



Neutral Citation Number: [2020] EWHC 402 (Comm)

Case No: CL-2018-000026

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane, London EC4A 1NL

Date: 26 February 2020

Before :

MR JUSTICE ANDREW BAKER

Between :

ROMAN PIPIA	<u>Claimant</u>
- and -	
BGEO GROUP LIMITED	<u>Defendant</u>
(formerly known as BGEO GROUP PLC)	

Andrew George QC, Paul Burton and Timothy Lau (instructed by **GSC Solicitors LLP**) for
the **Claimant**

Sonia Tolaney QC and Natasha Bennett (instructed by **Freshfields Bruckhaus Deringer
LLP**) for the **Defendant**

Hearing date: 4 February 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE ANDREW BAKER

Mr Justice Andrew Baker :

Introduction

1. This was an application by the defendant (“BG UK”) for a declaration that, for the purposes of disclosure, it does not control documents held by either JSC BGEO Group (“BG Georgia”), in which BG UK holds 100% of the shares (save for treasury shares), or JSC Bank of Georgia (“BoG”), in which BG Georgia presently holds 79.75% of the shares (together, the “Subsidiaries” and together with BG UK, the “BG Group”).
2. The relevant procedural background may be summarised as follows. On 15 January 2018, the claimant, Roman Pipia, issued this Claim against BG UK and seven other defendants, including the Subsidiaries. These were served on BG UK in March 2018. Mr Pipia discontinued his claims against the other seven defendants at the end of April 2018.
3. In the run up to a second CMC in the Claim on 19 July 2019, a difference arose between the parties as to which Extended Disclosure Model was appropriate in this case pursuant to the Disclosure Review Document required under the Disclosure Pilot Scheme. That difference, it was realised, reflected an issue as to the extent to which BG UK has control over documents held by the Subsidiaries for the purpose of disclosure in the Claim.
4. BG UK issued this application on 9 July 2019, seeking a declaration that for the purposes of CPR 31.8 (strictly, that should have been for the purposes of paragraph 1.1 of Appendix 1 to CPR PD 51U), it does not have control of documents held by the Subsidiaries (“the Application”).
5. It is unnecessary to rehearse Mr Pipia’s underlying claim in much detail. It concerns a company incorporated in Georgia, Rustavi Azot LLC (“Rustavi”) which he alleges he owns beneficially. In 2011, BoG entered into a US\$100 million general credit line facility agreement (“the GCLA”) with Rustavi and its principal shareholder as borrowers. BoG subsequently sought to enforce its security under the GCLA in the course of August 2016 by forcing a sale of the assets of Rustavi. These were sold at an auction on 1 September 2016 to EUI Investments Limited (“EUI”).
6. Mr Pipia advances a number of complaints under Georgian law in respect of the enforcement process including that EUI’s purchase of those assets was only made possible by a loan provided by BG Georgia which he believes was funded by BG UK and that EUI was illegitimately connected to the BG Group and BG UK’s Chief Executive Officer at the time, Irakli Gilauri. When it comes to disclosure, and stated at a high level of generality, Mr Pipia will say it is a concern that BG UK has or may have few documents of its own, or at any rate that much important evidence may be contained only in documents that are BG Georgia’s or BoG’s documents rather than BG UK’s documents. It is trite law that the fact BG UK owns BG Georgia (directly) and BoG (indirectly, via BG Georgia) does not mean, without more, that BG Georgia’s documents or BoG’s documents are within BG UK’s control.
7. The Application is unusual in that against that background Mr Pipia is more naturally the applicant, for directions for Extended Disclosure that depend upon BG UK having

control over documents held by BG Georgia or BoG. Instead, the Application was a pre-emptive application by BG UK for negative declaratory relief. What is more, it sought, ambitiously, to establish the negative proposition that no document held by BG Georgia or BoG is or ever has been within BG UK's control, save (as regards BG Georgia) "*for any categories of documents identified in evidence to be filed*" (not a helpful qualifier). This inevitably coloured the debate since it meant that, although Mr George QC provided at the hearing, with prompting, a first draft order prepared somewhat 'on the hoof' to set out in broad terms the categories of document in respect of which control was alleged, much of the discussion was conducted in the abstract without a firm grip on what documents Mr Pipia said were held by the Subsidiaries but within BG UK's control.

Control

8. CPR 31.8 provides:

"(1) A party's duty to disclose documents is limited to documents which are or have been in his control.

(2) For this purpose a party has or has had a document in his control if—

(a) it is or was in his physical possession;

(b) he has or has had a right to possession of it; or

(c) he has had a right to inspect or take copies of it."

9. Paragraph 1.1 Appendix 1 to CPR PD 51U has this definition: "*Control*" in the context of disclosure includes documents: *(a) which are or were in a party's physical possession; (b) in respect of which a party has or has had a right to possession; or (c) in respect of which a party has or has had a right to inspect or take copies*'.

10. The parties were mostly agreed on the correct approach to the interpretation and application of these provisions where it is alleged a parent company controls documents held by its direct or indirect subsidiaries. The starting point is that a parent company does not exercise control over the documents of or held by its subsidiaries merely by virtue of its shareholding in those companies: *Lonrho Ltd v Shell Petroleum Co Ltd (No 1)* [1980] 1 WLR 627. A parent would have control over documents held by a subsidiary for the purposes of CPR 31.8 and PD 51U in one of two distinct circumstances:

- i) Where there is an existing arrangement or understanding, whether or not legally enforceable as a contract, that in practice provides the parent with a right of access to documents held by its subsidiary. The parties differed as to whether there is a requirement, or what is meant by any requirement, for an arrangement to qualify as conferring control (a 'control arrangement'), that the right of access must be 'free and unfettered'.
- ii) Where the parent company has a presently enforceable legal right to obtain the documents from its subsidiary.

11. Before moving on, it is worth noting that CPR 31.8 requires disclosure of documents “*which are or have been*” in the control of a party. Although not developed much in argument, Mr Pipia relied on this in his skeleton to mean that, to the extent a party has had a right of access to a document which is either legally enforceable or conferred in practice by a control arrangement, then it would be required to disclose that document, even if it no longer had any such right of access when disclosure was being given. BG UK did not address this point in their skeleton or in oral argument, but it is obviously correct. It applies also under CPR PD 51U because of the definition of ‘control’ (see paragraph 9 above).
12. That said, the concept of ‘control’, as thus defined, is barely used in CPR PD 51U. It is used in defining ‘known adverse documents’ and the document preservation duty (see paragraphs 2.8 and paragraph 3.1(1)), but not thereafter. Section 2 of the Disclosure Review Document does not build upon the definition, as perhaps it might have, by requiring information to be given, so as to inform discussions and decisions about Extended Disclosure directions, as to the sources of documentation thought to fall within its different parts, but instead, going by the Notes in Appendix 2 to CPR PD 51U at any rate, Section 2 takes as its subject matter the “*data held*” (paragraph 1) or “*documents held*” (paragraph 2) by the litigating party. Question 2 in Section 2 of the Disclosure Review Document, in respect of “**Electronic files: data sources/locations**”, asks for “*details on all data sources to be considered at collection, including ... (10) Third parties who may have relevant documents which are under your control (e.g. agents or advisers)*” (my emphasis). No similar question appears to be asked as to hard copy documents. As regards electronic documents, the detail sought on the proposed disclosure methodology, under what are now familiar headings of Custodians, Date ranges, Keyword search terms, Irretrievable documents, Use of analytics and Technology / computer assisted review (TAR), all rather presupposes that the party is in possession of the relevant electronic files in searchable format. Thus, the Disclosure Review Document is not a ready vehicle for identifying how it is, and in respect of what documents or classes of documents, documents held by a third party are or have been within the control, for disclosure purposes, of the litigating party, or for airing between the parties and then with the court what (if anything) the litigating party should be required to do to obtain such documents.
13. At the end of the process, however, the Disclosure Certificate will have to certify that the Extended Disclosure List of Documents “*is a complete list of all documents which are or have been in my control and which I am obliged under the Disclosure Order to disclose*” (my emphasis again). If only because of that, it is thus implicit throughout that to the extent search-based disclosure is to be used, the concept of ‘control’, as defined, fixes the universe of documents from which, by one or other or a combination of means, a party’s Extended Disclosure is to be generated.

Control Arrangement

The Authorities

14. I was taken to a number of cases in argument which were said to bear on the question of whether a control arrangement arose, but in my view only two are relevant to the points of difference between the parties.

15. In *Schlumberger Holdings Ltd v Electromagnetic Geoservices AS* [2008] EWHC 56 (Pat), the defendant applied for an order that the claimant search the documents of other companies within its corporate group that were not parties to the action on the basis that the claimant had control over their documents. It was the evidence of one of the companies in the corporate group that, in general, group companies would provide documents requested by the claimant except where the documents were especially commercially sensitive, such as, in particular, corporate acquisition documents, or the requests were onerous.
16. Floyd J, as he was then, held that the documents of the other companies in the corporate group were within the control of the claimant. The starting point was, of course, *Lonrho v Shell*, *supra*. But at [21] the judge said this:

“...[W]hat happens where the evidence reveals that the party has already enjoyed, and continues to enjoy, the co-operation and consent of the third party to inspect his documents and take copies and has already produced a list of documents based on the consent that has been given and where there is no reason to suppose that that position may change? Because that is the factual situation with which I am confronted here. In my judgment, the evidence in this case sufficiently establishes that relevant documents are and have been within the control of the claimant. I should emphasise that my decision does not turn in any way on the existence of a common corporate structure. My decision depends on the fact that it appears from the evidence that a general consent has in fact been given to the claimant to search for documents properly disclosable in this litigation, subject only to the caveats ... concerning corporate acquisition documents and unreasonably onerous requests.”

17. In *Ardila Investments v ENRC* [2015] EWHC 3761 (Comm), the claimant, Ardila, sought disclosure of documents held by two subsidiaries, Bamin and Pedra Cinza, of the defendant parent company, ENRC. After setting out the relevant case law, including the *Schlumberger* case, Males J, as he was then, concluded as follows:

“10. It is apparent that what is required is an existing arrangement or understanding, the effect of which is that the party to the litigation from whom disclosure is sought has in practice free access to the documents of the third party, in that case the trustees. It appears that that does not need to be an arrangement which is legally binding. If it did, then there would be a legal right to possession of the documents, but it must nevertheless be an existing arrangement which, in practice, has the effect of conferring such access.

...

*13. The position can, therefore, be summarised for present purposes in this way. First, it remains the position that a parent company does not merely by virtue of being a 100 parent have control over the documents of its subsidiaries. Second, an expectation that the subsidiary will in practice comply with requests made by the parent is not enough to amount to control. Third, in such circumstances, as Lord Diplock said in *Lonrho*, there is no obligation even to make the request, although it may, in some circumstances, be legitimate to draw inferences if the party to the litigation declines to make sensible requests. But that is a separate point.*

14. Fourth, however, a party may have sufficient practical control in the sense which the Schlumberger and North Shore cases indicate, if there is evidence of the parent already having had unfettered access to the subsidiary's documents or if there is material from which the court can conclude that there is some understanding or arrangement by which the parent has the right to achieve such access."

18. Males J held on the facts that ENRC did not have control in that sense over the documents requested. Ardila had relied primarily on two matters as evidence of the relevant kind of agreement:

i) First, certain obligations ENRC had undertaken to Ardila in a share purchase agreement, which included the obligation to keep Ardila fully informed in respect of its subsidiaries' performance of certain payment conditions. As to that, Males J took the view, at [17] that:

"...extensive as those obligations are, they fall well short of any understanding or arrangement which would enable ENRC to have free access to all of Bamin's or other subsidiaries' documents. It is one thing to undertake specific obligations of that nature, it is quite another to permit free range through the documents, including those held electronically, of the subsidiary company, extending much more widely."

ii) Second, evidence of the parent company's general counsel that its subsidiary would comply with any request because it would be in the subsidiary's commercial interest to do so. Males J found this to be insufficient too, explaining at [21] that:

"It is merely the evidence of the normal relationship that one would expect between a parent and subsidiary without the particular features of the Schlumberger or North Shore cases. Such cooperation as there may have been in the past as to compliance with specific requests, for example production of certain of the licences in issue, does not, in my judgment, amount to evidence that ENRC has the necessary control in the sense which the cases show is necessary over Bamin's documents. It does not indicate that ENRC would be entitled to send its solicitors into Bamin's premises and to insist on searching Bamin's computers, applying the kind of word search terms and insisting on production of the computers of various individuals which would be necessary in order to enable that to be done. There is no evidence as far as I can see that that has happened so far, as distinct from specific documents being provided in response to a specific request."

19. It is important, in my judgment, not to read too much into that last quotation from Males J's judgment in *Ardila*. The particular arrangement found to exist in *Schlumberger* was an arrangement granting to the litigating party general access to the third party's documents enabling it to go through them looking for material relevant to the litigation. What was alleged to exist in *Ardila*, but found not to exist, was something similar. That does not mean there cannot be 'control' unless there is a grant of that kind of wholesale access to documents.

20. Take the paradigm case of an enforceable contractual right to be provided with documents of some particular description, upon request, perhaps quarterly management accounts for a business in which the litigating party has invested, or monthly stock reports for a business to which the litigating party has lent money or provided stock on a ‘sale or return’ basis. That would only ever entitle the litigating party to obtain documents of that description, by making an appropriate request. But there would plainly be control as that is defined for disclosure purposes, that is to say control over documents that fell within the scope of the contractual right. In this context, the need for the litigating party to make a request, to trigger the obligation on the third party to provide the documents, is not a material qualification upon the right to obtain the documents. The need for a request does not stop the entitlement from being “*presently enforceable*”, in the sense used by Lord Diplock in *Lonrho v Shell, supra*, at 635G-H.
21. As illustrated by *Ardila*, the fact that some particular request or requests to a third party for assistance by way of the provision of documents has or have been met without demur does not mean, without more, that there was or is some standing consent to meet such requests, or that some promise (legally enforceable or not) to meet future requests arises out of that prior assistance. That said, it is not difficult to envisage in principle, although it does not arise on the facts before me, the possibility of repeat behaviour sufficient to imply such a promise, i.e. to involve a standing consent as to the future. But all that is rather by the way for the present case, in which there was an express, written, standing consent, and the only real questions are what it meant and whether it persists today. To the extent that Ms Tolaney QC submitted that only a *Schlumberger*-type arrangement, granting general access to inspect a third party’s documents and take copies to provide by way of disclosure, confers control, I do not agree.

The Facts

22. At the time when, as alleged by Mr Pipia, wrongdoing against him occurred, Mr Gilauri was a Director, and Chief Executive Officer, of BG UK, the Executive Director of BG Georgia, and a Director, and Chief Executive Officer, of BoG (until September 2015 when he became a member of the Supervisory Board of BoG, becoming Chairman on 2 November 2015). A BG UK Board meeting occurred on 24 March 2016, the minutes of which recorded that Mr Gilauri, at this point still CEO of BG UK, was granted power to adopt and sign any resolutions on behalf of BG UK, “*without limitation to solely adopt and sign any and all decisions with respect to any issues related to the subsidiaries*”.
23. BG UK’s report for the third quarter of 2016 sets out information about the acquisition of Rustavi and its ongoing operation and management.
24. BG UK was the publicly listed ultimate holding company for the BG Group until a demerger in May 2018 when it was delisted. It was common ground that, at least up to that date, there would have been an arrangement in place similar to that currently in place between what is now the publicly listed ultimate holding company, Bank of Georgia Group plc, and the BG Group, whereby certain matters are reserved to the Board of the plc, including the “*prosecution, defence or settlement of litigation involving more than £2.5 million or being otherwise material to the interests of the Group*”. (For completeness, although nothing turns on it, Bank of Georgia Group plc

as (now) the publicly listed ultimate holding company owns 100% of BG UK and 19.8% of BoG (out of the 20.25% of BoG not owned by BG Georgia, leaving a balance of 0.45% of BoG shares that are traded on the Georgian Stock Exchange).)

25. By two letters dated 30 March 2018 (the “30 March Letters”) and addressed to Avtandil Namicheishvili, Deputy CEO of BG Georgia at the time, and Kakhaber Kiknavelidze, a Director of BoG, Mr Gilauri, as CEO of BG UK, requested on its behalf that, for the purposes of this Claim, the Subsidiaries would provide BG UK with “*all the documents pertaining to [the Claim] as requested by us or our advisors*”. Mr Gilauri signed each letter on behalf of BG UK; Mr Namicheishvili and Mr Kiknavelidze countersigned the respective letters on behalf of BG Georgia and BoG. The evidence on the Application did not identify when the letters were countersigned and the countersignatures themselves do not bear any date; but I take it they were countersigned at that time, i.e. on or about 30 March 2018.
26. BG UK served evidence for the Application from Archil Gachechiladze, who is currently (and has been since early 2019) a Director of BG UK, BG Georgia and BoG, and CEO of BoG. His evidence was that, following the 30 March Letters, some documents were sought by BG UK and provided by the Subsidiaries to BG UK, for use in the Claim. Those documents, to the extent they were not included within BG UK’s Initial Disclosure, will be treated as disclosable (subject to relevance), or as Mr Gachechiladze put it, they “*will be included in the pool of documents searched by BG UK for the purposes of its disclosure in due course*”. Whether those documents were within BG UK’s ‘control’, by virtue of the 30 March Letters, i.e. prior to being provided to BG UK, is effectively immaterial. Those (copies of) documents, as in fact received by BG UK, are now BG UK documents rather than third party documents, for disclosure purposes. The Application concerns documents that are, in that sense, still third party documents (i.e. BG Georgia or BoG documents, held by them), and the question is whether, as BG UK contends, no such documents are within its control.
27. By Notice of Discontinuance dated 27 April 2018, filed on 30 April 2018, Mr Pipia discontinued *inter alia* his claims against the Subsidiaries.
28. By a letter dated 5 June 2018 addressed to Teimuraz Bigvava (Head of the Legal Department at BoG), Venera Suknidze, a director at BG UK, stated that “*Information and documents are requested by [BG UK] from [BoG] in the context of [the Claim]*” and asked Mr Bigvava to “*provide such information/documents, as requested.*” BoG did not countersign or otherwise respond to this letter.
29. The primary exchange of Statements of Case was completed by July 2018 and a first CMC took place in December 2018 before Teare J, at which he refused an application by BG UK for a trial of a preliminary issue and an application by Mr Pipia for costs budgeting to be applied even though the asserted value of the claim is of the order of US\$300 million, dealt with an application by Mr Pipia to amend his pleaded case, directed that disclosure should be conducted in accordance with the Disclosure Pilot, i.e. under CPR PD 51U, which was about to come into effect in January 2019, and directed the further CMC for July 2019 to which I referred at the outset.
30. That second CMC came on before HHJ Pelling QC, sitting as a judge of this court. The issue about control over documents held by BG Georgia and BoG had surfaced

and BG UK had issued the Application. HHJ Pelling QC gave directions for the determination of the Application and also directed the listing of a final trial, time estimate 6-8 weeks, and set a pre-trial timetable. Under those directions, the trial has been fixed for Easter Term 2021 (going into Trinity Term 2021 if it runs beyond 6 weeks). It is a matter of some regret that the court's availability, rather than the parties', meant that the hearing of the Application did not come on until 4 February 2020. The second CMC Order directed that directions for Extended Disclosure be settled after judgment on the Application, by that judge, with disclosure under such directions to be given by 10 January 2020. That deadline was extended generally, to be re-set after judgment on the Application, by an Order of Jacobs J in September 2019.

31. With the second CMC on the horizon, on 7 June 2019, Mr Gachechiladze, writing as a Director of BG UK, wrote to Mr Chiladze, a Director and the Chief Risk Officer of BoG, requesting that BG UK "*be provided with open access to BoG's documents and data so that BG UK's solicitors can search for documents that relate to the issues in dispute in the Proceedings and so [BG UK] can then provide copies of these documents to Mr Pipia and the Court in London*". (I shall refer to this letter and the letter to BG Georgia three weeks later referred to in the next paragraph as "the June Letters".) On 11 June 2019, Mr Chiladze responded on behalf of BoG: "*The Bank is obliged to protect information that is subject to bank secrecy and is entitled to disclose such information only in specific cases and to specific recipients provided for in legislation. Based on the requirements of Georgian law, [BoG] is unable to fulfil your request ...*".
32. By a letter dated 28 June 2019, Mr Gachechiladze, writing again as Director of BG UK, wrote to BG Georgia requesting "*open access to [BG Georgia's] documents and data, so that [BG UK's] solicitors can search for documents that relate to the issues in [the Claim]*." By a letter dated 4 July 2019, Sulkhan Gvalia, Deputy General Director of BG Georgia, replied stating that BG Georgia was "*unable to comply*" with Mr Gachechiladze's request.
33. All of the BG Group entities share a single electronic document storage system hosted on a server in Georgia. However, that is a cost-reducing and administrative convenience. The companies' respective data are segregated, so that, for example, BG UK employees acting as such do not have access to BG Georgia's or BoG's documents on the server.

The Parties' Submissions

34. I start with Mr Pipia's case, although this is BG UK's application, because Mr Pipia is the party alleging the existence of a control arrangement.
35. Mr George QC for Mr Pipia submitted that, at the very least, the 30 March Letters created a control arrangement that has not been terminated. That was, though, his fall-back position, advanced squarely only at the hearing, after the meaning and effect of the 30 March Letters had been explored during Ms Tolaney QC's opening submissions. As his primary submission, Mr George QC submitted that a more wide-ranging, general control arrangement was in place prior to and independently of the 30 March Letters, and has not been terminated. The existence of such a control arrangement could be inferred from various matters, he argued, and I could find that

BG Georgia's and BoG's documents were, generally speaking, within BG UK's control. The matters relied on were these:

- i) Mr Gilauri's roles meant, it was said, that he was the directing mind and will of the BG Group such that in reality BG UK must have had access to documents of its subsidiaries;
 - ii) the minutes of the March 2016 Board meeting;
 - iii) BG UK's 2016 third quarter report since the information it contained about Rustavi could only have been provided to BG UK by the Subsidiaries;
 - iv) the arrangement reserving matters to the Board of BG UK, *qua* publicly listed holding company for the BG Group at the time, because this would necessarily have entailed a practice of the Subsidiaries providing it with documents relevant to the reserved matters; and
 - v) an adverse inference that, it was said, should be drawn, as contemplated by Males J in *Ardila*, in particular at [13] and [21].
36. Taking that last aspect first, Males J suggested, and I agree, that if a parent in litigation declines to make "*sensible requests*" of its subsidiary for documents, in the context of its disclosure obligations to collect documents that are within its control, then in appropriate circumstances it may be appropriate to draw the adverse inference that there is in fact a right of access (the logic being that the disinclination to make sensible requests stems from an appreciation that they would be responded to in such a way as would evidence the existence of that right). In this case, Mr George QC said BG UK had so failed to make sensible requests that an adverse inference should be drawn. He argued that BG UK, upon receiving the responses it did to the June Letters, should have responded to BG Georgia by asking it to explain its (asserted) inability to comply with BG UK's request (given that there was in fact no basis for it), and to BoG by requesting access to the substantial number of documents it is said in the witness statement evidence for the Application that BoG will hold that will be relevant to the underlying dispute and will not be covered by banking secrecy concerns under Georgian law.
37. There was a further suggestion in Mr George QC's skeleton that, by parity of reasoning, a court could draw an adverse inference where a sensible request was made by the parent and the subsidiary refused to comply. However, there is no parity of reasoning – to the contrary, such a refusal would be *prima facie* powerful evidence that there was no standing arrangement, assuming a genuine exchange not concocted to present a false picture to the court – and I did not understand Mr George QC to press this further point when tested.
38. Also, to be clear, the possibility noted by Males J in *Ardila* is that *as part of proving the existence of control so as to inform orders as to disclosure made before, usually long before, trial*, there may be circumstances where a failure by the litigating party to make sensible requests to a related third party for assistance might lead to an adverse inference, i.e. an adverse inference that a control arrangement existed and/or still exists. As Males J also made clear in *Ardila*, a conclusion, if reached, that such a third party would probably choose to provide documents, if asked by the litigating party to

help, is not a conclusion that control has been established; absent control, it is no part of the litigating party's disclosure obligations to ask such a third party to provide documents. That does not mean, however, that if *at trial* there is upon the evidence a serious case to answer of wrongdoing by a defendant and a paucity of evidence to rebut it, the defendant can safely hide, if it be the case, behind the fact that documentary evidence to rebut the case, if it existed, would have been held by a related third party. It can be proper, if the conclusion then is that the related party would probably have assisted if asked, and depending on all the circumstances of the particular case, to draw an adverse inference against the litigating party *going to the merits* (either generally or on some particular issue or issues) from its failure to seek that assistance. Quite apart from the fact that a court could not judge when giving directions as to disclosure, typically as I say long before trial, whether that possibility will or may arise, by definition it does not go to the litigating party's obligations as to disclosure, since they relate only to documents within its control as defined by the CPR and so it cannot play any part in setting disclosure directions.

39. Ms Tolaney QC submitted that this was not a case in which it would be appropriate to draw any adverse inference about the existence or extent of any control over BG Georgia or BoG documents; and I agree. The correct analysis of the June Letters is that they sought agreement to a *Schlumberger*-type control arrangement (general access to search, inspect, and use) that did not otherwise exist; and the Subsidiaries declined to agree. It was not suggested, and I could not find on the evidence, that the responses were concocted. I can understand, in a case in which I fear there may be little trust between the parties on anything, that Mr Pipia may have a suspicion that if BG UK had pressed the matter further, then BG Georgia at least might in fact have agreed to a more wide-ranging control arrangement. However, I cannot find that BG UK's failure to press is only sensibly to be explained by a fear that it would generate evidence showing that some such arrangement already exists.
40. Aside from any question of drawing an adverse inference, Ms Tolaney QC advanced four submissions in support of BG UK's contention that no control arrangement existed in favour of BG UK in respect of any of BG Georgia's or BoG's documents.
41. First, argued Ms Tolaney QC, as a matter of principle an arrangement must grant an unfettered right of access in order for it to qualify as a control arrangement and in this case nothing Mr Pipia relied on gave rise to such a right of access. She relied primarily on the *Ardila* case as authority for the proposition that an arrangement or understanding will only give rise to control in circumstances where its effect is to give 'free and unfettered access' to the documents in question. In the development of the argument, I understood the submission to contemplate that the requirement for 'free and unfettered access', before there was 'control', concerned the *scope* of the putative arrangement: to the extent there had been consent by BG Georgia and/or BoG to provide documents when requested by BG UK, that had only ever been to meet requests, if made, to provide documents; that was not the same as granting 'free and unfettered access' to BG Georgia's or BoG's documents, which it was said was needed for there to be 'control'.
42. In response, Mr George QC submitted that in *Schlumberger*, which had been relied on by Males J in *Ardila*, Floyd J had found that there was control in circumstances where the relevant agreement was subject to the *caveat* that requests for commercially sensitive information and requests which were onerous would not be complied with.

As to that, Ms Tolaney QC submitted that Floyd J had relied on evidence showing that “*a general consent has in fact been given ... to search for the documents*”. She submitted that in *Schlumberger* there had been a wide and general consent not present here.

43. Second, Ms Tolaney QC took the point that the very existence of the 30 March Letters suggests there was no control arrangement prior to that date, otherwise the parties would not have seen fit to document some form of understanding or arrangement by virtue of those letters. Self-evidently, that could answer only Mr George QC’s primary case and not a case founded simply upon the 30 March Letters themselves.
44. Third, Ms Tolaney QC submitted that, in any event, by virtue of the June Letters and the replies to them, and the fact that, by 27 April 2018, BG Georgia and BoG were no longer parties to the Claim, “*things had moved on*” so that whatever the position historically there was no control arrangement now.
45. As to that, Mr George QC submitted that BG Georgia’s statement in its letter of 4 July 2019 that it was “*unable*” to comply with a request should be construed as a statement of inability rather than a refusal. Further, that it was mistaken since (as indeed Ms Tolaney QC accepted) there was nothing as a matter of Georgian law, on the expert evidence, that prevented BG Georgia from complying with the request.
46. As to BoG’s statement in its letter of 11 June 2019 that it was “*unable*” to comply by reason of Georgia’s laws concerning banking secrecy (discussed below), Mr George QC accepted this *was* a refusal but contended that it arose out of a legitimate concern not to consent to a quite different arrangement to that established by the 30 March Letters, whereby BG UK’s solicitors would have been given general access to BoG’s documents to search for themselves (on behalf of BG UK) for anything of relevance to the Claim, which might well infringe Georgian law on banking secrecy.
47. Fourth, Ms Tolaney QC argued that the 30 March Letters, to the extent they gave rise to any right, did not confer a right of sufficient *quality*. This was said to be because the phrase “*all documents pertaining to [the Claim]*” was “*so generic*” that it was not “*sufficient to give free access to the documents generally*”. This elided somewhat with the first submission, and there was also a specific attempt to distinguish the present case from *Schlumberger* on the basis that in that case a list of documents had already been drawn up pursuant to the arrangement, whereas nothing like that has occurred in this case. But this fourth submission also appeared to involve the analytically different point that the arrangement established by the 30 March Letters was too vague to amount to any relevant standing consent.

Analysis

48. I do not accept Ms Tolaney QC’s primary submission, concerning what is required before there can be ‘control’. In short, a standing consent does not have to grant unrestricted access to a third party’s documents so that the litigating party may go through them (itself or using its solicitors) to identify documents that, because of their relevance to the litigation issues, should be disclosed. There can be ‘control’ that extends to a single document only.

49. Ms Tolaney QC was at pains to emphasise that by the Application BG UK had sought to respond to what had seemed to be Mr Pipia's case, through the pre-CMC correspondence and within the Application once it was issued, namely that the court should find, upon inference, that BG UK did indeed have a *Schlumberger*-type control arrangement extending to all BG Georgia's and BoG's documents, enabling it (BG UK) to send Freshfields in to their offices or servers to search for relevant material. Whilst there was some force to that, the fact remains that BG UK by the Application sought a ruling that it does not have, and has never had, control over any of BG Georgia's or BoG's documents. Further, it would not be in the parties' interests merely to dismiss the Application, if Ms Tolaney QC did not persuade me to find that there is not and has never been any control arrangement, and both sides encouraged me not to take that course, but rather, in that circumstance, to make whatever finding I felt able to make as to what control arrangement existed, or had existed in the past.
50. A true analysis is that there are three elements to the question whether a third party's documents, or particular such documents or classes of such documents, are within the 'control' of a party so as to be within the scope of its disclosure obligations in English civil litigation, by virtue of some standing consent given by the third party to the disclosing party in respect of its (the third party's) documents that falls short of an enforceable contract:
- i) firstly, the scope (subject matter) of the consent – the documents or types of document covered by the consent;
 - ii) secondly, the type of consent – how, under the consent given, the disclosing party will get hold of those documents (e.g. by looking through documents for itself and taking copies if it wishes, or by having documents located and sent (or copied) to it, or by having documents located and sent (or copied) to it to the extent they match some further (review) criteria);
 - iii) thirdly, the quality of the consent – whether it involves free and unfettered access to the documents covered, of which (or copies of which) the party will get hold in that way.
51. These elements are distinct in concept; and the question of control is concerned only with the third element, the quality of the consent. The scope of the consent will define the documents over which the disclosing party has control by virtue of the consent (if it is of the right quality), so that its disclosure obligations extend to those documents. The type of consent will affect what the disclosing party can be expected and required to do so as to discharge any disclosure obligation to conduct a search for those documents (again, if the consent is of such a quality as to confer control).
52. To illustrate by a simple example, suppose a standing consent is provided by a subsidiary to its parent to provide to the parent, upon request, any written resolution of the subsidiary's Board relating to some defined subject matter. That would give the parent control over such Board resolutions, so long as we accept (as both parties before me did) that a 'right' (to possession, to inspect, or to take copies) is not limited to a legal right enforceable as such. The unconditionality of the consent would give it the quality required to amount to control. But it would amount to control only over Board resolutions relating to the defined subject matter; and all the parent could fairly be expected by the court to do, so as to discharge a search-based disclosure obligation

relating to such documents not already in its possession, would be to make the request the subsidiary had thus agreed to satisfy. In turn – at the risk of complicating what is meant to be a simple example – whether the court should ultimately order that such a request be made by the parent, if that were contentious as regards disclosure in litigation to which the parent was party, would be affected by *inter alia* the court’s assessment of any evidence it had of the extent to which the parent already had copies of any such Board resolutions (whether pursuant to requests previously made of the subsidiary or otherwise); but that is an aspect of policing the sufficiency of the disclosure effort by the parent and does not negative control.

53. The point of principle illustrated by that example is clear. Resolutions in writing of the subsidiary’s Board relating to the defined subject matter would be within the parent’s control, though they might be few in number and though the parent’s effective access to them would be by the subsidiary locating and sending them rather than by the parent being allowed to look through the subsidiary’s files for itself to find them.
54. Where the existence or terms of any standing consent is a matter of inference or implication, it may not always be possible or appropriate to consider separately the three elements I have said are distinct in concept. In particular, what can be inferred as to the scope and type of any consent might perhaps speak also to the quality of consent in a particular case. Where, however, as in this case as regards the 30 March Letters, the standing consent is an express consent given in writing, the scope, type and quality of that consent will just be a question of interpreting what has been written.
55. I agree with Ms Tolaney QC that there is nothing in the background or surrounding circumstances relied on by Mr George QC, prior to or after the 30 March Letters, to suggest the existence of any standing consent of any kind. I also agree with her that the decision to document, by each Letter, an apparently new arrangement whereby to enable BG UK, for the purposes of the Claim, to get hold of BG Georgia and BoG documents, is inconsistent with the existence of some other arrangement by way of standing consent. In short, had it not been for the 30 March Letters, I would have agreed with Ms Tolaney QC that this was a case where I could find no more than that the Subsidiaries may have chosen to assist by providing some documents on one or more prior occasions, and that falls short of control.
56. But that gets Ms Tolaney QC only to the proposition that there was no control arrangement beyond any that was constituted by the 30 March Letters.
57. By those Letters, BG UK sought and obtained BG Georgia’s and BoG’s agreement to provide it (or its advisors) with all documents pertaining to this Claim such as it (or its advisors) might request. It was a standing promise and, in line with the authorities, it does not matter whether it would be enforceable as a contract. It was thus a standing consent of the type considered in my simple example, above, namely a consent to provide documents on request. The request for consent was not in any way conditional or qualified; and the request was “*Acknowledged and agreed*” by each authorised counter-signatory likewise without condition or qualification.
58. The scope of the consent thus sought and obtained was clearly enough defined. It covered documents held by BG Georgia, respectively BoG, that pertain to this Claim,

as might be requested by BG UK (or its advisors). To be clear, the need for a request seems to me to be a cumulative requirement for triggering, in respect of any particular document or documents, the promise to provide it to BG UK. It therefore affects the scope as well as the type of consent given, and it would not be reasonable to interpret this as enabling BG UK to make a request for “*all documents you hold pertaining to the Claim*”, without further specificity or direction as to what BG UK had identified that BG Georgia, respectively BoG, could provide to it as relevant to the Claim. That will need to be borne in mind when considering what the court can or should order, as regards BG UK’s Extended Disclosure obligations in respect of BG Georgia’s and BoG’s documents. But it does not affect the quality of the consent given, which was a standing consent giving BG UK unfettered access to documents held by BG Georgia or BoG relevant to the Claim for which a request could be formulated by BG UK that would sensibly enable BG Georgia or BoG to comply.

59. What I have just described is, in my judgment, control, for disclosure purposes under CPR 31.8 or paragraph 1.1 of Appendix 1 to CPR PD 51U, as regards the documents covered by the arrangement.
60. The control arrangement thus constituted by the 30 March Letters was put in place, it is true, when BG Georgia and BoG were co-defendants to the Claim. But it was not expressed to be conditional upon the Claim continuing against them. Indeed, from BG UK’s perspective, it was important principally if BG Georgia, respectively BoG, did not continue to be a co-defendant, since that is when they would not owe their own disclosure obligations within the litigation. Equally, from BG Georgia’s and BoG’s perspective, on the face of things it would be in their interests, and not merely in BG UK’s separate interests, to ensure that BG UK could present a materially full picture of the facts to the English court, and the more so if they did not continue to be party to the Claim and so had no direct standing to do so themselves. (To be clear, I do not mean by that to suggest that because that might be in their interests, a control arrangement could be inferred to exist in the absence of the 30 March Letters; I am dealing with the different point whether, though this is not stated in the 30 March Letters, the express control arrangement constituted by them should be read as applying only if BG Georgia, respectively BoG, was also being sued in the Claim.)
61. It is therefore, to my mind, no surprise that although the Claim was discontinued against BG Georgia and BoG as promptly as it was, the control arrangement under the 30 March Letters was not terminated. To the contrary, *prima facie* it would have been a surprise had it been terminated, depriving BG UK of access to documents held by BG Georgia and BoG with which to assist the court at trial herein; and for it to be terminated now would risk an inference being drawn in due course that it was terminated, in the face of BG UK’s disclosure obligations, because BG Georgia, respectively BoG, held documents not provided to BG UK that would be unhelpful to BG UK’s defence of the Claim.
62. The June 2019 Letters proposed a different control arrangement. I take them at face value, i.e. as having been sent and responded to in good faith and without co-ordination between request and response. They proposed that BG UK be granted “*open access to [BG Georgia’s, respectively BoG’s] documents and data, so that [BG UK’s] solicitors can search for documents that relate to the issues in dispute in the Proceedings and so [BG UK] can then provide copies of these documents to Mr Pipia and the Court in London*”. Had consent to that arrangement been given and remained

in place, BG UK would not have needed to rely on the pre-existing control arrangement constituted by the 30 March Letters, for the purpose of giving disclosure of documents held by BG Georgia and BoG; and it might be those Letters would have been regarded as superseded. But the 30 March Letters were not referred to, no suggestion was made (albeit without referring to those Letters) that any prior arrangement was to be terminated come what may, and in the event the new, different, proposed arrangement was not accepted.

63. The Application seeks a declaration that for the purposes of disclosure, documents held by each of BoG and BG Georgia “*are not and have not been within [BG UK’s] control*”. For the reasons I have given above, I am against BG UK on the claim that no document held by either BG Georgia or BoG is or ever has been within BG UK’s control for the purposes of disclosure in this Claim. To the contrary, documents held by BG Georgia, likewise documents held by BoG, pertaining to the Claim and capable of being described in such a way as will sensibly enable BG Georgia, respectively BoG, to comply with a request by or on behalf of BG UK for them to be provided, are within BG UK’s control by virtue of the control arrangements constituted by the 30 March Letters. Since a declaration as to the historic position and not just as to the present is sought, I would have been against BG UK’s application even if the arrangements established by the 30 March Letters had been terminated. To be clear, though, my conclusion is that they have not been terminated.
64. The conclusion, then, is that to the extent I stated in paragraph 58 above, BG Georgia’s and BoG’s documents are within BG UK’s control, for the purpose of CPR 31.8 or paragraph 1.1 of Appendix 1 to CPR PD 51U, because they are documents in respect of which BG UK presently has a right to possession, that having been the position since 30 March 2018 (or strictly, if different, since the date of the counter-signature of the respective 30 March Letter). Subject to agreement or discussion with counsel of the precise wording, I propose to make a declaration to that effect as my substantive disposition of BG UK’s Application Notice, subject (if at all) to the impact of Mr George QC’s claims that Georgian law confers relevant rights on BG UK over and above the 30 March Letters.
65. Whilst this will be a matter for the hearing consequential to this judgment, which will also be a resumption of the second CMC to finalise directions for Extended Disclosure, it strikes me, provisionally, that the pertinent disclosure obligation upon BG UK, deriving from the control arrangements it has in place under the 30 March Letters, will be to make reasonable and proportionate requests for documents pursuant to that arrangement. That may lend itself most naturally to the adoption of Model C for Extended Disclosure, the parties and the court appreciating that whatever Model C Requests are settled at the CMC will in practice be for BG UK to make to BG Georgia and BoG (as applicable).
66. It must be remembered that, whenever directions for Extended Disclosure are being considered, the ultimate target is to define, or set in train the process that will define, what documents *will be disclosed* (beyond Initial Disclosure), i.e. will be included in an Extended Disclosure List of Documents so as to be produced to the other side, subject to claims to withhold production, or an explanation given why production is not possible, all as required by CPR PD 51U, paragraphs 12.1(2), 12.1(3) and 12.3. In that regard, I observe now – because it is not clear to me the parties have taken this on board in their work on the Disclosure Review Document – that under Model C, the

assessment of relevance sufficient to require that documents *will be disclosed* is intended to be an aspect of settling the Model C Requests. I do not regard it as an accident that the definition of Model C Extended Disclosure under CPR PD 51U, paragraph 8, contains nothing functionally equivalent to the Model D language of “*documents which are likely to support or adversely affect ...*” (or the more expansive equivalent for Model E, or the narrower but functionally equivalent language for Model B (“*documents on which they have relied ... [and] key documents ... necessary to enable the other parties to understand the claim or defence they have to meet*”)).

67. The intention and effect of the language used in CPR PD 51U is this, namely that any documents located upon a reasonable and proportionate search that fall within the scope of a Model C Request adopted as part of directions for Extended Disclosure *will be disclosed*. Model C Requests therefore should be defined with that end result in mind; and a request for a disclosing party to search for “*any or all documents relating to*” a topic is not, to my mind, a Model C Request at all, it is merely a definition of a category of documents that might or might not contain anything of any real interest (hence paragraph 3 under ‘**Completion of Section 1B of the DRD**’ in Appendix 2 to CPR PD 51U; and see also paragraph (2) of the definition of Model C under paragraph 8 of CPR PD 51U).
68. In the present case, one Issue for Disclosure (“ID8”) is “*The circumstances of the Claimant’s loss of control of Agrochim and Rustavi Azot on or around 24 August 2016 ...*”. The claimant proposed Model C for BG UK’s disclosure on ID8 and drafted a Model C Request that seemed rather to assume that BoG’s documents, generally, were within BG UK’s control; BG UK proposed Model B instead, primarily (and perhaps entirely) on the basis of its stance that BoG’s documents generally were not within BG UK’s control; and the apparent assumption being made by Mr Pipia that BoG’s documents generally were available to BG UK to be searched was part of the background to which I said in paragraph 49 above that BG UK saw itself as responding by issuing the Application.
69. What concerns me at this stage in my judgment, however, is that BG UK seems to have agreed the claimant’s draft Model C Request if, contrary to its position on Models, the court adopts Model C for its disclosure on ID8. But that draft Request is for “*Any emails (including any relevant attachments), Word documents, PDF files of [sic.] communications, meeting notes (including manuscript notes), SMS, WhatsApp and Viber messages and any messages sent on any instant messaging system used by BoG, the Defendant between, initiated or received by any of [8 named individuals] and any other representatives of BoG, the Defendant, in relation to the Claimant’s loss of control of Agrochim and Rustavi Azot in the period between 30 June 2016 and 1 September 2016.*” As will be apparent from what I have said above, speaking provisionally (since this is not yet before me for determination), I do not think that is a competent Model C Request at all. Rather, it is a broadly-defined category of documents that it is envisaged will be collected together for review against some disclosure standard (unstated, but perhaps intended to be the Model D standard), the results of which will define what is finally disclosed out of that category of documents.
70. In the weeks that will follow between the handing down of this judgment and the resumed CMC, the parties will need to engage in constructive dialogue to define proper Model C Requests that can, in practice, then be made by BG UK to BG

Georgia and BoG pursuant to the 30 March Letters (assuming that they, or at least one of them, will be saying that Model C should indeed be adopted). That the Application has failed, i.e. that BG UK has not persuaded the court to deny generally the notion that it has control over any of BG Georgia's or BoG's documents, does not mean it will be appropriate, or meaningful, to require, in effect, that BG UK ask BG Georgia or BoG to conduct something akin to a Model D Extended Disclosure exercise such as might have been their duty if they had been co-defendants. Although presented as proposed Model C Requests, but upon a mistaken notion about the scope and/or type of standing consent BG UK enjoys so as to have some control over documents held by BG Georgia and BoG, I am concerned that that (a non-party Model D Extended Disclosure exercise) is the substance of what Mr Pipia has been hoping to achieve.

Georgian Law

71. It was common ground between the parties that there are three provisions of the Georgian Law on Entrepreneurs ("the LoE") pursuant to which BG UK could have legal rights, as shareholder, to information and/or documents from BG Georgia. There were differences between them over whether any of those provisions had relevant application here, i.e. created some right of access to, or to be provided with, documents that should properly influence the Extended Disclosure obligations to be imposed on BG UK in the Claim. There was also a fundamental divide between them as to whether BG UK's rights, if any, under those provisions of the LoE gave rise to any control over any of BoG's documents. This was referred to as the 'grandfather' issue: do BG UK's rights as shareholder in BG Georgia entitle it to require BG Georgia to exercise its rights as shareholder in BoG so that ultimately, as BoG's corporate grandfather, BG UK would be entitled to get hold of BoG documents?
72. Permission for expert evidence as to Georgian law was sought and granted at the second CMC, as to the meaning and effect of the LoE provisions relied on by Mr Pipia. BG UK relied on an expert report and supplemental expert report from Prof David Kereselidze. Mr Pipia relied on an expert report compiled by Mr Irakli Adeishvili. There was also a short reply report written by Mr Adeishvili in response to Prof Kereselidze's supplemental report, for which I gave permission at the hearing. It was never envisaged that there would be oral evidence and indeed there was none, leaving me to do my best to resolve some significant differences between the experts just from their reports and counsel's submissions.
73. The three LoE provisions are these:
 - i) Article 3.10 of the LoE, which provides:

"Each partner shall have the right to obtain a copy of the annual report and all publications of the company. Besides, any partner may check the correctness of the annual report and for this purpose may familiarise himself/herself with the company documents personally or through an auditor, and may request clarifications from the enterprise bodies upon submitting the annual report, but before its approval. If it is found that the annual report contains a substantial error or misstatement, the expenses related to the audit shall be borne by the enterprise. These rights of control and audit may be limited only by this Law, but may be broadened by the charter of the company."

ii) Article 53.3² of the LoE, which is in these terms:

“Shareholders – owners of 5% of shares may request a special inspection of business transactions or of the annual balance sheet in whole if they believe that there are irregularities.”

iii) Article 53.3⁵ of the LoE, which states:

“Holders of 5% of any class of shares may request from an appropriate management body of a joint-stock company copies of the agreements concluded on behalf of the company and/or information on the agreements to be concluded and/or copies of the agreement related decisions.”

74. By way of explanation, the LoE designates sub-sub-Articles by numbers written in superscript as shown above, so that it is indeed, for example, Article 53.3² rather than (say) Article 53.3.2 or Article 53.3(ii).
75. Mr George QC relied on each provision as giving BG UK separate Georgian legal rights to access distinct categories of BG Georgia documents. Ms Tolaney QC submitted that on their true construction, none did so.
76. Ms Tolaney QC also submitted that there are two distinct general limitations on the rights conferred by Articles 3.10, 53.3² and 53.3⁵: first, that a request can only be made by a shareholder for the purpose of protecting their economic interest in the shares in the company; second, that Georgian law on banking secrecy qualifies those rights by restricting the ability of the Subsidiaries to comply with such requests.
77. Mr George QC denied the existence of the first restriction. He accepted that the second restriction could mean some documents that would otherwise be in the control of BG UK, were not in their control. In that regard, Mr Pipia’s position, advanced by Mr George QC in his skeleton argument, had been that banking secrecy restrictions could not affect BG UK’s duty to give disclosure by listing documents, but he conceded at the hearing that that is not right for the Georgian law arguments. The Georgian banking secrecy laws trump any LoE rights, so those rights cannot confer control upon BG UK over documents subject to those laws. However, the banking secrecy laws apply only to BoG, not to BG Georgia, and even as regards BoG it was BG UK’s own evidence that it would have documents relevant to the issues in this Claim not covered by those laws, so banking secrecy, Mr George QC submitted, could not be a complete answer on the issue of control.

Article 3.10

78. Mr Pipia sought initially to rely on the second sentence of Article 3.10 as well as the first sentence as conferring a right of access, but that was premised on an error in the official English translation of Article 3.10 in which the words *“for this purpose”* do not appear. At the hearing, he only relied on the first sentence of Article 3.10 as conferring such a right.
79. The experts were agreed that the term *“partner”* in that sentence covered shareholders so that BG UK, as a shareholder of BG Georgia, has the right to obtain a copy of the annual report and *“all publications”* of BG Georgia. Whilst the parties disputed the

meaning of “*all publications of the company*”, without more, the first sentence of Article 3.10 thus defeats the Application. It provides BG UK with a right to obtain copies of BG Georgia’s annual reports and “*all [its] publications*”.

80. As regards “*all publications of [a] company*” under Article 3.10, Ms Tolaney QC argued they were limited to publicly available documents or documents submitted to state authorities on the basis of the following submissions:
- i) Prof Kereselidze suggested that the Supreme Court of Georgia had held by its decision dated 27 September 2016 (“the 2016 Decision”) that “*all publications of the company*” was so limited.
 - ii) Although a wider category of documentation was allowed to the shareholder in that case, that was because, on its facts, the request for documents was justified under Articles 53.3² and/or 53.3⁵, albeit Article 3.10 had also been relied on by the shareholder.
 - iii) The clear purpose of the provision is to confer on shareholders a right to obtain publicly available documents. In that context, “*publications*” could only mean “*publicly available*” and/or “*published*” documents (i.e. submitted to state authorities or regulators).
 - iv) A company’s “*publications*” could not mean its documents generally as that would ride roughshod over the separate legal personality of the company, a concept well established in Georgian law, for example under Article 24.1 of the Georgian Civil Code, and because “*company documents*” is used in the second sentence but not the first.
81. Mr George QC submitted that “*publications*” covered any document of any kind transmitted or communicated between individuals on company business, even internally within the company, alternatively it covered (all) external correspondence of the company. He suggested that:
- i) Mr Adeishvili’s evidence on the 2016 Decision supported his construction of “*publications*”. Mr George QC drew attention to paragraphs [67]-[68] of that Decision rejecting a submission that a shareholder could only request copies of transactions signed or to be signed on behalf of the Company, because Article 3.10 entitled a shareholder to request other types of information including “*publications*”. The Supreme Court held that to cover “*documentation on the 2006-2013 customers report to the National Communications Committee or reports of corresponding monthly data, as well as the copies of the documentation reflecting bank transfers, number of equipment installed to the customers, total price recovered from those customers and service fees collected from them ...*”. Apart from the report to the National Communications Committee itself, these could not be said to be publicly available documents or documents submitted to state authorities.
 - ii) A decision of the Supreme Court of Georgia dated 6 August 2015 (“the 2015 Decision”), refusing permission to appeal a decision of the Kutaisi Court of Appeals, also assisted. The Court of Appeals’ reasoning included the view, recorded in the 2015 Decision at [10.4], that: “*according to the law, a*

shareholder must have unlimited access to the financial and accounting documentation related to company's activity". The Court of Appeals granted the shareholder access to "all transactions with any commercial bank, financial institution, individuals or legal entities with regard to loans" and "minutes of shareholders meetings and minutes of the meetings of the Supervisory Board etc of commercial and non-commercial legal entities founded by the company and/or in which the company owns shares". The Supreme Court identified no basis for saying there was any error of law in the Court of Appeals' decision.

- iii) Mr Adeishvili's opinion should be accepted that Georgian law had given a "very liberal interpretation" to "publications"; and an analogy could be drawn with the meaning of "publication" in the English law of defamation, requiring only a communication to at least one other person.

82. In reply Ms Tolaney QC submitted that:

- i) In the 2016 Decision, only the report to the National Communications Committee was being treated as a "publication" within Article 3.10, the provision of other documentation (after "as well as ..." in the quote in paragraph 81.i) above) being justified, on the facts of that Decision, by the other LoE provisions relied on.
- ii) Mr Pipia's construction had the absurd result that a person with one share (a shareholder with only one share would count as a "partner" for the purposes of Article 3.10) could call for almost all the company documents without providing any reason for doing so.

83. I regret to say that I do not feel able, on the basis of the written expert evidence as to Georgian law, to state with any confidence a definition of "all publications of the company" for the purpose of Article 3.10. I am not persuaded it is as narrow as Prof Kereselidze suggests, not least because even if Ms Tolaney QC's point on "as well as" in the 2016 Decision is well taken (which it may not be), what then was ordered under Article 3.10 was not (or not just) the report submitted to the National Communications Committee, but company documentation relating to that report. On the other hand, I find it hard to believe that it is as wide as Mr George QC found himself rather forced to suggest; and on no view would I make a finding as to this rather technical provision of Georgian law on the relations between shareholder and company by reference to an analogy with the English law of defamation. I am not helped by the fact (which is what pushed Mr George QC to have to adopt the position he did) that although Mr Adeishvili's evidence rejected the idea that Article 3.10 is narrowly confined in ways suggested by Prof Kereselidze, it did not give any clear or workable definition by reference to which I can fix its scope.

84. I was not at first attracted by the notion of an implicit limit of purpose in the first sentence of Article 3.10 (paragraph 76 above); and I do not think, in the face of the 2016 Decision, that the first sentence is restricted to documents sought for the purpose of checking the accuracy of the company's reported annual financial results, although the second (and related third) sentence of Article 3.10 does have only that more limited focus. However, since I am unable to find that the concept of "publications" is otherwise capable of more sensibly confined definition, and also for the positive

reasons given by him on this point, I prefer Prof Kereselidze's opinion that the first sentence of Article 3.10 is to be interpreted "*in light of the purpose for which shareholders are given rights to information [from the company] under Georgian law*", namely "*the protection of the shareholder's investment made in the shares*". I accept his conclusion that Article 3.10 is to be interpreted, purposively, as confined to requests by a shareholder so as to be "*informed about developments that may impact their position in economic terms and enable them to take actions through a general meeting of the company to protect their economic interest in the company*".

85. However, that does not mean BG UK can avoid giving disclosure in relation to BG Georgia documents that it could properly request under Article 3.10 of the LoE, by saying that had Mr Pipia not brought this Claim, so that English litigation disclosure obligations now arise, BG UK would not have thought of exercising its Article 3.10 right in respect of those documents. Given the nature and asserted value of Mr Pipia's complaints in the Claim, I envisage it is likely that BG Georgia will have documents evidencing what occurred that would inform BG UK as shareholder concerning the enforcement by BoG of its rights under the GCLA, the sale of Rustavi's assets and (especially) the granting by BG Georgia to EUI of loan financing to enable EUI to acquire those assets, and that those events were and are material to the value of BG UK's investment *qua* shareholder in BG Georgia.
86. With a slight sense of dissatisfaction that I cannot better state the scope of BG UK's relevant right, since I cannot give a clear definition of "*all publications of the company*", nonetheless I can and do conclude that the first sentence of Article 3.10 of the LoE gives BG UK control over at least some of BG Georgia's documents. It would have been sufficient, therefore, without any *ad hoc* control arrangement, to defeat BG UK's claim, by the Application, for a declaration to the contrary. But that control arrangement happily means, I think, that the imprecision of this judgment in defining what documents BG UK could demand under the first sentence of Article 3.10 should not create any practical difficulty, since I envisage there is nothing of BG Georgia's of interest for the Claim that BG UK would have a right to request under Article 3.10 but not under the control arrangement.

Article 53.3²

87. There were four issues between the parties concerning this Article.
88. The first and main issue was the meaning of the requirement that a shareholder "*believe that there are irregularities*".
- i) Prof Kereselidze's evidence was that this imported a requirement that the shareholder (a) subjectively believes there are irregularities (b) with the annual balance sheet. The factual evidence on the Application is that BG UK does not believe (or, if relevant, suspect) that anything irregular occurred in relation to the GCLA, its enforcement, or the sale of Rustavi's assets; and I have no basis to reject that evidence.
 - ii) Mr Adeishvili disagreed. As to (a), there was no requirement that the shareholder *subjectively* believe there to be irregularities, instead an awareness of allegations of irregularities and a desire to investigate or defend the company's position suffices. As to (b), all irregularities in a companies'

activities, not just balance sheet irregularities, are covered. In Mr Adeishvili's view, (a) and (b) would be satisfied if a request were made by BG UK with a view to investigating the serious allegations made against the BG Group in England and Georgia. (There are related proceedings, brought by Rustavi against BG Georgia and BoG, in Georgia.)

89. In support of Mr Adeishvili's evidence, Mr George QC submitted that any alternative construction would have the result – he suggested a bizarre result – that a shareholder more willing to jump to conclusions would get access to company documents whereas a shareholder who gave the company the benefit of the doubt would not. Ms Tolaney QC referred to evidence of Prof Kereselidze that a Georgian court would require there to be “*reasonable suspicion*”. I am not clear that Prof Kereselidze really meant to say there is an equation, “*belief = reasonable suspicion*”, although that is how the particular statement in his evidence cited by Ms Tolaney QC reads. His evidence on the point, read as a whole, indicates, I think, that in his opinion actual (subjective) belief is required; and suspicion is not the same as belief, although it may be a stepping stone on the way. Doing the best I can having not had the chance to clarify Prof Kereselidze's evidence with him, I read him as saying that the requirement is indeed belief, but a Georgian court would require it to be founded upon some reasonable grounds before requiring the company to provide documents in response to it under Article 53.3².
90. With or without a requirement of a reasonable foundation for the belief, but especially with it, I do not agree with Mr George QC that it is bizarre to propose that a shareholder who does not think anything untoward has occurred in the company's activities is not given the Article 53.3² right, effectively a right to have a special audit in relation to putatively irregular activity, that is given to a shareholder who thinks that there has been irregularity.
91. The second issue was whether a shareholder may request special inspection of any business transaction (as Mr Pipia contended) or only those that form part of (and are material to) the annual balance sheet (as BG UK contended).
- i) Prof Kereselidze's evidence was that the words “*in whole*” would be otiose if inspection of any business transaction were permitted. In the 2016 Decision, it was only in order to prevent the company avoiding the inspection right conferred by this provision by not preparing a balance sheet at all, that access was granted to activities which would have been material to and formed part of the company's balance sheet had one been prepared, and that was a specific, limited, exception to deal with that issue.
- ii) Mr Adeishvili's view was that the 2016 Decision supported Mr Pipia's construction. In that case the Georgian Supreme Court put it as simply as this, namely that “*the law grants the shareholders the right to request a special review of operational activities of the company or the annual balance sheet*”.
92. During his submissions Mr George QC accepted that on his case and the evidence of Mr Adeishvili, there appeared to be no limit to when a request could be made. Ms Tolaney QC submitted that this could not be what the statute intended since it meant entirely vexatious and frivolous requests would have to be complied with. Her primary case, though, was that the purpose of this provision was to assist a

shareholder in approving the annual balance sheet so that once the annual balance sheet had been approved, Article 53.3² ceased to provide any right of access to a shareholder.

93. I do not find that Article 53.3² is limited in that way. In that regard, I do not accept Prof Kereselidze's view that there is a unifying theme for the provisions of Article 53.3 (five in all) limiting all of their scope to decision-making at the AGM or an EGM of the company. Even if that were a unifying theme, it would entitle a qualifying shareholder (Article 53.3² applies only to shareholders holding at least 5%) to call for a special inspection of a transaction so as to decide whether to call for an EGM. It is easy to envisage how a shareholder might come to believe there had been an irregularity only after the annual financial statements had been approved at an AGM and there is nothing in Article 53.3 that suggests to my eye that such a shareholder is intended to be less well protected. The question whether frivolous or vexatious requests could be denied was not addressed by either expert, and could not be explored with them since they were not called at the hearing. Whilst I cannot therefore say how, as an analysis under Georgian law, such requests would be dealt with, I am unable to say that their spectre raised by Ms Tolaney QC should deter me from saying that Article 53.3² means what it appears to say. (Indeed, the potential problem of frivolous or vexatious requests will exist whatever the scope of these rights is interpreted to be.)
94. The third issue was whether a shareholder's request must be made in the context of decisions and issues that can be discussed at and/or voted on by the shareholder at a general meeting (as BG UK contended) or not (as Mr Pipia contended).
- i) Prof Kereselidze's evidence was that Article 53.3² must be construed against Article 53.3 as a whole on account of the "*systemic approach*" to interpretation which was said to be a part of Georgian law. The other sub-paragraphs of Article 53.3 indicated it was particularly concerned with the rights of shareholders in the context of and for the purpose of general meetings. As such, shareholders' rights should only be exercisable in the context of decisions and issues that can be discussed and/or voted on by the shareholder at a general meeting.
 - ii) Mr Adeishvili disagreed with Prof Kereselidze. The language of Article 53.3 as a whole and the Supreme Court cases supported Mr Pipia's construction. In this regard he cited the 2015 Decision which he said covered a request without there having been any general meeting or voting. As Mr George QC explained in argument, there is no reference in Article 53.3² to its exercise being restricted to approval of decisions at general meetings. In addition, in neither the 2015 Decision nor 2016 Decision was the exercise of a right of access linked to there being an annual general meeting.
95. I have already indicated, in dealing with the second issue, that I prefer Mr Pipia's case on this third issue.
96. The fourth issue was whether the company has the right to refuse a request from a shareholder if it is in the substantial interests of the company to do so, as BG UK contended.

- i) Prof Kereselidze's evidence was that a company does have such a right to refuse a request. The "*systemic approach*" to interpretation requires consideration of Article 53.3 as a whole, including Article 53.3¹, which entitles shareholders to request clarifications for agenda items from the directors and supervisory board but is expressly subject to a right of refusal if it is in the substantial interests of the company. His view was that it is "*all the more compelling*" for a company to have such a right of refusal in the context of a request for documents under Article 53.3² which may contain confidential information.
 - ii) Mr Adeishvili's evidence was that the stipulation in 53.3¹ could not be read into 53.3². He relied on the 2015 Decision as supporting this proposition in which the Supreme Court held "*in general, a shareholder's request for information relating to company operations cannot be rejected on the ground that it is in essential interests of the company or that the disclosure of information will put the company at risk merely because it may be disclosed by third parties.*"
 - iii) Prof Kereselidze said he disagreed with the conclusion of the court in that case and did not believe that it represents Georgian law.
97. Mr George QC submitted, and I agree, that Mr Adeishvili's evidence should be preferred because Prof Kereselidze's was unsupported by either authority or the language of the provision. Further, it would largely emasculate the right under Article 53.3², which only arises at all if the 5% (or more) shareholder believes there has been an irregularity – meaning, *prima facie*, that he may well be at odds with the senior management of the company – if the company, in practice acting by that senior management, can refuse access by relying on a claim that to do so would be in the company's interests.
98. My conclusion in relation to Article 53.3², therefore, is that if BG UK believed that there had been irregularities in respect of BG Georgia's business transactions related to Rustavi and EUI, then it would have a right to conduct a special investigation into those transactions (which, I apprehend, must involve a right to inspect and take copies of related documents). BG UK does not hold that belief, however, so the right has not arisen in the event and Article 53.3² does not in fact grant any relevant control over BG Georgia's documents.

Article 53.3⁵

99. It was BG UK's case that, as with Article 53.3² the right conferred by this article is subject to two implied limitations:
- i) a request under Article 53.3⁵ can only be made in the context of decisions and issues that can be discussed and/or voted on by the shareholder at a general meeting; and
 - ii) a company has a right to refuse a request under Article 53.3⁵ if it is in the substantial interests of the company to do so.

100. The arguments were essentially the same as for Article 53.3². I therefore again prefer Mr Pipia's case on those points.
101. That means, though, unlike with Article 53.3², that there is on the facts no unsatisfied qualifying trigger for BG UK's right under Article 53.3⁵. It does not require BG UK to entertain a belief that anything untoward has occurred. On the other hand, the documents covered by Article 53.3⁵ are relatively narrowly defined. So far as material, it entitles BG UK only to "*copies of ... agreements concluded on behalf of [BG Georgia]*" and "*copies of agreement-related decisions*". Article 53.3⁵ also gives a right to be given "*information on the agreements to be concluded*", but as I understand it the Claim concerns only transactions that were concluded, and anyway a request for information could be satisfied by writing a letter or report giving the information, so a right to make such a request would not involve any element of control over documents created prior to and independently of the request.
102. BG UK therefore, I find, has control over – because it has a legal right under Article 53.3⁵ to be given by BG Georgia copies of – agreements concluded by BG Georgia and documents (if they exist) by which decisions to conclude those agreements were made. Here, I do not see room for Prof Kereselidze's suggestion that there is some implied limiting purpose that the shareholder's request under Article 53.3⁵ must be to obtain information relevant to the protection of his investment as shareholder. The scope of Article 53.3⁵ is narrow, its language unqualified, and a legislature could quite rationally take the view that the interests of shareholders of joint-stock companies are properly served only if they can see, if they wish, what contracts are being concluded by the company.
103. All that said, because of the limited focus of Article 53.3⁵, all the more so than with Article 3.10, I do not see how BG UK's right to be provided by BG Georgia with copies of BG Georgia contracts and copies of decisions to conclude the same will add anything, for the purposes of BG UK's Extended Disclosure obligations in the Claim, which is what ultimately matters at this stage, to the control arrangements under the 30 March Letters.

Summary – Georgian law (BG Georgia)

104. For the reasons given above, I have concluded and find that by virtue of its shareholding in BG Georgia, BG UK has a right under Georgian law to be provided by BG Georgia upon request with documents, or copies of documents, within the following categories, so that such documents as held by BG Georgia are within the control of BG UK for the purpose of CPR PD 51U (or, if relevant, CPR 31.8):
- i) under Article 3.10 of the LoE, all annual reports of BG Georgia;
 - ii) also under Article 3.10 of the LoE, any other "*publications of the company [i.e. of BG Georgia]*" within the first sentence of Article 3.10 (as to the meaning of which I have been unable to reach any firm conclusion);
 - iii) under Article 53.3⁵ of the LoE, agreements concluded on behalf of BG Georgia in each case together with any document(s) constituting the decision to conclude the agreement.

105. I do not envisage that BG UK's rights as shareholder under Georgian law, as just summarised, entitle it to any document held by BG Georgia that would be of interest in the Claim that is not in any event within the scope of the control arrangement constituted by the 30 March Letters. So I anticipate that those shareholder rights will not alter or expand the directions in respect of BG UK's Extended Disclosure that I shall make, but the parties can assist me as to that at the resumed second CMC in due course.

Grandfather Issue

106. That brings me to BoG's documents. None of Articles 3.10, 53.3² and 53.3⁵ gives any right against a subsidiary of the shareholder's company. So BG UK does not have control by virtue of the LoE over BoG's documents by virtue of a right to demand that BoG provide it with documents, or copies, or give it access to inspect or take copies of documents. However, Mr Pipia's position, supported by Mr Adeishvili's opinion, is that BG UK's rights against BG Georgia under the LoE extend to impose an obligation on BG Georgia, responding to a request made by BG UK exercising its rights, to make its own distinct but related request to BoG in exercise of its rights under the LoE.

107. Prof Kereselidze's view was that none of the Articles of the LoE relied on can be invoked in this way:

- i) First, there is no basis for this approach in the wording of the provisions; and access by virtue of a grandfather relationship would be inconsistent with the concept of independent and separate legal personality.
- ii) Second, there is no basis for the idea in the existing case law. He pointed out the 2015 Decision concerned a direct shareholder and that the passage at [10.4] I have already quoted (paragraph 81.ii) above) related to the right of the direct shareholder to be given documents of his company, not documents of the company's subsidiary; and he noted Mr Adeishvili's acceptance that the grandfather issue had not been directly considered by the Georgian Courts.

108. Mr Adeishvili's evidence was that the provisions were wide enough to have this effect. He relied in particular on the 2015 Decision. He cited the passage from paragraph [10.4] set out above and that the court ordered, pursuant to Articles 3.10, 53.3² and/or 53.3⁵, that the shareholder be provided with "*complete founding documentation, including charters, minutes of the meetings of partners and the Supervisory Board etc of commercial and non-commercial legal entities founded by the Company and/or in which the Company owns shares/ownership interest*". But as Prof Kereselidze noted, the Kutaisi Court of Appeal had held that it was not necessary for the shareholder to establish that documents requested were in the possession of the company to make a valid request, since if they were "*not available due to some objective reason, this will be identified when the court order is being enforced and, naturally, the shareholder will not be able to receive them.*" Thus the 2015 Decision, so far as material, was concerned only with the shareholder's right to get hold of documents already in his company's possession (for whatever reason), even if they were or were copies of documents that were originally his company's subsidiary's documents. If there were no such documents, there would be nothing to provide to the

shareholder, not (as now proposed by Mr Adeishvili) an obligation on the company to obtain them from its subsidiary so as to pass them on.

109. Ms Tolaney QC submitted that, even if grandfather requests are possible, this would not increase the scope of documents to which BG UK might have an entitlement. For example, the first sentence of Article 3.10, as putatively invoked by BG UK, could only ever concern BG Georgia's annual report and other "*publications*". BoG's annual report or other "*publications*", putatively demanded by BG Georgia under Article 3.10, would not become, because of the demand or if actually provided, BG Georgia's publications. Similarly, Article 53.3⁵ may entitle BG UK to copies of BG Georgia's contracts and BG Georgia to copies of BoG's contracts, but the latter right does not mean that BoG's contracts are BG Georgia's contracts so as to be caught by the former right.
110. That unanswerable logic led Mr George QC to float the possibility of BG UK making a request to BG Georgia, pursuant to Article 53.3², for "*special inspection*" of a BG Georgia "*business transaction*", proper compliance with which might, depending on the facts, oblige BG Georgia to exercise rights under Articles 3.10, 53.3² and/or 53.3⁵ against BoG, i.e. to get hold of BoG documents reasonably needed properly to understand whether the suspect BG Georgia transaction(s) had been irregular. That would not be immediately answered by Ms Tolaney QC's logic, because unlike Articles 3.10 and 53.3⁵, Article 53.3² does not itself define a right of access to certain documents or categories of documents at all, let alone in terms that exclude BoG documents or copies thereof, even if actually held by BG Georgia. It might still ultimately be answered by that logic, depending on what would really be entailed under Georgian law by an Article 53.3² "*special inspection*", on which Mr George QC had to concede there was no detailed expert evidence. Not only would I have needed such detailed expert evidence before I might entertain this rather speculative possibility at all seriously, it falls away in any event given my findings as to the "*belief*" requirement of Article 53.3².

Summary – Georgian law (BoG)

111. The result is that I am not persuaded that BG UK has any control by virtue of the LoE, whether directly or indirectly via BG Georgia, over any of BoG's documents. Had it not been for the *ad hoc* control arrangement under the 30 March Letters – which therefore BG UK was entirely well advised to put in place directly with BoG – I would have concluded that the Application succeeded so far as BoG's documents were concerned, and would have granted a declaration accordingly.

Banking Secrecy

112. As I have already noted, it became common ground at the hearing that there was, in principle, a general limitation on Articles 3.10, 53.3² and/or 53.3⁵, namely that BoG is subject to three Georgian banking secrecy provisions (the "*Banking Secrecy Provisions*"), the impact of which went to the issue of control in this case and therefore disclosure and not just to the question of production for inspection by BG UK, because there would be no right under any of the LoE Articles to see or be given, or be given a copy of, documents subject to those provisions. The Banking Secrecy Provisions are:

i) Article 863.1 of the GCC which provides:

“a credit institution shall keep secret the facts relating to the account and other facts made known to it in the course of business relations with the account holder except as provided by law or except where the matter concerns ordinary banking information that is not prejudicial to the account holder’s interests.”

ii) Article 17.1 of the Law of Georgia on Activities of Commercial Banks (“LOGAB”) which states:

“No one shall have the right to give anyone access to confidential information, to disclose or disseminate this information, or to use it for personal purposes. Confidential information may be communicated only to the National Bank within its authority.”

iii) Article 3d.e of the Code of Ethics and Standards of Professional Conduct of Commercial Banks (“the Code”), stating:

“persons within the scope of the Code must keep information about current and former customers confidential unless:

(d.e.a) Information is related to the illegal activities of the customer;

(d.e.b) Disclosure is required by law; or

(d.e.c) The customer permits disclosure of the information.”

113. While there was a dispute as to the scope of these provisions, set out below, there was much common ground between the parties.

114. They were agreed that these provisions apply to BoG, as a commercial bank licensed under Georgian legislation, but not to BG Georgia. As mentioned previously, it was common ground also that not all documents held by BoG that might be material to the issues in the Claim would be covered. It was the evidence of Mr Swain, on behalf of BG UK, that the Banking Secrecy Provisions would only cover *“the majority of the documents held by BoG that are potentially relevant to the proceedings”*.

115. There were disputes as to detail over the scope or impact of the Banking Secrecy Provisions. They were not explored in detail in the argument before me, partly in the interests of time but partly recognising realistically that I was not well placed to resolve the disputes and that it would be unlikely to assist for me to try to do so. Disclosure directions, which will create only procedural obligations upon BG UK as the litigating party here, are going to involve classic search/review/disclose processes, to whatever extent those are directed, as regards documents already in BG UK’s hands, and possibly requirements to request documents from BG Georgia and BoG. It may be that BoG will decline to provide requested documents, explaining why, if and to the extent it takes the view that it is not able to provide them because of the Banking Secrecy Provisions. Whether it will be appropriate, or possible, for the court to do anything more about that, as part of managing BG UK’s Extended Disclosure obligations, if Mr Pipia were to take the view that BoG had invoked the Banking

Secrecy Provisions mistakenly or to a mistaken extent or that BG UK had not done enough to challenge that invocation, is not something I can or should try to guess in advance even of the discussion that will follow this judgment as to what, if any, requests are in the first instance to be made.

Conclusions

116. By the 30 March Letters, BG UK set up with BG Georgia and BoG control arrangements, that is to say agreements (whether or not legally enforceable as contracts) under which BG Georgia and BoG gave their standing consent to provide to BG UK (or its advisors) upon request documents held by them that pertain to this Claim. Those arrangements have not been terminated, there is no reason to suppose they will be terminated and there is good reason to suppose they will not be terminated since it is the common cause of BG UK, BG Georgia and BoG to contest Mr Pipia's allegations as made in the Claim, albeit only BG UK is being sued here.
117. Accordingly, documents held by BG Georgia and BoG within the scope of those arrangements are within BG UK's control for the purpose of CPR PD 51U (and, if relevant, for the purpose of CPR 31.8), and have been since 30 March 2018 or thereabouts (strictly, since the dates of the respective counter-signatures of the 30 March Letters, which are not in evidence).
118. Interpreted reasonably, those arrangements in my judgment require BG UK (or its advisors on its behalf – in practice, presumably that will mean Freshfields) to formulate requests for particular documents or classes of documents so that BG Georgia, respectively BoG, can sensibly and reasonably readily comply. I do not interpret them as agreements entitling BG UK in effect to impose on BG Georgia or BoG all Extended Disclosure obligations such as they may have owed had they been party to the Claim. Obvious examples would be obligations, such as Extended Disclosure by a litigant in English proceedings can entail, to retrieve or restore deleted files, or to conduct wide-ranging keyword searches across huge email or other electronic documentary records.
119. Apart from the respective control arrangements just described, BG UK does not have control over any of BoG's documents. The provisions of Georgian law under the LoE relied on by Mr Pipia do not assist him in respect of documents held by BoG.
120. As regards documents held by BG Georgia, however, BG UK does have rights under the LoE, and therefore control to the extent of those rights, as summarised in paragraph 104 above.
121. Subject to further assistance from the parties as to the detail, I expect that it will be appropriate to reflect the conclusions I have reached as to control by requiring Model C Extended Disclosure by BG UK in respect of documents held by BG Georgia and BoG, with Model C Requests settled on the basis that they will be the requests BG UK is expected to make of BG Georgia and BoG, pursuant to the 30 March Letters, and I anticipate that BG UK's rights against BG Georgia under the LoE will not alter or add to the Model C Requests that it will be appropriate to require.