 (together, the “**Accounts**”).
9. The Accounts are now governed by a mandate letter dated 11 December 2018 and signed on behalf of BCV on 4 January 2019 (the “**Mandate Letter**”) [A/2], including its attached Customer Terms and Conditions (“**CT&Cs**”) and Annex 4: Gold (the “**Gold Annex**”).
10. Pursuant to the Mandate Letter, on whose full terms BCV will rely:

- (1) BoE holds the gold in the Accounts for BCV as bailee: Gold Annex, cl.3.1.
 - (2) BoE is authorised to act upon instructions given by BCV in various forms, including (a) SWIFT Instructions and (b) Written Instructions (in each case as defined in the CT&Cs), provided that the latter appear to BoE to be signed by one or more Authorised Signatories, according to a list of such Authorised Signatories provided by BCV from time to time: CT&Cs cl.3.1 and cl.3.2. Such authority is conclusive in favour of BoE in all circumstances: CT&Cs cl.3.4.
11. BoE's fundamental obligation as depository bank is to honour the instructions given by its customer, BCV.
 12. If BoE refuses to accept a proposed outward delivery of gold, it must explain why to BCV, and seek to agree a new date for such delivery with BCV: Gold Annex, cl.3.3. Failing such agreement, BoE must propose to BCV the next available date and amount of gold for delivery: Gold Annex, cl.3.7.
 13. By letter dated 7 January 2019 and signed on behalf of BCV by its President, Calixto Jose Ortega Sanchez ("**Mr Ortega**"), BCV provided BoE with an updated list of Authorised Signatories for the purpose of the Mandate Letter, namely: Mr Ortega, Sohail Nomardy Hernández Parra ("**Ms Hernández**") and Iliana Ruzza Terán ("**Ms Ruzza**") [A/3].

D. BCV's urgent need to call on its gold reserves

14. The pandemic caused by the novel coronavirus, SARS-CoV-2, poses a severe threat to the people of Venezuela.
15. Venezuela declared a state of alarm on 13 March 2020. Pursuant to art.338 of the Venezuelan Constitution, a state of alarm is declared when catastrophes,

public calamities or other similar events occur, seriously endangering the security of Venezuela or its citizens. The state of alarm was extended for 30 days on 12 April 2020.

16. On 17 March 2020 Venezuela formally requested support from the United Nations (“UN”) for the COVID-19 response and to address its socioeconomic consequences.
17. The UN has identified Venezuela as a priority country in its Global Humanitarian Response Plan for COVID-19.
18. BCV wishes to transfer a substantial part of the value of the gold in the Accounts to UNDP as a matter of urgency, so that UNDP may use such funds in accordance with its Humanitarian Response Plan for addressing the COVID-19 emergency in Venezuela, including to acquire healthcare equipment, medicines and basic foodstuffs on the international market.

E. BoE’s refusal to provide BCV with access to its gold reserves

19. On 21 April 2020 BCV’s solicitors, Zaiwalla & Co, sent to BoE’s solicitors, Herbert Smith Freehills LLP, a letter [A/4] which:
 - (1) described the emergency caused in Venezuela by the COVID-19 pandemic;
 - (2) set out BCV’s intention to instruct BoE to facilitate the transfer of US\$1 billion of value of the gold bars in the Accounts directly to UNDP for the purpose described above;
 - (3) explained that the necessary details were being finalised with UNDP and would be confirmed by a SWIFT Instruction within the meaning of the Mandate Letter (the “**Proposed Instruction**”); and

- (4) explained that, given the urgency of the situation, BCV sought BoE's confirmation that it would comply with the Proposed Instruction upon receipt, and that if BoE failed to provide such confirmation, BCV would issue the instant proceedings and seek an expedited hearing.
20. The letter was counter-signed by Mr Ortega.
21. BoE would be entitled and obliged to act upon the Proposed Instruction.
22. However, while purporting to recognise the urgency of the situation, BoE has to date refused to confirm that it will comply with the Proposed Instruction, notwithstanding that:
 - (1) Under the Mandate Letter, BoE is specifically and conclusively authorised to act on such a SWIFT Instruction: paragraph 10(2) above.
 - (2) Zaiwalla's 21 April 2020 letter setting out the Proposed Instruction was (a) validly authorised on behalf of BCV and (b) authenticated by an Authorised Signatory within the meaning of the Mandate Letter.
 - (3) UNDP is the global development network of the UN. It will use these funds to address a public health emergency, in accordance with its Humanitarian Response Plan. BoE can have no reasonable belief that carrying out the Proposed Instruction, and thereby facilitating the provision of funds to UNDP would put it in breach of any legal duty.

F. Governance of BCV

23. Pursuant to art.318 of the Venezuelan Constitution and chapter 1 of the Decree with Rank, Value and Force of Law on the Central Bank of Venezuela (Official Gazette No 6,211 dated 30 December 2015) (the "**BCV Law**"),

BCV is a legal person governed by public law with autonomy to formulate and implement policies within its competence.

24. Also pursuant to the BCV Law:

- (1) BCV's direction and the administration of its business are entrusted to the BCV President, who is also Chairperson of the Board of Directors (the "**BCV Board**") and BCV's legal representative (art.8) and its foremost representative and executive authority (art.9). The BCV President is appointed by the President of Venezuela for a seven-year term (art.9 and art.16).
- (2) The supreme governance of BCV falls to the BCV Board (art.21), which consists of the BCV President and six Directors. Five Directors are appointed on a full-time basis for seven-year terms; the other is a government minister (art.15). The Directors are appointed by the President of Venezuela (art.16).
- (3) The BCV President and the Directors may be removed from office only on specific grounds set out in art.25, and following the removal procedure set out in art.26.
- (4) The First Managing Vice President of BCV is appointed by the BCV Board for a six-year term (art.12) and assists the BCV President, exercising functions delegated to them by the BCV President or Board (art.11).
- (5) Vice Presidents of BCV are in charge of various technical areas assigned to them by the respective regulation. They are appointed by proposal to, and can only be removed from office by, the BCV Board (art.13).

25. The current BCV President is Mr Ortega. He was appointed under art.9 of the BCV Law by the President of Venezuela, pursuant to Decree No 3,474 dated 19 June 2018 (Official Gazette No 41,430 of 29 June 2018).
26. The current Directors of BCV include:
- (1) Ms Hernández, who was appointed as a Director pursuant to an Agreement of the National Assembly dated 27 May 2014 (Official Gazette No 40,420 of the same date), under art.16 of the version of the BCV Law then in force, i.e., the Law of Partial Reform of the Law on the Central Bank of Venezuela (Official Gazette No 39,419 of 7 May 2010). Ms Hernandez was appointed First Managing Vice President (acting) of BCV, by the BCV Board, on 19 May 2017.
 - (2) Ms Ruzza, who was appointed as a Director by the President of Venezuela under art.16 of the BCV Law pursuant to Decree No 3,518 of 6 July 2018 (Official Gazette No 41,434 of 6 July 2018). Ms Ruzza was appointed Vice President of International Operations (acting) of BCV, by the BCV Board, on 10 July 2018. In that role her responsibilities include managing BCV's external assets; implementing BCV's gold policy; and managing BCV's international obligations, as well as those derived from agreements and covenants signed with other central banks.
27. Mr Ortega, and the BCV Board including Ms Hernández and Ms Ruzza, control the day-to-day operations of BCV in Venezuela and its access to the international banking system.

G. BoE's breaches of duty

28. By its refusal to confirm that it will carry out the Proposed Instruction, as set out in section E above, BoE has placed itself in anticipatory breach of its contractual obligations, set out in section C above.
29. Further or alternatively, BoE's refusal renders it liable in conversion and/or breach of bailment.
30. The breaches set out above have caused BCV loss in the sum of €930 million.

H. Relief sought

31. BCV seeks an Order requiring BoE to comply with the Proposed Instruction.
32. Alternatively, BCV seeks the sum of €930 million, or damages in the same amount. BCV seeks that sum in Euros, because the Proposed Instruction will require a transfer in Euros. The equivalent sum in sterling is approximately £822.12 million, based on an exchange rate of 0.884 pounds per Euro, as published on FT.com on 14 May 2020 at 13:20 BST.
33. BCV further seeks interest pursuant to section 35A of the Senior Courts Act 1981 at such rate and for such period as the Court deems fit.
34. For the avoidance of doubt:
 - (1) In the event that BoE requires further or additional detail in the Proposed Instruction, BCV will work with BoE to provide such detail.
 - (2) BCV reserves all its rights, including the right to call for the remainder of its gold reserves with BoE, or any part thereof, at any time.

I. Prayer

AND THE CLAIMANT CLAIMS:

- (1) An Order requiring BoE to comply with the Proposed Instruction, alternatively the sum of €930 million or damages in the same amount.
- (2) Interest as pleaded in paragraph 33 above.
- (3) Further or other relief (including, without limitation, any appropriate declarations).
- (4) Costs.

TIM LORD QC
AMY ROGERS
MAX SCHAEFER

Statement of Truth

The Claimant believes that the facts stated in these Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Claimant to sign this statement.

Signature: 

Name: Sarosh Zaiwalla

Position: Senior Partner

Date: 14 May 2020