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## STATE IMMUNITY OF CENTRAL BANKS

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*Koo Golden East Mongolia v Bank of Nova Scotia and others* [2007] All ER (D) 306 (Dec) CA (Civ Div) (Sir Anthony Clarke MR, Smith and Pumfrey LJ) (19 December 2007)

### BACKGROUND

Koo Golden East Mongolia ('Koo') was a Mongolian mining company. Bank of Nova Scotia (the 'Canadian Bank') was a Canadian bullion bank with a branch in London. The Central Bank of Mongolia (the 'State Bank') was the central bank of the state of Mongolia. Koo entered into an agreement with the State Bank, whereby it deposited unrefined gold with the State Bank for safe custody in return for the State Bank paying 85 per cent of the price of the gold to Koo. Title to the gold remained with Koo. The State Bank disputed a further implied term in the agreement that Koo retained the right to the return of the deposit at any time. The State Bank subsequently transferred some of the unrefined gold to a third party outside Mongolia for refinement and sale in order to maintain the currency reserves of the country. The State Bank had an account with the Canadian Bank which had been credited in relation to dealings with Koo's gold.

On 10 December 2007, the High Court granted Koo a 'Norwich Pharmacal' order requiring the Canadian Bank to disclose information about its dealings with the State Bank.

### CONCLUSION

Ten days later, the Court of Appeal overturned the High Court

decision and set aside the order. The State Bank had been acting in exercise of its sovereign authority within the meaning of the UK State Immunity Act 1978, since it had been carrying out its function of maintaining Mongolia's currency reserves. Although the Canadian Bank was not, in a narrow sense, the agent or servant of the State Bank, that was not true in the wider sense contemplated by settled authority.

The Court of Appeal reinforced the conclusion reached by Aikens J in *AIG Capital Partners Inc and another v Republic of Kazakhstan* [2005] EWHC 2239 (Comm) that state immunity applies whenever 'a central bank ... is performing its key functions of acting as guardian and regulator of the state's monetary system'.

The decision reassures commercial banks that information on their central bank customers is not within the ambit of English courts. If the central banks can claim immunity, claimants cannot use the English courts to make orders against the bankers of the central banks.

*Jonathan Lawrence*  
*Kirkpatrick & Lockhart Preston Gates Ellis LLP*  
*jonathan.lawrence@klgates.com*  
*www.klgates.com*