



**His Honour, the Judge of
Lisbon Civil Court**

BEVERLY SECURITIES LIMITED, a company incorporated under the laws of the United Kingdom with the Registrar of Companies of England and Wales under number 1776729, whose registered office is at 144 High Street, Epping, Essex CM16 4AS England, United Kingdom, with an office in Portugal at Avenida da Liberdade, no. 110, 1269-046 Lisbon, entity qualified as an corporate entity, tax payer no. 980.066.476,

And,

BEVERLY SECURITIES INCORPORATED, a company incorporated under the laws of Panama, whose registered office is at Via General Micanor A. de Obar, Rio Calle 50 Plaza, Bancomer, City of Panama, Panama, with an office in Portugal at Avenida da Liberdade, no. 110, 1269-046 Lisbon

Hereby bring an action against,

THE ARMAMENTS CORPORATION OF SOUTH AFRICA LIMITED, a commercial company with public capital, incorporated under the laws of the Republic of South Africa whose registered office is at Armscor Building, Rigel Avenue, Erasmus Kloof, Pretoria, Gaunteng, Republic of South Africa, corporate registration number 1968/008611/06, taxpayer no. 4500101169,

**an AFFIRMATIVE ACTION FOR ORDER OF PAYMENT
BY ORDINARY PROCESS,**

which they do in the following terms and on the following grounds:



I - THE PARTIES and OTHER PARTICIPANTS IN THE FACTS

1.º

The Plaintiffs BEVERLY SECURITIES LIMITED (hereinafter "BSL") is a company incorporated under the laws of the United Kingdom, whose corporate purpose is to act as an intermediary, agent and commercial representative for third parties in all types of international commercial contracts, promoting the entering into and execution of same, especially the establishment of means and mechanisms for the transportation, supply and delivery of goods marketed by the parties represented thereby.

2.º

The Plaintiffs BEVERLY SECURITIES INCORPORATED (hereinafter "BSI"), is a company incorporated under the laws of Panama, with office in Portugal at the same address and having the same corporate purpose as that of BSL.

3.º

To such end, the Plaintiffs set up and developed their network of national and international contacts in order to establish an effective network of intermediation, agency, transportation and supply at an international level.

4.º

As consideration for the activities of intermediation, agency and representation for their various clients, the Plaintiffs earn a commission usually calculated on the basis of the overall value of the contract entered into between the parties represented,

5.º

Said commission is estimated, as a rule and in line with normal commercial practice in this market, at between 5% and 15% of the relevant overall amount.

6.º

The Defendant THE ARMAMENTS CORPORATION OF SOUTH AFRICA LIMITED (hereinafter "Arm Scor"), is a commercial company with public capital, incorporated under the laws of the Republic of South Africa under the statute "Section 2 of the Armaments Development and Production Act of 1968", whose corporate purpose is the acquisition and sale of materials of a civil and military nature on behalf of said Government and other public institutions, as well as the provision of associated



services to institutions under the auspices of the Ministry of Defence of the Government of said country.

7.°

Mr. Tielman Johannes de Waal was General Manager of the Defendant Armscor during the 1980s and 1990s, participating directly in the facts described below.

8.°

Mr. Piet C. Smith was the Defendant Armscor's Head of Foreign Procurement from 1988 to 1992, responsible for the negotiations involving the Plaintiffs, the Defendant Armscor, the Portuguese Defence Authorities and the company OGMA – Indústria Aeronáutica de Portugal, S.A. (hereinafter referred to as "OGMA") in the setting-up of a Portuguese supply and distribution channel under the terms better described below.

9.°

Mr. Raymond Pretorius was a senior member of the Defendant Armscor's management team, and was until 1992 said Defendant's General Manager for Planning Armscor Foreign Trade, at which point he succeeded Mr. Piet C. Smith as Head of Foreign Procurement of same.

10.°

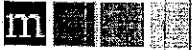
Mr. Raymond Pretorius was accused, tried and sentenced in the United States of America for crimes committed at the service the Defendant Armscor, and his participation in the facts leading to the non-performance of the contractual relationship of the defendant Armscor *vis-à-vis* the Plaintiffs - consisting of the deceitful opening and closure of the Plaintiffs BSL's bank account - constituted another offence included in the criminal conduct of said Defendant.

11.°

Mr. Piet C. Smith was also sentenced and censured in June 1995 by the Cameron Commission in the Republic of South Africa for grave delictual conduct, also committed at the service of the Defendant Armscor.

12.°

Mr. Eric Bestbier was Head of Air Force Foreign Procurement, exercising such functions during the 1980s with the Republic of South Africa Embassy in Paris.



13.°

Mr. Jacobus Johannes ("Kobus") Eksteen was Chairman of Armscor's Atlas Division during the 1980s and 1990s, especially dedicated to the acquisition and maintenance of aircraft, particularly helicopters.

14.°

Messers Eric Bestbier and Jacobus Johannes ("Kobus") Eksteen also participated directly in the deceitful manoeuvre that caused the Plaintiffs severe damage and loss, having unlawfully defrauded the Plaintiffs in respect of the payment of the 10% Commission that was owed to them by the Defendant Armscor under the terms described below.

15.°

Aerospatiale, S.A. (hereinafter "Aerospatiale") is a commercial company under French law, created in 1970, whose corporate purpose is the design, planning and production of military and civil aircraft and rockets, producing, among others, Airbus aircrafts, Alouette, Dauphin, Puma and Super Puma helicopters and Ariane rockets.

16.°

In 1992, Aerospatiale, following a merger with the company DaimlerBenz Aerospace AG (DASA) in the helicopter sector, formed the company Eurocopter Group.

17.°

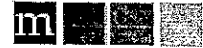
In 1999, Aerospatiale merged with the company Matra Haute Technologie, and in 2000, with the Spanish company Construcciones Aeronáuticas SA (CASA) and the German DaimlerChrysler Aerospace AG, from which resulted the current European Aeronautic Defence and Space Company (EADS).

18.°

Kredietbank S.A. Luxembourgeoise (hereinafter "KBL") is a banking institution under the private laws of Luxembourg, with a registered office at 43 Boulevard Royal, L-2955. Luxembourg, being a member of the corporate group KBC Group N.V., based in Brussels, Belgium.

19.°

KREDIETRUST LUXEMBOURG S.A. (hereinafter "KT"), is a limited company incorporated under the laws of Luxembourg, with registered office at Rue Aldringen



11, L-2960, Luxembourg, is also a member of the corporate group KBC Group N.V., whose corporate purpose is the management of the assets and rights held by the bank and Defendant KBL.

20.°

KBL and KT have since 1977 provided banking, financial and administrative services and advices to the Defendant Armscor in the monetary processing of its operations concerning contracts for the acquisition and financing of civil and defence items and materials or the provision of associated services.

21.°

Namely through the opening and operation of hundreds of bank accounts, in the name of third party off-shore "front companies", in order to carry out trans-national payments to various entities and the planning and setting up of schemes with a view to maximizing anonymity in its dealings and to affording the means by which trading activities could be conducted with the least possible risk of exposure.

22.°

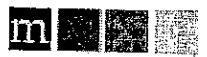
The Defendant Armscor, with the knowledge, complicity and direct action of the other participants in this claim, tried to devise a similar scheme in order to pay the Plaintiffs 10% Commission as better described below.

23.°

The bank KBL and its affiliated financial sister company KT played a proactive role in the protection of the interests of the Defendant Armscor and the Government of the Republic of South Africa during the "*Apartheid*" regime until the mid-1990s, being one of the fundamental players for facilitating banking operations during said period. This collaboration and complicity between Armscor and its principal European Bank, KBL and KT, is referred to herein as the "grand complicity."

24.°

One of the accounts that the bank KBL opened under its commercial relationship with the Defendant Armscor was a bank account in the name of the Plaintiffs BSL, which Armscor in complicity with KBL said was opened for the purpose of said Defendant paying the 10% Commission owed to the Plaintiffs.



25.°

In fact the real purpose behind the opening of the said account was to deceive the Plaintiffs into believing wrongly that their commission would be paid by Armscor, so as to cause them not to exercise a commercial veto that they possessed in Portugal which could and would have been used to protect their position had they known of the Defendant Armscor's true intention.

26.°

The bank KBL participated directly in the material facts that caused the damages to the Plaintiffs when, by order and instruction of the Defendant Armscor given by Messers Piet C. Smith and Raymond Pretorius, following the plan devised by the other participants, it opened the BSL account with the real cause and effect better described below.

27.°

In addition, it later closed that bank account at the request of the Defendant Armscor and Mr. Raymond Pretorius, a fact that was at the time neither known to the Plaintiffs BSL, nor ever expressly or tacitly authorized by BSL.

28.°

Moreover, the Defendant Armscor and the other participants, notably KBL and KT in the capacity of bank institutions, failed to provide any prior or subsequent information to BSL about the account or its true purpose.

II - THE FACTS

A) THE CONTRACTUAL RELATIONSHIP BETWEEN THE PLAINTIFFS BSL/BSI AND THE DEFENDANT ARMSCOR

29.°

In the mid-1980s, at the request of the Government of the Republic of South Africa the Defendant Armscor entered into negotiations with the French company Aerospatiale with a view to acquiring and supplying items and associated services (in upgrade kit form) for "Puma" helicopters (their purpose being "Puma Search and Rescue Helicopters"), the acquisition of the then new helicopters close to Super



Pumas for Search and Rescue missions, and the entering into of service agreements for the assembling and maintenance of said helicopters.

30.°

Said negotiations followed an already long commercial relationship between the Defendant Armscor and Aerospatiale regarding the purchase of aircraft, respective spare parts and technical assistance.

31.°

The contractual relationship above mentioned reached between Armscor and Aérospatiale, was code-named "Project Adenia".

(i) THE OBJECT AND PURPOSE OF PROJECT ADENIA

32.°

Even though Project Adenia had been held strictly secret within the Armscor office at the South African Embassy in Paris, it can be seen from contemporaneous documents and pertinent witness testimony gathered by the Plaintiffs that such agreement concerned:

(a) The Delivery of 50 new S2 helicopters in kit form

33.°

The delivery in kit form of 50 new Helicopters S2 re-branded as "the Oryx" in South Africa by the Defendant.

34.°

This part of the project has been concealed to the Plaintiffs by Armscor and only revealed later on the occasion of proceedings before South African courts and statements given by former employees of Armscor as explained below.

35.°

The project was thus related the delivery in kit form of 50 new complete helicopters, including a front Puma fuselage of Romanian origin fabricated by the company I.A.R. (the Romanian company I.A.R. still manufactured the Puma at that time) and a S2 kit including the essential other components of the AS332 Super Puma (rotor, tail rotor, avionics, controls, etc).



36.°

These new helicopters which the protagonists initially called "S2 kits" or "Super Pumas" were not properly speaking AS 332 Super Pumas, but a hybrid aircraft later named "Oryx" and assembled in South Africa by the company Atlas (which became Denel), an affiliate of Armscor. The aircraft is thus named an Atlas or Denel Oryx. As well,

(b) Engineering and Conception

37.°

Included engineering and conception services rendered by Aérospatiale to the Defendant Armscor, since Aérospatiale engineers were sent to South Africa at the beginning of the 1980's, who have also been affected by the original concept of the hybrid aircraft Oryx, which combined elements of the Puma and the Super Puma.

38.°

Mr Palm of Armscor specifies that "all the plans and assembly and maintenance manuals came directly from Aérospatiale to Armscor". Mr Steynberg of Armscor confirms that the helicopters have been conceived by Aérospatiale, in accordance to statements that will be subsequently attached.

39.°

One of the engineers working on Project Adenia, Mr Pompeo, mentions that *"the design of the grounding test of the plane [and of] the modification of the principal transmission box of the Super Puma [as well as] the design and the verification studies and the tests of the gear boxes"* between "1988 and 1989" in the Project followed by other concept and testing work between 1989 and 1993, until 1995, the date at which the Oryx have all been delivered.

(c) Transfer of Technology to the Defendant Armscor in South Africa

40.°

All operations included in Project Adenia were accompanied by a transfer of technology to South Africa relating to sophisticated helicopters. Part of the transferred technology (radios, avionics and transponders) have however been purchased by Aérospatiale from the American company Rockwell Collins.

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19



(d) Assembly

41.º

The assembly of the Oryx took place partially at OGMA in Portugal and in South Africa. The Aérospatiale Engineers sent to South Africa at the beginning of the 1980's have been used for this purpose.

(e) Spare Parts and Maintenance

42.º

As for the putting into service of an aeroplane or a helicopter, an important part of the transaction relates to the delivery of spare parts and the regular maintenance of the aircrafts. For this purpose, the Aérospatiale Engineers have been sent to South Africa. This situation remains in effect so long as the aircraft are still in service.

(f) Transportation

43.º

The 50 aircraft had been transported in various states of completion from France to South Africa, transiting Portugal.

44.º

In this respect, the details of the transportation have been described in an agreement entered into on 3 and 7 June 1988 between OGMA, Aérospatiale, Armacor and two intermediary companies, Zandumec and Reigosa representing Aerofrete (according to information to be subsequently attached).

45.º

This agreement was deliberately designed to mask the link between the principal parties to the sale/purchase agreement.

46.º

In this respect, the logistics involved in Project Adenia have been exceptional and remains partially in place, particularly as concerns the maintenance of the helicopters which continues until today.



(g) Modernization of a part of the existing fleet of South African SA300 Pumas

47.º

Other S2 kits have been used to modernize the Pumas then in service. It appears that 30 aircraft have been modernized.

48.º

This operation required the delivery of spare parts, of assembly and installation, of engineering and of transportation.

(h) Sending of spare parts for the Alouette helicopters in South African service

49.º

The project has also involved the delivery of spare parts for at least one other helicopter manufactured by Aérospatiale and in service in South Africa, the light aircraft (3 places) Alouette III.

50.º

Which is confirmed by one of the Engineers involved in the Adenia Project, as the "installation of the kits for Alouette" between "1993 and 1995" was also part of the project.

(i) Modernization of the 10 Portuguese SA330 Pumas (11 kits S1)

51.º

As better explained below, the project included the modernization of the 10 SA 330 Puma helicopters for maritime Search and Rescue operated by the Portuguese Air Force.

52.º

At that time, Aerospatiale had another model of upgrade kit for the Puma Search and Rescue helicopters called the S1, which consisted solely of the installation of (i) two new motors (trade name "Makila"), which were around 20% more powerful and economical than the original version of the Puma, produced by the French company Turboméca, and of (ii) a new transmission for the vehicles' rotors, and (iii) other

components and controls aimed at giving more stability to the vehicle due to its increased power.

53.°

The Government of the Republic of South Africa took the above mentioned decision to acquire Search and Rescue helicopters as it did not possess the logistical search and rescue means to carry out rescue operations at sea and coastal and maritime surveillance, and to deal with natural disasters, especially floods, which occurred very frequently in said country.

(ii) INTERMEDIATION AND AGENCY SERVICES PERFORMED BY THE PLAINTIFFS

54.°

The Plaintiffs, through contacts developed by Messrs. Luis Pinhol and Jorge Pinhol, both directors of the Plaintiffs, and by General Henri Troni, former general of the Portuguese Air Force, he being another member of the management team of the Plaintiffs, was at the time known in the market by the Defendant Armscor and by Aerospatiale.

55.°

The Plaintiffs' director, Jorge Pinhol, aware of the intention of the Republic of South Africa to begin negotiations with the company Aerospatiale, sent a letter on 11 February 1985 to Mr. Ben de Bruyn, suggesting the possibility of the Plaintiffs assisting the Defendant Armscor, in particular, in the handling of contacts and negotiations for the establishment of an effective and timely network of assembly, transportation and delivery of the Search and Rescue helicopters through Portugal (cf. document no. 1, herein deemed reproduced, and translation into Portuguese to be subsequently attached).

56.°

Following that letter, Mr. Jorge Pinhol was contacted by telephone by the First Secretary of the Republic of South Africa Embassy in Portugal, Mr. Christo Prinz, at the end of 1985, who told him that the Plaintiffs would be contacted at a later date by the Head of Armscor's Technical Committee at the Republic of South Africa Embassy in Paris, Mr. Tony de Klerk, which happened shortly afterwards.



57.°

Following his contact by telephone with Mr. Tony de Klerk, Mr. Jorge Pinhol was invited to go to the Republic of South Africa Embassy in Paris to discuss the terms of the possible participation of the Plaintiffs in the deal in question.

58.°

Which occurred at the end of 1985.

59.°

After said meeting, there were further meetings in Paris in which Mr. Tony de Klerk explained that Armscor did indeed intend to acquire from Aerospatiale S2 upgrade kits for Puma Search and Rescue Helicopters and various associated assembly and maintenance services.

60.°

For reasons of political sensitivities to be explained below, and given the volume of logistics and material in question, Armscor wished the upgrade kits for the Search and Rescue helicopters to be assembled and supplied via Portugal, pursuant to a contractual and supply schedule to be created in liaison with and monitored by the Plaintiffs, given the good relations existing between the parties and between the Government of the Republic of South Africa and the Portuguese Defence Establishment.

61.°

Indeed, even if the South African regime had undergone a notable evolution at that time, towards the end of the 1980's, in engaging in preliminary discussions with the African National Congress of Nelson Mandela in order to end Apartheid, the delivery of the Search and Rescue helicopters remained delicate on the political level, particularly as a result of French political tensions, which were reflected within the heart of Aérospatiale.

62.°

At the time, there existed a situation in which the President of the French Republic was from the left (François Mitterrand), but the government was of the right (Jacques Chirac – 1986 to 1988), and important internal pressures were felt at the top management levels of Aérospatiale.



63.°

The President of Aérospatiale at the time, General Henri Martre, did not wish to negotiate with Armscor, whereas Mr Phillippe Barbe, the "number 2" of Aérospatiale, and eager to obtain the position of President, was of the contrary opinion.

64.°

The negotiations were thus led by Aérospatiale's management in favour of Project Adenia, without the President of Aérospatiale being informed.

65.°

Moreover, the way in which world opinion had moved against the Apartheid Regime of South Africa had given rise to serious levels of high profiled public protest with the media constantly seeking to expose the consequences of supporting the South African Apartheid Regime.

66.°

For those reasons, Armscor and Aérospatiale have preferred that the project in question retain a strictly confidential character, which required an indirect delivery and assembling channel for the material to be established through a neutral country.

67.°

Enjoying such confidentiality, the Defendant Armscor also included in Project Adenia, without informing the Plaintiffs, the acquisition of 50 new Search and Rescue hybrid helicopters close to Super Pumas from Aérospatiale in kit form which would be assembled by the Defendant in the Republic of South Africa.

68.°

Such information, maliciously concealed by the Defendant from the Plaintiffs was only revealed in later proceedings before the South African and French courts.

69.°

Confidentiality appearing, therefore, as a key element for Armscor in Project Adenia, Mr. Tony de Klerk expressly stated that all the data and information transmitted should be treated with the utmost confidentiality, express instructions being given that wherever feasible information be processed verbally on a need to know basis only, thus avoiding as far as possible the production of written documents about the terms of the deal in question.



70.º

Such confidentiality and secrecy was common procedure for the Defendant Armscor, which avoided producing documents in writing and limited the knowledge of facts to a restricted circle of participants on a "need to know" basis – according to the term used by said Defendant.

71.º

The Plaintiffs, assuming that the Defendant Armscor was acting in good faith, did not raise any objection to the request of the Defendant's representative, given the fact that negotiations between the parties were at a very early stage and out of respect for appropriate commercial goodwill in the circumstances that applied.

72.º

Therefore, at the beginning of 1986, the Defendant Armscor, through Messrs. Tony de Klerk and Ben De Bruyn, in a meeting held with Mr. Jorge Pinhol in the Republic of South Africa Embassy in Paris, expressly requested that the Plaintiffs provide their services of intermediation and promotion of negotiations with the Portuguese Defence authorities with a view to obtaining their consent to the creation and setting-up in Portugal of a system of assembly, dispatch and transportation of helicopters to the Republic of South Africa (known among the parties as the "Portuguese Channel").

73.º

To such end, the Plaintiffs was expressly requested to enter into negotiations with the Portuguese Air Force in order to obtain consent from its highest-ranking officers to allow the involvement of the company OGMA – Indústria Aeronáutica de Portugal, S.A. (hereinafter "OGMA"), being the entity in Portugal with the necessary logistics and know-how to execute the project in question.

74.º

This assignment was accepted by the Plaintiffs.

75.º

Project Adenia, which would imply, at that time, and according to the information then disclosed by the Defendants to the Plaintiffs, the supply of S2 upgrade kits for Puma Search and Rescue helicopters, spare parts, special tools and components, as well as the transfer of technological know-how and the provision of assembly and maintenance services in Portugal and in the Republic of South Africa.

76.°

However, as explained above, the object of the Adenia Project was enlarged by the Defendant Arm Scor so as to include the acquisition of at least 50 new hybrid helicopters close to Super Pumas, in kit form, which was concealed from the Plaintiffs by the Defendant.

77.°

The creation of a system of assembly and commercial distribution of the Search and Rescue helicopters in Portugal – referred to as the Portuguese Channel – was expressly agreed between the defendant Arm Scor and Aerospatiale, pursuant to which the above mentioned goods would be delivered.

However,

78.°

The Defendant Arm Scor, on 7 February 1986, took the decision to test the Plaintiffs' negotiating capacities and contact network.

And thus,

79.°

On 19 February 1986, the Defendant Arm Scor requested a test of the Plaintiffs' capacities.

80.°

The performance of said test was accepted by the Plaintiffs who recognized the value of undertaking the test in promoting commercial goodwill of an ongoing involvement in the Adenia Project.

81.°

The test in question would consist of the establishment of business contacts with Mr. Jorge Serras, a representative in Portugal of a French company trading in helicopter components, for the acquisition by Arm Scor of a helicopter night-flight system and subsequent shipment of same to the Republic of South Africa.

82.°

Such negotiations were designated the "Orion Project".



83.º

Mr. Jorge Pinhol was able to establish a positive contact with Mr. Jorge Serras, who said that he was prepared to negotiate with the Defendant.

84.º

Mr. Jorge Pinhol and Mr. Jorge Serras travelled to Paris in mid-February 1986 in order for the latter to be introduced by Mr. Jorge Pinhol to Mr. Eric Bestbier and to negotiate the terms of the agreement to acquire and supply the item in question.

85.º

The Defendant Armscor closed the deal with Mr. Jorge Serras, the item being delivered via the Plaintiffs' arranged channel facilities in Portugal by the latter to said Defendant in the Republic of South Africa several weeks later.

For which purpose,

86.º

The Plaintiffs monitored the phases of the process of delivery of said item to the Defendant Armscor in the Republic of South Africa, filing with same regular reports on the progress of said project.

87.º

The execution of said project was deemed a success by the Defendant Armscor, the latter paying the Plaintiffs a symbolic commission of USD 25,000 (twenty-five thousand United States dollars) for its services.

88.º

The amount in question was paid by the Defendant Armscor by bank transfer from an account opened by same with the bank KBL to an account belonging to the Plaintiffs BSI at bank Credit Suisse Zurich.

89.º

Given the satisfactory execution of the aforementioned project, the Defendant Armscor verified the Plaintiffs' business capacities in the Portuguese market.

So that subsequently,

90.º

General Henri Troni, Mr. Luís Pinhol and Mr. Jorge Pinhol, in their capacity as collaborator and directors of the Plaintiffs immediately entered into contact with the

heads of the Portuguese Defence authorities in order to begin negotiations for the setting up of the Portuguese Channel within the Adenia Project in respect of the Search and Rescue helicopters in question.

91.º

General Henri Troni had been a high-ranking officer with the Portuguese Air Force and had a great deal of standing and connection in the Portuguese Defence establishment due to its *curriculum vitae* during the colonial war.

92.º

The Plaintiffs, and in particular General Henri Troni, was aware that the proposed project would particularly interest the Portuguese Defence authorities, especially the Portuguese Air Force.

93.º

The Portuguese Air Force had a fleet of some 10 Puma Search and Rescue helicopters in service, the maintenance of which was carried out at OGMA.

94.º

Although the Puma Search and Rescue helicopters were very useful and reliable in the execution of operations of civil protection and assistance to shipwrecks on the coast and on the high seas, they had a limited range given the extent of Portuguese territorial waters.

95.º

This fact was the cause of great concern in the Azores, where the geographical distances and the area to be covered by the Puma Search and Rescue helicopter fleet greatly exceeded their operational capacity.

96.º

In particular, the Puma Search and Rescue helicopters did not allow operations to assist shipwrecks up to the limit of the exclusive economic zone, i.e. 200 miles from the coast, as the original TurboMéca engines were not powerful enough and the fuel consumption of said vehicles was very high.

97.º

Which was a matter of great concern for the heads of the Portuguese Defence and Security since Portugal had committed itself with NATO to guaranteeing the execution

of said Search and Rescue operations up to the limit of the Portuguese exclusive economic zone.

98.º

The Portuguese Air Force, through OGMA, was at the time actively seeking solutions, with Aérospatiale and TurboMéca, to increase the power and efficiency of the 10 Puma Search and Rescue helicopters belonging to Portugal, with a view to fulfilling the Portuguese State's duties to NATO.

Specifically,

99.º

OGMA had carried out a study with Aérospatiale in order to evaluate the costs of acquiring S1 upgrade kits for the Puma Search and Rescue helicopters, Aérospatiale having presented a final selling price for the 11 kits of FRF 120,000,000 (one hundred and twenty million French francs).

100.º

The price quoted by Aérospatiale was totally not supportable for the Portuguese Air Force, which was at the time subject to budgetary constraints.

101.º

At the time, Portugal was going through the concluding phase of procedures for adherence to the then European Economic Community, and the Portuguese Government had therefore instituted a policy of public expenditure cutbacks which immediately influenced the budget of various sections of the Portuguese Defence forces.

102.º

Which is why OGMA and the Portuguese Air Force took the decision not to proceed with negotiations with Aérospatiale to acquire the S1 upgrade kits for the Portuguese Puma Search and Rescue helicopters.

However,

103.º

This fact caused great embarrassment and frustration among the heads of the Portuguese Air Force, who felt that they had a mission to fulfil with NATO and the

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Portuguese people which, due to insurmountable factors, was made impossible for them.

Accordingly,

104.º

The Plaintiffs, and in particular their collaborator General Henri Troni, knew how to approach the heads of the Portuguese Defence authorities and Air Force and how to arouse the obvious interest that they would have in the execution of the project in question in Portugal.

Therefore,

105.º

At the beginning of March 1986, General Henri Troni met with General Casimiro Proença, a former Portuguese Air Force officer with whom General Troni had strong ties, with a view to seeking his support for securing approval of General Brochado de Miranda the then Chief of Staff at the Portuguese Air Force to the Portuguese Air Force and its (controlled) logistics support company OGMA participating in the setting up of the Portuguese Channel for the assembly and shipment of the upgrade kits for the search and Rescue Helicopters involved in the Adenia Project to the Republic of South Africa.

106.º

General Casimiro Proença was extremely satisfied with the proposal and the description of the project presented by General Henri Troni, stating that such proposal was in the interests of the Portuguese Air Force particularly the expressed idea of upgrade kits for the Portuguese fleet of helicopters for its participation in said project.

107.º

General Casimiro Proença stated that given the purpose and the scale of the project presented, it would indeed be necessary to have authorization from the Air Force Chief of Staff, General Miranda, for the participation of OGMA in the assembly and shipment of the Search and Rescue helicopters in question.

108.º

The credibility of the proposal presented by General Henri Troni was such that General Casimiro Proença, when asked by the former if he could accompany him to a meeting with General Brochado de Miranda, General Casimiro Proença agreed.



114
17

109.º

Said meeting occurred in mid-March 1986, at which General Henri Troni outlined to General Miranda the terms and purpose of the project that the Defendant Armscor – at the time referred to by the Plaintiffs merely as a company from the Republic of South Africa – sought to pursue in Portugal.

110.º

It was expressly explained to General Brochado de Miranda that said company of the Republic of South Africa wanted for reasons of political sensitivity to set up in Portugal a channel for the assembly and distribution of material and components for Puma and hybrid helicopters close to Super Pumas destined for said country, utilizing for the purpose OGMA's logistical capacity and technical know-how.

111.º

General Miranda stated that the Portuguese Air Force, if it decided to participate in said business, would be looking for the kind of consideration to which General Troni referred, certainly not in money but in upgrade kits.

112.º

Additionally, General Miranda was insistent that there be minimal paperwork regarding the transaction, the authority for which he would be exercising on an autonomous basis to avoid the same being bogged down by slow political processes as applied at the time.

113.º

General Miranda became extremely interested in the business in question and set up a second meeting for 7 April 1986 with General Henri Troni in order that the former, before such date, might be able to analyse the terms of the proposal in question, especially in respect of the consideration to be demanded from the party represented by the Plaintiffs in the ongoing negotiations.

114.º

The Plaintiffs reported to the Defendant Armscor the successful efforts made by them with the Portuguese Defence authorities, which can be gathered from the Defendant Armscor's internal report of 3 April 1986 (cf. document no. 2, herein deemed reproduced, together with an English translation of the copy of the original document written in Afrikaander language, Portuguese translation to be subsequently attached).



115.°

Which led to an increasing number of internal discussions at the Defendant Armscor and at Aerospatiale, such was the interest created by the Plaintiffs' actions.

116.°

At said meeting of 7 April 1986, General Miranda expressed to General Henri Troni his acceptance of the terms of said deal, provided that the Portuguese Air Force received as consideration the S1 upgrade kits for free, i.e. without any cost.

117.°

General Miranda stated that said consideration should be paid by the South African company in S1 upgrade kits for the existing Portuguese fleet of 10 Puma Search and Rescue helicopters.

118.°

Since this was essential for Portugal to be able to fulfil its commitments with NATO, mainly in respect of its capacity to carry out Search and Rescue operations in the Azores up to the limit of the Portuguese Exclusive Economic Zone, i.e. 200 miles from the coast, which was out of the range of the original version of the Puma helicopters.

119.°

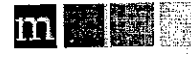
On 2 May 1986, General Brochado de Miranda met again with General Henri Troni and Mr. Jorge Pinhol, and they discussed the detailed terms of the means of transportation to be used from France to the Republic of South Africa, and the procedures for the assembly and shipment of the Search and Rescue helicopters and other material involved, nothing having been decided as to the consideration demanded by the Portuguese Air Force.

120.°

The Plaintiffs informed the Defendant Armscor of the terms of the ongoing negotiations.

121.°

Having been informed of said fact by the Plaintiffs, after a period of internal discussions, the Defendant Armscor gave its express acceptance of the proposal for commission demanded by the Portuguese Air Force.



122.º

Which can be gathered from the telecopy sent by Mr. Eric Bestbier to Mr. W. Venter on 3 June 1986 (cf. document no. 3, herein deemed reproduced, together with an English translation of the copy of the original document written in Afrikaander language, Portuguese translation to be subsequently attached).

123.º

In which it is stated that the Defendant Armscor, at that time, intended merely to pay a commission to the Plaintiffs of between 2% and 5% for their services (cf. document no. 3).

And which also set out,

124.º

On 18 December 1986, the same participants held another meeting in order to discuss the final terms of the deal in question and to ratify the compensation to be delivered to the Portuguese Air Force.

125.º

After some discussions, it was agreed that, in rewarding of their involvement, the Portuguese Air Force should receive for free 11 S1 upgrade kits, spare parts and know-how for their 10 Puma Search and Rescue helicopter fleet to be supplied by Aerospatiale to OGMA for subsequent assembly by the latter company.

126.º

On the other hand, according to Armscor, the primary purpose of the deal in question would be (i) the supply by Aerospatiale to the Defendant Armscor of S2 upgrade kits for obtaining Search and Rescue helicopters close to Super Pumas, (ii) the assembly of same at OGMA, in accordance with the procedures and technology indicated and transferred to OGMA by Aerospatiale, and (iii) the subsequent shipment of the assembled kits to the Defendant Armscor's facilities in the Republic of South Africa.

127.º

The terms of the Portuguese Channel in respect of the Search and Rescue helicopters in question, as drafted and proposed by the Plaintiffs, was therefore ratified by the Defendant Armscor.

128.º

Without disclosing the fact, the Defendant Armscor included in the purpose of the Adenia Project the acquisition of 50 new hybrid helicopters close to Super Puma Search and Rescue helicopters from Aerospatiale in kit form which would be assembled by the Defendant in the Republic of South Africa.

129.º

General Miranda stated that it would be necessary to have confirmation from OGMA as to the possibility of the latter company participating in the assembly project for such a large number of items, and that therefore he would need to meet with the Chairman of the Board of OGMA, at the time General Espadinha.

130.º

It was agreed that General Miranda would confirm to the Plaintiffs in writing of the acceptance by the Portuguese Air Force as soon as he had the reaction of General Espadinha to the operational demands of the project.

131.º

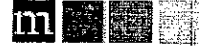
On 6 January 1987, General Miranda met with General Espadinha and discussed the terms negotiated by the Plaintiffs with Armscor, and OGMA's participation in the project in question.

132.º

General Espadinha stated that the modernization of the Puma Search and Rescue helicopters belonging to the Portuguese Air Force was urgent, so much so, in fact, that he himself had been in contact in previous years with Aerospatiale to enquire about the possibility of modernizing said vehicles by installing S1 upgrade kits, the Portuguese Air Force being unable, however, to bear the costs proposed - FRF 120,000,000 (one hundred and twenty million French francs).

133.º

General Espadinha stated that OGMA would have the capacity to take part in the assembly of the vehicles in question, but that he would, however, need to study in detail the potential costs involved.



118
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134.º

General Espadinha in the following days submitted to General Miranda a plan of costs to be incurred by the project.

And,

135.º

On 6 January 1987, General Miranda also sent a letter to the Plaintiffs BSI confirming acceptance by the Portuguese Air Force of what had been orally agreed consequent on the Plaintiffs negotiations with Armscor (cf. document no. 4, herein deemed reproduced).

136.º

Mr. Jorge Pinhol on behalf of the Plaintiffs promptly informed the Defendant Armscor of the above mentioned fact (cf. document no. 5, herein deemed reproduced, Portuguese translation to be subsequently attached).

137.º

General Henri Troni and Mr. Jorge Pinhol held a meeting with General Espadinha to discuss the participation of said company in the project in question, namely, if same had the means and logistics necessary to execute fully and in a timely fashion the various phases of said project.

138.º

General Espadinha confirmed to the former individuals that OGMA could participate in the project in question.

Thus,

139.º

On 23 February 1987, OGMA's Chairman also confirmed the intention of said company to begin negotiations with Armscor and Aerospatiale (cf. document no. 6, herein deemed reproduced, Portuguese translation to be subsequently attached).

140.º

From which we may conclude that OGMA might participate in the fabrication of some S2 kits for the Puma SA 330 Search and Rescue helicopters but that the execution of the whole project would depend on Aérospatiale and the Plaintiffs' client decisions (cf. document no. 6).



And,

141.º

That OGMA did not see and inconvenient in proceeding with the negotiations with Armscor through BSI on the above mentioned matters (cf. document no. 6).

To conclude,

142.º

Mr. Jorge Pinhol having procured an affirmative response from the Portuguese Defence authorities relevant and necessary to accomplish the Adenia Project, the Plaintiffs had therefore complied with the prime mandate granted them by the Defendant Armscor in respect of the setting up of the "Portuguese Channel" in respect of the Search and Rescue helicopter kits in question .

143.º

The Plaintiffs once again notified the Defendant Armscor of the successful measures taken by them with the Portuguese Defence authorities, which can be gathered from the letter sent by the Plaintiff BSI to Mr. Ben de Bruyn at the end of February 1987, albeit dated 11 February 1987 (cf. document no. 7, herein deemed reproduced, Portuguese translation to be subsequently attached),

144.º

From which the conclusion may be drawn that the Portuguese Defence authorities had granted the Portuguese Air Force permission to participate in the deal and assist the Republic of South Africa through the Defendant Armscor, requesting however a compensation for its intervention in the project (cf. document no. 7).

145.º

The successful contribution of the Plaintiffs to get the Portuguese authorities to agree that OGMA could participate in the Adenia Project was recognized by the Defendant Armscor.

146.º

Mr. Jorge Pinhol had previously made it very clear to the Defendant Armscor that the Plaintiffs, upon the full exercising of and compliance with the mandate and acts practiced under the Adenia Project, would charge a commission based on the total value of the goods and services which were the object of the relevant agreements to



be entered into by the Defendant Armcor with Aerospatiale in terms as subsequently negotiated and agreed, which was different from the compensation due by Armcor to the Portuguese Air Force (cf. document no. 7).

147.º

Which was accepted by the Defendant Armcor, pursuant to the above.

Thus,

148.º

It had been therefore during 1986 and 1987 that Mr. Jorge Pinhol and his colleagues on behalf of the Plaintiffs had developed, together with Mr. Eric Bestbier, who was responsible for the Adenia Project at Armcor, various contacts with the Portuguese Defence authorities to implement the terms under which the latter had agreed to participate in the assembly and subsequent shipment of the equipment to Armcor.

149.º

By means of said agreements, the Portuguese Channel for the assembly and distribution of the Search and Rescue helicopters included in the Adenia Project was duly set up.

150.º

On 26 February 1987, the Defendant Armcor notified the Plaintiffs of its desire to engage with the Portuguese Defence authorities to move forward the required operational planning, and requested the Plaintiffs' assistance to such end (cf. document no. 8, herein deemed reproduced, Portuguese translation to be subsequently attached).

151.º

The Plaintiffs requested OGMA to receive a visit by officials of the Defendant Armcor in order for the purposes mentioned above. General Espadinha confirmed a meeting with representatives from the Defendant Armcor in May 1987 (cf. document no. 9, herein deemed reproduced, Portuguese translation to be subsequently attached).

152.º

On 2 April 1987, the Plaintiff BSI confirmed to the Defendant Armcor that OGMA could receive a delegation from Armcor in May 1987 (cf. document no. 10, herein deemed reproduced, Portuguese translation to be subsequently attached).



121
/7

153.°

Said meeting took place on 12 and 13 May 1987 in the form of a visit to Portugal by the Defendants P. C. Smith and Eric Bestbier of the Defendant Armscor, the relevant negotiations being coordinated by the Plaintiffs, based on a program drawn up by Mr. Jorge Pinhol (cf. document no. 11, herein deemed reproduced, Portuguese translation to be subsequently attached).

154.°

On 19 October 1987, at the Defendant Armscor's request, the Plaintiffs programmed the visit of another delegation from the Defendant Armscor to OGMA

155.°

On that occasion, the delegation from the Defendant Armscor was led by Messrs Kobus Eksteen and Willie Ventnor (Head of Armscor's Foreign Projects Division).

156.°

Following said meeting, it was agreed between the Portuguese military authorities and the Defendant Armscor that the latter, following on from its previous agreement, would try to negotiate with Aerospatiale the acquisition of S1 upgrade kits for Puma Search and Rescue helicopters as compensation for the participation of said authorities in the Adenia Project.

(iii) THE PLAINTIFFS'S COMMISSION

157.°

The Defendant Armscor, recognizing the vital contribution of the intermediation performed by the Plaintiffs with the Portuguese Defence authorities, agreed with the Plaintiffs in July 1987 to jointly and severally pay them a commission corresponding to 10% of the gross value of all the goods and services included in the Adenia Project, which would be paid pro rata as such goods and services were delivered and provided (the "10% Commission").

158.°

Mr. Bestbier on the Defendant's behalf informed Mr. Jorge Pinhol that Aerospatiale would bear half, i.e., 5% of the Plaintiffs' commission, but that the payment of the 10% Commission would be made by the Defendant Armscor alone.

It transpired, however, that,



122
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159.º

At the express request of the Defendant Armscor, the oral agreement on the payment of the 10% Commission owing to the Plaintiffs was only to be, as it was, recorded in a written memorandum which for security reasons was to be retained by the Defendant Armscor at its base in the RSA Embassy in Paris.

160.º

Which was accepted by the Plaintiffs, bearing in mind the excellent commercial relations that they had had established and enjoyed for some time with the Defendant. It is also of note that such arrangements are consistent with practices in dealings of this nature where trust and acting with the utmost good faith are fundamental qualities.

161.º

The terms of said agreement were formally set out in an internal memorandum of around 10 pages from the Defendant Armscor, containing express references to the Plaintiffs' 10% Commission and the sharing of the payment of same between said Defendant and Aerospatiale, and as indicated above, it was deposited for safe keeping at the Republic of South Africa Embassy in Paris.

162.º

Subsequently, in 1993/1994, it appears that the said document was removed from the Paris Embassy by the Defendant Armscor and taken to the Republic of South Africa under the so-called Project Massada.

163.º

The Project Massada consisted of an Armscor programme to eliminate and/or conceal documents and records linked to the Defendant Armscor's activities which might compromise individuals supporting and executing the Apartheid regime.

164.º

Said project began in mid-1993 after a conference of the ANC – African National Congress (an opposition movement against the Apartheid regime, set up in the Republic of South Africa) and the calling of the first general elections in said country for April 1994.



123
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165.º

The Project Massada led to the loss or concealment of a great number of documents of public interest in the Republic of South Africa, some of which are of interest to this case and the possible continued existence of which has only recently come to the Plaintiffs knowledge.

(iv) THE IMPLEMENTATION OF PROJECT ADENIA

166.º

On 28 January 1988, the Defendant Armscor sent a note to the Plaintiffs, signed by Mr. Ackerman, requesting a written estimate of the supply costs, to which the Plaintiffs responded on 28 March 1988 (cf. document nos. 12 and 13, herein deemed reproduced, Portuguese translations to be subsequently attached).

167.º

The Plaintiffs, in the person of Mr. Jorge Pinhol, monitored the putting in place by the Portuguese Air Force and OGMA of the logistics necessary for the setting up of the Portuguese Channel, for the normal and timely reception of the goods shipped by Aerospatale, the assembly and subsequent shipment of such goods to the Defendant Armscor.

For this purpose,

168.º

Specific areas of various Portuguese Air Force bases and OGMA were set aside for the purpose of reception of the equipment and items for the Search and Rescue helicopters in question, and the assembly, maintenance and shipment of same to the Republic of South Africa.

169.º

In a first phase, Aerospatale supplied OGMA with materials and technical specifications for the latter to be able to implement Project Adenia.

170.º

The equipment was shipped to the Defendant's facilities in the Republic of South Africa.



171.º

Once the equipment arrived at its facilities, the Defendant Armscor, through Aerospatiale's engineers, completed the assembly and put the finishing touches to the vehicles and performed the relevant tests and maintenance of same.

172.º

The Defendant Armscor, in order to conceal from the public the execution of the Adenia Project, re-branded the hybrid helicopters close to Super Puma helicopters with the trade name "Oryx".

173.º

For this purpose, the Defendant Armscor entered into various agreements with Aerospatiale for the transfer of technology, technical know-how and the secondment of highly specialized professionals, who carried out the assembly and testing operations and assisted in the training of the Defendant's technical staff.

174.º

The Defendant Armscor set up a special assembly and testing line for the vehicles in question.

175.º

The execution of each of the above phases of the Adenia Project was monitored by the Plaintiffs to the extent that they were allowed to so do by the Defendant Armscor. In particular,

176.º

The Plaintiffs made themselves available to deal with the issuance of dispatch and shipping documents for the materials for all the parties involved in the project, from France to OGMA and from the latter to the Republic of South Africa, to include the carrier Aerofrete, in order to ensure the regularity and timeliness of supplies.

177.º

The Plaintiffs always kept the Defendant Armscor's representatives in the Republic of South Africa and in Paris duly informed as to the functioning of the Portuguese Channel albeit from the commencement of delivery activities on the project, the Defendant increasingly ostracized the Plaintiffs intended activities.



125
7

178.º

The Defendant Armscor did not complain about the Plaintiffs' performance nor did it express any comment or complaint about the functioning of the Portuguese Channel in respect of the Search and Rescue helicopters, set up and monitored by the Plaintiffs.

179.º

The Plaintiffs also lent assistance to the Portuguese Defence authorities and to the Defendant Armscor in the setting up and execution of the system to transport the Search and Rescue helicopters to the Republic of South Africa.

180.º

The Defendant Armscor, OGMA and the Portuguese Air Force always considered the Plaintiffs' action to be diligent and satisfactory, and they never objected to it or suggested anything with regard to the ways in which the Plaintiffs conducted negotiations for the Adenia Project, and they monitored the terms for the assembly and transportation of the materials in question.

181.º

The assembly, dispatch and delivery of the new hybrid Search and Rescue helicopters close to Super Pumas and the Puma Search and Rescue upgrading kits began in August 1989 and lasted until mid-1990's albeit maintenance and the supply of replacement parts continues to this date.

B) THE DEFENDANT ARMSCOR'S CONTRACTUAL DEFAULT

1. THE CONCEALMENT OF PROJECT ADENIA'S REAL OBJECT

1.1. The real object of Project Adenia

182.º

The Adenia Project turned out, in the end, to involve the goods and contractual relationships enumerated in paragraphs 31.º to 52.º.

183.º

As explained in said paragraphs above, the supply of 50 hybrid helicopters in kit form was concealed to the Plaintiffs, the effect of which was to limit the scope of the 10%



commission due to the Plaintiffs and which should have normally been calculated on the total gross value of all the items transferred through the Portuguese channel and related services.

1.2. The disclosure of Project Adenia's real object at the occasion of legal proceedings before South African and French Courts

184.°

Much later, during the legal proceedings brought by Jorge Pinhol and the Plaintiffs against Armscor in South Africa, between 1993 and 1994, then at the beginning of the years 2000 before the French courts against Aérospatiale, thanks to the statements given by former employees of Armscor, the Plaintiffs have learned that the size of the sale/purchase had been far more significant than Armscor had wanted to be revealed to them, and that this value rose not to 98,000 millions French Francs as had been indicated intentionally by Armscor to the Plaintiffs in order to reduce the commission, but to USD 3 Billion.

2. DEFAULT OF PAYMENT OF THE COMMISSION DUE TO THE PLAINTIFFSS

2.1. Armscor's Default of Payment

185.°

The business relationships between the Defendant Armscor and Aérospatiale with regard to Project Adenia begun on 1987. The execution of the Project was initiated in mid 1989 with the first deliveries to said Defendant.

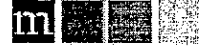
186.°

Nevertheless, the execution of the Project is still on-going due to the continuous delivery of spare and maintenance parts of the vehicles Oryx still active in South Africa.

187.°

The Defendant Armscor always omitted to inform the Plaintiffs of the full terms and conditions of said contracts, which would allow the latter to fully ascertain the 10% Commission owing to them.

However,



127
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188.º

Messrs Piet C. Smith, Raymond Pretorius, Eric Bestbier, Kobus Eksteen and Tielman Johannes de Waal repeatedly and continuingly gave assurances to the Plaintiffs the payment of their 10% Commission until their lack of fulfilment of such assurances became so evident that outright breaches emerged.

189.º

However, Mr. Raymond Pretorius and the other participants in the facts had by then already taken the decision to purely and simply not pay the Plaintiffs its 10% Commission.

190.º

They intended to convince the Plaintiffs – through successive contacts with Mr. Jorge Pinhol – that said Plaintiffs was still involved in the deal.

191.º

Furthermore, the Defendant Armscor and the other participants in the facts sought to prevent the Plaintiffs from exercising its commercial veto with the Portuguese military authorities and OGMA in respect of the execution of the Adenia Project in Portugal.

192.º

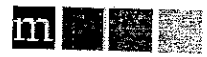
The Plaintiffs had in General Henri Troni, a highly prestigious former military who as indicated earlier was influent and well regarded by the heads of the Portuguese Air Force, and in Messrs. Luís and Jorge Pinhol, persons who, in relationship terms and due to their earlier common military service abroad for Portugal, enjoyed great credibility and confidence with the Portuguese Generals.

193.º

For the latter, it would only have needed the status of the relevant commercial relations – at the time at a purely embryonic stage – to be called into question, or any doubt to be raised as to the Defendant and/or Aerospatiale's integrity in the relevant negotiations, for the Adenia Project and the Portuguese Channel in respect of the Puma and Super Puma Search and Rescue helicopters to fail.

194.º

The Plaintiffs BSI having discovered that the assembly, dispatch and delivery of the upgrade kits for the Puma Search and Rescue helicopters had begun, sent a fax on



27 July 1989 to Mr. Tony de Klerk of the Defendant Armscor requesting the payment of the Plaintiffs' 10% Commission due for their participation in the negotiations that took place with the Portuguese Defence authorities (cf. document no. 14, herein deemed reproduced, Portuguese translation to be subsequently attached).

195.°

The Defendant Armscor did not reply to the Plaintiffs' fax.

196.°

The Plaintiffs, through Mr. Jorge Pinhol, chased Messrs Eric Bestbier, P. C. Smith and Raymond Pretorius with regard to the payment of their 10% Commission for the Adenia Project throughout the year 1989,

197.°

Who stated that the Defendant Armscor had problems with the allocation of budgetary provisions, and that the Plaintiffs would have to wait a little for release of the commission payments already overdue.

198.°

During the contacts made by Mr. Jorge Pinhol, Messrs Piet C. Smith, Raymond Pretorius, Eric Bestbier, Kobus Eksteen and Tielman Johannes de Waal's knowledge and consent, successively stated that the Defendant Armscor's financial department had taken into account the amount of the 10% Commission and that the Plaintiffs should exercise continuing patience in awaiting receipt.

199.°

The Plaintiffs considered the Defendant Armscor and its representatives' conduct to be totally inappropriate and intensified their lobbying of the Defendant to request that it should pay their 10% Commission in respect of the successive deliveries that were meanwhile being made.

200.°

The Defendant Armscor and its legal representatives always guaranteed that the Plaintiffs would be paid its 10% Commission.



2.2. The involvement of KBL in Armscor's default of payment

201.°

In order to avoid the exercise of the Plaintiffs' commercial veto with the Portuguese military authorities and OGMA, which would have blocked Project Adenia, the Defendant Armscor and the other participants in the facts, in complicity with KBL and its senior management subsequently, wilfully and deceitfully misled the Plaintiffs in a way giving rise to a great loss suffered by the Plaintiffs.

In fact,

202.°

The bank KBL was the Defendant Armscor's favoured bank, with which same had intense commercial relations.

203.°

As indicated earlier, the Defendant Armscor and the bank KBL began their commercial relations in 1977, the same year in which United Nations Resolution 418, of 4 November 1977, was approved, establishing the arms embargo on the Republic of South Africa.

204.°

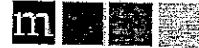
In the wake of said commercial relations, the bank KBL became the Defendant Armscor's main international banking institution, responsible for the opening, operation and management of more than 300 bank accounts (in the names of front companies and some as numbered accounts only) controlled by said Defendant, and utilized for financing its many trading projects, a considerable proportion of which offended the arms embargo unlike Project Adenia which did not so offend.

205.°

In total, the bank KBL was responsible for around 70% of the financial transactions that directly or indirectly involved the Defendant Armscor.

206.°

From its head office in Luxembourg, the bank KBL ensured the full confidentiality and secrecy of said transactions through a limited circle of highly qualified employees whose sole mission was to open, operate and manage the Defendant Armscor's bank accounts.



130
17

207.º

Since the outset of its clientele relationship with KBL and KT, the Defendant Armscor together with the its legal representatives, created an accountancy computer program in order to manage a payment control system and to eliminate or minimize any trace of the Defendant Armscor intervention in the respective banking and financial operations.

208.º

Said computer program was managed by two Armscor's employees, Messrs Martin Steynberg and Daniel Loubser, from Paris, which comprised the following essential information: (i) date of payment and amount thereof; (ii) the payment scheme to be used; (iii) payment beneficiary; (iv) beneficiary's bank and bank account numbers; (v) the payment vehicle used (i.e. the front "off-shore" company that would proceed with the payment), under which the amounts would circulate; (vi) the name of the directors of the relevant front off-shore company; (vii) country in which the directors and the relevant front off-shore company were registered; (viii) the front off-shore companies banks and account numbers,

209.º

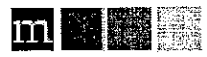
In said accountancy computer program we may find around 300 bank accounts opened in the bank KBL with the knowledge, advice and assistance of KBL and KT's legal representatives.

210.º

Messrs. Martin Steynberg and Daniel Loubser would travel every Wednesday from Paris to Luxembourg to meet with Mr. Germain Ménager from KBL and KT in order to carry out weekly balances of the Defendant Armscor's transactions in such accounts and to sign the bank statements thereof, and carried all their instructions in diplomatic pouches pertaining to the South African Embassy in Paris.

211.º

The structuring of the Defendant Armscor's accounts and the accounts of the remaining participants was made with particular care in order to avoid that the different payment channels interfere among themselves.



212.º

As a rule, it was set up a front company and a particular and isolated structure for each operation. After each payment the company and the structure set up was dissolved.

213.º

With regard to Project Adenia in particular, same was divided for payment purposes into various sub-projects named "Eltra", "Monsaguel", Kingsley", to which front companies and particular and isolated structure of bank accounts were allocated by the Defendant Armscor, KBL, KT and the respective legal representatives.

214.º

In accordance with Messrs Martin Steynberg and Daniel Loubser, during the delivery stage of the goods in respect of Project Adenia, payments were made on a weekly basis through KBL and KT.

215.º

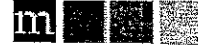
The members of KBL's management bodies and Germain Ménager assured total discretion in operations so that each operation was processed. At operational level only a very small group of individuals were involved in such operations, notably Mr. Germain Ménager.

216.º

The bank KBL and the members of its management bodies not only were perfectly aware of the daily transactions carried out by Armscor, but also pro-actively assisted and advised the Defendant Armscor and its legal representatives in the execution of said operations.

217.º

In mid-January 1990, the Defendant Armscor, through Mr. Raymond Pretorius, set out to maintain control over the Plaintiffs, informing Mr. Jorge Pinhol that the Defendant Armscor had decided that the payment of the Plaintiffs' commission would be made through the opening of a bank account in the name of the Plaintiffs for such purpose with the bank KBL, based in Luxembourg.



132
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218.º

In the case of the background pertaining to the position of the Plaintiffs leading up to 1990, it should be noted that Mr. Jorge Pinhol of the Plaintiffs, had enjoyed a very close relationship with Mr. Raymond Pretorius since 1988, as the latter was in regular contact with the Plaintiffs in the context of the Adenia Project.

219.º

They also frequented the same places socially in Zurich, where Mr. Jorge Pinhol and Mr. Raymond Pretorius often met.

220.º

When in mid-January 1990 Mr. Raymond Pretorius informed Mr. Jorge Pinhol that the Defendant Armscor had decided that the payment of the commission to the Plaintiffs would be made through the opening of a bank account with the bank KBL in Luxembourg, Mr. Jorge Pinhol had no personal or professional motive to doubt the Defendant Raymond Pretorius's word.

221.º

All the more so since him held a position of extremely high responsibility with the Defendant Armscor as General Manager for Planning Foreign Trade and, as such, was one of the top people responsible for negotiations on the Adenia Project between all the parties that were involved internationally.

222.º

Mr. Raymond Pretorius informed Mr. Jorge Pinhol that the payment of the commissions into said bank account would be made according to the supplies made, as agreed in July 1987.

223.º

After several meetings with Armscor representatives, Mr Jorge Pinhol was told that a trip to Luxembourg with an Armscor employee, Mr Loubser, would be arranged for him.

224.º

Mr. Jorge Pinhol and Mr. Daniel Loubser went on 8 February 1990, at the bank KBL's head office to meet with Mr. Germain Ménager, entering said premises by a private entrance.



225.°

Messrs Daniel Loubser and Germain Ménager clarified that the opening of the account in the Plaintiffs' name had the purpose of paying of the 10% Commission arising from the commercial relationship between the Plaintiffs and the Defendant Armscor.

226.°

Mr. Jorge Pinhol, fully believing in the good faith of the Defendant Armscor and the bank KBL and KT, represented at said meeting, respectively, by the Armscor financial controller and account manager, Mr. Daniel Loubser and the director Mr. Germain Ménager respectively, who assured the lawfulness of the procedures for opening the bank accounts under the terms defined by KBL's management, signed all said documents.

227.°

Among those documents, Mr Pinhol was requested to sign powers-of-attorney in favour of a group of Armscor's employees.

228.°

Nevertheless, the Plaintiffs BSL was the sole holder and beneficiary of account no. 210370, opened with the bank KBL as described above.

229.°

However, as explained below, the Commission was never paid on such account and Mr Pinhol learnt much later that the account was closed by KBL on the Defendant's instruction.

230.°

The bank KBL and the Defendant Armscor failed to notify the Plaintiffs either before or after the closure of the account, opened in the name of the Plaintiffs BSL.

231.°

It also failed to provide any bank account statements or other information on movements on the said account.

232.°

Furthermore, the Plaintiffs BSL never authorized, either expressly or tacitly, the closure of its bank account and the Defendant Armscor's representatives who were



134
9

granted powers-of-attorney used same for ends for which they had no powers, and they did not request any authorization from BSL for such purpose or even inform the Plaintiffs BSL of such fact.

233.°

In fact, had KBL not acted as mentioned above, the Plaintiffs would have exercised their commercial veto by alluding to the Portuguese Air Force authorities and representatives that serious doubts as to the Plaintiffs commercial reputation had come out and, thus, suspending Project Adenia until the payment of their 10% Commission was assured.

234.°

The malice of the Defendant Armscor, respective legal representatives, and of KBL, in the wilful malicious conduct to cause the enormous economic loss to the Plaintiffs, was of the highest degree, with the practice leading to a correspondingly colossal enrichment for the Defendant Armscor.

2.3. Persistence of Armscor's Default of Payment

235.°

On 27 March 1990, the Plaintiffs BSI sent another fax to Mr. Tony de Klerk on behalf of both Plaintiffs, alerting the Defendant Armscor to the fact that, since Aerospatiale had already begun deliveries some time before, Armscor should confirm in writing the many guarantees of its commitments to make the commission payments as covered by the agreement entered into in July 1987 (cf. document no. 15, herein deemed reproduced, Portuguese translation to be subsequently attached).

236.°

To which the Defendant Armscor refused to respond.

237.°

As can be gathered from the earlier descriptions that appear in this Statement of Claim, the Plaintiffs carried out the relevant actions on behalf of and representing the Defendant Armscor, among which:

- i) The obtaining of authorization from the Defence authorities of the Portuguese Air Force and OGMA and the express agreement of same to participate in and



- execute the Defendant Armscor's Adenia Project in respect of said upgrade kits and new Search and Rescue helicopters in Portugal;
- ii) Assistance to the Defendant Armscor in the negotiations with a view to obtaining agreement as to the consideration required by the Portuguese Air Force for its participation in the Adenia Project;
 - iii) The setting up and execution of the Portuguese Channel, notably for assembling and transporting the upgrade kits for the Puma Search and Rescue helicopters and the new Search and Rescue hybrid helicopters close to Super Pumas in kits to the Republic of South Africa.

238.°

It must also be noted in this regard that, in accordance with Messrs. Daniel J. Loubser and Martin Steynberg – both former Armscor employees with direct connections to the Adenia Project – taking into account all goods and services supplied and rendered by Aerospatiale and OGMA to the Defendant, the effective contract price as at 1998 was at least USD 3,000,000,000 (Three Billion United States dollars).

239.°

This would thus correspond to a commission in favour of the Plaintiffs in the amount of USD 300,000,000 (Three Hundred Million United States dollars).

However,

240.°

As criteria that may allow for the accurate assessment of the 10% Commission due to the Plaintiffs we may take into consideration the following:

241.°

The value of an S1 upgrade kit – i.e. only the materials and components included in a kit – was around FRF 12,000,000 (twelve million French francs), the equivalent of € 1,829,388.21 (one million, eight hundred and twenty-nine thousand, three hundred and eighty-eight euros and twenty-one cents) per kit.

242.°

At the time of the facts, the value of an S2 upgrade kit – i.e. only the materials and components included in a kit – was FRF 18,000,000 (eighteen million French francs), the equivalent of € 2,744,082.31 (two million, seven hundred and forty-four thousand and eighty-two euros and thirty-one cents) per kit.

243.°

The value of a Super Puma helicopter at that time was around FRF 69,500,000 (sixty-nine million, five hundred thousand French francs), the equivalent of € 10,595,206.70 (ten million, five hundred and ninety-five thousand, two hundred and six euros and seventy cents) per helicopter.

However,

244.°

Given the type of transaction in question, the secrecy involved and the need for the participation of a third party in the assembly and dispatch of the vehicles (i.e. OGMA), the price list value of said upgrade kits and the new Super Puma vehicles was increased by Aerospatiale by around 30% of the amounts mentioned in the price list.

Therefore,

245.°

Considering, at least, the aforementioned amounts applicable to the 11 S1 upgrade kits, the 50 new hybrid helicopters similar to the Super Puma Search and Rescue (Oryx), the 80 kits S2 for improvement of the Pumas Search and Rescue helicopters still active in South Africa, and the largesse of 30% in the respective values, Project Adenia may have reached € 1,000,233,247.14 solely in the purchase of such goods, which corresponds to USD 1,539,542,778.89.

However,

246.°

Due to the value of the engineering and conception services, the contracts for the transfer of technology, the improvement parts for an Alouette III vehicle, sale and shipment of spare and maintenance parts, transportation and delivery of same, the total value of Project Adenia reached not less than USD 3,000,000,000,00 (three billion United States of America dollars).

Accordingly,

247.°

The Plaintiffs estimate its 10% Commission to be € 192.180.622,82, corresponding to USD 300.000.000 (three hundred million United States of America dollars), at 13 March 2008 exchange rate (1 USD = 0,64060 EUR), without prejudice to what may be determined at execution of judgment, under and for the purposes of Articles 471.1, sub-paragraph b) and 661.2 of the Civil Procedure Code.



248.°

At the end of 1990, the Plaintiffs noted that the Defendant Armscor was increasingly in direct contact with the Portuguese Defence authorities, seeking to distance the Plaintiffs from its relevant business contacts.

249.°

During that period, the Defendant Armscor continued to guarantee to the Plaintiffs that their 10% Commission would be paid into the bank account opened with KBL.

250.°

Given the subsequent default, and it now being made clear that the Defendant Armscor, with the direct participation and concurrence of the other participants in the facts, was wilfully deceiving the Plaintiffs over the contractual relationship in question with the argument that the payment of its commission would always be guaranteed,

251.°

Then from the moment at which the Defendant Armscor, due to the Plaintiffs' action, acquired sufficient business contacts with the Portuguese Defence authorities for the purpose, it distanced the Plaintiffs from the ongoing negotiations and contacts.

252.°

Which is explained by the fact that, at that time, the Defendant Armscor had already delivered part of the compensation to the Portuguese Air Force in the form of 11 S1 upgrade kits for the Puma helicopters that were being assembled at OGMA.

253.°

Making it less feasible for the Plaintiffs to exercise their commercial veto that it enjoyed with the Portuguese Defence authorities.

254.°

Which before that point could readily have been exercised by the Plaintiffs.

255.°

During that period of time, the Defendant Armscor did not pay the commission into the bank account opened with the bank KBL.



256.º

Therefore, on several occasions Mr. Jorge Pinhol contacted Armscor's account manager Mr. Germain Ménager at the bank KBL in order to request information as to the status of the account opened with said institution.

257.º

Mr. Germain Ménager always refused to respond to Mr. Jorge Pinhol's contacts and, on the only occasion when he did respond, he stated peremptorily that he could not discuss with the Plaintiffs any matter relating to the Plaintiffs' account with KBL, and that any clarification should be requested directly from Armscor.

258.º

Mr. Jorge Pinhol tried several times to enter into contact with the Defendant Armscor's representatives, all of them refusing to provide any clarification.

259.º

Therefore, Mr. Jorge Pinhol entered into direct contact with the Chairman of Armscor's Board of Directors, Mr. J. Van Vuuren, on 1 July 1991,

260.º

Who told him that he did not understand the Plaintiffs' grievances in respect of Armscor's treatment of them, and that if the Plaintiffs continued to exert pressure on Armscor, same would consider the contractual relationship with the Plaintiffs terminated.

It so happens that,

261.º

On 17 July 1991, the Defendant Armscor sent a letter to both Plaintiffs, signed by the Director General of Acquisitions, Mr. T. J. De Waal, denying the Defendant Armscor's liability in the payment of any commission to the Plaintiffs, and stating that the Plaintiffs should request the payment of same from OGMA (cf. document no. 16, herein deemed reproduced, Portuguese translation to be subsequently attached).

262.º

Shocked by the position taken by the Defendant, the Plaintiffs, in the person of Mr. Jorge Pinhol, held several more meetings with Armscor representatives, the latter seemingly unbending in their refusal to pay any commission to the Plaintiffs (cf. fax

from BSI dated 16 September 1991 and from the Defendant dated from the following day, documents nos. 17 and 18, respectively, herein deemed reproduced, Portuguese translations to be subsequently attached).

263.º

To date, the Defendant Armscor has not yet paid the commission owed to the Plaintiffs.

264.º

As far as the Plaintiffs can ascertain, the Defendant Armscor has used the funds destined for payment of their 10% Commission to pay for supplies, as well as remuneration to unknown persons arising from commercial relations with third parties that also participated in the Adenia Project, or to persons with direct knowledge of same.

265.º

Noting the Defendant Armscor's contractual default, Mr. Jorge Pinhol entered into direct contact with the Minister of Foreign Affairs of the Republic of South Africa, Mr. Pik Botha, in August 1991.

266.º

Minister Pik Botha listened attentively to Mr. Jorge Pinhol and promised to look into the matter together with the Ambassador of the Republic of South Africa in Portugal Mr. Swanepoel.

267.º

As a consequence of the efforts of the Minister Pik Botha and the Ambassador of the Republic of South Africa in Portugal, in January 1992, at OGMA's facilities, it was concluded that the Plaintiffs had been the victims of default on the part of the Defendant Armscor (cf. memo from Mr. Sr. Swanepoel to the South African Ministry of Foreign Affairs, Mr. Pik Botha dated 21 April 1992, herewith attached as document no. 19 and deemed reproduced, Portuguese translation to be subsequently attached).

268.º

Therefore, Minister Pik Botha stated that he would make every effort to see to it that the Ministry of Defence of the Republic of South Africa corrected the Defendant Armscor's position.



Furthermore,

269.°

Pursuant to the Memorandum dated 1 December 1992, Minister Pik Botha expressly requested the payment of the Plaintiffs' commission in order to avoid an incident between the Portuguese Republic and the Republic of South Africa (cf. document no. 20, herein deemed reproduced, Portuguese translation to be subsequently attached).

270.°

Minister Pik Botha put direct pressure on the Defendant Armscor, requesting explanations of what had happened, the latter stating merely that it would carry out an internal investigation at management level.

271.°

Accordingly, Messrs. Tielman de Waal, P. C. Smith and Eric Bestbier travelled to Portugal in order to look into the Plaintiffs' allegations and draft a report to be appreciated by the Government of the Republic of South Africa.

However,

272.°

Said persons wilfully concealed the description of the facts, namely, the Plaintiffs' action in respect of the Adenia Project, in the name and on behalf of the Defendant Armscor.

273.°

Concluding in their report that there existed no contractual relationship between the parties and that therefore no commission was owed to the Plaintiffs.

3. THE PREVIOUS LEGAL PROCEEDINGS

274.°

Faced with the categorical refusal of the Defendants to comply with its obligation to pay the agreed commission, the Plaintiffs started a first proceeding against Armscor in South Africa, then a second in France against Aérospatiale on the basis of unjust enrichment at the cost of the Plaintiffs given that it had contracted to cover Armscor for half of the commission which that entity should have paid.

275.º

During and after those proceedings, certain new information became available which permitted the Plaintiffs to better understand what had really happened. On the basis of these elements, the Plaintiffs pursued their investigations and obtained a certain number of new exhibits essential for the proper understanding of the case.

3.1. The action introduced in the Republic of South Africa against Armscor

276.º

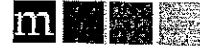
The Plaintiffs brought a legal action against Armscor in March 1993 before the Supreme Court of the Province of Transvaal. An evidentiary commission was opened by this jurisdiction in order to obtain information on the development of the facts in Portugal. The Generals Miranda, Espadhina and Proença accepted to appear as witnesses before this commission.

277.º

However, following the pleadings and initial hearings in the case, the local lawyer in charge of the matter, Mr Eberhard Bertelsmann, advised Jorge Pinhol and his businesses to withdraw the claims without prejudice of the right to file other subsequent claim, firstly due to physical threats and intimidations against Jorge Pinhol in South Africa and, secondly, by reason of a lack of sufficient proofs which would result in a loss of the case. This proof became available later.

278.º

It was however during the course of this proceeding that Jorge Pinhol learned that the scope of the contract entered into between Armscor and Aérospatiale was not limited to the delivery of «S1» and «S2» modernization kits for Puma helicopters but also by the provision of materials and related services which were far more substantial. This explains why the initial action had been brought on the basis of a project worth "98 million French Francs" and was consequently for a commission claim of 9.8 million French Francs at the time. It also explains why quite properly in those proceedings an order for an accounting had been sought



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3.2. The proceeding brought in France against Eurocopter (Aérospatiale)

279.°

Thereafter, a second proceeding has been brought before the Tribunal of Commerce of Bobigny against Eurocopter (formerly Aérospatiale). The action, based on unjust enrichment of Eurocopter, was rejected at first instance by judgment of 3 October 1996 on the ground that there were two distinct sales transactions, one between Aérospatiale and OGMA and the other between OGMA and Armscor, that the Plaintiffss were not involved in the negotiations of the first contract involving Aérospatiale, and that they could thus not claim to have been unjustly impoverished by Aérospatiale.

280.°

This judgment was confirmed on appeal by a decision of the Court of Appeal of Paris on 5 February 1999 (Court of Appeal of Paris, 25th chamber, section B, 5 February 1999) on the grounds that "the action based on unjust enrichments cannot be admitted when the claiming party acted in his own interest and at his own risks and perils." This position was adopted by the Court, referring to certain declarations of Mr Pinhol in the proceeding in South Africa stating that his intervention was part of a trial run. The Court has made a confusion with the "trial run" project, named "Project Orion" dealing with a night vision system.

281.°

These decisions can be challenged insofar as they did not enter into the real causation, nor did they deal with the global contractual relationship between the different parties from which it can be seen that there was one only sales operation between Aérospatiale and Armscor; rather they dealt only in a fragmented manner, without doubt, missing the more delicate legal and political issues, in particular being brought before the courts of the two principal states involved.

282.°

Thus Mr Loubser of Armscor declared in March 1998 that the judgment of the Bobigny Court was "completely inaccurate", which was confirmed by Mr Palm of Armscor who speaks of "conclusions [...] completely inaccurate".

3.3. The threats of Armscor and Aérospatiale against Mr Pinhol

283.°

It emerges from the exhibits of the file that in May 1996, the President of Aérospatiale has undertaken specific steps intended to cause the South African regime to put pressure on Mr Pinhol, if necessary by physical threats. As underlined by Mr Loubser, such wording was ambiguous (such as "taking the essential measures") given the existence, in this disturbed period of regime transition, of police personnel in charge of illegal missions such as exercising pressures.

4. CONCLUSIONS

284.°

The Plaintiffs' 10% Commission, as described above, should have been paid simultaneously and pro rata with the delivery of the goods and the rendering of the services included in the scope of Project Adenia to the Defendant Armscor.

285.°

As mentioned, the assembly, forwarding and delivery of the new hybrid Search and Rescue Helicopters close to Super Pumas and the Puma Search and Rescue Helicopters improved by the upgrade kits started in August 1988 and continued until mid-1997, despite the maintenance and supply of spare parts continues until this date. Therefore,

286.°

The Defendant Armscor is still bound to the duty to pay the Plaintiffs' 10% Commission.

It so happens that,

287.°

As of the termination of the contract for opening of a bank account and closing of the Plaintiffs BSL's account with KBL, the parties never agreed again any other venue for the performance of the Defendant Armscor's obligation.

288.°

As the Defendant's Armscor denies the existence of any commercial relationship with the Plaintiffs.



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4

289.º

As described above, the Defendant Armscor's benefited from the fraud carried out by the other Defendants is extremely large, corresponding to the value of the goods and services included in the Adenia Project, which in total, and without prejudice of a subsequent quantification, had reached USD 3,000,000,000 (three billion United States Dollars).

290.º

The loss suffered by the Plaintiffs corresponds to the loss of their remuneration in said project, i.e. their 10% Commission, considering that their commission may reach to USD 300,000,000 / € 192,180,622.82, without prejudice of a subsequent quantification.

291.º

The Plaintiffs BSL and BSI were unduly deprived of the funds deposited by Armscor in respect of the commission owed to the Plaintiffs into the aforementioned account by a wilful act on the part of the Defendant, with the conscious and wilful complicity of the bank KBL and the remaining participants in the facts.

292.º

The Defendants deliberately and deceitfully intended for the Plaintiffs not to intervene with the Portuguese Defence authorities in any way that would have a pernicious effect on compliance with the execution deadlines of the Adenia Project.

III – THE LAW

A) QUALIFICATION OF THE LEGAL RELATIONSHIP BETWEEN THE PARTIES – COMMERCIAL MANDATE

293.º

In view of the above, the Plaintiffs and the Defendant Armscor entered into an agreement whereby the former undertook to perform all commercial acts to establish and execute the Adenia Project in respect of the Puma and hybrid Search and Rescue helicopters close to Super Pumas in Portugal, in the name, in the interests and on behalf of Armscor.

294.º

Under said agreement, the Plaintiffs carried out the following commercial acts in the name, in the interests and on behalf of Armscor:

- i) The establishment of business contacts with the Defence authorities of the Portuguese Air Force and OGMA with a view to performing the legal business of assembly and subsequent shipment of the Puma Search and Rescue helicopters upgraded using S1 and S2 kits to the Portuguese Air Force and to the Defendant Armscor, respectively, and of the new hybrid helicopters close to Super Pumas to the latter;
- ii) Overseeing the setting up of an effective system of assembly and commercial distribution in Portugal for the Search and Rescue helicopters in question, destined for the Republic of South Africa and subsequent delivery to the Defendant Armscor.
- iii) The provision of consultation services for the execution of the transportation of the materials in question to the Republic of South Africa and subsequent delivery to the Defendant Armscor.

295.º

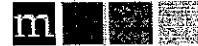
In return for the above mentioned commercial acts, the Defendant Armscor should have paid the Plaintiffs a commission corresponding to 10% of the value of the goods and services included in the so-called Adenia Project, which would be shared equally between the Plaintiffs.

296.º

In accordance with the common commercial practice existing in the market, the commissions of parties' commercial representatives in legal business of this kind are between 5% and 15% of the total value of the goods or services that are the object of the legal business performed.

297.º

The Plaintiffs and the Defendant are commercial companies whose corporate purposes are, respectively: intermediation, agencing and commercial representation for third parties in all types of international commercial contracts, promoting the entering into and execution of same, especially the setting up of means and mechanisms of transportation, supply and delivery of goods marketed by the parties represented by same; and the acquisition of civil and military material, as well as the



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7.

provision of associated services, notably maintenance, for institutions under the auspices of the Ministry of Defence of the Republic of South Africa,

298.°

Such acts being deemed subjectively and objectively commercial acts, under and for the purposes of Article 2 of the Commercial Code.

Thus,

299.°

The legal relationship existing between the parties should qualify as a commercial mandate, under which the Plaintiffs undertook to perform various commercial acts in the name, in the interests and on behalf of the Defendant Armscor.

B) APPLICABLE LAW

300.°

Article 41.1 of the Civil Code sets forth the following:

"Article 41

Duties arising from legal business

1. The duties arising from legal business, as well as the substance of same, shall be regulated by the law the relevant parties so designated or had in mind.

(our underlining).

301.°

Given that provided in said rule, it is evident that the Plaintiffs and the Defendant Armscor had in mind the application of Portuguese law for the execution of the mandate in question since all the commercial acts subject to said agreement were entered into on the footing that they would be and were executed by the Plaintiffs in Portugal, at the express request of the Defendant Armscor, with a view to the execution of the Adenia Project on the part of the latter in Portugal.

302.°

It should be stressed that the performance of the mandate in question was aimed at establishing business contacts with the military authorities pertaining to the Portuguese Air Force and OGMA with a view to enter into contracts for assembly and



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4

shipment of the Search and Rescue Helicopters Puma improved by the S1 and S2 upgrade kits for the Portuguese Air Force and the Defendant Armscor respectively, and the new Super Puma helicopters to the latter.

303.°

The Portuguese Air Force is a branch of the Portuguese Armed Force, under the direct and hierarchical dependence from the Portuguese State.

Hence,

304.°

The Plaintiffs' mandate was carried out and totally fulfilled in Portugal before authorities directly and hierarchal dependant from the Portuguese State.

Therefore,

305.°

The Plaintiffs' mandate was exercised and fulfilled having solely in mind the Portuguese jurisdiction and territory.

C) THE LEGAL CONSEQUENCES OF THE DEFENDANT ARMSCOR'S DEFAULT

306.°

As stated above, despite on various occasions being contacted for the purpose by the Plaintiffs, the Defendant Armscor has not to date paid the commission owed to the former for the execution of their commercial mandate, a fact which did not come about even with the artful opening and closing of the account at the bank KBL.

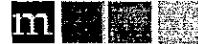
In fact,

307.°

The Defendant Armscor and Messrs Piet C. Smith, Raymond Pretorius, Eric Bestbier, Kobus Eksteen and Tielman Johannes de Waal ordered a deceitful manoeuvre in the opening of a bank account by BSL with KBL, carried out by KBL.

308.°

KBL, under the terms defined by the Defendants by direct action of Germain Ménager, carried out the opening of a bank account in the Plaintiff BSL name in order to facilitate the Defendant's Armscor contractual default.



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7

309.º

In fact, had KBL not acted as mentioned above, the Plaintiffs would have exercised their commercial veto by alluding to the Portuguese Air Force authorities and representatives that serious doubts as to the Plaintiffs commercial reputation had come out and, thus, suspending Project Adenia until the payment of their 10% Commission was assured.

310.º

KBL and KT were the direct instruments and the material perpetrators of the deceitful maneuver that had been ordered by the Defendant Armscor and Messers Piet C. Smith, Raymond Pretorius, Eric Bestbier, Kobus Eksteen and Tielman Johannes de Waal.

311.º

The Plaintiffs are entitled to demand judicially the payment of the amount corresponding to the 10% Commission due from the Defendant of an immediately payable value of € 192,180,622.82, corresponding to USD 300.000.000 (three hundred million United States of America dollars), at 13 March 2008 exchange rate (1 USD = 0,64060 EUR) without prejudice to what is determined at execution of judgment, under and for the purposes of Articles 471.1, sub-paragraph b) and 661.2 of the Civil Procedure Code, an entitlement that they exercise by means of this action, under Article 817 of the Civil Code.

Furthermore,

312.º

Not having paid the commission in question at the relevant date due, the Defendant is in default, under Article 805.2, sub-paragraphs b) and c), Article 805.3, and Article 806.1 of the Civil Code.

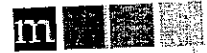
Therefore,

313.º

Under Article 805.2, sub-paragraphs b) and c), Article 805.3, and Article 806.1 of the Civil Code, to the amount owing -- in the immediately payable amount of € 192,180,622.82, must be added late payments interest counted as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment.

Thus,

149
7



314.º

At the date of the filing of this action, the Defendant Armscor owes the Plaintiffs the sum of € 192,180,622.82, which must be accrued with late payment interests counted as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment.

D) SUBSIDIARY CLAIM

315.º

However, even if deemed that the legal relationship between the parties does not take the form of a contract of commercial mandate, it must be said that the Defendant Armscor was unjustly enriched at the cost of the provision of services performed by the Plaintiffs in the name thereof, under and for the purposes of Article 473 of the Civil Code.

Indeed,

316.º

As stated above, on 15 July 1991, the Defendant Armscor sent a letter to both Plaintiffs, signed by the Director General of Acquisitions, Mr. T. J. De Waal, denying the Defendant Armscor's liability in the payment of any commission to the Plaintiffs and stating that the Plaintiffs should request the payment of same from OGMA.

That is,

317.º

The Defendant Armscor considered that there was never any legal relationship between it and the Plaintiffs.

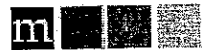
It so happens, however, that,

318.º

Between 1985 and 1991, the Plaintiffs performed various commercial acts in the name and on behalf of the Defendant Armscor.

319.º

Due to said commercial acts, the Defendant Armscor obtained a property advantage of enormous value in the form of (i) the acquisition of upgrade kits for Puma Search and Rescue helicopters, 11 of which were used to remunerate the Portuguese Air Force, and 1 upgrade kit for an Alouette III (ii) the acquisition of 50 new hybrid



helicopters similar to Super Puma Search and Rescue helicopters, (iii) the establishment of commercial relations with the Portuguese Defence authorities, and (iv) a system of transportation, assembly and re-shipment of said helicopters to their final destination: the Defendant Arm Scor's facilities in the Republic of South Africa.

320.º

The services provided by the Plaintiffs enabled the Defendant Arm Scor to obtain a large economic benefit in the form of the non-payment of the 10% Commission that the Plaintiffs would charge for its services under a legal relationship of commercial mandate, which, the Defendant Arm Scor claims -- much to the Plaintiffs' indignation -- never existed.

321.º

The property advantage gained by the Defendant Arm Scor was obtained at the cost of the commercial action of the Plaintiffs who, for almost a decade, acted in the Defendant Arm Scor's name.

322.º

The Defendant received, as stated above, a series of economic advantages in the form of the acquisition, transportation, assembly and re-dispatch of the goods described above, all due to the Plaintiffs' conduct.

323.º

The Plaintiffs' sacrifice or loss of property is the failure to obtain the remuneration corresponding to its actions during said period of time, i.e., a commission of 10% on the total value of the goods and services included in the Adenia Project.

324.º

Under Articles 473.2 and 479 of the Civil Code, due to its enrichment without cause, the Defendant Arm Scor has the duty to retribute the Plaintiffs for the property advantage with which it was unjustly enriched at their cost.

325.º

Which corresponds to a 10% Commission on the total value of the goods and services included in the Adenia Project, in the immediately payable amount of € 192,180,622.82, without prejudice to other interest to be ascertained at judgment.

Thus,



151
17

326.º

At the date of the filing of this action, the defendant owes the Plaintiffs the sum of € 192,180,622.82, which must be added with the late payment interests counted as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment. However, even if it is not thus construed,

327.º

It must be said that the Plaintiffs acted as manager of the Defendant Armscor's business ("negotiorum gestio") in respect of the Adenia Project, consolidated in practice by the Plaintiffs' performance of the various above mentioned commercial acts in the name, in the interests and on behalf of the Defendant Armscor, under and for the purposes of Article 464 and subsequent of the Civil Code.

328.º

As set out above, the Plaintiffs always acted in accordance with the Defendant Armscor's interests and real and effective will, the latter having express knowledge of said commercial acts performed by the Plaintiffs, who always provided the Defendant with all due information during the period between 1985 and 1991.

329.º

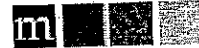
Such business management was expressly requested and approved by the Defendant Armscor, the latter opening an account in the Plaintiffs BSL's name with the bank KBL for the payment of the remuneration corresponding to the execution of its commercial mandate.

330.º

The Plaintiffs and the Defendant Armscor are commercial companies. Therefore,

331.º

Under paragraphs 1 and 2 of Article 470 of the Civil Code, the Plaintiffs are entitled to remuneration corresponding to their commercial action in said business management, which should be set pursuant to Article 232 of the Commercial Code, i.e., in accordance with the commercial practice existing in the market in which the Plaintiffs operate.



152
17

332.º

In accordance with the commercial practice existing in the market, the commissions of parties' commercial representatives in legal business of this kind are between 5% and 15% of the total value of the goods or services which are the object of the legal business entered into.

333.º

The Plaintiffs and the Defendant Armscor agreed the payment of a 10% Commission on the total value of the goods and services included in the Adenia Project.

334.º

Which to date has not been paid by the Defendant Armscor.

335.º

Which corresponds to the immediately payable sum of € 192,180,622.82, without prejudice to what may be determined at execution of judgment, under and for the purposes of Articles 471.1, sub-paragraph b) and 661.2 of the Civil Procedure Code. Furthermore,

336.º

Not having paid the commission in question at the relevant date due, the Defendant is in default, under Article 805.2, sub-paragraphs b) and c), Article 805.3, and Article 806.1 of the Civil Code.

Therefore,

337.º

Under Article 805.2, sub-paragraphs b) and c), Article 805.3, and Article 806.1 of the Civil Code, to the amount owing – in the immediately payable amount of € 192,180,622.82, must be added late payments interest counted as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment.

Thus,

338.º

At the date of the filing of this action, the Defendant Armscor owes the Plaintiffs the sum of € 192,180,622.82, which must be accrued with late payment interests counted



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as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment.

In these and other legal terms, this action must be deemed logical and proven and, consequently:

- (i) The Defendant Arm Scor must be ordered to pay the Plaintiffs the sum € 192,180,622.82 (one hundred and ninety-two millions, one hundred and eighty thousand, six-hundred and twenty-two euros and eighty-two cents), in respect of the 10% Commission for the commercial mandate agreement executed by the Plaintiffs, in the name and on behalf of said Defendant, which must be accrued with late payment interests counted as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment and to what may be determined at execution of judgment, under and for the purposes of Articles 471.1, sub-paragraph b) and 661.2 of the Civil Procedure Code;

If such is not construed, on a subsidiary basis,

- (ii) The Defendant Arm Scor must be ordered to pay the Plaintiffs the sum € 192,180,622.82 (one hundred and ninety-two millions, one hundred and eighty thousand, six-hundred and twenty-two euros and eighty-two cents), for the property advantage with which it was unjustly enriched at the cost of the conduct of the latter, corresponding to the 10% Commission on the total value of the goods and services included in the Adenia Project, which must be accrued with late payment interests counted as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment and to what may be determined at execution of judgment, under and for the purposes of Articles 471.1, sub-paragraph b) and 661.2 of the Civil Procedure Code;

Or, if such is not construed, on a subsidiary basis,



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- (iii) The Defendant Armscor must be ordered to pay the Plaintiffs the sum of € 192,180,622.82 (one hundred and ninety-two millions, one hundred and eighty thousand, six-hundred and twenty-two euros and eighty-two cents), in respect of remuneration corresponding to their commercial action as said Defendant's business managers on the Adenia Project, which must be accrued with late payment interests counted as of the date of service of notice of claim to the Defendant, without prejudice to other interest due until full and effective payment and to what may be determined at execution of judgment, under and for the purposes of Articles 471.1, subparagraph b) and 661.2 of the Civil Procedure Code;
- (iv) The Defendant Armscor must be ordered to pay the court fees and remaining costs from the proceedings.

Thus, we hereby request that Your Honour orders a writ of summons on the Defendant to, if it so wish, contest this action, or, should they fail to do so, the facts set forth in this initial petition should be deemed to be confessed, other terms proceeding to the end.

Amount: € 192,180,622.82 (one hundred and ninety-two millions, one hundred and eighty thousand, six-hundred and twenty-two euros and eighty-two cents)).

Attached: 20 (twenty) documents, duplicates (one in English as the Defendant is located in an English-speaking country), court proxies, document proving initial legal court fees and digital support.

THE ATTORNEYS,