



**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**COMMERCIAL COURT (QBD)**

CL-2020-000092

**BEFORE: The Honourable Mr Justice Butcher**

**DATED: 5 May 2022**

**B E T W E E N:-**

**CRF I LIMITED**

**Claimant**

**and**

**(1) BANCO NACIONAL DE CUBA**

**(2) THE REPUBLIC OF CUBA**

**Defendants**

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**CONSENT ORDER**

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**UPON** the Order of Richard Salter QC, sitting as a Deputy Judge of the High Court, made at the first CMC on 4 March 2021 (the “**First CMC Order**”), pursuant to which a jurisdiction trial with a time estimate of 6-8 days is to take place (the “**Jurisdiction Trial**”) for the purpose of determining the issues identified in paragraph 5 of the First CMC Order

**AND UPON** the Order of Mrs Justice Cockerill dated 13 June 2021 (the “**June 2021 Order**”) )

**AND UPON** the Order of Mr Justice Andrew Baker dated 26 November 2021, by which the time estimate for the Jurisdiction Trial was re-confirmed and further case management directions were given (the “**Second CMC Order**”) )

**AND UPON** the Order of Mrs Justice Cockerill dated 15 January 2022

**AND UPON** the pre-trial review in these proceedings (the “**PTR**”) having been listed for 8 July 2022 with a half-day estimate, further to paragraph 21 of the Second CMC Order

**AND UPON** the Order of The Honourable Mr Justice Robin Knowles CBE dated 11 March 2022, by which the existing listings for the PTR and the Jurisdiction Trial were vacated



**AND UPON** the listing of the PTR for Friday 18 November 2022 with a half-day estimate

**AND UPON** the agreement of the parties that the First CMC Order be amended such that the issue of whether there has been valid service of the Claim Form be excluded from the Jurisdiction Trial and instead be held over to be decided at a later stage

**AND UPON** the parties agreeing that the question of whether the conditions for granting permission for service out of the jurisdiction are satisfied should be determined at the hearing of the Jurisdiction Challenge (such that if any of those conditions are not satisfied the order granting permission to serve out shall be set aside)

**AND UPON** the parties agreeing, and the Claimant undertaking, that the Claimant will not contend that, by engaging with the matters addressed in this Order, either of the Defendants has taken any step in the proceedings within the meaning of section 2 of the State Immunity Act 1978, or otherwise submitted to the jurisdiction of the English Court, and that all of their rights, privileges and immunities (if any) remain unaffected (including, but not limited to, those arising under the State Immunity Act 1978). For the avoidance of doubt, the Claimant makes no admissions or concessions in relation to the issues of immunity and jurisdiction or otherwise

**AND UPON** the agreement of the parties

**IT IS HEREBY ORDERED THAT:**

**Service of the Re-Amended Claim Form**

1. The time in paragraph 2(b) of the June 2021 Order for service of the Re-Amended Claim Form be extended to 31 December 2022 in respect of service upon the Second Defendant.

**Trial date, scope and length**

2. The scope of the Jurisdiction Trial (as defined at paragraph 5 of the First CMC Order) be limited so as to exclude issue (c) as to “*whether there has been valid service of the Claim Form*”, such issue to be held over to be decided at a later stage, if necessary.

**Directions**

3. The Defendants have permission to serve if so advised, by 20 May 2022, a statement of case responding to the matters pleaded in the Amended Points of Reply.



4. The costs of the further statement of case are reserved to the PTR. For the avoidance of doubt, the Claimant shall bear its own costs of the amendments to the Points of Reply, insofar as those amendments were not occasioned by the amendments to the Points of Defence.
5. The timetable set down in the Second CMC Order shall be amended as follows:

**Disclosure and Inspection**

6. Model C disclosure, or a hybrid version thereof, is to be made in respect of Issues 1-5 for Disclosure by 13 May 2022, with inspection to be agreed by the parties thereafter.
7. Model D disclosure (with narrative documents) is to be made in respect of Issues 6 and 7 for Disclosure by 13 May 2022, with inspection to be agreed by the parties thereafter.

**Witness statements**

8. Witness statements and any notices of intention to rely on hearsay evidence shall be exchanged by 4pm on 1 July 2022.
9. Any short supplemental witness statements shall be exchanged by 4pm on 5 August 2022.

**Expert evidence of Cuban law**

10. The permission for expert evidence on Cuban law set out in paragraph 14 of the Second CMC Order shall include the following (with the full revised scope for expert evidence set out as Appendix 1 to this order):

Whether, by reason of the duty of good faith and/or the doctrine of proper acts, BNC is precluded from denying that it and/or its officials validly consented to the alleged assignments, as pleaded in paragraphs 20.1E(c) and 20.5B(iii) of the Amended Points of Reply

11. Any costs arising from the revisions to the scope of expert evidence as set out in paragraph 10 of this Order are reserved to the PTR.



12. The Defendants shall serve their expert report on Cuban law by 4pm on 12 August 2022.
13. The Claimant shall serve its expert report on Cuban law by 4pm on 16 September 2022.
14. 14.1 by 30 September 2022 the experts shall meet for the purposes of (i) identifying and narrowing the issues, if any, remaining between them; and (ii) where possible, reaching agreement on those issues; and  
14.2. by 7 October 2022 prepare and file a joint memorandum (i) identifying those issues on which they are agreed and those on which they disagree; and (ii) summarising their reasons for disagreeing.
15. The parties may serve a short supplemental report each by 4pm on 21 October 2022.

### **Progress monitoring**

16. The progress monitoring date is 28 October 2022. Each party is to provide a completed progress monitoring information sheet to the Commercial Court Listing Office at least 3 days before the progress monitoring date (with a copy to the other party).

### **Jurisdiction Trial**

#### *Trial date and length*

17. The estimated length of the Jurisdiction Trial is reconfirmed as 6-8 days, commencing on 23 January 2023, with pre-reading for 2 days on 18 and 19 January 2023.

#### *PTR*

18. The parties shall agree (so far as possible) for the PTR, and the Court shall settle at the PTR, a trial timetable.



*Trial bundles*

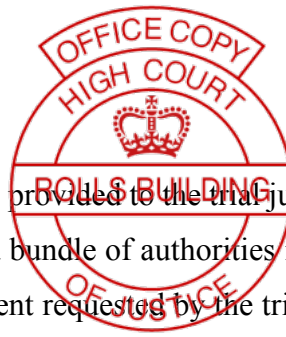
19. The Defendants shall send to the Claimant a draft bundle index for the trial bundle by 4pm on 14 October 2022.
20. The Claimant shall send any comments on the draft index by 4pm on 28 October 2022.
21. The Defendants shall provide the trial bundle to the Claimant in electronic form only, by 4pm on 11 November 2022.
22. The parties shall use their best endeavours to agree a Cuban law bundle containing (i) all Cuban legislation and related materials relied upon by the parties, including all the Defendants' internal rules, resolutions and guidance to which reference has been made in these proceedings; and (ii) an agreed English translation of each document inserted immediately after its Spanish counterpart. The Cuban law bundle shall be provided by the Defendants to the Claimant in electronic form only, by 4pm on 25 November 2022.
23. The Defendants shall file with the Commercial Court Listing Office the trial bundle for the use of the trial judge on 4pm on 13 January 2023, in electronic form only unless a hard copy of some or all of the trial bundle is requested by the judge.

*Pre-trial checklist*

24. Each party is to file and serve a completed pre-trial checklist by 4pm on 21 December 2022.

*Skeleton arguments*

25. Skeleton arguments shall be served sequentially, with the Defendants serving their skeleton argument not later than 1pm on 12 January 2023, and with the Claimant serving its skeleton argument not later than 4pm on 13 January 2023.
26. The parties shall endeavour to agree (i) a chronology of main events,



*dramatis personae* and reading list, to be provided to the trial judge by 4pm on 13 January 2023; and (ii) a combined bundle of authorities in electronic copy (and in hard copy, if and to the extent requested by the trial judge) by 4pm on 17 January 2023.

27. The parties have liberty to restore the CMC.

28. Costs of this consent order shall be in the Defendants' CPR Part 11 application.



Appendix 1: Revised Scope of Expert Evidence

1. There shall be permission for expert evidence on Cuban law, in particular on the Cuban law principles governing:
  - 1.1 the attribution to the First Defendant (**BNC**) and/or the Second Defendant (**Cuba**) of an act of a person purportedly consenting on behalf of BNC and/or Cuba to an alleged assignment of BNC's debt and/or related guarantee given by Cuba;
  - 1.2 BNC's and/or Cuba's consent to and/or BNC's capacity to consent to an alleged assignment of BNC's debt and/or related guarantee given by Cuba;
  - 1.3 BNC's authority to consent on behalf of Cuba to an alleged assignment of BNC's debt and/or related guarantee given by Cuba;
  - 1.4 the authority of BNC's officials (including Mr Lozano, Ms Marti, Ms Zubeldía and Mr Fernández) to consent on behalf of BNC to and/or ratify an alleged assignment of BNC's debt and/or related guarantee given by Cuba;
  - 1.5 whether, by reason of the duty of good faith and/or the doctrine of proper acts, BNC is precluded from denying that it and/or its officials validly consented to the alleged assignments, as pleaded in paragraphs 20.1E(c) and 20.5B(iii) of the Amended Points of Reply; and
  - 1.6 the consequences of any lack of such consent, capacity and/or authority, and/or the relevant act(s) not being attributable to BNC and/or Cuba.