

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)**



BETWEEN:

CL-2017-000730
CL-2017-000730

THE FEDERAL REPUBLIC OF NIGERIA

Claimant

and

JPMORGAN CHASE BANK, N.A.

Defendant

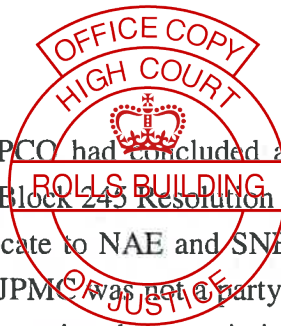
DEFENCE

1. In this Defence, save where otherwise stated or where the context otherwise requires:
 - (1) References to paragraph numbers are to the numbered paragraphs of the Particulars of Claim.
 - (2) The abbreviations and definitions used in the Particulars of Claim are adopted by JPMC for convenience only and without thereby making any admissions.
 - (3) Where an allegation in the Particulars of Claim is not admitted, the FRN is required to prove it.
 - (4) Save where expressly admitted or not admitted, each and every allegation in the Particulars of Claim is denied.

Background

The Escrow Agreement

2. On or around 4 May 2011, an escrow agreement was concluded between the FGN, NAE, SNEPCO and JPMC ("the Escrow Agreement"). The recitals to the Escrow Agreement recorded that:



- (1) On 29 April 2011, the FGN, NAE and SNEPCO had concluded an agreement (referred to in the Particulars of Claim as “the Block 245 Resolution Agreement”) pursuant to which the FGN committed to allocate to NAE and SNEPCO an oil-prospecting licence in respect of Block 245. (JPMC was not a party to the Block 245 Resolution Agreement, and nor did it have any involvement in its negotiation, drafting or execution.)
 - (2) Pursuant to the Block 245 Resolution Agreement, NAE, SNEPCO and the FGN were required to enter into an escrow agreement. NAE and SNEPCO were required to transfer into the escrow account the sum of \$1,092,040,000 which was to be used by the FGN for the purposes of settling any and all existing claims in respect of Block 245.
3. Under the terms of the Escrow Agreement:
- (1) JPMC was appointed as “Escrow Agent”. It was obliged to open the “Escrow Account” (as referred to in the first sentence of paragraph 37 of the Particulars of Claim), into which NAE was obliged by the terms of the Block 245 Resolution Agreement to pay the sum of \$1,092,040,000.
 - (2) JPMC was obliged to release the funds held in the Escrow Account, and transfer them to an account nominated by the FGN, upon receipt of an Escrow Completion Notice signed on behalf of NAE and SNEPCO and in the form set out in Schedule 2 to the Escrow Agreement.
4. The Escrow Agreement expressly incorporated JPMC’s “escrow terms and conditions” (“the Escrow Terms”), a copy of which was attached to the Escrow Agreement. JPMC will refer to the provisions of the Escrow Terms at trial insofar as necessary.
5. NAE transferred the sum of \$1,092,040,000 into the Escrow Account on 24 May 2011.

The Depository Agreement

6. On or around 20 May 2011, a depository agreement was concluded between the FGN and JPMC (“the Depository Agreement”). (This is believed to be the same agreement as is referred to in the second sentence of paragraph 39 of the Particulars of Claim, where it is incorrectly alleged that the Depository Agreement was concluded on 1 May 2011.)
7. Under the terms of the Depository Agreement:
- (1) JPMC was obliged to open the “Depository Account” (as referred to in the first sentence of paragraph 39 of the Particulars of Claim), and to accept deposits of cash made into that account.



- (2) JPMC was obliged, upon instructions from the FGN, to make payments out of the Depository Account to such party or parties as instructed by the FGN
8. The Depository Agreement expressly incorporated JPMC's "depository terms and conditions" ("the Depository Terms"), a copy of which was attached to the Depository Agreement. The Depository Terms included the following provisions:
- 2.3 The Depositor agrees that all Depository Cash held by the Depository pursuant to this Agreement is held by the Depository for the account of the Depositor and pursuant to the instructions of the Depositor.
 - 2.4 In relation to the Depository Cash from time to time held in the Depository Account, the Depository shall upon instructions from the Depositor pay such party or parties such amounts of the Depository Cash as instructed.
 - 5.1 The duties and obligations of the Depository in respect of the Depository Cash shall be determined solely by the express provisions of this Agreement. The Depository has no knowledge of the terms and provisions of any separate agreement or any agreement relating to the Depositor's Obligations, and shall have no responsibility for compliance by the Depositor with the terms of any other agreement, or for ensuring that the terms of any such agreement are reflected in this Agreement and shall have no duties to anyone other than the Depositor.
 - 5.3 The Depository shall be under no duty to take or omit to take any action with respect to the holding of, or any other matter relating to, the Depository Cash except in accordance with this Agreement.
 - 5.8 The Depositor hereby authorises the Depository to act hereunder notwithstanding that: ... (ii) the Depository or any of its divisions, branches or affiliates may be in possession of information tending to show that the instructions received may not be in the best interests of the Depositor and the Depositor agrees that the Depository is not under any duty to disclose any such information.
 - 7.1 Any and all instructions from either the Depositor to the Depository in connection with this Agreement shall be given by its Authorised Officer. Subject to clauses 7.2 and 7.3 and unless specified otherwise in this Agreement, the Depository shall act only on instructions given or purporting to be given by the Depositor by facsimile transmission. "**Authorised Officer**" means the person or persons signing this Agreement on behalf of the Depositor or those persons designated in Schedule 2 or any person from time to time nominated as an Authorised Officer by the Depositor (as the case may be) by notice to the Depository, such notice to be accompanied by a certified copy of the signature of any such person so nominated.
 - 7.2 Any instructions (regardless of the method of communication) given or purporting to be given by the Depositor, notwithstanding any error in transmission or that such instructions may prove not to be genuine, shall be conclusively deemed to be valid instructions from the Depositor to the Depository for the purpose of this Agreement if reasonably believed



by the Depository to be genuine... The Depository shall be under no duty to enquire into or investigate the validity, accuracy or content of any instructions or other communication...

7.4 The Depository need not act upon instructions which it reasonably believes to be contrary to law, regulation or market practice but is under no duty to investigate whether any instructions comply with any application law, regulation or market practice...

8.1 Neither the Depository, its affiliates, nor any of their directors, officers or employees, shall be liable to either the Depositor for any expense, loss or damage suffered by or occasioned to the Depositor:

- (a) by reason of any action taken or omitted to be taken by any one or all of the Depository, its affiliates, agents, or any directors, officers, employees or agents of such persons pursuant to this Agreement or in connection therewith; or
- (b) in the event of any loss, damage, destruction or mis-delivery of or to the Depository Cash howsoever caused; or
- (c) by any act or omission of any person not affiliated with the Depository;

unless caused by the fraud, gross negligence or wilful misconduct of the Depository...

8.2 Notwithstanding Clause 8.1, neither the Depository, its affiliates, nor any of their directors, officers or employees, shall in any circumstances be liable to either the Depositor for any expense, loss or damage suffered by or occasioned to either the Depositor by: ...

- (d) the Depository acting on what it in good faith believes to be instructions or in relation to notices, requests, waivers, consents, receipts, or other documents which the Depository in good faith believes to be genuine and to have been given or signed by the appropriate parties...

8.3 The Depository shall be liable only for reasonably foreseeable loss or damage which the Depositor suffers or incurs arising from the Depository's gross negligence or wilful misconduct and shall not be liable for any other loss or damage of any nature...

10.1 The Depositor hereby irrevocably and unconditionally agrees on demand to indemnify, and keep fully and effectively indemnified, (and on or after Tax basis) the Depository, and its directors, officers, agents and employees (the "indemnitees") against all costs, claims, losses, liabilities, damages, expenses, fines, penalties, Tax and other matters ("Losses") which may be imposed on, incurred by or asserted against the indemnitees or any of them directly or indirectly in respect of:

- (a) the following of any instruction or other directions upon which the indemnitees is authorised to act or rely pursuant to the terms of this Agreement, or arising as a result of entering into this Agreement or their status as holder of the Depository Cash; ...



- 11 The Depositor hereby represents and warrants to the Depository on a continuing basis that: ...
- 11.2 it is duly authorised and has taken all necessary action to allow it to enter into and perform this Agreement and the transactions contemplated hereby; ...
- 11.4 it has obtained all authorisations of any governmental authority or regulatory body required in relation to it in connection with this Agreement and such authorisations remain in full force and effect;
- 11.5 the execution, delivery and performance of and the transactions to be effected under this Agreement will not violate any law, regulation, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected and it is not restricted under the terms of its constitution or in any other manner from performing its obligations hereunder; ...
- 22.3 The Depositor represents and warrants that it shall comply with all applicable laws and regulations...
9. On or around 19 May 2011, the FGN nominated the Depository Account as the account to which JPMC should transfer the funds in the Escrow Account upon receipt from NAE and SNEPCO of an Escrow Completion Notice in accordance with the Escrow Agreement.
10. On or about 23 May 2011, NAE and SNEPCO delivered to JPMC an Escrow Completion Notice in accordance with the Escrow Agreement (which notice was received by JPMC on 24 May 2011). Accordingly, pursuant to its obligations under the Escrow Agreement, JPMC transferred the sum of \$1,092,040,000 from the Escrow Account to the Depository Account. The said transfer was made in two instalments of \$1,092,035,000 (on 24 May 2011) and \$5,000 (on 25 May 2011, but with a “value date” of 24 May 2011). JPMC had initially retained the latter sum to cover its fees incurred in connection with the Escrow Account, but this sum was later transferred from the Escrow Account to the Depository Account. In accordance with an agreement between JPMC and NAE, JPMC’s fees were instead met by NAE.

Instructions to make payments from the Depository Account

11. By a letter to JPMC dated 3 August 2011 from Dr Yerima Lawan Ngama (the Minister of State for Finance in the FGN), the FGN designated new Authorised Officers for the purposes of (and in accordance with clause 7.1 of) the Depository Terms. The letter specified that instructions in connection with the Depository Account were required to be given by one “category A” signatory and one “category B” signatory. The “category A” signatories were Dr Ngama and Mr Danladi Kifasi (Permanent Secretary of the Nigerian Federal Ministry of Finance). The “category B” signatories were Mr Otunla



Jonah Ogunniyi (the Accountant-General of the Nigerian Federation) and Mr Babayo Shehu (Director of Funds in the Office of the Accountant-General of the Nigerian Federation).

12. On 17 August 2011 JPMC received from the FGN written instructions (dated 16 August 2011) to transfer from the Depository Account:
 - (1) the sum of \$401,540,000 to an account in the name of Malabu at First Bank of Nigeria plc; and
 - (2) the sum of \$400,000,000 to an account in the name of Malabu at Keystone Bank Ltd.
13. The said instructions were signed by Dr Ngama and Mr Ogunniyi. Pursuant to the letter from the FGN dated 3 August 2011 as referred to in paragraph 11 above, Dr Ngama was an Authorised Officer and “category A” signatory, and Mr Ogunniyi was an Authorised Officer and “category B” signatory.
14. On 23 August 2011:
 - (1) JPMC completed telephone call-backs to Dr Ngama and Mr Ogunniyi to confirm their written payment instructions.
 - (2) Following receipt of the necessary confirmations, JPMC made the two payments specified in the FGN’s instructions received on 17 August 2011, as referred to in paragraph 12 above. JPMC received consent from the Serious Organised Crime Agency (“SOCA”) before making the payments.
15. On or about 3 July 2013, JPMC received from the FGN written instructions to transfer from the Depository Account the sum of \$74,200,000 to an account in the name of Malabu at Keystone Bank Ltd. The said instructions were signed by Dr Ngama and Mr Ogunniyi, each of whom continued to be an Authorised Officer (and respectively a “category A” and “category B” signatory) for the purposes of the Depository Agreement.
16. On 29 August 2013:
 - (1) JPMC completed telephone call-backs to Dr Ngama and Mr Ogunniyi to confirm their written payment instructions.
 - (2) JPMC transferred the sum of \$74,200,000.03 from the Depository Account to the Malabu account specified in the FGN’s instructions dated 3 July 2013, as referred to in paragraph 15 above. This amount was the balance of funds remaining in the Depository Account at that time. JPMC received consent from SOCA before making the payment.

17. In making the payments referred to in paragraphs 14 and 16 above, JPMC acted pursuant to valid, binding and irrevocable instructions given by the FGN pursuant to the Depository Agreement, and in accordance with its legal obligations under that agreement.



Response to the Particulars of Claim

18. Paragraphs 1-4 are admitted, save that the full name of JPMC is mis-stated in the first sentence of paragraph 2 (as well as in the heading to the Particulars of Claim and in the Claim Form). JPMC's full name is as set out in the heading to this Defence.
19. JPMC admits the descriptions of the "other persons and legal entities" referred to in paragraphs 5 to 19, save that:
- (1) No admissions are made as to the unparticularised "transactional arrangements" referred to in paragraph 11.
 - (2) As to paragraph 12, it is not admitted that NAE was "a conduit for the funds in issue", whatever is meant by that allegation.
 - (3) As to paragraph 13, it is not admitted that the licensing rights to OPL245 were "wrongfully" granted to Malabu. No admissions are made as to whether Etete "controlled" Malabu, or as to the size of his shareholding.
 - (4) No admissions are made as to the allegations in paragraphs 14 and 15.
20. As to paragraph 20:
- (1) JPMC does not plead to the vague, pejorative and tendentious summary of the claim in the first sentence. It is, however, denied that JPMC was party to the alleged "abuse" or "manipulation" referred to. As set out above, JPMC acted at all times in accordance with its legal obligations to the FGN under the Depository Agreement and pursuant to valid, binding and irrevocable instructions issued by Authorised Officers on behalf of the FGN.
 - (2) The second sentence is denied, insofar as it is possible to respond to such a vague and unparticularised allegation. JPMC's obligations to the FGN with respect to the funds held in the Escrow Account and then the Depository Account were governed solely by the express terms of (respectively) the Escrow Agreement and the Depository Agreement. Insofar as the Particulars of Claim seek to draw a distinction between the FRN and the FGN, JPMC's obligations were owed solely to the latter (the FGN being a party to the Escrow Agreement and the Depository Agreement while the FRN was not). JPMC acted at all times in accordance with the instructions it received from the FGN, as it was required to do under the terms of the relevant agreements.



21. As to paragraph 21:
 - (1) The first sentence is denied. JPMC's obligations to the FGN were governed solely by the express terms of the Escrow Agreement and the Depository Agreement. JPMC owed no obligations of any kind to the FRN as distinct from the FGN.
 - (2) The second sentence, which is based on a misconception as to the nature of a fiduciary duty, is denied.
22. JPMC has no direct knowledge of the matters alleged in paragraphs 22 to 30. The FRN is accordingly required to prove those allegations. It is, however, admitted that (as referred to in paragraph 25) JPMC was party to an escrow agreement (along with the FGN and SNUD) dated 22 December 2003, pursuant to which JPMC was appointed as escrow agent and required to hold certain funds in accordance with the terms of that agreement.
23. As to paragraph 31, it is denied that it was "necessary" to involve JPMC as alleged, but it is admitted that JPMC entered into the Escrow Agreement and the Depository Agreement, as described above. It is further admitted that (as set out in paragraphs 14 and 16 above) JPMC made payments out of the Depository Account to Malabu, as it was required to do under the terms of the Depository Agreement following receipt of the FGN's instructions to do so.
24. As to paragraph 32:
 - (1) The first sentence is denied. The FRN is required to prove that the Block 245 Malabu Resolution Agreement was a "device" or a "sham" as alleged. Insofar as it was, however, it is denied that JPMC was, or should have been, aware of this. Without prejudice to this position, it was specifically provided and agreed in the Depository Terms that (among other things):
 - (a) JPMC had no knowledge of the terms and provisions of any separate agreement to which the FGN was a party, and had no responsibility for the FGN's compliance with any such agreement (clause 5.1).
 - (b) JPMC was under no obligation to investigate whether any instructions complied with any applicable law, regulation or market practice (clause 7.4).
 - (c) The FGN represented and warranted to JPMC on a continuing basis that all transactions to be effected under the Depository Agreement would not violate any applicable law or regulation (clause 11.5).
 - (2) The FRN is required to prove the matters alleged in the second sentence. It is denied, insofar as alleged, that JPMC was or should have been aware of the matters referred to.



25. Save that no admissions are made as to the allegation of “illicit movement of funds” (whatever may be meant by that expression), paragraph 35 is denied for the reasons pleaded herein.
26. As to paragraph 34:
- (1) The Block 245 Resolution Agreement was entered into between the FGN, SNUD, the Nigerian National Petroleum Corporation, NAE and SNEPCO.
 - (2) It is admitted that the Block 245 Resolution Agreement contained the terms summarised in paragraph 34 (among others). JPMC will refer at trial to the Block 245 Resolution Agreement insofar as necessary.
27. Paragraph 35 is denied. In particular:
- (1) JPMC was bound by the Depository Agreement to hold the funds in the Depository Account for the account of (only) the FGN and pursuant to the instructions of (only) the FGN (clause 2.3 of the Depository Terms). It is denied that JPMC “considered the Claimant [i.e. the FRN] as the beneficiary of the Depository Account”. The depositor under the Depository Agreement was the FGN.
 - (2) It is also specifically denied that JPMC was required to be aware of any particular provisions of the Nigerian constitution.
28. Paragraph 36 is admitted. The appointment was made pursuant to the Escrow Agreement, as set out above.
29. As to paragraph 37:
- (1) The first sentence is admitted. As set out above, the parties to the Escrow Agreement were (in addition to JPMC) NAE, SNEPCO and the FGN.
 - (2) The second sentence is denied. The parties to the Escrow Agreement were as set out in sub-paragraph (1) above. The FRN was not a party, whether through the agency of the FGN or otherwise.
 - (3) As to the third sentence, it is admitted that, when the Escrow Agreement was concluded, JPMC was aware that Malabu (among others) was a party to a settlement in respect of Block 245. No other admissions are made.
 - (4) As to the fourth sentence, the FRN has not explained what “proper and appropriate due diligence” it is alleged should have been carried out, or the nature or source of the alleged duty referred to. It is, however, denied that JPMC owed any duty of any kind to the FRN (which was not a party to any relevant agreement with JPMC), whether in respect of “due diligence” or otherwise. It is also denied (insofar as alleged) that JPMC owed to the FGN any such obligation as is mentioned in the



fourth sentence, not least because of the contractual terms referred to in paragraphs 4 and 8 above.

- (5) The fifth sentence is accordingly denied. JPMC did not owe the FRN (or for that matter the FGN) any duty in respect of any of the matters referred to in that sentence, whether at the time of the conclusion of the Escrow Agreement or at any other time.

30. As to paragraph 38:

- (1) The first sentence is denied. As set out in paragraph 5 above, NAE transferred the sum of \$1,092,040,000 into the Escrow Account on 24 May 2011.
- (2) As to the second sentence, it is admitted that, under the terms of the Escrow Agreement, JPMC held the sums in the Escrow Account pending the delivery of an Escrow Completion Notice signed on behalf of NAE and SNEPCO and in the form set out in Schedule 2 to the Escrow Agreement. Upon the receipt of such an Escrow Completion Notice, JPMC was obliged to release the funds held in the Escrow Account, and transfer them to an account nominated by the FGN. It is denied, insofar as alleged, that the account so nominated was required by the terms of the Escrow Agreement to be an account at JPMC.
- (3) As to the third sentence:
 - (a) It is denied that the funds in the Escrow Account were “for the benefit of the Claimant”, insofar as this is intended to be an allegation that the FRN (or for that matter the FGN) had any kind of legal or beneficial interest in those funds while they were in the Escrow Account. Clause 2.3 of the Escrow Terms provided that the funds in the Escrow Account were owed by JPMC to NAE.
 - (b) It is admitted that the funds deposited by NAE in the Escrow Account were deposited in connection with the acquisition by NAE and SNEPCO of rights in respect of OPL245.
- (4) The fourth sentence is denied. The funds in the Escrow Account were in any event not deposited in the name of the FRN.

31. As to paragraph 39:

- (1) The first sentence is admitted. The account referred to is the Depository Account, which, as set out above, was opened pursuant to the Depository Agreement.
- (2) As to the second sentence:
 - (a) It is admitted that (as set out in paragraph 9 above) the FGN nominated the Depository Account as the account to which JPMC should transfer the funds



in the Escrow Account upon receipt from NAE and SNEPCO of an Escrow Completion Notice in accordance with the Escrow Agreement.

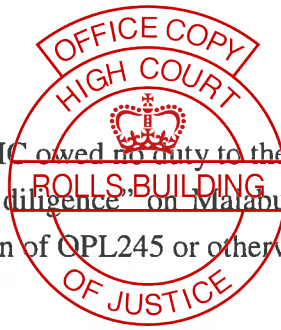
- (b) The reference to “a depository agreement dated 1 May 2011” is not understood. As set out above, the Depository Agreement was concluded on 20 May 2011.
- (c) It is denied that the FRN was a party to the Depository Agreement (whether through the agency of the FGN or otherwise). The only parties to the Depository Agreement were the FGN and JPMC.

32. As to paragraph 40:

- (1) Save that the Depository Agreement was actually (and not merely apparently) signed by Mr Fasouletos, the first sentence is admitted.
- (2) As to the second sentence, the description of Mr Ansari’s role is admitted. The relevance of this allegation is not understood.
- (3) As to the third sentence:
 - (a) It is admitted that, under the terms of the Depository Agreement, JPMC agreed to open the Depository Account.
 - (b) It is denied that the Depository Account was opened “for the benefit of the FRN”. The “Depositor” under the Depository Agreement was the FGN, and pursuant to clause 2.3 of the Depository Terms JPMC was obliged to hold the funds in the Depository Account for the account of the FGN and pursuant to its instructions.
 - (c) It is admitted that, following the receipt by JPMC of an Escrow Completion Notice from NAE and SNEPCO on or about 24 May 2011, JPMC, pursuant to its obligations under the Escrow Agreement, transferred the sum of \$1,092,040,000 from the Escrow Account to the Depository Account on 24 and 25 May 2011. Paragraph 10 above is repeated.

33. As to paragraph 41:

- (1) Insofar as the reference to “the Malabu Resolution” is intended to be a reference to the Block 245 Malabu Resolution Agreement as defined in paragraph 30(a), the first sentence is denied. The first recital to the Depository Agreement refers to the Block 245 Resolution Agreement (as defined in paragraph 30(b)), to which Malabu was not a party.
- (2) The second sentence is therefore based on a false premise and is accordingly denied.



- (3) The third sentence is in any event denied. JPMC ~~owed no duty to the~~ FRN (or for that matter the FGN) to undertake any “due diligence” on Malabu, whether in respect of its ownership and original acquisition of OPL245 or otherwise.

34. As to paragraph 42:

(1) In relation to the first sentence:

- (a) It is admitted that the Depository Agreement defined one of the “Depository Release Conditions” as “Written instructions per the Release Notice in Schedule 2”.
- (b) It is denied that, on the proper construction of the Depository Agreement, JPMC was only entitled to release funds from the Depository Account upon the receipt of a notice precisely in the form of Schedule 2 to the Depository Agreement. Schedule 2 contained an “example depository release notice”, and specified the information that written instructions for withdrawals from the Depository Account were required to contain. The giving of instructions in connection with the Depository Agreement was governed by clause 7.1 of the Depository Terms, which required only that any and all instructions from the FGN to JPMC be (i) given by the FGN’s Authorised Officer and (ii) given (or purportedly given) by the FGN by facsimile transmission.

(2) The second sentence is denied for the reason set out in sub-paragraph (1)(b) above.

(3) The third sentence is denied. As set out in paragraphs 12-17 above, JPMC made transfers from the Depository Account in accordance with written instructions received from Authorised Officers of the FGN pursuant to clause 7.1 of the Depository Terms. JPMC was both entitled and obliged to act on those instructions.

35. Paragraph 43 is denied.

(1) JPMC did not owe any obligations to the FRN under the Depository Agreement, because the FRN was not a party to that agreement. Clause 21 of the Depository Terms provided that any person who was not a party to the Depository Agreement had no right to enforce any term of the agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

(2) It is in any event denied that JPMC was obliged by the Depository Agreement (whether as a matter of the proper construction of the agreement, by an implied term, or otherwise) to do any of the things mentioned in paragraph 43. In particular:

(a) JPMC’s obligations under the Depository Agreement were (as set out in clause 5.1 of the Depository Terms) limited to those set out in the express



provisions of the agreement. Further, ~~clause 5.3 provided that~~ JPMC was under no duty to take or omit to take any ~~action with respect to~~ the holding of the Depository Cash except in accordance with the Depository Agreement.

- (b) JPMC's obligations under the Depository Agreement were owed only to the FGN and did not include obligations in respect of any of the matters referred to in paragraph 43.
 - (c) In any event, both the alleged "proper construction" and implied terms are contradicted by the express terms of the Depository Agreement, including clauses 7.2 (which provided that JPMC was under no duty to enquire into or investigate the validity, accuracy or content of any instruction or other communication) and 7.4 (which provided that JPMC was under no duty to investigate whether any instructions comply with any applicable law, regulation or market practice).
 - (d) It is admitted that JPMC was under regulatory obligations concerning money laundering, but these were not duties owed to the FRN (or for that matter the FGN).
36. Paragraph 44 is denied. JPMC did not owe the FRN any of the alleged tortious duties of care. Among other things, the express terms of the Depository Agreement preclude and/or are incompatible with the alleged duties.
37. Paragraph 45, which is based on a misconception as to the nature of a fiduciary duty, is denied.
38. Paragraph 46 is denied. It was specifically provided in paragraph 1 of Schedule 4 to the Depository Agreement that JPMC would not hold the funds in the Depository Account as trustee. JPMC did not hold the funds as trustee, whether for the FRN or anyone else.
39. As to paragraph 47:
- (1) In relation to the first sentence, it is admitted that in pre-action correspondence JPMC has referred to clause 7.2 of the Depository Terms (as well as several other provisions of the Depository Agreement).
 - (2) It is admitted that JPMC was under regulatory obligations concerning money laundering, but these were not duties owed to the FRN (or for that matter the FGN). Neither did JPMC owe the FRN any of the obligations set out in paragraph 43. The second sentence of paragraph 47 is accordingly misconceived.
 - (3) The third sentence is misconceived for the same reason. It is in any event denied that the provisions of clause 7.2 referred to in the first sentence are unenforceable, whether as alleged or at all.



40. Paragraph 48 is admitted. The confirmation referred to was given in the Escrow Completion Notice delivered to JPMC, as set out in paragraph 10 above. (For the avoidance of confusion, the “FGN Escrow Account” referred to in paragraph 48 and in the Escrow Completion Notice is the Depository Account opened pursuant to the Depository Agreement.)
41. As to paragraph 49, it is admitted that on 24 May 2011 NAE deposited the sum of \$1,092,040,000 into the Escrow Account, as set out in paragraph 5 above.
42. As to paragraph 50:
- (1) The first sentence is admitted. The transfer referred to was made by JPMC pursuant to its obligations under the Escrow Agreement.
 - (2) As to the second sentence, it is admitted that the three individuals referred to gave internal authorisation for a transfer from the Escrow Account to the Depository Account to be made in the sum of \$1,092,035,000 (this being the first of the two transfers referred to in paragraph 10 above). Approval for the second transfer, in the sum of \$5,000, was given by Mr Edy, Mr Lander and Ms Laura Ramsey. Both of these approvals were purely a matter of JPMC’s internal procedures. It is denied, insofar as alleged, that the confirmations given on the relevant JPMC internal forms that there were “no outstanding legal issues” were intended to refer to the (alleged) constitutional requirements of the FRN. The contents of these documents, which were internal to JPMC, are irrelevant to the FRN’s claim.
 - (3) In relation to the third sentence:
 - (a) It is denied that “the utilisation of the Depository Account” was contrary to the constitution of the FRN.
 - (b) It is denied that JPMC “should have been aware” that this was (allegedly) the case.
 - (c) The relevance of the allegations in the third sentence is in any event denied.
43. As to paragraph 51:
- (1) As to the first sentence, save that the Particulars of Claim mis-state the IBAN given in Mr Aganga’s instructions, it is admitted and averred that the instructions referred to were given (and were not merely “apparently” given) by Mr Aganga, who was at the relevant time an Authorised Officer of the FGN for the purposes of giving instructions to JPMC under the Depository Agreement.
 - (2) The second sentence is denied, although it is not clear precisely what “concern” it is alleged should have been raised and why. The Depository Agreement did not

provide that transfers from the Depository Account could be made only to Malabu. On the contrary, the Depository Agreement did not even mention Malabu, and imposed on JPMC an obligation, upon receiving instructions from the FGN, "to pay such party or parties such amounts of the Depository Cash as instructed" (clause 2.4 of the Depository Terms).

- (3) No admissions are made as to the purely hypothetical and unparticularised allegations in the third sentence.

44. Paragraph 52 is admitted.

45. As to paragraph 53:

- (1) In relation to the first sentence, it is admitted that on 2 June 2011 BSI returned to JPMC the funds that had been transferred on 31 May 2011. It is not admitted that BSI was "concerned about the legitimacy of the transaction", whatever that may be intended to mean. BSI explained that it was returning the funds "for compliance reasons".
- (2) In relation to the second sentence, no admissions are made as to the alleged inference referred to, the relevance of which is in any event denied.
- (3) The third sentence appears not to advance a positive case against JPMC, and JPMC therefore does not plead to it. However, on 8 June 2011 JPMC made a suspicious activity report ("SAR") to SOCA which explained (among other things) that BSI had returned the funds that had been transferred on 31 May 2011.

46. Paragraph 54 (which merely repeats the first sentence of paragraph 53) is admitted.

47. As to paragraph 55:

- (1) In relation to the first sentence:
 - (a) It is admitted that on 28 June 2011 the Supreme Court of the State of New York, on the application of ILCL, made an order of attachment in aid of arbitration.
 - (b) The said order was made against Malabu (which was named as the respondent in the order), and was issued in support of arbitral proceedings to be commenced by ILCL against Malabu in London. ILCL alleged in support of its application for the order that Malabu owed it the sum of \$65,522,400 for services said to have been provided in connection with the transfer of Malabu's rights in respect of OPL245.
 - (c) It is admitted that the sum secured by the order was \$74,695,936.



- (d) The order was served on JPMC (as “garnishee”) in New York on 8 July 2011, by way of sheriff’s levy.
- (e) Save as aforesaid, the first sentence is denied.
- (2) In relation to the second sentence, it is admitted that EVP commenced proceedings against Malabu in the Commercial Court in London, and that a freezing order was made in those proceedings against Malabu on 3 July 2011. The amount frozen by the order was \$215 million. No other admissions are made.
48. As to paragraph 56:
- (1) In relation to the first sentence, it is admitted that on 8 July 2011 Mr Danladi Kifasi, who was (and did not merely purport to be) the Permanent Secretary of the Ministry of Finance of the FGN, instructed JPMC to transfer the sum of \$877,040,000 to an account in the name of Malabu at Banque Misr Liban SAL (“BML”). Save as aforesaid, the first sentence is denied.
- (2) In relation to the second sentence, the FRN has not set out precisely what “further inquiries” it is alleged that JPMC should have undertaken in light of the instruction from Mr Kifasi. Pending the provision of proper particulars, the allegation is denied. Further and in any event:
- (a) JPMC rejected Mr Kifasi’s instructions as he was not an Authorised Officer for the purposes of the Depository Agreement. It was not therefore necessary for JPMC to undertake any further enquiries “before it facilitated the transaction”: JPMC did not make the transfer requested.
- (b) In any event, on 11 July 2011 JPMC made a further SAR to SOCA which referred to (among other things) Mr Kifasi’s instructions, and explained that JPMC had rejected those instructions.
49. As to paragraph 57:
- (1) It is admitted that JPMC refused to accept Mr Kifasi’s instructions dated 8 July 2011. JPMC also refused to accept revised instructions from him dated 11 July 2011, for the transfer from the Depository Account of \$802,040,000 to the same BML account in the name of Malabu.
- (2) As JPMC explained in a letter to Mr Kifasi dated 13 July 2011, the instructions were rejected (i) because Mr Kifasi was not an Authorised Officer for the purposes of the Depository Agreement, and (ii) because EVP had asserted (in the proceedings referred to in paragraph 47(2) above) a proprietary interest in the sums held in the Depository Account, and the validity of that claim needed to be resolved before JPMC would permit transfers to be made from the Depository Account. It



is denied that the rejection of the instructions on these grounds amounted to a mere “procedural issue”.

- (3) Further, JPMC made an additional SAR to SOCA on 11 July 2011, in which it informed SOCA about Mr Kifasi’s instructions dated 8 July 2011 (and that JPMC had rejected those instructions).
- (4) In the circumstances there was no need for JPMC to raise any further “concerns” about the instructions it had received.

50. As to paragraph 58:

- (1) The first sentence is denied. So far as JPMC is aware, there were no hearings before Gloster J in the proceedings between EVP and Malabu in 2011. The hearing which led to the judgment that she (as Gloster LJ) gave on 17 July 2013 ([2013] EWHC 2118 (Comm)) began on 27 November 2012.
- (2) In relation to the second sentence, it is admitted that by 14 July 2011 JPMC was aware of Etete’s conviction in France. The relevance of this is, however, denied.

51. Paragraph 59 is denied. In particular:

- (1) It is denied that the funds in the Depository Account were “rightfully the funds of the Claimant” (i.e. the FRN). As set out above, the funds in the Depository Account were held for the account of, and pursuant to the instructions of, the FGN.
- (2) The FRN is required to prove (a) that there was a risk that the funds in the Depository Account might be misappropriated by “acts of officials not acting in accordance with the law or constitution of” the FRN, (b) the nature of that risk and the potential acts referred to, and (c) the identity of the officials referred to.
- (3) The FRN is required to prove (a) that there were “parties or individuals other than [the FRN]” who “were seeking to misappropriate the funds held by [JPMC]”, (b) the identity of the parties and individuals referred to, and (c) how, why and for whose benefit those parties or individuals are said to have sought to misappropriate the funds referred to.
- (4) It is in any event denied that JPMC knew of (or should have known of or suspected) any of the matters referred to in paragraph 59.
- (5) It is denied that JPMC was required to have regard to the laws or the constitution of the FRN. JPMC’s obligations to the FGN in connection with the Depository Account were determined solely by the express terms of the Depository Agreement, which was governed by English law, and which expressly provided



that JPMC was under no duty to investigate whether any instructions complied with any applicable law. JPMC owed no duty of any kind to the FRN

(6) The relevance of the allegations in paragraph 59 is in any event denied.

52. As to paragraph 60:

(1) In relation to the first sentence:

(a) It is admitted that on 15 July 2011 the Supreme Court of the State of New York heard an application by ILCL for a temporary restraining order and preliminary injunction in aid of arbitration.

(b) It is admitted that the respondents to the application included Malabu and JPMC.

(c) It is admitted that, at the hearing of the application, a lawyer instructed by ILCL made submissions to the effect that Etete was Malabu's principal and that it was intended by the FGN that Malabu would receive the funds in the Depository Account. It is not admitted that those submissions were accurate.

(2) As to the second sentence, it is admitted that on 15 July 2011 the Supreme Court of the State of New York made a temporary restraining order and preliminary injunction in aid of arbitration which (among other things) temporarily enjoined JPMC from transferring (to the extent of \$65,522,400) the sums held in the Depository Account. It is admitted that the order referred to Etete as Malabu's principal.

53. As to paragraph 61:

(1) It is admitted that by 15 July 2011 JPMC was aware of Etete and of his association with Malabu.

(2) Paragraph 61 is otherwise denied, insofar as it is possible to respond to such vague and unparticularised allegations. In particular, it is not understood what is meant by "the requirements of ordinary compliance", or precisely what steps it is alleged should have been taken by way of "enhanced due diligence".

54. As to paragraph 62:

(1) The first sentence is admitted.

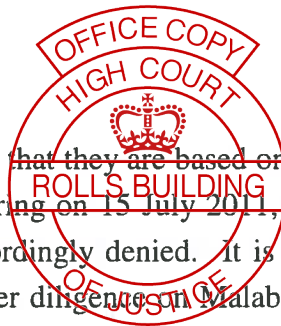
(2) In relation to the second sentence, it is admitted that the e-mail was addressed to Bayo Osolake of JPMC. It is denied that the e-mail contained further instructions to JPMC to transfer funds from the Depository Account. The e-mail referred to the fact that further instructions would be sent in hard copy by courier.



- (3) The third sentence is admitted.
- (4) The fourth sentence is denied. As explained in a letter from Clifford Chance LLP (on behalf of JPMC) to David Steel J dated 15 July 2011, the receipt of Mr Ismaila's e-mail was one of the factors which caused JPMC to make an application in the Commercial Court proceedings between EVP and Malabu (referred to in paragraph 47(2) above) for the freezing order made on 3 July 2011 to be varied.
55. As to the "summary" in paragraph 63:
- (1) It is denied that JPMC owed the FGN (or for that matter the FRN) any duty to carry out "reasonable due diligence" or any other duty in respect of the matters referred to. The allegations concerning what JPMC "would or should have known or at least suspected" if it had complied with those alleged duties are therefore misconceived and are accordingly denied.
- (2) It is denied for the reasons set out above that the funds in the Depository Account were held "in the name of the FRN".
56. On 19 July 2011, upon the application of JPMC as referred to in paragraph 54(4) above, David Steel J made an order in the Commercial Court proceedings between EVP and Malabu, varying the freezing order that had been made on 3 July 2011. Paragraph 4 of the freezing order was amended so as expressly to permit JPMC, upon receiving from the FGN valid payment instructions in accordance with the Depository Agreement:
- (i) To pay Malabu the sum of **US\$801,540,000** (eight hundred and one million, five hundred and forty thousand US dollars); and
 - (ii) To pay into Court (i.e. to the Account of the Court Funds Office of England and Wales), on behalf of Malabu, and to be held to the order of the English Court pending final determination of these proceedings or further order of the Court, the sum of **US\$215,000,000** (two hundred and fifteen million US dollars).
57. As to paragraph 64:
- (1) In relation to the first sentence:
- (a) It is admitted that Ms Maulucci sent the letter referred to on 22 July 2011. JPMC will refer to the letter at trial insofar as necessary.
 - (b) Ms Maulucci's letter was sent in response to a letter of instruction sent to JPMC from Dr Ngama and Mr Ogunniyi dated 20 July 2011, in which JPMC was asked to make transfers from the Depository Account of (i) the reduced sum of \$801,540,000 to Malabu's account at BML, and (ii) the sum of \$215,000,000 to the Court Funds Office of England and Wales.



- (c) Ms Maulucci explained that JPMC was unable to comply with that letter of instruction because it did not satisfy the requirements of the order made by David Steel J on 19 July 2011.
- (d) It is admitted that in her letter Ms Maulucci requested a meeting between representatives of JPMC and Dr Ngama as part of JPMC's security procedures.
- (2) The second sentence is denied. Representatives of JPMC met representatives of JPMC in Nigeria in May 2011, before the conclusion of the Depository Agreement.
- (3) In relation to the third sentence, representatives of JPMC met Dr Ngama and Mr Ogunniyi in Nigeria on 22 July 2011.
- (4) The fourth sentence is denied. The reasons why JPMC requested the meeting were as set out in Ms Maulucci's letter of 22 July 2011.
58. As to paragraph 65:
- (1) It is believed that the hearing referred to (in the Supreme Court of the State of New York) took place on 15 July 2011, not 22 July 2011 as alleged. It is assumed that this hearing was the same as the hearing referred to in paragraph 60.
- (2) In relation to the first sentence, the transcript of the hearing records that ILCL's lawyer submitted that "this case reeks of" "anti-terrorism, money-laundering, fraud, corruption, etc". It is not admitted that those submissions were well-founded, but their relevance is in any event denied.
- (3) In relation to the second sentence, it is admitted that JPMC became a party to the proceedings brought by ILCL against Malabu and that it was represented at the hearing on 15 July 2011. This was because ILCL sought a temporary injunction against JPMC, as referred to in paragraph 52 above.
- (4) The third and fourth sentences are denied, and are based on a wholly misleading partial quotation from the transcript of the hearing. In the relevant passage (on page 15), Mr Robert (not Donald) Houck on behalf of JPMC was referring to the fact that ILCL had submitted that JPMC had conceded that the Depository Account was for the benefit of Malabu. As is clear from the transcript when read as a whole, the purpose of Mr Houck's reference to ILCL's submission was to make it clear that the submission was wrong and that JPMC did not accept that the funds in the Depository Account were held for the benefit of Malabu. The allegations in the third and fourth sentences should never have been made and the FRN is invited to withdraw them forthwith.



59. The allegations in paragraph 66 are misconceived in that they are based on an incorrect reading and misquoting of the transcript of the hearing on 15 July 2011, as set out in paragraph 58(4) above. Those allegations are accordingly denied. It is in any event denied that JPMC was required to undertake “further diligences on Malabu” (whatever that may be intended to mean), or to investigate “the legality of the original award of OPL245 to the company” (whatever that is intended to refer to).
60. Paragraph 67 is denied. The New York court did not make any “findings” or “rulings” as alleged, whether on 22 July 2011 or at any other time. The only orders issued by the New York court were the order of attachment in aid of arbitration issued on 28 June 2011 (as referred to in paragraph 47(1) above) and the temporary restraining order and preliminary injunction in aid of arbitration issued on 15 July 2011 (as referred to in paragraph 52 above).
61. Paragraph 68 is denied, insofar as it is possible to respond to such vague and unparticularised allegations. It is wholly unclear precisely which alleged “obligations to prevent money laundering” are being referred to, and why they (allegedly) required JPMC to freeze the Depository Account or terminate the Depository Agreement. JPMC will respond to the FRN’s case on these matters if and when it is properly particularised.
62. Paragraph 69 is admitted. The letter appears to have been sent in order to correct the deficiencies in the earlier instructions dated 20 July 2011, as referred to in the letter from Ms Maulucci referred to in paragraph 57 above.
63. As to paragraph 70:
- (1) It is admitted that on 29 July 2011 a hearing took place before David Steel J in the proceedings between EVP and Malabu. The hearing was in respect of Malabu’s application to discharge the freezing order that had been granted on 3 July 2011 (as referred to in paragraph 47(2) above) and varied on 19 July 2011 (as referred to in paragraph 56 above).
 - (2) It is admitted that, in the course of his *ex tempore* judgment given at the conclusion of the hearing, David Steel J said the words attributed to him in the first sentence.
 - (3) In relation to the second sentence, it is admitted that David Steel J required the parties to the proceedings before him, and JPMC, to bring the nature and content of the proceedings to the attention of the Nigerian High Commission in London and the FGN. That direction was made by an e-mail from the judge’s clerk sent on 22 July 2011 (and not, as suggested by the second sentence of paragraph 70, at the hearing on 29 July 2011).
64. As to paragraph 71:



- (1) The first sentence is admitted. The letter referred to was dated 25 July 2011. JPMC will refer to it at trial insofar as necessary. The letter was sent to the law firm McGuire Woods (who acted for EVP) under cover of a letter dated 28 July 2011 from the Nigerian High Commissioner to the UK which stated that the Attorney-General's letter "explains the government's position in relation to the settlement of its disputes in relation to Oil Block 245".
 - (2) As to the second sentence, it is admitted that the Attorney-General's letter of 25 July 2011 was summarised in the judgment given by David Steel J on 29 July 2011. No other admissions are made.
 - (3) It is admitted that the Attorney-General's letter addressed (among other things) the matters referred to in the third sentence.
 - (4) As to the fourth sentence:
 - (a) No admissions are made as to whether or not the Resolution Agreements were "in the public interest of the Nigerian people" (an inherently subjective notion), or whether they involved any breach of duty under Nigerian law on the part of those (unidentified) "individuals in the FGN" who were responsible for concluding them.
 - (b) The relevance of these matters to the present case is in any event denied.
 - (c) Further and in any event, it is denied (insofar as alleged) that JPMC was or should have been aware of the matters alleged in the fourth sentence.
 - (d) Yet further, the Attorney-General's letter amounted to a clear representation on the part of the FGN and/or the FRN that the Resolution Agreements had the approval of the FGN and/or the FRN. It is denied, insofar as alleged, that JPMC could or should have questioned that assessment.
65. Paragraph 72 is admitted, save that there is a minor error in the quotation there set out: the third line should read "...stake call, it seems to me, for some degree...". JPMC will refer to the official transcript insofar as necessary.
66. As to paragraph 73:
- (1) It is not admitted that David Steel J had "plain judicial concerns" as alleged. In any event, as he said at the hearing on 29 July 2011, he was comforted by the written assurance that he had received from the Attorney-General of the FGN that the FGN believed the Block 245 Resolution Agreement to have been in the best interests of the Nigerian people.



- (2) It is admitted that JPMC did not “put a hold on further disbursements”. JPMC was not required to do so, and had in the circumstances ~~no right or power~~ to refuse to honour instructions received from the FGN if they complied with the requirements of the Depository Account.
- (3) Furthermore:
- (a) The order of David Steel J dated 18 and 19 July 2011 expressly permitted JPMC to pay \$801,540,000 to Malabu.
 - (b) As set out in paragraph 14(2) above and paragraph 68 below, JPMC obtained the consent of SOCA before making the payments from the Depository Account referred to in those paragraphs.
67. Paragraph 74 is admitted, save that the letter of instruction (from Dr Ngama) was dated 3 August 2011. The letter of instruction also requested JPMC to transfer \$215,000,000 to the Court Funds Office of England and Wales (in accordance with sub-paragraph (ii) of the amended freezing order made by David Steel J on 19 July 2011, as set out in paragraph 56 above). That payment was to be made in order to provide security for EVP’s claim against Malabu, in accordance with paragraph 13(a) of the freezing order made on 3 July 2011.
68. Paragraphs 75 and 76 are admitted. The payment of \$215,000,000 to the Court Funds Office of England and Wales did not, however, fail. JPMC first obtained the consent of SOCA before making the payments to BML and the Court Funds Office, which were made on 4 August 2011.
69. Paragraph 77 is admitted and averred. JPMC will refer to the Attorney-General’s letter at trial insofar as necessary.
70. Paragraph 78 is denied. In particular:
- (1) As to the first sentence:
 - (a) The FRN’s claim is flawed in fact and law for the reasons set out in this Defence, regardless of the letter from the Attorney-General dated 10 August 2011. It is in any event denied that JPMC is unable to rely on the letter in support of its defence, insofar as may be necessary.
 - (b) It is denied that either the “airing” of allegations in the New York court, or the alleged “concerns of [David] Steel J”, gave rise to any obligations on the part of JPMC to the FRN (or for that matter the FGN).
 - (c) The same is true of the “material relating to Etete” (whatever may be meant by that expression).



- (d) The Particulars of Claim do not contain ~~any particulars of~~ the alleged “reputation of the officials in control of the FGN”, or even identify the officials being referred to. JPMC will respond to these allegations, insofar as necessary, if and when they are properly particularised.
- (2) The second sentence is denied, insofar as it is possible to respond to so vague and unparticularised an allegation.
71. As to paragraph 79:
- (1) The first sentence is admitted.
- (2) The second sentence is denied. The letter of 16 August 2011 (received by JPMC on 17 August 2011) was signed by Dr Ngama (who was an Authorised Officer of the FGN for the purposes of the Depository Agreement and “category A” signatory), and by Mr Ogunniyi (who was an Authorised Officer and “category B” signatory). Further, the letter was sent shortly after the Attorney-General’s letter of 10 August 2011, which had provided assurances (on behalf of the FGN and/or the FRN) as to the legitimacy of the transfers that JPMC had been instructed to make to Malabu.
72. As to paragraph 80:
- (1) It is admitted that on 23 August 2011 JPMC made the two payments specified in the FGN’s instructions dated 16 August 2011.
- (2) JPMC made those payments only after (a) completing telephone call-backs to Dr Ngama and Mr Ogunniyi to confirm their written payment instructions, and (b) obtaining consent from SOCA.
- (3) Paragraph 80 is otherwise denied. It is in particular denied that JPMC was required to take any other step by way of “further due diligence”, or that it should have appreciated that the transfer was “of criminal property in a transaction ‘wreaking’ [sic] of political corruption” (which allegations the FRN is required to prove).
73. As to paragraph 81, it is admitted (as set out above) that the transfers were made. Paragraph 81 is otherwise denied, and paragraph 72(2) above is repeated. It is denied that JPMC was required to undertake any “further or enhanced due diligence”. It is noted that the FRN has failed to state either (1) precisely what further steps it is alleged JPMC should have taken, or (2) the nature and source of such alleged obligation.
74. As to paragraph 82:
- (1) In relation to the first sentence, on 3 May 2013 JPMC was notified by Malabu’s lawyers that ILCL’s claim in its arbitration against Malabu had been dismissed.

According to a consent order made in the Commercial Court in London on 7 May 2013 (which discharged a freezing order that had been made against Malabu on the application of ILCL in 2012), the arbitration award was issued on 18 April 2013.

- (2) In relation to the second sentence, on 25 June 2013 JPMC received from the FGN written instructions (dated 15 May 2013) to transfer from the Depository Account the sum of \$75,000,000 to an account in the name of Malabu at Keystone Bank Ltd. On 25 June 2013 JPMC sought consent from SOCA to transfer, in accordance with the FGN's instructions, the remaining balance in the Depository Account (which would not exceed \$75,000,000).
- (3) On 27 June 2013, JPMC wrote to the FGN to explain that it would not be able to comply with the instructions received on 25 June 2013, because the balance of the Depository Account was only \$74,200,000. On or about 3 July 2013, JPMC received from the FGN revised written instructions to transfer from the Depository Account the sum of \$74,200,000 to an account in the name of Malabu at Keystone Bank Ltd, as referred to in paragraph 15 above. JPMC sought consent from SOCA to make this payment on 7 August 2013.
- (4) In relation to the third sentence, on 4 July 2013 SOCA refused consent to make the payment of \$75,000,000 that was the subject of the request made on 25 June 2013. Consent to make the payment of \$74,200,000, as requested on 7 August 2013, was given by SOCA on 15 August 2013 and received by JPMC on 20 August 2013. JPMC transferred \$74,200,000.03 to Malabu on 29 August 2013, as set out in paragraph 16 above. This reduced the balance of the Depository Account to zero.

75. As to paragraph 83:

- (1) It is admitted that on 8 September 2014 HHJ Taylor, sitting in the Crown Court at Southwark, made an order under the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 freezing an account held at the City of London branch of National Westminster Bank plc. It is admitted that the order was made on the application of the PPM.
- (2) It is admitted that, on various dates between 28 May 2014 and 24 April 2015, orders were made by the Public Prosecutor of the Swiss Confederation freezing certain bank accounts in Switzerland. It is admitted that the orders were made on the application of the PPM.
- (3) Save as set out above, paragraph 83 is denied. The relevance of the allegations made therein is in any event denied.

76. Paragraph 84 is not admitted.



77. As to paragraph 85:
- (1) In relation to the first sentence, it is admitted that EVP brought proceedings against Malabu in the Commercial Court in London (as referred to in paragraph 47(2) above).
 - (2) The second sentence is denied. The freezing order made on 3 July 2011 provided (in paragraph 13(a)) that the order would cease to have effect if Malabu paid the sum of \$215 million into court by way of security. It did not require such a payment to be made.
78. As to paragraph 86, in her judgment dated 17 July 2013, Gloster LJ awarded EVP \$110.5 million in respect of its claim against Malabu.
79. Paragraph 87 is not admitted.
80. The FRN is required to prove paragraphs 88 and 89. The relevance of these allegations is in any event denied.
81. As to paragraph 90:
- (1) In relation to the first sentence, the FRN's case is denied for the reasons given above. The FRN has (again) failed to specify (a) which provisions of the Money Laundering Regulations 2007 are alleged to have applied and to have been breached, and (b) what the alleged "ordinary due diligence principles" required and how any alleged breach of them is said to give rise to a remedy in these proceedings. It is also unclear what "material available to the PPM" is being referred to.
 - (2) The allegations in the second sentence are also denied for the reasons given above. It is denied that the funds in the Depository Account were the funds of the FRN, or that JPMC owed any obligations to the FRN in respect of them.
82. As to paragraph 91:
- (1) It is denied that "the Escrow accounts" (which is assumed to be a reference to the Escrow Account and the Depository Account) were not "lawful in Nigeria".
 - (2) The relevance of the laws of Nigeria is in any event denied, given that (a) neither the Escrow Account nor the Depository Account was held in Nigeria, and (b) the obligations that JPMC owed to the FGN in connection with the Escrow Account and the Depository Account were determined solely by the express terms of (respectively) the Escrow Agreement and the Depository Agreement, which were both governed by English law.



- (3) It is denied, insofar as alleged, that JPMC was under any obligation to conduct any “due diligence” in respect of the laws of Nigeria.

83. As to paragraph 92:

- (1) In relation to the first sentence, it is admitted and averred that the Escrow Account was not part of the Consolidated Revenue Fund of the FRN. It was held by JPMC pursuant to the terms of the Escrow Agreement, which provided (among other things) that the funds in the account were owed by JPMC to NAE.
- (2) The second sentence is denied. JPMC was under no such obligation, as the terms of the Escrow Agreement and the Depository Agreement made clear. It is in any event denied that the FRN was JPMC’s “client”.
- (3) As to the third sentence, JPMC was under a legal obligation (with which it complied) to pay the funds into the Depository Account upon receipt of a valid Escrow Completion Notice.
- (4) The fourth sentence is denied. The relevance of the allegation is also and in any event denied.

84. Paragraph 93 is denied for the reasons given above. JPMC acted in accordance with its legal obligations and pursuant to the valid and binding instructions of the FGN when (1) transferring the funds in the Escrow Account to the Depository Account and (2) making payments from the Depository Account to Malabu.

85. As to paragraph 94:

- (1) It is denied that JPMC “found it difficult to disperse the funds”. It is admitted that on two occasions funds that had been transferred from the Depository Account were returned to JPMC.
- (2) It is admitted that the transfers made on 23 August 2011 were made to two banks in Nigeria. It is not admitted that these two banks were “not connected to the FGN”, but the relevance of that allegation is denied in circumstances where the transfers were made on the FGN’s valid and binding instructions, given in accordance with the terms of the Depository Agreement.

86. Paragraph 95 is denied. The transfers in question were made pursuant to the valid and binding instructions of the FGN, given in accordance with the Depository Agreement. The allegation that the transfers were made “without due regard to the governing mandate for the Deposit Account” is not understood but is in any event denied. As to the instructions pursuant to which the payments were made, paragraph 71(2) above is repeated.



87. Paragraph 96 is denied for the reasons given above.
88. As to paragraph 97:
- (1) The quotation from section 80(1) of the Nigerian constitution is admitted. Its relevance is denied.
 - (2) Otherwise paragraph 97 is denied. It is specifically denied that JPMC was required to be “cognisant of” the provisions of section 80(1) (or of any other provisions) of the Nigerian constitution, or that it owed a duty of care to the FRN (whether to carry out “the ordinary inquiries of a diligent banker” or otherwise). It is also denied that JPMC was “a banker to the FGN on behalf of the FRN”.
89. No admissions are made as to the vague allegation in paragraph 98 that “the Escrow” and “the Deposit Account” do not “fall under” section 80(1), but in any event the provisions of section 80(1) are irrelevant in this case.
90. Paragraph 99 is denied for the reasons given above.
91. As to paragraph 100:
- (1) The first sentence is denied for the reasons given above.
 - (2) The second sentence is denied. The transfers made by JPMC from the Depository Account were in accordance with the lawful and valid instructions of the FGN given pursuant to the Depository Agreement.
92. As to paragraph 101, it is denied that JPMC was required to undertake any “inquiries” or “due diligence” into the matters alleged (which matters the FRN is required to prove). The FRN has failed to state the nature and source of the alleged duties referred to.
93. As to paragraph 102:
- (1) In relation to the first sentence, it is admitted that the Depository Account had a balance of \$74,200,000.03 on 31 May 2013. It is denied that the funds in the account were “for the benefit to [sic] the Claimant”.
 - (2) As to the second sentence, it is admitted that JPMC transferred \$74,200,000.03 to Malabu’s account at Keystone Bank Ltd on 29 (not 20) August 2013, as set out in paragraph 16 above. This was in accordance with instructions received from the FGN dated 3 July 2013, as referred to in paragraph 15 above. JPMC obtained the consent of SOCA before making the payment. The second sentence is otherwise denied, insofar as it is possible to respond to such vague and unparticularised allegations.
94. As to paragraph 103:



- (1) In relation to the first sentence:
 - (a) It is denied that JPMC acted in breach of the Nigerian constitution whether as alleged or at all. The Nigerian constitution did not impose (and was not capable of imposing) any obligations on JPMC. It is irrelevant in the context of the present case.
 - (b) The FRN is required to prove (a) that the funds in the Depository Account were distributed to “corrupt government officials, corporations associated with these officials and persons connected with these officials”, (b) the allegation that such officials, corporations and persons were “corrupt”, and (c) the identity of the officials, corporations and persons referred to.
 - (c) It is in any event denied that JPMC knowingly facilitated the distribution of the funds in the Depository Account to the (unidentified) officials, corporations and persons as alleged.
- (2) It is denied that JPMC knowingly facilitated the distribution of the funds in the Depository Account to Etete. It is denied (insofar as alleged) that JPMC knew that Etete had acquired the initial rights to OPL245 in breach of any fiduciary duty (if indeed he had, which the FRN is required to prove).

95. As to paragraph 104:

- (1) In relation to the first sentence:
 - (a) It is admitted that JPMC transferred the funds in the Escrow Account to the Depository Account on 24 and 25 May 2011, as set out in paragraph 10 above. JPMC was required to do so by the terms of the Escrow Agreement upon receipt of an Escrow Completion Notice.
 - (b) The relevance of the allegations concerning “the officers of the Defendant” is not understood.
 - (c) The allegation concerning the confirmation that there were “no outstanding legal issues” is misconceived for the reasons given in paragraph 42(2) above.
- (2) The second sentence is denied. The constitution of the FRN is irrelevant for the reasons given above, and JPMC was under no obligation to have any regard to it.

96. The FRN is required to prove paragraphs 105 and 106, insofar as they may be relevant.

97. Paragraph 107 is denied. In particular:

- (1) As set out above, JPMC did not owe the FRN any of the duties referred to.



- (2) The allegations of breach (and of gross negligence) are also denied for the reasons given above.
- (3) Further, insofar as the FRN's claim is based on an alleged breach of duty on the part of JPMC in (1) "receiving" the funds held in the Depository Account (which took place on 24 May 2011), or (2) taking (or omitting to take) any other step before 14 August 2011 (when a standstill agreement was concluded between the parties), the claim is time-barred under the Limitation Act 1980.
98. Paragraph 108 is denied. As set out above, JPMC did not owe any duty to the FRN. The allegations of breach are also denied.
99. Paragraph 109 is denied.
- (1) In relation to the first sentence, JPMC did not "receive" funds other than as banker, pursuant to the instructions and for the account of the FGN. It is not admitted that the funds were paid to JPMC in furtherance of a "corrupt arrangement" (of which no particulars have been provided), or in breach of trust or fiduciary duty, but it is denied that JPMC was or should have been aware of those alleged matters (which the FRN is required to prove). In any event, the transfers to Malabu were made pursuant to JPMC's contractual obligations to the FGN and following the order of David Steel J dated 18-19 July 2011 which expressly permitted them (see paragraph 56 above).
- (2) The second sentence is denied.
- (3) The third sentence is denied. JPMC did not beneficially receive the funds in the Depository Account. The claim based on alleged "knowing receipt" is therefore unsustainable.
- (4) Further and in any event, any claim based on JPMC's alleged "receipt" of the funds held in the Depository Account (which took place on 24 May 2011) is time-barred under the Limitation Act 1980.
100. Paragraph 110 is denied. In particular it is denied that any breach or legal wrong by JPMC caused the alleged or any loss and damage.
101. It is denied that the FRN is entitled to the relief claimed or to any relief.
102. Further, the FRN's case as to the relationship between it and the FGN is unclear. In the premises, if and to the extent that the FRN succeeds in establishing that the Depository Account was opened by the FGN "for the benefit" of the FRN and/or that the FRN was (whether through the agency of the FGN or otherwise) a party to the Depository Agreement, then JPMC will be entitled to be indemnified by the FRN pursuant to clause



10.1 of the Depository Terms in respect of any liability which may be established against it in these proceedings, and the claim will thus fail for circuitry

103. Further and in any event, given that the FRN was (on its own case) represented at all material times by the FGN, the (alleged but unparticularised) corrupt and unlawful conduct of the relevant individuals within the FGN (of which the FRN itself complains in, among others, paragraphs 59 and 103 of the Particulars of Claim) falls to be attributed to the FRN, and the claim will (irrespective of its alleged legal basis) thus fail for illegality. JPMC reserves the right to plead further in this respect if and when the FRN provides further particulars of the respects in which it is alleged that members of the FGN were guilty of corrupt and unlawful conduct.

104. In addition, JPMC reserves all of its rights against the FGN, including to bring proceedings against it (whether in this action or otherwise) for an indemnity under clause 10.1 of the Depository Terms in respect of any sums for which JPMC is found liable to pay the FRN, and/or for breach of warranty under clause 11.

ROSALIND PHELPS QC

DAVID MURRAY

STATEMENT OF TRUTH

The Defendant believes that the facts stated in this Defence are true. I am duly authorised to sign this Defence on behalf of the Defendant.

Signed: Rebecca Smith

Name: REBECCA SMITH

Position: EXECUTIVE DIRECTOR & ASSISTANT GENERAL COUNSEL

Date: 29 March 2018

Claim No. CL-2017-000730

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND
AND WALES

COMMERCIAL COURT (QBD)

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA

Claimant

–and–

JP MORGAN CHASE BANK, NA

Defendant

DEFENCE



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