

<p>1 Monday, 8 April 2019</p> <p>2 (9.00 am)</p> <p>3 (Proceedings not transcribed)</p> <p>4 (9.21 am)</p> <p>5 (All proceedings interpreted)</p> <p>6 THE CHAIRMAN: There is some technical issues. We will get</p> <p>7 someone to ask the technician to come to the courtroom.</p> <p>8 Submissions by MR FOERSTER</p> <p>9 MR FOERSTER: Everything is in place now. As I said before,</p> <p>10 Alexander Foerster, counsel, for the Republic of</p> <p>11 Kazakhstan, and I will start with the opening statement</p> <p>12 of this case and the cases about execution, enforcement</p> <p>13 measures to which it latterly belongs to.</p> <p>14 The property was first sequestered and later</p> <p>15 attached based on our decisions in 2017 and 2018. It</p> <p>16 will present different decisions for the enforcement</p> <p>17 authority, but initially I will refer to them is that</p> <p>18 this is about property, which could be taken quickly(?).</p> <p>19 As the enforcement authority attached securities at</p> <p>20 Bank Mellon -- in the appellants, with account number</p> <p>21 L100261060. This is something -- this is the account we</p> <p>22 will be calling the deposit with the securities on that</p> <p>23 account, which will be the securities in our opening</p> <p>24 statement.</p> <p>25 The enforcement authority has tried to as of date(?)</p> <p style="text-align: center;">Page 1</p>	<p>1 and the bank and this takes us to lunch. Then,</p> <p>2 afterwards we can pass over to the counsel for the</p> <p>3 National Bank, who will explain why the court cannot</p> <p>4 come to the conclusion that the property belongs to</p> <p>5 Kazakhstan, which it should be considered that the</p> <p>6 securities are not colocated in Sweden, and this will</p> <p>7 take the remainder of the afternoon.</p> <p>8 Tomorrow we will start again and then my colleagues,</p> <p>9 Mr Metz and Mrs Jaderberg discuss the issue of state</p> <p>10 immunity, with the exception of the issue whether the</p> <p>11 Kazakhstan has lost the rights to claim state immunity,</p> <p>12 this is something we will contend with in the closing</p> <p>13 statements, and I will conclude tomorrow our opening</p> <p>14 statements with a couple of closing words.</p> <p>15 The legal basis for this case is what has been said.</p> <p>16 In our statements we have said that they will not</p> <p>17 presented, but however they set the brief and they</p> <p>18 create a framework for the statements. So therefore</p> <p>19 I would like to remind ourselves what they supplied and</p> <p>20 what we have submitted. The property does to run to</p> <p>21 Kazakhstan in the -- in the beginning of the chapter 14,</p> <p>22 paragraph 17 of the enforcement code. Mobile(?)</p> <p>23 property can only be attached if it is clear that it</p> <p>24 belongs to the debtor. The applicants did not show that</p> <p>25 this belongs to Kazakhstan, therefore it cannot be a</p> <p style="text-align: center;">Page 3</p>
<p>1 to sell the securities that were sold for more than</p> <p>2 120 million SEK and the money currently is with the</p> <p>3 enforcement agency. Secondly, the enforcement agency</p> <p>4 attached an attendance claim, the dividend claim, the</p> <p>5 dividend paid to Bank of New York Mellon accounts in</p> <p>6 SEB, with the account number 5218 and 515757.</p> <p>7 This account is the account called cash account of</p> <p>8 the statements. The evidence claimed has been defined</p> <p>9 as the dividends claim.</p> <p>10 The enforcement agencies attached the funds on the</p> <p>11 cash account, ie New York Mellon's account in SEB. It</p> <p>12 has found -- with the cash account. Enforcement</p> <p>13 agency's decisions are erroneous, that the Republic and</p> <p>14 the bank will show this during the course of this</p> <p>15 hearing.</p> <p>16 The structure of the credit statement is that, as</p> <p>17 the high court discuss, which issues the court might</p> <p>18 have to try. Later I will present the background of</p> <p>19 this issue and the parties involved. My colleague,</p> <p>20 Julia Fermback subsequently will present a number of</p> <p>21 parallel proceedings in other jurisdictions and we will</p> <p>22 explain why this is important to mention this.</p> <p>23 Afterwards, my colleague, Mr Metz, to discuss the</p> <p>24 property included in this case and the decisions which</p> <p>25 are the subject of the appeal brought by the Republic</p> <p style="text-align: center;">Page 2</p>	<p>1 subject for attachment matters.</p> <p>2 If the court would find that the property belongs to</p> <p>3 Kazakhstan, in accordance with the enforcement code, the</p> <p>4 property is covered by immunity, the immunity or the</p> <p>5 principle from article 21 in the UN Convention on State</p> <p>6 Immunity.</p> <p>7 When we're discussing the convention, this is the</p> <p>8 convention we're referring to, the Central Bank holds</p> <p>9 control and disposes of the property. Therefore this</p> <p>10 property is the property of the National Bank in the</p> <p>11 meaning of the Convention, and the property cannot be</p> <p>12 the subject for enforcement measures. If the court will</p> <p>13 find that the property belongs to Kazakhstan, the</p> <p>14 according the to enforcement code and lacks immunity in</p> <p>15 accordance with accordance the 21(1) (c) of the</p> <p>16 Convention, the property is still protected the property</p> <p>17 by the immunity, in accordance with the principle, ie</p> <p>18 the one stated in article 19 of the Convention, so the</p> <p>19 property is used and intended to use to ensure</p> <p>20 Kazakhstan's social and economic development, the</p> <p>21 property should reduce the state economical</p> <p>22 vulnerability to fluctuating the process of raw</p> <p>23 materials. The property as intended to be used under</p> <p>24 the framework of the monetary politics, when the</p> <p>25 National Bank conducts transactions with the property,</p> <p style="text-align: center;">Page 4</p>

<p>1 so the purpose of the property to use it for state 2 non-commercial purposes, and therefore the property 3 object to the enforcement measures. 4 When it comes to the securities, the securities are 5 not colocated, the securities are active materials and 6 therefore they should be considered that the securities 7 are located in the country where a freeze(?) is held 8 over the actual owners of the securities. There is no 9 freeze(?) held in Sweden. The fact that the securities 10 are not entered in Sweden means that it specifically 11 transacts the security(?) under article 19 of the 12 Convention and therefore the investment authority and 13 the Swedish court lacks authority to make a decision on 14 enforcement measures for the securities. 15 This is another reason why the securities cannot be 16 subjected -- be the subject of enforcement measures. So 17 to summarise, the court has to take a stand on four main 18 issues. Three deal with the attached property and one 19 deals only with the attached securities. 20 The court could answer the questions in any 21 particular order preferably, but the order should be as 22 follows the question. 23 The owner of the property belongs to Kazakhstan in 24 the meaning of the enforcement code. If the court 25 answers no to this question, then the appeal should be</p> <p style="text-align: center;">Page 5</p>	<p>1 codes. We will also in general describe the parallel 2 enforcement proceedings in other jurisdictions. 3 Kazakhstan is a Republic in Central Asia, one the 4 largest states in the world, and 18 million inhabitants. 5 This is a former Soviet Republic which came into being 6 in 1991. Kazakhstan has extensive gas and oil deposits, 7 and the initial structure(?) of this case is about -- 8 from a gas deposit in gas fields in the west of 9 Uzbekistan. 10 So the gas and oil deposits are decisive for the 11 economy of Kazakhstan, therefore the country becomes 12 vulnerable when gas and oil prices fluctuate, therefore 13 the national fund was created 20 years ago. The 14 national fund is a collective term for assets; it's not 15 a legal entity. It was built using the revenues from 16 the oil sector with the -- with the potential decree 17 number 402. The decree says the purpose of the national 18 fund to ensure stability in the social and economic 19 development of Kazakhstan to save means for future 20 generation, to decrease the dependence on the national 21 economy to negative external factors. The decree also 22 says that the National Bank should manage the assets 23 National Fund. This is also found in the budgetary law 24 of Kazakhstan, which clarifies that the National Fund 25 should decrease the states dependent on the oil sector,</p> <p style="text-align: center;">Page 7</p>
<p>1 granted. 2 If the answer to this question is yes, the court 3 should try the following questions. 4 The following question is whether the property is 5 protected by the immunity according to the 21(1)(c) of 6 the Convention. 7 If the answer is yes, then the court should grant 8 it. If no, then we move onto the third question. The 9 third question is whether the property is exempt from 10 immunity to according to article 19 of the Convention. 11 If the answer to this question is no, then the court 12 should (inaudible). If the answer is yes, then the 13 court should consider the fourth and last questions, ie 14 whether the securities are located in Sweden. 15 The court can then grant the appeal by answering 16 each and every one of the questions without considering 17 the questions. If the court answered no to this 18 question, then the appeal should be granted when it 19 comes to the securities. 20 I will start by describing the parties and the sake 21 of the words of the National Fund. Afterwards I will 22 briefly describe how can we entered here. I will 23 discuss the arbitral proceedings and arbitral awards, 24 one of the writs of the execution, the writ of execution 25 which is the basis of the decision by the enforcement</p> <p style="text-align: center;">Page 6</p>	<p>1 and that the oil could be used for fixing earmarked 2 transfers to the national budget -- in the budgetary law 3 there is a more detailed on -- they're saying that the 4 National Fund's bank manages the National Fund through 5 a trust management agreement. 6 We'll use the term "trust", "trustee", "trustor" and 7 we'll talk about a Kazakh legal concept, ie -- which is 8 the management of the fund by the National Bank. There 9 are several translations of this word. We can use the 10 general word foyend(?). The important thing for the 11 codes is that this is governed by the Kazakh law. This 12 is the English term, because it pops up quite often in 13 different translations. But the effects of this legal 14 consequence are important and they can decided by the 15 Kazakh law. We'll discussion the decree and the 16 budgetary law and the trust management agreements in 17 more detail. 18 A recurring subject in the motivation of the 19 applicants, they try to present the Kazakhstan, the 20 country and the country in the very critical, negative 21 way. But how Kazakhstan organises its data process is 22 not of importance to this issue. It's not up to the 23 Swedish court to praise foreign states or make political 24 considerations when it comes to provisions of the Kazakh 25 law and the laws of -- stating that the court should</p> <p style="text-align: center;">Page 8</p>

<p>1 respect the foreign legal -- foreign law and the basic 2 principle of the sovereignty of the state. 3 Moving onto the bank, the National Bank, the Central 4 Bank, the head office is in the city of Almaty and the 5 main task of the bank is to ensure price stability in 6 Kazakhstan to achieve price stability, trying to reduce 7 inflation is a typical task for a Central Bank. 8 The National Bank has some of the authorities, some 9 of the functions. We'll discuss them in more detail 10 later. 11 We'll also look at the provisions of the Central 12 Bank Act, which regulates the activities of 13 National Bank. The National Bank is a separate legal 14 subject and this was decided inter alia by the Svea 15 Court of Appeal in their decision. The Svea Court of 16 Appeal said that the National Bank is a legal entity and 17 could acquire civil -- or obligations and rights. 18 In certain emphasis, the National -- even though the 19 National Bank can sometimes act as a representative of 20 Kazakhstan, it should not be an entrance(?) to this 21 assessment. 22 The appellant, Anatoli Stati and Gabriel Stati, are 23 both citizens of Moldova and Romania, and Terra Raf 24 Trans Traiding Ltd Limited and Terra Raf Gibraltar and 25 Ascom Group SA is domiciled in Moldova, and there's</p> <p style="text-align: center;">Page 9</p>	<p>1 500 million USD to the applicants. 2 After the award was rendered, Kazakhstan found out 3 about certain circumstances which showed that the 4 applicants have misled the arbitral tribunal during the 5 proceedings, therefore Kazakhstan appealed the arbitral 6 award in the Swedish Court of Appeal. In that case, the 7 President stated that the investment in a dispute is 8 part of a fraudulent scheme, and that the applicants 9 have misled the Tribunal, affecting the assessment by 10 the Tribunal, by the size of the damages or of 11 jurisdiction. 12 On 9 December, the Court of Appeal rejected the 13 appeal by Kazakhstan without considering the issue of 14 the fraudulent scheme. The applicants did not provide 15 any counter evidence in respect of the fraudulent 16 scheme. No witnesses were called, neither Anatoli Stati 17 himself nor any other employees of the Stati companies 18 appeared in the Court of Appeal. 19 The Court of Appeal decided that it was not 20 necessary to try to the case. 21 They didn't think it was necessary, that it was 22 important to consider whether the evidence which was 23 served as the basis for the decision by the Tribunal, 24 misled the Tribunal, resulting in much higher damages 25 than what the applicants were due. According to the</p> <p style="text-align: center;">Page 11</p>
<p>1 evidence inserted Anatoli Stati. Anatoli Stati was 2 considered to be the richest person in Moldova, and 3 together with his son Gabriel he controls a large number 4 of companies domiciled in different jurisdictions, in 5 jurisdictions where it's difficult to retrieve company 6 information, for example BVI. Therefore it's very 7 different to say they started collaborating(?) at the 8 arbitral proceedings. 9 With the exception of the National Bank, the parties 10 had a couple of years to get used to each other. There 11 was a so-called investment dispute between the 12 applicants and Kazakhstan in the arbitral tribunal, 13 arbitration, considered it for about three years. The 14 award was made on 9 December 2013 and was corrected on 15 17 January 2014. 16 This award is one of the rights of execution which 17 is the basis for -- of the appeal of the enforcement 18 decision and enforcement agency. It could be described 19 as the fruit of all the enforcement decisions which have 20 been appealed and which the court should try this case. 21 The applicants have filed the arbitral awards as 22 exhibit 122. The applicant asked for a concession of 23 about US\$3 billion for breaches of the energy charter 24 treaty, ECT. 25 The arbitration of the original tribunal awarded</p> <p style="text-align: center;">Page 10</p>	<p>1 Court of Appeal, such misleading would not violate the 2 order public in Sweden, and Kazakhstan was ordered to 3 compensate the legal costs of the applicant. This is 4 also one of the effects of execution, which is the basis 5 for the decision made by the enforcement authority, 6 which is part of this case. Due to the flaws in the 7 decision by the Court of Appeal, an appeal was submitted 8 to the Supreme Court and due to -- based on a grave 9 procedural error, the Supreme Court rejected the appeal, 10 showing the Kazakhstan as presenting sections which 11 indicate a procedural error. 12 So therefore Kazakhstan is questioning of the 13 decision by the Court of Appeal didn't result in the 14 Supreme Court. However, much more fruitful was the 15 decision in England, where an English court decided the 16 Swedish Court of Appeal did not try everything which was 17 supposed to try, and at least prima facie there was 18 a fraudulent contract on the part of the applicants. 19 Through the English enforcement proceeding and during 20 the examination of the former CFO of the applicants, 21 which was conducted last week on 30 April, and this was 22 done in Houston, Texas, Kazakhstan subsequently received 23 documentation from the applicants which indicates 24 clearly that the applicants were not only misleading at 25 the tribunal but they also misled the Svea Court of</p> <p style="text-align: center;">Page 12</p>

<p>1 Appeal during the examination of Anatolie, the former 2 CFO of the Stati companies. He confirmed that the 3 annual reports, the annual reports for the Kazakh 4 companies for the relevant years were incorrect, and 5 also therefore the information and the indicative offer 6 which was then to be imported by the members of the 7 arbitral tribunal. If this would have been known during 8 the proceedings of the court, the court would have 9 probably landed in a different conclusion. I'm not 10 saying that this should be tried here, but this is 11 an important piece of background information, and we're 12 trying to understand Kazakhstan's position in other 13 countries, which takes us to the parallel enforcement 14 proceedings.</p> <p>15 As I said, there are processes for execution outside 16 of Sweden, also in parallel with the execution country, 17 Sweden. The petitioners have also started proceedings 18 in England, Belgium, Netherlands, USA, Italy and 19 Luxembourg. We shall not elaborate on all of them, but 20 we shall look at what is our greatest interest in this 21 case.</p> <p>22 Initially it should be said that it has not been 23 finally established that there is a possibility of 24 execution in other countries, apart from the Sweden.</p> <p>25 One can ask oneself why foreign processes should be</p> <p style="text-align: center;">Page 13</p>	<p>1 A few words about the legal implication of that will 2 come in the closing speech, but apart from that it is 3 important that this district court has a fair image on 4 the execution process that is ongoing, and 5 understandable, Kazakhstan says. Kazakhstan has valid 6 reasons to have the fraudulent scheme reviewed. That is 7 why we will use some time to explain about those 8 processes.</p> <p>9 Under the Convention from 1958 on Execution of 10 Foreign Arbitral Awards, the arbitral award may be 11 executed also outside of the country where it was handed 12 down. Article 5 of the Convention indicates on what 13 grounds execution can be denied.</p> <p>14 In order to execute an arbitral award in one country 15 where it was not handed down, there is a need for 16 a special procedure, normally in a court. That 17 procedure shall be tried, if there no other grounds 18 returned. And that is, if that is the case, then the 19 arbitral award may not be executed.</p> <p>20 With the background of that provision in the 21 New York Convention, we considered that the arbitral 22 award cannot be executed anywhere else. My colleague, 23 Mrs Fermbäck, will now explain about those foreign 24 processes more in detail. That is the details that are 25 of interest in this case, and she shall start with</p> <p style="text-align: center;">Page 15</p>
<p>1 of interest for this district court. Foreign decisions 2 on execution are not of legal importance in Sweden and 3 this court has -- they are not bound by decisions from 4 other conditions. Nevertheless, there is a good reason 5 to know what goes on in other countries. One reason is 6 to understand that there are, as I said, good grounds 7 for Kazakhstan not to pay a new arbitrary award.</p> <p>8 The applicants want to give the impression that 9 Kazakhstan does not want to pay without reason. That is 10 wrong.</p> <p>11 The objections are made especially with background 12 of the fraud that the applicants committed. Kazakhstan 13 has valid reasons in order to protest against execution 14 in all countries.</p> <p>15 It is also relevant in order for this district court 16 to understand fairly what goes on in other countries. 17 The appellants want to give the impression that they are 18 successful in the foreign execution processes. However, 19 the truth is that the matter has only been settled 20 finally in only one jurisdiction and that is England. 21 There it has been established that execution may not 22 take place.</p> <p>23 The applicants have also alleged that Kazakhstan has 24 forfeited its right to use immunity by fighting 25 execution in other countries.</p> <p style="text-align: center;">Page 14</p>	<p>1 England.</p> <p>2 Submissions by MS FERMBÄCK</p> <p>3 MS FERMBÄCK: I shall now show some documents from the 4 binders with evidence that the Central Bank has 5 submitted. Maybe you want to look at them. If you do 6 not, we have additional copies.</p> <p>7 As Alexander just explained, the question is: if 8 this, the arbitral award, can be executed, that has been 9 finally settled in England. I will now explain about 10 a few items. I should also mention that are two other 11 processes that are of interest. They are called part 7 12 and part 8. One of them is terminated and one is 13 ongoing.</p> <p>14 Back in 2014, the applicants made an application for 15 execution, before the English High Court of Justice for 16 execution. This process was stayed during the time when 17 this was challenged in Sweden.</p> <p>18 Now, the execution process in England is terminated, 19 and it has been determined that the arbitral award may 20 not be executed there. That was the findings of the 21 English Court of Appeal after the applicants revoked 22 their case.</p> <p>23 The applicants have submitted this as attachment 24 123.</p> <p>25 The alleged reasons for the revocation in England is</p> <p style="text-align: center;">Page 16</p>

<p>1 that they had, according to themselves, secured 2 sufficient assets in other countries and that the third 3 party financing was not part of the process in England. 4 However, the revocation came at a stage when the 5 English High Court had concluded that Kazakhstan, prima 6 facie, had shown that the arbitral award had been handed 7 down after fraud. 8 Here you see, apart from the judgment from the High 9 Court, that is exhibit 23 and 67. You'll find them 10 under tab 1, and flip forward to page 20. 11 In paragraph 92 the judge writes: 12 "I hold that the decision of the Sweden courts and 13 the decision of the US court do not create an estoppel, 14 that the state is entitled to rely on the evidence 15 obtained since the award, and that there is a sufficient 16 prima facie case that the award was obtained by fraud." 17 The judge thus considered that this Svea Court of 18 Appeal judgment does not create estoppel. Estoppel in 19 this context means the same thing as res judicata. 20 In other words, if the objection of fraud had been 21 tried by another court, then the English court would 22 have considered themselves unable to try the case. 23 The judge also considered that Kazakhstan, prima 24 facie, had shown with sufficient strength with the 25 arbitral award had been obtained by fraud. That is, the</p> <p style="text-align: center;">Page 17</p>	<p>1 the disclosure stage, that is the stage where the 2 parties should make available all relevant documents to 3 the counterparty. 4 The closure should take place on 22 February 2018. 5 On that very day the applicant asked for and were 6 granted respite, but instead of respecting the respite 7 the applicants requested to revoke that case. 8 As I said previously, the applicants said that the 9 reasons was that the -- they had secured sufficient 10 assets in other countries and that the process was not 11 subject to the process in England. The reaction was in 12 Kazakhstan was, amongst others, to ask the court not 13 to -- to set aside the petition. 14 Here is a decision from 2018, which is about the 15 applicant's application to revoke their petition. 16 Let us flip to page 26. 17 Paragraph 22, the High Court Judge wrote as follows 18 about the grounds from the applicants: 19 "The explanations offered by the Statis are not 20 explanations that I accept on the material available." 21 The judge thus considered that the explanations from 22 the applicants were insufficient. 23 Page 25, paragraph 25, the judge wrote for -- that 24 the real reasons: 25 "I am, however, prepared to hold that the real</p> <p style="text-align: center;">Page 19</p>
<p>1 court admitted the assessment on the merits. 2 Let us flip back to look at page 80, the English 3 court wrote: 4 "No court has decided the question whether there has 5 been the fraud alleged. Neither the Swedish court nor 6 the US court nor English court has, although material 7 has been put before those courts that would allow them 8 to decide that question." 9 The English court thus found that no court, nor 10 Swedish neither English, had settled matter about the 11 alleged fraud, despite that fact that all of them had 12 the possibility to do so. 13 Now, with regards to the Svea High Court's judgment, 14 the English judge said: 15 "The Swedish court did not decide the factual 16 question of indirect decisive impact on the tribunal in 17 its assessment of the dispute." 18 The English thus found that the Swedish High Court 19 had not addressed the question of whether the fraud 20 indirectly affected the arbitral panels in this dispute, 21 that is the High Court had decided to admit a complete 22 assessment on the merits of the case with the objection 23 of fraud. 24 A two week meeting had been planned 25 for October 2018. In February 2018 the process was at</p> <p style="text-align: center;">Page 18</p>	<p>1 reason for the notice of discontinuance is that the 2 Statis do not wish to take the risks that the trial may 3 lead to findings against them in and in favour of the 4 state." 5 The High Court's assessment thus was that the reason 6 for the discontinuance is that it did not want to risk 7 at assessment that could lead to unfavourable result for 8 them. 9 In other words, the applicants understood that there 10 was a real and eminent risk that the English court would 11 consider that the arbitral award had been obtained by 12 fraud. 13 That decision would have affected his evidence in 14 other jurisdictions and of course it would have caused 15 problems for the applicant's attempts as executing the 16 arbitral award. 17 Thereafter, the court decided to set aside the 18 petition, and the Court of Appeal changed that decision 19 in August last year, and they allowed the petitioners to 20 discontinue their case. 21 The discontinuance means that the arbitral award is 22 not and can never become executable in England. 23 As the judges maybe remember, I said initially that 24 there are three processes that are relevant to this case 25 in England. I have now explained about one of them,</p> <p style="text-align: center;">Page 20</p>

<p>1 that was the execution process. The next one, the 2 so-called part 8 process, has been terminated, and the 3 last one, the part 7 process, is still pending. 4 These processes started in England as a consequence 5 of an execution decision in Belgium, and before we speak 6 about these processes, I will explain what happened in 7 Belgium. 8 I will explain about three processes in Belgium, 9 that is about sequestration, executor and attachment. 10 I will start about sequestration, which the reason for 11 the part 7 and 8 processes. 12 Roughly a month after the applicants applied for 13 execution in Sweden, then a process similar was started 14 in Belgium where the applicants asked for interim 15 sequestration for assets that the Bank Mellon held for 16 Kazakhstan. 17 In mid-October 2007, the application was granted in 18 the first instance of the Belgian court. 19 The decision made Bank of New York/Bank Mellon 20 freeze the assets that the bank holds for Central Bank. 21 The assets are worth US\$22 billion, which is the 22 equivalent of approximately 200 billion Swedish Kronors. 23 The applicants are keen on referring to 24 Bank Mellon's way of acting, saying that this should 25 mean that the Bank of New York Mellon considers it to</p> <p style="text-align: center;">Page 21</p>	<p>1 should not draw that kind of conclusion. 2 Now, exhibit 258, tab 83, flip to page 1008. 3 This is Bank of New York Mellon's amended defence of 4 the first defendant. 5 It was submitted on the part 7 process in England 6 that I mentioned earlier. We will return to that 7 process. 8 But I want now to draw your attention to what Bank 9 of New York Mellon said in that process about their way 10 of acting in Belgium. 11 "6.1, Bank of New York Mellon described: 12 "Bank of New York Mellon understands that, as 13 a matter of Belgian law ..." 14 Then 6.2: 15 "Any non-compliance by the Bank of New York Mellon 16 with the Belgian garnishment order might result for Bank 17 of New York Mellon in criminal sanctions and/or civil 18 liability to the Stati parties. 19 "Bank of New York Mellon thus risks penal 20 responsibility and civil responsibility towards the 21 applicants if it does not adhere to the court decision." 22 On the next page, paragraph 10, we can see Bank of 23 New York Mellon's position. They write: 24 "Bank New York Mellon takes a neutral position in 25 relation to this dispute, save that it is concerned to</p> <p style="text-align: center;">Page 23</p>
<p>1 hold assets for Kazakhstan. 2 However, it is rather -- the reasons for that way of 3 acting is cautiousness, where the bank is simply 4 uncertain. 5 Here we see something that is called writ of 6 voluntary intervention that the bank submitted in 7 Belgium in 2018. 8 Exhibit 135 under tab 76, in binder 2. Let us flip 9 to page 888. 10 Item 70, article 3 the Bank of New York Mellon write 11 that the reason that they froze the assets is that: 12 "The bank cannot wholly exclude that the Republic of 13 Kazakhstan (including the National Fund) has or will 14 have claims on Bank of New York Mellon, or the Bank of 15 New York Mellon holds assets of or for the Republic of 16 Kazakhstan, (including the National Fund) which are the 17 subject of the garnishment ..." 18 So Bank of New York Mellon does not consider that 19 they hold assets for the Bank of Kazakhstan. 20 In fact, the bank considers that they cannot 21 completely exclude that Kazakhstan has or may have 22 demands on the bank. 23 The applicants want to make it seem as Bank of New 24 York Mellon's way of acting means that they do hold 25 assets for the Bank of Kazakhstan, but these judges</p> <p style="text-align: center;">Page 22</p>	<p>1 avoid a situation where it might incur double liability 2 to both NBK and the Stati parties (that is where it 3 might be contractually obliged to comply with the 4 instructions given by NBK in relation to the cash held 5 pursuant to the GCA, but liable to pay or transfer the 6 same cash to the Stati parties pursuant to the Belgian 7 garnishment order as a matter of Belgian law) and/or 8 criminal liability in Belgium for non-compliance with 9 the Belgian garnishment order." 10 Bank of New York Mellon, that is they tried to avoid 11 a situation whereby it risks responsibilities to pay 12 damages to both the Central Bank and the applicant. The 13 bank also wants to avoid criminal responsibility, and 14 with that you must view the Bank of New York Mellon's 15 acting with that as a background. This cautiousness 16 caused Bank of New York Mellon froze assets worth 17 approximately US\$22 billion as a sequence of the 18 decision from the Belgian court. 19 In May 2018, the Belgian court from the first 20 instance handed down the decision. That confirmed 21 sequestration but they limited it to US\$530 million, not 22 22 billion. The court also expressed that the question 23 whether the Bank of New York Mellon has a debt for which 24 Kazakhstan is a material matter that shall be settled in 25 England.</p> <p style="text-align: center;">Page 24</p>

<p>1 Both Kazakhstan and the Central Bank have appealed 2 that decision in Belgium. The correspondence and the 3 second instance will go on during the second half of 4 this year and the audience will be held in December. 5 Apart from the sequestration process, there is also 6 an executor(?) procedure. They were granted execution 7 ex parte in 2017. Kazakhstan has appealed against the 8 decision and the audience is planned for May 2019. 9 The applicants in parallel have applied for the 10 first instance court in Brussels to convert the 11 application for sequestration to one of attachment. 12 That procedure is currently pending. 13 As I mentioned earlier, there were two legal 14 processes started in England as a sequence of the 15 Belgian process, part 7 and part 8 process. I will now 16 speak about those processes, starting by part 8. 17 After the interim sequestration decision from 18 Belgium in 2018, Bank of Mellon froze assets belonging 19 to the Central Bank. Shortly thereafter Kazakhstan and 20 the Central Bank initiated a so-called part 8 process in 21 England against the Bank of New York Mellon. Part 8 is 22 the Civil Procedure Rules in England. They are 23 applicable. Part 8 is a simplified procedure initiated 24 by some kind of establishment procedure, but it is used 25 when there are no greater differences between the</p> <p style="text-align: center;">Page 25</p>	<p>1 procedures. 2 This is the most common kind of procedure and it can 3 be compared to a litigation in a Swedish court. 4 Kazakhstan and the Central Bank, within the 5 framework of this process, asked the court to establish 6 that only the Central Bank and Bank of New York Mellon 7 are parties in the global custody agreement. That is 8 not Kazakhstan. 9 They also want to have confirmed that the Bank of 10 New York Mellon's obligations under the global custody 11 agreement only applies towards the Central Bank. 12 In this process the applicants and Bank of New York 13 Mellon are respondents. The applicants protested 14 against jurisdiction but that was in rejected in 2018. 15 Correspondence is currently underway and there is no 16 date for audience. 17 In conclusion, the Belgian competent court agreed to 18 sequestration on assets that New York Mellon hold for 19 the Central Bank. It is also been said that the 20 question of the -- whose assets shall be settled by an 21 English court. That is the Belgian court decided that 22 they could not determine whose the assets are. They say 23 that it's a matter for an English court. 24 Such a process has been initiated through the part 7 25 process, and it has not been finally settled to whom the</p> <p style="text-align: center;">Page 27</p>
<p>1 parties about the merits. 2 In this process, Kazakhstan and the Central Bank 3 asked for confirmation of a number of legal situations. 4 The main matter became if the agreement between the 5 Central Bank and the Bank of New York Mellon, that is 6 the GCA, if that gives an obligation to the Bank of 7 Mellon to obey the decision of the Belgian court. 8 In all instances concluded that the agreement 9 obliged Bank of New York Mellon to that. The question 10 of whether there were rights towards Bank of New York 11 Mellon were not assessed. The English court found that 12 it was inappropriate to pass judgment on some of the 13 petitions since the parties were not parties in this 14 case. This process has not been finally settled. 15 I will now go on with the part 7. 16 As the judges may be remember a few minutes ago, 17 from the Belgian court from the first instance handed 18 down the decision in sequestration in December 2018. In 19 that decision the Belgian court said that the question 20 that the New York Bank of Mellon, if they have debt to 21 Kazakhstan, shall be settled by an English court. A few 22 days after that decision from Belgium, Kazakhstan and 23 the Central Bank presented a so-called part 7 case in an 24 English court, as I have just reviewed. Part 7 refers 25 to, just as part 8, a part of the English civil</p> <p style="text-align: center;">Page 26</p>	<p>1 assets belong, and there is no proceedings booked yet. 2 I will now continue with the Netherlands. 3 There are several proceedings ongoing in the 4 Netherlands. In the first one and then also with the -- 5 the attachments start with enforcement proceedings here 6 which have been concluded. 7 In 2013 the applicants applied for 8 part-sequestration of the assets and this is so secure 9 the claim according to the award. The Ministry of 10 Justice is competent -- the Ministry of Justice of the 11 Netherlands is competent to say that the assets are 12 covered by the state immunity. This is what happened on 13 this case. This was the position of the Ministry of 14 Justice, that the enforcement of the asset management 15 fund would violate international law and therefore it 16 made a decision that no enforcement could be made. 17 The applicants appealed which led to a case between 18 the applicant and the Dutch state. The application was 19 rejected in the first instance, and finally with the 20 Supreme Court of the Netherlands. 21 In 2018 the conclusion was made that the assets are 22 not based(?) state immunity. Therefore exhibit 17.25 23 are a part of this case. I will come back to this at 24 a later stage. These proceedings took place without 25 Kazakhstan National Bank finding out about them.</p> <p style="text-align: center;">Page 28</p>

<p>1 In August 2017, the applicants submitted a new ex 2 parte application for a sequestration. According to 3 Netherlands law, an applicant's ex parte(?) application 4 have an obligation to be truthful, an application has in 5 a complete and full manner, they have to present all of 6 the facts which are relevant to the decision which the 7 applicants want the court to make. 8 In August 2003 the applicants submitted a new 9 application for sequestration of the Netherlands. They 10 had an obligation to inform the court that the assets in 11 question were covered by the previous application which 12 has been rejected by the Supreme Court of the 13 Netherlands. The applications did not inform the court 14 about that fact. 15 After a summary hearing, a -- the court of the 16 Netherlands made an ex parte decision to sequester the 17 assets of the National Fund. The decision was made on 18 the basis of insufficient evidence provided by the 19 applicant, and without knowledge of the court -- of the 20 Supreme Court decision in 2016, together with the 21 Belgian decision on this basis for the Bank of New York 22 Mellon to freeze assets to the tune of \$220 billion. 23 When the decision was made, when the Republic of 24 Kazakhstan and the bank found out about this, they 25 appealed for the decision to be lifted and this is</p> <p style="text-align: center;">Page 29</p>	<p>1 decision. 2 In 7.1, this court: 3 "... lifts the attachment levied by Stati on Bank of 4 New York Mellon, insofar as those attachments covered 5 (i) assets which are part of the National Fund, (ii) 6 bank and securities accounts in the name of the NBK, 7 (iii) claims based on the Global Custody Agreement and 8 monies and securities held pursuant to the GCA, and (iv) 9 other assets of the NBK." 10 So the appellants were also fined 1 million Euro if 11 they once again opposed(?) to apply for an 12 international(?) without providing the connect 13 information for the court. This decision has been 14 appealed but the case has been stayed based on the 15 agreement between the parties. 16 The application have also appealed for enforcement 17 of the award, the Amsterdam Court of Appeal and 18 an interim decision was made by the court 19 in December 2008 where it allowed Kazakhstan to 20 elaborate on the grounds for the fraud offence, the 21 exchange of submissions being made in this case and the 22 hearing would be taking place in August of this year. 23 The applicants have also referred to the case 24 between the applicant and Samruk Kazyna. The case 25 doesn't (inaudible) around this case and therefore is</p> <p style="text-align: center;">Page 31</p>
<p>1 something can find under tab 5, on page 103. 2 The decision of the court was to lift the 3 sequestration decision based on two (inaudible) of 5.3 4 of the code. The court rights: 5 "Under English law, the fact that the Republic of 6 Kazakhstan may be the ultimate beneficiary of this 7 claim, it does not mean or imply that it is de facto 8 creditor of AAMGS Bank of New York Mellon. Consequently 9 it would appear on the face that Stati is also unable to 10 levy attachment on that claim for its claim on the 11 Republic of Kazakhstan. On that basis alone, the claim 12 to lift the attachment can be allowed." 13 So it was the position of the courts that the assets 14 belonged to the National Bank, which is an independent 15 legal entity with respect to Kazakhstan and therefore 16 could not be attached for its claim. For claims on the 17 Republic of Kazakhstan. Furthermore in the first 18 instance in 5(4) the court said: 19 "Stati acted in breach of the obligation to be 20 truthful." 21 So it was the court's position that the applicant 22 violated the obligation to be truthful, presenting the 23 previous proceedings. 24 Having decided that, the court lifted the 25 attachment. We can move to page 105, where you see the</p> <p style="text-align: center;">Page 30</p>	<p>1 not relevant. 2 Moving onto the proceedings in the US, where you 3 have a number of ongoing pending proceedings springing 4 out of the arbitral proceedings, some of them are about 5 discovery. Discovery is basically a collection of 6 information in the meaning of the Swedish law. I will 7 not discuss this in more detail. 8 Whilst the process is an application by the 9 applicants to enforce the award according to the 10 New York Convention, the application was submitted 11 in December 2015 to the District Court in Washington DC. 12 The application has been accepted in the first 13 instance without the public objection, ie the third 14 objection has been tried on the merits. This decision 15 has been appealed and is now considered by the second 16 instance. 17 Another application was on the enforcement of the 18 judgment by Svea hovratts, who comes to the courts in 19 accordance with the law of the state of New York, so 20 this is not an enforcement process in the meaning of the 21 New York Convention. This process is on a stay when it 22 comes to the arbitral award. 23 The first process is Kazakhstan's RICO action. 24 Kazakhstan filed such an action against the applicants 25 for the losses caused to Kazakhstan due to the</p> <p style="text-align: center;">Page 32</p>

<p>1 applicant's actions during the arbitral tribunal due to 2 the enforcement proceedings. 3 The first instance of the American court made 4 a decision to reject the action and the decision will be 5 appealed by Kazakhstan. 6 Moving onto Italy, where the applicants also filed 7 for enforcement. This is the second instance court in 8 April. The court did not accept Kazakhstan's objections 9 in December, 1 March, of this year that the arbitral 10 award can be enforced in Italy. The decision seemed to 11 be based on the correct understanding that the Svea 12 Court of Appeal has already tried whether the fraudulent 13 scheme by the applicant was present. This decision will 14 be appealed in 60 days by the Kazakhstan. 15 There is other enforcement proceedings in Luxemburg. 16 The applicants have applied ex parte and received 17 an enforcement declaration which has been appealed by 18 Kazakhstan and an exchange of submissions is proceeding 19 in this case. 20 So, to summarise, there are proceedings in England, 21 Sweden, Belgian, Netherlands, USA, Italy and Luxembourg. 22 In Sweden, the award can be enforced in England if 23 it's been finally decided that the award cannot be 24 enforced. In the other jurisdictions, there is no final 25 decision yet.</p> <p style="text-align: center;">Page 33</p>	<p>1 (A short break) 2 (10.35 am) 3 THE CHAIRMAN: Please. 4 MR METZ: Thank you. 5 Initially, Alexander first -- the property which is 6 subject to the enforcement measures could be split into 7 three categories, one via securities to business claim 8 and then claims to the cash on the accounts and I will 9 discuss the decisions of the enforcement agencies and 10 what has been attached and I might say that enforcement 11 measures has enforced the cash in the account, or money, 12 the money of the account. Both the money of the account 13 has been attached. This is the claim to the bank. 14 A bunch of decisions on sequestration were made 15 in September/October 2017. I will discuss them in 16 greater detail but in sum the enforcement agency 17 sequestration case was de-listed in 2018 and the writ of 18 execution, which is the basis for this, was the interim 19 attachment by the Stockholm District Court in 21049772. 20 This decision was annulled by the Court of Appeal 21 and that the case there had case number 1956-18 and 22 1221/18. 23 Moving onto the securities and the sequestration 24 orders, the majority of the money which is currently 25 retained by the enforcement agency comes from the</p> <p style="text-align: center;">Page 35</p>
<p>1 It's possible that during the opening statements by 2 the applicants we'll hear the claims of the success of 3 the applicants to enforce the award. It's true that the 4 award is enforceable in Sweden as such but I want the 5 court to keep in mind that it has been finally decided 6 in England that the award cannot be enforced. 7 In the other jurisdictions there is no final 8 decision when it comes to enforcement. 9 Kazakhstan's objections to the enforcement, the 10 purpose of this is to get a consideration on the merits 11 on the question of whether the fraudulent conduct by the 12 applicant took place, something which Kazakhstan wasn't 13 allowed to do in the case of Svea Court of Appeal. 14 I would like the court to keep in mind that the Supreme 15 Courts of the Netherlands have decided that the assets 16 in the national fund are covered by the state according 17 to the national law and therefore cannot be subjected to 18 sequestration. 19 Now, I will pass the decision to Mr Metz, who will 20 present the discussions. 21 THE CHAIRMAN: I propose that now this is a section where we 22 can take a break, because we'll be discussing some other 23 issues. We have planned for 15 minutes. So we'll 24 reconvene at 10.35. 25 (10.20 am)</p> <p style="text-align: center;">Page 34</p>	<p>1 securities which were first sequestered and further 2 attached. They have been dematerialised, ie they do not 3 exist in a physical form, and we'll hear more about this 4 from the counsel for the Central Bank. 5 The securities consisted mainly equities from the 6 listed companies, listed in the deposit, ie Bank of New 7 York Mellon's account number in SEB. 8 The enforcement agency decided to sequester the 9 securities in September 2017. The value at the time was 10 about 706 million SEK. But the enforcement made a full 11 decision on the attachment of the securities. The first 12 one was made on 14 November. This has been filed as 13 exhibit 14 and it's under tab 54 in tab 2. You don't 14 have 2 open. The writ of the enforcements was the 15 decision by the Svea Court of Appeal in the invalidity 16 case. According to this decision, they said it was 17 about 31.7 million SEK for legal costs. For that, the 18 enforcement agency attached securities which were 19 708 million SEK. What you see in the screen and in the 20 presentations on your table, you see a time line with 21 a number of boxes. 22 Every box represents one attachment decision. You 23 have the date at the top, then you have the decision 24 number, if it exists. Otherwise case number and the 25 decision of the enforcement agency. If the decision has</p> <p style="text-align: center;">Page 36</p>

<p>1 been filed in this exhibit, then it says, like here, 2 exhibit 14 and tab number. This is the tab number in 3 the left of -- the next line, we see what this decision 4 covers. This case: securities. The next line, writ of 5 execution, and the line at the bottom the case numbers 6 until the merger. I will not go into detail for each of 7 the decisions but you can find this in the boxes.</p> <p>8 After about three months after the first decision on 9 attached securities we have reached 19 February 2018. 10 This decision is exhibit 16, tab 56, binder 2. You have 11 to look at that writ of execution, was the decision by 12 the district court on legal costs in the sequestration 13 case was about 780,000 SEK, give attached securities 14 worth about 780 million.</p> <p>15 On 12 April, the enforcement agency made the third 16 decision to attach the same securities. This is 17 exhibit 17 and the writ of execution was the arbitral 18 award. The attached was 403 billion SEK. I'd like the 19 court to open the (inaudible) which was in 473 billion 20 Kronor.</p> <p>21 4.3 billion Kronor, sorry. This is tab 57, 22 page 659.</p> <p>23 This is a debt specification, and in the column -- 24 in the left column you see the document in its issued 25 instance. It says the decision by a court, date</p> <p style="text-align: center;">Page 37</p>	<p>1 about -- was a claim to cash at bank accounts. We'll 2 come back to this later, but it will, first of all, be 3 the second decision which was made on 1 November. This 4 is exhibit 13, tape 53 in tab 2, if you can look at 5 that, page 621.</p> <p>6 On page 621 it says what the decision covers. The 7 following property was attached, later descriptions of 8 property. Funds at the enforcement agency is the first 9 one, and the second one, dividends, shared dividends.</p> <p>10 Further down there is additional text, saying that 11 the decision goes dividend and the proceeds from the SEB 12 custody account number, this is from the securities 13 deposit, and the money was sequestered earlier and are 14 now attached for -- attached, which has been 15 established. So apart from the funds at the enforcement 16 agency, the enforcement agency says here that what has 17 been attached: it's dividends, proceedings, proceeds 18 from sale and money. It's quite difficult to understand 19 what the enforcement agency actually attached. But 20 there is a reference to the fact that the money was 21 sequestered earlier, and I understand what has been 22 attached -- if we look at one of the prior sequestration 23 orders, this is from September 2017, and this is when 24 the enforcement agency sequestered the dividends claim 25 from six companies. This is tab 58 in tab 2, page 668,</p> <p style="text-align: center;">Page 39</p>
<p>1 9 September 2016. In this instance, the Svea Court of 2 Appeal.</p> <p>3 I would like to know why you have this text here, 4 because, if you look at the date, if you add all that's 5 according to the specification, then it seems that the 6 writ of execution is the award.</p> <p>7 I would like to point the court's attention to this 8 item where this is the case. But our point of departure 9 is that the award is the writ of execution.</p> <p>10 The fourth and last decision for the securities was 11 made on June 12, 2018. It has not been filed but it has 12 been appealed, and prior to the merger it was -- the 13 case references were 43, 53 and 43-54/80. These are -- 14 the securities were at the same account as the other 15 securities, which have not been attachment. At the time 16 the debt was about 4.5 billion SEK and, just like the 17 previous decision, the impression from this decision is 18 that the decision by the Court of Appeal is the rate of 19 execution, but in this case it should be the -- before 20 the enforcement agency made the first decision on 21 securities, on attaching the securities. So before 22 14 November 2017, the authority made two attachment 23 decisions. Both the decisions were made on 24 1 November 2017. One of the decisions, according to the 25 wording, repayment of taxes, where it actually was</p> <p style="text-align: center;">Page 38</p>	<p>1 exhibit 18.</p> <p>2 Page 668, this is an attachment regarding shared 3 dividends being sequestered. We see a number of dates, 4 payment dates: 2 October, 11 October, 27 October, 5 2 November, 2 November again and 17 November. All of 6 these dates in 2017.</p> <p>7 Using this information, we came to the conclusion 8 that at the time of the -- before the decision, the 9 decision dated November 1, 2013, funds were paid out at 10 least on 2, 11, 27 October. If you add these three 11 amounts at the top three lines, they get 633,153 SEK. 12 This is what was paid out per November 1, 2017.</p> <p>13 If we request go back to the decision 14 dated November 1, tab 53, same binder, let's have 15 another look at page 621, under "Property attached", 16 line 4, type "Other", shared dividends, values estimated 17 to 1,737,186 SEK.</p> <p>18 Here it might be proper to criticise the decision 19 since dividends are not a type of property, and since 20 the debtors have to investigate what has been attached 21 by the enforcement agency. But with the help of the 22 attachment order we might be able to understand that 23 what was attached were the claims, the dividend claims, 24 which were on Bank of New York Mellon account at SEB, 25 plus dividend claims which have already not been paid</p> <p style="text-align: center;">Page 40</p>

<p>1 out the attachment quota.</p> <p>2 So apart from the funds which were already with the</p> <p>3 enforce the agency, this decision should cover a claim</p> <p>4 in the amount in the account of SEB, 733,000 SEK and</p> <p>5 a claim to dividends payable 1,000,133. The writ of</p> <p>6 execution was the Court of Appeal's decision in the</p> <p>7 invalidity and appeal of the arbitral award case.</p> <p>8 This second decision was rendered on 12 April, which</p> <p>9 is tab 59, and the text is more or less similar to the</p> <p>10 previous decision. The only exception is the additional</p> <p>11 specification, which is found on page 677, which this is</p> <p>12 dividends from the securities deposit, SEB custody</p> <p>13 account, 100261060, which is the Ministry of Finance for</p> <p>14 the Kazakhstan through the agent, Bank of New York</p> <p>15 Mellon.</p> <p>16 We remember from the previous decision, which we</p> <p>17 just considered, that the dividends were payable</p> <p>18 in October/November 2017. Oat the time of this</p> <p>19 attachment decision in April 2018, we have to assume</p> <p>20 that the money was paid out and deposited at the SEB</p> <p>21 account. So this decision covers probably a claim to</p> <p>22 the funds on the account because there was no longer any</p> <p>23 dividends claim in place at this point in time. The</p> <p>24 total amount attached here was the same as in the</p> <p>25 previous decision.</p> <p style="text-align: center;">Page 41</p>	<p>1 property. This is tab 62. You don't have to the open</p> <p>2 the tab, exhibit 22. It says that the property as the</p> <p>3 enforcement agency, so therefore we could probably make</p> <p>4 the conclusion that the previous decision was for the</p> <p>5 bank funds which were paid to the enforcement agency.</p> <p>6 The arbitral award was the writ of execution on</p> <p>7 18 June 2018. The enforcement agency attached an amount</p> <p>8 of 2 billion SEK. So this was an attachment of a claim</p> <p>9 at an account which might come to this account in the</p> <p>10 future. This decision has not been submitted in this</p> <p>11 exhibit and the relevant case numbers are 4353 and</p> <p>12 4354-18.</p> <p>13 What's funny about this decision? It has followed</p> <p>14 the decision about whether there was any money in the</p> <p>15 account at the time of the attachment. So we got in</p> <p>16 touch with the enforcement agency, after the decision</p> <p>17 was made, asking whether this was the case and they</p> <p>18 stated that there was about 1.5 million SEK at the</p> <p>19 account and the writ of execution was the arbitral award</p> <p>20 and finally, last and least, the decision</p> <p>21 dated September 20, 2018 has not been filed either but</p> <p>22 has been appealed, but these were case numbers 66/2018,</p> <p>23 66-9-18 before they manage this SEB account, which,</p> <p>24 according to an enforcement agency, belongs to</p> <p>25 Kazakhstan. The estimated value was at the time of the</p> <p style="text-align: center;">Page 43</p>
<p>1 If you look at page 678, even here you get</p> <p>2 an impression that the writ of execution is the judgment</p> <p>3 by the Svea Court of Appeal, but it should be the</p> <p>4 arbitral award.</p> <p>5 As far as we understand, the enforcement agency</p> <p>6 decided to attach the cash, apart from the funds which</p> <p>7 the enforcement agency called "dividends" on</p> <p>8 1 November 2017. This is at the left corner of the</p> <p>9 screen. The enforcement agency decided to attach</p> <p>10 something which in the decisions is called repayment of</p> <p>11 taxes. This is exhibit 21, tab 61 in binder 2, but this</p> <p>12 is claims to the cash in the cash account. This is not</p> <p>13 what follows from the decision on page 6191. You have</p> <p>14 the additional description, that this is the money which</p> <p>15 was sequestered earlier but now has been attached.</p> <p>16 The sequestration decision was made on 15 October,</p> <p>17 5 October, correction. This is exhibit 20, tab 60, you</p> <p>18 don't have to open, but I would like to say for the</p> <p>19 record that in paragraph 6 on page 684 in that tab this</p> <p>20 is sequestration of funds in SEB, with the claim to</p> <p>21 funds at SEB. This is what was sequestered at the</p> <p>22 time -- was attached now and what was sequestered</p> <p>23 earlier. The amount is 2,245,745 SEK and the writ of</p> <p>24 execution was the judgment by the Svea Court of Appeal.</p> <p>25 Next decision was made on 12 April 2018 by the same</p> <p style="text-align: center;">Page 42</p>	<p>1 attachment 20,680.</p> <p>2 So, to summarise, the enforcement agency made ten</p> <p>3 attachment decisions: two on 1 November 2017, dividend</p> <p>4 and cash; one decision was made on 14 November 2017</p> <p>5 securities; one decision of 19 February 2018,</p> <p>6 securities; three decisions made on 12 April 2018</p> <p>7 securities and management account; one on 12 June,</p> <p>8 securities, 2018; 18 June 2018, account, 2018.</p> <p>9 So we have quite different descriptions of the</p> <p>10 property but it's mainly the attachment of two types of</p> <p>11 property, securities and claims.</p> <p>12 This is everything I had to say and I pass over to</p> <p>13 Mr Guterstam, who represents National Bank, and we'll</p> <p>14 swap places and we'll also distribute our presentation.</p> <p>15 Submissions by MR GUTERSTAM</p> <p>16 MR GUTERSTAM: All of you who want this have this? Yes.</p> <p>17 Then we continue with the part of the merits that</p> <p>18 relates to the reasons why the property does not belong</p> <p>19 to Kazakhstan.</p> <p>20 The starting point for this part is naturally 4.17,</p> <p>21 as we heard. That is that liquid assets may be attached</p> <p>22 if they belong to the creditor, which means that they</p> <p>23 must belong to Kazakhstan, to be attached and, as we</p> <p>24 heard from Kazakhstan, the Central Bank, according to</p> <p>25 the decision from the Svea Appeals Court, is a separate</p> <p style="text-align: center;">Page 44</p>

<p>1 identity.</p> <p>2 We assume that it is undoubted that Bank of New York</p> <p>3 Mellon is independent. It means that this belongs to</p> <p>4 either the Central Bank or -- interpreter did not hear</p> <p>5 that.</p> <p>6 So the question then is to whom does the assets</p> <p>7 belong. They way of organising this part is as follows.</p> <p>8 First, the National Fund's function and structure and</p> <p>9 then very briefly what the court should decide on and</p> <p>10 then the specific evidence which is relevant for the</p> <p>11 assets that are located in Sweden, England and</p> <p>12 Kazakhstan and to whom those assets along and then some</p> <p>13 concluding remarks. That is my agenda. I assumed that</p> <p>14 I maybe go on for 30/35 minutes under item 1 and then we</p> <p>15 will see.</p> <p>16 When we then look at the evidence for the different</p> <p>17 jurisdictions, we will also briefly contest the evidence</p> <p>18 from the other party.</p> <p>19 Let us then start by item 1, the National Fund's</p> <p>20 function and structure. Then I will, as I said, speak</p> <p>21 about the overall structure without expanding on</p> <p>22 evidence. We will do that under each item and at the</p> <p>23 end, in these binders, you have to loose sheets and they</p> <p>24 are charged with the structures. You're supposed to</p> <p>25 have them sort of on the side. Maybe you could look at</p> <p style="text-align: center;">Page 45</p>	<p>1 of Kazakhstan..."</p> <p>2 As you see, in the image, we have exactly the same</p> <p>3 purpose written in the budget code in article 21.3.</p> <p>4 In said decree, it was also ordered that the Central</p> <p>5 Bank should establish an account in Kazakhstan in the</p> <p>6 name of the Republic of Kazakhstan and that is what</p> <p>7 constitutes the National Fund.</p> <p>8 I will return the more exact meaning of the</p> <p>9 presidential decree 402. That is something that we</p> <p>10 dispute. But what I want to highlight here is that the</p> <p>11 fund was created by this decree and the budget code from</p> <p>12 the year 2000.</p> <p>13 As we see in this law and decree, this fund was</p> <p>14 created in order to maintain a stability function in</p> <p>15 place and that that stability function should remain</p> <p>16 over time.</p> <p>17 This National Fund should not only be used for</p> <p>18 Kazakh's then and now population but also for their</p> <p>19 children and grandchildren and, in order to create that,</p> <p>20 there are different kinds of assets in the National</p> <p>21 Fund. First, assets that could be used in the long term</p> <p>22 for the stake of stability and other assets that could</p> <p>23 be used for the sake of stability long term and, in</p> <p>24 order to refer to the short term assets, the collective</p> <p>25 name is the stability portfolio. If they should use for</p> <p style="text-align: center;">Page 47</p>
<p>1 them when I speak about the structures.</p> <p>2 THE CHAIRMAN: Yes.</p> <p>3 MR GUTERSTAM: So the work with establishing this central</p> <p>4 fund, as we heard, started over 20 years ago, when the</p> <p>5 Kazakh state wanted to create a fund with revenues</p> <p>6 mainly from selling oil and gas in order to use that for</p> <p>7 the purpose of stability, and long term and short term.</p> <p>8 In order to establish this fund, experts were contacted,</p> <p>9 in fact mainly from Sweden, Denmark and Norway and</p> <p>10 particularly Norway, because Norway has, or had, an oil</p> <p>11 fund administered by their Central Bank, Norges Bank,</p> <p>12 and this has been an ongoing information exchange</p> <p>13 between the Kazakhstan Central Bank and the Bank of</p> <p>14 Norway and that continues still. Still, we will hear</p> <p>15 more about that when we hear from will listen to</p> <p>16 Aliya Moldabekova from the Central Bank on Monday.</p> <p>17 Next image. The very National Fund was created by a</p> <p>18 Presidential decree, 402, in August 2000 and under that</p> <p>19 decree it was created:</p> <p>20 "In order in ensure a stable social and economic</p> <p>21 development of the country, accumulation of financial</p> <p>22 resources for future generations, reduce the dependence</p> <p>23 of the economy on the impact of unfavourable external</p> <p>24 factors, I decree:</p> <p>25 1. To establish the National Fund of the Republic</p> <p style="text-align: center;">Page 46</p>	<p>1 the same stability purposes but long term, then it is</p> <p>2 called the savings portfolio. So that is the existing</p> <p>3 breakdown.</p> <p>4 But I now want to highlight that there is only one</p> <p>5 fund, the National Fund, and there is only one overall</p> <p>6 stability, and that is the stability purpose, but short</p> <p>7 term and long term.</p> <p>8 The National Fund, or rather the Central Bank, can</p> <p>9 use assets in the National Fund for the sake of monetary</p> <p>10 politics and, as we heard, that is done by currency</p> <p>11 exchange transactions in the local currency, tenge, and</p> <p>12 in foreign currencies and that way currency is being</p> <p>13 controlled. We will here more about that from Aliya</p> <p>14 Moldabekova from the Central Bank on Wednesday.</p> <p>15 If we now look at the structure number 1, this shows</p> <p>16 the overall structure on what we call the National Fund</p> <p>17 and I have handed out two sheets. The only difference</p> <p>18 between one and two is, as we see, at the bottom, the</p> <p>19 cash account that has been included. It has been added</p> <p>20 on image 2. I will return to that.</p> <p>21 But I want you to look at page 1 now, which is the</p> <p>22 structures as they have been until the decision on</p> <p>23 sequestration.</p> <p>24 Let us start from the top.</p> <p>25 After the Presidential decree 402 had been adopted</p> <p style="text-align: center;">Page 48</p>

<p>1 and incorporated in the budget code, then Kazakhstan 2 entered into a trust agreement with the Central Bank. 3 That is what we call the National Fund agreement in our 4 submissions. 5 Thanks to this agreement, the trust was created. It 6 constituted a National Fund and that way the Central 7 Bank became the trustee and the state trustor and from 8 this the National Fund agreement we can read in 1.1: 9 "The Government hereby transfers the Fund under the 10 trust management by the Bank and the Bank undertakes to 11 carry out trust management for the benefit of the 12 Government by way of investing financial assets of the 13 Fund." 14 That is, we can see under provision number 1, that 15 Kazakhstan transfers money to the Central Bank to keep 16 them in a trust and that the National Fund constitutes 17 a trust, we can see that also explicitly from 21.7 in 18 the budget code. I quote: 19 "Trust Management of the National Fund of the 20 Republic of Kazakhstan is carried out by the National 21 Bank of the Republic of Kazakhstan on the basis of the 22 Trust management agreement ..." 23 And when the expression "trust management 24 agreement", that refers to the National Fund agreement. 25 We will return to that when we discuss the specific</p> <p style="text-align: center;">Page 49</p>	<p>1 reference to Bank of New York Mellon, which means that 2 the GCA only contained two parties, Central Bank and 3 Bank of New York Mellon. 4 So through this Global Custody Agreement, Bank of 5 New York Mellon became the global custodian and that 6 means briefly that they are the overall global 7 administrator, the original one, and the bank's tasks 8 include keeping accounting of everything the bank has in 9 London and then open accounts with different 10 sub-custodians were never necessary in local 11 jurisdictions and then the transactions are being 12 carried out following instructions from the Central Bank 13 or asset managers hired by the Central Bank. 14 Under this Global Custody Agreement that we will 15 elaborate on when we discuss the English parts of the 16 chain there, there they have a obligation from Bank of 17 New York Mellon to register all assets with the Central 18 Bank. The Central Bank is registered as the owner of 19 the assets in London. 20 Bank of New York Mellon has opened 40 plus accounts 21 for the Central Bank and only seven of those are linked 22 to Swedish accounts with SEB. 23 These accounts thus are being kept in London. 24 If we now take a peak once again at the structure 25 image, we can see on the left that there is an agreement</p> <p style="text-align: center;">Page 51</p>
<p>1 circumstances relevant to the Kazakh leg in this chain. 2 But I want to say now the essence of the Kazakh trust is 3 that the assets of the Trust belong to the trustee, 4 which is the Central Bank, and the assets under Kazakh 5 law cannot be attached for public debts. 6 And, as explained in the Central Bank statement from 7 22 May 2018, it is within the framework for this 8 agreement where the state transferred money to the 9 Central Bank continuously during several years. I will 10 not plunge into that evidence because we agree on that, 11 as we agreed in a previous meeting. Rather, I would 12 like to continue in this structural image. As you see, 13 the next step is the relationship between the Central 14 Bank and the Bank of New York Mellon. 15 I will call this Bank of New York Mellon, some may 16 call it Mellon. BoNY is something that will be used by 17 some witnesses who are finance experts, but it's one and 18 the same company. 19 Yes. The Central Bank entered into a so-called 20 Global Custody Agreement. We call that GCA. That was 21 with Boston Safe Deposit & Trust Company and Mellon Bank 22 NA London branch and, as we explained in our 23 submissions, the Bank of New York Mellon later on 24 assumed all the responsibilities and -- so all of the 25 reference, previous reference, is now made with</p> <p style="text-align: center;">Page 50</p>	<p>1 with asset managers and then there is a broken arrow. 2 That means that they give instructions to Bank of 3 New York Mellon. 4 The asset manager, they are the ones who make 5 decisions on carrying out such transactions and they get 6 that mission directly from the Central Bank through the 7 asset manager agreement. 8 The asset managers naturally do not have complete 9 freedom when they invest. On the contrary, they have 10 a strict framework they must follow, something that is 11 called investment benchmarks decided on by the Central 12 Bank and an investment benchmark that is a model for 13 what you may invest in. 14 The purpose with the investment benchmarks that 15 these asset managers must follow is to spread the risk 16 with the portfolio. Since the risk should be low, that 17 means, with the benchmark that investments are made all 18 over the world in different, kind of assets and many 19 different industries, that is how risk is being spread. 20 It is quite common that the Central Bank has for 21 instance a currency deposit and a gold deposit. That 22 means a considerably greater risk than this benchmark 23 model, which is why the benchmark model was chosen: the 24 gold price fluctuates too much. 25 So asset managers, their task is to make these</p> <p style="text-align: center;">Page 52</p>

<p>1 investment decisions and then they inform Bank of New 2 York Mellon, who carries them out. These agreements are 3 made between the Central Bank and asset managers and it 4 is only the Central Bank which has any possibility to 5 give instructions to the asset managers. 6 So now I want to continue with the next part, which 7 is Bank of New York Mellon's relationship to SEB and to 8 the sub-custodian agreement. 9 The background, why there is a sub-custodian, is 10 that in certain jurisdiction there is a requirement for 11 Bank of New York Mellon having a local collaboration 12 partner. That could be due to different reasons, but in 13 this very case it is because of Euroclear, the Swedish 14 securities centre. 15 Now, briefly, in order to make changes in the 16 Euroclear register, then one must be a registered 17 administrator and there is just a small number of 18 Swedish banks who have gone through that process in 19 order to become registered administrators. SEB is one 20 of those banks. 21 For that reason, the sub-custodian agreement is 22 there with SEB so that SEB on their own can introduce 23 changes in the Euroclear registry. 24 Bank of New York Mellon, they keep shares in Swedish 25 listed companies, or rather administer for a great</p> <p style="text-align: center;">Page 53</p>	<p>1 It is important to notice what SEB's role is 2 a sub-custodian. They execute only transactions from 3 the customer, that is the global custodian, which is 4 Bank of New York Mellon. They do not make their own 5 decisions, they do not take their own initiatives. They 6 receive swift messages exactly on what is to be done and 7 then they do what is required. 8 Now, the right part of the structure, there is 9 an arrow to the SEB reconciliation account. My 10 colleague, Marcus Axelryd, will explain that in detail. 11 But at the very bottom of the structure we see BNY 12 Mellon's omnibus account and the securities deposit and, 13 as I said, this is the way the structure looked when 14 these securities were acquired and they were being 15 acquired during a long time. 16 Yes, the omnibus account. That is an account where 17 Bank of New York Mellon deposits money for requirement 18 and then securities for many customers. 19 We know that the Central Bank -- no, Bank of 20 Mellon -- had money here in accordance with the Global 21 Custody Agreement for the Central Bank and we also know 22 that there was money from other accounts, that is it is 23 a mixed account, and Bank of New York Mellon then opened 24 a great quantity of securities deposits for their own 25 and for their clients' account and all of these accounts</p> <p style="text-align: center;">Page 55</p>
<p>1 number of customers. It's an enormously big 2 international bank. The Central Bank is only one of 3 those customers. 4 The sub-custodian agreements that you see on the 5 overview, which is relevant to this case, this is the 6 general sub-custodian agreement for all of the 7 customers. So, as soon as Bank of New York Mellon for 8 any customer needs to register securities in a Swedish 9 listed company, then they will, via this sub-custodial 10 agreement, and as we do so, so this agreement does to 11 the refer only to the Swedish Central Bank, but all 12 dealings in the SEB and Bank of New York Mellon 13 generally. Since this is an agreement that relates to 14 dealings between Bank of New York Mellon and SEB and the 15 Central Bank has nothing to do with it, they did not 16 want to surrender that agreement. We do not have 17 access, the judges do not have access, to that. 18 What we do know however about the sub-custodian 19 agreement between SEB and the Bank of New York Mellon 20 was that it is only Bank of New York Mellon who has 21 right in relationship with SEB and it is only BNY Mellon 22 who can give instructions to SEB. We know that through 23 a lot correspondence between the two parties that 24 obtained through the enforcement agency but we will also 25 hear that from the witnesses on Wednesday.</p> <p style="text-align: center;">Page 54</p>	<p>1 they were opened in Bank of New York Mellon's own name 2 at this sub-custodian level after one of those accounts 3 is the securities deposit which Bank of New York Mellon 4 opened according to the Global Custody Agreement for the 5 Central Bank. 6 Now I want to speak about the main ways where 7 securities can be registered at the deposit. Number 1 8 that has happened is that Bank of New York Mellon asks 9 SEB to transfer money from this mixed omnibus account, 10 in order to acquire securities, and then the securities 11 are registered on the Bank of New York Mellon -- or the 12 Central Bank's account with Bank of New York Mellon in 13 London and then there is a subsequent registration at 14 the securities deposit. 15 In this case, money is taken from the omnibus 16 account for that requirement. 17 There could also be an interest on securities on the 18 deposit in another way, which is if the transaction is 19 made exclusively at the global custodian leg with the 20 bank in London. For instance, if Bank of New York 21 Mellon says that part of the payment shall be taken from 22 one of the 40 accounts in London to the seller of the 23 securities, then there is simply a message sent to SEB 24 in order to register those securities on the securities 25 deposit but it is not an equivalent adjustment of the</p> <p style="text-align: center;">Page 56</p>

<p>1 money on the omnibus account, because the things took 2 place in England. But all requirements of securities 3 are registered on the Central Bank's account with Bank 4 of New York Mellon in London and then there is 5 a subsequent adjustment at the securities fund. 6 So these are the two major ways that the securities 7 that we discussed today have been acquired. 8 If we then finally look at the next structure, it is 9 picture 2, where we have the added cash account. 10 Now what is the background of this? Well, we heard 11 that the enforcement agency made a number of decisions 12 on sequestration, amongst other things, for money or 13 dividends from a securities deposit. The money that 14 they wanted to sequester, they were on this mixed 15 account from different clients on the Bank of Mellon's 16 omnibus account. That account could not be frozen based 17 on those sequestration decisions. For that reason, a 18 new account was opened in the name of Bank of New York 19 Mellon, which is the cash account. 20 So that is how the cash account was created. It did 21 not exist when the securities were required. 22 Yes. Let me then say some words in conclusion about 23 the sub-custodian level. 24 It is the Bank of New York Mellon which is the 25 holder of all accounts for SEB. All the securities were</p> <p style="text-align: center;">Page 57</p>	<p>1 This is the so-called ultimate beneficiary of the 2 National Fund and, like we've said before, the money can 3 be withdrawn in the local currency, tenge, following 4 a certain procedure. 5 This is described in the expert reports of 6 Professor Suleimenov and Mukasheva, and these exhibit, 7 this exhibit 194, we'll come back to this expert report 8 and we'll set out in more detail, but now I would like 9 to discuss the transfers from the Central Bank to the 10 state. 11 The point of departure for this assessment is 12 paragraph 23 of the budgetary act, which is found under 13 tab 8, page 138, and it says: 14 "The National Fund of the Republic of Kazakhstan is 15 spent: 16 1. As a guaranteed transfer from the National Fund 17 of the Republic of Kazakhstan to the republican 18 budget... 19 3. On covering of expenses associated with the 20 management of the National Fund of the Republic of 21 Kazakhstan and conducting the annual audit. 22 4. In the form of targeted transfers transmitted 23 from the National Fund of the Republic of Kazakhstan to 24 the republican budget for the purposes determined by the 25 President of the Republic of Kazakhstan."</p> <p style="text-align: center;">Page 59</p>
<p>1 acquired with money from Bank of New York Mellon's 2 so-called omnibus or through transactions at the English 3 level in the creditor's chain. SEB only takes 4 instructions from its customer, BNY Mellon according to 5 the sub-custodian agreement and SEB has no information 6 about for whom BNY Mellon acts or opens the accounts. 7 The Central Bank has no right to use or dispose over 8 the assets by giving instructions to SEB and Kazakhstan 9 have absolutely no such right. We will hear more about 10 this from the SEB representatives on Wednesday. 11 Now I have gone from the top to the bottom in this 12 creditors chain and the structure. I would like now to 13 return to the relationship between the Central Bank and 14 Kazakhstan and explain under what conditions transfers 15 could be made from the bank to the state. 16 Like I mentioned before, the money which is 17 transferred from the state to National Bank is part of 18 a Kazakhi trust and according to paragraph 8161 in the 19 Kazakhi Civil Code, which we'll be coming back to, a 20 trustor, the estate, has no right to dispose of the 21 assets, has no right to withdraw the money from the 22 trust unless it follows from agreement or statutory 23 documents. 24 Therefore I would like to present the circumstances 25 in which you can withdraw the money.</p> <p style="text-align: center;">Page 58</p>	<p>1 So, as it is stated in this provision, the money 2 could be transferred as a guaranteed transfer. You can 3 cover the expenses for management and audit and you can 4 make a so-called targeted transfer. Both the guaranteed 5 transfers and the targeted transfers have to be made to 6 the budget of the country. 7 The more detailed description of how this is down 8 follows from presidential decree number 385 and this is 9 the most interesting document in terms of this 10 discussion and this is binder 2, tab 79. It starts on 11 page 938. 12 So under "Use of National Funds assets": 13 "The policy for using the National Fund and the 14 volume of use over the medium and long term will be 15 based on the need to prevent a reduction in the National 16 Fund's foreign currency assets and to build them up for 17 future generations." 18 And then the most significant part: 19 "The National Fund is used for: 20 1) An annual guaranteed fixed transfer from the 21 National Fund to the national budget; 22 2) Targeted transfers from the National Fund to the 23 national budget; 24 3) Paying the cost of managing the National Fund 25 and its annual audit."</p> <p style="text-align: center;">Page 60</p>

<p>1 And finally: 2 "All guaranteed and targeted transfers from the 3 National Fund to the national budget must be made in 4 accordance with budget procedures." 5 As you can see here, they are using the word "use". 6 It says "use of National Funds" and, this word, and 7 we'll be coming back to this word, on a number of 8 occasions, different laws and decrees, this is the money 9 which is withdrawn from the National Fund. This does 10 not describe how the funds in the National Fund are 11 used. It's important. So the money could be 12 transferred from the trust through the annual guaranteed 13 fixed transfer to the national budget, targeted transfer 14 to the national budget, and the management costs and 15 audit costs. 16 Here in the last sentence it says something about 17 the budget procedures, that it should be made in 18 accordance with the budget procedures. In Suleimenov 19 and Mukasheva's report from October 10, it follows that 20 the Parliament has to approve these transfers, so they 21 can be incorporated into the budget, so all withdrawals 22 from the National Fund have been to approved by the 23 Parliament. There are further guidelines in the 24 presidential decree number 385. This is page 8938. 25 You can see what the targeted transfers could be</p> <p style="text-align: center;">Page 61</p>	<p>1 and non-commercial social projects, as well as for 2 strategic infrastructure projects unless any other 3 funding alternative is available. 4 So these are the only purposes for which a targeted 5 transfer could be made. 6 Then let's consider the purpose of the guaranteed 7 transfers which is on page 978 and you see in the first 8 sentence we shall see on the screen: 9 "Stabilisation requires ensuring annual guaranteed 10 transfers to the national budget, as well as targeted 11 transfers to fund crisis management programmes to 12 stimulate economic growth during periods of economic 13 decline or growth deceleration to provide funding for 14 non-profit national social projects and strategic 15 infrastructure projects. 16 National Fund assets cannot be used for any other 17 purpose, not even for investment in domestic financial 18 instruments issued by Kazakhstani issuers." 19 So it follows from the first sentence that 20 guaranteed transfers are for the stability purposes and 21 then it's repeated once again which purposes the 22 targeted transfers can be made for. 23 In the second paragraph, we can see that no 24 transfers could be made out of the National Fund for any 25 other purposes than the ones described.</p> <p style="text-align: center;">Page 63</p>
<p>1 used for. So if you've opened up page 938, I will read 2 the section which is in the screen: 3 "Targeted the transfers from the National Fund will 4 only be made by decision of the President of the 5 Republic of Kazakhstan to fund: 6 Crisis management programmes during periods of 7 economic decline or growth deceleration; 8 Non-profit national social projects and strategic 9 infrastructure projects if no alternative funding 10 sources are available. 11 Targeted transfers for crisis management programmes 12 during periods of economic decline or growth 13 deceleration are to be made over and above the 14 guaranteed transfers. 15 If required, the President of the Republic of 16 Kazakhstan may allocate an amount for target the funding 17 as part of the guaranteed transfer to fund non-profit 18 social and infrastructure projects. 19 If the full amount of the targeted transfer from the 20 National Fund to the national budget has not been used 21 by the end of the financial year, the unused amount will 22 be returned to the National Fund during the next 23 financial year, using the remaining budget funds." 24 So, as you can see from the text, the targeted 25 transfers could be made for crisis management programmes</p> <p style="text-align: center;">Page 62</p>	<p>1 The funds in the National Fund can only be used for 2 stability purposes. This is something which follows 3 from the decision of National Bank, of Eura(?) National 4 Bank, decision number 65, dated from 2006. This is 5 exhibit 147. You don't have to open the document. 6 I just want to go over this quote: 7 "A savings portfolio is a portfolio whose purpose is 8 to increase the return on assets in the long term. All 9 proceeds to the savings portfolio yes and transfers from 10 the savings portfolio are made from the stabilisation 11 portfolio." 12 So, as you can see from the text, no transfers can 13 be made from the savings portfolio, but the transfers to 14 the estate can be through the stabilisation portfolio. 15 Right. 16 So let me summarise the rights of the state in 17 Kazakhstan. 18 Kazakhstan has no right to the specific assets in 19 the National Fund. They have only a right to get 20 payments in the local currency, tenge. The transfers 21 have to be made for a purpose which corresponds to the 22 purpose of the National Fund, that is stability purpose. 23 The transfers can only be made from the stability 24 portfolio. The transfers have to be approved by the 25 Parliament and have to be incorporated in the budget of</p> <p style="text-align: center;">Page 64</p>

<p>1 the country. 2 This is what I wanted to say about the general 3 structure. I'd like to move on to this Swedish 4 legislation, but maybe we could take a break for lunch 5 a bit earlier, because this will take 35 to 40 minutes. 6 THE CHAIRMAN: It doesn't really matter to us, if it's okay 7 with you. 8 MR AXELRYD: I think we'll find in terms of time. So 9 an early lunch would be perfect for us. 10 THE CHAIRMAN: Okay. Good, let's do that. We'll break for 11 lunch for an hour. Quarter to one. Reconvene at 12 quarter to one. 13 (11.38 am) 14 (The luncheon adjournment) 15 (12.45 am) 16 MR GUTERSTAM: Thank you. Before lunch we spoke about the 17 structure and I shall now say some words about the 18 assessment that the court should make. 19 That is a consequence of the enforcement officer who 20 only has the right to sequester assets in Sweden. If 21 they're not in Sweden, they cannot be sequestered. It 22 was assumed there was assets in Sweden, and then I shall 23 see what kind of assets they are and if they can be 24 sequestered in Sweden. And if one could somehow 25 disregard to who or where they are, then one goes to</p> <p style="text-align: center;">Page 65</p>	<p>1 those things relating to England and Kazakhstan. 2 The overall structure in Sweden is that both BoNY, 3 that's how I call Bank of New York, they hired SEB as a 4 foreign administrator for a bonus investment scheme, the 5 Swedish securities for their own and their customers' 6 behalf. 7 These securities are registered to SEB as 8 administrated in Euroclear. 9 This relationship can then be seen in SEB's account 10 registry. In SEB's account registry, BoNY opened 11 a number of accounts where bonus claims for securities 12 with SEB can be seen. 13 One of those accounts is the securities deposit. Let 14 us look at the account statement and then go further on 15 to look at the example of a public shares book, then the 16 listing of the shareholders, before I make conclusions. 17 When we look at the account statement and the shares 18 book, we will speak about the class A shares and we're 19 going to use this bank, SHB, Svenska Handelsbanken 20 because, from a value point of view, it's the greatest 21 part of the assets in the securities. 22 The securities that are most interesting in this 23 case, we call them securities as they are listed in the 24 decision of (inaudible)2007 to 2009. There are some 25 documents which are not included but that we can see in</p> <p style="text-align: center;">Page 67</p>
<p>1 England and finds out if it's their assets in England 2 that would be sequestered. If one could disregard both 3 the assets, they belong in England and in Sweden. In 4 that case we would end up in Kazakhstan. So the 5 assessment on the English part, that is governed by the 6 laws of England, and the same goes for the laws of 7 Kazakhstan, and those are the steps that we shall now 8 take, and I shall give the floor to my colleague, 9 Marcus. 10 Submissions by MR AXELRYD 11 MR AXELRYD: Yes, the chain of debtors must be expressed in 12 these steps. The steps in this chain, we see that 13 somebody higher up in the chain is the owner of assets 14 further down the chain. Each debtor in this chain has 15 rights and those are the assets that could be 16 sequestered. 17 The GMA and the structure through which securities 18 have been acquired means that there are relationships 19 between -- and in different levels that it is a chain of 20 debts. That does not mean that Kazakhstan is the owner 21 the securities under (inaudible) 4.17. This is under 22 the laws the Sweden, England and Kazakhstan and we'll 23 return to this in our closing submissions. 24 I will explain about the facts that is relevant for 25 the chain of debtors in Sweden. We can speak about</p> <p style="text-align: center;">Page 66</p>	<p>1 the enforcement agency's decision from 2018 to June 12, 2 even if we're not going to study or comment on 3 especially that the Central Bank, of course, has the 4 same objections for the whole of the securities in the 5 appealed decision. 6 I suggest we now look in binder 1, tab 50. 7 This the enforcement agency's decision from 8 6 September 2017. It's exhibit 10 under the heading 9 "action", we see that the shares and subscription rights 10 under annex 1 are sequestered. In page 606 we see 11 a document from SEB that says on the top left it is 12 called "Statement of securities". That's to the right. 13 Under this, if we look up to the left, we see this 14 is addressed in (inaudible) in Belgium and to the right 15 we can see this is printed on 6 September 2017 and then 16 there's a box. On this box we see that it is the 17 evidence on 5 September 2017 then we will see that it 18 comes from a certain account. That account is the one 19 that the Central Bank refers to as the deposit, and this 20 is the account that I will use from now on when I use 21 the expression "deposit". 22 Further down is the account holder. On the 23 following lines we see a description of the accounts, 24 account description. We will return to the account 25 description, but now I want to make an observation that</p> <p style="text-align: center;">Page 68</p>

<p>1 it is BoNY that named the account and it was BoNY's free 2 decision to call the account exactly whatever. 3 It could have been called, for instance, account X. 4 The deposit constitutes what we call a segregated 5 securities deposit that has to be owned in BoNY's own 6 name for the customer's account. The BoNY thus is not 7 with the registered owner of the securities in this SEB 8 deposit account system, but their intermediary, and that 9 for a customer. The fact that it is that way, you can 10 see that in lots of reasons, in their answer to me on 11 10 April 2018. Let us look now at binder 2, tab 85. 12 So that barrister was called Karl Guterstam. This 13 document contains some information that we can release 14 to the government, SEB provisions, but it's important 15 for the legalities of that case. I will highlight that. 16 This is a statement from SEB from 2018, April 10, in 17 their response to question 1, I have highlighted certain 18 things. 19 We can see that BoNY hires SEB to keep a deposit of 20 their own Swedish securities, and also for their 21 customers' Swedish securities. That is not only their 22 customers but their own and the sub-custodian of the 23 agreement refers to both their own and customers 24 securities. 25 In order to keep the customer's documents, there was</p> <p style="text-align: center;">Page 69</p>	<p>1 are only the numbers of the shares or any accounts are 2 specified. It's only a certain number of shares of 3 a certain class. 4 The reason is because this is fungible assets, one 5 share in Handelsbanken can be swapped for another share. 6 This is of importance for the legal analysis and we will 7 turn to that in our closing submissions, but the meaning 8 of that is Kazakhstan cannot be considered to have its 9 own rights under 417, sequestrated securities. 10 Please also notice that under Handelsbanken, of the 11 left column, there is a code. It is SE0007100599. This 12 is a so-called ISIN code. All shares in Handelsbanken, 13 class A, have this code. It is the code which 14 identifies this kind of shares with Euroclear. 15 That this is fungible assets can also been seen in 16 the preparatory works, 2013/14 and following, 2011. 17 From the Swedish you can see the following. 18 The financial instruments that are listed by 19 Euroclear Sweden AB are sufficient specified in number 20 and kind. However, it is not possible to distinguish 21 two instruments of the same kind. That means an 22 instrument of the same kind is fungible assets, the same 23 way as money. Usually also the trade is with financial 24 instruments, is fungible assets. But the financial 25 instruments are not individually determined in the</p> <p style="text-align: center;">Page 71</p>
<p>1 an instruction to segregate it in the accounts, in the 2 system. These deposits were in its name but for 3 a client but these in short abbreviated names and 4 addresses that BoNY decided. So it is BoNY who decides 5 how the account should be called. BoNY is not tax 6 registered as the owner, but it is an intermediate with 7 deposit for the customer. 8 Question 3, the next page, here we can see that the 9 SEB customers decide themselves how they should 10 denominate the account description. 11 We then return to statement of securities, tab 50. 12 I suggest we look at what is a deposits and we can see 13 what is being sequestrated. Not left, it is right. 14 Under that heading we have subscription rights in the 15 (inaudible). It's worth 250 thousand (inaudible), we 16 would submit that they're right, which is a negligible 17 amount, this amount in this context. A large part comes 18 later of Swedish shares. 19 If we just glance at the list and we can see that 20 these shares in major Swedish companies, such as Alfa 21 Laval, Assa Abloy, Electrolux, Handelsbanken, SEB, 22 Telia, large Swedish listed companies. On page 607 we 23 notice the Handelsbanken series A shares highlighted 24 with yellow. We see its worth we see it's 2,441,320 25 shares in the bank, Handelsbanken. As we can see, there</p> <p style="text-align: center;">Page 70</p>	<p>1 agreement between the parties. 2 Before leaving this document, let us go to page 609. 3 I just want to show that to the bottom right we see 4 the value highlighted in yellow, which was 385 million 5 Swedish Crowns at the stock exchange value. 6 Now, the securities are shares in legitimate listed 7 at NASDAQ. These companies are so-called isolation 8 companies which means that the documents would be 9 registered in a registry and a number of securities, and 10 accounting for financial instruments. That law, I will 11 call it LKF. Euroclear is a Swedish deposit and it 12 accounts for these accounts in a registry under LKF. 13 It's important to understand what "account for" 14 means. It is defined in the law, chapter 1, article 3 15 as deregistration in reconciliation registries by 16 ownership rights and special rights to such financial 17 instruments for which share letters, rights or other 18 documents have not been -- so it is not keeping, but 19 rather a register of rights. 20 So that is what is included in the reconciliation 21 registry, and this registry constitutive effect. That 22 is the registration in said registry gives rights, it 23 has legal effect that can be seen in chapter 6 in 24 Euroclear, headed "Legal effect from registration". So 25 it is this deregistration that gives rights to owners at</p> <p style="text-align: center;">Page 72</p>

<p>1 different stages.</p> <p>2 When the shares are registered for the first time,</p> <p>3 then these financial instruments become a rate that is</p> <p>4 separate from the company, and it still deregistration</p> <p>5 in this registry which determines who can use this right</p> <p>6 towards the emissary, that is the company that admits</p> <p>7 these shares. Wallin-Norman comments like this in his</p> <p>8 book, Kontorätt.</p> <p>9 Just when issuing the complete and signed promissory</p> <p>10 notes, then this does not become effective until they</p> <p>11 are at the Central Bank, and for that reason the data,</p> <p>12 both for the instruments accounted for, it shall be</p> <p>13 considered at the time they are delivered to the</p> <p>14 investors. It is at this hearing at the moment when</p> <p>15 these registered companies requires reconciliations</p> <p>16 accounts in the financial instruments become for</p> <p>17 (inaudible).</p> <p>18 Before that, there are no free separate financial</p> <p>19 instruments, such as object from somebody else's</p> <p>20 ownership right. That would mean that the owner's right</p> <p>21 to new admitted, accounted instrument does not arise</p> <p>22 until the accounting for this actually takes place.</p> <p>23 Apart from doing this, Euroclear also keeps a share</p> <p>24 ledger for the company.</p> <p>25 If share owners register their shares with</p> <p style="text-align: center;">Page 73</p>	<p>1 the reconciliation register.</p> <p>2 But this doesn't mean that the SEB is registered;</p> <p>3 it's a custodian.</p> <p>4 So Euroclear registers of ownership and a special</p> <p>5 rate is registered as a custodian, is a restriction of</p> <p>6 a special rate, which rate is given to them as</p> <p>7 registered custodian.</p> <p>8 One is so-called ownership presumption, which means</p> <p>9 that registration itself means that SEB has the right to</p> <p>10 dispose of the shares and sell the shares. It followed</p> <p>11 from chapter 3, paragraph 10, and chapter 6 paragraph</p> <p>12 1 in LKF.</p> <p>13 In chapter 3, paragraph 10, you can see that the</p> <p>14 financial instruments registered for (inaudible),</p> <p>15 chapter 6 is applicable. Chapter 6, paragraphs 1 and 4,</p> <p>16 it's noted that reconciliation account, as an owner,</p> <p>17 should instead apply to custodian, and chapter 6,</p> <p>18 paragraph 1, which is called "Ownership presumption".</p> <p>19 The one who's noted as known authorisation(?)</p> <p>20 account shall with limitations which fall from the</p> <p>21 account to be considered to have the right to dispose of</p> <p>22 the financial instrument.</p> <p>23 So SEB -- secondly is registered as a custodian,</p> <p>24 that economical rights connected to the shares are given</p> <p>25 to SEB. For example, SEB has the right to receive</p> <p style="text-align: center;">Page 75</p>
<p>1 administrators, it is the administrator and not the</p> <p>2 owner of Euroclear that registers. This is under</p> <p>3 chapter 3 (inaudible) and also the share chapter. These</p> <p>4 shares were registered at Euroclear and the</p> <p>5 consolidation registry. We want to highlight what the</p> <p>6 Handelsbanken book says.</p> <p>7 That we can see in book 2, tab 69.</p> <p>8 So if you go to page 799, at the top left this is</p> <p>9 a public share ledger from Handelsbanken, you can see</p> <p>10 the date, 29 December 2017 at the top column, first</p> <p>11 table on the left. You see the ISIM code. You can see</p> <p>12 that this is A series, so this the same code as you can</p> <p>13 see in the separate securities under Handelsbanken</p> <p>14 shares. So all of the A series shares of this code, if</p> <p>15 we flip the page to page 800, we can see that SEB is a</p> <p>16 registered, listed there in 4, about 630 million shares</p> <p>17 in Handelsbanken of 88 -- about 2.4 of these fungible</p> <p>18 shares were attached and sold by the enforcement agency.</p> <p>19 This share ledger is in alphabetic order and has</p> <p>20 been submitted in its entirety on a flash drive, so</p> <p>21 therefore if you analyse the ledger, share ledger, it's</p> <p>22 BoNY's is not registered as a shareholder in Handelsbank</p> <p>23 in the same place to the National Bank and to the</p> <p>24 Republic of Kazakhstan. None of these entities have</p> <p>25 been registered as owners to any identifiable shares in</p> <p style="text-align: center;">Page 74</p>	<p>1 dividends and the signing rights, and this follows from</p> <p>2 chapter 6, paragraph 39 of the Companies Act, which goes</p> <p>3 when a reconciliation company shareholder or a custodian</p> <p>4 who, under the reconciliation date, is registered in the</p> <p>5 share ledger and registered in the reconciliation</p> <p>6 register has the right to receive new shares signing</p> <p>7 gross dividends, et cetera.</p> <p>8 So SEB, being a registered custodian, has the right</p> <p>9 of disposal over the shares, with the risk actually</p> <p>10 admitting(?), has the economic rights connected to</p> <p>11 shares, but it doesn't mean that SEB are registered as</p> <p>12 the owner of the shares. SEB are registered as an</p> <p>13 intermediary and they hold the shares for somebody else.</p> <p>14 This follows directly from chapter 3, paragraph 9 of</p> <p>15 LKF. The custodian is not registered as an owner but on</p> <p>16 behalf of another party, but says that a reconciliation</p> <p>17 account for the financial instruments registered to</p> <p>18 custodians includes a note that the instruments are</p> <p>19 managed on behalf of someone else.</p> <p>20 SEB, being an intermediary, they have an obligation,</p> <p>21 according to 3.12 LKF, they have an obligation to</p> <p>22 provide Euroclear with information about the underlying</p> <p>23 customers. According to the 3.13 of LKF, Euroclear</p> <p>24 should have this information available to the public in</p> <p>25 assembly of shareholders. 3.13 goes as follows:</p> <p style="text-align: center;">Page 76</p>

<p>1 "The essential security deposit for every 2 reconciliation company, there should be some of 3 shareholders with more than 500 shares in the company." 4 This summary is not a part of the reconciliation 5 register, it is a summary of the information which 6 Euroclear received from the custodians. So this is 7 a reflection of the information in the custodian's 8 accounts system. 9 Let's have a look at what it looked like at 10 Handelsbanken. The date of the public ledger, which is 11 the 29 December 2017, and this is tab 66 in binder 2. 12 Look at page 754. 13 Then we see this public list of nominees. This is 14 Svenska Handelsbanken. We see the date, which is 15 9 December, then there are two tables on the left-hand 16 side. The top table gives the total number of issued 17 securities, and the table at the bottom are the shares 18 which are -- which are nominee shareholder registered. 19 So we can see that about 64 per cent of the shares in 20 Handelsbanken were registered with the nominee 21 shareholder, as you can see. 22 On the right-hand side, in the lower table, move on 23 to page 75, which is the next page, this is the 24 an extract which starts when BoNY was registered as a 25 holder. The first item -- as a registered holder -- is</p> <p style="text-align: center;">Page 77</p>	<p>1 provided to SEB through its SWIFT message lists, than 2 the information in possession of SEB and GOK(?). This 3 item is a part of BoNY's claim to SEB with respect to 4 A securities in Handelsbanken. As far as I understand, 5 this is based, inter alia, on this information in the 6 public registered nominees. Based on this, the 7 enforcement agency decided to attach 24,630 shares on 8 the reconciliation account. 9 We don't understand how the 2.4 million shares were 10 selected out of 630 million shares, because one share 11 cannot be differentiated from a different share of the 12 different client. So how could they identify which 13 shares which were allegedly owned by Kazakhstan? It is 14 also unclear how the 2.4 million shares who were 15 selected were from BoNY's claim to SEB, covering 16 131 million shares. These shares which BoNY -- and the 17 shares owned by BoNY's customers are fixed on SEB's 18 account. 19 But if you could say is this of an importance that 20 SEB registered 2.4 million shares in a segregated 21 deposit. No, this registration does not lift the -- 22 makes the reconciliation account. It doesn't give any 23 rights with respect to the issue and it does not 24 identify any specific shares on the reconciliation 25 account.</p> <p style="text-align: center;">Page 79</p>
<p>1 the third item from the bottom. 2 We can see, if you flip forward, you'll see the 3 number of items where BoNY is registered as holders. So 4 basically the entire extract covers these items. 5 If you flip to page 791, you can see that BoNY are 6 the registered holders up until the last item. 7 If you add all these items, that you consider BoNY 8 has a claim for SEB with respect to 131 million A shares 9 in Handelsbank. And as we can see from the statement 10 from SEB, BoNY has retained SEB for a deposit of BoNY's 11 own securities and the securities which belong to 12 BoNY's customers. So BoNY's claim for 131 million 13 shares, these are the securities for which BoNY has a 14 claim on their own, and shares where BoNY's customer, or 15 a customer of a customer, of a customer of a customer of 16 a customer has an ownership claim. 17 Where the ownership claim is depends on the length 18 of the links to the underlying beneficiary. Let's 19 consider a specific item of this public nominee 20 register. 21 If we flip to page 789, the last item on that page. 22 The last item on this page reflects the number of 23 A shares of Handelsbanken which were registered at the 24 securities deposit, the information for which follows 25 from column number 2, is the information which BoNY have</p> <p style="text-align: center;">Page 78</p>	<p>1 This could be compared to -- on a note, that 2 registration is SEB registry, as opposed to the note of 3 the reconciliation register -- has no legal effect. This 4 is just evidence of a claim to set a number of shares of 5 a certain kind, so a claim for fungible property. 6 To attend to deal with specific shares, it appears 7 on the registration of a name(?) in the reconciliation 8 registered that approval of specific share has been made 9 with the authorisation to receive the rights with 10 respect to the issue according to LKF, according to the 11 Companies Act. 12 So the -- as long as they wish to administer the 13 rights granted to SEB, SEB in their turn they have 14 obligations with respect to their customer. 15 How, therefore, SEB has no liabilities to the 16 customers of their customers? 17 There is no claims with the relationship between SEB 18 and BoNY's underlying customers. 19 We will hear from the officers at SEB that SEB 20 managed for the customers for BoNY and that SEB's 21 obligations are with respect to BoNY and no one else. 22 The fact that there is no claim between SEB and BoNY's 23 underlying customers, it follows specifically from the 24 fact that SEB doesn't even know who the underlying 25 customers are. The form of nominee doesn't know who the</p> <p style="text-align: center;">Page 80</p>

<p>1 underlying customer -- it's not unusual. Very normal. 2 They comment in the following manner in their textbook. 3 If we go through the Swedish list of companies with 4 whatever the securities, it is whether -- it's that the 5 formal nominee in the reconciliation register has only 6 knowledge about the fact that some of their own 7 customers normally for financial institutions are not 8 the owners. The underlying owners, with respect to the 9 third nominee, should in the usual case according to the 10 Swedish law, should be regulated by foreign law. 11 Foreign owners, in principle, have "foreign rights of 12 ownership" to the Swedish shares and other financial 13 instruments registered in the essential securities 14 deposit. And underlying customer who the nominee is not 15 aware of cannot make any claims to the formal nominee 16 with respect to the shares on the reconciliation 17 account. The underlying customer has only claim to the 18 delivery of shares from their account, but according to 19 their contractual counterparty, if this counterparty is 20 outside of the Swedish, which means that the assets of 21 the underlying customer are located outside of Sweden. 22 BoNY have retained SEB as a formal nominee. So to 23 go to the summary, BoNY has retained SEB a formal 24 manager for investment, for BoNY and BoNY's customers in 25 Swedish securities. According to this conciliation(?)</p> <p style="text-align: center;">Page 81</p>	<p>1 Further submissions by MR GUTERSTAM 2 MR GUTERSTAM: So what we've heard so far is about the 3 circumstances about who the assets in Sweden belong to, 4 and this is the legal analysis of the sequences will 5 give us an answer to this question. We haven't heard 6 any comments to the applicants when it comes to the 7 circumstances. However, the applicants claim that the 8 National Fund, quote unquote, belongs to Kazakhstan, so 9 they know which asset they are referring to. But they 10 have still submitted a number of documents regarding the 11 Swedish part of the chain to support their statement, 12 and these four documents. And these are description of 13 the account or statement of securities, something we 14 just presented, extracts from Euroclear's registry, 15 something we have considered already, Electrolux's 16 prospectus and a request for repayment of taxes. But 17 these are the four documents which we would like to 18 present briefly, before I move onto the English part of 19 the chain of debtors. 20 The first question which I would like the court to 21 ask themselves, just by looking at the documents which 22 have been submitted, is: could any of these documents 23 change the circumstances we have just presented? Could 24 it change which rights follow from the statutory 25 documents, or which rights follow from the subsequent</p> <p style="text-align: center;">Page 83</p>
<p>1 agreement, SEB is registered as the formal nominee in 2 Euroclear for BoNY's Swedish securities. SEB also is 3 a nominee for a large number of other customers. The 4 quoting of shares per SEB is registered on one 5 reconciliation account with Euroclear. The shares 6 obviously mentioned in this account cannot be 7 differentiated from each other. So it's not possible to 8 identify which shares belong to BoNY or which shares 9 belong to BoNY's customers. 10 We come to the segment from BoNY, which from SEB 11 BoNY has right to a certain number of shares, but not 12 specific identifiable shares. 13 This right of claim exists in Sweden, but this rate 14 belongs to BoNY and no one else. Their underlying 15 customers -- BoNY's underlying customers' claim for the 16 securities does not exist in Sweden, since BoNY's 17 textbook is found overseas. Therefore these underlying 18 claims cannot be attached in Sweden. This is what 19 I wanted to say about this in my opening statement, and 20 I pass the word to my colleague, Carl, who would like to 21 provide comment submitted by the applicant, and he will 22 also describe the situation in the English and Kazakhi 23 section of the contain of debtors. 24 25</p> <p style="text-align: center;">Page 82</p>	<p>1 agreement which BoNY and SEB. And the obvious answer is 2 no. Therefore this evidence is not relevant to our 3 case. But the claimants say the evidence is relevant 4 and therefore I would like to deal with that. 5 The comment I would make for the four documents is 6 that all of them include a reference to "ultimate 7 beneficiary", ie Republic of Kazakhstan. In one way or 8 another the name is there and that's why the documents 9 have been submitted. 10 If we start with the first document, and I have just 11 cut the section at the top right corner, "Statement of 12 securities". We have just considered this, so we don't 13 have to go back to the document again. What has been 14 submitted here is what is the text under the account 15 description. If you look at the statement of 16 securities, just like we've heard from my colleague, the 17 only legally relevant information which could be read 18 from submission is who the account holder is. And it 19 says this information is found under "Account holder", 20 and here we can see that it's BoNY which is the account 21 holder. 22 However, we also have the account description, and 23 an account description is a description an account, and 24 here you can choose whatever you want. You can write 25 nothing, you can write X. It has no legal importance</p> <p style="text-align: center;">Page 84</p>

<p>1 whatsoever and we'll hear more about this from the SEB 2 witnesses. 3 What they included here is a reference to the 4 ultimate beneficiary, ie the Republic of Kazakhstan, and 5 who included this information. It was BoNY who sent 6 a swift message to SEB, who said: open accounts of this 7 type, give this statement -- this is an account 8 description. Why have we been given this reference? We 9 don't know, but they've done this, and this has no legal 10 effect. 11 The next document is the extract from Euroclear's 12 registry, something we have considered already. This is 13 the information which SEB sends to Euroclear to include 14 in the list and the summary, and SEB received this 15 information from BoNY. Just like for the account 16 description, SEB has to state BoNY to Euroclear, and 17 then the reference given by BoNY. And here they have 18 added the reference to the ultimate beneficiary. We 19 don't know why, but they have done it. This is of no 20 legal importance whatsoever, because BoNY is the one 21 registered as a legal entity. 22 The next document, a prospectus from Electrolux, and 23 I have selected an extract from the relevant page and 24 the prospectus. And Electrolux have created this 25 prospectus in order to name the largest shareholders,</p> <p style="text-align: center;">Page 85</p>	<p>1 this is a form of the Swedish taxation agency to remit 2 the taxes, but these are the two ones I would like to 3 identify. They say it was the claimant and on behalf of 4 claimant BoNY is requesting repayment. BoNY, they 5 stated that the National Fund was the ultimate 6 beneficiary, ie Ministry of Finance, ie the Finance 7 Ministry of the Republic of Kazakhstan. BoNY did not 8 conduct investigations whether this was correct 9 according to the Swedish law, in order to request 10 repayment of taxes on behalf of someone else. In Sweden 11 they required power of attorney. BoNY had no power of 12 attorney from the state, because, according to the GCA, 13 their counterparty was National Bank. Therefore BoNY 14 sent a standard power of attorney which gives different 15 authority to conduct different measures with respects to 16 holdings. They send it to the National Bank and they 17 asked National Bank to -- for the authority(?) to be 18 signed by someone on behalf of the state. The 19 National Bank, they trusted the global facilities, so 20 therefore they made sure it was signed it back. 21 You know that this happens, this is a document which has 22 been submitted by the applicants. This is exhibit 142. 23 This is a letter which was sent from deputy director of 24 the national bank addressed to BoNY: 25 "As per your request please find attached the signed</p> <p style="text-align: center;">Page 87</p>
<p>1 and when they did that, like we've heard, the majority 2 of the shares in the largest group of companies are 3 nominee registered. So go to the list of nominees and 4 see who is registered at Euroclear. 5 On the previous slide you see BoNY registered on 6 behalf of someone else, and we saw this reference. And 7 what they did, they didn't conduct any further analysis, 8 they couldn't, because no other information could be 9 received from a bank due the confidentiality provision. 10 So therefore they assumed incorrectly that BoNY's 11 customer was the Republic of Kazakhstan. We know, and 12 it's not disputed in this case, that BoNY's customer is 13 the National Bank and not the Republic of Kazakhstan. 14 So we know that Electrolux's prospectus is incorrect. 15 So this document describes what the public listing is. 16 It's of no relevance at all for this case. 17 Finally, we have an application for tax, repayment 18 of taxes. Some securities, they pay out dividends and 19 in Sweden dividends are taxed at the tax rate of 20 30 per cent, and there is a double taxation agreement 21 between the companies, and normally you get 15 per cent 22 back if you apply for that. 23 For these holdings of the National Bank in BoNY, 24 it's BoNY which is responsible to claim this tax, and 25 there is a form in Swedish and in English which is --</p> <p style="text-align: center;">Page 86</p>	<p>1 original power of attorney, ie [the Swedish translation 2 follows]." 3 This confirms the sequence of events. The question, 4 obviously, is: what does this mean to Kazakhstan 5 suddenly become the owner of shares in question, since 6 BoNY have stated that they are the beneficial owner in 7 a tax form to the tax agency? 8 So did the entire structural -- did all the 9 rights -- till they suddenly changed after the form was 10 filled out? No, obviously not. 11 It's not the tax form which decides who is the owner 12 of the assets; it's who owns the owner -- who owns the 13 shares. This determines what you should write in your 14 tax form and the fact that BoNY incorrectly requested 15 payment, the repayment of taxes in the name of 16 Kazakhstan rather than in the name of the national bank. 17 This is of no importance whatsoever to this case. It 18 should be noted that after this was noticed, 19 National Bank of Kazakhstan has changed their procedures 20 and now they requested a payment of taxes in their own 21 name. 22 So, to summarise, the fourth documents which I have 23 just presented, they don't effect in any way the 24 circumstances which actually are decisive in terms of 25 who owns the property in accordance with the Swedish</p> <p style="text-align: center;">Page 88</p>

<p>1 law. 2 Having said that, I would like to move on to the 3 situation in England. 4 We have already shown that the assets and the rates 5 which are found in Sweden to have gone to Kazakhstan and 6 we could stop there. 7 But if we proceed we will end up in the England, and 8 the situation is that England is governed by the English 9 law and therefore to grant the application by the 10 applicants, what is required is that these assets are 11 taxable according to the English law. So the question 12 is which assets are present in the England and who do 13 they belong to, and English law is applicable to these 14 two issues. 15 The first question: what assets are there? 16 It follows from the structure of the screen, the 17 assets are the rights which followed from the global 18 custody agreement. 19 This is why we will go through the global custody 20 agreements to see which rights are there and who are the 21 owners of these rights. 22 So if the court could open tab 75 in binder 2, and 23 we will stay there for a while. 24 Lets start with page 854. So this is the first 25 page. We can see the parties to the GCA as it follows</p> <p style="text-align: center;">Page 89</p>	<p>1 a claim to generic securities of a certain kind and 2 type. These are securities. 3 Moving on to 5B, we can read the following: 4 "In the ownership of securities in the account shall 5 clearly recorded on Boston Safe's books as belonging to 6 the client and, to the extent securities are physically 7 held in the securities account, such securities shall 8 also be physically segregated from the general assets of 9 Boston Safe." 10 Yes. As we can see from this provision, the 11 ownership of all the securities, including everything 12 which is not money, shall be registered as belonging to 13 the client and the client is of course the Central Bank. 14 And it can also be seen that if there are physical 15 assets, not cash, they shall be kept separate from 16 BoNY's own property. 17 So from this provision we can understand that there 18 is an obligation to register the bank in its books. 19 Now, how do we know that this actually took place, 20 that they fulfilled this obligation? Well, there is 21 a lot of evidence that shows this. This is a letter 22 that we will quote briefly and we will get back to that 23 in its entirety. It's a letter from BoNY and us at 24 Frank from 30 October 2013, certifying as follows: 25 "The owner of securities and other assets in Bank of</p> <p style="text-align: center;">Page 91</p>
<p>1 from the document just initially it says agreement made 2 on 24 December 2005, on Christmas eve, National Bank of 3 Kazakhstan entered into an agreement with Boston Safe 4 Deposit and Trust Company and Mellon Bank NA, London 5 branch. Like we've said before, BoNY has received from 6 the rights from these two parties. So the National Bank 7 and BoNY have entered this agreement. 8 Here we can make the conclusion that these are the 9 two parties who have rights and obligations in 10 accordance with the agreements, there are no provisions 11 in the GCA which give any other party, including the 12 Republic of Kazakhstan, appoint them with any rights 13 with respect to the BoNY. However, there are other 14 circumstances or other sections of the agreement which 15 I would like to present, and I would like to start with 16 paragraph 3A and accounts. 17 I would like to have a look at the definition of the 18 securities: 19 "Boston Safe shall open one or more accounts in 20 Boston Safe's books (each a securities account) for all 21 non-cash assets (securities) of the client as Boston 22 Safe or any of its sub-custodians may from time to time 23 hold in custody." 24 So securities in this GSA is everything which is not 25 cash, so not just securities in the legal term, but also</p> <p style="text-align: center;">Page 90</p>	<p>1 New York Mellon's books." 2 We also have, on the court's requests, asked for 3 printouts from the actual accounts with BoNY Mellon in 4 London showing who is the holder of these accounts in 5 London. And we have submitted that account information 6 together with the explanatory letters that BoNY -- 7 including, that is from 9 May 2018, and that is what 8 I think we should look at. 9 Binder 1, tab 17. 10 So this is a letter from BoNY to the Central Bank, 11 and at the bottom on page 1, this is what I have the 12 screen to explaining the texts that we will study. BoNY 13 writes: 14 "I enclose screen prints from each of the seven 15 accounts, which show: 16 "1. Screen G840. This confirms the name of the 17 account on our systems. Due to system limitations, the 18 account name states NBK, which is short for the National 19 Bank of Kazakhstan. 20 "2. Screen G875. This confirms the account number 21 in Sweden which each portfolio is linked to, both 22 securities account number [there's the number] and cash 23 account number [there's the number]. 24 "3. Scene KIIC. This is a screenshot of the 25 customer identification screen which confirms that their</p> <p style="text-align: center;">Page 92</p>

<p>1 customer name, on our records, for each of the accounts 2 above is the National Bank of Kazakhstan." 3 As we can see here, there are three screen prints 4 for each respective one of these seven accounts linked 5 to the SEB accounts, and at the funds(?) for 6 Central Bank in London. And from these screen prints we 7 can see in G840, that is the account name, and G875, we 8 can see what account with the sub-custodian that they 9 are linked to, and finally the KIIC that shows who the 10 holder of the account is. 11 And, as we can see from the very letter under 12 item 3, it is confirmed that each of the accounts above 13 is the National Bank account, it is the registered 14 owner. 15 Nevertheless, let us return to how these screen 16 prints should be read. I was going to study all 21 of 17 them, but three examples, three different types. 18 Here I simply want to highlight where these things 19 are, because the printout is messy. At the very left, 20 we see what kind of screen print this is. This is G840 21 and then we see the account number. It is the text 22 after "ACCT" and then the name of the account. It says 23 "NBK". 24 We go forward one page and we have the next one, 25 screen print, G875 for the same account, with</p> <p style="text-align: center;">Page 93</p>	<p>1 "Boston Safe shall keep proper records of the 2 client's interests in all securities held by 3 a sub-custodian." 4 As we understand from this provision, 6A, the bank, 5 New York Mellon, they have the obligation to keep some 6 kind of registry of the Central Bank's interests in 7 securities held by sub-custodians, such as SEB. Let us 8 continue, we read as follows, it's fairly long, but 9 I will read it all because it's important: 10 "Unless the client otherwise instructs in accordance 11 with clause 4(a) and except where securities are held in 12 a securities system, Boston Safe may arrange for 13 client's registrable securities to be registered in the 14 name of a nominee, either of Boston Safe or of 15 a sub-custodian. Where otherwise required by local law, 16 regulation or market practice, or where Boston Safe 17 reasonably believes it is in the client's best interests 18 to do so, Boston Safe may arrange for securities held 19 outside the United Kingdom to be registered in the name 20 of either Boston Safe itself or of a sub-custodian. 21 Such securities may not be separately identifiable and 22 may not be protected from the claims of general 23 creditors in the event of default of Boston Safe or of 24 the relevant sub-custodian. All such securities as are 25 registered in the name of a nominee or sub-custodian</p> <p style="text-align: center;">Page 95</p>
<p>1 Bank Mellon's London, but different information. You 2 see it's a different account number. It's the same 3 account number, but a different information, so it's 4 still NBK's account. And then it says ACCT, and that is 5 a reference to the Swedish account that this account is 6 linked to. And finally, but not least, we have the 7 customer identification screen print. 8 Next page, page 206 in the binder, where we can read 9 that this account belongs to National BK, Kazakhstan. 10 It means the National Bank. 11 Then I could also mention that we have covered with 12 black certain things, that is assets manager. That is 13 not public information, it is not relevant, why we have 14 redacted that. 15 It could be also important to notice that the Bank 16 New York Mellon, just as SEB and other banks that 17 I know, they do not have parallel systems where they 18 register ownership rights. So this is the system that 19 exist and here we can see that it is the Central Bank 20 which is included in their books as the owner to the 21 accounts, just according to their obligations under the 22 global custody agreement. 23 Let us now return to the global custody agreement. 24 Page 875 -- 857, article 6A: 25 "Recording and registration.</p> <p style="text-align: center;">Page 94</p>	<p>1 shall be held to be the order of Boston Safe." 2 Yes. From 6B we understand that the bank, Bank 3 Mellon, can register a security in its own name or in 4 its sub-custodian's name. And, as we understand from 5 the last sentence, those securities registered at the 6 nominee or sub-custodian shall be held to the order of 7 Boston Safe, that is for the account of Bank New York 8 Mellon, and this is important to understand that this is 9 what all the non-cash assets -- and it's important to 10 understand that they cannot necessarily be identified 11 nor protected in a case of bankruptcy. 12 So Bank of New York Mellon has the right to 13 jeopardise all of these assets. 14 Continuing now to 6, next page. Here we have the 15 next provision, it says: 16 "Notwithstanding any other provision of this 17 agreement, but without prejudice to the proprietary 18 rights of the client, the client's redelivery rights in 19 respect of the securities are not in specie but rather 20 in respect of securities of the same issuer, number, 21 class, denomination and issue as those originally 22 deposited with Boston Safe in the securities account." 23 And as we see in this article, 6D, the Central Bank 24 has no right to specific securities, but documents of 25 the same kind, that is you cannot go and ask for</p> <p style="text-align: center;">Page 96</p>

<p>1 a certain paper from Handelsbanken. 2 I now move on to GCA 13 delta. It's a long one, 3 I will not read all of it. I will just skip to the -- 4 after the first comma clause: 5 "The client agrees to indemnify each of Boston Safe 6 and Mellon on demand against each loss, liability and 7 cost suffered or incurred by Mellon or, as the case may 8 be, Boston Safe, including without limitation any legal 9 fees and disbursements arising directly or 10 indirectly ..." 11 And then there are two different scenarios. As we 12 see in this provision there is a commitment for the 13 Central Bank to hold Bank New York Mellon to ensure that 14 they are not suffering, or to indemnify them in certain 15 cases. 16 We then continue to 17. I read the first and last 17 sentences: 18 "Each of Boston Safe and Mellon shall be entitled to 19 reasonable fees for their respective services under this 20 agreement in accordance with the fee schedule, as may be 21 amended by agreement between the parties from time to 22 time." 23 Here we can see that there is a right to due 24 compensation as per an annex. The last sentence, it 25 says:</p> <p style="text-align: center;">Page 97</p>	<p>1 practicable consultation with the client) and to apply 2 the proceeds in satisfaction of such sums. Boston Safe 3 is authorised to effect any necessary currency 4 conversion as Boston Safe's own rate of exchange then 5 prevailing." 6 So what can be understood from that provision? 7 Well, here we understand that the Bank of New York 8 Mellon has certain collateral, or, for instance, the 9 indemnity and reasonable fees that we've just read 10 about. That can be seen from article 13D, 17, 18B, but 11 those rights could not exist, and we can also read that 12 one has collateral in the securities. And as I will 13 return to in the closing argument, it becomes relevant 14 because if we have to pull out all the assets at a lower 15 stage then the collateral would be useless. But I will 16 get back to that. 17 Finally, I want to draw your attention to the 18 article 26, which says that this agreement shall be 19 interpreted in accordance with English law. 20 So conclusion on what we have learned from the GCA: 21 it is the Central Bank and Bank New York Mellon who are 22 the parties in the GCA, nobody else. It's the 23 Central Banks, they have a claim under the GCA, it is 24 money and it is security of a certain kind and number, 25 but not specific assets.</p> <p style="text-align: center;">Page 99</p>
<p>1 "Notwithstanding clauses 7(c) and 11(e) the clients 2 consents to fees and expenses referred to in this 3 clause 17 being debited from the cash account by Mellon 4 within 30 days of the date of the invoice." 5 So what can be understand here is that the Bank of 6 New York Mellon can itself take money from the accounts 7 to cover the fees that it is entitled to. 8 Next provision related to these, that is 18B, also 9 a fairly long one, but it is also important, which is 10 why I will read all of it, or almost. It says: 11 "Boston Safe shall, in addition to any general lien 12 or other rights to which Boston Safe may be entitled to 13 the extent permitted under any applicable law, have 14 a first lien on all securities and shall have a right to 15 withhold a redelivery to or to the order of the client 16 of the securities under the control of Boston Safe, or 17 any agent for securing payment to Boston Safe and/or 18 Mellon, as the case may be, of all sums (including 19 interest, fees and expenses), for which the client is 20 from time to time liable to Boston Safe and/or 21 Mellon ..." 22 And then it says, a little by the further down: 23 " ... Boston Safe shall be entitled to sell and 24 otherwise realise any such securities (following prior 25 written notification to and, where reasonably</p> <p style="text-align: center;">Page 98</p>	<p>1 Again, in the Bank of New York Mellon's registry, 2 the Central Bank is the registered owner to the assets. 3 The sub-custodians can be registered in its own name, 4 Bank of New York Mellon has the right to mix and 5 jeopardise assets out, Bank of New York Mellon has the 6 right to certain fees and also to be kept free of 7 damage. 8 They also have collateral in all the securities 9 located in London and everything on the Central Bank's 10 account in order to settle any debts that the 11 Central Bank could have under the GCA, and the 12 interpretation shall be done under the laws of England. 13 We now have a fairly close image of the rights of 14 the English part of this, and we make the observation 15 that this belongs to the Central Bank and Kazakhstan has 16 rights to that in the English court. We don't stop 17 here. We have plenty of evidence that we can see in the 18 global custody agreement. 19 Let us start with the letters and from the Bank 20 New York Mellon to us at the law firm. The background 21 to this, it is in the binder at tab 11. 22 So on the one page, the background to this letter is 23 that we wanted to provide information to the enforcement 24 agency about the contractual relationship between the 25 Central Bank and the Bank of New York Mellon. For that</p> <p style="text-align: center;">Page 100</p>

<p>1 reason, this letter was sent to me and my colleague 2 Marcus. It was sent by Lawrence Dean Costell(?), Vice 3 President and counsel at the Bank of New York Mellon on 4 the 13 October 2013 and we can read: 5 "The Bank of New York Mellon has been asked by Frank 6 advokatbyra, as legal counsel for the National Bank of 7 Kazakhstan to provide information in relation to the 8 assets held by Bank of New York Mellon, London branch. 9 I can confirm that: 10 "1. Bank of New York Mellon has concluded a global 11 custody agreement with NBK. 12 "2. Pursuant to the global custody agreement, Bank 13 New York Mellon holds certain shares and other assets in 14 custody for NBK at SEB. Bank New York Mellon holds 15 these assets on SEB account [account number] (the SEB 16 account). 17 "3. Under the global custody agreement, Bank 18 New York Mellon acts upon instructions from its client, 19 NBK. Bank New York Mellon does not accept any 20 instructions from the Republic of Kazakhstan with regard 21 to the SEB account. 22 "4. Bank New York Mellon does not have any 23 contractual relationship with the Republic of Kazakhstan 24 concerning the assets on the SEB account. 25 "5. NBK is the owner of the shares and other assets</p> <p style="text-align: center;">Page 101</p>	<p>1 evidence in addition to GCA which shows who the owner of 2 the assets in England is. Even better than that, we 3 have the AIG judgment. I would like to spend some time 4 on that. The question is how should this be considered 5 from the point of view of the English law and based on 6 the evidence we have presented, it would be foreign that 7 the rates are not held by NBK, but this has also been 8 confirmed by a judgment and this is the AIG case from 9 2005. 10 I will quickly present the basic facts about this 11 case. 12 AIG Capital Partners et al through an award, they 13 received a claim against Kazakhstan and AIG applied for 14 enforcement in England, and the enforcement was with 15 respect to NBK's claim to BoNY, according to the GCA, 16 something we just presented. So the case was about the 17 same agreement, the GCA, the same debtor, the Republic 18 of Kazakhstan, and the same situation of claims: NBK, 19 BoNY and possible rights, alleged rights, of the 20 Republic of Kazakhstan. And, as it follows from the AIG 21 judgment, the structure of the National Fund was exactly 22 the same at the time as it is today. 23 NBK intervened in this case, just like they did in 24 this case, and said that the assets belonged to the NBK, 25 and that they were immune, in accordance with the rules</p> <p style="text-align: center;">Page 103</p>
<p>1 in Bank New York Mellon's books. 2 "6. Bank New York Mellon maintains accounts 3 determining the ownership in the Bank New York Mellon's 4 books of the shares and other securities in the SEB 5 account. These accounts are held and managed in London 6 by New York Mellon's London branch. 7 "The above arrangements were in place before 2017 8 and continue in force today. 9 "I trust this is helpful. Please feel free to 10 forward this letter to the relevant authorities." 11 So this is the information that we received. It 12 follows from this letter that BoNY holds the assets on 13 behalf of all -- that the bank takes instructions from 14 the National Bank. It doesn't accept any instructions 15 from Kazakhstan, has no contractual relationship with 16 the Republic of Kazakhstan, that the NBK is the owner of 17 the shares and other assets on BoNY's books, and that 18 the accounts are held in London, and finally that all of 19 the above arrangements were in place, actually the term 20 relevance to this case and they continue in force. In 21 the same sense the GCA was concluded in addition to this 22 letter, or we have the letter dated 9 May 2019, where 23 the different screen prints were analysed which 24 confirmed that the property belongs to the National Bank 25 and doesn't belong to anybody else. So there is more</p> <p style="text-align: center;">Page 102</p>	<p>1 of the state's immunity. Even in that case the 2 applicants, AIG et al, they argued that the Republic of 3 Kazakhstan was the ultimate beneficiary or the QPO(?) of 4 the interest of the fund and therefore the assets were 5 enforceable. So the case was completely identical with 6 the case we're dealing with today, with the exception 7 that this was told in the English part of the debtor 8 chain. So what kind of conclusions were made by the 9 High Court of justice? 10 Well, this is what you can see on this slide. 11 This is at tab 3, page 1, page 43, where you can 12 read the conclusions in the AIG judgment. 13 What it says here, under paragraph 30, and this was 14 the English court, was a so-called TPD order, this kind 15 of order which the parties applied for: 16 "A TPD order cannot be made unless there is a debt 17 due or accruing due from a third party to the judgment 18 debtor. In this case the judgment debtor is the RoK." 19 Ie Kazakhstan, ie the bank. 20 "The relevant third party is AAMGS [which is BoNY]. 21 The cash accounts held by AAMGS in London are in the 22 name of the NBK not the RoK. The cash accounts were 23 opened pursuant to the GCA and clause 16(j) of the GCA 24 (which is governed by English law) recognises the common 25 law rule that cash in the cash accounts reflects a debt</p> <p style="text-align: center;">Page 104</p>

<p>1 owed by AAMGS to the NBK, which is the account holder." 2 So the High Court established that the NBK was the 3 holder of the account in London, and therefore the NBK 4 has a claim to BoNY, and therefore this claim could not 5 be attachable to anyone else on behalf of Kazakhstan. 6 The High Court of Justice also considered the 7 argument that Kazakhstan is the UBO. This was an issue 8 which was discussed there. 9 This is something we can read in the following 10 paragraph in the AIG judgment. The High Court writes: 11 "The fact that the RoK holds the ultimate beneficial 12 interest in the National Fund, and therefore by has 13 a beneficial interest in the cash accounts held by AAMGS 14 on behalf of the NBK, does not, in my view, mean that 15 there is a debt due or accruing due to the RoK in 16 respect of those accounts. The RoK has no contractual 17 rights against AAMGS, either under the GCA or otherwise. 18 There is no relationship of debtor and creditor between 19 them. The fact that the RoK may ultimately have 20 a beneficial interest in the money represented in the 21 cash accounts cannot, in my view, create such 22 a relationship. 23 "32. Therefore there is no basis on which to make 24 a TPD order against AAMGS. On this ground alone, the 25 interim TPD order must be discharged."</p> <p style="text-align: center;">Page 105</p>	<p>1 matter of AIG Capital Partners Inc versus the Republic 2 of Kazakhstan) gave its view on how the GCA should be 3 interpreted. In that judgment, the English court 4 determined that the Republic of Kazakhstan does not have 5 rights against Bank of New York Mellon which arise out 6 of the GCA. The following was considered in 7 paragraph 31 of that judgment ..." 8 And then they quote what we've just read and 9 paragraph 31 in the AIG judgment. The Dutch court 10 proceeds in bundle 5.3: 11 "The judgment cited here contains an opinion on the 12 legal relationship between the parties involved in that 13 judgment, which included the Republic of Kazakhstan, the 14 NBK and Bank of New York Mellon. Whilst Stati was not 15 involved as a party, it does not detract from the fact 16 that in these summary proceedings the interpretation 17 given by the (competent) English court of that 18 relationship, which is governed by English law, should 19 on the face of it be followed. The arbitral award from 20 which Stati derives its claim was rendered between it 21 and the Republic of Kazakhstan. This attachment was 22 levied on the claim which the National Bank of 23 Kazakhstan has on a third party, AAMGS Bank of New York 24 Mellon. It was ruled in the considerations cited in 5.2 25 above that under English law, the fact that the Republic</p> <p style="text-align: center;">Page 107</p>
<p>1 So -- but the court establishes here that it was of 2 no importance at all, the fact that RoK held the 3 ultimate beneficial interest in the National Fund. The 4 court, who was the owner of the assets which were to be 5 attached (inaudible), and the answer to this question, 6 the question who the assets belonged to, the answer to 7 this question was that it was the NBK, so the AIG 8 judgment confirms that the assets of the claims to BoNY 9 belongs to the NBK in England. This is the AIG 10 judgment. 11 But it should be noted that the court in Amsterdam 12 in two decisions from 2018, one for the applicant, 13 another for other creditors, have made the decision. So 14 I would like to consider one of the case, and this is 15 the Amsterdam court, the applicant, Kazakhstan, and 16 NBK, January 23, 2018, tab 5, page 103. 17 5.2 in the judgment. This is about the same assets 18 as we're dealing with here and the Amsterdam court 19 writes the following: 20 "The contractual relationship between the NBK and 21 notwithstanding New York Mellon is governed by the GCA 22 concluded in 2001 (see 2.19): the GCA is governed by 23 English law (see article 26 of the GCA); this was not 24 disputed by counsel for Stati at the hearing. On 25 20 October 2005 the (competent) English court (in the</p> <p style="text-align: center;">Page 106</p>	<p>1 of Kazakhstan may be the ultimate beneficiary of this 2 claim, it does not mean or imply that it is also a 3 de facto creditor of AAMGS Bank of New York Mellon. 4 Subsequently, it would appear on the face that Stati is 5 also unable to levy attachment on that claim for its 6 claim on the Republic of Kazakhstan. On that basis 7 alone, the claim to lift the attachment can be allowed." 8 So the Dutch court refers to the English court, and 9 noting that they have already decided on the matter 10 whether the represent has rights against BoNY, which 11 they raised out of GCA, and they announced that this is 12 not the case. You can say in brief that the Dutch court 13 says that when it comes to interpretation of the English 14 law according to an English contract, we will trust what 15 the English said about this issue. 16 And exactly the same conclusion was made by the 17 Amsterdam court in the so-called Caratube case, and I 18 will not present that in detail, but at the bottom of 19 the page you see a reference where he find the Caratube 20 case. But they came to the exactly the same conclusion 21 that they should trust the AIG judgment when it comes to 22 interpretation of the English law, and therefore they 23 refused the claim regarding the claim. 24 I think we'll break now. 25 THE CHAIRMAN: We'll take a break now. 15 minutes, to half</p> <p style="text-align: center;">Page 108</p>

<p>1 past. 2 (2.12 pm) 3 (A short break) 4 (2.32 pm) 5 THE CHAIRMAN: So everybody here? Equipment is working. 6 Yes. 7 MR GUTERSTAM: Yes. Yes, I shall now finish with the 8 English part, with the short rebuttal of the evidence 9 from the other side. We notice that no proof whatsoever 10 has been presented about the contents of the laws of 11 England. It has been said that the AIG judgment has no 12 effect, legally, since the applicant was not party, and 13 then there is reference to written evidence by the Bank 14 Mellon. 15 Now, the AIG case we say that it is obvious that it 16 has legal force in Sweden, but obviously it can work as 17 evidence relating on the interpretation of the laws of 18 England. And lots would be required if Swedish courts 19 should contradict an English court on the interpretation 20 of the laws of England. 21 Now, adduced evidence, and we heard this in Italy 22 from Mannheimer and the Republic, and it is the 23 submission, or what it is that the Bank of New York 24 Mellon in Belgium, where it said it was not completely 25 excluded, but there was a claim from the Republic.</p> <p style="text-align: center;">Page 109</p>	<p>1 So concluding briefly what we know about submitted 2 evidence among England. We noticed that there is GCA 3 confirming that it is the Central Bank and Bank New York 4 Mellon, which are the parties, and we have confirmation 5 from Bank New York Mellon in this letter to us at Frank 6 Law Firm. That letter was written prior to the threats 7 of \$500 million in damages, and then we have Bank of New 8 York Mellon's Bank in May 2018 confirming who is the 9 creditor in England. And then we have the AIG judgment 10 under identical conditions as in this case, and the 11 English part have found that it is only the Central Bank 12 who has the claim. And finally we have two judgments 13 from Amsterdam confirming how the AIG judgment has been 14 applied there. Against that, we have Bank of New York 15 Mellon's affirmation that it cannot be completely 16 excluded that there is a claim, a statement, that was 17 made under the threats of legal effects, criminal and 18 civil. 19 I now finish off with England and I go on to the 20 Kazakh part of this chain. Let us return to the 21 structure. 22 So number, when does the Kazakh conditions, when do 23 they become relevant? Well, according to the Central 24 Bank, they never become relevant to this case. The 25 assets cannot be attached in Sweden nor in England,</p> <p style="text-align: center;">Page 111</p>
<p>1 I just want to remind you briefly about the 2 circumstances. 3 It came, it was said, within the framework for the 4 sequestration decisions in Holland and Belgium and as we 5 heard, these decisions on sequestration in Holland and 6 Belgium work in a different way than in Sweden. 7 The court decides on sequestration and then that 8 message or court sends that decision which is sent to 9 the third parties that they decide themselves. It's not 10 like a Swedish enforcement agency. And if there's an 11 error in that judgment, in that case there are criminal 12 consequences in Belgium, but also civil consequences 13 insofar that one can be liable to damages for all of the 14 amount in litigation, that is in this case roughly 15 5 billion American dollars. 16 So it is within this setting that the Bank of New 17 York Mellon had these decisions on sequestration from 18 Holland and Belgium. And their submission was that they 19 said we have no assets belonging to Kazakhstan, and 20 after pressure and threats then they changed their 21 positions and wrote the Bank cannot fully exclude, as we 22 heard this morning. For that reason, they agreed to 23 freeze the assets and this is the evidence that we 24 adduce from the applicant relating to claims in the 25 English part.</p> <p style="text-align: center;">Page 110</p>	<p>1 which means that we can never end up in the Kazakh 2 situations. But if we would deviate whose assets these 3 are, then we end up in Kazakhstan, and then we must try 4 the rights there and whom they belong. And that is 5 determined by Kazakh law, and under the laws of 6 Kazakhstan there are three expert statements that I will 7 make reference to. 8 It is the ones from the Professors Suleimenov and 9 Mukasheva from 7 January and 28 February and 10 6 March 2018, and it is particularly the one from 11 28 February that I will speak about now. 12 So what assets are there in Kazakhstan? 13 As we can see from the structure we see the 14 relationship between the Republic and the Central Bank 15 that are governed by the National Fund agreement and by 16 Kazakh law. And that is the situation that we should 17 examine, and according to the Central Bank this is 18 a trust relationship, that is Kazakh trust. So the 19 money which has been transferred from the Republic to 20 the bank are included in a trust. The applicants 21 dispute that. 22 The fact that it is a trust is explicit from 28.7 in 23 the budget code which says as follows, we see it at the 24 top. It says: 25 "Trust management of the National Fund of the</p> <p style="text-align: center;">Page 112</p>

<p>1 Republic of Kazakhstan is carried out by the 2 National Bank of the Republic of Kazakhstan on the basis 3 of the trust management agreement, concluded between the 4 National Bank of the Republic of Kazakhstan and the 5 Government of the Republic of Kazakhstan." 6 So this provision we have looked at before, and it 7 says simply that the trust management, that is the 8 National Fund, shall -- or there the Central Bank shall 9 be the trustee and the Republic the trustor. This is 10 governed by an agreement which is the National Fund 11 agreement that we see quoted 1.1. I read that once 12 again: 13 "The government hereby transfers the fund under the 14 trust management by the bank, and the bank undertakes to 15 carry out trust management for the benefit of the 16 government by way of investing financial assets of the 17 fund." 18 So it is clear from the National Fund agreement 19 confirming that this is a trust. Then it should be 20 mentioned that all experts in this case, including the 21 expert invoked by the applicant, Professor Max(?), 22 seemed to agree that a trust was created by these two, 23 the budget code and the National Fund agreement. 24 Professor Max furthermore considers that we can 25 disregard this being a trust, for different reasons that</p> <p style="text-align: center;">Page 113</p>	<p>1 would say a few words about the property right or the 2 concept of property under Kazakh law. 3 We can read this in Suleimenov and Mukasheva's 4 statement from February 28, 2018. They write that in 5 Kazakh law there is a difference between civil right 6 property to proprietary rights, and property rights to 7 fungible asset, which is called rights of claims. So 8 proprietary claims is the right of ownership to a 9 physical thing, such as a car, and rights of claim is 10 the right to or the claim to fungible assets. In this 11 statement from February 28, the experts, Suleimenov and 12 Mukasheva, write as follows on the National Fund. 13 Article 27: 14 "As the National Fund assets are all fungible assets 15 (ie money and known documentary securities held in bank 16 accounts) the right of ownership to these assets is 17 a right of claim." 18 So the National Fund simply consists of 19 dematerialised securities and money that is fungible 20 assets. So the relevant concept under the laws of 21 Kazakhstan is rights of claim, and here we're going to 22 try to find who has the right of claim to these assets 23 in Kazakhstan. 24 Let us now examine how this looks like in Kazakh 25 law. We start with the Kazakh Civil Code. Let us look</p> <p style="text-align: center;">Page 115</p>
<p>1 we will return to, but a trust was created through this. 2 This seems to be undisputed among the experts, although 3 it is being disputed by the parties. And the fact that 4 it is a trust becomes clear from all the experts by the 5 law and by the National Fund, agreement and also by the 6 article invoked by the petitioner with 7 Professor Didenkos. Didenkos writes: 8 "The national bank exercises its function as the 9 trustee of the National Fund on the basis of the civil 10 law contract ..." 11 In other words, the trust management function. 12 So there is plenty and convincing evidence that this 13 constitutes a trust, and I'm using the English concepts 14 and, as you heard initially, also the Republic counsel 15 uses that concept, the reason being that our statements 16 that we use the English terminology and also the 17 legislation. The applicant two weeks ago submitted 18 a translation of the budget code, or it was called 19 (Swedish spoken, we do not offer an opinion on that 20 translation, that Swedish word, but what that concept is 21 what it means under Kazakh law, and not how it is 22 translated. 23 Now, what does this trust mean, the trust that has 24 been created through the national trust agreement and 25 the budget code? Before speaking about that, I simply</p> <p style="text-align: center;">Page 114</p>	<p>1 at that in binder 1, tab 14, page 173 is where I will 2 start quoting. 3 Here we see article -- initially I should say that 4 a trust under Kazakh law is not a legal person and the 5 legal effects of a trust, we find that in articles 883 6 to 95 in the Kazakh Civil Code, and 883.1 in the Civil 7 Code has the following: 8 "In the settlement, the trust management of 9 property, the trustee shall control on the beneficiary's 10 behalf the property, transferred to his or her 11 possession, use and disposal, unless otherwise provided 12 by the contract or legislation, in the interests of the 13 beneficiary." 14 And in 888.1 civil code, the top of page 175, and 15 the next quote, under heading "Rights and 16 responsibilities of the trustee": 17 "The trustee shall have the right to take any action 18 which could make the owner of a trusted property for the 19 purpose of appropriate management. 20 "The rights of the trustee to the trust property may 21 be limited by legislative acts, contracts or other acts, 22 under which the property trust management are based." 23 So, as we can see, in these two provisions, a 24 trustee has all the rights to assets transferred to the 25 trust, unless anything else is specified in the law or</p> <p style="text-align: center;">Page 116</p>

<p>1 by agreement. It is also important to note that when 2 a trustee acts, they act in their own name until -- 3 unless agreed otherwise. And we can also read that in 4 the professor's expert statement from 28 February, where 5 they write as follows, with reference to these 6 provisions: 7 "Accordingly, assets transferred into trust are held 8 and accounted for by the trustee in his own name, and 9 are no longer within the control of the Trustor or his 10 creditors." 11 This means that the transactions for the property in 12 a trust between the trustee, Central Bank in this case 13 and the third parties, for instance Bank of New York 14 Mellon, are transactions between indeed the trustee and 15 the third party, and there are no rights or obligations 16 towards the trustor, the Republic in this case. And 17 this of course affects how the -- the position of those 18 who have claims against the Republic and that is 19 regulated in 885. I quote again: 20 "4. Foreclosure on the debts of the founder of the 21 property, transferred by him (her) in trust, shall not 22 be permitted, except the cases provided by article 181 23 of this code and the insolvency (bankruptcy) of the 24 person." 25 So as can be seen clearly from this provision, one</p> <p style="text-align: center;">Page 117</p>	<p>1 Here it is seen sort of on the other side of the coin, 2 what rights are still there from trustor. It says: 3 "In the period of the contract of the trust 4 management, the founder of the trust may not take any 5 action with respect to the property held in trust, 6 unless another is provided by the legislative acts of 7 the Republic of Kazakhstan or this trust management 8 contract." 9 So from this provision it is clear that the trustor 10 has no rights whatsoever to the property transferred to 11 a trust. And finally I want us to notice 883 in the 12 Civil Code. It says: 13 "Trustee shall be entitled to claim, prosecute, 14 intrusted to him (her) for unlawful possession, and 15 demand the removal of a violation of his (her) right to 16 management even if these violations are not related to 17 possession." 18 Well, as can be understood from the expert statement 19 from 28 February, this provision means that the trustee 20 has the right to use all rights against third parties, 21 including the trustor, and that is also written about, 22 that the Kazakh court has confirmed that in a case in 23 Almaty. Let me see. Yes, next page. It says -- this 24 is a quote from their statement: 25 "The exclusive nature of a trustee's rights have</p> <p style="text-align: center;">Page 119</p>
<p>1 cannot attach assets for a debt, and this also becomes 2 clear from the comments to the Kazakh Civil Code which 3 was indeed written by Suleimenov, and he was an editor, 4 and it is quoted in their expert statement 5 from February 28. So this is a quote from the comments 6 to the Civil Code that is being quoted in the expert 7 statement. It says: 8 "As a general rule, the foreclosure on the debts of 9 the founder of the property transferred by him (her) in 10 trust, shall not be permitted. Exceptions concern 11 bankruptcy/insolvency of the founder which is a legal 12 entity (except for a public enterprise and 13 an institution) and an individual entrepreneur. In case 14 of bankruptcy/insolvency of such founders the trust 15 management is terminated and the property shall be 16 included to the bankruptcy assets." 17 So under Kazakh right, it is the trustee who 18 controls and administers the assets. They enter into 19 an agreement in the trustee's own name and these 20 documents cannot be foreclosed, and the consequence of 21 this article 885.4 that says that at the cannot be 22 foreclosed, it seems like it is undisputed in this case. 23 At least nobody has objected as saying that has another 24 meaning. That the trustee assumes all the rights, also 25 becomes clear from paragraph 886.1 in the Civil Code.</p> <p style="text-align: center;">Page 118</p>	<p>1 been confirmed in Kazakh case law in a case where the 2 trust founder and beneficiary (a joint stock company) 3 had attempted to exercise shareholder rights -- the 4 right to hold a shareholder meeting -- connected to 5 shares he had transferred into trust. The Specialised 6 Inter-district Economic court of Almaty held that the 7 founder and beneficiary of the trust could not legally 8 exercise those rights until the trust management 9 agreement had been terminated." 10 So as can be understood from this, once the shares 11 had been transferred to a trust, one has no right to use 12 any rights relates to those securities. 13 So this is briefly what the Kazakh law says on 14 a trust and its meaning. The applicant argues, and also 15 in the expert statements, it says that the property is 16 still owned by the Republic since all public property in 17 Kazakhstan, under the law of state property, is state 18 property or municipal and everything is included in what 19 is named State Treasury. 20 I want to clarify that these concepts are a bit 21 confusing. All property with some link to the state is 22 considered state property. This follows from the state 23 property law, and Suleimenov and Mukasheva comment on 24 that in their statement from 26 March 2018 when they 25 explain the meaning of that law. And what can be</p> <p style="text-align: center;">Page 120</p>

<p>1 understood is that this law has no civil law -- civil 2 rights effect. The purpose of this law is to 3 distinguish between property which is state level or 4 communal level. So this division between state and 5 communal level has no civil right effects and nor the 6 Civil Code provisions that we looked at. 7 So the property concept which is interest here is 8 who has the right of claim to these assets and that is 9 not affected by this division. 10 So now we have looked at the regulations under the 11 law and expert statements on those. Now I want to speak 12 about the rights that the Central Bank actually has, 13 that is to the assets in the trust. 14 The Central Bank's rates in Kazakhstan follow from 15 the fact that they are the trustees to the property and 16 that is how they have right to the money. And, as we 17 have read in article 888.1 in the Civil Code, they have 18 the right to take any action relating to the property in 19 the trust unless anything else is stipulated in laws or 20 agreements. What then is stipulated in laws or 21 agreement? We have looked at this before, it is article 22 2.1.1 in the National Fund agreement. 23 "The bank has the right to possess, use and dispose 24 of the funds under the conditions specified herein." 25 And, as we understand when we look at the</p> <p style="text-align: center;">Page 121</p>	<p>1 rights of claim which is the essential concept according 2 to Kazakhstani law. 3 If we move on to the Republic's rights with respect 4 to assets of the Trust, they have the rights which 5 followed from them being a trust, and, like we've 6 mentioned before, this follows from 861, any action with 7 respect to the property in trust, that the trust cannot 8 make any transactions with respect to the property held 9 in trust, unless it follows from a law and an oral 10 agreement. 11 And like with -- there is no law, no agreement, 12 which gives the state any right to take any measures 13 with the property, of the trust, and this is something 14 which is mentioned in the expert report 15 dated February 28 and their conclusion is: 16 "Neither Kazakh law nor the trust management 17 agreement provide that the Government has retained any 18 right to take any action with respect to the assets of 19 the National Fund whilst they are held in trust. This 20 means that the government cannot claim the National Fund 21 assets from the National Bank or transfer them, or claim 22 them from, any other party. 23 "Accordingly, the right of claim to the 24 National Fund assets has been transferred to the 25 National Bank and cannot be exercised by the Government</p> <p style="text-align: center;">Page 123</p>
<p>1 National Fund agreement, there are no limitations. And 2 this also becomes clear from Suleimenov and Mukasheva's 3 statement from February 28. There is also no limitation 4 in the law -- you saw that in the other exception -- and 5 it seems like it is undisputed in this case. There is 6 no limitation to this right. 7 From that we can conclude that the Central Bank has 8 all the rights listed here, and the Central Bank also 9 has the right to enter into agreements relating to the 10 assets in trust, for instance from GCA without linking 11 or compromising anybody else than the Central Bank, and 12 Suleimenov and Mukasheva conclude this in their 13 statement from 28 February: 14 "As we will explain further below, under Kazakh law 15 the National Bank, as trustee, has assumed all rights of 16 claim with respect to the National Fund assets from the 17 Government, as trustor." 18 So some words about the rights of the Central Bank. 19 The Central Bank has all the rights, including the 20 rights with respect to the property of the trust, you 21 have to the right to enter into an agreement with third 22 parties, which only bind the Central Bank to the third 23 party. It claims the rights of third parties, including 24 the state, and the assets in the transaction attached 25 for Kazakhstan and therefore the National Bank has the</p> <p style="text-align: center;">Page 122</p>	<p>1 for the duration of the Trust management agreement. 2 This right to the assets of the National Fund belongs 3 exclusively to the National Bank as an independent right 4 and is subject to legal protection, including from the 5 Government." 6 So they note that the state has no right of claim to 7 the disputed assets in the trust. 8 The next section in this expert opinion, this is 9 with respect to the third parties: 10 "This conclusion applies a fortiori to any rights 11 out of contracts that the National Bank enters into with 12 third parties in the exercise of its trust management of 13 the National Fund assets. As described in paragraph 35, 14 such contracts are entered into by the National Bank in 15 its own name, and therefore only create rights of claim 16 (and obligations) for the National Bank, not for the 17 Republic of Kazakhstan. For the avoidance of doubt, 18 Kazakh law does not provide for any other right of claim 19 on the National Fund assets (eg restitution or 20 otherwise) for the Government against either the 21 National Bank or a third party that the National Bank 22 contracts with in the exercise of its trust management 23 of the National Fund assets." 24 So, to summarise, the Republic has no rights of 25 claim. The applicants have objected here, saying that</p> <p style="text-align: center;">Page 124</p>

<p>1 state or the President has some kind of control or some 2 kind of influence over the property, and they have 3 referred to the Presidential decree number 402, saying 4 that the funds and the National Fund belong to the 5 Kazakhstani state with the government, and the President 6 of the Republic of Kazakhstan had the right to decide 7 how to dispose of the funds and they should be 8 undisputed, and all these claims are not correct. 9 The decree, Presidential decree 402, does not 10 support this claim, and the relevant section of the 11 Presidential decree 402 goes as follows: 12 "The scope and directions of use of the 13 National Fund shall be determined by the President of 14 the Republic of Kazakhstan, based on suggestions by the 15 Government of the Republic of Kazakhstan." 16 Without any supportive evidence or without any 17 expert statement from any expert in Kazakhstani law, the 18 claim was made that this paragraph would give the 19 President or the state influence over the assets and the 20 National Fund. This is not the case and to refute this 21 statement we have produced an expert opinion from 22 Mr Suleimenov and Ms Mukasheva, and this is the expert 23 opinion dated October 2018. And here they explain the 24 meaning of this section but they explain the decree in 25 some other sections. But specifically, when it comes to</p> <p style="text-align: center;">Page 125</p>	<p>1 according to these 33 provisions, and these are the 2 targeted transfers which were explained earlier. 3 Therefore the Republic has the right to receive 4 funds in the local currency, Tenge, that are used in the 5 terms of the accordance with the National Fund, has been 6 approved by the country's parliament and is incorporated 7 in the budget of country. Kazakhstan has no right to 8 claim any rights with respect to third parties which are 9 retained by the NBK with respect to the trust. 10 Now I would like to spend some time regarding the 11 objections on the basis of the Kazakhstani law, 12 objections made by the applicants, and these are three 13 main objections. 14 It's alleged the President has influence and actual 15 control over the trust and therefore this is not 16 a trust. Secondly, that the courts, even if the court 17 will find that this is a trust, they could as regard 18 from this issue because the trust structure is 19 a violation of valid law by violating the ban on mock 20 and sham transactions, and good faith principles in 21 paragraph 8, and that also that the trust structure 22 violates the Swedish public law too. 23 I will now present our legal objections to this 24 situation, but I would like to present the legal 25 arguments which are supported in our line of</p> <p style="text-align: center;">Page 127</p>
<p>1 point 3, what the expert opinion says, that this 2 provision deals with the issues of the National Fund. 3 And, like we've mentioned in the initial part of our 4 opening statement, "use" is not about the money or the 5 assets in the National Fund, but about what the funds 6 and the money in the National Fund are used once they 7 are withdrawn from the National Fund. So there's a big 8 difference between those two things. 9 This is something which is stated in the opinion: 10 "It should be noted that the word 'use' in the 11 context of decree 402 concerns the Government's use of 12 the money transferred from the National Fund. This is 13 evident from decree 385 which clarifies that the use may 14 be in form of a guaranteed transfer to the budget or 15 a targeted transfer to specific projects (see further 16 below) ..." 17 So, as it follows, if you read decree number 385 and 18 if you read the budgetary code, paragraph 43, it's very 19 clear that by using the word "use" they mean the money 20 which is taken out from the National Fund, not how the 21 funds in the National Fund should be managed. 22 So, to summarise, the right of claim to the assets 23 only rests with the National Bank; the state has no 24 right. This state is oddly not omni, but they just 25 addressed that they have the right to receive the funds</p> <p style="text-align: center;">Page 126</p>	<p>1 documentation. 2 I start with the alleged influence and actual 3 control exercised by the President. A condition for -- 4 which has been fulfilled in order for this evidence to 5 be relevant, it means that the circumstances should be 6 relevant when assessing who is the owner of the property 7 in accordance with the Kazakhstani law, and this issue 8 should be decided in such way as a Kazakhstani court 9 would decide the same. 10 So if Kazakhstani law says that the alleged 11 influence and alleged actual control should be 12 considered when deciding who the property belongs to, 13 the answer to that question is no, and therefore this 14 objection is of no relevance, and the evidence is of no 15 relevance at all. 16 But there are some issues which I would still like 17 to mention in this respect. 18 A general reflection would be when you discuss these 19 issues about the possible influence and the control 20 exercised by the President. Everything is always 21 compared with the Swedish conditions and a Swedish 22 minister would have no influence over a specific case in 23 Sweden. 24 But this is quite a narrow approach to this issue, 25 and here I'd like to show you a quote from</p> <p style="text-align: center;">Page 128</p>

<p>1 Roberth Nordhs' expert opinion, which was about the Svea 2 Court of Appeal. This is tab 23, binder 2, exhibit 284, 3 where he writes about the authority of the parties. He 4 says a factor which seems to be important in terms of 5 the court's acceptance is the governance of the NBK, 6 namely the influence which, according to the court, the 7 President of the Republic could exercise when it comes 8 to the activities of the NBK.</p> <p>9 The fact that the court has to pay attention to this 10 respect could probably extend by the Swedish governance 11 model where the authorities are relatively independent 12 when it comes to managing specific cases.</p> <p>13 This is not the general rule for the public 14 administration of other countries. On the contrary, in 15 countries such as Denmark, Norway and the UK, it's usual 16 that the activities of the agencies are governed through 17 directives from the government and that responsibility 18 for the separate decisions rests with the minister and 19 not with the specific public servants.</p> <p>20 As far as can I see, there are no civil or political 21 obstacles to an authority such as the state that they 22 could act as a subject of the law different from the 23 state. There is no connection between the 24 administration of the government's model and the 25 legality subjectivity of the authorities. So therefore</p> <p style="text-align: center;">Page 129</p>	<p>1 relevant to the case.</p> <p>2 But I would like to bring the court's attentions to 3 two issues:</p> <p>4 1, the considerations here should be based on the 5 circumstances present at the time of the attachment. 6 This structure has existed for more than 20 years, this 7 trust structure. It exists to today and this should be 8 the conditions for the court's consideration, not 9 hypothetical conditions in the future which the court is 10 not aware of. We could make comparison to the Swedish 11 company Vattenfall, which is the fully owned state 12 company. And the question is could you attach the 13 Vattenfall's assets on behalf the Swedish state? The 14 answer is no. And it doesn't matter that the state 15 could directly in the future dissolve, liquidate 16 Vattenfall. It is a bit irrelevant. What is relevant 17 is the situation at the time of the attachment order.</p> <p>18 The test, for the sake of argument, is what would 19 happen if one would liquidate the National Fund. The 20 counterparty doesn't want to go into detail about this. 21 Why? Because it doesn't support the argument. This has 22 been addressed by Suleimenov and Mukasheva's opinion, 23 dated March 6, 2018, where they write:</p> <p>24 "Upon termination of the Trust management agreement, 25 the Government of the Republic of Kazakhstan, as founder</p> <p style="text-align: center;">Page 131</p>
<p>1 it's strange that the state actually is a different 2 administration. They have the right to that, but 3 specifically there is no connection between the public 4 governance model chosen by the state and the authority 5 of the parties and who the property belongs to. There 6 is no connection between those two issues. But 7 a battery of different articles and enquiries et cetera, 8 reports have been submitted by the applicant, and we 9 object to the misrepresentations with respect to the 10 country and the bank, there are no reasons for me to go 11 through all this evidence because this evidence is not 12 relevant to our case.</p> <p>13 The only issue which I would like to discuss, which 14 allegedly supports the claim that the President of the 15 Republic exercises the influence is the claim that if 16 the President has the right to know the National Fund, 17 and therefore the state would receive all the securities 18 of the fund and allegedly this shows his actual control.</p> <p>19 Initially, the question whether the President could 20 actually cancel funds or not, there's an issue which has 21 been discussed and then the article which has been filed 22 by the applicants, Professor Didenkos had said he cannot 23 determine. Furthermore, we have dealt with a number of 24 legal provisions which require a decision by the 25 Kazakhi department, but this something which is not</p> <p style="text-align: center;">Page 130</p>	<p>1 and beneficiary under the Trust management agreement, 2 would only obtain a right to claim back from the 3 National Bank the remaining value of the National Fund 4 assets after termination of the Trust management 5 agreement. This too would be a right of claim that the 6 Government of the Republic of Kazakhstan would only have 7 against the National Bank as trustee under the trust 8 management agreement.</p> <p>9 "Accordingly, under the trust management agreement 10 and Kazakh (trust) law, the Republic of Kazakhstan has 11 no right to claim National Fund assets from third 12 parties, irrespective of whether the trust management 13 agreement is in effect or terminated."</p> <p>14 So, as it follows from this section, even if the 15 trust would be dissolved, the state has not the right to 16 the underlying, as they only have the claim from the NBK 17 and it isn't changed.</p> <p>18 So, to summarise, there is no support for the 19 statement of actual control or influence and it's not 20 relevant in accordance with the Kazakhstani law. And 21 even if it would be relevant, which it isn't, then the 22 evidence doesn't support that claim.</p> <p>23 The next objection is that the National Fund and its 24 structure would violate abusive rights and sham and mock 25 transactions; it would violate Kazakhstani law. And</p> <p style="text-align: center;">Page 132</p>

<p>1 this objection is extraordinary, to say the least, and 2 to be honest it is quite difficult to take it seriously. 3 The applicants are claiming that the National Fund, that 4 was created according to the Norwegian model that has 5 existed for more than 20 years, would be in breach of 6 the two provisions which I quote. One is 8.4 in the 7 Civil Code, saying that: 8 "Citizens and legal entities must act in good faith, 9 reasonably and fairly when exercising their rights, and 10 comply with the requirements contained in legislation 11 and the moral principles of the society. Entrepreneurs 12 must also comply with the rules of business ethics. 13 This obligation may not be excluded or restricted by any 14 agreement. The good faith, reasonableness and fairness 15 of the acts or participants in civil rights relations 16 shall be presumed." 17 Then a reference is made to paragraph 160 which is 18 about fictitious or faked transactions, which says 19 under 1: 20 "If a fictitious transaction is one which is entered 21 into only for the sake of appearances, without intention 22 to cause any legal consequences, shall be invalid. 23 "4. If one transactions is entered into only for 24 the purpose of hiding another transaction (faked), then 25 the rules shall be applied which are applicable to the</p> <p style="text-align: center;">Page 133</p>	<p>1 But this objection has been told. We've asked the 2 professors to provide their comment and these opinions 3 are exhibits 187 and 195, and you could say that these 4 experts were both mildly very surprised when they were 5 asked to comment on this, and I will not present 6 everything they say on this objection, but I would like 7 to summarise. 8 Some sections of their opinion, they say that the 9 provisions regarding these structures in the Civil Code 10 explicitly foresee the possibility of placement of 11 state's assets into trust. This is quite important. 12 The Civil Code explicitly foresees that the state can 13 place assets into trust structures, and at the same time 14 this would be in breach of a fundamental principle of 15 good faith in Kazakhstani law. This is completely 16 escalated. Suleimenov and Mukasheva are aware of that. 17 These are two of the most prominent lawyers in the 18 country. There is no support in the doctrine or any of 19 the statements that any of the structures of the 20 National Fund would be in breach of the abuse of right. 21 Even Professor Didenko reports on several occasions 22 that this is a trust. It's not invalid and, as far as 23 Suleimenov and Mukasheva know, a Kazakh court has never 24 failed a trust structure referring to the abuse of 25 rights. And also Suleimenov and Mukasheva say that, if</p> <p style="text-align: center;">Page 135</p>
<p>1 transactions which the parties actually had in mind." 2 Professor Max is referring to another translation of 3 paragraph 161 called mock and sham transactions, but you 4 can call it whatever you want. It's not about the 5 translation. 6 So give some context to these objections, the fact 7 that the central funds are responsible for 8 national funds or oil funds of this kind is huge. This 9 is the case in Norway. The Central Bank in Norway is 10 responsible for the Norwegian oil fund, and like 11 Professors Suleimenov and Mukasheva state in their two 12 opinions dated January and March, this is a usual model 13 used in Kazakhstan and this is used, among other things, 14 for the state pension fund. 15 Furthermore, it's not a secret that this is what the 16 structure looks like, or that a trust means exactly 17 that, because according to Kazakhstani law anyone could 18 read what a trust is according to Kazakhstani law, and 19 anybody could read the National Funds agreement which 20 creates the trust that's available to everyone. 21 So this is a common and completely transparent 22 structure. How would it be possible in that case for 23 this to be created only for the sake of appearance only 24 without the intentions of causing any legal consequences 25 et cetera. It's difficult for us to understand that.</p> <p style="text-align: center;">Page 134</p>	<p>1 you want to use the abusive right concept it should be 2 aimed at a certain legal or physical person. You cannot 3 just declare this invalid on the general grounds, like 4 the applicants are trying to. It should also be noted 5 that if the National Fund would be invalid according to 6 the Kazakhstani law, if they would be assessed by 7 Kazakhstani court, then a number of other trusts in 8 Kazakhstan would fail and the consequences would be 9 huge. So therefore the court should decide on this as a 10 Kazakhstani court would have decided on this issue, 11 applying Kazakhstani law. And it's obvious that the 12 Kazakhstan court would never fail -- would declare the 13 trust to be invalid. 14 The last observation that is in relation of the 15 Swedish public order. This is something I will deal 16 with during my closing statement. 17 So finally I would like to say who the assets belong 18 to in Sweden, just like Marcus presented. 19 SEB is the registered custodian. They have 20 an account in Euroclear. These securities are fungible 21 property. There are not only securities held at this 22 account. Some are owned by BoNY, but other customers in 23 SEB and other customers of BoNY. Let's see -- BoNY does 24 not have the right of ownership to any identifiable 25 securities. They only have a claim to securities of</p> <p style="text-align: center;">Page 136</p>

<p>1 a certain type and certain command from SEB. 2 So this right of claim could only be attached for 3 BoNY's debt. BoNY's customers, they have a right of 4 claim too, but against BoNY. But these rights of claims 5 are not in Sweden because the debtor, BoNY, is not in 6 Sweden. 7 If we look at the English section, it has been 8 established that the National Bank has a claim against 9 BoNY for money and so is entitled to securities. And 10 after the National Bank gives money to BoNY, this is 11 crediting, so therefore they have a claim against BoNY 12 regarding money and securities. They don't own the 13 assets as such and NBK can never claim the rights of 14 ownership to any specific monies or any specific 15 securities with respect to BoNY, and Kazakhstan has no 16 rights whatsoever with respect to BoNY in England. 17 So in England there are no assets which could be 18 attached on behalf of the Republic. 19 Finally, in Kazakhstan, like they have presented, 20 it's only the NBK which has the rights of claim, the 21 assets and the trust. This state has no right of claim 22 and the state can only get the rights to assets 23 according to this conditional claim in Tenge, in the 24 local currency, for certain purposes, and that's a 25 decision by the Parliament. And they could never get</p> <p style="text-align: center;">Page 137</p>	<p>1 where the securities are registered, and once again it 2 is the SEB's deposit. And here we see information from 3 that document from SEB. It's called "Statement of 4 securities". 5 Looking at that, it shows that there is the 6 situation in September 2017 where the account holder is 7 Bank New York Mellon. This is the court exhibit 39. 8 But Bank Mellon is registered with SEB as holding of 9 the shares for somebody else. That was written in 10 April 2018, sent to my colleagues, Connor Michaels. It 11 is in the binder with evidence, court exhibit 180. 12 Now, the last step down to England and Bank New York 13 Mellon's registry, it is the last one that shows the 14 securities and here it is written as the Central Bank as 15 the owner of the securities, which we can see amongst 16 others places here. It is screen prints from exhibit 60 17 in the court's binder, we see here that it is the 18 Central Bank who is the Bank New York Mellon's customer. 19 And we can also see from the account statement under 20 tab 19 in the binder 1, with evidence, page 65, is the 21 exhibit from the court, and that they -- the portfolio 22 of action is registered with the bank, SEB. 23 So concluding that three registries for the 24 securities: First SEB as the custodian in the 25 Euroclear's book, and then it's Euroclear who are listed</p> <p style="text-align: center;">Page 139</p>
<p>1 the specific assets, and since the assets are neither in 2 Sweden -- because the assets in Sweden belong to the 3 Republic, they cannot be attached. 4 Having said that, I will pass the word to my 5 colleague Magnus, who will say something about the next 6 ground, this is the securities are not located in 7 Sweden. 8 Submissions by MR NYGREN 9 MR NYGREN: Yes, as the counsel for the Republic explained 10 before, one ground is that the value of securities are 11 not in Sweden and they cannot be seized here. The claim 12 is that the securities are in London and there's 13 registry who is the genuine owner of the securities, and 14 there is also a registry on the sub -- the 15 sub-administrator. 16 But now I'm going to speak about the registries, 17 where they are registered. The documents I refer to in 18 this image, my colleagues have spoken about them 19 already. We do not need to look at the papers, it's 20 enough if we look at this. 21 As said previously, we see that in the public 22 shareholders' ledger by Euroclear, SEB is the registered 23 custodian, and we can see also this in the previous 24 document, related to Handelsbanken. 25 Going then to the next level, to SEB, next registry,</p> <p style="text-align: center;">Page 138</p>	<p>1 as the owner of the SEB, and then the owner registered 2 in the bank New York Mellon in London. And this is in 3 London where the chain of custodians are in London, and 4 we reach the registration of true owner of the 5 securities. And it is only here where it is clear who 6 the owner is. 7 In my closing argument I will argue why it should be 8 considered that the securities are located in London and 9 why the Swedish enforcement agency does not have 10 jurisdiction. They do not have a jurisdiction for 11 foreclosure. 12 MR FOERSTER: We have not reached the point where we 13 actually should start with the objection on the grounds 14 of the rights, the immunity and also the international 15 law. This would take two hours and instead of breaking 16 halfway through, I suggest that we break now for today. 17 We have heard a lot of civil rights, Kazakhi rights, and 18 I think it would be better to take these in one go 19 tomorrow and I assure that you will not use more time in 20 your planning. 21 THE CHAIRMAN: That's indeed what I was just going to ask. 22 MR FOERSTER: Gentlemen, yes, we have progressed fine today, 23 we are running ahead of schedule, and I think even 24 tomorrow will be better. 25 THE CHAIRMAN: Very well, that sounds like a reasonable</p> <p style="text-align: center;">Page 140</p>

1 solution. That means that we are done for today. We
 2 reconvene at 9 o'clock in the same room.
 3 No, wait, leave your affairs? I don't know.
 4 I don't know if the customary to do that.
 5 No, I don't believe so. I don't think we can be
 6 held responsible for that. I'm afraid not.
 7 I understand that it's a bit of a nuisance, but --
 8 MR NILSON: Maybe one can conclude that the documents are
 9 not valuables, maybe with the computers. We don't mind
 10 that.
 11 (3.30 pm)
 12 (The hearing adjourned until 9.00 am on Tuesday, 9
 13 April 2019)
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 16 Submissions by MR FOERSTER2
 17 Submissions by MS FERMBÄCK17
 18 Submissions by MR GUTERSTAM45
 19 Submissions by MR AXELRYD67
 20 Further submissions by MR GUTERSTAM84
 21 Submissions by MR NYGREN139
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